

UNITED STATES
SECURITIES AND EXCHANGE COMMISSION
Washington, DC 20549
Form 10-K

ANNUAL REPORT PURSUANT TO SECTION 13 OR 15(d) OF THE SECURITIES
EXCHANGE ACT OF 1934

For the fiscal year ended December 31, 2001

TRANSITION REPORT PURSUANT TO SECTION 13 OR 15(d) OF THE SECURITIES
EXCHANGE ACT OF 1934

For the transition period from _____ to _____

Commission File Number 333-52664

BLACK HILLS CORPORATION

Incorporated in South Dakota IRS Identification Number 46-0458824

625 Ninth Street
Rapid City, South Dakota 57701

Registrant's telephone number, including area code
(605) 721-1700

Securities registered pursuant to Section 12(b) of the Act:

Title of each class	Name of each exchange on which registered
---------------------	--

Common stock of \$1.00 par value	New York Stock Exchange
----------------------------------	-------------------------

Indicate by check mark whether the Registrant (1) has filed all reports required to be filed by Section 13 or 15(d) of the Securities Exchange Act of 1934 during the preceding 12 months (or for such shorter period that the Registrant was required to file such reports), and (2) has been subject to such filing requirements for the past 90 days.

YES X NO
--- ---

Indicate by check mark if disclosure of delinquent filers pursuant to Item 405 of Regulation S-K is not contained herein, and will not be contained, to the best of Registrant's knowledge, in definitive proxy or information statements incorporated by reference in Part III of this Form 10-K or any amendment to this Form 10-K.

X

State the aggregate market value of the voting stock held by non-affiliates of the Registrant.

At February 28, 2002 \$734,526,500

Indicate the number of shares outstanding of each of the Registrant's classes of common stock, as of the latest practicable date.

Class	Outstanding at February 28, 2002
Common stock, \$1.00 par value	26,694,625 shares

Documents Incorporated by Reference

1. Definitive Proxy Statement of the Registrant filed pursuant to Regulation 14A for the 2002 Annual Meeting of Stockholders to be held on May 29, 2002, is incorporated by reference in Part III.

TABLE OF CONTENTS

	Page
ITEMS	
1 & 2.	
BUSINESS AND PROPERTIES.....	3
General.....	3
Industry Overview.....	5
Strategy.....	6
Integrated Energy.....	8
Power Generation.....	9
Fuel Production.....	14
Fuel Marketing.....	15
Electric Utility - Black Hills Power, Inc.....	17
Communications.....	20
Competition.....	20
Risk Management.....	21
Regulation.....	21
Energy Regulation.....	22
Environmental Regulation.....	22
Exploration and Production.....	26
Other Properties.....	26
Employees.....	26

ITEM 3.	LEGAL PROCEEDINGS.....	27
ITEM 4.	SUBMISSION OF MATTERS TO A VOTE OF SECURITY HOLDERS.....	27
ITEM 5.	MARKET FOR REGISTRANT'S COMMON EQUITY AND RELATED STOCKHOLDER MATTERS.....	28
ITEM 6.	SELECTED FINANCIAL DATA.....	29
ITEM 7.	MANAGEMENT'S DISCUSSION AND ANALYSIS OF FINANCIAL CONDITION AND RESULTS OF OPERATIONS.....	30
	BUSINESS STRATEGY.....	30
	RESULTS OF OPERATIONS.....	31
	CRITICAL ACCOUNTING POLICIES.....	39
	LIQUIDITY AND CAPITAL RESOURCES.....	40
	MARKET RISK DISCLOSURES.....	46
	RATE REGULATION.....	51
	NEW ACCOUNTING PRONOUNCEMENTS.....	52
	SAFE HARBOR FOR FORWARD LOOKING INFORMATION.....	53
ITEM 8.	FINANCIAL STATEMENTS AND SUPPLEMENTARY DATA.....	54
ITEM 9.	CHANGES IN AND DISAGREEMENTS WITH ACCOUNTANTS ON ACCOUNTING AND FINANCIAL DISCLOSURE.....	87
ITEM 10.	DIRECTORS AND EXECUTIVE OFFICERS OF THE REGISTRANT.....	87
ITEM 11.	EXECUTIVE COMPENSATION.....	88
ITEM 12.	SECURITY OWNERSHIP OF CERTAIN BENEFICIAL OWNERS AND MANAGEMENT.....	88
ITEM 13.	CERTAIN RELATIONSHIPS AND RELATED TRANSACTIONS.....	88
ITEM 14.	EXHIBITS, FINANCIAL STATEMENT SCHEDULES AND REPORTS ON FORM 8-K.....	88
	SIGNATURES.....	92

FORWARD-LOOKING STATEMENTS

This Form 10-K includes "forward-looking statements" as defined by the Securities and Exchange Commission. These statements concern our plans, expectations and objectives for future operations. All statements, other than statements of historical facts, included in this Form 10-K that address activities, events or developments that we expect, believe or anticipate will or may occur in the future are forward-looking statements. The words "believe," "plan," "intend," "anticipate," "estimate" "project" and similar expressions are also intended to identify forward-looking statements. These forward-looking statements include, among others, such things as:

- o expansion and growth of our business and operations;
- o future financial performance;
- o future acquisition and development of power plants;
- o future production of coal, oil and natural gas;
- o reserve estimates; and
- o business strategy.

These forward-looking statements are based on assumptions, which we believe are reasonable based on current expectations and projections about future events and industry conditions and trends affecting our business. However, whether actual results and developments will conform to our expectations and predictions is subject to a number of risks and uncertainties which could cause actual results to differ materially from those contained in the forward-looking statements, including the following factors:

- o prevailing governmental policies and regulatory actions with respect to allowed rates of return, industry and rate structure, acquisition and disposal of assets and facilities, operation and construction of plant facilities, recovery of purchased power and other capital investments, and present or prospective wholesale and retail competition;
- o changes in and compliance with environmental and safety laws and policies;
- o weather conditions;
- o population growth and demographic patterns;
- o competition for retail and wholesale customers;
- o pricing and transportation of commodities;
- o market demand, including structural market changes;
- o changes in tax rates or policies or in rates of inflation;
- o changes in project costs;
- o unanticipated changes in operating expenses or capital expenditures;
- o capital market conditions;
- o technological advances;
- o competition for new energy development opportunities; and
- o legal and administrative proceedings that influence our business and profitability.

PART I

ITEMS 1 AND 2. BUSINESS AND PROPERTIES

General

We are a growth oriented, diversified energy holding company operating principally in the United States. Our regulated and unregulated businesses have expanded significantly in recent years. Our integrated energy group produces and markets power and fuel. We produce and sell electricity in a number of markets, with a strong emphasis on the western United States. We also produce coal, natural gas and crude oil primarily in the Rocky Mountain region and market fuel products nationwide. Our electric utility serves approximately 59,200 customers in South Dakota, Wyoming and Montana. Our communications group offers state-of-the-art broadband communication services to residential and business customers in Rapid City and the northern Black Hills region of South Dakota. Our predecessor company was incorporated and began providing electric utility service in 1941 and began selling and marketing various forms of energy on an unregulated basis in 1956.

As the following table illustrates, we have experienced significant growth over the last five years, primarily as a result of the expansion of our integrated energy business and increases in wholesale electric sales.

	2001	2000	1999	1998	1997
Net income available for common (in thousands):					
Integrated energy	\$ 56,246	\$ 28,213	\$ 11,588	\$ 10,068	\$ 10,471
Electric utility	45,238	37,100	27,362	24,825	22,106
Communications	(12,300)	(11,382)	(968)	(280)	(218)
Corporate expenses and intersegment eliminations	(1,634)	(1,161)	(915)	-	-
Oil and gas write-down	-	-	-	(8,805)	-
	<u>\$ 87,550</u>	<u>\$ 52,770</u>	<u>\$ 37,067</u>	<u>\$ 25,808</u>	<u>\$ 32,359</u>
Earnings per share - diluted	\$3.42	\$2.37	\$1.73	\$1.60(2)	\$1.49
Total assets (in thousands)	\$1,658,767	\$1,320,320	\$668,492	\$559,417	\$508,741
Capital expenditures (in thousands)	\$594,156	\$173,517(1)	\$154,609	\$27,225	\$28,319
The following is unaudited:					
Generating capacity (megawatts)					
Utility (owned generation)	395	393	353	353	353
Utility (purchased capacity)	65	70	75	75	75
Independent power generation	617	250	-	-	-
Total generating capacity	<u>1,077</u>	<u>713</u>	<u>428</u>	<u>428</u>	<u>428</u>
Utility electric sales (megawatt-hours):					
Regulated utility					
Firm electric sales	2,012,354	1,973,066	1,920,005	1,923,331	1,932,347
Wholesale off-system	965,030	684,378	445,712	371,104	279,612
Total utility electric sales	<u>2,977,384</u>	<u>2,657,444</u>	<u>2,365,717</u>	<u>2,294,435</u>	<u>2,211,959</u>
Oil and gas reserves (Mmcfe)	48,401	44,882	44,114	30,160	24,022
Oil and gas production sold (Mmcfe)	7,293	5,278	4,698	4,120	3,541
Tons of coal sold (thousands of tons)	3,518	3,050	3,180	3,280	3,251
Average daily marketing volumes:					
Natural gas (MMbtus)	1,047,700	860,800	635,500	524,800	231,000
Crude oil (barrels)	36,500	44,300	19,270	19,000	12,600(3)
Coal (tons)	6,100	4,400	4,500	4,400(3)	-
Communications:					
Residential customers	15,660	8,368	143	-	-
Business customers	2,250	646	110	-	-
Fiber optic backbone miles	242	210	200	-	-
Hybrid fiber coaxial cable miles	737	588	100	-	-

(1) Excludes the non-cash acquisition of Indeck Capital, Inc.

(2) Excludes impact of \$0.41 per share non-cash write-down of oil and gas properties due to historically low oil prices, lower natural gas prices and a decline in the value of unevaluated properties.

(3) Since date of inception of marketing operations.

For additional information on our business segments see - "ITEM 7. MANAGEMENT'S DISCUSSION AND ANALYSIS OF FINANCIAL CONDITION AND RESULTS OF OPERATIONS and Note 14 of NOTES TO CONSOLIDATED FINANCIAL STATEMENTS."

Industry Overview

In the last decade, many U.S. regulatory bodies have taken steps to transform the energy sectors which they regulate to encourage competition, introduce customer choice and, in some cases, to improve the operational performance of strategic energy assets. In particular, the electric power industry is undergoing substantial change as a result of regulatory initiatives at the federal and state levels. As early as the mid-1990's, new regulatory initiatives to increase competition in the domestic power generation industry had been adopted or were being considered at the federal level and by many states. The primary focus of such efforts was to increase competition through the disaggregation of the traditional utility functions of generation, transmission, distribution and marketing of electricity into competitive or partially regulated businesses. This resulted in new investment opportunities to enter previously non-competitive or closed markets.

In 1992, the Federal Energy Regulatory Commission (FERC) issued Order 636, followed by Order 888 in 1996, to increase competition by easing entry into natural gas and electricity markets. These orders require owners and operators of natural gas and power transmission systems to make transmission service available on a non-discriminatory basis to energy suppliers. In order to better assure competitive access to the transmission network on a non-discriminatory basis, FERC issued Order 2000 in December 1999, which encourages electric utilities with power transmission assets to voluntarily form regional transmission organizations to provide regional management and control of transmission assets independent of firms that sell electricity.

The electric power industry has also witnessed growing consumer demand and frequent regional shortages of electricity over the past several years. The summers of 1998, 1999 and 2000 and the winter of 2000-2001 have all been characterized by very high peak prices for electricity in a number of recently created wholesale electricity markets. Mild weather patterns in the summer of 2001 and winter of 2001-2002 and the current recession have mitigated most regional energy shortages. However, we believe that the reduction in demand for energy is temporary and there remains a long-term need for new electric generating capacity to relieve shortages of electricity and to replace inefficient and obsolete facilities.

The oil and gas industry has experienced volatile changes in commodity prices in the last year. Price increases have been driven in part by several years of modest drilling activity combined with strong growth in demand for energy commodities. Price decreases have been driven by weather patterns, the recession and actions by OPEC. Natural gas is expected to remain the fuel of choice and demand for natural gas is expected to be strong in the future as an increasing number of gas-fired power plants are brought into service.

The telecommunications industry is currently undergoing widespread changes brought about by, among other things, the Telecommunications Act of 1996, the decisions of federal and state regulators to open the monopoly local telephone and cable television markets to competition and the need for higher speed, higher capacity networks to meet the increasing consumer demand for expanded telecommunications services, including broader video choices and high speed data and Internet services. The convergence of these trends and the inherent limitations of most existing networks have created opportunities for new types of communications companies capable of providing a wide range of voice, video and data services through new and advanced high speed, high capacity telecommunications networks.

As a result of historical and anticipated regulatory initiatives and the increasing demand for electricity, fuel and broadband services, we believe there are significant opportunities for the development and growth of our integrated energy businesses, our regulated utility and our communications business.

Strategy

Our strategy is to build long-term shareholder value by adding and augmenting revenue streams from our diverse integrated energy operations. We have implemented a balanced, integrated and risk managed approach to fuel production, energy marketing and independent power. We expect our integrated energy businesses to operate nationwide, with an integrated regional emphasis on the western half of the United States. Built on the strength of our electric utility, we have enhanced our local operations by providing broadband communications. Our utility and communications businesses intend to continue focusing their retail operations primarily in Rapid City and the northern Black Hills region of South Dakota, with wholesale power sales concentrated primarily in the Rocky Mountain and West Coast regions and the ability to move a limited amount of power to the eastern markets. Our diverse operations avoid reliance on any single element to achieve our growth objective. This diversity provides a measure of stability in volatile or cyclical periods.

Our strategy includes the following key elements:

- o grow our power generation segment by developing and acquiring power projects in targeted western markets;
- o expand the generating capacity of our existing sites through a strategy known as "brownfield development;"
- o sell a large percentage of the production from our independent power projects through long-term contracts in order to secure attractive investment returns;
- o increase our reserves and production of natural gas and crude oil;
- o maintain abundant clean coal reserves to assure low-cost generation capability;
- o exploit our fuel cost advantages and our operating and marketing expertise to remain a low-cost power producer;
- o exploit our knowledge and market expertise while managing the risks inherent in fuel marketing;
- o build and maintain strong relationships with wholesale energy customers; and
- o capitalize on our utility's established market presence, relationships and customer loyalty.

Grow our Power Generation Segment by Developing and Acquiring Power Projects in Targeted Western Markets. Our aim is to continue the development of power plants in regional markets based on prevailing supply and demand fundamentals in a manner that complements our existing fuel assets and fuel and energy marketing capabilities. This approach aims to capitalize on market growth while managing our fuel procurement needs. Over the next few years, we intend to grow through a combination of disciplined acquisitions and development of new power generation facilities primarily in the western region where we believe we have the detailed knowledge of market fundamentals and competitive advantage to achieve attractive returns. We believe the following trends will provide us with growth opportunities in the future:

- o Demand for electricity in the western regions will grow and new generation capacity will be required over the next several years.
- o New electric generation construction will be predominantly gas-fired, which may create further competitive cost advantages for new and existing coal-fired generation assets.

- o Transmission construction will significantly lag new generation development, favoring new development located near load centers or existing, unconstrained transmission locations.
- o Disaggregation of the electric utility industry from traditionally vertically integrated utilities into separate generation, transmission, distribution and marketing entities will continue, thereby creating opportunities for acquisitions and joint ventures.

Expand the Generating Capacity of Our Existing Sites Through a Strategy Known as "Brownfield Development." We believe that existing sites with opportunities for brownfield expansion generally offer the potential for greater returns than development of new sites through a "greenfield" strategy. Brownfield sites typically offer several competitive advantages over greenfield development, including:

- o proximity to existing transmission systems;
- o operating cost advantages related to ownership of shared facilities;
- o a less costly and time consuming permitting process; and
- o potential ability to share infrastructure with existing facilities at the same site.

We are currently expanding our capacity with brownfield development underway at our Arapahoe, Las Vegas and Wyodak sites, and believe that our Fountain Valley, Wyodak and Las Vegas sites in particular provide further opportunities for a significant expansion of our gas- and coal-fired generating capacity over the next several years.

Sell a Large Percentage of the Production From Our Independent Power Projects Through Long-Term Contracts in Order to Secure Attractive Investment Returns. By selling the majority of our energy and capacity under mid- and long-term contracts, we believe that we can satisfy the requirements of our customers while earning more stable revenues and greater returns over the long term than we could by selling our energy into the more volatile spot markets. Approximately 90 percent of our power generation assets are under long-term contracts.

Increase Our Reserves and Production of Natural Gas and Crude Oil and Maintain Abundant Clean Coal Reserves to Assure Low-Cost Generation Capability. We aim to support the fuel requirements of our growing portfolio of power plants as well as power plants owned by others by emphasizing natural gas and coal production. Our strategy is to expand our natural gas reserves through a combination of acquisitions and drilling programs and expand our coal production through the construction of mine-mouth coal-fired generation plants at our Wyodak mine location. Our objective is to maintain coal reserves to serve our mine-mouth coal-fired generation plants directly and to maintain sufficient natural gas production either to directly serve or indirectly hedge the fuel cost exposure of our gas-fired generation plants. Specifically, we plan to:

- o substantially increase our natural gas reserves while minimizing exploration risk by focusing on lower-risk exploration and development drilling as well as acquisitions of proven reserves;
- o exploit our belief that the long-term demand for natural gas will remain strong by emphasizing natural gas in our acquisition and drilling activities;
- o add natural gas reserves and increase production by focusing on various shallow gas plays in the Rocky Mountain region, where the added production can be integrated with our fuel marketing and/or power generation activities;

- o increase coal production and sales from our Wyodak mine by continuing to develop additional mine-mouth generating facilities at the site, including the Wygen plant, which is scheduled for completion in first quarter 2003; and
- o pursue future sales of coal from the Wyodak mine to rail-served customers by reducing the moisture content of our coal so that we can ship it greater distances.

Exploit Our Fuel Cost Advantage and Our Operating and Marketing Expertise to Remain a Low-Cost Power Producer. We expect to expand our portfolio of power plants having relatively low marginal costs of producing energy and related products and services. We intend to utilize a low-cost power production strategy, together with access to coal and natural gas reserves, to protect our revenue stream as an increasing number of gas-fired power plants are brought into operation. Low marginal production costs can result from a variety of factors, including low fuel costs, efficiency in converting fuel into energy, and low per unit operation and maintenance costs. We have aggressively managed each of these factors to achieve very low production costs, especially at our coal-fired and hydroelectric generating facilities.

Our primary competitive advantage is our coal mine, which is located in close proximity to our retail service territory. We are exploiting the competitive advantage of this native fuel source by building additional mine-mouth coal-fired generating capacity. This strengthens our position as a low-cost producer since transportation costs often represent the largest component of the delivered cost of coal.

Exploit Our Knowledge and Market Expertise While Managing the Risks Inherent in Fuel Marketing. We aim to apply our knowledge of and expertise in the natural gas transmission system and trading markets in the western and northwestern regions of the United States and western Canada in order to exploit market inefficiencies and maximize our profits in our fuel marketing businesses. Our fuel marketing operations require effective management of price, counterparty and operational risks. To mitigate these risks, we have implemented risk management policies and procedures for each of our marketing companies that establish price risk exposure levels, counterparty credit limits and committees to monitor compliance with our policies. We also limit exposure to energy marketing risks by maintaining separate credit facilities for each of our marketing companies.

Build and Maintain Strong Relationships with Wholesale Energy Customers. We strive to build strong relationships with utilities, municipalities and other wholesale customers, who we believe will continue to be the primary providers of electricity to retail customers in a deregulated environment. We further believe that these entities will need products, such as capacity, in order to serve their customers reliably. By providing these products under long-term contracts, we are able to meet our customers' energy needs. Through this approach, we also believe we can earn more stable revenues and greater returns over the long term than we could by selling energy into the more volatile spot markets.

Capitalize On Our Utility's Established Market Presence, Relationships and Customer Loyalty. As a result of its firmly established market presence, our electric utility has built solid brand recognition and customer loyalty in the Black Hills region. By ensuring a reliable supply of power to retail customers in our South Dakota and Wyoming service territory at rates below the national average, we have developed a strong, supportive relationship with our utility regulators. Our utility provides a solid foundation of support for the expansion of our integrated energy and communications businesses. In addition, industry, technical and market expertise from our utility supports the growth of our integrated energy businesses, and our strong brand recognition assists us in achieving rapid customer acceptance of our bundled communications services in our Black Hills service territory.

Integrated Energy

Our integrated energy group engages in the production and sale of electric power through ownership of a diversified portfolio of generating plants, the production of coal, natural gas and crude oil primarily in the Rocky Mountain region, and the marketing of fuel products nationwide. Net income from the integrated energy group exceeded net

income derived from our electric utility in 2001. We expect that earnings growth from the integrated energy group over the next few years will be driven primarily by our continued expansion in the power generation and oil and gas segments. The integrated energy group consists of four segments: power generation, oil and gas, coal mining and fuel marketing.

Power Generation. Our power generation segment acquires, develops and expands unregulated power plants. We hold varying interests in operating independent power plants in California, New York, Massachusetts, Wyoming, Nevada and Colorado with a total net ownership of 593 megawatts, as well as minority interests in several power-related funds with a net ownership interest of 24 megawatts.

Project Development Program. Power generation projects currently under construction include:

- o Arapahoe CC5, a 50 megawatt combined cycle expansion of our gas-fired turbines at the Arapahoe site located in the Front Range of Colorado, which is expected to be placed in service in mid-2002;
- o Las Vegas Cogeneration expansion, a 224 megawatt gas-fired co-generation power plant project located near Las Vegas, Nevada, which is expected to be placed in service in the third quarter of 2002; and
- o Wygen, a 90 megawatt coal-fired plant under construction at our Wyodak, Wyoming site which is expected to be operational in the first quarter of 2003. We will lease this plant.

We also have an active acquisition and development program through which we are pursuing a number of additional generation projects in early stages of development, including a coal-fired mine-mouth power plant with generating capacity of up to 500 megawatts, to be located at our Wyodak site near Gillette, Wyoming. No assurance can be given that we will be successful in completing any or all of the projects currently under consideration.

How We Manage Our Portfolio. We strive to maintain diversification and balance in our portfolio of regulated and unregulated power plants. Our portfolio (including plants currently operating and those under construction) is diversified in terms of fuel mix and geographic location, with 87 percent of net unregulated capacity being gas-fired, 9 percent coal-fired, and the remainder hydroelectric. Our independent power plants are located in California, Wyoming, Colorado, Nevada, New York and Massachusetts. In contrast, our electric utility capacity is approximately 50 percent coal-fired, 38 percent oil or gas-fired, and 12 percent under purchased power contracts, with plants located in South Dakota and Wyoming.

We also have a diversified mix of revenue sources. We typically sell two types of products: energy and capacity, including ancillary services. Although these are separate products, both are typically sold together. Energy refers to the actual electricity generated by our facilities for ultimate transmission and distribution to consumers of electricity. Energy is the only one of our products that is subsequently distributed to consumers. Capacity refers to the physical capability of a facility to produce energy. Ancillary services generally are capacity support products used to ensure the safe and reliable operation of the electric power supply system. Examples of ancillary services include:

- o automatic generation control, which is used to balance energy supply with energy demand, referred to in our industry as "load," on a real-time basis; and
- o operating reserves, which are used on an hourly or daily basis to generate additional energy if demand increases or if major generating resources go off-line or if transmission facilities become unavailable.

Our output is sold under contracts of varying length and subject to merchant pricing, thereby allowing us to take advantage of current favorable price trends, while hedging the impact of a potential downturn in prices in the future. We currently sell energy and capacity under a combination of short- and long-term contracts as well as direct sales into the merchant energy markets. Currently, we sell approximately 90 percent of our unregulated generating capacity

in operation under contracts greater than one year in duration. We sell the remainder of this capacity under short-term contracts or directly into the merchant markets. Substantially all of the energy and capacity to be generated by our projects under construction is also under long-term contracts.

How We Develop and Acquire Power Plants. We plan to actively pursue power plant acquisitions and development opportunities in areas we view as attractive throughout North America. Our current focus has been, and is likely to remain, in the North American Reliability Council region known as the Western Systems Coordinating Council, or "WSCC." Among those factors we consider critical in evaluating the relative attractiveness of new generation opportunities are the following:

- o electric demand growth potential in the targeted region;
- o requirements for permitting and siting;
- o proximity of the proposed site to high transmission capacity corridors;
- o fuel supply reliability and pricing;
- o the local regulatory environment; and
- o the potential to exploit market expertise and operating efficiencies relating to geographic concentration of new generation with our existing power plant portfolio.

Our goal is to sell approximately 80 percent of the independent power generation portfolio under long-term contracts, while leaving the remainder available for merchant, or "spot" sales. We aim to secure long-term power sales contracts in conjunction with project financing. This enables us to minimize our liability and to design a debt repayment schedule to closely match the term of the power sales contracts so that at the end of the contract term, the debt has largely been repaid.

Independent Power Plants

General. Power facilities are often classified by cost of production. Facilities that have the lowest costs of production relative to other power plants in the region are usually the facilities that are first used to provide energy. These plants are known as "baseload" facilities and typically operate more than 60 percent of the time they are available. Our hydroelectric assets in New York and the Wygen coal-fired facility under construction in Wyoming are examples of low-cost, baseload plants.

As demand for electricity rises during the year or even during the course of a day, power plants that have higher costs of production are dispatched to supply additional energy. Facilities that regularly provide additional energy during a day and that are typically used between 10 percent and 60 percent of the time are known as "intermediate" facilities.

Power plants with the highest costs of production are called upon only in times of exceptionally high demand and are known as "peaking units." Peaking units are generally dispatched less than 10 percent of the time they are available.

Rocky Mountain and West Coast Facilities. We own approximately 525 megawatts of generating capacity in the WSCC states of California, Colorado, Nevada and Wyoming, and are in the process of constructing or acquiring another 364 megawatts in the region. All of these facilities in operation are gas-fired, with all but our Harbor Cogeneration facility in California operating under long-term power purchase or tolling agreements whereby the purchaser assumes the fuel risk. The Harbor Cogeneration facility currently operates as a merchant peaking plant selling ancillary services and energy into the California market.

WSSC Facilities

Power Plant	Fuel Type	State	Total Capacity (MWS)	Interest	Net Capacity (MWS)	Start Date
----	----	----	-----	-----	-----	-----
In Operation:						
Fountain Valley	Gas	CO	240.0	100%	240.0	2001
Arapahoe Unit 5	Gas	CO	40.0	100%	40.0	2000
Arapahoe Unit 6	Gas	CO	40.0	100%	40.0	2000
Valmont Unit 7	Gas	CO	40.0	100%	40.0	2000
Valmont Unit 8	Gas	CO	40.0	100%	40.0	2001
Las Vegas I	Gas	NV	53.0	50%	26.5	1994
Ontario	Gas	CA	12.0	50%	6.0	1984
Harbor	Gas	CA	80.0	53.3%	42.6	1989
Harbor Expansion	Gas	CA	18.0	53.3%	9.6	2001
Gillette CT	Gas	WY	40.0	100%	40.0	2001
Total in Operation			603.0		524.7	
			-----		-----	
Under Construction:						
Arapahoe CC5	Gas	CO	50.0	100%	50.0	2002
Las Vegas II	Gas	NV	224.0	100%	224.0	2002
Wygen	Coal	WY	90.0	100%	90.0	2003
Total in Construction			364.0		364.0	
			-----		-----	
Total WSSC			967.0		888.7	
			=====		=====	

Arapahoe, Valmont and Fountain Valley Facilities

In Operation: Our Fountain Valley, Arapahoe and Valmont plants are wholly-owned gas-fired peaking facilities in the Front Range of Colorado, with a total capacity of 400 megawatts, including 280 megawatts which became operational during the summer of 2001. We sell all of the output from these plants to Public Service Company of Colorado under tolling contracts expiring in May 2012. These contracts also cover the Arapahoe expansion project described below.

Under Construction: We expect to increase our capacity by 50 megawatts at the Arapahoe plant by mid 2002.

Las Vegas Cogeneration Facility

In Operation: Las Vegas Cogeneration, is a 53 megawatt, gas-fired plant northeast of Las Vegas, Nevada. Most of the power from this plant is sold to Nevada Power under a long-term contract that expires in 2024. We own 50 percent of this plant, however under generally accepted accounting principles, we consolidate 100 percent.

Under Construction/Expansion: We are currently expanding the Las Vegas Cogeneration facility by an additional 224 megawatts. The expansion is expected to become fully operational during the third quarter of 2002. The power generated by the expansion will be sold under a long-term contract with Allegheny Energy Supply L.L.C. that expires in 2017. We own 100 percent of the expansion project.

Wygen Facility

Under Construction: The Wygen facility is a leased mine-mouth coal-fired plant with a total capacity of 90 megawatts, which is expected to be completed by first quarter 2003. The Wygen plant will be substantially identical in design to our electric utility's Neil Simpson II facility, completed in 1995. The plants will run on pulverized low-sulfur coal fed by conveyor from our adjacent Wyodak mine. The plant will burn approximately

500,000 tons of coal per year, and will use the latest available environmental control technology. We intend to sell the majority of the power from the facility under long-term unit contingent capacity and energy sales contracts, under which delivery is not required during plant outages. We have entered into a contract to sell 60 megawatts of unit contingent capacity from this plant to Cheyenne Light, Fuel and Power Company with a term of 10 years from the date the plant becomes operational. We have also signed a contract to sell an additional 20 megawatts of unit contingent capacity and energy to the Municipal Electric Agency of Nebraska for a term of 10 years.

Gillette CT

The Gillette CT facility, a gas-fired combustion turbine facility located at the same site as our Wygen plant, has a total capacity of 40 megawatts and became operational in May 2001. The energy and capacity from this facility is sold to Cheyenne Light, Fuel and Power Company under a 10-year tolling agreement.

Ontario Cogeneration Facility

Ontario Cogeneration Company is a 12 megawatt, gas-fired power plant in Ontario, California, which is currently being operated as a baseload plant. Electrical output from the plant is subject to a 25-year power purchase agreement with Southern California Edison, which expires in January 2010. The project also sells all of its steam production to Sunkist Growers, Inc. under a five-year agreement, which terminates in November 2002. For a description of certain issues relating to our operation of this plant, see "--Regulation--Environmental Regulation--Clean Air Act."

Harbor Cogeneration Facility

Harbor Cogeneration, a gas-fired plant located in Wilmington, California, is currently being operated as a merchant peaking plant selling ancillary services and energy into the California Independent System Operator, or "CAISO," market. It formerly operated under a 30-year power purchase agreement with Edison Mission Energy. This contract was terminated in February 1999 under a settlement agreement with Southern California Edison. Under the buyout agreement, Harbor Cogeneration will receive payments pursuant to a termination payment schedule for an amount equal to the total payment under the original contract due for the 11-year period beginning April 1, 1997 and ending on October 1, 2008. During 2001, we completed an expansion of the Harbor Cogeneration plant adding 18 megawatts (10 megawatt net ownership interest). The plant has sold the peaking capacity from its expansion to the CAISO for the peak summer periods of 2001 through 2003 under an agreement that provides for payments to us of approximately \$0.6 million per year of the contract. We plan to sell the remaining capacity and all of the energy from this plant in the California market on a merchant basis.

Northeast Facilities. We currently own approximately 68 net megawatts of generation capacity in eight plants in the Northeast region, all of which are located in New York and Massachusetts. Fifty-nine percent of this generation is "run-of-river" hydroelectric, with the remainder being gas-fired peaking capacity.

Power Plant	Fuel Type	State	Total Capacity (Mws)	Interest	Net Capacity (Mws)	Start Date
-----	-----	-----	-----	-----	-----	-----
Northeast						
New York State Dam	Hydro	NY	11.4	100%	11.4	1990
Middle Falls	Hydro	NY	2.3	50%	1.2	1989
Sissonville	Hydro	NY	3.0	100%	3.0	1990
Warrensburg	Hydro	NY	2.9	100%	2.9	1988
Hudson Falls	Hydro	NY	41.9	33.0%	13.8	1995
South Glens Falls	Hydro	NY	13.9	30.2%	4.2	1994
Fourth Branch	Hydro	NY	3.4	100%	3.4	1988
Pepperell	Gas	MA	40.0	70.7%	28.3	1990
			-----		-----	
Total Northeast			118.8		68.2	
			=====		=====	

Adirondack Hydro Development

The seven "run-of-river" hydroelectric plant interests are:

- o New York State Dam, an 11.4 megawatt plant located in Waterford and Cohoes, New York;
- o Middle Falls, a 2.3 megawatt plant located in Easton, New York;
- o Sissonville, a 3.0 megawatt plant located in Potsdam, New York;
- o Warrensburg, a 2.9 megawatt plant located in Warrensburg, New York;
- o Hudson Falls, a 41.9 megawatt plant located in Moreau, New York;
- o South Glens Falls, a 13.9 megawatt plant located in South Glens Falls, New York; and
- o Fourth Branch, a 3.4 megawatt plant located in Waterford, New York.

The seven projects were initially covered by long-term power purchase contracts with Niagara Mohawk Power Corporation for all or most of their output. Currently, four projects have been restructured to allow the power purchase contracts to be bought out and for us eventually to sell power into the New York Independent System Operator (ISO). The New York State Dam, Sissonville, Fourth Branch and Warrensburg facilities are currently subject to short-term transition power sales agreements expiring in 2002 and 2003, at which point these plants will sell directly into the market on a merchant basis. The remaining three New York plants, Hudson Falls, South Glens Falls and Middle Falls, continue to operate under long-term power purchase agreements with Niagara Mohawk.

Pepperell Facility

The Pepperell facility is a 40 megawatt gas-fired combined-cycle plant located in Pepperell, Massachusetts. The plant has capacity contracts covering 2002 and sells merchant wholesale energy into the New England ISO. The facility also has a steam sales agreement with the Pepperell Paper Company expiring in December 2002.

Power Funds. In addition to our ownership of the power plants described above, we hold various indirect interests in power plants through our investment in energy and energy-related funds, both domestic and international, as described below:

Fund Name	Total Amount (\$MM)	Left to be Funded (\$MM)	Number of Plants	Total Capacity (Mws)	Interest	Net Capacity (Mws)
Energy Investors Fund I	\$159.5	\$0	5	76.0	12.6%	9.6
Energy Investors Fund II	\$115.0	\$0	5	66.6	6.9%	4.6
Project Finance Fund III	\$101.0	\$0	3	136.8	5.3%	7.3
Caribbean Basin	\$75.0	\$60	2	60.3	3.7%	2.2
				-----		-----
Total Fund Interests				339.7		23.7
				=====		=====

Financing of Our Independent Power Projects. We have financed our principal independent power generation facilities primarily with non-recourse debt that is repaid solely from the project's revenues. This type of financing is referred to as "project financing." These financings generally are secured by the physical assets, major project contracts and agreements, cash accounts and, in certain cases, our ownership interest, in the related project. True project financing is not available for all projects, including some assets purchased out of bankruptcy, some merchant plants and some purchases of minority stock positions in publicly traded companies. Even in those instances, however, we may still be able to finance a smaller portion of the total cost with project financing, with the remainder financed with debt that is either raised or supported at the corporate rather than the project level.

Project financing transactions generally are structured so that all revenues of a project are deposited directly with a bank or other financial institution acting as escrow or security deposit agent. These funds then are payable in a specified order of priority set forth in the financing documents to ensure that, to the extent available, they are used first to pay operating expenses, senior debt service and taxes and to fund reserve accounts. Thereafter, subject to satisfying debt service coverage ratios and certain other conditions, available funds may be disbursed for management fees or dividends or, where there are subordinated lenders, to the payment of subordinated debt service.

These project financing structures are designed to prevent the lenders from relying on us or our other projects for repayment; that is, they are "non-recourse" to us and our affiliates not involved in the project, unless we or another affiliate expressly agree to undertake liability. In the event of a foreclosure after a default, our project affiliate owning the facility would only retain an interest in the assets, if any, remaining after all debts and obligations were paid. In addition, the debt of each operating project may reduce the liquidity of our equity interest in that project because the interest is typically subject both to a pledge securing the project's debt and to transfer restrictions set forth in the relevant financing agreements. Also, our ability to transfer or sell our interest in certain projects or the project's power is restricted by certain purchase options or rights of first refusal in favor of our partners and certain change of control restrictions in the project financing documents.

We may also choose to finance these projects from time to time by other means including using our short-term credit facilities on an interim basis.

Fuel Production

Coal

Our coal production segment mines and processes low-sulfur sub-bituminous coal near Gillette, Wyoming. The Wyodak mine, which we acquired in 1956 from Homestake Gold Mining Company, is located in the Powder River Basin, one of the largest coal reserves in the United States. We believe the Wyodak mine is the oldest operating surface coal mine in the nation, with an annual production of approximately 3.5 million tons. Mining rights to the coal are based on four federal leases and one state lease. We pay royalties of 12.5 percent and 9.0 percent,

respectively, of the selling price on all federal and state coal. As of December 31, 2001, we had coal reserves of 276.6 million tons, enough to satisfy present contracts for approximately 70 years. Substantially all of our coal production is currently sold under long-term contracts to Black Hills Power, Inc., our electric utility, and to PacifiCorp.

Our coal segment's agreement with Black Hills Power limits earnings from all coal sales to Black Hills Power to a specified return on our original cost depreciated investment base. Black Hills Power made a commitment to the South Dakota Public Utilities Commission, the Wyoming Public Service Commission and the City of Gillette that coal would be furnished and priced as provided by that agreement for the life of our Neil Simpson II plant.

The price for unprocessed coal sold to PacifiCorp for its 80 percent interest in the Wyodak Plant is determined by a coal supply agreement terminating in 2022. This is a new agreement that began January 1, 2001 and was part of a litigation settlement with PacifiCorp.

Over the next several years, we expect to increase coal production to supply:

- o the Wygen 90 megawatt mine-mouth power plant, which is scheduled for completion in 2003;
- o additional mine mouth generating capacity of up to 500 megawatts at the same site as the Wygen plant, which is in the early stages of development; and
- o future sales of coal to rail-served customers.

In addition, if our coal enhancement K-Fuel plant is re-started, we expect to increase production from the Wyodak mine and market any low-moisture, high-heat content coal we produce to an expanded customer base.

Natural Gas and Crude Oil

Our oil and gas exploration and production segment operates approximately 385 oil and gas wells, all of which are located in Wyoming, Colorado and Nebraska. The majority of these wells are in the Finn-Shurley Field area, located in Weston and Niobrara Counties in Wyoming. We also own a working interest in, but do not operate, an additional 428 wells located in California, Montana, Louisiana, Colorado, North Dakota, Texas, Wyoming, Oklahoma and offshore in the Gulf of Mexico. In addition, we have accumulated significant acreage in the Rocky Mountain region, which we plan to utilize for oil and gas exploration.

We plan to substantially increase our natural gas reserves and minimize exploration risk by focusing on lower-risk exploration and development drilling and acquisitions of proven producing properties. A key component of this strategy is the pursuit of shallow gas opportunities in the Rocky Mountain region. We also expect to modestly increase our Mid-continent area production in the future but do not plan to serve as the operator for those production activities.

As of December 31, 2001, we had proved reserves of 4.0 million barrels of oil and 24.1 billion cubic feet of natural gas, with approximately 63 percent of current production consisting of natural gas. In 2001, our oil and gas production increased 38 percent over 2000 levels, with strong drilling results, acquisitions and year-end reserves.

In April 2001, we purchased certain operating and non-operating interests in 74 oil and gas wells located primarily in Colorado and Wyoming from Stewart Petroleum Corporation. These properties added to our proved reserves approximately 8.7 billion cubic feet of natural gas and approximately 200,000 barrels of oil.

Fuel Marketing. We market natural gas, oil and coal in specific regions of the United States. We offer physical and financial wholesale fuel marketing and price risk management products and services to a variety of customers. These customers include natural gas distribution companies, municipalities, industrial users, oil and gas producers, electric

utilities, coal mines, energy marketers and retail gas users. Our average daily marketing volumes for the year ended December 31, 2001, were 1,047,700 million British thermal units of gas, 36,500 barrels of oil and 6,100 tons of coal.

The following table briefly summarizes the location of our fuel marketing operations and sales offices:

Company	Fuel	Marketing Operations	Sales Offices
Enserco Energy	Natural Gas	Golden, CO	Calgary, Alberta, Canada
Black Hills Energy Resources	Crude Oil	Houston, TX	Tulsa, OK; Midland, TX; Longview, TX
Black Hills Coal Network	Coal	Mason, OH	St. Clairsville, OH

Gas Marketing

Our natural gas marketing operations are headquartered in Golden, Colorado, with a satellite office in Calgary, Canada. Our gas marketing operations focus primarily on wholesale marketing and producer marketing services. Producer services include providing for direct purchases of wellhead gas and for risk transfer and hedging products. Our gas marketing efforts are concentrated in the Rocky Mountain and West Coast regions and in Western Canada, which are areas in which we believe we have a competitive advantage due to our knowledge of local markets. We contractually hold natural gas storage capacity and both long and short-term transportation capacity on several major pipelines in the western United States and Canada. We utilize this capacity to move relatively low cost natural gas from the producer regions to more expensive end-use market areas.

Oil Marketing and Transportation

Our crude oil marketing and transportation operations are headquartered in Houston, Texas and are concentrated primarily in Texas, Oklahoma and Louisiana. At December 31, 2001 we owned a 33 percent interest in Millennium Pipeline Company, L.P., which owns and operates a 200-mile pipeline. In March 2002, we acquired the remaining 67 percent interest in Millennium. The pipeline has a capacity of approximately 65,000 barrels of oil per day, and transports imported crude oil from Beaumont, Texas to Longview, Texas, which is the transfer point to connecting carriers. We also acquired additional ownership interest in Millennium Terminal Company, L.P., which has 1.1 million barrels of crude oil storage connected to the Millennium Pipeline at the Oil Tanking terminal in Beaumont. The Millennium system is presently operating near capacity through shipper agreements. These acquisitions give us 100 percent ownership in the Millennium companies.

Coal Marketing

We market coal to various industrial customers and power plants located primarily in the Midwest and eastern regions of the United States through our coal marketing subsidiary, Black Hills Coal Network. We formed Black Hills Coal Network in 1998 to acquire the assets and hire the operational management of Coal Network and Coal Niche, based in Mason, Ohio. These predecessor companies were coal brokerage and agency companies with customers located primarily east of the Mississippi River.

Electric Utility - Black Hills Power, Inc.

Our electric utility, Black Hills Power, is engaged in the generation, transmission and distribution of electricity. It provides a solid foundation of revenues, earnings and cash flow that support utility capital expenditures, dividends, and overall performance and growth.

Distribution and Transmission. Our electric utility distribution and transmission businesses serve approximately 59,200 electric customers, with an electric transmission system of 447 miles of high voltage lines and 541 miles of lower voltage lines. In addition, we jointly own 43 miles of high voltage lines with Basin Electric Cooperative. Our utility's service territory covers a 9,300 square mile area of western South Dakota, eastern Wyoming and southeastern Montana with a strong and stable economic base. Over 90 percent of our utility's retail electric revenues are generated in South Dakota.

The following are characteristics of our distribution and transmission businesses:

- o We have a diverse customer and revenue base. Our revenue mix in 2001 is comprised of 22 percent commercial, 17 percent residential, 11 percent industrial, 8 percent long-term contract wholesale, 10 percent short-term contract wholesale, 31 percent wholesale off-system sales and 1 percent municipal. Approximately 65 percent of our large commercial and industrial customers are provided service under long-term contracts. We have historically optimized the utilization of our power supply resources by selling wholesale power to other utilities and to power marketers in the spot market and through short-term sales contracts.
- o In 1999, the South Dakota Public Utilities Commission extended our previous retail rate freeze for another five-years, through January 1, 2005. The rate freeze preserves our low-cost rate structure at levels below the national average for our retail customers while allowing us to retain the benefits from cost savings and from wholesale "off-system" sales, which are not covered by the rate freeze. This provides us with flexibility in allocating our generating capacity to maximize returns in changing market environments.
- o Forty-one percent of our electric revenues for the year ended December 31, 2001 consisted of off-system and short-term contract wholesale sales compared to 29 percent in 2000 and 8 percent in 1999. Although the demand for power in the western markets has eased from the record levels seen in the first half of 2001, further increases in the volume of off-system sales are expected in the future due to demand growth in the Rocky Mountain region and the early 2002 addition of 40 megawatts of gas-fired generating capacity.
- o Our system has the capability of connecting to either the eastern or western transmission systems, which provides us with access between the WSCC region and the Mid-Continent Area Power Pool, or "MAPP" region. This allows us the opportunity to improve system reliability and take advantage of power price differentials between the two electric grids. We are able to interconnect up to 80 megawatts of our generation into the MAPP. Alternatively, we can have up to 80 megawatts of our load served from the MAPP region. The available transmission capacity of the MAPP transmission system determines how much of this 80 megawatts can be served from the eastern interconnection.
- o We have firm transmission access to deliver up to 60 megawatts of power on PacifiCorp's system to wholesale customers in the western region during 2002, scheduled to decline to 50 megawatts by 2004.

On October 15, 2000, we indicated to FERC our intent to participate in a regional transmission organization, or RTO. Our transmission system is a part of the western transmission grid governed by the WSCC, and it interconnects with transmission systems operated by the Western Area Power Administration, or WAPA, and by PacifiCorp. WAPA continues to evaluate participation in the RTOs which will involve transmission systems in Colorado and the southwest region, while PacifiCorp is involved in the development of the RTO West which will involve transmission

systems in Wyoming and the northwest region. We will continue to monitor the development of these two RTOs and decide in the future which RTO best fits our transmission system and operations.

Power Sales Agreements. We sell approximately 50 percent of our utility's current load under long-term contracts. Our key contracts include a 10-year contract expiring in 2007 with Montana-Dakota Utilities Company for the sale of up to 55 megawatts of energy and capacity to service the Sheridan, Wyoming electric service territory, and a contract with the City of Gillette, Wyoming, expiring in 2012, to provide the city's first 23 megawatts of capacity and energy. Both contracts are integrated into our control system and are treated as firm native load. In May 2001, we began selling 30 megawatts of firm capacity and energy up to the contract capacity to Public Service Company of Colorado for a period through 2004. We have entered into an agreement with the Municipal Electric Agency of Nebraska for the sale of 30 megawatts of unit contingent energy and capacity for a period through the completion of construction of the Wygen independent power facility, which is expected in first quarter 2003. For the 10-year period beginning with the completion of the Wygen facility, our utility and our power generation segment will each provide 20 megawatts of unit contingent energy and capacity to the Municipal Electric Agency of Nebraska.

Our utility's electric load is served by coal-, oil- and natural gas-fired generating units providing 395 megawatts of generation capacity and from the following purchased power and capacity contracts with PacifiCorp:

- o a power sales agreement expiring in 2023, involving the purchase by us of 60 megawatts of baseload power in 2002, and scheduled to decline to 50 megawatts by 2004;
- o a reserve capacity integration agreement expiring in 2012, which makes available to us 100 megawatts of reserve capacity in connection with the utilization of the Ben French CT units; and
- o a capacity option call, which gives us an option to purchase up to 60 megawatts of peaking capacity seasonally through March 31, 2007.

Regulated Power Plants. Since 1995, our utility has been a net producer of energy. Our utility owns 395 megawatts of generating capacity with an additional 40 megawatts under construction, all of which is located in the Rocky Mountain region. Our utility's peak system load of 392 megawatts was reached in August 2001. None of our generation is restricted by hours of operation, thereby providing us with the ability to generate power to meet demand whenever necessary and feasible.

The following table describes our utility's portfolio of power plants:

Power Plant -----	Fuel Type -----	State -----	Total Capacity (Mws) -----	Interest -----	Net Capacity (Mws) -----	Start Date -----
In Operation: -----						
Ben French	Coal	SD	25.0	100%	25.0	1960
Ben French Diesels 1-5	Diesel	SD	10.0	100%	10.0	1965
Ben French CTs 1-4	Gas/Oil	SD	100.0	100%	100.0	1977-1979
Neil Simpson I	Coal	WY	21.8	100%	21.8	1969
Neil Simpson II	Coal	WY	91.0	100%	91.0	1995
Neil Simpson CT	Gas	WY	40.0	100%	40.0	2000
Osage	Coal	WY	34.5	100%	34.5	1948
Wyodak	Coal	WY	362.0	100%	72.4	1978
Total in Operation			684.3	20%	394.7	

Under Construction: -----						
Lange CT	Gas	SD	40.0	100%	40.0	2002
Total Utility			724.3		434.7	
			=====		=====	

Ben French

Ben French is a wholly owned coal-fired plant situated in Rapid City, South Dakota, with a capacity of 25 megawatts. This plant was put into service in 1960 and has since been operating as a baseload plant. Coal for the plant is purchased from our Wyodak mine and delivered by truck.

Ben French Diesel Units 1-5

The Ben French Diesel Units 1-5 are wholly owned diesel-fired plants located in Rapid City, South Dakota, with a capacity of 10 megawatts. These plants were put into service in 1965, and are being operated as peaking plants.

Ben French CT's 1-4

The Ben French Combustion Turbines 1-4 are wholly owned gas and oil-fired units with a capacity of 100 megawatts located in Rapid City, South Dakota. These facilities were put into service from 1977 to 1979, and are being operated as peaking units.

Neil Simpson I and II

Neil Simpson I and II are air-cooled, coal-fired wholly owned facilities located near Gillette, Wyoming. Neil Simpson I has a capacity of 21.8 megawatts and was put into service in 1969. Neil Simpson II has a capacity of 91.0 megawatts and was put into service in 1995. These plants are operated as baseload facilities, and are mine-mouth coal-supplied plants, receiving their coal directly from our Wyodak mine.

Neil Simpson CT

The Neil Simpson Combustion Turbine is a wholly owned gas-fired plant located near Gillette, Wyoming with a capacity of 40 megawatts. This plant was put into service in 2000, and was installed to provide peaking capabilities.

Osage

The Osage plant is a wholly owned coal-fired plant in Osage, Wyoming with a total capacity of 34.5 megawatts and was put into service from 1948 to 1952. This plant has three turbine generation units, and is being operated as a baseload plant. Coal for the plant is purchased from our Wyodak mine and delivered by truck.

Wyodak

Wyodak is a 362 megawatt mine mouth coal-fired plant owned jointly by PacifiCorp and us and in which we hold a 20 percent (72.4 net megawatt) ownership interest. Our Wyodak mine furnishes all the coal fuel supply for the Wyodak plant. The plant was put into service in 1978, and is currently being operated as a baseload plant.

Lange CT

The Lange Combustion Turbine is a wholly owned 40 megawatt gas-fired plant under construction near Rapid City, South Dakota. The plant is expected to be placed in service early 2002. The Lange Project was originally planned as an independent power plant, but is being constructed by our utility as a regulated power plant to provide peaking capacity and voltage support for the area.

Communications

Our communications group, whose primary business is Black Hills FiberCom, was formed to provide state-of-the-art broadband telecommunications services to the underserved markets of Rapid City and the northern Black Hills of South Dakota. We offer residential and business customers a full suite of telecommunications services, including local and long distance telephone service, expanded cable television service, cable modem Internet access and high speed data and video services. We have completed a 242-mile inter- and intra-city fiber optic network and currently operate 737 miles of two-way interactive hybrid fiber coaxial or "HFC" cable. We believe we are one of the first companies in the United States to provide video entertainment service, high-speed Internet access, and local and long distance telephone services over an advanced broadband infrastructure. We have bundled these services into value packages with a single consolidated bill for all of these services.

We introduced our broadband communications services to the Rapid City and northern Black Hills areas in November 1999. As of December 31, 2001, we had attracted 15,660 residential customers and 2,250 business customers. Our goal is to attain 60 percent residential and commercial market penetration within our service territory.

The construction of our communications network is approximately 85 percent complete and we expect to substantially complete construction of the base network in 2002.

Competition

The independent power, fuel production and fuel marketing industries are characterized by numerous strong and capable competitors, some of which may have more extensive operating experience, larger staffs or greater financial resources than us. In particular, the independent power industry in recent years has been characterized by increased competition for asset purchases and development opportunities.

In addition, Congress has considered various pieces of legislation to restructure the electric industry that would require, among other things, customer choice and/or repeal of the Public Utility Holding Company Act of 1935, or PUHCA. The debate is likely to continue and perhaps intensify. The effect of enacting such legislation cannot be predicted with any degree of certainty. Industry deregulation may encourage the disaggregation of vertically integrated utilities into separate generation, transmission and distribution businesses. As a result of these potential regulatory changes, significant additional competitors could become active in the generation segment of our industry.

Our communications unit faces competition from numerous well established companies, including Qwest Communications, Rapid City's incumbent local exchange carrier, Midcontinent Communications, the area's incumbent cable television provider, as well as long distance providers and Internet service providers. Our success in this business will depend upon, among other things, the quality of our customer service, the willingness of residential and business customers to accept us as an alternative provider of broadband communications services, our products and services and our ability to offer an attractive package of bundled products.

Risk Management

Our fuel marketing operations require effective risk management of price, counterparty performance and operational risks. Price risk is created through the volatility of energy prices. Counterparty performance risk is the risk that a counterparty will fail to satisfy its contractual obligations to us, and includes credit risk. Operational risk arises from a lack of internal controls. We have implemented controls to mitigate each of these risks.

Our fuel marketing operations are conducted in accordance with guidelines established through separate risk management policies and procedures for each marketing company and through our credit policy. These policies are established and approved by our board of directors, reviewed on a regular basis and monitored as described below.

We maintain a working risk management committee for each of our marketing companies, and a credit committee at the parent company level. The risk management committees focus on implementation of risk management procedures and on monitoring compliance with established policies. The credit committee sets counterparty credit limits, monitors credit exposure levels and reviews compliance with established credit policies. Additionally, we employ a risk manager and a credit manager responsible for overseeing these functions.

Our risk management policies and procedures specify maximum price risk exposure levels within which each respective marketing company must operate. These policies and procedures establish relatively low exposure levels and generally prohibit speculative trading strategies.

As part of our enterprise-wide risk management strategy, we limit our exposure to energy marketing risks by maintaining separate credit facilities within each of our fuel marketing companies. These credit facilities have security interests solely against the assets of the respective marketing company, with the exception of a \$1 million guarantee by our coal mining subsidiary on our coal marketing unit's credit facility.

A significant potential risk related to power sales is the price risk arising from the sale of wholesale power that exceeds our generating capacity. Short positions can arise from unplanned plant outages or from unanticipated load demands. To control such risks, we restrict wholesale off-system sales to amounts by which our anticipated generation capabilities exceed our anticipated load requirements plus a required reserve margin. We further control this risk by selling only in the day-ahead power market and by entering into longer-term sales contracts that are made on a "unit contingent" basis, under which delivery is not required during unplanned outages at specified power plants.

Regulation

We are subject to a broad range of federal, state and local energy and environmental laws and regulations applicable to the development, ownership and operation of our projects. These laws and regulations generally require that a wide variety of permits and other approvals be obtained before construction or operation of a power plant commences and that, after completion, the facility operate in compliance with their requirements. We strive to comply with the terms of all such laws, regulations, permits and licenses and believe that all of our operating plants are in material compliance with all such applicable requirements.

Energy Regulation

Federal Power Act. The Federal Power Act gives FERC exclusive ratemaking jurisdiction over wholesale sales of electricity and the transmission of electricity in interstate commerce. Pursuant to the Federal Power Act, all public utilities subject to FERC's jurisdiction are required to file rate schedules with FERC prior to commencement of wholesale sales or interstate transmission of electricity. Public utilities with cost-based rate schedules are also subject to accounting, record-keeping and reporting requirements administered by FERC.

The Energy Policy Act. The passage of the Energy Policy Act in 1992 further encouraged independent power production by providing certain exemptions from regulation for exempt wholesale generators, or EWGs. All of our subsidiaries that would otherwise be treated as public utilities are currently treated as EWGs under the Energy Policy Act. An EWG is an entity that is exclusively engaged, directly or indirectly, in the business of owning or operating facilities that are exclusively engaged in generation and selling electric energy at wholesale. An EWG will not be regulated under PUHCA, but is subject to FERC and state public utility commission regulatory reviews, including rate approval. Since EWGs are only allowed to sell power at wholesale, their rates must receive initial approval from FERC rather than the states. All of our EWGs to date that have sought rate approval from FERC have been granted market-based rate authority, which allows FERC to waive certain accounting, record-keeping and reporting requirements imposed on public utilities with cost-based rates. However, FERC customarily reserves the right to suspend, upon complaint, market-based rate authority on a prospective basis if it is subsequently determined that we or any of our EWGs exercised market power. If FERC were to suspend market-based rate authority, it would most likely be necessary to file, and obtain FERC acceptance of, cost-based rate schedules for any of our EWGs. Also, the loss of market-based rate authority would subject the EWGs to the accounting, record keeping and reporting requirements that are imposed on public utilities with cost-based rate schedules.

In addition, if there occurs a "material change" in facts that might affect any of our subsidiaries' eligibility for EWG status, within 60 days of the material change, the relevant EWG must (1) file a written explanation of why the material change does not affect its EWG status, (2) file a new application for EWG status, or (3) notify FERC that it no longer wishes to maintain EWG status. If any of our subsidiaries were to lose EWG status, we, along with our affiliates, would be subject to regulation under PUHCA as a public utility company. Absent a substantial restructuring of our business, it would be difficult for us to comply with PUHCA without a material adverse effect on our business.

State Energy Regulation. In areas outside of wholesale rate regulation (such as financial or organizational regulation), some state utility laws may give their public utility commissions broad jurisdiction over steam sales or EWGs that sell power in their service territories. The actual scope of the jurisdiction over steam or independent power projects depends on state law and varies significantly from state to state.

Environmental Regulation

The construction and operation of power projects are subject to extensive environmental protection and land use regulation in the United States. These laws and regulations often require a lengthy and complex process of obtaining licenses, permits and approvals from federal, state and local agencies. If such laws and regulations are changed and our facilities are not grandfathered, extensive modifications to project technologies and facilities could be required.

General. Based on current trends, we expect that environmental and land use regulation will continue to be stringent. Accordingly, we actively review proposed construction projects that could subject us to stringent pollution controls imposed on "major modifications," as defined under the Clean Air Act, and changes in "discharge characteristics," as defined under the Clean Water Act. The goal of these actions is to achieve compliance with applicable regulations, administrative consent orders and variances from applicable air-quality related regulations.

Clean Air Act. Our Neil Simpson II, Neil Simpson CT, Gillette CT, the Arapahoe, Valmont, Fountain Valley, Lange CT and Wyodak plants are all subject to Title IV of the Clean Air Act, which requires certain fossil-fuel-fired combustion devices to hold sulfur dioxide "allowances" for each ton of sulfur dioxide emitted. We currently hold sufficient allowances credited to us as a result of sulfur removal equipment previously installed at the Wyodak plant to apply to the operation of all units subject to Title IV through 2031 without requiring the purchase of any additional allowances. With respect to any future plants, we plan to comply with the need for holding the appropriate number of allowances by reducing sulfur dioxide emissions through the use of low sulfur fuels, installation of "back end" control technology and if necessary, the purchase of allowances on the open market. We expect to integrate the costs of obtaining the required number of allowances needed for future projects into our overall financial analysis of such projects.

On July 14, 2000, the South Coast Air Quality Management District, known as SCAQMD, sent a letter to our affiliate, Black Hills Ontario, L.L.C., the operator of a 12 megawatt natural-gas fired co-generation facility located in Ontario, California, stating that the SCAQMD had determined, as a result of a facility audit completed for the compliance year ended June 1, 1999, that the facility's nitrogen oxide, or NOx, emissions were 28,958 pounds over the facility's NOx allocation established by the SCAQMD's RECLAIM emissions trading program. As a result, the SCAQMD indicated that it would be reducing the facility's NOx allocation by the same number of allowances for the compliance year subsequent to a final determination on this issue. Black Hills Ontario provided documentation to the SCAQMD disputing this proposed reduction and by letter on August 14, 2001, the SCAQMD agreed that Ontario had not exceeded its NOx allocation and stated the issue is now resolved. Black Hills Ontario was able to purchase NOx allowances for the 2001-2002 compliance period and projects that it will need to continue purchasing NOx allowances for all future compliance years. Annual purchases are anticipated to be approximately 30,000 allowances. There is currently significant volatility in the price and supply of RECLAIM NOx allowances; although the SCAQMD has proposed a revision to its regulations to stabilize the RECLAIM market, it is unclear whether these rules will mitigate Black Hills Ontario's potential exposure for its projected allowance shortfall. Accordingly, no assurance can be given at this time regarding whether RECLAIM NOx allowances will be available for purchase to allow Black Hills Ontario to comply with RECLAIM requirements for the year ended June 30, 2002, or, if allowances are available, as to the cost of those allowances.

In July 1999, the United States Environmental Protection Agency (EPA) finalized rules designed to protect and improve visibility impairment resulting from air emissions. Among other things, the regulations required states to identify sources of emissions (including certain coal-fired generating units built between 1962 and 1977) by 2004 that would be subject to "Best Available Retrofit Technology," known as BART. These sources would be required to implement BART within five years after the EPA approved state plans adopted to combat visibility impairment. The submission of these plans is due between 2004 and 2008. In January 2001, the EPA proposed guidance to assist states in determining which sources should be subject to the BART requirement. That guidance is currently under review by the Whitehouse Office of Management and Budget and is expected to be final in 2002. Management believes that the only existing plant which may be required to comply with Clean Air Act requirements is our Neil Simpson I plant and that any capital expenditures associated with bringing the plant into compliance would not have a material adverse effect on our financial position or results of operations.

Title V of the Clean Air Act imposes federal requirements, which dictate that all of our fossil fuel-fired generation facilities must obtain operating permits. All of our existing facilities subject to this requirement are in the process of or have submitted Title V permit applications and either have received or are in the process of receiving permits.

On November 3, 1999, the United States Department of Justice filed suit against a number of electric utilities for alleged violations of the Clean Air Act's "new source review" requirements related to modifications of air emissions sources at electric generating stations located in the southern and Midwestern regions of the United States. Several states have joined these lawsuits. In addition, the EPA has also issued administrative notices of violation alleging similar violations at additional power plants owned by some of the same utilities named as defendants in the Department of Justice lawsuit, and also issued an administrative order to the Tennessee Valley Authority for similar violations at some of its power plants. The EPA has also issued requests for information pursuant to the Clean Air

Act to numerous other electric utilities seeking to determine whether those utilities also engaged in activities that may have been in violation of the Clean Air Act's new source review requirements. No such proceedings have been initiated or requests for information issued with respect to any of our facilities, but there can be no assurance that we will not be subject to similar proceedings in the future.

In December 2000, the EPA announced its intention to regulate mercury emissions from coal-fired and oil-fired electric power plants under Section 112 of the Clean Air Act. The EPA is committed to proposing a rule to regulate such emissions by no later than 2003. Because we do not know what the EPA may require with respect to this issue, we are not able to evaluate the impact of potential mercury regulations on the operation of our facilities.

Since the adoption of the United Nations Framework on Climate Change in 1992, there has been worldwide attention with respect to greenhouse gas emissions. In December 1997, the Clinton administration participated in the Kyoto, Japan negotiations, where the basis of a climate change treaty was formulated. Under the treaty, known as the Kyoto Protocol, the United States would be required, between 2008 and 2012 to reduce its greenhouse gas emissions by 7 percent from 1990 levels. However, because of opposition to the treaty in the United States Senate, the Kyoto Protocol has not been submitted to the Senate for ratification. Although legislative developments on the state level related to controlling greenhouse gas emissions have occurred, we are not aware of any similar developments in the states in which we operate. If the United States ratifies the Kyoto Protocol or we otherwise become subject to limitations on emissions of carbon dioxide from our plants, these requirements could have a significant impact on our operations. In March 2001, the Bush administration announced that it would not seek to impose any limitations on carbon dioxide emissions.

Clean Water Act. Our existing facilities are also subject to a variety of state and federal regulations governing existing and potential water/wastewater discharges. Generally, such regulations are promulgated under authority of the Clean Water Act and govern overall water/wastewater discharges through National Pollutant Discharge Elimination System, or NPDES, permits. Under current provisions of the Clean Water Act, existing NPDES permits must be renewed every five years, at which time permit limits are extensively reviewed and can be modified to account for changes in regulations or program initiatives. In addition, the permits have re-opener clauses which allow the permitting authority (which may be the United States or an authorized state) to attempt to modify a permit to conform to changes in applicable laws and regulations. Some of our existing facilities have been operating under NPDES permits for many years and have gone through one or more NPDES permit renewal cycles. All of our facilities required to have NPDES permits have those in place and are in compliance with discharge limitations.

Solid Waste Disposal. We dispose of all solid wastes collected as a result of burning coal at our power plants in approved solid waste disposal sites. Each disposal site has been permitted by the state of its location in compliance with law. Ash and wastes from flue gas and sulfur removal from the Wyodak and Neil Simpson II plants are deposited in mined areas. These disposal areas are located below some shallow water aquifers in the mine. None of the solid wastes from the burning of coal is classified as hazardous material, but the wastes do contain minute traces of metals that would be perceived as polluting if such metals were leached into underground water. Recent investigations have concluded that the wastes are relatively insoluble and will not measurably affect the post-mining ground water quality. While management does not believe that any substances from our solid waste disposal activities will pollute underground water, they can give no assurances that pollution will not occur over time. In this event, we could experience material costs to mitigate any resulting damages. Agreements in place require PacifiCorp to be responsible for any such costs that would be related to the solid waste from its 80 percent interest in the Wyodak plant.

Additional unexpected material costs could also result in the future if the federal or state government determines that solid waste from the burning of coal contains some hazardous material that requires special treatment, including solid waste of which we previously disposed. In that event, the government regulator could consequently hold those entities that disposed of such waste responsible for such treatment.

Mine Reclamation. Under federal and state laws and regulations, we are required to submit to the regulation by, and receive approval from, the Wyoming Department of Environmental Quality (DEQ) for a mining and reclamation plan which provides for orderly mining, reclamation and restoration of all of our Wyodak coal mine in conformity with state laws and regulations. We have an approved mining permit and are otherwise in compliance with other land quality permitting programs.

Based on extensive reclamation studies, we currently estimate the cost of reclamation for our mine at approximately \$26 million and have currently accrued approximately \$18.2 million on our accompanying Consolidated Balance Sheet for these reclamation costs. No assurance can be given that additional requirements in the future will not be imposed that would cause an unexpected material increase in reclamation costs.

One situation that could result in substantial unexpected increases in costs relating to our reclamation permit concerns three depressions -- the "South" depression, the "Peerless" depression and the "North Pit" depression - that have or will result from our mining activities at the Wyodak mine. Because of the thick coal seam and relatively shallow overburden, the current restoration plan would leave these depressions, which have limited reclamation potential, with interior drainage only. Although the DEQ has accepted the current plan to limit reclamation of these depressions, it has reserved the right to review and evaluate future reclamation plans or to reevaluate the existing reclamation plan. If as a result of our mining activities, additional overburden becomes available, the DEQ may require us to conduct additional reclamation of the depressions, particularly if the DEQ finds that the current limited reclamation is resulting in exceedances in the DEQ's water quality standards.

Ben French Oil Spill. In 1990 and 1991, we discovered extensive underground fuel oil contamination at the Ben French plant site. With the help of expert consultants, we worked closely with the South Dakota Department of Environment and Natural Resources to assess and remediate the site. Our assessment and remediation efforts continue today and we continue to monitor the site. All of our underground oil-carrying facilities from which the contamination occurred are now above ground. There have been no significant recoveries of free fuel oil product since 1994. Soil borings and monitoring wells on the perimeters of our Ben French plant property provide no indication of contamination beyond the property's limits. Management believes that the underground spill has been sufficiently remedied so as to prevent any oil from migrating off site. However, due to underground gypsum deposits in this area, the fuel oil has the potential of migrating to area waterways. In such event, cleanup costs could be greatly increased. Management believes that sufficient remediation efforts to prevent such a migration are currently in place, but due to the uncertainties of underground geology, no assurance can be given.

Cleanup costs recognized to date total approximately \$0.5 million, of which amount \$0.4 million has been reimbursed by the South Dakota Petroleum Release Compensation Fund. To date, no penalties, claims or actions have been taken or threatened against us because of this oil spill. In late 2001, the South Dakota Department of Environment and Natural Resources started preparing a review, which is directed at permanently closing numerous monitoring wells which have shown no contamination for several years.

PCBs. Under the federal Toxic Substances Control Act, the EPA has issued regulations that control the use and disposal of polychlorinated biphenyls, or PCBs. PCBs were widely used as insulating fluids in many electric utility transformers and capacitors manufactured before the Toxic Substances Control Act prohibited any further manufacture of PCB equipment. We remove and dispose of PCB-contaminated equipment in compliance with law as it is discovered.

Release of PCB-contaminated fluids, especially any involving a fire or a release into a waterway, could result in substantial cleanup costs. Several years ago, we began a testing program of potential PCB-contaminated transformers, and in 1997 completed testing of all transformers and capacitors which are not located in our electric substations. We have not completed the testing of sealed potential transformers and bushings located in our electric substations as the testing of this equipment requires their destruction. Release of PCB-contaminated fluid, if present, from our equipment is unlikely and the volume of fluid in such equipment is generally less than one gallon. Moreover, any release of this fluid would be confined to our substation site.

Exploration and Production

Our oil and gas exploration and production operations are subject to various types of regulation at the federal, state and local levels. They include:

- o requiring permits for the drilling of wells;
- o maintaining bonding requirements in order to drill or operate wells;
- o submitting and implementing spill prevention plans;
- o submitting notification relating to the presence, use and release of certain contaminants incidental to oil and gas operations;
- o regulating the location of wells, the method of drilling and casing wells, the use, transportation, storage and disposal of fluids and materials used in connection with drilling and production activities; and
- o regulating surface usage and the restoration of properties upon which wells have been drilled, the plugging and abandoning of wells and the transporting of production.

Our operations are also subject to various conservation matters, including the regulation of the size of drilling and spacing units or proration units, the number of wells which may be drilled in a unit and the unitization or pooling of oil and gas properties. In this regard, some states allow the forced pooling or integration of tracts to facilitate exploration while other states rely on voluntary pooling of lands and leases, which may make it more difficult to develop oil and gas properties. In addition, state conservation laws establish maximum rates of production from oil and gas wells, generally prohibit the venting or flaring of gas and impose certain requirements regarding the ratable purchase of production. The effect of these regulations is to limit the amounts of oil and gas we can produce from our wells and to limit the number of wells or the locations at which we can drill. In addition, various federal, state and local laws and regulations concerning the discharge of contaminants into the environment, the generation, storage, transportation and disposal of contaminants and the protection of public health, natural resources, wildlife and environment affect our exploration, development and production operations and our related costs.

Other Properties

In addition to the other properties described herein, we own an eight-story office building consisting of approximately 47,000 square feet of office space in Rapid City, South Dakota. We occupy approximately 75 percent of this building and lease the remainder to others.

Employees

At December 31, 2001, we had 785 employees, approximately 287 of who are employed in our utility business, 236 of who are employed in our integrated energy businesses, 209 of who are employed in our communications business and 53 of who are employed by the parent company.

Approximately one-half of our utility employees are covered by collective bargaining agreements with the International Brotherhood of Electrical Workers, which expire on April 1, 2003. We have experienced no significant labor stoppages or labor disputes at our facilities.

ITEM 3. LEGAL PROCEEDINGS

There are currently no pending material legal proceedings to which we are a party. There are currently no pending material legal proceedings to which an officer or director is a party or has a material interest adverse to us or our subsidiaries. There are also no material administrative or judicial proceedings arising under environmental quality or civil rights statutes pending or known to be contemplated by governmental agencies to which we are or would be a party.

ITEM 4. SUBMISSION OF MATTERS TO A VOTE OF SECURITY HOLDERS

No matter was submitted to a vote of security holders during the fourth quarter of 2001.

PART II

ITEM 5. MARKET FOR REGISTRANT'S COMMON EQUITY AND RELATED STOCKHOLDER MATTERS

Our common stock (\$1 par value) is traded on The New York Stock Exchange. Quotations for the common stock are reported under the symbol BKH. At year-end, the Company had 5,509 common shareholders of record and approximately 16,000 beneficial owners. All 50 states and the District of Columbia plus 10 foreign countries are represented.

We have declared common stock dividends payable in cash in each year since our predecessor's incorporation in 1941. At our January 2002 meeting, the Board of Directors raised the quarterly dividend to 29 cents per share, equivalent to an annual increase of 4 cents per share. This regular quarterly dividend is payable March 1, 2002. Dividend payment dates are normally March 1, June 1, September 1 and December 1.

Quarterly dividends paid and the high and low common stock prices, as reported in the New York Stock Exchange Composite Transactions, for the last two years were as follows:

Year ended December 31, 2001

	1st ---	2nd ---	3rd ----	4th ---
Dividends paid per share	\$0.28	\$0.28	\$0.28	\$0.28
Common stock prices				
High				
High	\$45.74	\$58.50	\$45.55	\$34.20
Low	\$31.00	\$39.50	\$27.76	\$26.00

Year ended December 31, 2000

	1st ---	2nd ---	3rd ----	4th ---
Dividends paid per share	\$0.27	\$0.27	\$0.27	\$0.27
Common stock prices				
High				
High	\$25.19	\$25.19	\$30.13	\$46.06
Low	\$20.44	\$20.88	\$22.00	\$27.00

ITEM 6. SELECTED FINANCIAL DATA

Years ended December 31,	2001	2000	1999	1998	1997
	----	----	----	----	----
TOTAL ASSETS (in thousands)	\$1,658,767	\$1,320,320	\$668,492	\$559,417	\$508,741
PROPERTY AND INVESTMENTS (in thousands)					
Total property and investments	\$1,626,519	\$1,122,266	\$710,488	\$619,549	\$598,306
Accumulated depreciation and depletion	328,400	277,848	246,299	229,942	197,179
Capital expenditures	594,156	173,517*	154,609	27,225	28,319
CAPITALIZATION (in thousands)					
Long-term debt	\$415,798	\$307,092	\$160,700	\$162,030	\$163,360
Preferred stock equity	5,549	4,000	-	-	-
Common stock equity	509,615	278,346	216,606	206,666	205,403
	-----	-----	-----	-----	-----
Total capitalization	\$930,962	\$589,438	\$377,306	\$368,696	\$368,763
	=====	=====	=====	=====	=====
CAPITALIZATION RATIOS					
Long-term debt	44.7%	52.1%	42.6%	43.9%	44.3%
Preferred stock equity	0.6	0.7	-	-	-
Common stock equity	54.7	47.2	57.4	56.1	55.7
	-----	-----	-----	-----	-----
Total	100.0%	100.0%	100.0%	100.0%	100.0%
	=====	=====	=====	=====	=====
TOTAL OPERATING REVENUES (in thousands)	\$1,558,558	\$1,623,836	\$791,875	\$679,254	\$313,662
NET INCOME AVAILABLE FOR COMMON STOCK (in thousands)	\$87,550	\$52,770	\$37,067	\$25,808**	\$32,359
DIVIDENDS PAID ON COMMON STOCK (in thousands)	\$28,517	\$23,527	\$22,602	\$21,737	\$20,540
COMMON STOCK DATA (in thousands)					
Shares outstanding, average	25,374	22,118	21,445	21,623	21,692
Shares outstanding, average diluted	25,771	22,281	21,482	21,665	21,706
Shares outstanding, end of year	26,652	22,921	21,372	21,578	21,705
(in dollars)					
Basic earnings per average share	\$ 3.45	\$ 2.39	\$ 1.73	\$ 1.19**	\$ 1.49
Diluted earnings per average share	\$ 3.42	\$ 2.37	\$ 1.73	\$ 1.19**	\$ 1.49
Dividends paid per share	\$ 1.12	\$ 1.08	\$ 1.04	\$ 1.00	\$ 0.95
Book value per share, end of year	\$ 19.12	\$ 12.14	\$ 10.14	\$ 9.58	\$ 9.46
RETURN ON COMMON STOCK EQUITY (year-end)	17.2%	19.0%	17.1%	12.5%**	15.8%

*Excludes the non-cash acquisition of Indeck Capital, Inc.

**Includes impact of \$8.8 million, or 41 cents per average share, write-down of certain oil and gas properties

ITEM 7. MANAGEMENT'S DISCUSSION AND ANALYSIS OF FINANCIAL CONDITION AND RESULTS OF OPERATIONS

We are a growth oriented, diversified energy holding company operating principally in the United States. Our unregulated and regulated businesses have expanded significantly in recent years. Our integrated energy group, Black Hills Energy, Inc. (formerly Black Hills Energy Ventures, Inc.), produces and markets electric power and fuel. We produce and sell electricity in a number of markets, with a strong emphasis in the western United States. We also produce coal, natural gas and crude oil, primarily in the Rocky Mountain region, and market fuel products nationwide. Our electric utility, Black Hills Power, Inc., serves approximately 59,200 customers in South Dakota, Wyoming and Montana. Our communications group offers state-of-the-art broadband communications services to residential and business customers in Rapid City and the northern Black Hills region of South Dakota through Black Hills FiberCom, LLC.

Business Strategy

We are executing a long-term growth strategy by adding and augmenting revenue streams from our diverse integrated energy operations. We have implemented a balanced, integrated and risk-managed approach to fuel production, energy marketing and power generation. Built on the strength of our electric utility, we have enhanced our local operations by providing broadband communications. Our diverse operations help to avoid reliance on any single element to achieve our growth objective. This diversity provides a measure of stability in volatile or cyclical periods. We believe the strength of our low-cost assets and the expertise of our management team together forge sustained opportunity for growth and success.

Prospective Information

We reaffirm our goal of long-term annual earnings per share growth of 10 percent to 15 percent off a "normalized" 2000 earnings per share base of \$2.00, which adjusts for the impact of high energy prices at that time. However, due to the current low price environment in energy markets, near-term results may be lower than our long-term objective.

Net income from the integrated energy group exceeded net income derived from our electric utility in 2001. We expect that earnings growth from the integrated energy group over the next few years will be driven primarily by our continued expansion in the power generation and oil and gas production segments. The following key elements are an integral part of our plan to achieve this objective:

- o grow our power generation segment by developing and acquiring power projects in targeted western markets, and, in particular, by expanding the generation capacity of our existing sites through a strategy known as "brownfield development;"
- o sell a large percentage of our production from new projects through long-term contracts in order to secure revenue stability at attractive returns;
- o increase our reserves of natural gas and crude oil and expand our fuel production;
- o manage the risks inherent in fuel marketing by maintaining position limits that minimize price risk exposure;
- o conduct business with a diversified group of counterparties of high credit quality;
- o exploit our fuel cost advantages and our operating and marketing expertise to remain a low-cost power producer;
- o increase margins from our coal production through an expansion of mine mouth generation and increased coal sales;
- o build and maintain strong relationships with wholesale energy customers; and
- o capitalize on our utility's established market presence, relationships and customer loyalty to expand our integrated energy businesses.

Although we believe our integrated energy group will continue to grow as our largest business group, we are unable to predict the price environment and growth in the energy markets.

Our electric utility has continued to produce modest growth in revenue and earnings from the retail business over the past two years. We believe that this trend is stable and that, absent unplanned system outages, it will continue for the

next several years due to the extension of our electric utility's rate freeze until January 1, 2005. (See Rate Regulation.) We forecast firm energy sales in our retail service territory to increase over the next 10 years at an annual compound growth rate of approximately one percent, with the system demand forecasted to increase at a rate of two percent. These forecasts are derived from studies conducted by us whereby we examined and analyzed our service territory to estimate changes in the needs for electrical energy and demand over a 20-year period. These forecasts are only estimates, and the actual changes in electric sales may be substantially different. Weather deviations can also affect energy sales significantly when compared to forecasts based on normal weather. The portion of the utility's future earnings that will result from wholesale off-system sales will depend on many factors, including native load growth, plant availability and electricity demand and commodity prices in the western markets.

Although our broadband communications business significantly increased residential and business customers in 2001, we expect it will sustain approximately \$6.5 million in net losses in 2002, with annual losses decreasing thereafter and profitability expected by 2004. The recovery of capital investment and future profitability are dependent primarily on our ability to attract new customers, including customers from incumbent providers. Our goal is to attain 60 percent penetration for both residential and commercial customers within our service territory. If we are unable to attract additional customers or technological advances make our network obsolete, we could have a material write-down of assets. While we do not anticipate being regulated in the local markets, we are unable to predict future markets, future government impositions and future economic and competitive conditions that could affect the profitability of the communications operations.

Results of Operations

Consolidated Results

Overview

Revenue and net income (loss) provided by each business group as a percentage of our total revenue and net income were as follows:

	2001	2000	1999
	----	----	----
Revenue:			
Integrated energy	85%	89%	83%
Electric utility	14	11	17
Communications	1	-	-
	---	---	---
	100%	100%	100%
	===	===	===
Net Income (Loss):			
Integrated energy	63%	55%	31%
Electric utility	51	70	74
Communications	(14)	(25)	(5)
	---	---	---
	100%	100%	100%
	===	===	===

2001 Compared to 2000

Consolidated net income for 2001 was \$87.6 million, compared to \$52.8 million in 2000, or \$3.42 per average common share in 2001, compared to \$2.37 per average common share in 2000. This equates to a 17.2 percent and 19.0 percent return on year-end common equity in 2001 and 2000, respectively. The return on year-end common equity in 2001 was diluted due to the net proceeds of \$163 million from the public stock offering in 2001.

We reported record earnings in 2001, primarily due to strong natural gas marketing activity, increased fuel production, expanded power generation and increased wholesale off-system electric utility sales. Strong results in our integrated energy business group and electric utility business group were partially offset by losses in our communications business. Unusual energy market conditions stemming primarily from gas and electricity shortages in the West contributed to our strong financial performance in 2001 and 2000. There was approximately a \$1.40 and a \$0.40

contribution to 2001 and 2000 earnings per share, respectively, due to prevailing prices of gas and electricity and unusually wide gas trading margins in the last part of year 2000 and first half of 2001.

Consolidated revenues were slightly lower in 2001 at \$1.56 billion compared to \$1.62 billion in 2000. Revenue increases in fuel production, independent power generation, the electric utility and communications were offset by a decrease in fuel marketing revenue. The effects of decreases in energy prices beginning in late spring 2001 were partially offset by higher sales volumes. Daily volumes of natural gas marketed increased 22 percent from 860,800 million British thermal units per day in 2000 to 1,047,700 million British thermal units in 2001. Prices of financial and physical natural gas marketed decreased from an average of \$2.77 per million British thermal units in 2000 to \$2.14 per million British thermal units in 2001.

Earnings in 2001 included a \$4.4 million after-tax charge (\$0.17 per share) for a financial exposure to Enron Corporation and certain of its subsidiaries now in bankruptcy. The exposure is primarily related to the value of a long-term swap to provide natural gas to a power plant. We have taken action to mitigate this exposure. By negotiations or by appropriate legal action filed in U.S. Bankruptcy Court, Southern District of New York, we will seek authority to "net," or offset, certain obligations with Enron and its subsidiaries, both payable and receivable, among our subsidiaries. If we are successful in these efforts, substantially all of the financial value of the fuel swap could be recovered, and we would not have any remaining exposure to Enron and its bankrupt subsidiaries.

Earnings in 2001 also reflect a \$0.12 per share charge for employee stock bonus awards and the funding of a new non-profit foundation to advance our charitable and philanthropic endeavors. Both of these transactions were funded with Black Hills Corporation common stock.

2000 Compared to 1999

Consolidated net income for 2000 was \$52.8 million, compared to \$37.1 million in 1999, or \$2.37 per average common share in 2000, compared to \$1.73 per average common share in 1999. This equates to a 19.0 percent and 17.1 percent return on year-end common equity in 2000 and 1999, respectively.

Earnings growth in 2000 was primarily due to strong natural gas marketing activity, increased fuel production, expanded power generation and increased wholesale off-system electric utility sales. Strong results in our integrated energy business group were partially offset by losses in our communications business. Unusual energy market conditions stemming primarily from gas and electricity shortages in the West during the last part of 2000 contributed to our strong financial performance. There was approximately a \$0.40 contribution to 2000 earnings per share due to higher prevailing prices of gas and electricity and unusually wide gas trading margins.

Consolidated revenues more than doubled in 2000 to \$1.6 billion compared to 1999. The growth in revenues in 2000 was a result of high energy commodity prices and increased volumes of fuel marketed, primarily as a result of extreme price volatility in the western markets, acquisitions and growth in the integrated energy business group and increases in off-system sales by our electric utility. Prices of financial and physical natural gas marketed increased from an average of \$1.38 per million British thermal units in 1999 to \$2.77 per million British thermal units in 2000.

The following business group and segment information does not include intercompany eliminations.

Integrated Energy Group

	2001 ----	2000 ----	1999 ----
	(in thousands)		
Revenue:			
Fuel marketing	\$1,185,049	\$1,366,970	\$614,228
Power generation	94,294	39,660	-
Oil and gas	33,408	20,328	13,052
Coal mining	31,800	30,530	31,095
	-----	-----	-----
Total revenue	1,344,551	1,457,488	658,375
Expenses	1,245,109	1,398,461	645,123
	-----	-----	-----
Operating income	\$ 99,442	\$ 59,027	\$ 13,252
	=====	=====	=====
Net income	\$ 56,246	\$ 28,213	\$ 11,588
	=====	=====	=====
EBITDA	\$ 137,715	\$ 63,389	\$ 23,807
	=====	=====	=====

EBITDA represents earnings before interest, income taxes, depreciation and amortization. EBITDA is used by management and some investors as an indicator of a company's historical ability to service debt. Management believes that an increase in EBITDA is an indicator of improved ability to service existing debt, to sustain potential future increases in debt and to satisfy capital requirements. However, EBITDA is not intended to represent cash flows for the period, nor has it been presented as an alternative to either operating income, or as an indicator of operating performance or cash flows from operating, investing and financing activities, as determined by generally accepted accounting principles. EBITDA as presented may not necessarily be comparable to other similarly titled measures of other companies.

The following is a summary of sales volumes of our coal, oil and natural gas production and various measures of power generation:

	2001 ----	2000 ----	1999 ----
Tons of coal sold	3,518,000	3,050,000	3,180,000
Barrels of oil sold	445,500	334,000	318,000
Mcf of natural gas sold	4,619,500	3,274,000	2,791,000
Mcf equivalent sales	7,292,500	5,278,000	4,698,000
MWs of independent power capacity in service	617	250	-
MWs of independent power capacity under construction	364	470	-

The following is a summary of average daily fuel marketing volumes:

	2001 ----	2000 ----	1999 ----
Natural gas - MMBtus	1,047,700	860,800	635,500
Crude oil - barrels	36,500	44,300	19,270
Coal - tons	6,100	4,400	4,500

2001 Compared to 2000

Net income of our integrated energy group nearly doubled in 2001 compared to 2000. These strong earnings resulted primarily from the unusually high prices of natural gas and high gas trading margins received in western markets during the first half of 2001, an increase in volumes marketed and fuel production, and expanded power generation.

In addition, in 2001, we reached a settlement of ongoing litigation with PacifiCorp concerning rights and obligations under a coal supply agreement under which PacifiCorp purchased coal from our coal mine to meet the coal requirements of the Wyodak Power Plant. As a result of this settlement, we recognized \$5.6 million pre-tax non-operating income. In addition, we sold the "North Conveyor System" which resulted in a \$2.6 million pre-tax gain. See Note 10 of Notes to Consolidated Financial Statements.

The integrated energy business group's revenues decreased 8 percent in 2001 compared to 2000. A full year of independent power operations revenues related to the July 2000 acquisition of Indeck Capital and an increase in fuel production revenue was offset by decreased gas marketing revenue. Although daily volumes of natural gas marketed increased 22 percent, gas marketing revenues declined due to a decrease in prices of financial and physical natural gas marketed from an average of \$2.77 per million British thermal units in 2000 to \$2.14 per million British thermal units in 2001.

The integrated energy business group's total operating expenses decreased 11 percent due to a decrease in the cost of sales related to lower commodity prices. EBITDA and operating income increased over 117 percent and 68 percent, respectively from 2000 levels due to the decline in operating expenses and higher production volumes.

2000 Compared to 1999

Net income of our integrated energy group increased 144 percent in 2000 compared to 1999. Operating expenses, operating income and EDITDA increased over 117 percent, 345 percent and 166 percent, respectively. These increases resulted primarily from our gas marketing operations--which experienced a dramatic increase in both trading volumes and margins, a significant increase in fuel production volumes, record fuel and power prices and expanded power generation, including the acquisition of Indeck Capital.

The integrated energy business group's revenues increased 121 percent in 2000 compared to 1999. The revenue increase was a direct result of gas and electricity shortages in the West Coast markets and the closing of the Indeck Capital acquisition. Daily volumes of natural gas marketed increased 35 percent.

Fuel Marketing

Our fuel marketing companies produced the following results:

	2001	2000	1999
	----	----	----
	(in thousands)		
Revenue	\$1,185,049	\$1,366,970	\$614,228
Operating income (loss)	54,071	23,774	(2,248)
Net income (loss)	35,058	14,009	(185)
EBITDA	55,414	23,977	2,995

Our fuel marketing companies generate large amounts of revenue and corresponding expense related to buying and selling energy commodities. Fuel marketing is extremely competitive, and margins are typically very small.

2001 Compared to 2000

Earnings from the fuel marketing segment increased \$21.1 million due substantially to high gas margins received in the first half of 2001, as well as a 22 percent increase in natural gas average daily volumes marketed in 2001 compared to 2000. Revenues decreased 13 percent from 2000 as a decline in margins in the last half of 2001 more than offset higher daily volumes.

The unusual energy market conditions stemming primarily from natural gas and electricity shortages in California and our ability to capture the higher margins contributed significantly to the strong financial performance.

2000 Compared to 1999

The strong increase in earnings in 2000 compared to 1999 was due to the unusual energy market conditions that existed in the last half of 2000 stemming from the natural gas and electricity shortages in California. Average daily volumes of natural gas marketed increased 35 percent in 2000 compared to 1999.

Power Generation

Our power generation segment produced the following results:

	2001 ----	2000 ----	1999 ----
	(in thousands)		
Revenue	\$94,294	\$39,660	\$ -
Operating income (loss)	27,455	20,374	(157)
Net income (loss)	1,576	3,241	(109)
EBITDA	44,363	17,630	(157)

2001 Compared to 2000

2001 reflects the first full year of operations of our power generation segment and our continued expansion of generation facilities. We now own 617 net megawatts in currently operating plants. Of these 617 net megawatts, approximately 90 percent are under contracts or tolling arrangements with at least one year remaining. An additional 364 megawatts of generating capacity is currently under construction. Substantially all of this output will be sold pursuant to existing long-term contracts. The increased production capacity was offset by a \$4.4 million after-tax charge for Enron exposure, reserves for exposure to western power markets and reduced water flow at hydro power plants in New York.

2000 Compared to 1999

Results from the power generation segment were not significant in 1999. In July 2000, we completed the acquisition of Indeck Capital, representing a significant advancement of our position in the power generation segment. At December 31, 2000 we owned 250 net megawatts of generation in operating plants and had 470 megawatts of generating capacity under construction.

Oil and Gas

Oil and gas operating results were as follows:

	2001 ----	2000 ----	1999 ----
	(in thousands)		
Revenue	\$33,408	\$20,328	\$13,052
Operating income	15,193	7,906	3,978
Net income	10,197	4,992	2,462
EBITDA	23,033	12,005	6,392

The following is a summary of our oil and gas reserves at December 31:

	2001 ----	2000 ----	1999 ----
Barrels of oil (in thousands)	4,055	4,413	4,109
Mcf of natural gas	24,071	18,404	19,460
Total in Mcf equivalents	48,401	44,882	44,114

These reserves are based on reports prepared by Ralph E. Davis Associates, Inc., an independent consulting and engineering firm. Reserves were determined using constant product prices at the end of the respective years. Estimates of economically recoverable reserves and future net revenues are based on a number of variables, which may differ from actual results. We intend to increase our net proved reserves by selectively increasing our oil and gas exploration and development activities and by acquiring producing properties.

2001 Compared to 2000

Record net income in 2001 was primarily a result of a 27 percent increase in the average price received and a 38 percent increase in production volumes. The increase in gas reserves at December 31, 2001 was due to strong drilling results and reserve acquisitions.

In 2001, we acquired the operating and non-operating interests in 74 gas and oil wells located in Colorado and Wyoming from Stewart Petroleum Corporation of Denver, Colorado, for approximately \$10 million. The acquired interest in these fuel assets represents approximately 10 billion cubic feet equivalent of natural gas. The acquisition increased our proved reserves by approximately 22 percent (based on year-end 2000 reserve estimates) and our current production rates by 10 percent.

2000 Compared to 1999

The increase in net income in 2000 was primarily the result of record natural gas prices, higher crude oil prices, and a significant increase in production volumes. The increase in economically recoverable oil reserves at December 31, 2000 was due to improved product prices.

Coal Mining

Coal mining results were as follows:

	2001 ----	2000 ----	1999 ----
	(in thousands)		
Revenue	\$31,800	\$30,530	\$31,095
Operating income	6,586	8,794	12,606
Net income	11,591	7,173	9,715
EBITDA	18,468	11,361	14,965

2001 Compared to 2000

Coal mining earnings increased \$4.4 million as a result of a coal contract settlement, a gain on the sale of mining equipment and a 15 percent increase in tons sold, partially offset by lower average coal prices due to a coal contract settlement and an increase in mining related expenses. Tons of coal sold increased primarily due to the commencement of sales through our train load-out facility.

In 2001, we reached a settlement of ongoing litigation with PacifiCorp concerning rights and obligations under a coal supply agreement under which PacifiCorp purchased coal from our coal mine to meet the coal requirements of the Wyodak Power Plant. As a result of this settlement, we recognized \$5.6 million pre-tax non-operating income. In addition, we sold the "North Conveyor System" which resulted in a \$2.6 million pre-tax gain. See Note 10 of Notes to Consolidated Financial Statements.

2000 Compared to 1999

A planned five-week outage at the Wyodak Plant resulted in lower coal sales and earnings in 2000 compared to 1999.

Electric Utility Group

	2001 ----	2000 ----	1999 ----
		(in thousands)	
Revenue	\$212,355	\$173,308	\$133,222
Operating expenses	128,247	105,100	80,936
	-----	-----	-----
Operating income	\$ 84,108	\$ 68,208	\$ 52,286
	=====	=====	=====
Net income	\$ 45,238	\$ 37,100	\$ 27,362
	=====	=====	=====
EBITDA	\$ 96,189	\$ 83,367	\$ 67,804
	=====	=====	=====

We currently have a winter peak of 344 megawatts established in December 1998 and a summer peak of 392 megawatts established in August 2001. We own 395 megawatts of electric utility generating capacity and purchase an additional 65 megawatts under a long-term agreement (decreasing to 60 megawatts in 2002). An additional 40 megawatts of generating capacity is currently under construction.

2001 Compared to 2000

Electric revenue increased 23 percent in 2001 compared to 2000. The increase in electric revenue in 2001 was primarily due to a 78 percent increase in wholesale off-system sales at an average price that was 27 percent higher than the average price in 2000. The increase in off-system sales was driven by high spot market prices for energy in early 2001, which enabled us to generate more energy from our combustion turbine facilities, including the Neil Simpson combustion turbine, which we placed into commercial operation in June 2000. Megawatt-hours generated from our oil-fired diesel and natural gas-fired combustion turbines were 440,368 in 2001, compared to 305,767 in 2000. Historically, market prices were not sufficient to support the economics of generating from these facilities, except to meet peak demand and as standby use for native load requirements.

Firm kilowatt-hour sales increased 2 percent in 2001. Residential and commercial sales increases of 3 percent in 2001 were partially offset by a slight decrease in industrial sales, primarily due to load reductions at Homestake Gold Mine. Degree days, a measure of weather trends, were 3 percent below normal in 2001 and 4 percent below 2000.

Revenue per kilowatt-hour sold was 7.0 cents in 2001 compared to 6.4 cents in 2000. The number of customers in the service area increased to 59,237 from 58,601 in 2000. The increase in the revenue per kilowatt-hour sold in 2001 is due to a 41 percent increase in wholesale off-system sales to 965,030 megawatt-hours and strong average wholesale power prices.

Electric utility operating expenses increased 22 percent in 2001 primarily due to a 29 percent increase in purchased power costs and a 14 percent increase in the average cost of generation. The increase in the average cost of generation was primarily associated with the operation of certain gas-fired combustion turbines.

In addition, 2001 results include a \$2.0 million after-tax non-cash charge related to the contribution of Black Hills Corporation Common Stock to the newly formed Black Hills Corporation Foundation. This Foundation was created to enhance our longstanding practice of giving back to our communities. Through the Foundation, we may strengthen our service to our valued customers and fellow citizens for generations to come.

2000 Compared to 1999

Electric revenue increased 30 percent in 2000 compared to 1999. The increase in electric revenue in 2000 was primarily due to a 381 percent increase in wholesale off-system sales at an average price that was 3 times higher than the average price in 1999. The increase in off-system sales was driven by high spot market prices for energy in late 2000, which enabled us to generate more energy from our combustion turbine facilities, including the Neil Simpson combustion turbine, which we placed into commercial operation in June 2000. Megawatt-hours generated from our oil-fired diesel and natural gas-fired combustion turbines were 305,767 in 2000 compared to 25,882 in 1999.

Firm kilowatt-hour sales increased 3 percent. Residential and commercial sales increases of 4 percent were partially offset by a 2 percent decrease in industrial sales, primarily due to load reductions at Homestake Gold Mine. Degree days, a measure of weather trends, were 16 percent above 1999 and 1 percent above normal.

Revenue per kilowatt-hour sold was 6.4 cents in 2000 compared to 5.4 cents in 1999. The number of customers in the service area increased to 58,601 in 2000 from 57,709 in 1999. The increase in the revenue per kilowatt-hour sold in 2000 is due to a 54 percent increase in wholesale off-system sales to 684,378 megawatt-hours and robust wholesale power prices.

Electric utility operating expenses increased by 30 percent in 2000 primarily due to increased fuel, purchased power, and operating and maintenance expenses, partially offset by lower depreciation. Fuel expense in 2000 included the cost associated with the additional combustion turbine generation.

Communications Group

	2001	2000	1999
	----	----	----
	(in thousands)		
Revenue - external*	\$ 20,258	\$ 7,689	\$ 278
Revenue - intersegment*	4,250	3,682	3,145
Operating expenses	37,758	23,857	7,070
	-----	-----	-----
Operating loss	\$(13,250)	\$(12,486)	\$(3,647)
	=====	=====	=====
Net loss	\$(12,300)	\$(11,382)	\$ (968)
	=====	=====	=====
EBITDA	\$ (3,142)	\$ (6,484)	\$(1,659)
	=====	=====	=====

*External revenue is revenue from our broadband communications business. Intersegment revenue is primarily revenue from our information services company derived from providing services to our other business segments. This intersegment revenue and associated expenses are eliminated in the consolidation process.

	2001	2000	1999
	----	----	----
Residential customers	15,660	8,368	143
Business customers	2,250	646	110
Fiber optic backbone miles	242	210	200
Hybrid fiber coaxial cable miles	737	588	100

In September 1998, we formed our broadband communications business to provide facilities-based communications services for Rapid City and the northern Black Hills of South Dakota. We have invested approximately \$125 million in state-of-the-art technology that offers local and long distance telephone service, expanded cable television service, Internet access, and high-speed data and video services. We began serving communications customers in late 1999 and market our services to schools, hospitals, cities, economic development groups, and business and residential customers. The build-out is approximately 85 percent complete at December 31, 2001. Losses are expected to continue as we proceed with building the network and increasing the customer base. We expect our communications group will sustain approximately \$6.5 million in net losses in 2002, with annual losses decreasing thereafter and profitability expected by 2004. The recovery of capital investment and future profitability are dependent primarily on our ability to attract new customers. If we are unable to attract additional customers or technological advances make our network obsolete, we could have a material write-down of assets.

2001 Compared to 2000

Our customer base nearly doubled in 2001 to 15,660 residential customers and 2,250 business customers. The increase in revenues from a larger customer base in 2001 was partially offset by increases in reserves for inventory and carrier billings and increased interest expense. Operating expense increased due to the expansion of the business. Operating performance in 2001 was in line with our expectations.

2000 Compared to 1999

Operating losses in 2000 were attributable to increased interest, depreciation and operating expenses. Operating losses in 1999 were primarily due to start-up organizational costs, increased depreciation expense and increased interest expense associated with the capital deployment.

Critical Accounting Policies

We prepare the consolidated financial statements in conformity with accounting principles generally accepted in the United States. We are required to make certain estimates, judgments and assumptions that we believe are reasonable based upon the information available. These estimates and assumptions affect the reported amounts of assets and liabilities at the date of the financial statements and the reported amounts of revenues and expenses during the periods presented. The significant accounting policies which we believe are the most critical in understanding and evaluating our reported financial results include the following:

Valuation of Long-Lived Assets

We periodically review the carrying value of our long-lived assets, including goodwill and other intangibles, for continued appropriateness. This review is based upon our projections of anticipated future cash flows. If the anticipated future cash flows are less than our carrying value, then a permanent non-cash write-down is required to be charged to earnings. Although we believe our estimates of future cash flows are reasonable, different assumptions regarding such cash flows could materially affect our evaluations.

Full Cost Method of Accounting for Oil and Gas Activities

We account for our oil and gas activities under the full cost method whereby all productive and nonproductive costs related to acquisition, exploration and development drilling activities are capitalized. These costs are amortized using a unit-of-production method based on volumes produced and proved reserves. Any conveyances of properties, including gains or losses on abandonments of properties, are treated as adjustments to the cost of the properties with no gain or loss recognized. Net capitalized costs are subject to a "ceilings test" that limits such costs to the aggregate of the present value of future net revenues of proved reserves and the lower of cost or fair value of unproved properties. This method values the reserves based upon actual oil and gas prices at the end of each reporting period adjusted for contracted price changes. If the net capitalized costs exceed the full-cost ceiling, then a permanent non-cash write-down is required to be charged to earnings in that reporting period. Although our net capitalized costs were less than the full cost ceiling at December 31, 2001, we can make no assurances that a write-down in the future will not occur depending on oil and gas prices at that point in time. In addition, we rely on an independent consulting and engineering firm to determine the amount of our proved reserves based on a number of assumptions about variables. We can make no assurances that these assumptions will not differ from actual results.

Fair Value of Derivative Instruments

Derivative instruments used in our trading activities are recorded at fair value, and realized and unrealized gains and losses are recorded as a component of income. Fair values are based on listed market prices, where possible. If listed market prices are not available, fair value is determined based on other relevant factors. Fair values for certain derivative contracts are derived from pricing models that consider current market and contractual prices for the underlying financial instruments or commodities, as well as time value and yield curve or volatility factors underlying the positions.

Pricing models and their underlying assumptions impact the amount and timing of unrealized gains and losses recognized, and the use of different pricing models or assumptions could produce different financial results. Changes in the commodity markets will impact our estimates of fair value in the future. To the extent financial contracts have extended maturity dates, our estimates of fair value may involve greater subjectivity due to the lack of transparent market data available upon which to base modeling assumptions.

Counterparty Credit Risk

We perform ongoing credit evaluations of our customers and adjust credit limits based upon payment history and the customer's current creditworthiness, as determined by our review of their current credit information. We continuously monitor collections and payments from our customers and maintain a provision for estimated credit losses based upon our historical experience and any specific customer collection issue that we have identified. While most credit losses have historically been within our expectations and provisions established, we cannot guarantee that we will continue to experience the same credit loss rates that we have in the past or that an investment grade counterparty will not default as was the case with Enron in 2001. We accrued for a \$4.4 million after-tax loss in 2001 in regards to the Enron bankruptcy, which was outside our original provision. In addition, in 2001 we accrued approximately \$1.0 million after-tax loss for payments owed by Southern California Edison, however this payment was collected in the first quarter of 2002.

Pension and Other Postretirement Plans

The determination of our obligation and expense for pension and other postretirement benefits is dependent on the use of certain assumptions by actuaries in calculating the amounts. Those assumptions are described in Note 11 of our Notes to Consolidated Financial Statements and include, among others, the discount rate, the expected long-term rate of return on assets and the rate of increase in compensation levels and healthcare benefits. In accordance with generally accepted accounting principles, actual results that differ from our assumptions are accumulated and amortized over future periods and therefore, generally affect our recognized expense and recorded obligation in future periods. Although we believe our assumptions are appropriate, significant differences in our actual experience or significant changes in our assumptions may materially affect our pension and other postretirement obligations and our future expense.

Liquidity and Capital Resources

Cash Flow Activities

2001

In 2001, we generated sufficient cash flow from operations to meet our operating needs, to pay dividends on common and preferred stock, to pay long-term debt maturities and to fund a material amount of our property additions. We continue to fund property and investment additions primarily related to construction of additional electric generation facilities for our integrated energy business group through a combination of operating cash flow, increased short-term debt and long-term non-recourse project financing. Cash flows from operations increased \$107 million, primarily due to increased net income, depreciation, deferred taxes and decreased working capital.

In the second quarter of 2001, we issued 3.4 million shares of common stock through an underwritten public offering at \$52 per share. Total net proceeds of approximately \$163 million were used to repay a portion of current indebtedness under revolving credit facilities, to fund various power plant construction projects and for general corporate purposes.

Also, in the second quarter of 2001 we acquired the Fountain Valley facility, a 240 megawatt generation facility located near Colorado Springs, Colorado, featuring six LM-6000 simple-cycle, gas-fired turbines from Enron Corporation. The facility became operational in the third quarter of 2001. Total project cost was approximately \$183 million that we financed primarily with non-recourse debt. We have an 11-year contract with Public Service Company of Colorado to utilize the facility for peaking purposes under a tolling arrangement in which we assume no fuel risk.

In the third quarter of 2001, we purchased a 277 megawatt gas-fired co-generation power plant project located in North Las Vegas, Nevada from Enron North America, a wholly owned subsidiary of Enron Corporation. The facility currently has a 53 megawatt co-generation power plant in operation of which we own 50 percent. Although we only

own 50 percent of this power plant, under generally accepted accounting principles we are required to consolidate 100 percent of this plant. Most of the power from the 53 megawatt facility is sold under a long-term contract expiring in 2024. In addition, the project also has a 224 megawatt combined-cycle expansion under construction, of which we own 100 percent. The facility is scheduled to be fully operational in third quarter 2002 and will utilize LM-6000 technology. The power to be generated by the expansion project is also under a long-term sales contract that expires in 2017. Total cost of the project is estimated to be approximately \$330 million of which \$240 million was expended and financed with short-term borrowings at December 31, 2001. We plan on financing the transaction primarily with non-recourse project level debt in 2002.

In addition, during the third quarter of 2001, we completed a \$400 million revolving credit facility, which replaced our previous short-term credit lines, which totaled \$290 million.

2000

In 2000, we generated sufficient cash flow from operations to meet our operating needs, to pay common and preferred dividends and to pay long-term debt maturities. We funded property additions primarily related to construction of additional electric generation facilities for our integrated energy business group through a combination of operating cash flow, increased short-term debt and long-term non-recourse project financing. Investing and financing activities increased primarily as a result of the acquisition of Indeck Capital in July 2000 and construction of several generating facilities. Cash flows from operations decreased \$2.9 million, primarily due to increased working capital partially offset by increased net income and depreciation. We expect increased operating cash flows resulting from our investing activities to support the additional indebtedness.

As part of our acquisition of Indeck Capital, we incurred \$40.3 million of additional debt through an increase in borrowings on our short-term credit facilities, which were used to repay certain obligations of Indeck Capital. In addition, we issued 1.537 million shares of common stock and 4,000 shares of convertible preferred stock to the former Indeck Capital shareholders.

Dividends

Dividends paid on our common stock totaled \$1.12 per share in 2001. This reflected increases approved by our board of directors from \$1.08 per share in 2000 and \$1.04 per share in 1999. All dividends were paid out of current earnings. Our three-year annual dividend growth was 3.8 percent. In January 2002, our board of directors increased the quarterly dividend 3.6 percent to 29 cents per share. If this dividend is maintained during 2002, it will be equivalent to \$1.16 per share, an annual increase of 4 cents per share. The determination of the amount of future cash dividends, if any, to be declared and paid will depend upon, among other things, our financial condition, funds from operations, the level of our capital expenditures, restrictions under our credit facilities and our future business prospects.

Short-Term Liquidity and Financing Transactions

Our principal sources of short-term liquidity are our revolving bank facilities and cash provided by operations. As of December 31, 2001 we had available a \$200 million 364-day facility and a \$200 million three-year facility both dated August 28, 2001. In addition, on January 4, 2002, we entered into a \$50.0 million bridge credit agreement that expires June 30, 2002. These bank facilities can be used to fund our working capital needs, for general corporate purposes and to provide liquidity for a commercial paper program if implemented. At December 31, 2001, we had \$360 million of bank borrowings outstanding under these facilities. The corresponding amount outstanding at February 28, 2002 was \$384 million. After inclusion of applicable letters of credit, the remaining borrowing capacity under the bank facilities was \$7.0 million and \$32.0 million at December 31, 2001 and February 28, 2002, respectively.

The above bank facilities include covenants that are common in such arrangements. Such covenants include a consolidated net worth in an amount of not less than the sum of \$375 million and 50 percent of the aggregate consolidated net income beginning June 30, 2001; a recourse leverage ratio not to exceed 0.65 to 1.00; an interest

coverage ratio of not less than 3.00 to 1.00; and a credit rating of at least "BBB-" from Standard & Poor's or "Baa3" from Moody's Investor Service. If these covenants are violated, it would be considered an event of default and the lender has the right to terminate the remaining commitment and accelerate the principal and interest outstanding to become immediately due. In addition, certain of our interest rate swap agreements with a \$150 million notional amount at December 31, 2001 include cross-default provisions. These provisions would allow the counterparty the right to terminate the swap agreement and liquidate at a prevailing market rate, in the event of default.

In addition, Enserco Energy, Inc., our gas marketing unit, has a \$75.0 million uncommitted, discretionary line of credit to provide support for the purchase of natural gas. The line of credit is secured by all of Enserco's assets. We provide no other guarantees to the lender under this facility. At December 31, 2001 and 2000, there were outstanding letters of credit issued under the facility of \$36.2 million and \$69.8 million, respectively, with no borrowing balances on the facility.

Similarly, Black Hills Energy Resources, Inc., our oil marketing unit, has a \$25.0 million uncommitted, discretionary credit facility secured by all of its assets. We provide no other guarantees to the lender under this facility. This line of credit provides credit support for the purchases of crude oil by Black Hills Energy Resources. At December 31, 2001 and 2000, Black Hills Energy Resources had letters of credit outstanding of \$4.4 million and \$8.5 million, respectively, and no balance outstanding on its overdraft line.

Based upon our expected cash flows from operations, expected project financings for the year, credit facility capacity, and projected cash needs in the near term, we do not expect any liquidity issues in the foreseeable future.

On March 15, 2002, we closed on \$135 million of senior secured financing for our Arapahoe and Valmont Facilities, 210 megawatts of gas-fired generation located in the Denver, Colorado area. Proceeds from this financing were used to refinance \$53.8 million of an existing seven-year senior secured term facility, pay down approximately \$50.0 million of short-term credit facility borrowings and approximately \$31.0 million will be used for future project construction costs.

In addition, we plan on seeking long-term project-level non-recourse financing for the Las Vegas Project, a 277 megawatt gas-fired generation complex located in North Las Vegas, Nevada during 2002. Total project costs are estimated to be \$330 million of which approximately \$240 million was expended as of December 31, 2001 and was funded with short-term credit facility borrowings.

Our consolidated net worth was \$515 million at December 31, 2001. The long-term debt component of our capital structure at December 31, 2001 and 2000 was 45 percent and 52 percent, respectively. Our total debt leverage (long-term debt and short-term debt) was 61 percent and 65 percent at December 31, 2001 and 2000, respectively.

The following information is provided to summarize cash obligations and commercial commitments. As shown in the table, we have \$35.9 million of long-term debt maturing in 2002.

Contractual Obligations	Payments Due by Period				
	Total	Less Than 1 Year	1-3 Years	4-5 Years	After 5 Years
Notes payable	\$ 361,240	\$361,240	\$ -	\$ -	\$ -
First mortgage bonds	130,316	18,018	6,978	3,910	101,410
Project financing debt (a)	293,016	17,839	63,101	153,611	58,465
Other long-term debt	28,370	47	187	175	27,961
Unconditional purchase obligations (b)	232,081	25,815	36,656	32,159	137,451
Other long-term obligations (c)	149,255	-	11,324	12,942	124,989
Total contractual cash obligations	\$1,194,278	\$422,959	\$118,246	\$202,797	\$450,276

(a) Approximately 74 percent of the floating rate term loans has been hedged with an interest rate swap moving the floating rates to fixed rates. See "Financing Activities under Market Risk Disclosures."

(b) Unconditional purchase obligations include the capacity costs associated with a purchase power agreement with PacifiCorp and certain coal purchase, gas purchase, and gas transportation agreements. The energy charge under the purchase power agreement and the commodity price under the gas purchase contract are variable costs which for purposes of estimating our future obligations, were calculated using existing prices at December 31, 2001.

(c) Black Hills Generation, a subsidiary in our power generation segment, has entered into agreements with Wygen Funding, Limited Partnership to lease the Wygen Plant, a 90 megawatt coal-fired power plant under construction in Campbell County, Wyoming. Wygen Funding is a special purpose entity that owns the Wygen Plant and has financed the project. Total cost of the project is estimated to be \$130 - \$140 million. Neither Wygen Funding, its owners, nor its officers are related to us, and other than the lease transaction and obligations incurred as a result of the transaction, we have no obligation to provide additional funding or issue securities to Wygen Funding. Lease payments are based on final construction and financing costs and are currently estimated to be approximately \$6.5 million per year based on five-year treasury rates. Lease payments will begin after substantial completion of construction scheduled to occur in the first quarter of 2003. The lease will be accounted for as an operating lease. The initial lease term is five years with two five-year renewal options and includes a purchase option equal to the adjusted acquisition cost. The adjusted acquisition cost is essentially equal to the cost of the project. If Black Hills Generation elects to terminate and not renew the lease and not purchase the project, then it must make a termination payment equal to the lesser of 83.5 percent of the adjusted acquisition cost or the shortfall proceeds received from the sale of the project. Black Hills Corporation has guaranteed the agreements.

Other Commercial Commitments	Amount of Commitment Expiration Per Period				
	Total Amounts Committed	Less Than 1 Year	1-3 Years	4-5 Years	After 5 Years
Letters of credit	\$74,300	\$73,400	\$900	\$ -	\$ -
Reclamation liability (a)	18,161	-	-	-	18,161
Total commercial commitments	\$92,461	\$73,400	\$900	\$ -	\$18,161

- (a) Under our coal mining permit, we are required to reclaim all land where we have mined coal reserves. The cost of reclaiming the land is accrued as the coal is mined. While the reclamation process takes place on a continual basis, much of the reclamation occurs over an extended period after we mine the area. Approximately \$0.7 million is charged to operations as reclamation expense annually. As of December 31, 2001, accrued reclamation costs were approximately \$18.2 million.

Credit Ratings

As of February 28, 2002, our corporate credit rating is "A3" by Moody's Investors Service and "BBB" by Standard & Poor's. In addition, our utility's first mortgage bonds are rated "A1" and "BBB+" by Moody's and Standard & Poor's, respectively. These security ratings are subject to revision and/or withdrawal at any time by the respective rating organizations.

Capital Requirements

Our primary capital requirements for the three years ended December 31, 2001 were as follows:

	2001 ----	2000 ----	1999 ----
		(in thousands)	
Property and investment additions:			
Integrated energy	\$532,788	\$130,332	\$73,656
Electric utility	41,313	25,257	31,911
Communications and other	20,055	59,377	49,042
Common stock dividends	28,517	23,527	22,602
Maturities/redemptions of long-term debt	13,960	1,330	1,330
	-----	-----	-----
	\$636,633	\$239,823	\$178,541
	=====	=====	=====

Our capital additions for 2001 were \$594 million. The major capital items for the year included the following:

- o Acquisition of the 240 megawatt Fountain Valley gas-fired turbine generation facility located near Colorado Springs, Colorado which was placed in service in third quarter 2001.
- o Acquisition of the 277 megawatt gas-fired co-generation power plant project located near Las Vegas, Nevada of which 53 megawatts were operational and 224 megawatts is expected to be placed in service in the third quarter of 2002.
- o Construction of the 50 megawatt combined-cycle expansion at our Arapahoe site in Denver, Colorado, which is expected to be placed in service in mid-2002.
- o Completion of construction of the 40 megawatt gas-turbine expansion at our Valmont, Colorado site, which we placed in service in July 2001.
- o Completion of construction of the 40 megawatt gas-fired combustion turbine unit at our Wyodak site, which we placed in service in May 2001.
- o Completion of the 18 megawatt combined-cycle upgrade of the Harbor facility near Long Beach, California.
- o Acquisitions of various interests in partnerships in which we previously held a minority interest.
- o Acquisition of operating and non-operating interests in 74 gas and oil wells from Stewart Petroleum Corporation.
- o Construction of a 40 megawatt gas-fired turbine known as the Lange project, which is expected to be placed in service in early 2002.
- o Construction of our communications fiber optic network.

Forecasted capital requirements for projected plant construction, other integrated energy investments, regulated utility capital improvements and completion of the communications network are as follows:

	2002	2003	2004
	----	----	----
		(in thousands)	
Integrated energy	\$ 148,996	\$210,161	\$336,489
Electric utility	47,745	24,180	15,271
Communications	16,312	4,269	3,230
	-----	-----	-----
	\$ 213,053	\$238,610	\$354,990
	=====	=====	=====

Our integrated energy business group's forecasted capital requirements include the following:

- o Completion of construction of the 224 megawatt gas-fired co-generation power plant project located near Las Vegas, Nevada which is expected to be placed in service in the third quarter of 2002.
- o Completion of construction of a 50 megawatt combined-cycle expansion at our Arapahoe, Colorado site (expected in mid-2002).
- o Deployment of \$500 million for generating projects and acquisitions of proven producing natural gas properties and low-risk exploration and development drilling in years 2003-2004.

We expect to finance our integrated energy business group's purchase and construction of electric generating facilities, primarily with long-term, non-recourse project level debt. We expect that any project-level debt will contain significant restrictions on distributions of cash from the project to us.

In addition to the above forecasted capital items we will lease the Wygen Plant, a 90 megawatt coal-fired plant under construction at our Wyodak, Wyoming site through an off-balance sheet financing arrangement discussed above under Short-term Liquidity and Financing Transactions. Because of the leasing arrangement, the \$130 - \$140 million total construction cost of the plant is not included in the above three-year capital expenditure forecast. Wygen will be similar in design to our Neil Simpson II facility, which was completed in 1995 at the same site. The plant will run on low-sulfur coal fed by conveyor from our adjacent Wyodak coal mine and will use the latest available environmental control technology. We anticipate that the Wygen Plant will be operational in the first quarter of 2003.

Forecasted capital expenditures for our electric utility operations include completion of construction of a 40 megawatt gas-fired turbine known as the Lange project expected to be in service in mid-2002, construction of an AC/DC/AC Tie which is expected to be placed in service in 2003, transmission and substation projects, re-build projects on existing transmission lines, distribution projects in response to customer requests for electric service, capital projects associated with our utility's existing generation plants, and other miscellaneous items.

Our communications group's capital requirements forecast primarily consists of 2002 costs related to the completion of our fiber optic network in Rapid City and the northern Black Hills of South Dakota, nominal extensions of the base network to reach additional customers, and capital improvements to the existing network infrastructure.

Market Risk Disclosures

Our operations and financial results are impacted by numerous factors including, but not limited to, commodity price risk, interest rate risk and counterparty risk. We are exposed to commodity price variability in nearly all of our core energy marketing and trading businesses. In addition, fuel requirements for our gas-fired generation and our natural long position in crude oil and natural gas production introduce additional commodity price risk.

Fuel Marketing Activities

We market natural gas, coal, and crude oil in specific areas of the United States and Canada. We offer wholesale fuel marketing and price risk management products and services to a variety of customers. These activities are subject to numerous risks, including commodity price risk.

We have adopted Risk Management Policies and Procedures (RMP&P) covering all marketing activities. These RMP&P's have been approved by our Board of Directors and are routinely reviewed by the Audit Committee of the Board of Directors. The RMP&P include, but are not limited to, trader limits, position limits and credit exposure limits.

We employ risk management methods to mitigate our commodity price risk. As a general policy, we only permit speculation with limited "open" positions as defined in the RMP&P. Therefore, substantially all of our marketing activities are fully hedged or back-to-back positions; in other words, each sale is matched with a purchase.

To maintain compliance with these RMP&P and mitigate our commodity price risk, we routinely utilize fixed price forward purchase and sales contracts and over-the-counter swaps and options. We attempt to balance our fixed price physical and financial purchase and sale commitments in terms of volume and timing of performance and delivery obligations. However, we may at times have a bias in the market, within established guidelines, resulting from the management of our portfolio. In addition, we may, at times, be unable to fully hedge our portfolio for certain market risks as a result of marketplace illiquidity and other factors.

Our fuel marketing operations fall under the purview of Statement of Financial Accounting Standards No. 133 (SFAS 133), "Accounting for Derivative Instruments and Hedging Activities" and Emerging Issues Task Force Issue No. 98-10, "Accounting for Energy Trading and Risk Management Activities" (EITF 98-10). As such, these activities are accounted for under mark-to-market accounting. The fair values are recorded as either Derivative assets and/or Derivative liabilities on the accompanying Consolidated Balance Sheet. The net gains or losses are recorded as Revenues in the accompanying Consolidated Statements of Income.

The contract or notional amounts and terms of our derivative commodity instruments held for trading purposes at December 31, 2001 and 2000, are set forth below:

	2001 ----	Maximum Term in Years	2000 ----	Maximum Term in Years
	Notional Amounts -----	-----	Notional Amounts -----	-----
(thousands of MMBtu's)				
Natural gas basis swaps purchased	9,882	1	25,578	2
Natural gas basis swaps sold	10,696	1	26,060	2
Natural gas fixed-for-float swaps purchased	10,646	2	6,476	1
Natural gas fixed-for-float swaps sold	11,815	2	7,361	1
Natural gas swing swaps purchased	465	1	-	-
Natural gas swing swaps sold	930	1	-	-
Natural gas physical purchases	13,159	1	-	-
Natural gas physical sales	19,339	1	-	-
(thousands of barrels)				
Crude oil purchased	3,139	1	2,186	1
Crude oil sold	3,142	1	2,530	1
(thousands of tons)				
Coal purchased	1,554	4	896	1
Coal sold	1,448	4	988	1

As required under SFAS 133 and EITF 98-10, derivatives and energy trading activities were marked to fair value on December 31, 2001, and the gains and/or losses recognized in earnings. The amounts related to the accompanying Consolidated Balance Sheets and Statements of Income as of December 31, 2001 and 2000 are as follows (in thousands):

December 31, 2001	Current Assets -----	Non-current Assets -----	Current Liabilities -----	Non-current Liabilities -----	Unrealized Gain -----
Natural gas	\$29,755	\$ 661	\$25,437	\$953	\$4,026
Crude Oil	6,267	-	5,497	-	770
Coal	1,192	467	1,018	-	641
	-----	-----	-----	-----	-----
	\$37,214	\$1,128	\$31,952	\$953	\$5,437
	=====	=====	=====	=====	=====
December 31, 2000					
Natural gas	\$61,008	\$ 391	\$56,968	\$3,532	\$ 899
Crude oil	1,523	-	1,000	-	523
Coal	5,370	-	4,460	-	910
	-----	-----	-----	-----	-----
	\$67,901	\$ 391	\$62,428	\$3,532	\$2,332
	=====	=====	=====	=====	=====

At December 31, 2001, we had a mark to fair value unrealized gain of \$5.4 million for our fuel marketing activities. Of this amount, \$5.2 million was current and \$0.2 million was non-current. The current portion of unrealized gains included \$5.5 million gain associated with hedged transactions and \$(0.3) million loss associated with open positions. We anticipate that substantially all of the current portion of unrealized gains for hedged transactions will be realized during the next twelve months. Conversely, estimated and actual realized gains or losses related to open positions will likely change during 2002 as market prices change from the December 31, 2001 estimates.

Non-trading Energy Activities

We produce natural gas and crude oil through our exploration and production activities. These natural "long" positions, or unhedged open positions, introduce commodity price risk and variability in our cash flows. We employ risk management methods to mitigate this commodity price risk and preserve our cash flows. We have adopted guidelines covering hedging for our natural gas and crude oil production. These guidelines have been approved by our Board of Directors and are routinely reviewed by our Audit Committee.

To mitigate commodity price risk and preserve cash flows, we use over-the-counter swaps and options. These derivative instruments fall under the purview of SFAS 133 and we elect to utilize hedge accounting as allowed under this Statement.

At December 31, 2001, we had a portfolio of swaps to hedge portions of our crude oil and natural gas production. These transactions were previously identified as cash flow hedges, properly documented and met prospective effectiveness testing. At year-end, these transactions met retrospective effectiveness testing criteria and retained their cash flow hedge status.

At December 31, 2001, the derivatives were marked to fair value and were recorded as Derivative assets or Derivative liabilities on the Consolidated Balance Sheet. The effective portion of the gain or loss on these derivatives was reported in other comprehensive income and the ineffective portion was reported in earnings.

On January 1, 2001 (the transition adjustment date for SFAS 133 adoption), and on December 31, 2001, we had the following swaps and related balances (in thousands):

January 1, 2001	Notional	Maximum Terms in Years	Current Assets	Non-current Assets	Current Liabilities	Non-current Liabilities	Accumulated Other Comprehensive Income (Loss)	Earnings
Crude oil swap	294,000	2	\$ 33	\$151	\$ -	\$ -	\$ 184	\$ -
Crude oil options	120,000	1	472	-	-	-	472	-
Natural gas swaps	1,581,000	1	-	-	3,411	-	(3,411)	-
			\$ 505	\$151	\$3,411	\$ -	\$ (2,755)	\$ -
			=====	=====	=====	=====	=====	=====
December 31, 2001								
Crude oil swaps	90,000	1	\$ 529	\$ -	\$ -	\$ -	\$ 529	\$ -
Natural gas swaps	1,216,000	1	1,593	-	-	-	1,463	130
			\$2,122	\$ -	\$ -	\$ -	\$ 1,992	\$ 130
			=====	=====	=====	=====	=====	=====

*Crude in bbls, gas in MMBtu's

Most of our crude oil and natural gas hedges are highly effective, resulting in very little earnings impact prior to realization. During 2001, we recorded \$0.1 million in earnings due to ineffectiveness for certain natural gas swaps due to basis risk.

All existing hedges at December 31, 2001 expire during the year ended December 31, 2002. The unrealized earnings gains or losses currently recorded in accumulated other comprehensive income are expected to be realized in earnings during 2002. Based on December 31, 2001 market prices, \$2.0 million will be realized and reported in earnings during 2002. These estimated realized gains for 2002 were calculated using December 31, 2001 market prices. Estimated and actual realized gains will likely change during 2002 as market prices change.

In addition, we acquired several natural gas swaps when we completed the Las Vegas Cogeneration acquisition on August 31, 2001 (See Note 15). The project has a long-term fixed price power sales agreement and an index-priced natural gas purchase contract for 5,000 MMBtus per day through April 30, 2010. These swaps fix the long-term purchase price of the index-priced natural gas purchase contract. At acquisition close, the fair value of these swaps

was \$6.0 million. These swaps were executed with Enron North America Corp. (Enron), which is currently in bankruptcy proceedings.

These swaps are derivatives under SFAS 133. We elected to treat these derivatives as cash flow hedges so that any gains or losses on the fair values of the swaps could be deferred and subsequently recognized when the underlying hedged natural gas was consumed in the plant. The swaps were properly documented and met the criteria for cash flow hedges.

During the fourth quarter of 2001, we determined that it was probable that Enron would default on its obligations to us in conjunction with these swaps. Upon that determination, we ceased to account for these swaps as cash flow hedges. In addition, we recognized a \$6.0 million pre-tax valuation reserve in recognition of Enron's probable performance default and resulting consequence that we would not receive payment for these amounts. We have taken action to mitigate this exposure. By negotiations or by appropriate legal action filed in U.S. Bankruptcy Court, Southern District of New York, we will seek authority to "net" or offset, certain obligations with Enron and its subsidiaries, both payable and receivable, among our subsidiaries. If we are successful in these efforts, substantially all of the financial value of the fuel swap could be recovered, and we would not have any remaining exposure to Enron or its bankrupt subsidiaries.

Financing Activities

We engage in activities to manage risks associated with changes in interest rates. We have entered into floating-to-fixed interest rate swap agreements to reduce our exposure to interest rate fluctuations associated with our floating rate debt obligations. At December 31, 2001, these hedges met effectiveness testing criteria and retained their cash flow hedge status. At December 31, 2001, we had \$291.4 million of notional amount floating-to-fixed interest rate swaps, having a maximum term of five years and a fair value of \$(14.4) million. These hedges are substantially effective and any ineffectiveness was immaterial.

In addition to the above interest rate swaps, we have entered into a \$100 million forward starting floating-to-fixed interest rate swap to hedge the anticipated floating rate debt financing related to the Las Vegas Cogeneration expansion. The forward starting period for the swap is the second quarter of 2002, with a term of ten years. The swap will terminate and cash settle on its forward starting date, based on the fair market value of the swap at the starting date. At December 31, 2001, the swap had a fair market value of \$2.3 million. The hedge has met effectiveness criteria. Upon completion of the long-term financing of the project, any gain or loss on the fair market value of the swap is anticipated to be amortized over the life of the long-term financing.

On January 1, 2001 (the transition adjustment date for SFAS 133 adoption) and on December 31, 2001, our interest rate swaps and related balances were as follows (in thousands):

	Notional	Weighted Average Fixed Interest Rate	Maximum Terms in Years	Current Assets	Non- current Assets	Current Liabilities	Non- current Liabilities	Accumulated Other Comprehensive Income (Loss)
January 1, 2001	-----	----	-----	-----	-----	-----	-----	-----
Swaps on project financing	\$127,416 =====	7.38%	5	\$ - =====	\$ 265 =====	\$ 2,440 =====	\$5,332 =====	\$ (7,507) =====
December 31, 2001								
Swaps on project financing	\$316,397	5.85%	4	\$ -	\$5,746	\$10,212	\$5,949	\$(10,415)
Swaps on corporate debt	75,000	4.45%	3	-	-	1,535	217	(1,752)
	-----			-----	-----	-----	-----	-----
	\$391,397 =====			\$ - =====	\$5,746 =====	\$11,747 =====	\$6,166 =====	\$(12,167) =====

We anticipate a portion of unrealized losses recorded in accumulated other comprehensive income will be realized as increased interest expense in 2002. Based on December 31, 2001 market interest rates, \$11.7 million will be realized as additional interest expense during 2002. Estimated and realized amounts will likely change during 2002 as market interest rates change.

At December 31, 2001, we had \$655.8 million of outstanding, floating-rate debt of which \$264.4 million was not offset with interest rate swap transactions that effectively convert the debt to a fixed rate. A 100 basis point increase in interest rates would cause interest expense to increase \$2.6 million.

The table below presents principal (or notional) amounts and related weighted average interest rates by year of maturity for our short-term investments and long-term debt obligations, including current maturities (in thousands).

	2002	2003	2004	2005	2006	Thereafter	Total
Cash equivalents							
Fixed rate	\$ 29,666	\$ -	\$ -	\$ -	\$ -	\$ -	\$ 29,666
Long-term debt							
Fixed rate	\$ 18,065	\$ 3,122	\$ 2,017	\$ 2,026	\$ 2,036	\$128,565	\$ 155,831
Average interest rate	6.98%	9.31%	9.50%	9.52%	9.54%	8.28%	8.20%
Variable rate (a)	\$ 17,839	\$ 19,301	\$ 21,126	\$ 22,674	\$ 135,285	\$ 79,646	\$ 295,871
Average interest rate	3.45%	3.45%	3.45%	3.45%	3.32%	3.48%	3.40%
Total long-term debt	\$ 35,904	\$ 22,423	\$ 23,143	\$ 24,700	\$ 137,321	\$ 208,211	\$ 451,702
Average interest rate	5.22%	4.27%	3.98%	3.95%	3.41%	6.44%	5.05%

(a) Approximately 74 percent of the variable rate debt has been hedged with interest rate swaps moving the floating rates to fixed rates with an average interest rate of 5.85 percent.

Credit Risk

Credit risk relates to the risk of financial loss resulting from non-performance of contractual obligations by a counterparty. We maintain credit policies with regards to our counterparties that we believe limit our overall credit risk.

For our fuel marketing, energy production and risk management activities, we attempt to mitigate our credit risk by conducting a majority of our business with investment grade companies, obtaining netting agreements where possible and securing our exposure with less creditworthy counterparties through parental guarantees, prepayments and letters of credit.

We perform ongoing credit evaluations of our customers and adjust credit limits based upon payment history and the customer's current creditworthiness, as determined by our review of their current credit information. We maintain a provision for estimated credit losses based upon our historical experience and any specific customer collection issue that we have identified. While most credit losses have historically been within our expectations and provisions established, we cannot guarantee that we will continue to experience the same credit loss rates that we have in the past or that an investment grade counterparty will not default as was the case with Enron in 2001.

At the end of the year, our credit exposure (exclusive of regulated utility retail customers and communications) was concentrated with investment grade companies. Approximately 85 percent of our credit exposure was with investment grade companies. For the 15 percent credit exposure with non-investment grade rated counterparties, approximately 60 percent of this exposure was supported through letters of credit, prepayments, parental guarantees and asset liens.

Rate Regulation

Existing Rate Regulation

In June 1999, the South Dakota Public Utilities Commission approved a settlement, which extended a rate freeze in effect since 1995 until January 1, 2005.

The South Dakota settlement provides that, absent an extraordinary event, we may not file for any increase in our rates or invoke any fuel and purchased power adjustment tariff which would take effect during the freeze period. The specified extraordinary events are:

- o new governmental impositions increasing annual costs for South Dakota customers by more than \$2.0 million;
- o simultaneous forced outages of both our Wyodak plant and Neil Simpson II plant projected to continue at least 60 days;
- o forced outages occurring to either plant which continue for a period of three months and are projected to last at least nine months;
- o an increase in the Consumer Price Index at a monthly rate for six months which would result in a 10 percent or higher annual inflation rate;
- o the loss of a South Dakota customer or revenue from an existing South Dakota customer that would result in a loss of revenue of \$2.0 million or more during any 12-month period;
- o the cost of coal to our South Dakota customers increases and is projected to increase by more than \$2.0 million over the cost for the most recent calendar year; and
- o electric deregulation occurs as a result of either federal or state mandate, which allows any of our customers to choose its provider of electricity at any time during the freeze period.

During the freeze period, except as identified above, we are undertaking the risks of:

- o machinery failure;
- o load loss caused by either an economic downturn or changes in regulation;
- o increased costs under power purchase contracts over which we have no control;
- o government interferences; and
- o acts of nature and other unexpected events that could cause material losses of income or increases in costs of doing business.

However, the settlement anticipates that we will retain, during that period of time, earnings realized from more efficient operations, sales from load growth, and off-system sales of power and energy.

Over the last four years we have initiated an effort to enter into new contracts with our largest industrial customers. The new contracts contain "meet or release" provisions that grant us a five-year right to continue to serve a customer at market rates in the event of deregulation. Additionally, through our General Service Large Optional Combined Account Billing Tariff, we have allowed general service customers to aggregate their loads. This tariff also provides us with a five-year right to continue to serve those customers in the event of deregulation. Our "meet or release" contracts currently total more than 124 megawatts of large commercial and industrial load. These contracts provide us the assurance of a firm local market for our power resources, in the event deregulation occurs. These industrial and large commercial customers, together with our wholesale power sale agreements with the City of Gillette, Wyoming and Montana-Dakota Utilities Company, equal approximately 50 percent of our utility's firm load.

Regulatory Accounting

As it pertains to the accounting for our utility operations, we follow SFAS No. 71, "Accounting for the Effects of Certain Types of Regulation," and our financial statements reflect the effects of the different ratemaking principles followed by the various jurisdictions in which we operate. As a result of our regulatory activity, a 50-year depreciable life for the Neil Simpson II plant is used for financial reporting purposes. If we were not following SFAS 71, a 35- to 40-year life would probably be more appropriate which would increase depreciation expense by approximately \$0.6 million per year. If rate recovery of generation-related costs becomes unlikely or uncertain, due to competition or regulatory action, these accounting standards may no longer apply to our generation operations. In the event we determine that we no longer meet the criteria for following SFAS 71, the accounting impact to us could be an extraordinary non-cash charge to operations of an amount that could be material. Criteria that may give rise to the discontinuance of SFAS 71 include increasing competition that could restrict our ability to establish prices to recover specific costs and a significant change in the manner in which rates are set by regulators from cost-based regulation to another form of regulation. We periodically review these criteria to ensure that the continuing application of SFAS 71 is appropriate.

New Accounting Pronouncements

In June 2001, the Financial Accounting Standards Board (FASB) issued Statement of Financial Accounting Standards No. 141, "Business Combinations" (SFAS 141) and No. 142, "Goodwill and Other Intangible Assets" (SFAS 142). SFAS 141 requires all business combinations initiated after June 30, 2001 to be accounted for using the purchase method of accounting. Under SFAS 142, goodwill and intangible assets with indefinite lives are no longer amortized but are reviewed annually (or more frequently if impairment indicators arise) for impairment. Intangible assets with a defined life will continue to be amortized over their useful lives (but with no maximum life). The amortization provisions of SFAS 142 apply to goodwill and intangible assets acquired after June 30, 2001. With respect to goodwill and intangible assets acquired prior to July 1, 2001, we were required to adopt SFAS 142 effective January 1, 2002. We are currently evaluating the effects adoption has on our consolidated financial statements.

In June 2001, the FASB issued Statement of Financial Accounting Standards No. 143, "Accounting for Asset Retirement Obligations" (SFAS 143). SFAS 143 requires that the fair value of a liability for an asset retirement obligation be recognized in the period in which it is incurred with the associated asset retirement costs being capitalized as part of the carrying amount of the long-lived asset. Over time, the liability is accreted to its present value each period and the capitalized cost is depreciated over the useful life of the related asset. We expect to adopt SFAS 143 effective January 1, 2003 and are currently evaluating the effects adoption will have on our consolidated financial statements.

In August 2001, the FASB issued Statement of Financial Accounting Standards No. 144, "Accounting for the Impairment or Disposal of Long-Lived Assets" (SFAS 144). SFAS 144 supersedes FASB Statement 121, "Accounting for the Impairment of Long-Lived Assets and for Long-Lived Assets to Be Disposed Of" (SFAS 121) and the accounting and reporting provisions of Accounting Principles Board Opinion No. 30, "Reporting the Results of Operations - Reporting the Effects of Disposal of a Segment of a Business, and Extraordinary, Unusual and Infrequently Occurring Events and Transactions" (APB 30). SFAS 144 establishes a single accounting model for long-lived assets to be disposed of by sale as well as resolves implementation issues related to SFAS 121. We were required to adopt SFAS 144 effective January 1, 2002. Adoption did not have a material impact on our consolidated financial position, results of operations or cash flows.

Safe Harbor for Forward Looking Information

In connection with the safe harbor provisions of the Private Securities Litigation Reform Act of 1995 (Reform Act), we are hereby filing cautionary statements identifying important factors that could cause our actual results to differ materially from those projected in forward-looking statements (as such term is defined in the Reform Act) made by or on behalf of the Company in our Annual Report on Form 10-K, Annual Report, Quarterly Report on Form 10-Q, and presentations, or in response to questions or otherwise. These statements concern our plans, expectations and objectives for future operations. All statements, other than statements of historical fact that address activities, events or developments that we expect, believe or anticipate will or may occur in the future are forward-looking statements. The words "anticipate," "believe," "estimate," "expect," "intend," "plan," "predicts," "project," "will likely result," "will continue," or similar expressions are not statements of historical fact and may be forward-looking. These forward-looking statements include, among others, such things as:

- o expansion and growth of our business and operations;
- o future financial performance;
- o future acquisition and development of power plants;
- o future production of coal, oil and natural gas;
- o reserve estimates; and
- o business strategy.

Forward-looking statements are based on assumptions that we believe are reasonable based on current expectations and projections about future events and industry conditions and trends affecting our business. However, whether actual results and developments will conform to our expectations and predictions is subject to a number of risks and uncertainties which could cause actual results to differ materially from those contained in the forward-looking statements, including the following factors:

- o prevailing governmental policies and regulatory actions, with respect to allowed rates of return, industry and rate structure, acquisition and disposal of assets and facilities, operation and construction of plant facilities, recovery of purchased power and other capital investments, and present or prospective wholesale and resale competition;
- o changes in and compliance with environmental and safety laws and policies;
- o weather conditions;
- o population growth and demographic patterns;
- o competition for retail and wholesale customers;
- o pricing and transportation of commodities;
- o market demand, including structural market changes;
- o changes in tax rates or policies or in rates of inflation;
- o changes in project costs;
- o unanticipated changes in operating expenses or capital expenditures;
- o capital market conditions;
- o creditworthiness of counterparties;
- o technological advances;
- o competition for new energy development opportunities; and
- o legal and administrative proceedings that influence our business and profitability.

Any forward-looking statement speaks only as to the date on which that statement is made, and we undertake no obligation to update any forward-looking statement to reflect events or circumstances after the date on which that statement is made or to reflect the occurrence of an anticipated event. New factors emerge from time to time, and it is not possible for management to predict all such factors, nor can it assess the impact of any such factor on the business or the extent to which factor, or combination of factors, may cause results to differ materially from those contained in any forward-looking statement.

ITEM 8. FINANCIAL STATEMENTS AND SUPPLEMENTARY DATA

INDEX TO CONSOLIDATED FINANCIAL STATEMENTS

Report of Independent Public Accountants	54
Consolidated Statements of Income for the three years ended December 31, 2001	55
Consolidated Balance Sheets as of December 31, 2001 and 2000	56
Consolidated Statements of Cash Flows for the three years ended December 31, 2001	57
Consolidated Statements of Common Stockholders' Equity for the three years ended December 31, 2001	58
Notes to Consolidated Financial Statements	59-86

REPORT OF INDEPENDENT PUBLIC ACCOUNTANTS

To the Shareholders of Black Hills Corporation:

We have audited the accompanying consolidated balance sheets of Black Hills Corporation (a South Dakota corporation) and Subsidiaries as of December 31, 2001 and 2000, and the related consolidated statements of income, common stockholders' equity and cash flows for each of the three years in the period ended December 31, 2001. These financial statements are the responsibility of the Company's management. Our responsibility is to express an opinion on these financial statements based on our audits.

We conducted our audits in accordance with auditing standards generally accepted in the United States. Those standards require that we plan and perform the audit to obtain reasonable assurance about whether the financial statements are free of material misstatement. An audit includes examining, on a test basis, evidence supporting the amounts and disclosures in the financial statements. An audit also includes assessing the accounting principles used and significant estimates made by management, as well as evaluating the overall financial statement presentation. We believe that our audits provide a reasonable basis for our opinion.

In our opinion, the financial statements referred to above present fairly, in all material respects, the financial position of Black Hills Corporation and Subsidiaries as of December 31, 2001 and 2000, and the results of their operations and their cash flows for each of the three years in the period ended December 31, 2001, in conformity with accounting principles generally accepted in the United States.

As explained in Note 2 to the consolidated financial statements, effective January 1, 2001, the Company adopted the provisions of Statement of Financial Accounting Standards No. 133, "Accounting for Derivative Instruments and Hedging Activities."

ARTHUR ANDERSEN LLP

Minneapolis, Minnesota,
March 22, 2002

BLACK HILLS CORPORATION
CONSOLIDATED STATEMENTS OF INCOME

Years ended December 31,	2001 ----- (in thousands, except per share amounts)	2000 -----	1999 -----
Operating revenues	\$1,558,558 -----	\$1,623,836 -----	\$ 791,875 -----
Operating expenses:			
Fuel and purchased power	1,165,144	1,370,841	637,302
Operations and maintenance	65,556	46,054	36,463
Administrative and general	80,635	44,423	18,272
Depreciation, depletion and amortization	54,051	32,864	25,067
Taxes, other than income taxes	22,993	14,904	12,880
	----- 1,388,379 -----	----- 1,509,086 -----	----- 729,984 -----
Operating income	----- 170,179 -----	----- 114,750 -----	----- 61,891 -----
Other income (expense):			
Interest expense	(39,626)	(30,342)	(15,460)
Interest income	2,378	7,075	3,614
Other, net	9,876	2,996	876
	----- (27,372) -----	----- (20,271) -----	----- (10,970) -----
Income before minority interest and income taxes	142,807	94,479	50,921
Minority interest	(4,186)	(11,273)	1,935
Income taxes	(50,544)	(30,358)	(15,789)
	----- 88,077 -----	----- 52,848 -----	----- 37,067 -----
Net income	88,077	52,848	37,067
Preferred stock dividends	(527)	(78)	-
Net income available for common stock	----- \$ 87,550 =====	----- \$ 52,770 =====	----- \$ 37,067 =====
Earnings per share of common stock:			
Basic	\$ 3.45 =====	\$ 2.39 =====	\$ 1.73 =====
Diluted	\$ 3.42 =====	\$ 2.37 =====	\$ 1.73 =====
Weighted average common shares outstanding:			
Basic	----- 25,374 =====	----- 22,118 =====	----- 21,445 =====
Diluted	----- 25,771 =====	----- 22,281 =====	----- 21,482 =====

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

BLACK HILLS CORPORATION
CONSOLIDATED BALANCE SHEETS

At December 31,	2001 ----	2000 ----
	(in thousands, except share amounts)	
ASSETS		
Current assets:		
Cash and cash equivalents	\$ 29,666	\$ 24,913
Securities available-for-sale	3,550	2,113
Receivables (net of allowance for doubtful accounts of \$5,913 and \$3,631, respectively)	117,259	299,719
Derivative assets	39,336	67,901
Other current assets	30,540	23,973
	-----	-----
	220,351	418,619
	-----	-----
Investments	59,895	50,137
	-----	-----
Property, plant and equipment	1,566,624	1,072,129
Less accumulated depreciation and depletion	(328,400)	(277,848)
	-----	-----
	1,238,224	794,281
	-----	-----
Other assets:		
Derivative assets	6,874	391
Goodwill and other intangible assets	115,081	45,905
Other	18,342	10,987
	-----	-----
	140,297	57,283
	-----	-----
	\$1,658,767	\$1,320,320
	=====	=====
LIABILITIES AND STOCKHOLDERS' EQUITY		
Current liabilities:		
Accounts payable	\$ 102,041	\$ 247,596
Accrued liabilities	40,178	49,661
Current maturities of long-term debt	35,904	13,960
Notes payable	361,240	211,679
Derivative liabilities	43,699	62,428
	-----	-----
	583,062	585,324
	-----	-----
Long-term debt, net of current maturities	415,798	307,092
	-----	-----
Deferred credits and other liabilities:		
Federal income taxes	75,398	62,679
Derivative liabilities	7,119	3,532
Other	42,693	41,386
	-----	-----
	125,210	107,597
	-----	-----
Minority interest in subsidiaries	19,533	37,961
	-----	-----
Commitments and contingencies (Notes 10, 11 and 15)		
Stockholders' equity:		
Preferred stock - no par Series 2000-A; 21,500 shares authorized; issued and outstanding: 5,177 shares in 2001, 4,000 shares in 2000	5,549	4,000
	-----	-----
Common stock equity-		
Common stock \$1 par value; 100,000,000 shares authorized; issued: 26,890,943 shares in 2001 and 23,302,111 shares in 2000	26,891	23,302
Additional paid-in capital	240,454	73,442
Retained earnings	250,515	191,482
Treasury stock, at cost	(4,503)	(9,067)
Accumulated other comprehensive loss	(3,742)	(813)
	-----	-----
	509,615	278,346
	-----	-----
Total stockholders' equity	515,164	282,346
	-----	-----
	\$1,658,767	\$1,320,320
	=====	=====

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

BLACK HILLS CORPORATION
CONSOLIDATED STATEMENTS OF CASH FLOWS

Years ended December 31,	2001 ----	2000 ---- (in thousands)	1999 ----
Operating activities:			
Net income available for common	\$87,550	\$52,770	\$37,067
Principal non-cash items-			
Depreciation, depletion and amortization	54,051	32,864	25,067
Issuance of treasury stock (Note 4)	4,243	-	-
Provision for valuation allowances	9,632	3,353	(203)
Net change in derivative assets and liabilities	(4,186)	(2,332)	-
Gain on sales of assets	(2,587)	(3,736)	(2,541)
Deferred income taxes and investment tax credits	9,792	1,937	2,291
Undistributed earnings in associated companies	(9,287)	(3,672)	-
Minority interest	4,186	11,273	(1,935)
Change in operating assets and liabilities-			
Accounts receivable	181,738	(204,662)	2,435
Other current assets	(7,446)	(3,513)	(4,003)
Accounts payable	(146,603)	165,394	6,268
Accrued liabilities	(9,483)	18,678	4,013
Other, net	5,796	2,444	5,284
	----- 177,396	----- 70,798	----- 73,743
Investing activities:			
Property, plant and equipment additions	(378,479)	(134,855)	(102,290)
Payment for acquisition of net assets, net of cash acquired	(199,001)	(28,688)	-
Payment for acquisition of minority interest	(16,676)	-	-
Increase in investments	(471)	(9,974)	(52,319)
Proceeds from sales of assets	2,900	5,500	3,463
Available-for-sale securities purchased	-	-	(7,870)
Available-for-sale securities sold	-	4,660	22,959
	----- (591,727)	----- (163,357)	----- (136,057)
Financing activities:			
Dividends paid on common stock	(28,517)	(23,527)	(22,602)
Treasury stock issued (purchased)	321	(1,037)	(4,949)
Common stock issued	168,522	3,854	424
Increase in short-term borrowings	149,561	73,848	92,489
Long-term debt - issuance	144,610	60,082	-
Long-term debt - repayments	(13,960)	(1,330)	(1,330)
Subsidiary distributions to minority interests	(1,453)	(10,900)	-
	----- 419,084	----- 100,990	----- 64,032
 Increase in cash and cash equivalents	 4,753	 8,431	 1,718
Cash and cash equivalents:			
Beginning of year	24,913	16,482	14,764
End of year	----- \$ 29,666 =====	----- \$ 24,913 =====	----- \$ 16,482 =====
Supplemental disclosure of cash flow information:			
Cash paid during the period for-			
Interest	\$39,595	\$31,292	\$15,297
Income taxes	\$40,917	\$18,518	\$13,173
Noncash net assets acquired through issuance of common and preferred stock (Note 15)			
	\$ 3,628	\$34,493	\$ -

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

BLACK HILLS CORPORATION
CONSOLIDATED STATEMENTS OF COMMON STOCKHOLDERS' EQUITY

	Common Stock		Additional Paid-In Capital	Retained Earnings	Treasury Stock		Accumulated Other Comprehensive Income (loss)	Total
	Shares	Amount			Shares	Amount		
	(in thousands, except share amounts)							
Balance at December 31, 1998	21,719	\$ 21,719	\$ 40,254	\$147,774	141	\$(3,081)	-	\$206,666
Comprehensive Income:								
Net income	-	-	-	37,067	-	-	-	37,067
Total comprehensive income	-	-	-	37,067	-	-	-	37,067
Dividends on common stock	-	-	-	(22,602)	-	-	-	(22,602)
Issuance of common stock	20	20	404	-	-	-	-	424
Treasury stock acquired, net	-	-	-	-	227	(4,949)	-	(4,949)
Balance at December 31, 1999	21,739	21,739	40,658	162,239	368	(8,030)	-	216,606
Comprehensive Income:								
Net income	-	-	-	52,848	-	-	-	52,848
Other comprehensive income, net of tax:								
Unrealized loss on available for sale securities	-	-	-	-	-	-	(813)	(813)
Total comprehensive income	-	-	-	52,848	-	-	(813)	52,035
Dividends on preferred stock	-	-	-	(78)	-	-	-	(78)
Dividends on common stock	-	-	-	(23,527)	-	-	-	(23,527)
Issuance of common stock	1,563	1,563	32,784	-	-	-	-	34,347
Treasury stock acquired, net	-	-	-	-	13	(1,037)	-	(1,037)
Balance at December 31, 2000	23,302	23,302	73,442	191,482	381	(9,067)	(813)	278,346
Comprehensive Income:								
Net income	-	-	-	88,077	-	-	-	88,077
Other comprehensive income, net of tax:								
Unrealized gain on available for sale securities	-	-	-	-	-	-	1,438	1,438
Initial impact of adoption of SFAS 133, net of minority interest	-	-	-	-	-	-	(4,510)	(4,510)
Fair value adjustment on derivatives designated as cash flow hedges, net of minority interest	-	-	-	-	-	-	143	143
Total comprehensive income	-	-	-	88,077	-	-	(2,929)	85,148
Dividends on preferred stock	-	-	-	(527)	-	-	-	(527)
Dividends on common stock	-	-	-	(28,517)	-	-	-	(28,517)
Issuance of common stock	3,589	3,589	167,012	-	-	-	-	170,601
Treasury stock issued, net	-	-	-	-	(142)	4,564	-	4,564
Balance at December 31, 2001	26,891	\$ 26,891	\$240,454	\$250,515	239	\$(4,503)	\$ (3,742)	\$509,615

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

BLACK HILLS CORPORATION
NOTES TO CONSOLIDATED FINANCIAL STATEMENTS
December 31, 2001, 2000 and 1999

(1) BUSINESS DESCRIPTION AND SUMMARY OF SIGNIFICANT ACCOUNTING POLICIES

Business Description

Black Hills Corporation and its subsidiaries operate in three primary operating groups: non-regulated integrated energy, regulated electric utility and communications. The Company operates its integrated energy businesses through its direct and indirect subsidiaries: Wyodak Resources related to coal, Black Hills Exploration and Production related to oil and natural gas, Enserco Energy, Black Hills Energy Resources and Black Hills Coal Network related to fuel marketing of natural gas, oil and coal, respectively, and Black Hills Energy Capital and its subsidiaries and Black Hills Generation related to independent power activities, all aggregated for reporting purposes as Black Hills Energy (formerly Black Hills Energy Ventures); operates its public utility electric operations through its subsidiary, Black Hills Power, Inc.; and operates its communications operations through its indirect subsidiaries Black Hills Fiber Systems, Black Hills FiberCom L.L.C. and Daksoft. For further descriptions of the Company's business segments, see Note 14.

In December 2000, the Company effected a holding company structure under the renamed holding company, Black Hills Corporation.

Use of Estimates

The preparation of financial statements in conformity with accounting principles generally accepted in the United States requires management to make estimates and assumptions that affect the reported amounts of assets and liabilities and disclosure of contingent assets and liabilities at the date of the financial statements and the reported amounts of revenues and expenses during the reporting period. The most significant estimates relate to allowance for uncollectable accounts receivable, inventory obsolescence, realization of market value of derivatives due to commodity risk, intangible asset valuations and useful lives, proved oil and gas reserve volumes, employee benefit plans, environmental accruals and contingencies. Actual results could differ from those estimates.

Principles of Consolidation

The consolidated financial statements include the accounts of Black Hills Corporation and its wholly owned and majority-owned subsidiaries and certain subsidiaries in which the Company's ownership interest may be less than 50 percent but represents voting control. Generally, the Company uses equity accounting for investments of which it owns between 20 and 50 percent and investments in partnerships under 20 percent if the Company exercises significant influence.

All significant intercompany balances and transactions have been eliminated in consolidation except for revenues and expenses associated with intercompany coal sales in accordance with the provisions of Statement of Financial Accounting Standards No. 71, "Accounting for the Effects of Certain Types of Regulation" (SFAS 71). Total intercompany coal sales not eliminated were \$11.2 million, \$9.7 million and \$7.7 million in 2001, 2000 and 1999, respectively.

The Company owns 51 percent of the voting securities of Black Hills FiberCom, LLC (FiberCom). During 2000, FiberCom's operating losses reduced its members' equity below zero. At that point, the Company began to recognize 100 percent of FiberCom's operating losses and will continue to do so until such time as additional equity investments are made by third parties or future net income restores members' equity to a positive amount.

As discussed in Note 15, the Company and its subsidiaries made several acquisitions during 2001 and 2000. The Company's consolidated statements of income include operating activity of these companies beginning with their acquisition date.

The Company uses the proportionate consolidation method to account for its working interests in oil and gas properties.

Minority Interest in Subsidiaries

Minority interest in the accompanying Consolidated Statements of Income represents the share of income or loss of certain consolidated subsidiaries attributable to the minority shareholders of those subsidiaries. The minority interest in the accompanying Consolidated Balance Sheets reflect the amount of the underlying net assets of those certain consolidated subsidiaries attributable to the minority shareholders in those subsidiaries.

Regulatory Accounting

The Company's subsidiary, Black Hills Power, is subject to regulation by various state and federal agencies. The accounting policies followed are generally subject to the Uniform System of Accounts of the Federal Energy Regulatory Commission (FERC). These accounting policies differ in some respects from those used by the Company's non-regulated businesses.

Black Hills Power follows the provisions of SFAS 71, and its financial statements reflect the effects of the different ratemaking principles followed by the various jurisdictions regulating Black Hills Power. As a result of Black Hills Power's 1995 rate case settlement, a 50-year depreciable life for the Neil Simpson II plant is used for financial reporting purposes. If Black Hills Power were not following SFAS 71, a 35 to 40 year life would be more appropriate, which would increase depreciation expense by approximately \$0.6 million per year. If rate recovery of generation-related costs becomes unlikely or uncertain, due to competition or regulatory action, these accounting standards may no longer apply to Black Hills Power's generation operations. In the event Black Hills Power determines that it no longer meets the criteria for following SFAS 71, the accounting impact to the Company could be an extraordinary non-cash charge to operations of an amount that could be material. Criteria that give rise to the discontinuance of SFAS 71 include increasing competition that could restrict Black Hills Power's ability to establish prices to recover specific costs and a significant change in the manner in which rates are set by regulators from cost-based regulation to another form of regulation. The Company periodically reviews these criteria to ensure that the continuing application of SFAS 71 is appropriate.

Cash Equivalents

The Company considers all highly liquid investments with an original maturity of three months or less to be cash equivalents.

Securities Available-for-Sale

The Company has investments in marketable securities that are classified as available-for-sale securities and are carried at fair value in accordance with the provisions of Statement of Financial Accounting Standards No. 115, "Accounting for Certain Investments in Debt and Equity Securities." The unrealized gain or loss resulting from the difference between the securities' fair value and cost basis is included as a component of accumulated other comprehensive income in common stockholders' equity.

Inventory

Materials, supplies and fuel are generally stated at the lower of cost or market on a first-in, first-out basis. During 2001, 2000 and 1999, provisions of \$1.4 million, \$1.5 million and \$0, respectively, were charged to operations to write-down inventories at the Company's communications group to estimated net realizable value. Natural gas, oil and coal inventories held in fuel marketing companies are stated at market.

Property, Plant and Equipment

Additions to property, plant and equipment are recorded at cost when placed in service. Included in the cost of regulated construction projects is an allowance for funds used during construction (AFUDC) which represents the approximate composite cost of borrowed funds and a return on capital used to finance the project. The AFUDC was computed at an annual composite rate of 10.2, 9.7 and 8.3 percent during 2001, 2000 and 1999, respectively. In addition, the Company capitalizes interest, when applicable, on certain non-regulated construction projects. The amount of AFUDC and interest capitalized was \$7.5 million, \$2.0 million and \$1.2 million in 2001, 2000 and 1999, respectively. The cost of regulated electric property, plant and equipment retired, or otherwise disposed of in the ordinary course of business, together with removal cost less salvage, is charged to accumulated depreciation. Retirement or disposal of all other assets, except for oil and gas properties as described

below, result in gains or losses recognized as a component of income. Repairs and maintenance of property are charged to operations as incurred.

Depreciation provisions for regulated electric property, plant and equipment is computed on a straight-line basis using an annual composite rate of 3.0 percent in 2001, 2.8 percent in 2000 and 3.1 percent in 1999. Non-regulated property, plant and equipment are depreciated on a straight-line basis using estimated useful lives ranging from 3 to 39 years. Capitalized coal mining costs and coal leases are amortized on a unit-of-production method on volumes produced and estimated reserves.

Goodwill and Intangible Assets

Goodwill represents the excess of acquisition costs over the fair value of the net assets of acquired businesses and through 2001 was amortized on a straight-line basis over the estimated useful lives of such assets, which ranged from 8 to 25 years. The cost of other acquired intangibles is amortized on a straight-line basis over their estimated useful lives. Amortization expense was \$4.4 million, \$3.1 million and \$2.7 million in 2001, 2000 and 1999, respectively. Accumulated amortization was \$11.1 million, \$6.7 million and \$3.6 million at December 31, 2001, 2000 and 1999, respectively.

Impairment of Long-Lived Assets and Intangible Assets

The Company periodically evaluates whether events and circumstances have occurred which may affect the estimated useful life or the recoverability of the remaining balance of its long-lived assets. If such events or circumstances were to indicate that the carrying amount of these assets was not recoverable, the Company would estimate the future cash flows expected to result from the use of the assets and their eventual disposition. If the sum of the expected future cash flows (undiscounted and without interest charges) was less than the carrying amount of the long-lived assets, the Company would recognize an impairment loss. No impairment loss was recorded during 2001, 2000 or 1999.

Oil and Gas Operations

The Company accounts for its oil and gas activities under the full cost method. Under the full cost method, all productive and nonproductive costs related to acquisition, exploration and development drilling activities are capitalized. These costs are amortized using a unit-of-production method based on volumes produced and proved reserves. Any conveyances of properties, including gains or losses on abandonments of properties, are treated as adjustments to the cost of the properties with no gain or loss recognized.

Under the full cost method, net capitalized costs are subject to a "ceiling test" which limits these costs to the present value of future net cash flows discounted at 10 percent, net of related tax effects, plus the lower of cost or fair value of unproved properties included in the net capitalized costs. Future net cash flows are estimated based on end-of-period spot market prices adjusted for contracted price changes. If the net capitalized costs exceed the full cost "ceiling" at period end, a permanent noncash write-down would be charged to earnings in that period unless subsequent market price changes eliminate or reduce the indicated write-down. Given the volatility of oil and gas prices, it is possible that the Company's estimate of discounted future net cash flows from proved oil and gas reserves could change in the near term. If oil and gas prices decline significantly, even if only for a short period of time, it is possible that a write-down of oil and gas properties could occur in the future. No "ceiling test" write-downs were recorded during 2001, 2000 or 1999.

Income Taxes

The Company uses the liability method in accounting for income taxes. Under the liability method, deferred income taxes are recognized, at currently enacted income tax rates, to reflect the tax effect of temporary differences between the financial and tax basis of assets and liabilities. Such temporary differences are the result of provisions in the income tax law that either require or permit certain items to be reported on the income tax return in a different period than they are reported in the financial statements. The Company classifies deferred tax assets and liabilities into current and noncurrent amounts based on the classification of the related assets and liabilities.

Revenue Recognition

Generally, revenue is recognized when there is persuasive evidence of an arrangement with a fixed or determinable price, delivery has occurred or services have been rendered, and collectibility is reasonably assured. Fuel marketing businesses also use the mark-to-market method of accounting. Under that method, all energy trading activities are recorded at fair value as of the balance sheet date and net gains or losses resulting from the revaluation of these contracts to fair value are recognized currently in the results of operations. For long-term non-utility power sales agreements revenue is recognized either in accordance with Emerging Issues Task Force Issue No. 91-6, "Revenue Recognition of Long-Term Power Sales Contracts," or in accordance with SFAS No. 13, "Accounting for Leases," as appropriate. Under EITF 91-6, revenue is generally recognized as the lower of the amount billed or at the average rate expected over the life of the agreement. Under SFAS 13, revenue is generally leveled over the life of the agreement. For its Investments in Associated Companies (see Note 3), which are involved in power generation, the Company uses the equity method to recognize as earnings its pro rata share of the net income or loss of the associated company.

Earnings Per Share of Common Stock

Basic earnings per share is computed by dividing net income available to common shareholders by the weighted average number of common shares outstanding during each year. Diluted earnings per share is computed under the treasury stock method and is calculated to compute the dilutive effect primarily resulting from outstanding stock options and conversion of preferred shares.

Reclassifications

Certain 2000 and 1999 amounts in the consolidated financial statements have been reclassified to conform to the 2001 presentation. These reclassifications had no effect on the Company's common stockholders' equity or results of operations, as previously reported.

Recently Issued Accounting Pronouncements

In June 2001, the Financial Accounting Standards Board (FASB) issued Statement of Financial Accounting Standards No. 141, "Business Combinations" (SFAS 141) and No. 142, "Goodwill and Other Intangible Assets" (SFAS 142). SFAS 141 requires all business combinations initiated after June 30, 2001 to be accounted for using the purchase method of accounting. Under SFAS 142, goodwill and intangible assets with indefinite lives are no longer amortized but are reviewed annually (or more frequently if impairment indicators arise) for impairment. Intangible assets with a defined life will continue to be amortized over their useful lives (but with no maximum life). The amortization provisions of SFAS 142 apply to goodwill and intangible assets acquired after June 30, 2001. With respect to goodwill and intangible assets acquired prior to July 1, 2001, the Company was required to adopt SFAS 142 effective January 1, 2002. Management is currently evaluating the effects adoption has on the Company's consolidated financial statements.

In June 2001, the FASB issued Statement of Financial Accounting Standards No. 143, "Accounting for Asset Retirement Obligations" (SFAS 143). SFAS 143 requires that the fair value of a liability for an asset retirement obligation be recognized in the period in which it is incurred with the associated asset retirement costs being capitalized as part of the carrying amount of the long-lived asset. Over time, the liability is accreted to its present value each period and the capitalized cost is depreciated over the useful life of the related asset. Management expects to adopt SFAS 143 effective January 1, 2003 and is currently evaluating the effects adoption will have on the Company's consolidated financial statements.

In August 2001, the FASB issued Statement of Financial Accounting Standards No. 144, "Accounting for the Impairment or Disposal of Long-Lived Assets" (SFAS 144). SFAS 144 supersedes FASB Statement 121, "Accounting for the Impairment of Long-Lived Assets and for Long-Lived Assets to Be Disposed Of" (SFAS 121) and the accounting and reporting provisions of Accounting Principles Board Opinion No. 30, "Reporting the Results of Operations - Reporting the Effects of Disposal of a Segment of a Business, and Extraordinary, Unusual and Infrequently Occurring Events and Transactions" (APB 30). SFAS 144 establishes a single accounting model for long-lived assets to be disposed of by sale as well as resolves implementation issues related to SFAS 121. The Company was required to adopt SFAS 144 effective January 1, 2002. Adoption did not have a material impact on the Company's consolidated financial position, results of operations or cash flows.

Change in Accounting Principle - Derivatives and Hedging Activities

In June 1998, the FASB issued Statement of Financial Accounting Standards No. 133 (SFAS 133), "Accounting for Derivative Instruments and Hedging Activities." SFAS 133, as amended, establishes accounting and reporting standards requiring that every derivative instrument be recorded in the balance sheet as either an asset or liability measured at its fair value. SFAS 133 requires that changes in the derivative instrument's fair value be recognized currently in earnings unless specific hedge accounting criteria are met.

SFAS 133 allows hedge accounting for fair value and cash flow hedges. SFAS 133 provides that the gain or loss on a derivative instrument designated and qualifying as a fair value hedging instrument as well as the offsetting loss or gain on the hedged item attributable to the hedged risk be recognized currently in earnings in the same accounting period. SFAS 133 provides that the effective portion of the gain or loss on a derivative instrument designated and qualifying as a cash flow hedging instrument be reported as a component of other comprehensive income and be reclassified into earnings in the same period or periods during which the hedged forecasted transaction affects earnings. The remaining gain or loss on the derivative instrument, if any, must be recognized currently in earnings.

SFAS 133 requires that on date of initial adoption, an entity shall recognize all freestanding derivative instruments in the balance sheet as either assets or liabilities and measure them at fair value. The difference between a derivative's previous carrying amount and its fair value shall be reported as a transition adjustment. The transition adjustment resulting from adopting this Statement shall be reported in net income or other comprehensive income, as appropriate, as the effect of a change in accounting principle in accordance with paragraph 20 of Accounting Principles Board Opinion No. 20 (APB 20), "Accounting Changes."

On January 1, 2001, the Company adopted SFAS 133. Upon adoption, most of the Company's fuel marketing activities previously accounted for under Emerging Issues Task Force Issue No. 98-10, "Accounting for Energy Trading and Risk Management Activities" (EITF 98-10) fell under the purview of SFAS 133. The effect of adoption on the fuel marketing companies and risk management activities was not material because, unless otherwise noted, the fuel marketing companies did not designate their risk management activities as hedge instruments. This "no hedge" designation resulted in these derivatives being measured at fair value and gains and losses recognized currently in earnings. This treatment under SFAS 133 was comparable to the accounting under EITF 98-10.

At January 1, 2001, the Company had certain non-trading energy contracts and interest rate swaps documented as cash flow hedges. These contracts were defined as derivatives under SFAS 133 and met the requirements for cash flow hedges. Because these contracts were documented as hedges prior to adoption, the transition adjustment was reported in accumulated other comprehensive income. The aggregated entry for these derivatives identified as cash flow hedges increased derivative assets by \$0.9 million, increased the derivative liabilities by \$11.2 million and decreased accumulated other comprehensive income by \$10.3 million pre-tax.

(2) RISK MANAGEMENT ACTIVITIES

The Company's operations and financial results are impacted by numerous factors including, but not limited to, commodity price risk, interest rate risk and counterparty risk. The Company is exposed to commodity price variability in nearly all core energy marketing and trading businesses. In addition, fuel requirements at its gas-fired generation and its natural long position in crude oil and natural gas production introduce additional commodity price risk.

Fuel Marketing Activities

The Company markets natural gas, coal, and crude oil in specific areas of the United States and Canada. The Company offers wholesale fuel marketing and price risk management products and services to a variety of customers. These activities subject the Company to numerous risks including commodity price risk.

The Company has adopted Risk Management Policies and Procedures (RMP&P) covering all marketing activities. The RMP&P have been approved by the Company's Board of Directors and are routinely reviewed by the Audit Committee of the Board of Directors. The RMP&P include, but are not limited to, trader limits, position limits and credit exposure limits.

The Company employs risk management methods to mitigate its commodity price risk. As a general policy, the Company only permits speculation with limited "open" positions as defined in the RMP&P. Therefore, substantially all of its marketing activities are fully hedged or back-to-back positions; in other words, each sale is matched with a purchase.

To maintain compliance with the RMP&P and mitigate its commodity price risk, the Company routinely utilizes fixed price forward purchase and sales contracts and over-the-counter swaps and options. The Company attempts to balance its fixed price physical and financial purchase and sale commitments in terms of volume and timing of performance and delivery obligations. However, the Company may at times have a bias in the market, within established guidelines, resulting from the management of its portfolio. In addition, the Company may, at times, be unable to fully hedge its portfolio for certain market risks as a result of marketplace illiquidity and other factors.

The Company's fuel marketing operations fall under the purview of SFAS 133 and EITF 98-10. As such, these activities are accounted for under mark-to-market accounting. The Company records its fair values as either Derivative assets and/or Derivative liabilities on the accompanying Consolidated Balance Sheet. The net gains or losses are recorded as Revenues in the accompanying Consolidated Statements of Income.

The contract or notional amounts and terms of the Company's derivative commodity instruments held for trading purposes at December 31, 2001 and 2000, are set forth below:

(thousands of MMBtu's)	2001		2000	
	Notional Amounts -----	Maximum Term in Years -----	Notional Amounts -----	Maximum Term in Years -----
Natural gas basis swaps purchased	9,882	1	25,578	2
Natural gas basis swaps sold	10,696	1	26,060	2
Natural gas fixed-for float swaps purchased	10,646	2	6,476	1
Natural gas fixed-for-float swaps sold	11,815	2	7,361	1
Natural gas swing swaps purchased	465	1	-	-
Natural gas swing swaps sold	930	1	-	-
Natural gas physical purchases	13,159	1	-	-
Natural gas physical sales	19,339	1	-	-
(thousands of barrels)				
Crude oil purchased	3,139	1	2,186	1
Crude oil sold	3,142	1	2,530	1
(thousands of tons)				
Coal purchased	1,554	4	896	1
Coal sold	1,448	4	988	1

As required under SFAS 133 and EITF 98-10, derivatives and energy trading activities were marked to fair value on December 31, 2001, and the gains and/or losses recognized in earnings. The amounts related to the accompanying Consolidated Balance Sheets and Statements of Income as of December 31, 2001 and 2000, are as follows (in thousands):

	Current Assets -----	Non-current Assets -----	Current Liabilities -----	Non-current Liabilities -----	Unrealized Gain -----
December 31, 2001					
Natural gas	\$29,755	\$ 661	\$25,437	\$ 953	\$4,026
Crude Oil	6,267	-	5,497	-	770
Coal	1,192	467	1,018	-	641
	-----	-----	-----	-----	-----
	\$37,214	\$1,128	\$31,952	\$ 953	\$5,437
	=====	=====	=====	=====	=====
December 31, 2000					
Natural gas	\$61,008	\$ 391	\$56,968	\$3,532	\$ 899
Crude oil	1,523	-	1,000	-	523
Coal	5,370	-	4,460	-	910
	-----	-----	-----	-----	-----
	\$67,901	\$ 391	\$62,428	\$3,532	\$2,332
	=====	=====	=====	=====	=====

At December 31, 2001, the Company had a mark to fair value unrealized gain of \$5.4 million for its fuel marketing activities. Of this amount, \$5.2 million was current and \$0.2 million was non-current. The current portion of unrealized gains included \$5.5 million gain associated with hedged transactions and \$(0.3) million loss associated with open positions. The Company anticipates that substantially all of the current portion of unrealized gains for hedged transactions will be realized during the next twelve months. Conversely, estimated and actual realized gains or losses related to open positions will likely change during 2002 as market prices change from the December 31, 2001 estimates.

Non-trading Energy Activities

The Company produces natural gas and crude oil through its exploration and production activities. These natural long positions, or unhedged open positions, introduce commodity price risk and variability in cash flows for the Company. The Company employs risk management methods to mitigate this commodity price risk and preserve its cash flows. The Company has adopted guidelines covering hedging for its natural gas and crude oil production. These guidelines have been approved by the Company's Board of Directors and are routinely reviewed by its Audit Committee.

To mitigate commodity price risk and preserve cash flows, the Company uses over-the-counter swaps and options. These derivative instruments fall under the purview of SFAS 133 and the Company elects to utilize hedge accounting as allowed under this Statement.

At December 31, 2001, the Company had a portfolio of swaps to hedge portions of its crude oil and natural gas production. These transactions were previously identified as cash flow hedges, properly documented, and met prospective effectiveness testing. At year-end, these transactions met retrospective effectiveness testing criteria and retained their cash flow hedge status.

At December 31, 2001, the derivatives were marked to fair value and were recorded in Derivative assets or Derivative liabilities on the accompanying Consolidated Balance Sheets. The effective portion of the gain or loss on these derivatives was reported in other comprehensive income and the ineffective portion was reported in earnings.

On January 1, 2001 (the transition adjustment date for SFAS 133 adoption) and December 31, 2001, the Company had the following swaps and related balances (in thousands):

	Notional*	Maximum Terms in Years	Current Assets	Non-current Assets	Current Liabilities	Non-current Liabilities	Accumulated Other Comprehensive Income (Loss)	Earnings
January 1, 2001								
Crude oil swaps	294,000	2	\$ 33	\$151	\$ -	\$ -	\$ 184	\$ -
Crude oil options	120,000	1	472	-	-	-	472	-
Natural gas swaps	1,581,000	1	-	-	3,411	-	(3,411)	-
			-----	-----	-----	-----	-----	-----
			\$ 505	\$151	\$ 3,411	\$ -	\$ (2,755)	\$ -
			=====	=====	=====	=====	=====	=====
December 31, 2001								
Crude oil swaps	90,000	1	\$ 529	\$ -	\$ -	\$ -	\$ 529	\$ -
Natural gas swaps	1,216,000	1	1,593	-	-	-	1,463	130
			-----	-----	-----	-----	-----	-----
			\$2,122	\$ -	\$ -	\$ -	\$ 1,992	\$ 130
			=====	=====	=====	=====	=====	=====

*crude in bbls, gas in MMBtu's

Most of the Company's crude oil and natural gas hedges are highly effective, resulting in very little earnings impact prior to realization. During 2001, the Company recorded \$0.1 million earnings due to ineffectiveness for certain natural gas swaps due to basis risk.

All existing hedges at December 31, 2001 expire during the year ended December 31, 2002. The unrealized earnings gains or losses currently recorded in accumulated other comprehensive income are expected to be realized in earnings during 2002. Based on December 31, 2001 market prices, \$2.0 million will be realized and reported in earnings during 2002. These estimated realized gains for 2002 were calculated using December 31, 2001 market prices. Estimated and actual realized gains will likely change during 2002 as market prices change.

In addition, the Company acquired several natural gas swaps when it completed the Las Vegas Cogeneration acquisition on August 31, 2001 (Note 15). The project has a long-term fixed price power sales agreement and an index-priced natural gas purchase contract for 5,000 MMBtus per day through April 30, 2010. These swaps fix the long-term purchase price of the index-priced natural gas purchase contract. At acquisition close, the fair value of these swaps was \$6.0 million. These swaps were executed with Enron North America Corp. (Enron), which is currently in bankruptcy proceedings.

These swaps are derivatives under SFAS 133. The Company elected to treat these derivatives as cash flow hedges so that any gains or losses on the fair values of the swaps could be deferred and subsequently recognized when the underlying hedged natural gas was consumed in the plant. The swaps were properly documented and met the criteria for cash flow hedges.

During the fourth quarter of 2001, the Company determined that it was probable that Enron would default on its obligations to the Company in conjunction with these swaps. Upon that determination, the Company ceased to account for these swaps as cash flow hedges. In addition, the Company recognized a \$6.0 million pre-tax valuation reserve in recognition of Enron's probable performance default and resulting consequence that the Company would not receive payment for these amounts.

Financing Activities

The Company engages in activities to manage risks associated with changes in interest rates. The Company has entered into floating-to-fixed interest rate swap agreements to reduce its exposure to interest rate fluctuations associated with its floating rate debt obligations. At December 31, 2001, these hedges met effectiveness testing criteria and retained their cash flow hedge status. At December 31, 2001, the Company had \$291.4 million of notional amount floating-to-fixed interest rate swaps, having a maximum term of five years and a fair value of \$(14.4) million. These hedges are substantially effective and any ineffectiveness was immaterial.

In addition to the above interest rate swaps, the Company has entered into a \$100 million forward starting floating-to-fixed interest rate swap to hedge the anticipated floating rate debt financing related to the Company's Las Vegas Cogeneration

expansion. The forward starting period for the swap is the second quarter of 2002, with a term of ten years. The swap will terminate and cash settle on its forward starting date, based on the fair market value of the swap at the starting date. At December 31, 2001, the swap had a fair market value of \$2.3 million. The hedge has met effectiveness criteria. Upon completion of the long-term financing of the project, any gain or loss on the fair market value of the swap is anticipated to be amortized over the life of the long-term financing.

At December 31, 2001, the Company had \$655.8 million of outstanding, floating rate debt, of which \$264.4 million was not offset with interest rate swaps transactions that effectively convert the debt to fixed rate.

On January 1, 2001 (the transition adjustment date for SFAS 133 adoption) and on December 31, 2001, the Company's interest rate swaps and related balances were as follows (in thousands):

	Notional*	Weighted Average Fixed Interest Rate	Maximum Terms in Years	Current Assets	Non-current Assets	Current Liabilities	Non-current Liabilities	Accumulated Other Comprehensive Income (Loss)
January 1, 2001								
Swaps on project financing	\$127,416	7.38%	5	\$ -	\$ 265	\$ 2,440	\$5,332	\$ (7,507)
December 31, 2001								
Swaps on project financing	\$316,397	5.85%	4	\$ -	\$ 5,746	\$10,212	\$5,949	\$ (10,415)
Swaps on corporate debt	75,000	4.45%	3	-	-	1,535	217	(1,752)
Total	\$391,397			\$ -	\$ 5,746	\$11,747	\$6,166	\$ (12,167)

The Company anticipates a portion of unrealized losses recorded in accumulated other comprehensive income will be realized as increased interest expense in 2002. Based on December 31, 2001 market interest rates, \$11.7 million will be realized as additional interest expense during 2002. Estimated and realized amounts will likely change during 2002 as market interest rates change.

Credit Risk

Credit risk relates to the risk of financial loss resulting from non-performance of contractual obligations by a counterparty. The Company maintains credit policies with regards to its counterparties that the Company believes limit its overall credit risk.

For its fuel marketing, energy production and risk management activities, the Company attempts to mitigate its credit risk by conducting a majority of its business with investment grade companies, obtaining netting agreements where possible and securing its exposure with less creditworthy counterparties through parental guarantees, prepayments and letters of credit.

At the end of the year, the Company's credit exposure (exclusive of regulated retail customers and communications) was concentrated with investment grade companies. Approximately 85 percent of the Company's credit exposure was with investment grade companies. For the 15 percent credit exposure with non-investment grade rated counterparties, approximately 60 percent of this exposure was supported through letters of credit, prepayments, parental guarantees and asset liens.

(3) INVESTMENTS IN ASSOCIATED COMPANIES

Included in Investments on the Consolidated Balance Sheets are the following investments that have been recorded on the equity method of accounting:

- o A 33.33 percent interest (see Note 18) in Millennium Pipeline Company, L.P., a Texas limited partnership, which owns and operates an oil pipeline in the Gulf Coast region of Texas. The Company has a carrying amount in the investment of \$7.0 million and \$6.9 million as of December 31, 2001 and 2000, respectively. The partnership had assets of \$23.8 million and \$22.0 million, liabilities of \$2.8 million and \$1.0 million as of December 31, 2001 and 2000, and net income of \$3.4 million and \$2.8 million during 2001 and 2000, respectively.
- o At 12.6 percent, 6.9 percent and 5.3 percent interest in Energy Investors Fund, L.P., Energy Investors Fund II, L.P., and Project Finance Fund III, L.P., respectively, which in turn have investments in numerous electric generating facilities in the United States and elsewhere. The Company has a carrying amount in the investment of \$10.0 million and \$8.4 million at December 31, 2001 and 2000, respectively, which includes \$1.9 million and \$2.1 million, respectively, that represents the cost of the investment over the underlying net assets of the funds. This excess is being amortized over 10 years. As of and for the year ended December 31, 2001, the funds had assets of \$215.1 million, liabilities of \$0.7 million and net income of \$37.2 million. As of, and for the year ended December 31, 2000, the funds had assets of \$186.8 million, liabilities of \$16.0 million and net income of \$27.1 million.
- o A 50 percent interest in two natural gas-fired co-generation facilities located in Rupert and Glenns Ferry, Idaho. The Company's carrying amount in the investment is \$3.9 million and \$4.1 million as of December 31, 2001 and 2000, respectively, which includes \$0.5 million that represents the cost of the investment over the value of the underlying net assets of the projects. This excess is being amortized over 19 years. As of and for the year ended December 31, 2001, these projects had assets of \$25.6 million, liabilities of \$19.0 million and a net loss of \$(0.4) million. As of, and for the year ended December 31, 2000, these projects had assets of \$26.0 million, liabilities of \$18.7 million and net income of \$0.9 million.
- o A direct and indirect ownership of approximately 53 percent (32 percent in 2000) representing 50 percent voting control, of Harbor Cogeneration Company (see Note 18). Harbor Cogeneration owns a 98 megawatt gas-fired plant (expanded from 80 megawatts in 2000) located in Wilmington, California. At December 31, 2001 and 2000, the Company's carrying amount in the investment was \$47.9 million and \$42.2 million, respectively, which includes \$12.2 million and \$13.7 million, respectively, which represents the cost of the investment over the value of the underlying net assets of Harbor. This excess is being amortized over 15 years. As of and for the year ended December 31, 2001, Harbor had assets of \$51.4 million, liabilities of \$0.4 million and net income of \$10.1 million. As of, and for the year ended December 31, 2000, Harbor had assets of \$41.7 million, liabilities of \$0.8 million and net income of \$28.8 million.

(4) COMMON STOCK

Common Stock Offering

During 2001, the Company completed a public offering of its common stock through which approximately 3.4 million shares were sold at \$52 per share. Net proceeds were approximately \$163 million after commissions and expenses. The proceeds were used to repay a portion of current indebtedness under revolving credit facilities, to fund various power plant construction costs and for general corporate purposes.

Employee Stock Incentive and Employee Stock Purchase Plans

The Company has several employee stock incentive plans (Stock Incentive Plans), which allow for the granting of stock options with exercise prices equal to the stock's fair market value on the date of grant, and an employee stock purchase plan (ESPP Plan). The Company accounts for such plans under APB No. 25, and has adopted the disclosure-only provisions of SFAS No. 123, "Accounting for Stock Based Compensation" (SFAS 123). Accordingly, no compensation cost has been recognized.

The Company may grant options for up to 2,200,000 shares of common stock under the Stock Incentive Plans. The Company has 1,037,882 shares available to grant at December 31, 2001. The option exercise price equals the fair market value of the stock on the day of the grant. The options granted vest one-third a year for three years and all expire after ten years from the grant date.

A summary of the status of the stock option plans at December 31, 2001, 2000 and 1999, and changes during the years then ended are as follows:

	2001 ----		2000 ----		1999 ----	
	Shares -----	Weighted Average Exercise Price -----	Shares -----	Weighted Average Exercise Price -----	Shares -----	Weighted Average Exercise Price -----
Balance at beginning of year	914,917	\$23.43	431,450	\$21.35	292,700	\$20.29
Granted	203,000	\$37.09	492,500	\$25.22	140,250	\$23.58
Forfeited	(30,834)	\$22.13	(4,000)	\$23.25	(1,500)	\$23.06
Exercised	(94,211)	\$20.41	(5,033)	\$21.33	-	\$ -
	-----	-----	-----	-----	-----	-----
Balance at end of year	992,872	\$26.55	914,917	\$23.43	431,450	\$21.35
	=====	=====	=====	=====	=====	=====
Exercisable at end of year	445,252	\$22.76	292,891	\$20.43	182,400	\$19.19
	=====	=====	=====	=====	=====	=====

Details of outstanding options at December 31, 2001 are as follows:

Option Exercise Prices -----	Shares Outstanding -----	Weighted Average Exercise Price -----	Weighted Average Remaining Contractual Life -----	Shares Exercisable -----	Weighted Average Exercise Price -----
\$16.67 to \$25.00	680,872	\$21.75	7.4 years	407,600	\$21.45
\$25.01 to \$37.50	151,000	\$31.04	9.8 years	3,166	\$28.63
\$37.51 to \$55.36	161,000	\$42.65	9.1 years	34,486	\$37.69

The fair value of each option is estimated on the date of grant using the Black-Scholes option pricing model. The weighted average fair value of the options granted and the assumptions used to estimate the fair value of options are as follows:

	2001 ----	2000 ----	1999 ----
Weighted average fair value of options at grant date	\$10.77	\$3.88	\$4.16
Weighted average risk-free interest rate	5.92%	6.30%	6.68%
Weighted average expected price volatility	34.92%	20.60%	19.85%
Weighted average expected dividend yield	2.90%	4.20%	4.50%
Expected life in years	10	10	10

Had compensation cost been determined consistent with SFAS 123, the Company's net income and earnings per share would have been reduced to the following pro forma amounts for the years ended December 31 (unaudited):

	2001 ----	2000 ----	1999 ----
(in thousands, except per share amounts)			
Net income available for common:			
As reported	\$87,550	\$52,770	\$37,067
Pro forma	\$86,845	\$52,432	\$36,877
Earnings per share (basic and diluted):			
As reported - basic	\$ 3.45	\$ 2.39	\$1.73
- diluted	\$ 3.42	\$ 2.37	\$1.73
Pro forma - basic	\$ 3.42	\$ 2.38	\$1.72
- diluted	\$ 3.39	\$ 2.35	\$1.72

The Company maintains the ESPP Plan under which it sells shares to employees at 90 percent of the stock's market price on the offering date. The Company issued 48,368, 21,394 and 19,565 shares of common stock under the ESPP Plan in 2001, 2000 and 1999, respectively. At December 31, 2001, 177,808 shares are reserved and available for issuance under the ESPP Plan. The fair value per share of shares sold in 2001 was \$22.50 on the offering date.

Employee Stock Awards

During 2001, the Company issued a total of 36,550 common shares as a stock bonus award to its non-officer employees. The bonus was grossed up to cover related employee taxes. The total pre-tax compensation charge recognized by the Company was \$1.9 million, which is based on the market value of the stock on the grant date. Additionally, approximately 18,000 common shares will be issued at the two-year anniversary date of the original award, contingent on certain vesting restrictions. Pre-tax compensation cost related to this portion of the award is estimated to be \$0.9 million and is being expensed over the two-year vesting period.

During 2001, the Company issued 12,177 restricted common shares (net of 4,512 common shares forfeited) to certain officers. The shares carry a restriction on the officer's ability to sell the shares, until the shares vest. The shares vest one-third per year over three years, contingent on employment. Pre-tax compensation cost related to the award was \$0.7 million, which is being expensed over the three-year vesting period.

Nonemployee stock award

During 2001, the Company issued 100,000 common shares as a charitable contribution to the newly formed not-for-profit entity, Black Hills Corporation Foundation. The charitable contribution cost included in "Other, net" on the 2001 Consolidated Statement of Income was \$3.1 million, which is based on the stock market value on the grant date.

Dividend Reinvestment and Stock Purchase Plan

The Company has a Dividend Reinvestment and Stock Purchase Plan under which shareholders may purchase additional shares of common stock through dividend reinvestment and/or optional cash payments at 100 percent of the recent average market price. The Company has the option of issuing new shares or purchasing the shares on the open market. The Company purchased shares on the open market in 2001, 2000 and 1999. At December 31, 2001, 1,290,797 shares of unissued common stock were available for future offerings under the Plan.

(5) PREFERRED STOCK

The Company has 25,000,000 authorized shares of no-par preferred stock.

During 2001 and 2000, the Company issued 5,177 preferred shares in the Indeck Capital acquisition and the related "earn-out" provisions. The preferred shares issued are non-voting, cumulative, no par shares with a dividend rate equal to 1 percent per annum per share, computed on the basis of \$1,000 per share plus an amount equal to any dividend declared payable with respect to the common stock, multiplied by the number of shares of common stock into which each share of preferred stock is convertible. The record and payment dates are the same as the record and payment dates with respect to the payment of dividends on common stock. No dividend may be declared or paid with respect to common stock unless such a dividend is declared and paid with respect to the preferred stock. The preferred stock is senior to the common stock in liquidation events.

The Company may redeem the preferred stock in whole or in part, at any time solely at its option. The redemption price per share for the preferred stock shall be \$1,000 per share plus all accrued and unpaid dividends. Each share of the preferred stock is convertible at the option of the holder into common stock at any time prior to July 7, 2005 and automatically converted into common stock on July 7, 2005. Each share of preferred stock is convertible into 28.57 common shares. If the Company delivers a notice of redemption, the conversion price shall be adjusted to equal the lesser of (i) the conversion price then in effect, and (ii) the current market price on the redemption notice date.

(6) LONG-TERM DEBT

Long-term debt outstanding at December 31 is as follows (in thousands):

	2001	2000
	----	----
First mortgage bonds:		
6.50% due 2002	\$ 15,000	\$ 15,000
9.00% due 2003	2,176	3,215
8.06% due 2010	30,000	30,000
9.49% due 2018	4,840	5,130
9.35% due 2021	33,300	35,000
8.30% due 2024	45,000	45,000
	-----	-----
	130,316	133,345
	-----	-----
Other long-term debt:		
Pollution control revenue bonds at 6.7% due 2010	12,300	12,300
Pollution control revenue bonds at 7.5% due 2024	12,200	12,200
Other	3,870	3,911
	-----	-----
	28,370	28,411
	-----	-----
Project financing floating rate debt (a):		
Fountain Valley project at 3.29% (b) due 2006	144,581	-
Hudson Falls at 3.7% (b) due 2010	69,479	74,147
South Glens Falls at 3.7% (b) due 2009	24,008	26,124
Valmont and Arapahoe at 3.31% (b) due 2010	54,948	59,025
	-----	-----
	293,016	159,296
	-----	-----
Total long-term debt	451,702	321,052
Less current maturities	(35,904)	(13,960)
	-----	-----
Net long-term debt	\$415,798	\$307,092
	=====	=====

(a) Approximately 74 percent of the December 31, 2001 balance has been hedged with interest rate swaps moving the floating rates to fixed rates with a weighted average interest rate of 5.85 percent (see Note 2-Risk Management Activities).

(b) Interest rates are presented as of December 31, 2001.

Substantially all of the Company's utility property is subject to the lien of the indenture securing its first mortgage bonds. First mortgage bonds of the Company may be issued in amounts limited by property, earnings and other provisions of the mortgage indentures.

Project financing debt is non-recourse debt collateralized by a mortgage on each respective project's land and facilities, leases and rights, including rights to receive payments under long-term purchase power contracts.

Certain debt instruments of the Company and its subsidiaries contain restrictive covenants, all of which the Company and its subsidiaries were in compliance with or have obtained amendments and waivers effective at December 31, 2001.

Scheduled maturities of long-term debt for the next five years are: \$35.9 million in 2002, \$22.4 million in 2003, \$23.1 million in 2004, \$24.7 million in 2005 and \$137.3 million in 2006.

(7) NOTES PAYABLE

The Company has committed lines of credit with various banks totaling \$400 million at December 31, 2001 and \$290 million at December 31, 2000. At December 31, 2001, these lines consist of a \$200 million revolving credit facility with a term of 364 days, which terminates August 27, 2002, and a \$200 million revolving credit facility with a term of three years, which terminates on August 27, 2004. The Company had \$360 million of borrowings and \$33.0 million of letters of credit and \$211 million of borrowings and \$20.6 million of letters of credit issued on the lines at December 31, 2001 and 2000, respectively. The Company had no compensating balance requirements associated with these lines of credit.

The above facilities contain ratings trigger provisions that, if violated, would be considered an event of default and would allow the lender to terminate the remaining commitment and accelerate the principal and interest outstanding to become immediately due. The Company would be considered in violation of these ratings trigger provisions if its Standard & Poor's (S&P) Rating ceases to be at least BBB- or its Moody's Rating ceases to be at least Baa3. In addition, certain of the Company's interest rate swap agreements with a \$150.0 million notional amount and a \$0.7 million fair value at December 31, 2001 include cross-default provisions. These provisions would allow the counterparty the right to terminate the swap agreement and liquidate at a prevailing market rate, in the event of default. The Company's S&P and Moody's Ratings were BBB and A3, respectively at December 31, 2001.

In addition to the above lines of credit, at December 31, 2001, Enserco Energy (Enserco) has a \$75.0 million (\$90.0 million at December 31, 2000) uncommitted, discretionary line of credit to provide support for the purchases of natural gas. The line of credit is secured by all of Enserco's assets. The Company and its other subsidiaries provide no guarantees to the lender. At December 31, 2001 and 2000, there were outstanding letters of credit issued under the facility of \$36.2 million and \$69.8 million, respectively, with no borrowing balances on the facility.

Black Hills Energy Resources (BHER) has a \$25.0 million uncommitted, discretionary credit facility secured by all of its assets. The transactional line of credit provides credit support for the purchases of crude oil of BHER. The Company and its other subsidiaries provide no guarantees to the lender. At December 31, 2001 and 2000, BHER had letters of credit outstanding of \$4.4 million and \$8.5 million, respectively, with no borrowing balances on the facility.

Our credit facilities contain certain restrictive covenants. The Company and its subsidiaries had complied with all the covenants at December 31, 2001.

Interest rates under the facility borrowings vary and are based, at the option of the Company at the time of the loan origination, on either (i) a prime based borrowing rate varying from prime rate (4.75 percent at December 31, 2001) to prime rate plus 1.0 percent, or (ii) on a London Interbank Offered Rate (LIBOR) based borrowing rate varying from LIBOR plus 0.6 percent to LIBOR plus 0.625 percent. The one-month LIBOR rate at December 31, 2001 was 1.87 percent. In addition to interest on outstanding borrowings, the credit facilities contain a 0 percent to 0.15 percent annual facility fee on the total facility amount, and an annual utilization fee ranging from 0 percent to 0.125 percent of the total used facility amount.

The Company has entered into floating-to-fixed interest rate swaps to hedge a portion of its exposure to interest rate fluctuations with the above floating rate obligations. See Note 2 for further details.

(8) FAIR VALUE OF FINANCIAL INSTRUMENTS

The estimated fair values of the Company's financial instruments are as follows:

	2001 ----	(in thousands)		2000 ----
	Carrying Amount -----	Fair Value -----	Carrying Amount -----	Fair Value -----
Cash and cash equivalents	\$ 29,666	\$ 29,666	\$ 24,913	\$ 24,913
Securities available-for-sale	\$ 3,550	\$ 3,550	\$ 2,113	\$ 2,113
Derivative financial instruments - assets	\$ 46,210	\$ 46,210	\$ 68,292	\$ 68,292
Derivative financial instruments - liabilities	\$ 50,818	\$ 50,818	\$ 65,960	\$ 65,960
Notes payable	\$361,240	\$361,240	\$211,679	\$211,679
Long-term debt	\$451,702	\$469,787	\$321,052	\$337,446

The following methods and assumptions were used to estimate the fair value of each class of the Company's financial instruments.

Cash and Cash Equivalents

The carrying amount approximates fair value due to the short maturity of these instruments.

Securities Available-for-Sale

The fair value of the Company's investments equals the quoted market price when available and a quoted market price for similar securities if a quoted market price is not available. The Company has classified all of its marketable securities as available-for-sale as of December 31, 2001 and 2000. An unrealized gain on the Company's investments of \$1.4 million and an unrealized loss of \$0.8 million was recorded as of December 31, 2001 and 2000, respectively.

Derivative Financial Instruments

These instruments are carried at fair value. Descriptions of the various instruments the Company uses and the valuation method employed are available in Note 2 of these Consolidated Financial Statements.

Notes Payable

The carrying amount approximates fair value due to their variable interest rates with short reset periods.

Long-Term Debt

The fair value of the Company's long-term debt is estimated based on quoted market rates for debt instruments having similar maturities and similar debt ratings. The Company's outstanding bonds are either currently not callable or are subject to make-whole provisions which would eliminate any economic benefits for the Company to call and refinance the bonds.

(9) JOINTLY OWNED FACILITY

The Company owns a 20 percent interest and Pacific Power owns an 80 percent interest in the Wyodak Plant (Plant), a 330 megawatt coal-fired electric generating station located in Campbell County, Wyoming. Pacific Power is the operator of the Plant. The Company receives 20 percent of the Plant's capacity and is committed to pay 20 percent of its additions, replacements and operating and maintenance expenses. As of December 31, 2001, the Company's investment in the Plant included \$71.7 million in electric plant and \$22.8 million in accumulated depreciation, and is included in the corresponding captions in the accompanying Consolidated Balance Sheets. The Company's share of direct expenses of the Plant was \$5.9 million, \$5.6 million and \$4.9 million for the years ended December 31, 2001, 2000 and 1999, respectively, and is included in the corresponding categories of operating expenses in the accompanying Consolidated Statements of Income. As discussed in Note 10, the Company's coal mining subsidiary, Wyodak Resources, supplies coal to the Plant under an agreement expiring in 2022. This coal supply agreement is collateralized by a mortgage on and a security interest in some of Wyodak Resources' coal reserves. Under the coal supply agreement, PacifiCorp is obligated to purchase a minimum of 1,500,000 tons of coal each year of the contract term, subject to adjustment for planned outages. Wyodak Resources' sales to the Plant were \$21.0 million, \$23.2 million and \$24.9 million for the years ended December 31, 2001, 2000 and 1999, respectively.

(10) COMMITMENTS AND CONTINGENCIES

Off Balance Sheet Lease

The Company's subsidiary, Black Hills Generation, has entered into an Agreement for Lease and Lease with Wygen Funding, Limited Partnership for the Wygen Plant, a 90 megawatt coal-fired power plant under construction in Campbell County, Wyoming. Wygen Funding is a special purpose entity that owns the Wygen Plant and has financed the project. Total cost of the project is estimated to be approximately \$130 - \$140 million. Neither Wygen Funding, its owners, nor its officers are related to the Company, and other than the lease transaction and obligations incurred as a result of this transaction, there is no obligation to provide additional funding or issue securities to Wygen Funding. Lease payments are based on final construction and financing costs and are currently estimated to be approximately \$6.5 million per year based on five-year treasury rates. Lease payments will begin after substantial completion of construction scheduled for first quarter 2003. The lease will be accounted for as an operating lease. The initial lease term is five years with two five-year renewal options and includes a purchase option equal to the adjusted acquisition cost. The adjusted acquisition cost is essentially equal to the final construction cost of the project. If the Company elects to terminate or not renew the lease and not purchase the project, then it must make a termination payment equal to the lesser of 83.5 percent of the adjusted acquisition cost or the shortfall of proceeds received from the sale of the project. Black Hills Corporation has guaranteed the Agreement for Lease and Lease.

Power Purchase Agreement - Pacific Power

In 1983, the Company entered into a 40 year power purchase agreement with Pacific Power providing for the purchase by the Company of 75 megawatts of electric capacity and energy from Pacific Power's system. An amended agreement signed in October 1997 reduces the contract capacity by 25 megawatts (5 megawatts per year starting in 2000). The price paid for the capacity and energy is based on the operating costs of one of Pacific Power's coal-fired electric generating plants. Costs incurred under this agreement were \$13.9 million in 2001, \$14.6 million in 2000 and \$17.8 million in 1999.

Long-Term Power Sales Agreements

The Company, through its subsidiaries, has the following significant long-term power sales contracts:

- o The Company has long-term power sales contracts with the Public Service Company of Colorado (PSCC) for the output of several of its plants. All of the output of the Company's Fountain Valley, Arapahoe and Valmont gas-fired facilities, totaling 400 megawatts in operation plus an additional 50 megawatts combined-cycle expansion currently under construction, is included under the contracts which expire in 2012. The contracts are tolling arrangements in which the Company assumes no fuel price risk.
- o Beginning September 1, 2001, the Company has a ten year power sales contract with Cheyenne Light, Fuel and Power (CLF&P) for the output of the 40 megawatt gas-fired Gillette CT. The contract is a tolling arrangement in which the Company assumes no fuel risk. In addition, the Company entered into a ten year contract with CLF&P for 60 megawatts of contingent capacity from the 90 megawatt Wygen Plant, currently under construction. Twenty megawatts of the remaining capacity of this plant has been sold under a ten year contract with the Municipal Electric Agency of Nebraska.
- o The Company has secured long-term contracts for the output of the 277 megawatt Las Vegas facility that was acquired during the third quarter of 2001. See Note 15 for a description of the facility and the related long-term contracts.
- o Various long-term contracts with Niagara Mohawk Power Corporation have been entered into to sell the output of several of the Company's hydroelectric projects located in upstate New York. The Company's net ownership of capacity under contract is approximately 21 megawatts with contracts expiring between 2028 and 2032. There are additional contracts on plants with a net ownership capacity of approximately 21 megawatts that expire during 2002 and 2003.

Reclamation Liability

Under its mining permit, Wyodak Resources is required to reclaim all land where it has mined coal reserves. The cost of reclaiming the land is accrued as the coal is mined. While the reclamation process takes place on a continual basis, much of the reclamation occurs over an extended period after the area is mined. Approximately \$0.7 million is charged to operations as reclamation expense annually. As of December 31, 2001, accrued reclamation costs included in Other liabilities on the accompanying Consolidated Balance Sheets were approximately \$18.2 million.

Legal Proceedings

Settlement

On April 3, 2001, the Company reached a settlement of ongoing litigation with PacifiCorp filed in the United States District Court, District of Wyoming, (File No. 00CV-155B). The litigation concerned the parties' rights and obligations under the Further Restated and Amended Coal Supply Agreement dated May 5, 1987, under which PacifiCorp purchased coal from the Company's coal mine to meet the coal requirements of the Wyodak Power Plant. The Settlement Agreement provided for the dismissal of the litigation, with prejudice, coupled with the execution of several new coal-related agreements between the parties discussed below. The Company believes the value of the Settlement Agreements is equal to the net present value of the litigated Further Restated and Amended Coal Supply Agreement.

New Restated and Amended Coal Supply Agreement: Effective January 1, 2001, the parties agreed to terminate the Further Restated and Amended Coal Supply Agreement, and replace it with the New Restated and Amended Coal Supply Agreement (New Agreement). The New Agreement began on January 1, 2001, and extends to December 31, 2022. Under the New Agreement, the Company received an extension of sales beyond the June 8, 2013 term of the former Coal Supply Agreement. PacifiCorp will receive a price reduction for each ton of coal purchased. The minimum purchase obligation under the New Agreement increased to 1,500,000 tons of coal for each calendar year of the contract term, subject to adjustment for planned

outages. The New Agreement further provided for a special one-time payment by PacifiCorp in the amount of \$7.3 million, which was received in August 2001. This payment primarily related to disputed billings under the previous agreement and a value transfer premium. Of this payment, \$5.6 million was recognized currently and is included in "Other, net" non-operating income on the accompanying Consolidated Statements of Income, \$1.0 million was previously recognized in revenues and the remaining \$0.7 million is being recognized as sales are made under the New Agreement.

Coal Option Agreement: The term of this agreement began October 1, 2001, and extends until December 31, 2010. The agreement provides that PacifiCorp shall purchase 1,400,000 tons of coal during the period of October 1, 2001 through December 31, 2002 and 1,000,000 tons of coal in 2003 at a fixed price. The agreement further provides the Company with a "put" option for 2002 and 2003 under which the Company may sell to PacifiCorp up to 500,000 tons of coal from the Wyodak Mine at a market based price. For each calendar year from January 1, 2004 through 2010, the put option is increased to a maximum of 1,000,000 tons at a market based price. The "put" tonnages will be reduced or offset for quantities of an enhanced coal known as "K-Fuel" purchased by PacifiCorp under the KFx Facility Output Agreement. Additionally, for each calendar year during which the Company is selling to PacifiCorp K-Fuel under the KFx Facility Output Agreement described below, and in which the Company has not exercised its "put" option, PacifiCorp may elect to purchase an equal amount of tonnage from the Company's coal reserves to use in a 50/50 blend with the K-Fuel, up to 500,000 tons per year in 2002 through 2007 at a market based price with a fixed floor.

Asset Option Agreement: This agreement provides PacifiCorp an option to purchase a 10 percent interest in the KFx facility or the legal entity that owns the KFx facility at a market based price.

Sale of North Conveyor System: The Company sold the "North Conveyor System" to PacifiCorp, which served as the backup coal delivery system for the Wyodak Power Plant which resulted in a \$2.6 million gain that is included in "Other, net" non-operating income on the accompanying Consolidated Statements of Income.

KFx Facility Output Agreement: The KFx plant is a coal enhancement facility the Company owns located near its Wyodak Coal Mine. The KFx plant was built to produce an enhanced coal known as "K-Fuel." Assuming the plant becomes operational, PacifiCorp agrees to purchase K-Fuel for a term beginning January 1, 2002, and extending to December 31, 2007. If the plant is not operational on or before December 31, 2003, the agreement will become void. Under this agreement, PacifiCorp agrees to purchase the output of K-Fuel from the KFx plant, up to a maximum of 500,000 tons for each calendar year from 2002 through 2007 at fixed price with market based escalation. Wyodak reserves the right to sell up to a total of 100,000 tons from the output of the KFx plant to other customers during the same time period.

Ongoing Litigation

The Company is subject to various legal proceedings and claims, which arise in the ordinary course of operations. In the opinion of management, the amount of liability, if any, with respect to these actions would not materially affect the consolidated financial position or results of operations of the Company.

(11) EMPLOYEE BENEFIT PLANS

Defined Benefit Pension and Other Postretirement Plans

The Company has a noncontributory defined benefit pension plan (Plan) covering the employees of the Company and those of the following subsidiaries, Black Hills Power, Wyodak Resources Development Corp., Black Hills Exploration and Production and Daksoft who meet certain eligibility requirements. The benefits are based on years of service and compensation levels during the highest five consecutive years of the last ten years of service. The Company's funding policy is in accordance with the federal government's funding requirements. The Plan's assets are held in trust and consist primarily of equity securities and cash equivalents.

Net pension income for the Plan was as follows:

	2001 ----	2000 ---- (in thousands)	1999 ----
Service cost	\$ 945	\$ 967	\$ 1,174
Interest cost	3,080	2,885	2,598
Estimated return on assets	(5,814)	(5,257)	(4,162)
Amortization of transition amount	-	(90)	(90)
Amortization of prior service cost	231	231	89
Recognized net actuarial gain	(556)	(537)	-
	-----	-----	-----
Net pension income	\$(2,114)	\$(1,801)	\$ (391)
	=====	=====	=====
Actuarial assumptions:			
Discount rate	7.5%	7.5%	6.75%
Expected long-term rate of return on assets	10.5%	10.5%	10.5%
Rate of increase in compensation levels	5.0%*	5.0%	5.0%

*The rate of increase in compensation levels for 2001 was changed from a single rate assumption for all ages to an age-based salary scale assumption resulting in a weighted average increase of 5.0 percent.

A reconciliation of the beginning and ending balances of the projected benefit obligation is as follows:

	2001 ----	2000 ----
	(in thousands)	
Beginning projected benefit obligation	\$41,314	\$39,615
	-----	-----
Service cost	945	967
Interest cost	3,080	2,885
Actuarial gains	(167)	(48)
Benefits paid	(2,156)	(2,105)
	-----	-----
Net increase	1,702	1,699
	-----	-----
Ending projected benefit obligation	\$43,016	\$41,314
	=====	=====

A reconciliation of the fair value of Plan assets as of October 1 of each year is as follows:

	2001 ----	2000 ----
	(in thousands)	
Beginning market value of plan assets	\$56,560	\$51,212
Benefits paid	(2,156)	(2,105)
Investment income (loss)	(13,136)	7,453
	-----	-----
Ending market value of plan assets	\$41,268	\$56,560
	=====	=====

Funding information for the Plan as of October 1 each year was as follows:

	2001 ----	2000 ----
	(in thousands)	
Fair value of plan assets	\$41,268	\$56,560
Projected benefit obligation	(43,016)	(41,314)
	-----	-----
Funded status	(1,748)	15,246
Unrecognized:		
Net (gain) loss	5,527	(13,812)
Prior service cost	1,823	2,054
	-----	-----
Prepaid pension cost	\$ 5,602	\$ 3,488
	=====	=====
Accumulated benefit obligation	\$35,695	\$33,374
	=====	=====

The Company has various supplemental retirement plans for outside directors and key executives of the Company. The plans are nonqualified defined benefit plans. Expenses recognized under the plans were \$0.5 million during 2001 and 2000 and \$0.4 million during 1999.

Employees who are participants in the Plan and who retire from the Company on or after attaining age 55 after completing at least five years of service to the Company are entitled to postretirement healthcare benefits coverage. These benefits are subject to premiums, deductibles, copayment provisions and other limitations. The Company may amend or change the Plan periodically. The Company is not pre-funding its retiree medical plan.

The net periodic postretirement cost was as follows:

	2001 ----	2000 ----- (in thousands)	1999 ----
Service cost	\$ 289	\$ 282	\$225
Interest cost	507	523	362
Amortization of transition obligation	150	150	150
Loss	21	68	1
	----- \$ 967 =====	----- \$ 1,023 =====	----- \$738 =====

Funding information as of October 1 was as follows:

	2001 ----	2000 ----- (in thousands)
Accumulated postretirement benefit obligation:		
Retirees	\$3,186	\$2,478
Fully eligible active participants	1,803	1,203
Other active participants	3,963	3,172
	-----	-----
Unfunded accumulated postretirement benefit obligation	8,952	6,853
Unrecognized net loss	(2,792)	(1,001)
Unrecognized transition obligation	(1,648)	(1,797)
	-----	-----
Accrued postretirement cost	\$4,512 =====	\$4,055 =====

For measurement purposes, an 8.0 percent annual rate of increase in healthcare benefits was assumed for 2001; the rate was assumed to decrease gradually to 6.0 percent in 2005 and remain at that level thereafter. The healthcare cost trend rate assumption has a significant effect on the amounts reported. A one percent increase in the healthcare cost trend assumption would increase the service and interest cost \$1.0 million or 23.8 percent and the net periodic postretirement cost \$1.2 million or 28.1 percent. A one percent decrease would reduce the service and interest cost by \$0.7 million or 18.3 percent and decrease the net periodic postretirement cost \$0.8 million or 17.2 percent. The weighted-average discount rate used in determining the accumulated postretirement benefit obligation was 7.5 percent.

Defined Contribution Plan

The Company also sponsors a 401(k) savings plan for eligible employees. Participants elect to invest up to 20 percent of their eligible compensation on a pre-tax basis. Effective January 1, 2000 (May 1, 2000 for employees covered by the collective bargaining agreement), the Company provides a matching contribution of 100 percent of the employee's tax-deferred contribution up to a maximum 3 percent of the employee's eligible compensation. Matching contributions vest at 20 percent per year and are fully vested when the participant has 5 years of service with the Company. The Company's matching contributions totaled \$0.9 million for 2001 and \$0.6 million for 2000.

(12) OTHER COMPREHENSIVE INCOME

The following table displays the related tax effects allocated to each component of Other Comprehensive Income (Loss) for the year ended December 31, 2001:

	Pre-tax Amount -----	Tax Expense (Benefit) ----- (in thousands)	Net-of-tax Amount -----
Unrealized gain on securities during the year	\$1,775	\$ 337	\$ 1,438
Net change in fair value of derivatives designated as cash flow hedges (net of minority interest share of \$2,875)	(7,299)	(2,932)	(4,367)
Other comprehensive loss	<u>\$(5,524)</u> =====	<u>\$(2,595)</u> =====	<u>\$(2,929)</u> =====

Items of other comprehensive income (loss) were not significant in 2000 or 1999.

(13) INCOME TAXES

Income tax expense for the years indicated was:

	2001 ----	2000 ----- (in thousands)	1999 ----
Current:			
Federal	\$38,730	\$27,140	\$13,267
State	2,022	1,281	231
	40,752	28,421	13,498
Deferred	10,224	2,576	2,931
Tax credits	(432)	(639)	(640)
	<u>\$50,544</u> =====	<u>\$30,358</u> =====	<u>\$15,789</u> =====

The temporary differences, which gave rise to the net deferred tax liability, were as follows:

Years ended December 31,	2001 ----	2000 ----- (in thousands)
Deferred tax assets:		
Accelerated depreciation, amortization and other plant-related differences	\$ 735	\$ 5,393
Regulatory asset	2,169	2,507
Valuation reserves	3,099	508
Mining development and oil exploration	1,501	3,605
Employee benefits	4,178	3,308
Items of other comprehensive income	4,540	-
Other	6,176	3,203
	<u>22,398</u> -----	<u>18,524</u> -----
Deferred tax liabilities:		
Accelerated depreciation and other plant-related differences	74,449	63,559
Regulatory liability	1,425	1,447
Mining development and oil exploration	8,650	8,450
Employee benefits	2,152	1,347
Derivative fair value adjustments	2,000	-
Items of other comprehensive income	1,945	-
Other	7,175	6,400
	<u>97,796</u> -----	<u>81,203</u> -----
Net deferred tax liability	<u>\$75,398</u> =====	<u>\$62,679</u> =====

The effective tax rate differs from the federal statutory rate for the years ended December 31, as follows:

	2001 ----	2000 ----	1999 ----
Federal statutory rate	35.0%	35.0%	35.0%
State income tax	1.4	1.4	-
Amortization of investment tax credits	-	(1.0)	(0.9)
Percentage depletion in excess of cost	(2.2)	(1.1)	(1.6)
Other	2.3	2.2	(2.6)
	-----	-----	-----
	36.5%	36.5%	29.9%
	=====	=====	=====

(14) BUSINESS SEGMENTS

The Company's reportable segments are those that are based on the Company's method of internal reporting, which generally segregates the strategic business groups due to differences in products, services and regulation. As of December 31, 2001, substantially all of the Company's operations and assets are located within the United States. The Company's operations are conducted through six business segments that include: Electric, which supplies electric utility service to western South Dakota, northeastern Wyoming and southeastern Montana; Integrated Energy consisting of: Mining, which engages in the mining and sale of coal from its mine near Gillette, Wyoming; Oil and Gas, which produces, explores and operates oil and natural gas interests located in the Rocky Mountain region, Texas, California and other states; Fuel Marketing, which markets natural gas, oil, coal and related services to customers in the East Coast, Midwest, Southwest, Rocky Mountain, West Coast and Northwest regions markets; Power Generation, which produces and sells power to wholesale customers; and Communications, which primarily markets communications and software development services.

December 31:	2001	2000
	----	----
	(in thousands)	
Total assets		
Integrated energy:		
Coal mining	\$ 42,198	\$ 47,038
Oil and gas	57,766	36,376
Fuel marketing	144,586	340,969
Power generation	867,203	375,801
Electric utility	421,280	412,213
Communications	123,634	106,884
Corporate	2,100	1,039
	-----	-----
Total assets	\$1,658,767	\$1,320,320
	=====	=====
Capital expenditures		
Integrated energy:		
Coal mining	\$ 7,855	\$ 2,419
Oil and gas	27,114	9,259
Fuel marketing	166	273
Power generation	497,653	76,932*
Electric utility	41,313	25,257
Communications	20,030	59,377
Corporate	25	-
	-----	-----
Total capital expenditures	\$ 594,156	\$ 173,517
	=====	=====

*Excludes the non-cash acquisition of Indeck Capital, Inc. as described in Note 15.		
Property, plant and equipment		
Integrated energy:		
Coal mining	\$ 63,592	\$ 57,720
Oil and gas	104,926	77,812
Fuel marketing	790	1,559
Power generation	698,175	294,805
Electric utility	569,368	530,380
Communications	129,748	109,718
Corporate	25	135
	-----	-----
Total property, plant and equipment	\$1,566,624	\$1,072,129
	=====	=====

December 31:	2001 -----	2000 ----- (in thousands)	1999 -----
External operating revenues			
Integrated energy:			
Coal mining	\$ 20,551	\$ 20,880	\$ 23,431
Oil and gas	30,619	19,183	13,052
Fuel marketing	1,169,232	1,353,795	614,228
Power generation	94,294	39,331	-
Electric utility	212,355	173,308	133,222
Communications	20,258	7,689	278
	-----	-----	-----
Total external operating revenues	\$1,547,309 =====	\$1,614,186 =====	\$784,211 =====
Intersegment operating revenues			
Integrated energy:			
Coal mining (a)	\$ 11,249	\$ 9,650	\$ 7,664
Oil and gas	2,789	1,145	-
Fuel marketing	15,817	13,175	-
Power generation	-	329	-
Communications	4,250	3,682	3,145
Intersegment eliminations	(22,856)	(18,331)	(3,145)
	-----	-----	-----
Total intersegment operating revenues(a)	\$ 11,249 =====	\$ 9,650 =====	\$ 7,664 =====

(a) In accordance with the provisions of SFAS 71, intercompany coal sales are not eliminated.			
Depreciation, depletion and amortization			
Integrated energy:			
Coal mining	\$ 2,984	\$ 3,525	\$ 3,259
Oil and gas	7,806	4,071	2,953
Fuel marketing	724	644	2,757
Power generation	16,520	3,646	-
Electric utility	15,773	14,966	15,552
Communications	9,944	6,012	546
Corporate	300	-	-
	-----	-----	-----
Total depreciation, depletion and amortization	\$ 54,051 =====	\$ 32,864 =====	\$ 25,067 =====
Operating income (loss)			
Integrated energy:			
Coal mining	\$ 6,586	\$ 8,794	\$ 12,606
Oil and gas	15,193	7,906	3,978
Fuel marketing	54,071	23,774	(2,248)
Power generation	27,455	20,374	(157)
Electric utility	84,108	68,208	52,286
Communications	(13,250)	(12,486)	(3,647)
Corporate	(3,984)	(1,820)	(927)
	-----	-----	-----
Total operating income (loss)	\$ 170,179 =====	\$ 114,750 =====	\$ 61,891 =====

December 31:	2001 ----	2000 ---- (in thousands)	1999 ----
Interest income			
Integrated energy:			
Coal mining	\$ 8,125	\$ 9,974	\$ 2,709
Oil and gas	45	39	18
Fuel marketing	1,859	535	347
Power generation	8,992	4,085	101
Electric utility	4,858	5,658	1,190
Communications	15	657	1,050
Corporate	7,379	370	399
Intersegment eliminations	(28,895)	(14,243)	(2,200)
	-----	-----	-----
Total interest income	\$ 2,378	\$ 7,075	\$ 3,614
	=====	=====	=====
Interest expense			
Integrated energy:			
Coal mining	\$ 5,752	\$ 8,006	\$ 1,260
Oil and gas	145	372	568
Fuel marketing	164	535	719
Power generation	33,593	11,911	111
Electric utility	15,780	17,411	13,830
Communications	5,789	6,245	1,155
Corporate	7,298	105	17
Intersegment eliminations	(28,895)	(14,243)	(2,200)
	-----	-----	-----
Total interest expense	\$ 39,626	\$ 30,342	\$ 15,460
	=====	=====	=====
Income taxes			
Integrated energy:			
Coal mining	\$ 6,266	\$ 2,660	\$ 3,439
Oil and gas	4,930	2,609	968
Fuel marketing	21,326	9,323	50
Power generation	1,668	3,154	(58)
Electric utility	24,255	19,469	12,446
Communications	(6,561)	(6,476)	(807)
Corporate	(1,340)	(381)	(249)
	-----	-----	-----
Total income taxes	\$ 50,544	\$ 30,358	\$ 15,789
	=====	=====	=====
Net income (loss) available for common stock			
Integrated energy:			
Coal mining	\$ 11,591	\$ 7,173	\$ 9,715
Oil and gas	10,197	4,992	2,462
Fuel marketing	35,058	14,009	(185)
Power generation	1,576	3,241	(109)
Electric utility	45,238	37,100	27,362
Communications	(12,300)	(11,382)	(968)
Corporate	(3,086)	(1,175)	(295)
Intersegment eliminations	(724)	(1,188)	(915)
	-----	-----	-----
Total net income available for common stock	\$ 87,550	\$ 52,770	\$ 37,067
	=====	=====	=====

(15) ACQUISITIONS

On April 11, 2001, the Company's power generation subsidiary, Black Hills Energy Capital, purchased the Fountain Valley facility, a 240 megawatt generation facility located near Colorado Springs, Colorado, featuring six LM-6000 simple-cycle, gas-fired turbines. The facility came on-line mid third quarter of 2001. The facility was purchased from Enron Corporation. Total cost of the project was approximately \$183 million and has been financed primarily with non-recourse project debt. The Company has obtained an 11-year contract with Public Service of Colorado to utilize the facility for peaking purposes. The contract is a tolling arrangement in which the Company assumes no fuel risk. The transaction has been accounted for as an asset purchase recorded at cost.

On August 31, 2001, Black Hills Energy Capital purchased a 277 megawatt gas-fired co-generation power plant project located in North Las Vegas, Nevada from Enron North America, a wholly owned subsidiary of Enron Corporation. The facility currently has a 53 megawatt co-generation power plant in operation. Most of the power from that facility is under a long-term contract expiring in 2024. The Company has sold 50 percent of this power plant to other parties; however, under generally accepted accounting principles the Company is required to consolidate 100 percent of this plant. The project also has a 224 megawatt combined-cycle expansion under way, which is 100 percent owned by the Company. The facility is scheduled to be fully operational in the third quarter of 2002 and will utilize LM-6000 technology. The power of the expansion is also under a long-term contract, which expires in 2017. This contract for the expansion requires the purchaser to provide fuel to the power plant when it is dispatched. The cost for the entire facility is expected to be approximately \$330 million and the Company is in the process of obtaining long-term financing, which is expected to be primarily non-recourse project debt.

The acquisition has been accounted for under the purchase method of accounting and, accordingly, the purchase price of approximately \$205 million has been allocated to the acquired assets and liabilities based on preliminary estimates of the fair values of the assets purchased and the liabilities assumed as of the date of acquisition. Fair values in the allocation include assets acquired of approximately \$157 million (excluding goodwill and other intangibles) and liabilities assumed of approximately \$2.0 million. The estimated purchase price allocations are subject to adjustment, generally within one year of the date of the acquisition, should new or additional facts about the acquisitions become available, any changes to the preliminary estimates will be reflected as an adjustment to goodwill. The purchase price and related acquisition costs exceeded the fair values assigned to net tangible assets by approximately \$57.0 million, which was recorded as long-lived intangible assets and goodwill.

In addition, during 2001, the Company acquired an additional 31 percent interest and a 13 percent interest in its consolidated majority-owned subsidiaries, Black Hills North American Power Fund, L.P. and Indeck North American Power Partners, L.P., respectively, from minority shareholders. Total consideration paid was \$15.9 million.

Pro forma financial amounts reflecting the effects of the above acquisitions are not presented as such acquisitions were not significant to the Company's financial position or results of operations.

On July 7, 2000, the Company acquired Indeck Capital, Inc. and merged it into its subsidiary, Black Hills Energy Capital, Inc. The acquisition was a stock transaction with the Company issuing 1,536,747 shares of common stock to the shareholders of Indeck priced at \$21.98 per share, along with \$4.0 million in preferred stock, resulting in a purchase price of \$37.8 million. Additional consideration, consisting of common and preferred stock, may be paid in the form of an earn-out over a four-year period beginning in 2000. As of December 31, 2001, \$3.6 million has been paid under the earn-out. The earn-out consideration is based on the acquired company's earnings during such period and cannot exceed \$35.0 million in total. Additional consideration paid out under the earn-out is recorded as an increase to goodwill.

The acquisition was accounted for under the purchase method of accounting and, accordingly, the purchase price was allocated to the acquired assets and liabilities based on estimates of the fair values of the assets purchased and the liabilities assumed as of the date of acquisition. Fair values in the allocation include assets acquired of \$151.1 million (excluding goodwill) and liabilities assumed of \$138.7 million. The purchase price and related acquisition costs exceeded the fair values assigned to net tangible assets by \$25.4 million, which was recorded as goodwill and was being amortized over 25 years on a straight-line basis during 2001 and 2000.

In addition during 2000, the Company made several step-acquisitions resulting in consolidation of \$169.5 million of assets and \$138.8 million of liabilities. The related transactions are as follows:

- o Through various transactions, acquired an additional 27.11 percent interest in Indeck North American Power Fund, L.P. and an additional 46.66 percent interest in Indeck North American Power Partners, L.P., for \$13.0 million in cash.
- o Acquired a 39.6 percent interest in each of Northern Electric Power Company, L.P. and South Glens Falls Limited Partnership for \$4.2 million in cash.
- o Acquired substantially all of the partnership interests in Middle Falls Limited Partnership, Sissonville Limited Partnership and New York State Dam Limited Partnership for \$12.9 million in cash.

(16) OIL AND GAS RESERVES (Unaudited)

Black Hills Exploration and Production has interests in 813 producing oil and gas properties in nine states. Black Hills Exploration and Production also holds leases on approximately 228,551 net undeveloped acres.

The following table summarizes Black Hills Exploration and Production's quantities of proved developed and undeveloped oil and natural gas reserves, estimated using constant year-end product prices, as of December 31, 2001, 2000 and 1999, and a reconciliation of the changes between these dates. These estimates are based on reserve reports by Ralph E. Davis Associates, Inc., an independent engineering company selected by the Company. Such reserve estimates are based upon a number of variable factors and assumptions, which may cause these estimates to differ from actual results.

	2001		2000		1999	
	Oil	Gas	Oil	Gas	Oil	Gas
	---	---	---	---	---	---
	(in thousands of barrels of oil and MMcf of gas)					
Proved developed and undeveloped reserves:						
Balance at beginning of year	4,413	18,404	4,109	19,460	2,368	15,952
Production	(446)	(4,615)	(352)	(3,285)	(309)	(2,801)
Additions	749	19,111	625	4,228	376	7,718
Property sales	-	-	-	-	(164)	(66)
Revisions to previous estimates	(661)	(8,829)	31	(1,999)	1,838	(1,343)
	-----	-----	-----	-----	-----	-----
Balance at end of year	4,055	24,071	4,413	18,404	4,109	19,460
	=====	=====	=====	=====	=====	=====
Proved developed reserves at end of year included above	2,962	22,420	3,047	16,418	2,819	14,391
	=====	=====	=====	=====	=====	=====
Year-end prices (average well-head)	\$ 18.12	\$ 2.05	\$ 26.76	\$ 8.05	\$ 25.60	\$ 1.99
	=====	=====	=====	=====	=====	=====

(17) QUARTERLY HISTORICAL DATA (Unaudited)

The Company operates on a calendar year basis. The following table sets forth selected unaudited historical operating results and market data for each quarter of 2001 and 2000.

	First Quarter -----	Second Quarter -----	Third Quarter -----	Fourth Quarter -----
	(in thousands, except per share amounts)			
2001:				
Operating revenues	\$561,693	\$419,049	\$302,398	\$275,418
Operating income	61,580	64,005	29,439	15,155
Net income available for common stock	32,050	34,553	16,235	4,712
Earnings per common share: Basic	1.39	1.35	0.61	0.18
Diluted	1.37	1.34	0.61	0.18
Dividends paid per share	0.28	0.28	0.28	0.28
Common stock prices				
High	45.74	58.50	45.55	34.20
Low	31.00	39.50	27.76	26.00
2000:				
Operating revenues	\$247,959	\$336,978	\$453,231	\$585,668
Operating income	16,872	15,200	42,519	40,159
Net income available for common stock	9,061	8,061	16,285	19,363
Earnings per common share: Basic	0.42	0.38	0.71	0.84
Diluted	0.42	0.38	0.71	0.83
Dividends paid per share	0.27	0.27	0.27	0.27
Common stock prices				
High	25.19	25.19	30.13	46.06
Low	20.44	20.88	22.00	27.00

(18) SUBSEQUENT EVENTS (Unaudited)

On January 4, 2002, the Company closed on a \$50.0 million bridge credit agreement. The credit agreement will supplement our revolving credit facilities in place at December 31, 2001 and has the same terms as those facilities with an expiration date of June 30, 2002. Outstanding borrowings under the agreement as of February 28, 2002 were \$21.1 million.

On March 8, 2002, the Company acquired an additional 67 percent ownership interest in Millennium Pipeline Company, L.P., which owns and operates a 200-mile pipeline. The pipeline has a capacity of approximately 65,000 barrels of oil per day, and transports imported crude oil from Beaumont, Texas to Longview, Texas, which is the transfer point to connecting carriers. The Company also acquired additional ownership interest in Millennium Terminal Company, L.P., which has 1.1 million barrels of crude oil storage connected to the Millennium Pipeline at the Oil Tanking terminal in Beaumont. The Millennium system is presently operating near capacity through shipper agreements. These acquisitions give the Company 100 percent ownership in the Millennium companies. Total cost of the acquisitions was \$11.0 million and was funded through borrowings under short-term revolving credit facilities.

On March 15, 2002, the Company closed on \$135 million of senior secured financing for the Arapahoe and Valmont Facilities. These projects have a total of 210 megawatts in service and under construction and are located in the Denver, Colorado area. Proceeds from this financing were used to refinance \$53.8 million of an existing seven-year senior secured term project-level facility, pay down approximately \$50.0 million of short-term credit facility borrowings and approximately \$31.0 million will be used for future project construction.

On March 15, 2002, the Company paid \$25.7 million to acquire an additional 30 percent interest in the Harbor Cogeneration Facility (the Facility), a 98 megawatt gas-fired plant located in Wilmington, California. This acquisition was funded through borrowings under short-term revolving credit facilities and gives the Company an 83 percent ownership interest and voting control of the Facility.

ITEM 9. CHANGES IN AND DISAGREEMENTS WITH ACCOUNTANTS ON ACCOUNTING AND FINANCIAL DISCLOSURE

No change of accountants or disagreements on any matter of accounting principles or practices or financial statement disclosure have occurred.

PART III

ITEM 10. DIRECTORS AND EXECUTIVE OFFICERS OF THE REGISTRANT

Information regarding our directors is incorporated herein by reference to the Proxy Statement for the Annual Shareholders' Meeting to be held May 29, 2002.

EXECUTIVE OFFICERS

Daniel P. Landguth, age 55, was elected Chairman of the Board and Chief Executive Officer in January 1991. Mr. Landguth also currently chairs the Executive Committee. He has over 30 years of experience with Black Hills. Mr. Landguth holds a B.S. degree in Electrical Engineering from the South Dakota School of Mines and Technology.

Everett E. Hoyt, age 62, has been President and Chief Operating Officer since February 2001. Since 1989, he has been President and Chief Operating Officer of our electric utility business - a role he continues to play. Mr. Hoyt was elected to the Board of Directors in 1991. Prior to joining us, Mr. Hoyt was employed by NorthWestern Corporation for 16 years where he served as Senior Vice President-Legal and as a member of the Board of Directors. He holds a B.S. degree in Mechanical Engineering from the South Dakota School of Mines and Technology and a J.D. from the University of South Dakota School of Law.

Thomas M. Ohlmacher, age 50, has been the President and COO of our Independent Energy Group since November 2001. He served as Senior Vice President-Power Supply and Power Marketing since January 30, 2001 and Vice President - Power Supply since August 1994. Prior to that, he held several positions with our company since 1974. Mr. Ohlmacher holds a B.S. in Chemistry from the South Dakota School of Mines and Technology.

Mark T. Thies, age 38, has been our Senior Vice President and Chief Financial Officer since March 2000. From May 1997 to March 2000, he was our Controller. From 1990 to 1997, Mr. Thies served in a number of accounting positions with InterCoast Energy Company, an unregulated energy company and a wholly owned subsidiary of MidAmerican Energy Holdings Company. Mr. Thies holds B.A.s in Accounting and Business Administration from Saint Ambrose College and is a certified public accountant.

Ronald D. Schaible, age 57, has been Senior Vice President of Communications of Black Hills Corporation and Vice President and General Manager of Black Hills FiberCom since October 1998. Mr. Schaible has more than 25 years experience in the telecommunications industry. From 1995 to 1998, he was Vice President and General Manager of the Kansas City and Missouri subsidiaries of Brooks Fiber Properties. Mr. Schaible was responsible for both network construction and operations in Kansas City. He holds a B.S. in Electrical Engineering from South Dakota State University.

James M. Mattern, age 47, has been the Senior Vice President-Corporate Administration since September 1999, and was Vice President-Corporate Administration from January 1994 to September 1999. From 1997 to 1999, he was also Assistant to the CEO. Mr. Mattern has 12 years of experience with us. He holds a B.S. in Social Sciences and an M.S. in Administration from Northern State University.

Steven J. Helmers, age 45, has been our General Counsel and Corporate Secretary since January 2001. Prior to joining us, Mr. Helmers was a shareholder with the Rapid City, South Dakota law firms of Truhe, Beardsley, Jensen, Helmers & VonWald, from 1997 to January 2001, and Lynn, Jackson, Schultz & Lebrun, P.C., from 1983 to 1997. He holds a J.D. from the University of South Dakota School of Law.

Roxann R. Basham, age 40, has been our Vice President-Controller since March 2000. From December 1997 to March 2000, she was Vice President-Finance and Secretary/Treasurer. From 1993 until December 1997, she served as our Secretary/Treasurer, and has a total of 16 years of experience with us. She holds a B.S. in Business Administration from the University of South Dakota and is a certified public accountant.

David R. Emery, age 39, has been our Vice President-Fuel Resources since January 1997. From June 1993 to January 1997, he was General Manager of Black Hills Exploration and Production. Mr. Emery has 12 years of experience with us. He holds a B.S. in Petroleum Engineering from the University of Wyoming and an M.S. in Business Administration from the University of South Dakota.

Kyle D. White, age 42, has been Vice President - Corporate Affairs since January 30, 2001 and Vice President-Marketing and Regulatory Affairs since July 1998. Mr. White served as Director-Strategic Marketing and Sales from 1993 to January 1998 and Vice President-Energy Services from January 1998 to July 1998. He has a total of 18 years of experience with us. Mr. White holds a B.S. and M.S. in Business Administration from the University of South Dakota.

ITEM 11. EXECUTIVE COMPENSATION

Information regarding management remuneration and transactions is incorporated herein by reference to our Proxy Statement for the Annual Shareholders' Meeting to be held May 29, 2002.

ITEM 12. SECURITY OWNERSHIP OF CERTAIN BENEFICIAL OWNERS AND MANAGEMENT

Information regarding the security ownership of certain beneficial owners and management is incorporated herein by reference to our Proxy Statement for the Annual Shareholders' Meeting to be held May 29, 2002.

ITEM 13. CERTAIN RELATIONSHIPS AND RELATED TRANSACTIONS

Information regarding certain relationships and related transactions is incorporated herein by reference to our Proxy Statement for the Annual Shareholders' Meeting to be held May 29, 2002.

PART IV

ITEM 14. EXHIBITS, FINANCIAL STATEMENT SCHEDULES AND REPORTS ON FORM 8-K

(a) 1. Consolidated Financial Statements

Financial statements required by Item 14 are listed in the index included in Item 8 of Part II.

2. Schedules

All schedules have been omitted because of the absence of the conditions under which they are required or because the required information is included elsewhere in the financial statements incorporated by reference in the Form 10-K.

3. Exhibits

Exhibit Number	Description
2*	Plan of Exchange Between Black Hills Corporation and Black Hills Holding Corporation (filed as an exhibit to the Registrant's Registration Statement on Form S-4 (No. 333-52664)).
3.1*	Articles of Incorporation of the Registrant (filed as an exhibit to the Registrant's Registration Statement on Form S-4 (No. 333-52664)).
3.2*	Articles of Amendment of the Registrant (filed as an exhibit to the Registrant's Form 8-K filed on December 26, 2000).
3.3*	Bylaws of the Registrant (filed as an exhibit to the Registrant's Registration Statement on Form S-4 (No. 333-52664)).
3.4*	Statement of Designations, Preferences and Relative Rights and Limitations of No Par Preferred Stock, Series 2000-A of the Registrant (filed as an exhibit to the Registrant's Form 8-K filed on December 26, 2000).
4.1*	Restated and Amended Indenture of Mortgage and Deed of Trust of Black Hills Corporation (now called Black Hills Power, Inc.) dated as of September 1, 1999 (filed as an exhibit to the Registrant's Registration Statement on Form S-4 (No. 333-52664)).
4.2*	Form of Stock Certificate for Common Stock, Par Value \$1.00 Per Share (filed as Exhibit 4.2 to the Registrant's Form 10-K for 2000).
10.1*	Agreement for Transmission Service and the Common Use of Transmission Systems dated January 1, 1986, among Black Hills Power, Inc., Basin Electric Power Cooperative, Rushmore Electric Power Cooperative, Inc., Tri-County Electric Association, Inc., Black Hills Electric Cooperative, Inc. and Butte Electric Cooperative, Inc. (filed as Exhibit 10(d) to the Registrant's Form 10-K for 1987).
10.2*	Restated and Amended Coal Supply Agreement for NS II dated February 12, 1993 (filed as Exhibit 10(c) to the Registrant's Form 10-K for 1992).
10.3*	Coal Leases between Wyodak Resources Development Corp. and the Federal Government -Dated May 1, 1959 (filed as Exhibit 5(i) to the Registrant's Form S-7, File No. 2-60755) -Modified January 22, 1990 (filed as Exhibit 10(h) to the Registrant's Form 10-K for 1989) -Dated April 1, 1961 (filed as Exhibit 5(j) to the Registrant's Form S-7, File No. 2-60755) -Modified January 22, 1990 (filed as Exhibit 10(i) to Registrant's Form 10-K for 1989) -Dated October 1, 1965 (filed as Exhibit 5(k) to the Registrant's Form S-7, File No. 2-60755) -Modified January 22, 1990 (filed as Exhibit 10(j) to the Registrant's Form 10-K for 1989).
10.4*	Restated and Amended Coal Supply Agreement dated as of January 1, 2001 between Wyodak Resources Development Corp. and PacifiCorp (filed as Exhibit 10.4 to the Registrant's Form S-1 No. 333-57440).
10.5*	Second Restated and Amended Power Sales Agreement dated September 29, 1997, between PacifiCorp and Black Hills Power, Inc. (filed as Exhibit 10(e) to the Registrant's Form 10-K for 1997).
10.6*	Coal Supply Agreement for Wyodak Unit #2 dated February 3, 1983, and Ancillary Agreement dated February 3, 1982, between Wyodak Resources Development Corp., Pacific Power & Light Company and Black Hills Power, Inc. (filed as Exhibit 10(o) to the Registrant's Form 10-K for 1983). Amendment to Agreement for Coal Supply for Wyodak #2 dated May 5, 1987 (filed as Exhibit 10(o) to the Registrant's Form 10-K for 1987).
10.7*	Reserve Capacity Integration Agreement dated May 5, 1987, between Pacific Power & Light Company and Black Hills Power, Inc. (filed as Exhibit 10(u) to the Registrant's Form 10-K for 1987).
10.8*	Marketing, Capacity and Storage Service Agreement between Black Hills Power, Inc. and PacifiCorp dated September 1, 1995 (filed as Exhibit 10(ag) to the Registrant's Form 10-K for 1995).
10.9*	Assignment of Mining Leases and Related Agreement effective May 27, 1997, between Wyodak Resources Development Corp. and Kerr-McGee Coal Corporation (filed as Exhibit 10(u) to the Registrant's Form 10-K for 1997).
10.10*	Rate Freeze Extension (filed as Exhibit 10(t) to the Registrant's Form 10-K for 1999).

- 10.11*+ Amended and Restated Pension Equalization Plan of Black Hills Corporation dated January 6, 2000 (filed as Exhibit 10.11 to the Registrant's Form 10-K for 2000).
- 10.12*+ First Amendment to the Pension Equalization Plan of Black Hills Corporation dated January 30, 2001 (filed as Exhibit 10.12 to the Registrant's Form 10-K for 2000).
- 10.13*+ Black Hills Corporation Nonqualified Deferred Compensation Plan dated June 1, 1999 (filed as Exhibit 10.13 to the Registrant's Form 10-K for 2000).
- 10.14*+ Black Hills Corporation 1996 Stock Option Plan (filed as Exhibit 10(s) to the Registrant's Form 10-K for 1997).
- 10.15*+ Black Hills Corporation 1999 Stock Option Plan (filed as Exhibit 10.14 to the Registrant's Form 10-K for 2000).
- 10.16+ Black Hills Corporation Omnibus Incentive Compensation Plan dated May 30, 2001.
- 10.17*+ Agreement for Supplemental Pension Benefit for Everett E. Hoyt dated January 20, 1992 (filed as Exhibit 10(gg) to the Registrant's Form 10-K for 1992).
- 10.18*+ Change in Control Agreements for various officers (filed as Exhibit 10(af) to the Registrant's Form 10-K for 1995).
- 10.19*+ Outside Directors Stock Based Compensation Plan (filed as Exhibit 10(t) to the Registrant's Form 10-K for 1997).
- 10.20*+ Officers Short-Term Incentive Plan (filed as Exhibit 10(s) to the Registrant's Form 10-K for 1999).
- 10.21* Agreement and Plan of Merger, dated as of January 1, 2000, among Black Hills Corporation, Black Hills Energy Capital, Inc., Indeck Capital, Inc., Gerald R. Forsythe, Michelle R. Fawcett, Marsha Fournier, Monica Breslow, Melissa S. Forsythe and John W. Salyer, Jr. (Exhibit 2 to Schedule 13D filed on behalf of the former shareholders of Indeck Capital, Inc. consisting of Gerald R. Forsythe, Michelle R. Fawcett, Marsha Fournier, Monica Breslow, Melissa S. Forsythe and John W. Salyer, Jr., dated July 7, 2000).
- 10.22* Addendum to the Agreement and Plan of Merger, dated as of April 6, 2000, among Black Hills Corporation, Black Hills Energy Capital, Inc., Indeck Capital, Inc., Gerald R. Forsythe, Michelle R. Fawcett, Marsha Fournier, Monica Breslow, Melissa S. Forsythe and John W. Salyer, Jr. (Exhibit 3 to Schedule 13D filed on behalf of the former shareholders of Indeck Capital, Inc. consisting of Gerald R. Forsythe, Michelle R. Fawcett, Marsha Fournier, Monica Breslow, Melissa S. Forsythe and John W. Salyer, Jr., dated July 7, 2000).
- 10.23* Supplemental Agreement Regarding Contingent Merger Consideration, dated as of January 1, 2000, among Black Hills Corporation, Black Hills Energy Capital, Inc., Indeck Capital, Inc., Gerald R. Forsythe, Michelle R. Fawcett, Marsha Fournier, Monica Breslow, Melissa S. Forsythe and John W. Salyer, Jr. (Exhibit 4 to Schedule 13D filed on behalf of the former shareholders of Indeck Capital, Inc. consisting of Gerald R. Forsythe, Michelle R. Fawcett, Marsha Fournier, Monica Breslow, Melissa S. Forsythe and John W. Salyer, Jr., dated July 7, 2000).
- 10.24* Supplemental Agreement Regarding Restructuring of Certain Qualifying Facilities (Exhibit 5 to Schedule 13D filed on behalf of the former shareholders of Indeck Capital, Inc. consisting of Gerald R. Forsythe, Michelle R. Fawcett, Marsha Fournier, Monica Breslow, Melissa S. Forsythe and John W. Salyer, Jr., dated July 7, 2000).
- 10.25* Addendum to the Agreement and Plan of Merger, dated as of June 30, 2000, among Black Hills Corporation, Black Hills Energy Capital, Inc., Indeck Capital, Inc., Gerald R. Forsythe, Michelle R. Fawcett, Marsha Fournier, Monica Breslow, Melissa S. Forsythe and John W. Salyer, Jr. (Exhibit 6 to Schedule 13D filed on behalf of the former shareholders of Indeck Capital, Inc. consisting of Gerald R. Forsythe, Michelle R. Fawcett, Marsha Fournier, Monica Breslow, Melissa S. Forsythe and John W. Salyer, Jr., dated July 7, 2000).
- 10.26* Registration Rights Agreement among Black Hills Corporation, Gerald R. Forsythe, Michelle R. Fawcett, Marsha Fournier, Monica Breslow, Melissa S. Forsythe and John W. Salyer, Jr. (Exhibit 7 to Schedule 13D filed on behalf of the former shareholders of Indeck Capital, Inc. consisting of Gerald R. Forsythe, Michelle R. Fawcett, Marsha Fournier, Monica Breslow, Melissa S. Forsythe and John W. Salyer, Jr., dated July 7, 2000).

10.27*	Shareholders Agreement among Black Hills Corporation, Gerald R. Forsythe, Michelle R. Fawcett, Marsha Fournier, Monica Breslow, Melissa S. Forsythe and John W. Salyer, Jr. (Exhibit 8 to Schedule 13D filed on behalf of the former shareholders of Indeck Capital, Inc. consisting of Gerald R. Forsythe, Michelle R. Fawcett, Marsha Fournier, Monica Breslow, Melissa S. Forsythe and John W. Salyer, Jr., dated July 7, 2000).
10.28*	3-year Credit Agreement dated as of August 28, 2001 among Black Hills Corporation, as Borrower, The Financial Institutions party, hereto, as Banks, ABN AMRO BANK N.V., as Administrative Agent, Union Bank of California, N.A., as Syndication Agent, Bank of Montreal, as Co-Syndication Agent, US Bank, National Association, as Documentation Agent, and The Bank of Nova Scotia, as Co-Documentation Agent (filed as Exhibit 10.1 to the Registrant's Form 10-Q for the quarterly period ended September 30, 2001).
10.29*	364-day Credit Agreement dated as of August 28, 2001 among Black Hills Corporation, as Borrower, The Financial Institutions party, hereto, as Banks, ABN AMRO BANK N.V., as Administrative Agent, Union Bank of California, N.A., as Syndication Agent, Bank of Montreal, as Co-Syndication Agent, US Bank, National Association, as Documentation Agent, and The Bank of Nova Scotia, as Co-Documentation Agent (filed as Exhibit 10.2 to the Registrant's Form 10-Q for the quarterly period ended September 30, 2001).
10.30	Purchase and Sale Agreement by and between TLS Investors, LLC and Black Hills Energy Capital, Inc. dated June 18, 2001 to purchase Southwest Power, LLC.
10.31	Agreement for Lease between Wygen Funding, Limited Partnership and Black Hills Generation, Inc. dated as of July 20, 2001.
10.32	Amendment No. 1 dated as of December 20, 2001 to Agreement for Lease dated as of July 20, 2001 between Wygen Funding, Limited Partnership as Owner and Black Hills Generation, Inc., as Agent.
10.33	Lease Agreement dated as of July 20, 2001 between Wygen Funding, Limited Partnership as Lessor and Black Hills Generation, Inc. as Lessee.
21	List of Subsidiaries of Black Hills Corporation.
23.1	Consent of Independent Public Accountants.
23.2	Consent of Petroleum Engineer and Geologist.
99.1	Letter to Commission Pursuant to Temporary Note 3T.

- - - - -
* Previously filed as part of the filing indicated and incorporated by reference herein. + Indicates a board of director or management compensatory plan.

- (b) Reports on Form 8-K
We have not filed any Reports on Form 8-K since September 30, 2001.
- (c) See (a) 3. Exhibits above.
- (d) See (a) 2. Schedules above.

SIGNATURES

Pursuant to the requirements of Section 13 or 15(d) of the Securities Exchange Act of 1934, the Registrant has duly caused this report to be signed on its behalf by the undersigned, thereunto duly authorized.

BLACK HILLS CORPORATION

By DANIEL P. LANDGUTH

Daniel P. Landguth, Chairman
and Chief Executive Officer

Dated: March 25, 2002

Pursuant to the requirements of the Securities Exchange Act of 1934, this report has been signed below by the following persons on behalf of the Registrant and in the capacities and on the dates indicated.

DANIEL P. LANDGUTH ----- Daniel P. Landguth, Chairman, and Chief Executive Officer	Director and Principal Executive Director	March 25, 2002
MARK T. THIES ----- Mark T. Thies, Senior Vice President and Chief Financial Officer	Principal Financial Officer	March 25, 2002
ROXANN R. BASHAM ----- Roxann R. Basham, Vice President-Controller, and Assistant Secretary	Principal Accounting Officer	March 25, 2002
ADIL M. AMEER ----- Adil M. Ameer	Director	March 25, 2002
BRUCE B. BRUNDAGE ----- Bruce B. Brundage	Director	March 25, 2002
DAVID C. EBERTZ ----- David C. Ebertz	Director	March 25, 2002
JOHN R. HOWARD ----- John R. Howard	Director	March 25, 2002
EVERETT E. HOYT ----- Everett E. Hoyt, President and Chief Operating Officer	Director and Officer	March 25, 2002
KAY S. JORGENSEN ----- Kay S. Jorgensen	Director	March 25, 2002
DAVID S. MANEY ----- David S. Maney	Director	March 25, 2002
THOMAS J. ZELLER ----- Thomas J. Zeller	Director	March 25, 2002

INDEX TO EXHIBITS

Exhibit Number	Description
2*	Plan of Exchange Between Black Hills Corporation and Black Hills Holding Corporation (filed as an exhibit to the Registrant's Registration Statement on Form S-4 (No. 333-52664)).
3.1*	Articles of Incorporation of the Registrant (filed as an exhibit to the Registrant's Registration Statement on Form S-4 (No. 333-52664)).
3.2*	Articles of Amendment of the Registrant (filed as an exhibit to the Registrant's Form 8-K filed on December 26, 2000).
3.3*	Bylaws of the Registrant (filed as an exhibit to the Registrant's Registration Statement on Form S-4 (No. 333-52664)).
3.4*	Statement of Designations, Preferences and Relative Rights and Limitations of No Par Preferred Stock, Series 2000-A of the Registrant (filed as an exhibit to the Registrant's Form 8-K filed on December 26, 2000).
4.1*	Restated and Amended Indenture of Mortgage and Deed of Trust of Black Hills Corporation (now called Black Hills Power, Inc.) dated as of September 1, 1999 (filed as an exhibit to the Registrant's Registration Statement on Form S-4 (No. 333-52664)).
4.2*	Form of Stock Certificate for Common Stock, Par Value \$1.00 Per Share (filed at Exhibit 4.2 to the Registrant's Form 10-K for 2000).
10.1*	Agreement for Transmission Service and the Common Use of Transmission Systems dated January 1, 1986, among Black Hills Power, Inc., Basin Electric Power Cooperative, Rushmore Electric Power Cooperative, Inc., Tri-County Electric Association, Inc., Black Hills Electric Cooperative, Inc. and Butte Electric Cooperative, Inc. (filed as Exhibit 10(d) to the Registrant's Form 10-K for 1987).
10.2*	Restated and Amended Coal Supply Agreement for NS II dated February 12, 1993 (filed as Exhibit 10(c) to the Registrant's Form 10-K for 1992).
10.3*	Coal Leases between Wyodak Resources Development Corp. and the Federal Government -Dated May 1, 1959 (filed as Exhibit 5(i) to the Registrant's Form S-7, File No. 2-60755) -Modified January 22, 1990 (filed as Exhibit 10(h) to the Registrant's Form 10-K for 1989) -Dated April 1, 1961 (filed as Exhibit 5(j) to the Registrant's Form S-7, File No. 2-60755) -Modified January 22, 1990 (filed as Exhibit 10(i) to Registrant's Form 10-K for 1989) -Dated October 1, 1965 (filed as Exhibit 5(k) to the Registrant's Form S-7, File No. 2-60755) -Modified January 22, 1990 (filed as Exhibit 10(j) to the Registrant's Form 10-K for 1989).
10.4*	Restated and Amended Coal Supply Agreement dated as of January 1, 2001 between Wyodak Resources Development Corp. and PacifiCorp (filed as Exhibit 10.4 to the Registrant's Form S-1 No. 333-57440).
10.5*	Second Restated and Amended Power Sales Agreement dated September 29, 1997, between PacifiCorp and Black Hills Power, Inc. (filed as Exhibit 10(e) to the Registrant's Form 10-K for 1997).

- 10.6* Coal Supply Agreement for Wyodak Unit #2 dated February 3, 1983, and Ancillary Agreement dated February 3, 1982, between Wyodak Resources Development Corp., Pacific Power & Light Company and Black Hills Power, Inc. (filed as Exhibit 10(o) to the Registrant's Form 10-K for 1983). Amendment to Agreement for Coal Supply for Wyodak #2 dated May 5, 1987 (filed as Exhibit 10(o) to the Registrant's Form 10-K for 1987).
- 10.7* Reserve Capacity Integration Agreement dated May 5, 1987, between Pacific Power & Light Company and Black Hills Power, Inc. (filed as Exhibit 10(u) to the Registrant's Form 10-K for 1987).
- 10.8* Marketing, Capacity and Storage Service Agreement between Black Hills Power, Inc. and PacifiCorp dated September 1, 1995 (filed as Exhibit 10(ag) to the Registrant's Form 10-K for 1995).
- 10.9* Assignment of Mining Leases and Related Agreement effective May 27, 1997, between Wyodak Resources Development Corp. and Kerr-McGee Coal Corporation (filed as Exhibit 10(u) to the Registrant's Form 10-K for 1997).
- 10.10* Rate Freeze Extension (filed as Exhibit 10(t) to the Registrant's Form 10-K for 1999).
- 10.11** Amended and Restated Pension Equalization Plan of Black Hills Corporation dated January 6, 2000 (filed as Exhibit 10.11 to the Registrant's Form 10-K for 2000).
- 10.12** First Amendment to the Pension Equalization Plan of Black Hills Corporation dated January 30, 2001 (filed as Exhibit 10.12 to the Registrant's Form 10-K for 2000).
- 10.13** Black Hills Corporation Nonqualified Deferred Compensation Plan dated June 1, 1999 (filed as Exhibit 10.13 to the Registrant's Form 10-K for 2000).
- 10.14** Black Hills Corporation 1996 Stock Option Plan (filed as Exhibit 10(s) to the Registrant's Form 10-K for 1997).
- 10.15** Black Hills Corporation 1999 Stock Option Plan (filed as Exhibit 10.14 to the Registrant's Form 10-K for 2000).
- 10.16+ Black Hills Corporation Omnibus Incentive Compensation Plan dated May 30, 2001.
- 10.17** Agreement for Supplemental Pension Benefit for Everett E. Hoyt dated January 20, 1992 (filed as Exhibit 10(gg) to the Registrant's Form 10-K for 1992).
- 10.18** Change in Control Agreements for various officers (filed as Exhibit 10(af) to the Registrant's Form 10-K for 1995).
- 10.19** Outside Directors Stock Based Compensation Plan (filed as Exhibit 10(t) to the Registrant's Form 10-K for 1997).
- 10.20** Officers Short-Term Incentive Plan (filed as Exhibit 10(s) to the Registrant's Form 10-K for 1999).
- 10.21* Agreement and Plan of Merger, dated as of January 1, 2000, among Black Hills Corporation, Black Hills Energy Capital, Inc., Indeck Capital, Inc., Gerald R. Forsythe, Michelle R. Fawcett, Marsha Fournier, Monica Breslow, Melissa S. Forsythe and John W. Salyer, Jr. (Exhibit 2 to Schedule 13D filed on behalf of the former shareholders of Indeck Capital, Inc. consisting of Gerald R. Forsythe, Michelle R. Fawcett, Marsha Fournier, Monica Breslow, Melissa S. Forsythe and John W. Salyer, Jr., dated July 7, 2000).
- 10.22* Addendum to the Agreement and Plan of Merger, dated as of April 6, 2000, among Black Hills Corporation, Black Hills Energy Capital, Inc., Indeck Capital, Inc., Gerald R. Forsythe, Michelle R. Fawcett, Marsha Fournier, Monica Breslow, Melissa S. Forsythe and John W. Salyer, Jr. (Exhibit 3 to Schedule 13D filed on behalf of the former shareholders of Indeck Capital,

- Inc. consisting of Gerald R. Forsythe, Michelle R. Fawcett, Marsha Fournier, Monica Breslow, Melissa S. Forsythe and John W. Salyer, Jr., dated July 7, 2000).
- 10.23* Supplemental Agreement Regarding Contingent Merger Consideration, dated as of January 1, 2000, among Black Hills Corporation, Black Hills Energy Capital, Inc., Indeck Capital, Inc., Gerald R. Forsythe, Michelle R. Fawcett, Marsha Fournier, Monica Breslow, Melissa S. Forsythe and John W. Salyer, Jr. (Exhibit 4 to Schedule 13D filed on behalf of the former shareholders of Indeck Capital, Inc. consisting of Gerald R. Forsythe, Michelle R. Fawcett, Marsha Fournier, Monica Breslow, Melissa S. Forsythe and John W. Salyer, Jr., dated July 7, 2000).
- 10.24* Supplemental Agreement Regarding Restructuring of Certain Qualifying Facilities (Exhibit 5 to Schedule 13D filed on behalf of the former shareholders of Indeck Capital, Inc. consisting of Gerald R. Forsythe, Michelle R. Fawcett, Marsha Fournier, Monica Breslow, Melissa S. Forsythe and John W. Salyer, Jr., dated July 7, 2000).
- 10.25* Addendum to the Agreement and Plan of Merger, dated as of June 30, 2000, among Black Hills Corporation, Black Hills Energy Capital, Inc., Indeck Capital, Inc., Gerald R. Forsythe, Michelle R. Fawcett, Marsha Fournier, Monica Breslow, Melissa S. Forsythe and John W. Salyer, Jr. (Exhibit 6 to Schedule 13D filed on behalf of the former shareholders of Indeck Capital, Inc. consisting of Gerald R. Forsythe, Michelle R. Fawcett, Marsha Fournier, Monica Breslow, Melissa S. Forsythe and John W. Salyer, Jr., dated July 7, 2000).
- 10.26* Registration Rights Agreement among Black Hills Corporation, Gerald R. Forsythe, Michelle R. Fawcett, Marsha Fournier, Monica Breslow, Melissa S. Forsythe and John W. Salyer, Jr. (Exhibit 7 to Schedule 13D filed on behalf of the former shareholders of Indeck Capital, Inc. consisting of Gerald R. Forsythe, Michelle R. Fawcett, Marsha Fournier, Monica Breslow, Melissa S. Forsythe and John W. Salyer, Jr., dated July 7, 2000).
- 10.27* Shareholders Agreement among Black Hills Corporation, Gerald R. Forsythe, Michelle R. Fawcett, Marsha Fournier, Monica Breslow, Melissa S. Forsythe and John W. Salyer, Jr. (Exhibit 8 to Schedule 13D filed on behalf of the former shareholders of Indeck Capital, Inc. consisting of Gerald R. Forsythe, Michelle R. Fawcett, Marsha Fournier, Monica Breslow, Melissa S. Forsythe and John W. Salyer, Jr., dated July 7, 2000).
- 10.28* 3-year Credit Agreement dated as of August 28, 2001 among Black Hills Corporation, as Borrower, The Financial Institutions party, hereto, as Banks, ABN AMRO BANK N.V., as Administrative Agent, Union Bank of California, N.A., as Syndication Agent, Bank of Montreal, as Co-Syndication Agent, US Bank, National Association, as Documentation Agent, and The Bank of Nova Scotia, as Co-Documentation Agent (filed as Exhibit 10.1 to the Registrant's Form 10-Q for the quarterly period ended September 30, 2001).
- 10.29* 364-Day Credit Agreement dated as of August 28, 2001 among Black Hills Corporation, as Borrower, The Financial Institutions party, hereto, as Banks, ABN AMRO BANK N.V., as Administrative Agent, Union Bank of California, N.A., as Syndication Agent, Bank of Montreal, as Co-Syndication Agent, US Bank, National Association, as Documentation Agent, and The Bank of Nova Scotia, as Co-Documentation Agent (filed as Exhibit 10.2 to the Registrant's Form 10-Q for the quarterly period ended September 30, 2001).

- 10.30 Purchase and Sale Agreement by and between TLS Investors, LLC and Black Hills Energy Capital, Inc. dated June 18, 2001 to purchase Southwest Power, LLC.
- 10.31 Agreement for Lease between Wygen Funding, Limited Partnership and Black Hills Generation, Inc. dated as of July 20, 2001.
- 10.32 Amendment No. 1 dated as of December 20, 2001 to Agreement for Lease dated as of July 20, 2001 between Wygen Funding, Limited Partnership as Owner and Black Hills Generation, Inc., as Agent.
- 10.33 Lease Agreement dated as of July 20, 2001 between Wygen Funding, Limited Partnership as Lessor and Black Hills Generation, Inc. as Lessee.
- 21 List of Subsidiaries of Black Hills Corporation.
- 23.1 Consent of Independent Public Accountants.
- 23.2 Consent of Petroleum Engineer and Geologist.
- 99.1 Letter to Commission Pursuant to Temporary Note 3T.

- -----

* Previously filed as part of the filing indicated and incorporated by reference herein.

+ Indicates a board of director or management compensatory plan.

TABLE OF CONTENTS

	Page
Article 1.	Establishment, Objectives, and Duration.....1
1.1	Establishment of the Plan.....1
1.2	Objectives of the Plan.....1
1.3	Duration of the Plan.....1
Article 2.	Definitions.....1
Article 3.	Administration.....6
3.1	General.....6
3.2	Authority of the Committee.....7
3.3	Decisions Binding.....7
Article 4.	Shares Subject to the Plan and Maximum Awards.....7
4.1	Number of Shares Available for Grants.....7
4.2	Lapsed Awards and Awards Not Paid in Shares.....8
4.3	Adjustments in Authorized Shares.....8
Article 5.	Eligibility and Participation.....8
5.1	Eligibility.....8
5.2	Actual Participation.....8
Article 6.	Stock Options.....8
6.1	Grant of Options.....8
6.2	Award Agreement.....9
6.3	Option Price.....9
6.4	Duration of Options.....9
6.5	Exercise of Options.....9
6.6	Payment.....9
6.7	Restrictions on Share Transferability.....9
6.8	Termination of Employment/Directorship.....10
6.9	Nontransferability of Options.....10
6.10	No Cancellation and Reissuance of Options.....10
Article 7.	Stock Appreciation Rights.....10
7.1	Grant of SARs.....10
7.2	SAR Agreement.....11
7.3	Term of SARs.....11
7.4	Exercise of Freestanding SARs.....11
7.5	Exercise of Tandem SARs.....11

7.6	Payment of SAR Amount.....	11
7.7	Termination of Employment/Directorship.....	11
7.8	Nontransferability of SARs.....	12
Article 8.	Restricted Stock.....	12
8.1	Grant of Restricted Stock.....	12
8.2	Restricted Stock Agreement.....	12
8.3	Transferability.....	12
8.4	Other Restrictions.....	12
8.5	Voting Rights.....	13
8.6	Dividends and Other Distributions.....	13
8.7	Termination of Employment/Directorship.....	13
Article 9.	Performance Units, Performance Shares, and Cash-Based Awards.....	13
9.1	Grant of Performance Units/Shares and Cash-Based Awards.....	13
9.2	Value of Performance Units/Shares and Cash-Based Awards.....	13
9.3	Earning of Performance Units/Shares and Cash-Based Awards.....	13
9.4	Form and Timing of Payment of Performance Units/Shares and Cash-Based Awards.....	14
9.5	Termination of Employment/Directorship.....	14
9.6	Nontransferability.....	14
Article 10.	Other Awards.....	14
Article 11.	Performance Measures.....	14
Article 12.	Beneficiary Designation.....	16
Article 13.	Deferrals.....	16
Article 14.	Rights of Employees/Directors.....	16
14.1	Employment.....	16
14.2	Participation.....	16
14.3	Rights as a Stockholder.....	16
Article 15.	Change in Control.....	16
15.1	Treatment of Outstanding Awards.....	16
15.2	Termination, Amendment, and Modifications of Change-in-Control Provisions.....	17
14.3	Pooling of Interests Accounting.....	17
Article 16.	Amendment, Modification, Termination and Bifurcation	18
16.1	Amendment, Modification, and Termination.....	18
16.2	Adjustment of Awards Upon the Occurrence of Certain Unusual or Nonrecurring Events.....	18

16.3	Awards Previously Granted.....	18
16.4	Compliance with Code Section 162(m).....	18
16.5	Bifurcation of the Plan.....	18
Article 17.	Withholding.....	18
17.1	Tax Withholding.....	19
17.2	Share Withholding.....	19
Article 18.	Indemnification.....	19
Article 19.	Successors.....	19
Article 20.	General Provisions.....	19
20.1	Gender and Number.....	19
20.2	Severability.....	20
20.3	Requirements of Law.....	20
20.4	Securities Law Compliance.....	20
20.5	Listing.....	20
20.6	Delivery of Title.....	20
20.7	Investment Representations.....	20
20.8	No Additional Rights.....	20
20.9	Uncertificated Shares.....	21
20.10	Unfunded Status of the Plan.....	21
20.11	Governing Law.....	21

Black Hills Corporation
Omnibus Incentive Compensation Plan

Article 1. Establishment, Objectives, and Duration

1.1 Establishment of the Plan. Black Hills Corporation, a South Dakota corporation (hereinafter referred to as the "Company"), hereby establishes an incentive compensation plan to be known as the "Black Hills Corporation Omnibus Incentive Compensation Plan" (hereinafter referred to as the "Plan"), as set forth in this document. The Plan permits the grant of Nonqualified Stock Options, Incentive Stock Options, Stock Appreciation Rights, Restricted Stock, Performance Shares, Performance Units, and Cash-Based Awards.

The Plan shall become effective when approved by the Shareholders at the 2001 annual meeting of Shareholders on May 30, 2001, (the "Effective Date") and shall remain in effect as provided in Section 1.3 hereof.

1.2 Objectives of the Plan. The objectives of the Plan are to optimize the profitability and growth of the Company through annual and long-term incentives that are consistent with the Company's goals and that link the personal interests of Participants to those of the Company's stockholders; to provide Participants with an incentive for excellence in individual performance; and to promote teamwork among Participants. The Plan is further intended to provide flexibility to the Company, its Affiliates, and Subsidiaries, in their ability to motivate, attract, and retain the services of Participants who make significant contributions to the Company's success and to allow Participants to share in such success.

1.3 Duration of the Plan. The Plan shall commence on the Effective Date, as described in Section 1.1 hereof, and shall remain in effect, subject to the right of the Board of Directors to amend or terminate the Plan at any time pursuant to Article 16 hereof, until all Shares subject to it shall have been purchased or acquired according to the Plan's provisions. However, in no event may an Award be granted under the Plan on or after the tenth (10th) anniversary of the Effective Date.

Article 2. Definitions

Whenever used in the Plan, the following terms shall have the meanings set forth below, and when the meaning is intended, the initial letter of the word shall be capitalized:

2.1 "Affiliate" shall have the meaning ascribed to such term in Rule 12b-2 of the General Rules and Regulations of the Exchange Act.

2.2 "Award" means, individually or collectively, a grant under this Plan of Nonqualified Stock Options, Incentive Stock Options, Stock Appreciation Rights, Restricted Stock, Performance Shares, Performance Units, or Cash-Based Awards.

2.3 "Award Agreement" means an agreement entered into by the Company and each Participant setting forth the terms and provisions applicable to Awards granted under this Plan.

2.4 "Beneficial Owner" or "Beneficial Ownership" shall have the meaning ascribed to such term in Rule 13d-3 of the General Rules and Regulations under the Exchange Act.

2.5 "Board" or "Board of Directors" means the Board of Directors of the Company.

2.6 "Cash-Based Award" means an Award granted to a Participant as described in Article 9 herein.

2.7 "Change in Control" shall mean any of the following events:

- (a) An acquisition (other than directly from the Company) of any Common Stock of the Company by any "Person" (as the term person is used for purposes of Section 13(d) or 14(d) of the Exchange Act, as amended (the "Exchange Act")), immediately after which such Person has "Beneficial Ownership" (within the meaning of Rule 13d-3 promulgated under the Exchange Act) of thirty percent (30%) or more of the Common Stock of the Company; provided, however, in determining whether a Change in Control has occurred, Common Stock which is acquired in a "Non-Control Acquisition" (as hereinafter defined) shall not constitute an acquisition which would cause a Change in Control. A "Non-Control Acquisition" shall mean an acquisition by (1) an employee benefit plan (or a trust forming a part thereof) maintained by (A) the Company or (B) any corporation or other Person of which a majority of its voting power or its voting equity securities ("Voting Securities") or equity interest is owned, directly or indirectly, by the Company (for purposes of this definition, a "Subsidiary"), (ii) the Company or its Subsidiaries, or (iii) any Person in connection with a "Non-Control Transaction" (as hereinafter defined);
- (b) The individuals who, as of the Effective Date are members of the Board (the "Incumbent Board"), cease for any reason to constitute at least two-thirds of the members of the Board; provided, however, that if the election, or nomination for election by the Company's common shareholders, of any new director was approved by a vote of at least two-thirds of the Incumbent Board, such new director shall, for purposes of this Plan, be considered as a member of the Incumbent Board; provided further, however, that no individual shall be considered a member of the Incumbent Board if such individual initially assumed office as a result of either an actual or threatened "Election Contest" (as described in Rule 14a-11 promulgated under the Exchange Act) or other actual or threatened

solicitation of proxies or consents by or on behalf of a Person other than the Board (a "Proxy Contest") including by reason of any agreement intended to avoid or settle any Election Contest or Proxy Contest; or

- (c) Approval by shareholders of the Company of:
- (i).....A merger, consolidation or reorganization involving the Company, unless such merger, consolidation or reorganization is a "Non-Control Transaction." A "Non-Control Transaction" shall mean a merger, consolidation or reorganization of the Company where:
- (A) The shareholders of the Company, immediately before such merger, consolidation or reorganization, own directly or indirectly immediately following such merger, consolidation or reorganization, at least seventy percent (70%) of the combined voting power of the outstanding Voting Securities of the corporation resulting from such merger or consolidation or reorganization (the "Surviving Corporation") in substantially the same proportion as their ownership of the Voting Securities immediately before such merger, consolidation or reorganization,
- (B) The individuals who were members of the Incumbent Board immediately prior to the execution of the agreement providing for such merger, consolidation or reorganization constitute at least two-thirds of the members of the board of directors of the Surviving Corporation, or a corporation beneficially directly or indirectly owning a majority of the Voting Securities of the Surviving Corporation, and
- (C) No Person other than (i) the Company, (ii) any Subsidiary, (iii) any employee benefit plan (or any trust forming a part thereof) maintained by the Company, the Surviving Corporation, or any Subsidiary, or (iv) any Person who, immediately prior to such merger, consolidation or reorganization had Beneficial Ownership of thirty percent (30%) or more of the then outstanding Voting Securities), has Beneficial Ownership of thirty percent (30%) or more of the combined voting power of the Surviving Corporation's then outstanding Voting Securities.
- (ii) A complete liquidation or dissolution of the Company; or
- (iii) An agreement for the sale or other disposition of all or substantially all of the assets of the Company to any Person other

than (x) a transfer to a Subsidiary or (y) a sale or transfer of a Subsidiary by the Company except if such sale or transfer would be a sale or other disposition of all or substantially all of the assets of the Company.

- (d) Notwithstanding the foregoing, (i) a Change in Control shall not be deemed to occur solely because any person (the "Subject Person") acquired Beneficial Ownership of more than the permitted amount of the then outstanding Common Stock as a result of the acquisition of Common Stock by the Company which, by reducing the number of shares of Common Stock then outstanding, increases the proportional number of shares Beneficially Owned by the Subject Persons, provided that if a Change in Control would occur (but for the operation of this sentence) as a result of the acquisition of Common Stock by the Company, and after such stock acquisition by the Company, the Subject Person becomes the Beneficial Owner of any additional Common Stock which increases the percentage of the then outstanding Common Stock Beneficially Owned by the Subject Person, then a Change in Control shall occur; and (ii) a Change in Control shall not be deemed to occur unless and until all regulatory approvals required to effect a Change in Control of the Company have been obtained.

2.8 "Code" means the Internal Revenue Code of 1986, as amended from time to time.

2.9 "Committee" means the committee appointed by the Board to administer Awards to Employees, as specified in Article 3 herein.

2.10 "Common Stock" means the \$1 par value common stock of the Company.

2.11 "Company" means Black Hills Corporation, a South Dakota corporation and any successor thereto as provided in Article 19 herein.

2.12 "Covered Employee" means a Participant who, as of the date of vesting and/or payout of an Award, as applicable, is, or, in the judgment of the Board, might then be one of the group of "covered employees," as defined in the regulations promulgated under Code Section 162(m), or any successor statute.

2.13 "Director" means any individual who is a member of the Board of Directors of the Company; provided, however, that any Director who is employed by the Company shall be considered an Employee under the Plan.

2.14 "Disability" shall have the meaning ascribed to such term in the Participant's governing long-term disability plan, or if no such plan exists, at the discretion of the Committee.

2.15 "Effective Date" shall have the meaning ascribed to such term in Section 1.1 hereof.

2.16 "Employee" means any employee of the Company or its Subsidiaries or Affiliates.

2.17 "Exchange Act" means the Securities Exchange Act of 1934, as amended from time to time, or any successor act thereto.

2.18 "Fair Market Value" shall be determined on the basis of the closing sale price on the principal securities exchange on which the Shares are traded or, if there is no such sale on the relevant date, then on the last previous day on which a sale was reported.

2.19 "Freestanding SAR" means an SAR that is granted independently of any Options, as described in Article 7 herein.

2.20 "Incentive Stock Option" or "ISO" means an option to purchase Shares granted under Article 6 herein and that is designated as an Incentive Stock Option and that is intended to meet the requirements of Code Section 422.

2.21 "Insider" shall mean an individual who is, on the relevant date, an officer, director or ten percent (10%) beneficial owner of any class of the Company's equity securities that is registered pursuant to Section 12 of the Exchange Act, all as defined under Section 16 of the Exchange Act.

2.22 "Nonqualified Stock Option" or "NQSO" means an option to purchase Shares granted under Article 6 herein and that is not intended to meet the requirements of Code Section 422, or that otherwise does not meet such requirements.

2.23 "Option" means an Incentive Stock Option or a Nonqualified Stock Option, as described in Article 6 herein.

2.24 "Option Price" means the price at which a Share may be purchased by a Participant pursuant to an Option.

2.25 "Other Award" means an Award granted under Article 10 hereunder.

2.26 "Participant" means an Employee or Director who has been selected to receive an Award or who has outstanding an Award granted under the Plan.

2.27 "Performance-Based Exception" means the performance-based exception from the tax deductibility limitations of Code Section 162(m).

2.28 "Performance Share" means an Award granted to a Participant, as described in Article 9 herein.

2.29 "Performance Unit" means an Award granted to a Participant, as described in Article 9 herein.

2.30 "Period of Restriction" means the period during which the transfer of Shares of Restricted Stock is limited in some way (based on the passage of time, the achievement of performance goals, or upon the occurrence of other events as determined by the Committee, at its discretion), and the Shares are subject to a substantial risk of forfeiture, as provided in Article 8 herein.

2.31 "Person" shall have the meaning ascribed to such term in Section 3(a)(9) of the Exchange Act and used in Sections 13(d) and 14(d) thereof, including a "group" as defined in Section 13(d) thereof.

2.32 "Restricted Stock" means an Award granted to a Participant pursuant to Article 8 herein.

2.33 "Retirement" shall have the meaning ascribed to such term in the Company's tax-qualified defined benefit retirement plan.

2.34 "Rule 16b-3" means Rule 16b-3 of the regulations promulgated under Section 16 of the Exchange Act, as amended, or any successor rule in effect from time to time.

2.35 "Shares" means the shares of Common Stock of the Company.

2.36 "Stock Appreciation Right" or "SAR" means an Award, granted alone or in connection with a related Option, designated as an SAR, pursuant to the terms of Article 7 herein.

2.37 "Subsidiary" means any corporation, partnership, joint venture, or other entity in which the Company has a majority voting interest.

2.38 "Tandem SAR" means an SAR that is granted in connection with a related Option pursuant to Article 7 herein, the exercise of which shall require forfeiture of the right to purchase a Share under the related Option (and when a Share is purchased under the Option, the Tandem SAR shall similarly be canceled).

Article 3. Administration

3.1 General. Subject to the terms and conditions of the Plan, the Plan shall be administered by the Committee. The members of the Committee shall be appointed by the Board from the Compensation Committee of the Board, and shall serve at the discretion of, the Board of Directors. All members of the Committee shall meet the definition of "nonemployee directors" as defined in 17 C.F.R. ss. 240.16b-3(b)(3)(i) and "outside directors" as defined in Code regulation ss. 1.162-27(e)(3). The Committee shall have the authority to delegate administrative duties to

officers of the Company; provided, that no delegation may be made of all or any part of authority under the Plan to the extent such delegation would result in noncompliance with Rule 16b-3 or Code regulation ss. 1.162-27.

3.2 Authority of the Committee. Except as limited by law or by the articles of incorporation or bylaws of the Company, and subject to the provisions of the Plan herein, the Committee shall have full power to select Employees and Directors who shall participate in the Plan; determine the sizes and types of Awards; determine the terms and conditions of Awards in a manner consistent with the Plan; construe and interpret the Plan and any agreement or instrument entered into under the Plan; establish, amend, or waive rules and regulations for the Plan's administration; and amend the terms and conditions of any outstanding Award as provided in the Plan. Further, the Committee shall make all other determinations that may be necessary or advisable for the administration of the Plan.

3.3 Decisions Binding. All determinations and decisions made by the Committee pursuant to the provisions of the Plan and all related orders and resolutions of the Committee shall be final, conclusive, and binding on all persons, including the Company, its stockholders, Directors, Employees, Participants, and their estates and beneficiaries.

Article 4. Shares Subject to the Plan and Maximum Awards

4.1 Number of Shares Available for Grants. Subject to adjustment as provided in Section 4.2 herein, the number of Shares hereby reserved for issuance to Participants under the Plan shall be one million two hundred thousand (1,200,000), no more than two hundred forty thousand (240,000) of which may be granted in the form of Restricted Shares. Such Share may be authorized but unissued Shares, treasury shares, shares acquired on the open market specifically for distribution under this Plan, or any combination thereof, as the Committee may from time to time determine. The Committee shall determine the appropriate methodology for calculating the number of shares issued pursuant to the Plan. Unless and until the Committee determines that an Award to a Covered Employee shall not be designed to comply with the Performance-Based Exception, the following rules shall apply to grants of such Awards under the Plan:

- (a) Stock Options: The maximum aggregate number of Shares that may be granted in the form of Stock Options, pursuant to any Award granted in any one fiscal year to any one single Participant shall be five hundred thousand (500,000); provided, that the aggregate Fair Market Value (determined as of the time an Incentive Stock Option is granted) of the Common Stock with respect to which Incentive Stock Options are exercisable for the first time during any calendar year shall not exceed \$100,000.
- (b) SARs: . . . The maximum aggregate number of Shares that may be granted in the form of Stock Appreciation Rights, pursuant to any Award granted in any one fiscal year to any one single Participant shall be five hundred thousand (500,000).

- (c) Restricted Stock: The maximum aggregate grant with respect to Awards of Restricted Stock granted in any one fiscal year to any one Participant shall be one hundred thousand (100,000).
- (d) Performance Shares/Performance Units and Cash-Based Awards: The maximum aggregate grant with respect to Awards of Performance Shares made in any one fiscal year to any one Participant shall be equal to the value of fifty thousand (50,000) Shares; the maximum aggregate amount awarded with respect to Cash-Based Awards or Performance Units to any one Participant in any one fiscal year may not exceed Two Million Dollars (\$2,000,000).

4.2 Lapsed Awards and Awards Not Paid in Shares. If any Award granted under this Plan is canceled, terminates, expires, or lapses for any reason, any Shares subject to such Award again shall be available for the grant of an Award under the Plan. Shares received by the Company as payment for an Award (e.g., stock-for-stock exercises), Shares withheld by the Company to satisfy tax withholding and stock-based Awards that are ultimately settled in cash shall be available for grant of future Awards under the Plan.

4.3 Adjustments in Authorized Shares. In the event of any change in corporate capitalization, such as a stock split, or a corporate transaction, such as any merger, consolidation, separation, including a spin-off, or other distribution of stock or property of the Company, any reorganization (whether or not such reorganization comes within the definition of such term in Code Section 368) or any partial or complete liquidation of the Company, such adjustment shall be made in the number and class of Shares that may be delivered under Section 4.1, in the number and class of and/or price of Shares subject to outstanding Awards granted under the Plan, and in the Award limits set forth in subsections 4.1 (a) and 4.1 (b), as may be determined to be appropriate and equitable by the Committee, in its sole discretion, to prevent dilution or enlargement of rights; provided, however, that the number of Shares subject to any Award shall always be a whole number.

Article 5. Eligibility and Participation

5.1 Eligibility. Persons eligible to participate in this Plan include all Employees and Directors.

5.2 Actual Participation. Subject to the provisions of the Plan, the Committee may, from time to time, select from all eligible Employees and Directors, those to whom Awards shall be granted and shall determine the nature and amount of each Award.

Article 6. Stock Options

6.1 Grant of Options. Subject to the terms and provisions of the Plan, Options may be granted to Participants in such number, and upon such terms, and at any time and from time to time as shall be determined by the Committee.

6.2 Award Agreement. Each Option grant shall be evidenced by an Award Agreement that shall specify the Option Price, the duration of the Option, the number of Shares to which the Option pertains, and such other provisions as the Committee shall determine which are not inconsistent with the terms of the Plan. The Award Agreement also shall specify whether the Option is intended to be an ISO within the meaning of Code Section 422, or an NQSO whose grant is intended not to fall under the provisions of Code Section 422.

6.3 Option Price. The Option Price for each grant of an Option under this Plan shall be as determined by the Committee; provided, that the Option Price may in no event be less than the Fair Market Value of the Shares subject to the Option on the date of grant of the Option.

6.4 Duration of Options. Each Option granted to a Participant shall expire at such time as the Committee shall determine at the time of grant; provided, however, that no ISO shall be exercisable later than the tenth (10th) anniversary date of its grant.

6.5 Exercise of Options. Options granted under this Article 6 shall be exercisable at such times and be subject to such restrictions and conditions as the Committee shall in each instance approve, which need not be the same for each grant or for each Participant.

6.6 Payment. Options granted under this Article 6 shall be exercised by the delivery of a written notice of exercise to the Company, setting forth the number of Shares with respect to which the Option is to be exercised, accompanied by full payment for the Shares.

The Option Price upon exercise of any Option shall be payable to the Company in full either: (a) in cash or its equivalent; or (b) by tendering previously acquired Shares having an aggregate Fair Market Value at the time of exercise equal to the total Option Price (provided that the Shares that are tendered must have been held by the Participant for at least six (6) months prior to their tender to satisfy the Option Price); or (c) by a combination of (a) and (b); or (d) any other method approved by the Committee in its sole discretion.

The Committee also may allow cashless exercise as permitted under Federal Reserve Board's Regulation T, subject to applicable securities law restrictions, or by any other means which the Committee determines to be consistent with the Plan's purpose and applicable law.

Subject to any governing rules or regulations or to the provisions of Article 13, as soon as practicable after receipt of a written notification of exercise and full payment, the Company shall deliver to the Participant, in the Participant's name, Share certificates in an appropriate amount based upon the number of Shares purchased under the Option(s).

Unless otherwise determined by the Committee, all payments under all of the methods indicated above shall be paid in United States dollars.

6.7 Restrictions on Share Transferability. The Committee may impose such restrictions on any Shares acquired pursuant to the exercise of an Option granted under this Article 6 as it may deem advisable, including, without limitation, restrictions under applicable federal securities or tax laws, under the requirements of any stock exchange or market upon which such Shares are then listed and/or traded, and under any blue sky or state securities laws applicable to such Shares.

6.8 Termination of Employment/Directorship. Each Participant's Award Agreement shall set forth the extent to which the Participant shall have the right to exercise the Option following termination of the Participant's employment or directorship with the Company. Such provisions shall be determined in the sole discretion of the Committee, shall be included in the Award Agreement entered into with each Participant, need not be uniform among all Options issued pursuant to this Article 6, and may reflect distinctions based on the reasons for termination.

6.9 Nontransferability of Options.

- (a) Incentive Stock Options. No ISO granted under the Plan may be sold, transferred, pledged, assigned, or otherwise alienated or hypothecated, other than by will or by the laws of descent and distribution. Further, all ISOs granted to a Participant under the Plan shall be exercisable during his or her lifetime only by such Participant.
- (b) Nonqualified Stock Options. Except as otherwise provided in a Participant's Award Agreement, no NQSO granted under this Article 6 may be sold, transferred, pledged, assigned, or otherwise alienated or hypothecated, other than by will or by the laws of descent and distribution. Further, except as otherwise provided in a Participant's Award Agreement, all NQSOs granted to a Participant under this Article 6 shall be exercisable during his or her lifetime only by such Participant.

6.10 No Cancellation and Reissuance of Options. In no event shall the Board or the Committee permit the repricing of Options by any method, including by cancellation and reissuance.

Article 7. Stock Appreciation Rights

7.1 Grant of SARs. Subject to the terms and conditions of the Plan, SARs may be granted to Participants at any time and from time to time as shall be determined by the Committee. The Committee may grant Freestanding SARs, Tandem SARs, or any combination of these forms of SAR.

Subject to the terms and conditions of the Plan, the Committee shall have complete discretion in determining the number of SARs granted to each Participant and, consistent with

the provisions of the Plan, in determining the terms and conditions pertaining to such SARs.

The grant price of a Freestanding SAR shall equal the Fair Market Value of a Share on the date of grant of the SAR. The grant price of Tandem SARs shall equal the Option Price of the related Option.

7.2 SAR Agreement. Each SAR grant shall be evidenced by an Award Agreement that shall specify the grant price, the term of the SAR, and such other provisions as the Committee shall determine.

7.3 Term of SARs. The term of an SAR granted under the Plan shall be determined by the Committee, in its sole discretion.

7.4 Exercise of Freestanding SARs. Freestanding SARs may be exercised upon whatever terms and conditions the Committee, in its sole discretion, imposes upon them.

7.5 Exercise of Tandem SARs. Tandem SARs may be exercised for all or part of the Shares subject to the related Option upon the surrender of the right to exercise the equivalent portion of the related Option. A Tandem SAR may be exercised only with respect to the Shares for which its related Option is then exercisable.

Notwithstanding any other provision of this Plan to the contrary, with respect to a Tandem SAR granted in connection with an ISO: (a) the Tandem SAR will expire no later than the expiration of the underlying ISO; (b) the value of the payout with respect to the Tandem SAR may be for no more than one hundred percent (100%) of the difference between the Option Price of the underlying ISO and the Fair Market Value of the Shares subject to the underlying ISO at the time the Tandem SAR is exercised; and (c) the Tandem SAR may be exercised only when the Fair Market Value of the Shares subject to the ISO exceeds the Option Price of the ISO.

7.6 Payment of SAR Amount. Upon exercise of an SAR, a Participant shall be entitled to receive payment from the Company in an amount determined by multiplying:

- (a) The difference between the Fair Market Value of a Share on the date of exercise over the grant price; by
- (b) The number of Shares with respect to which the SAR is exercised.

At the discretion of the Committee, the payment upon SAR exercise may be in cash, in Shares of equivalent value, in some combination thereof, or in any other manner approved by the Committee at its sole discretion. The Committee's determination regarding the form of SAR payout shall be set forth in the Award Agreement pertaining to the grant of the SAR.

7.7 Termination of Employment/Directorship. Each Award Agreement shall set forth the extent to which the Participant shall have the right to exercise the SAR following termination of the Participant's employment or directorship with the Company, its Affiliates,

and/or its subsidiaries, as the case may be. Such provisions shall be determined in the sole discretion of the Committee, shall be included in the Award Agreement entered into with Participants, need not be uniform among all SARs issued pursuant to the Plan, and may reflect distinctions based on the reasons for termination.

7.8 Nontransferability of SARs. Except as otherwise provided in a Participant's Award Agreement, no SAR granted under the Plan may be sold, transferred, pledged, assigned, or otherwise alienated or hypothecated, other than by will or by the laws of descent and distribution. Further, except as otherwise provided in a Participant's Award Agreement, all SARs granted to a Participant under the Plan shall be exercisable during his or her lifetime only by such Participant.

Article 8. Restricted Stock

8.1 Grant of Restricted Stock. Subject to the terms and provisions of the Plan, the Committee, at any time and from time to time, may grant Shares of Restricted Stock to Participants in such amounts as the Committee shall determine.

8.2 Restricted Stock Agreement. Each Restricted Stock grant shall be evidenced by a Restricted Stock Award Agreement that shall specify the Period(s) of Restriction, the number of Shares of Restricted Stock granted, and such other provisions as the Committee shall determine.

8.3 Transferability. Except as provided in this Article 8, the Shares of Restricted Stock granted herein may not be sold, transferred, pledged, assigned, or otherwise alienated or hypothecated until the end of the applicable Period of Restriction established by the Committee and specified in the Restricted Stock Award Agreement, or upon earlier satisfaction of any other conditions, as specified by the Committee in its sole discretion and set forth in the Restricted Stock Award Agreement. All rights with respect to the Restricted Stock granted to a Participant under the Plan shall be available during his or her lifetime only to such Participant.

8.4 Other Restrictions. The Committee shall impose such other conditions and/or restrictions on any Shares of Restricted Stock granted pursuant to the Plan as it may deem advisable including, without limitation, a requirement that Participants pay a stipulated purchase price for each Share of Restricted Stock, restrictions based upon the achievement of specific performance goals, time-based restrictions on vesting following the attainment of the performance goals, time-based restrictions, and/or restrictions under applicable federal or state securities laws.

To the extent deemed appropriate by the Committee, the Company may retain the certificates representing Shares of Restricted Stock in the Company's possession until such time as all conditions and/or restrictions applicable to such Shares have been satisfied.

Except as otherwise provided in this Article 8, Shares of Restricted Stock covered by each Restricted Stock grant made under the Plan shall become freely transferable by the

Participant after the last day of the applicable Period of Restriction.

8.5 Voting Rights. If the Committee so determines, Participants holding Shares of Restricted Stock granted hereunder may be granted the right to exercise full voting rights with respect to those Shares during the Period of Restriction.

8.6 Dividends and Other Distributions. During the Period of Restriction, Participants holding Shares of Restricted Stock granted hereunder may, if the Committee so determines, be credited with dividends paid with respect to the underlying Shares while they are so held. The Committee may apply any restrictions to the dividends that the Committee deems appropriate. Without limiting the generality of the preceding sentence, if the grant or vesting of Restricted Shares granted to a Covered Employee is designed to comply with the requirements of the Performance-Based Exception, the Committee may apply any restrictions it deems appropriate to the payment of dividends declared with respect to such Restricted Shares, such that the dividends and/or the Restricted Shares maintain eligibility for the Performance-Based Exception.

8.7 Termination of Employment/Directorship. Each Award Agreement shall set forth the extent to which the Participant shall have the right to receive unvested Restricted Shares following termination of the Participant's employment or directorship with the Company. Such provisions shall be determined in the sole discretion of the Committee, shall be included in the Award Agreement entered into with each Participant, need not be uniform among all Shares of Restricted Stock issued pursuant to the Plan, and may reflect distinctions based on the reasons for termination.

Article 9. Performance Units, Performance Shares, and Cash-Based Awards

9.1 Grant of Performance Units/Shares and Cash-Based Awards. Subject to the terms of the Plan, Performance Units, Performance Shares, and/or Cash-Based Awards may be granted to Participants in such amounts and upon such terms, and at any time and from time to time, as shall be determined by the Committee.

9.2 Value of Performance Units/Shares and Cash-Based Awards. Each Performance Unit shall have an initial value that is established by the Committee at the time of grant. Each Performance Share shall have an initial value equal to the Fair Market Value of a Share on the date of grant. Each Cash-Based Award shall have a value as may be determined by the Committee. The Committee shall set performance goals in its discretion which, depending on the extent to which they are met, will determine the number and/or value of Performance Units/Shares and Cash-Based Awards that will be paid out to the Participant. For purposes of this Article 9, the time period during which the performance goals must be met shall be called a "Performance Period."

9.3 Earning of Performance Units/Shares and Cash-Based Awards. Subject to the terms of this Plan, after the applicable Performance Period has ended, the holder of

Performance Units/Shares and Cash-Based Awards shall be entitled to receive payout on the number and value of Performance Units/Shares and Cash-Based Awards earned by the Participant over the Performance Period, to be determined as a function of the extent to which the corresponding performance goals have been achieved.

9.4 Form and Timing of Payment of Performance Units/Shares and Cash-Based Awards.

Payment of earned Performance Units/Shares and Cash-Based Awards shall be as determined by the Committee and as evidenced in the Award Agreement. Subject to the terms of the Plan, the Committee, in its sole discretion, may pay earned Performance Units/Shares and Cash-Based Awards in the form of cash or in Shares (or in a combination thereof) that have an aggregate Fair Market Value equal to the value of the earned Performance Units/Shares and Cash-Based Awards at the close of the applicable Performance Period. Such Shares may be granted subject to any restrictions deemed appropriate by the Committee. The determination of the Committee with respect to the form of payout of such Awards shall be set forth in the Award Agreement pertaining to the grant of the Award.

At the discretion of the Committee, Participants holding Performance Units/Shares may be entitled to receive dividend units with respect to dividends declared with respect to the Shares. Such dividends may be subject to the same accrual, forfeiture, and payout restrictions as apply to dividends earned with respect to Shares of Restricted Stock, as set forth in Section 8.6 herein, as determined by the Committee.

9.5 Termination of Employment/Directorship. In the event the employment or directorship terminates for any reason, including by reason of death, Disability, or Retirement, all Performance Units/Shares and Cash-Based Awards shall be forfeited by the Participant to the Company unless determined otherwise by the Committee, as set forth in the Participant's Award Agreement.

9.6 Nontransferability. Except as otherwise provided in a Participant's Award Agreement, Performance Units/Shares and Cash-Based Awards may not be sold, transferred, pledged, assigned, or other-wise alienated or hypothecated, other than by will or by the laws of descent and distribution. Further, except as otherwise provided in a Participant's Award Agreement, a Participant's rights under the Plan shall be exercisable during the Participant's lifetime only by the Participant.

Article 10. Other Awards

The Committee shall have the right to grant other Awards which may include, without limitation, the grant of shares based on attainment of performance goals established by the Committee, the payment of Shares in lieu of cash or cash based on attainment of performance goals established by the Committee, and the payment of Shares in lieu of cash under other Company incentive or bonus programs. Payment under or settlement of any such Awards shall be made in such manner and at such times as the Committee may determine.

Article 11. Performance Measures

Unless and until the Committee proposes for shareholder vote and shareholders approve a change in the general performance measures set forth in this Article 11, the attainment of which may determine the degree of payout and/or vesting with respect to Awards to Covered Employees that are designed to qualify for the Performance-Based Exception, the performance measure(s) to be used for purposes of such grants shall be based upon one or more of the following performance based criteria, either on a Company-specific basis or in comparison with peer group performance:

- (a) Earnings per share;
- (b) Net income (before or after taxes);
- (c) Return measures (including, but not limited to, return on assets, equity, or sales);
- (d) Cash flow (including, but not limited to, operating cash flow and free cash flow);
- (e) Cash flow return on investments, which equals net cash flows divided by owner's equity;
- (f) Earnings before or after taxes, interest, depreciation and/or amortization;
- (g) Internal rate of return or increase in net present value;
- (h) Dividends paid;
- (i) Gross revenues;
- (j) Gross margins;
- (k) Share price performance (including, but not limited to, growth measures and total shareholder return);
- (l) Customer satisfaction measures; and
- (m) Price earnings ratio.

The Committee in its sole discretion shall have the ability to set such performance measures at the corporate level or the business unit level.

The Committee may exclude various items and occurrences from business results before determining Awards under the Plan. To the extent such exclusions affect Awards to executives covered by Section 162(m), they will be prescribed in resolutions that meet the requirements of Section 162(m) for deductibility.

Notwithstanding anything contained herein, Awards that are designed to qualify for the Performance-Based Exception, and that are held by Covered Employees, may not be adjusted upward (the Committee shall retain the discretion to adjust such Awards downward).

In the event that applicable tax and/or securities laws change to permit Committee discretion to alter the governing performance measures without obtaining shareholder approval of such changes, the Committee shall have sole discretion to make such changes without obtaining shareholder approval. In addition, in the event that the Committee determines that it is

advisable to grant Awards that shall not qualify for the Performance-Based Exception, the Committee may make such grants without satisfying the requirements of Code Section 162(m). No payment for Awards that are designed to qualify for the Performance-Based Exception shall be paid until the Committee certifies in writing that the performance goals and all material terms of the Award were in fact satisfied. Approved minutes of the Committee meeting in which the certification is made shall be treated as a written certification.

Article 12. Beneficiary Designation

Each Participant under the Plan may, from time to time, name any beneficiary or beneficiaries (who may be named contingently or successively) to whom any benefit under the Plan is to be paid in case of his or her death before he or she receives any or all of such benefit. Each such designation shall revoke all prior designations by the same Participant, shall be in a form prescribed by the Company, and will be effective only when filed by the Participant in writing with the Company during the Participant's lifetime. In the absence of any such designation, benefits remaining unpaid at the Participant's death shall be paid to the Participant's estate.

Article 13. Deferrals

The Committee may permit or require a Participant to defer such Participant's receipt of the payment of cash or the delivery of Shares that would otherwise be due to such Participant by virtue of the exercise of an Option or SAR, the lapse or waiver of restrictions with respect to Restricted Stock, or the satisfaction of any requirements or goals with respect to Performance Units/Shares and Cash-Based Awards. If any such deferral election is required or permitted, the Committee shall, in its sole discretion, establish rules and procedures for such payment deferrals.

Article 14. Rights of Employees/Directors

14.1 Employment. Nothing in the Plan shall interfere with or limit in any way the right of the Company to terminate any Participant's employment at any time, nor confer upon any Participant any right to continue in the employ of the Company, or any right in any Director to be retained in the service of the Company.

14.2 Participation. No Employee or Director shall have the right to be selected to receive an Award under this Plan, or, having been so selected, to be selected to receive a future Award.

14.3 Rights as a Stockholder. A Participant shall have none of the rights of a shareholder with respect to shares of Common Stock covered by any Award until the Participant becomes the record holder of such shares.

Article 15. Change in Control

15.1 Treatment of Outstanding Awards. Upon the occurrence of a Change in Control, unless otherwise specifically prohibited under applicable laws, or by the rules and regulations of any governing governmental agencies or national securities exchanges, or unless the Committee shall determine otherwise in the Award Agreement:

- (a) Any and all Options and SARs granted hereunder shall become immediately exercisable, and shall remain exercisable throughout their entire term;
- (b) Any restriction periods and restrictions imposed on Restricted Shares that are not performance-based shall lapse; and
- (c) The target payout opportunities attainable under all outstanding Awards of performance-based Restricted Stock, Performance Units, Performance Shares, and Cash-Based Awards shall be deemed to have been fully earned for the entire Performance Period(s) as of the effective date of the Change in Control. The vesting of all Awards denominated in Shares shall be accelerated as of the effective date of the Change in Control, and there shall be paid out to Participants within thirty (30) days following the effective date of the Change in Control a pro rata number of shares based upon an assumed achievement of all relevant targeted performance goals and upon the length of time within the Performance Period that has elapsed prior to the Change in Control. Awards denominated in cash shall be paid pro rata to participants in cash within thirty (30) days following the effective date of the Change in Control, with the proration determined as a function of the length of time within the Performance Period that has elapsed prior to the Change in Control, and based on an assumed achievement of all relevant targeted performance goals.

15.2 Termination, Amendment, and Modifications of Change-in-Control Provisions.

Notwithstanding any other provision of this Plan (but subject to the limitations of Section 16.3 hereof) or any Award Agreement provision, the provisions of this Article 15 may not be terminated, amended, or modified on or after the date of a Change in Control to affect adversely any Award theretofore granted under the Plan without the prior written consent of the Participant with respect to said Participant's outstanding Awards; provided, however, the Board may terminate, amend, or modify this Article 15 at any time and from time to time prior to the date of a Change in Control.

14.3 Pooling of Interests Accounting. Notwithstanding any other provision of the Plan to the contrary, in the event that the consummation of a Change in Control is contingent on using pooling of interests accounting methodology, the Board may take any action necessary to preserve the use of pooling of interests accounting.

Article 16. Amendment, Modification, Termination and Bifurcation

16.1 Amendment, Modification, and Termination. Subject to the terms of the Plan, the Committee may at any time and from time to time, alter, amend, suspend, or terminate the Plan in whole or in part; provided, that no such amendment shall be made without the approval of the Company shareholders (a) that would increase the number of Shares available for issuance in accordance with the Plan; or (b) if such approval is required, (i) to comply with Section 422 of the Code with respect to Incentive Stock Options; or (ii) for purposes of Section 162(m) of the Code.

16.2 Adjustment of Awards Upon the Occurrence of Certain Unusual or Nonrecurring Events.

The Committee may make adjustments in the terms and conditions of, and the criteria included Awards in recognition of unusual or nonrecurring events (including, without limitation, the events described in Section 4.3 hereof) affecting the Company or the financial statements of the Company or of changes in applicable laws, regulations, or accounting principles, whenever the Committee determines that such adjustments are appropriate in order to prevent dilution or enlargement of the benefits or potential benefits intended to be made available under the Plan; provided that, no such adjustment shall be authorized to the extent that such authority would be inconsistent with the Plan's or any Award's meeting the requirements of Section 162(m) of the Code, as from time to time amended.

16.3 Awards Previously Granted. Notwithstanding any other provision of the Plan to the contrary (but subject to Section 15.2 hereof), no termination, amendment, or modification of the Plan shall adversely affect in any material way any Award previously granted under the Plan, without the written consent of the Participant holding such Award.

16.4 Compliance with Code Section 162(m). At all times when Code Section 162(m) is applicable, all Awards granted under this Plan to Employees who are or could reasonably become Covered Employees as determined by the Committee shall comply with the requirements of Code Section 162(m); provided, however, that in the event the Committee determines at the time it makes an Award or Award(s) available for grant under the Plan that such compliance is not desired with respect to any Award or Awards available for grant under the Plan, then compliance with Code Section 162(m) will not be required. In addition, in the event that changes are made to Code Section 162(m) to permit greater flexibility with respect to any Award or Awards available under the Plan, the Committee may, subject to this Article 16, make any adjustments it deems appropriate.

16.5 Bifurcation of the Plan. Notwithstanding anything in the Plan to the contrary, the Committee, in its sole discretion, may bifurcate the Plan so as to restrict, limit or condition the use of any provision of the Plan to Participants who are subject to Section 16 of the Exchange Act without so restricting, limiting, or conditioning the Plan with respect to other Participants.

Article 17. Withholding

17.1 Tax Withholding. The Company shall have the power and the right to deduct or withhold, or require a Participant to remit to the Company, an amount sufficient to satisfy Federal, state, and local taxes, domestic or foreign, required by law or regulation to be withheld with respect to any taxable event arising as a result of this Plan.

17.2 Share Withholding. With respect to withholding required upon the exercise of Options or SARs, upon the lapse of restrictions on Restricted Stock, or upon any other taxable event arising as a result of Awards granted hereunder, Participants may elect, subject to the approval of the Board, to satisfy the withholding requirement, in whole or in part, by having the Company withhold Shares having a Fair Market Value on the date the tax is to be determined equal to the minimum statutory total tax that could be imposed on the transaction. All such elections shall be irrevocable, made in writing, signed by the Participant, and shall be subject to any restrictions or limitations that the Committee, in its sole discretion, deems appropriate.

Article 18. Indemnification

Each person who is or shall have been a member of the Committee, or of the Board, shall be indemnified and held harmless by the Company against and from any loss, cost, liability, or expense that may be imposed upon or reasonably incurred by him or her in connection with or resulting from any claim, action, suit, or proceeding to which he or she may be a party or in which he or she may be involved by reason of any action taken or failure to act under the Plan and against and from any and all amounts paid by him or her in settlement thereof, with the Company's approval, or paid by him or her in satisfaction of any judgment in any such action, suit, or proceeding against him or her, provided he or she shall give the Company an opportunity, at its own expense, to handle and defend the same before he or she undertakes to handle and defend it on his or her own behalf. The foregoing right of indemnification shall not be exclusive of any other rights of indemnification to which such persons may be entitled under the Company's articles of incorporation or bylaws, as a matter of law, or otherwise, or any power that the Company may have to indemnify them or hold them harmless.

Article 19. Successors

All obligations of the Company under the Plan with respect to Awards granted hereunder shall be binding on any successor to the Company, whether the existence of such successor is the result of a direct or indirect purchase, merger, consolidation, or otherwise, of all or substantially all of the business and/or assets of the Company.

Article 20. General Provisions

20.1 Gender and Number. Except where otherwise indicated by the context, any masculine term used herein also shall include the feminine; the plural shall include the singular and the singular shall include the plural.

20.2 Severability. In the event any provision of the Plan shall be held illegal or invalid for any reason, the illegality or invalidity shall not affect the remaining parts of the Plan, and the Plan shall be construed and enforced as if the illegal or invalid provision had not been included.

20.3 Requirements of Law. The granting of Awards and the issuance of Shares under the Plan shall be subject to all applicable laws, rules, and regulations, and to such approvals by any governmental agencies or national securities exchanges as may be required.

20.4 Securities Law Compliance. With respect to Insiders, transactions under this Plan are intended to comply with all applicable conditions of Rule 16b-3 or its successors under the 1934 Act., unless determined otherwise by the Committee. To the extent any provision of the Plan or action by the Committee fails to so comply, it shall be deemed null and void, to the extent permitted by law and deemed advisable by the Committee. All grants and exercises of Options and other Awards under the Plan shall be executed in accordance with the requirements of Section 16 of the Exchange Act, as amended and any regulations promulgated thereunder. To the extent that any of the provisions contained herein do not conform with Rule 16b-3 of the Act or any amendments thereto, or any successor regulation, then the Committee may make such modifications so as to conform the Plan and any Options or other Awards granted hereunder to the Rules requirements, except only such modifications as to a Performance-Based Exception as may be prohibited by Code regulation ss. 1.162-27.

20.5 Listing. The Company may use reasonable endeavors to register Shares allotted pursuant to the exercise of an Option with the United States Securities and Exchange Commission or to the effect compliance with the registration, qualification, and listing requirements of any national securities laws, stock exchange, or automated quotation system.

20.6 Delivery of Title. The Company shall have no obligation to issue or deliver evidence of title for shares of Shares under the Plan prior to:

- (a) Obtaining any approvals from governmental agencies that the Company determines are necessary or advisable; and
- (b) Completion of any registration or other qualification of the Shares under any applicable national or foreign law or ruling of any governmental body that the Company determines to be necessary or advisable.

20.7 Investment Representations. As a condition to the exercise of an Option, the Company may require the person exercising such Option to represent and warrant at the time of any such exercise that the Shares are being purchased only for investment and without any present intention to sell or distribute such Shares if, in the opinion of counsel for the Company, such a representation is required.

20.8 No Additional Rights. Nothing in the Plan shall interfere with or limit in any way the right of the Company to terminate any Participant's employment at any time, or confer upon any Participant any right to continue in the employ of the Company, or upon any Director the right to continue in service with the Company.

20.9 Uncertificated Shares. To the extent that the Plan provides for issuance of certificates to reflect the transfer of Shares, the transfer of such Shares may be effected on a non-certificated basis, to the extent not prohibited by applicable law or the rules of any stock exchange.

20.10 Unfunded Status of the Plan. The Plan is intended to constitute an "unfunded" Plan. With respect to any payments or deliveries of Shares not yet made to a Participant by the Company, nothing contained herein shall give any rights that are greater than those of a general creditor of the Company.

20.11 Governing Law. The Plan and each Award Agreement shall be governed by the laws of the state of South Dakota, excluding any conflicts or choice of law rule or principle that might otherwise refer construction or interpretation of the Plan to the substantive law of another jurisdiction. Unless otherwise provided in the Award Agreement, recipients of an Award under the Plan are deemed to submit to the exclusive jurisdiction and venue of the federal or state courts of South Dakota, to resolve any and all issues that may arise out of or relate to the Plan or any related Award Agreement.

BLACK HILLS CORPORATION

ACTIVE WHOLLY OWNED DIRECT AND INDIRECT SUBSIDIARIES

Acquisition Partners, LP, a New York limited partnership
 Adirondack Hydro - Fourth Branch, LLC, a New York limited liability company
 Adirondack Hydro Development Corporation, a Delaware corporation
 Adirondack Operating Services, LLC, a New York limited liability company
 Black Hills Coal Network, Inc., a South Dakota corporation
 Black Hills Colorado, LLC, a Delaware limited liability company
 Black Hills Energy Capital, Inc., a Delaware corporation
 Black Hills Energy Inc., a South Dakota corporation
 Black Hills Energy Pipeline, LLC, a Delaware limited liability company
 Black Hills Energy Resources, Inc., a South Dakota corporation
 Black Hills Energy Terminal, LLC, a South Dakota limited liability company
 Black Hills Exploration and Production, Inc., a Wyoming corporation
 Black Hills Fiber Systems, Inc., a South Dakota corporation
 Black Hills FiberCom, LLC, a South Dakota limited liability company
 Black Hills Fountain Valley, LLC, a Delaware limited liability company
 Black Hills Generation, Inc., a Wyoming corporation
 Black Hills Idaho Operations, LLC, a Delaware limited liability company
 Black Hills Long Beach, Inc., a Delaware corporation
 Black Hills Millennium Pipeline, Inc., a South Dakota corporation
 Black Hills Millennium Terminal, Inc., a South Dakota corporation

1

Black Hills Nevada Operations, LLC, a Delaware limited liability company
 Black Hills Nevada Real Estate Holdings, LLC, a Delaware limited liability company
 Black Hills Nevada, LLC, a Delaware limited liability company
 Black Hills North America, Inc., a Delaware corporation
 Black Hills Power, Inc., a South Dakota corporation
 Black Hills Southwest, LLC, a Delaware limited liability company
 Black Hills Valmont Colorado, Inc., a Delaware corporation
 Daksoft, Inc., a South Dakota corporation
 E NextA Equipment Leasing Company, LLC, a Delaware limited liability company
 EIF Investors, Inc., a Delaware corporation
 Enserco Energy, Inc., a South Dakota corporation
 Fountain Valley Power, LLC, a Delaware limited liability company
 Hudson Falls, LLC, a New York limited liability company
 Landrica Development Company, a South Dakota corporation
 Las Vegas Cogeneration Energy Financing Company, LLC, a Delaware limited liability company
 Las Vegas Cogeneration II, LLC, a Delaware limited liability company
 Middle Falls Corporation, a New York Corporation
 Middle Falls II, LLC, a New York limited liability company
 NHP, LP, a New York limited partnership
 North American Funding, LLC, a Delaware limited liability company
 NYSD Limited Partnership, a New York limited partnership
 NYSD Partners, LLC, a New York limited liability company

Sissonville Corporation, a New York corporation

Sissonville II, LLC, a New York limited liability company

Sissonville Limited Partners, LLC, a New York limited liability company

Sissonville Limited Partnership, a New York limited partnership

South Glens Falls, LLC, a Delaware limited liability company

State Dam Corporation, a New York corporation

State Dam II, LLC, a New York limited liability company

Sunco Ltd., LLC, a Nevada limited liability company

Warrensburg Corporation, a New York corporation

Warrensburg Hydro Power Limited Partnership, a New York limited partnership

Warrensburg II Corporation, a New York corporation

Wyodak Resources Development Corp., a Delaware corporation

CONSENT OF INDEPENDENT PUBLIC ACCOUNTANTS

As independent public accountants, we hereby consent to the incorporation of our report dated March 22, 2002 included or in this Form 10-K, into the Company's previously filed Registration Statements, File Numbers 33-71130, 33-63059, 333-17451, 333-61969, 333-82787, 333-30272 and 333-63264.

Arthur Andersen LLP

Minneapolis, Minnesota,
March 25, 2002

CONSENT OF INDEPENDENT PETROLEUM ENGINEER AND GEOLOGIST

As petroleum engineers, we hereby consent to the inclusion of the information included in this Form 10-K with respect to the oil and gas reserves of Black Hills Exploration and Production, Inc., the future net revenues from such reserves, and the present value thereof, which information has been included in this Form 10-K in reliance upon the report of this firm and upon the authority of this firm as experts in petroleum engineering. We hereby further consent to all references to our firm included in this Form 10-K and to the incorporation by reference in the Registration Statements on Form S-8 Nos. 33-63059, 333-61969, 333-17451, 333-82787, 333-30272 and 333-63264 and the Registration Statement on Form S-3, No. 33-71130.

RALPH E. DAVIS ASSOCIATES, INC.

/s/ Ralph E. Davis Associates, Inc.

March 22, 2002

by and between

TLS Investors, L.L.C.

and

Black Hills Energy Capital, Inc.

June 18, 2001

Table of Contents

	Page
ARTICLE 1	Certain Definitions.....1
1.1	Certain Defined Terms.....1
1.2	References, Gender, Number.....9
ARTICLE 2	Purchase and Sale.....9
ARTICLE 3	Purchase Price and Payment.....9
3.1	Purchase Price.....9
3.2	Payment.....10
3.3	Closing Statement.....10
3.4	Post-Closing Adjustment to the Purchase Price.....10
3.5	Allocation of Purchase Price.....11
ARTICLE 4	Representations and Warranties.....12
4.1	Representations and Warranties of Seller.....12
4.2	Representations and Warranties of Buyer.....21
ARTICLE 5	Access and Confidentiality.....23
5.1	General Access.....23
5.2	Confidential Information.....24
5.3	No Other Contract.....24
ARTICLE 6	Tax Matters.....24
6.1	Preparation.....24
6.2	Access to Information.....24
6.3	Transfer Taxes.....25
6.4	Tax Sharing Agreements.....25
6.5	Assistance and Cooperation.....25
6.6	Tax Indemnity.....25
6.7	Tax Indemnity Claims.....26
6.8	Tax Refunds.....26
ARTICLE 7	Covenants of Seller and Buyer.....27
7.1	Conduct of Business Pending Closing.....27
7.2	Qualifications on Conduct.....31
7.3	Public Announcements.....32

7.4	Actions by Parties.....	32
7.5	Supplements to Schedules.....	32
7.6	Further Assurances.....	32
7.7	Records.....	32
7.8	Assumption of Obligations of SWP and any Subsidiary.....	33
7.9	Regulatory and Other Authorizations and Consents.....	33
7.10	Fees and Expenses.....	35
7.11	Excluded Assets.....	35
7.12	Guarantees and Other Affiliate Contracts.....	36
7.13	Use of Enron Marks.....	36
7.14	Insurance.....	36
7.15	Lending Matters.....	37
ARTICLE 8	Closing Conditions.....	37
8.1	Seller's Closing Conditions.....	37
8.2	Buyer's Closing Conditions.....	38
ARTICLE 9	Closing.....	39
9.1	Closing.....	39
9.2	Seller's Closing Obligations.....	39
9.3	Buyer's Closing Obligations.....	40
ARTICLE 10	Limitations.....	40
10.1	Buyer's Review.....	40
10.2	Disclaimer of Warranties.....	41
10.3	Waiver of Damages.....	42
ARTICLE 11	Indemnification.....	42
11.1	Indemnification By Seller.....	42
11.2	Indemnification By Buyer.....	42
11.3	Limitations on Indemnity.....	43
11.4	Third Party Claims.....	43
11.5	Survival and Time Limitation.....	44
11.6	Sole and Exclusive Remedy.....	44

11.7	Compliance with Express Negligence Rule.....	45
ARTICLE 12	Termination and Remedies.....	45
12.1	Termination.....	45
12.2	Remedies.....	45
ARTICLE 13	Other Provisions.....	46
13.1	Counterparts.....	46
13.2	Governing Law.....	46
13.3	Arbitration.....	46
13.4	Entire Agreement.....	47
13.5	Notices.....	47
13.6	Successors and Assigns.....	48
13.7	Amendments and Waivers.....	48
13.8	Schedules and Exhibits.....	49
13.9	Interpretation and Rules of Construction.....	49
13.10	Agreement for the Parties' Benefit Only.....	49
13.11	Attorneys' Fees.....	50
13.12	Severability.....	50
13.13	Time of Essence.....	50
13.14	Bulk Sales or Transfer Laws.....	50
ARTICLE 14	Letter of Credit; GUARANTY BY BKH.....	50
14.1	Letter of Credit.....	50
14.2	Guaranty by BKH.....	51
14.3	Effect of Failure to Deliver Letter of Credit or Guaranty.....	51

PURCHASE AND SALE AGREEMENT

THIS PURCHASE AND SALE AGREEMENT (this "Agreement"), dated as of June 18, 2001, is by and between TLS Investors, L.L.C., a Delaware limited liability company ("Seller"), and Black Hills Energy Capital, Inc. ("Buyer") a Delaware corporation. Seller and Buyer are sometimes referred to herein individually as a "Party" and collectively as the "Parties."

Recitals:

A. Seller desires to sell, or cause to be sold, to Buyer, and Buyer desires to purchase, all of the issued and outstanding member interests the "LLC Interests") of Southwest Power, L.L.C., a Delaware limited liability company ("SWP"), upon the terms and subject to the conditions set forth in this Agreement; and

B. In order to maintain the QF status of the Operating Facility, at the Closing, Buyer will transfer no less than one-half of all of the issued and outstanding member interests of the owners of the general and limited partnership interests in the Operating Facility to one or more third parties that are not electric utilities or electric utility holding companies and are not affiliated or associated with electric utilities or electric utility holding companies.

NOW, THEREFORE, in consideration of the mutual covenants and agreements set forth in this Agreement, the Parties agree as follows:

ARTICLE 1
Certain Definitions

1.1 Certain Defined Terms.

As used in this Agreement, the following terms have the respective meanings set forth below or set forth in the Sections referred to below:

"Action" means any action, suit, investigation, proceeding, condemnation, or audit by or before any court or other Governmental Authority or any arbitration proceeding.

"Additional Project Agreement" is defined in Section 7.1(b)(iii).

"Adjusted Purchase Price" is defined in Section 3.1.

"Affiliate" means, as to the Person specified, any Person controlling, controlled by or under common control with such specified Person. The concept of control, controlling or controlled as used in the aforesaid context means the possession, directly or indirectly, of the power to direct or cause the direction of the management and policies of another, whether through the ownership of voting securities, by contract or otherwise. No Person shall be deemed an Affiliate of any Person by reason of the exercise or existence of rights, interests, or remedies under this Agreement.

"Agreement" is defined in the preamble.

"Allegheny" means Allegheny Energy Supply Company, L.L.C., a Delaware limited liability company.

"Assignment and Assumption Agreements" means the Assignment and Assumption Agreements, each in substantially the form attached hereto as Exhibit 9.2, pursuant to which the LLC Interests shall be conveyed to Buyer.

"BKH" means Black Hills Corporation, a South Dakota corporation and the parent corporation of Buyer.

"BKH Guaranty" is defined in Section 14.2.

"Bridge Loan" is defined in Section 3.2.

"Business" with respect to SWP, means the business and operations of SWP related to the Operating Facility and the Development Project.

"Business Day" means any day which is not a Saturday, Sunday, or legal holiday recognized by the United States of America.

"Buyer" is defined in the preamble.

"Buyer Indemnified Party" and "Buyer Indemnified Parties" are defined in Section 11.1.

"Buyer's Construction Representative" is defined in Section 7.1(c).

"Closing" is defined in Section 9.1.

"Closing Date" means the later to occur of either (i) the first Business Day after the conditions in Section 8.1 and Section 8.2 are either satisfied or waived by the Party entitled to waive such condition, or (ii) August 31, 2001, or such other date as may be mutually agreed to by Seller and Buyer.

"Closing Payment" is defined in Section 3.2.

"Closing Statement" is defined in Section 3.3.

"Closing Statement Arbitrator" is defined in Section 3.4(b).

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

"Confidentiality Agreement" is defined in Section 5.2.

"Damage Award" is defined in Section 14.1.

"Deductible Amount" means \$500,000.

"Development Budget" means the budget for development and construction of the Development Project set forth in Exhibit B.

"Development Expenses" means any and all costs, expenses or liabilities incurred, paid or performed by Seller, SWP or any Subsidiary in connection with the development, permitting or construction of the Development Project in accordance with Seller Practice, including, without limitation, expenditures for equipment, consultants, contractors, permits, deposits, lease payments and finance costs.

"Development Project" means the 222 (nominal) megawatt, natural gas fired electrical generating facility currently under development by a Subsidiary on the Development Project Site.

"Development Project Activities" is defined in Section 7.1(b)(i).

"Development Project Site" means the site of the Development Project more fully described in Part I of Exhibit A.

"Dispute" is defined in Section 13.3.

"Dollar," "Dollars" and "\$" mean United States dollars.

"Effective Date" means the date first written above.

"Enron Marks" means the name "Enron" and other trademarks, service marks, and trade names owned by Seller and its Affiliates.

"Environmental Claim" means any claim by (i) any Governmental Authority for enforcement, cleanup, removal, response, remedial or other actions or damages pursuant to any applicable Environmental Law, and (ii) any other Person seeking damages, contribution, indemnification, cost recovery, compensation or injunctive relief (A) resulting from the presence or disposal of Hazardous Materials off-site or at the Operating Facility or Development Project Site or (B) otherwise arising under or related to Environmental Laws.

"Environmental Law" means all Laws, as existing as of the date of this Agreement, relating to (i) the control of any pollutant, or protection of the air, water, or land, (ii) solid, gaseous or liquid waste generation, handling, treatment, storage, disposal or transportation, and (iii) exposure to hazardous, toxic or other harmful substances. "Environmental Laws" shall include, but not be limited to, the Clean Air Act, 42 U.S.C.ss.7401 et seq., the Resource Conservation Recovery Act, 42 U.S.C.ss.6901 et seq., the Federal Water Pollution Control Act, 33 U.S.C.ss.1251 et seq., the Safe Drinking Water Act, 42 U.S.C.ss.300f et seq., and the Comprehensive Environmental Response, Compensation, and Liability Act, as amended by the Superfund Amendments and Reauthorization Act, 42 U.S.C.ss.9601 et seq.

"EPC Contract" means the Engineering, Procurement and Construction Contract between Las Vegas Cogeneration II, L.L.C. and Modern Continental South, Inc., dated as of March 29, 2001.

"ERISA" means the Employee Retirement Income Security Act of 1974, as amended, and the regulations promulgated thereunder.

"Estimated Adjusted Purchase Price" is defined in Section 3.3.

"Excluded Assets" is defined in Section 7.11

"FERC" means the Federal Energy Regulatory Commission.

"Final Closing Statement" is defined in Section 3.4(b).

"Final Settlement Date" is defined in Section 3.4(a).

"Financial Statements" is defined in Section 4.1(q).

"GAAP" means United States generally accepted accounting principles as in effect on the Effective Date.

"Government Antitrust Authority" means any Governmental Authority with jurisdiction over the enforcement of any applicable antitrust Laws.

"Good Operating Practices" means, with respect to the Operating Facility, the practices, methods, and acts generally engaged in or approved by a significant portion of the independent electric power industry in the United States for similarly situated facilities in the United States during a particular time period, or any of such practices, methods, and acts, which, in the exercise of reasonable judgment in light of the facts known or that reasonably should be known at the time a decision is made, would be expected to accomplish the desired result in a manner consistent with law, regulation, reliability, safety, environmental protection, economy and expedition, and taking into consideration the requirements of this Agreement, the applicable Project Documents, the Transferred Contracts, and the other contracts and agreements affecting the operation of the Operating Facility. Good Operating Practices are not intended to be limited to the optimum practices, methods or acts, to the exclusion of all others, but rather to include a spectrum of possible practices, methods, or acts generally acceptable in the region during the relevant period in light of the circumstances.

"Governmental Approvals" means all material consents and approvals of Governmental Authorities, including those required under the HSR Act or from the FERC and the Securities and Exchange Commission, that reasonably may be deemed necessary so that the consummation of the transactions contemplated hereby will be in compliance with applicable Laws and the failure to comply with which would have a Material Adverse Effect.

"Governmental Authority" means (i) the United States of America, (ii) any state, county, municipality, or other governmental subdivision within the United States of America, and (iii) any court or any governmental department, commission, board, bureau, agency, or other instrumentality of the United States of America or of any state, county, municipality, or other governmental subdivision within the United States of America.

"Guarantees" means any and all obligations relating to the guarantees, letters of credit, surety bonds, and other credit assurances of a comparable nature of Seller or any of its Affiliates (other than SWP) for the benefit of SWP or any Subsidiary and listed or described on Schedule 7.12(a).

"Hazardous Material" means (a) any "hazardous substance," as defined by the Comprehensive Environmental Response, Compensation and Liability Act of 1980, (b) any "hazardous waste," as defined by the Resource Conservation and Recovery Act, and (c) any pollutant, contaminant or hazardous, dangerous or toxic chemical, material, waste or substance within the meaning of any applicable Environmental Law.

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

"Indemnified Party" is defined in Section 11.4.

"Indemnifying Party" is defined in Section 11.4.

"Interest Rate" means a rate of interest equal to the lesser of (i) the LIBOR Rate or (ii) the maximum rate of interest from time to time allowed by applicable Law.

"Knowledge of Buyer" means the actual knowledge of any fact, circumstance or condition by Maurice Klefeker and John Salyer.

"Knowledge of Seller" means the actual knowledge of any fact, circumstance or condition by Christopher Calger, Jim Gilbert, Jody Blackburn, Ed Clark and J. D. Hawkins.

"Law" means any applicable statute, law (including common law), ordinance, regulation (including Environmental Laws), rule, treaty, code, permit, certificate, license, interpretation, judgment, ruling, order, writ, injunction, decree, or other official act of or by any Governmental Authority.

"Letter of Credit" is defined in Section 14.1.

"LIBOR Rate" means, for each calendar month, (i) the rate per annum (rounded upward, if not an integral multiple of 1/100 of 1%, to the nearest 1/100 of 1% per annum) appearing on Telerate Page 3750 (or any successor page) as the London interbank offered rate for deposits in United States dollars at approximately 11:00 a.m. (London time) two Business Days before the first day of such calendar month for a term comparable thereto; (ii) if for any reason the rate specified in clause (i) of this definition does not so appear on Telerate Page 3750 (or any successor page), the rate per annum (rounded upward, if not an integral multiple of 1/100 of 1%, to the nearest 1/100 of 1% per annum) appearing on Reuters Screen LIBO page (or any successor page) as the London interbank offered rate for deposits in United States dollars at approximately 11:00 a.m. (London time) two Business Days before the first day of such calendar month for a term comparable thereto; provided, however, if more than one rate is specified on Reuters Screen LIBO page (or any successor page), the applicable rate shall be the arithmetic mean of all such rates; and (iii) if the rate specified in clause (i) of this definition does not so appear on Telerate Page 3750 (or any successor page) and if no rate specified in clause (ii) of this definition so appears on Reuters Screen LIBO page (or any successor page), the interest rate per annum (rounded upward to the nearest whole multiple of 1/16 of 1% per annum if such rate is not such a multiple) equal to the rate per annum at which deposits in United States dollars are offered by the principal office of Citibank, N.A. in London, England to prime banks in the London interbank market at 11:00 a.m. (London time) two Business Days before the first day of such calendar month.

"Lien" means any lien, security interest, charge, claim, mortgage, deed of trust, option, warrant, purchase right, lease, or other encumbrance.

"LLC Interests" is defined in the Recital.

"Losses" means any and all claims, liabilities, losses, causes of action, fines, penalties, litigation, lawsuits, administrative proceedings, administrative investigations, costs, and expenses, including reasonable attorneys' fees, court costs, and other costs of suit or proceeding.

"LVC Finance" means Las Vegas Cogeneration Energy Financing Company, L.L.C., a subsidiary of SWP.

"LVC II" means Las Vegas Cogeneration II, L.L.C., a Delaware limited liability company.

"Material Adverse Effect" means a material adverse effect on the value of SWP and any Subsidiary taken as a whole, excluding any effect resulting from any change in economic, industry, or market conditions (whether general or regional in nature or limited to any area where any assets of SWP or any Subsidiary are located) or from any change in law or regulatory policy.

"NatWest Loan" means loans and other credit accommodations made to or for the account of Seller by National Westminster Bank PLC and certain other lenders pursuant to the Credit Agreement dated August 31, 1999, as in effect as of the Effective Date.

"Notice of Disagreement" is defined in Section 3.4(a).

"Operating Facility" means the generation and green house facilities identified in Part II of Exhibit A, and all of the assets related thereto.

"Party" and "Parties" are defined in the preamble.

"Permits" is defined in Section 4.1(t).

"Permitted Exceptions" means, with respect to any Person, any one or more of the following: (a) Liens for taxes, assessments or other governmental charges or levies either not yet delinquent or which are being contested in good faith by appropriate proceedings diligently prosecuted and as to which adequate reserves shall have been set aside in conformity with GAAP, (b) deposits or pledges to secure the payment of workers' compensation, unemployment insurance, social security benefits or obligations arising under similar legislation, or to secure the performance of public or statutory obligations, surety or appeal bonds, and other obligations of a like nature incurred in the ordinary course of business, (c) materialmen's, mechanics', workmen's, repairmen's, employees', landlord's, lessor's or other like Liens arising in the ordinary course of business to secure obligations not yet due or being contested in good faith and as to which adequate reserves shall have been set aside in conformity with GAAP or as to which adequate bonds shall have been obtained, (d) zoning restrictions, easements, rights-of-way, restrictions,

servitudes, permits, reservations, encroachments, exceptions, conditions, covenants, and any other restrictions on the use of real property none of which materially impairs the use of such property by the owner of such property in the operation of its business, (e) Liens and other matters shown on the Title Commitment, (f) any obligations or duties affecting any of the property of such Person to any municipality or public authority with respect to any franchise, grant, license or permit which do not materially impair the use of such property for the purposes for which it is held, (g) defects, irregularities and deficiencies in title to any property of such Person which in the aggregate do not materially impair the use of such property for the purposes for which such property is held by such Person, (h) other minor Liens or encumbrances none of which interferes materially with the use of the property affected in the ordinary conduct of the Seller's business and which individually or in the aggregate do not have a Material Adverse Effect, (i) utility easements, building restrictions and such other encumbrances or charges against real property which are of a nature generally existing with respect to properties of a similar character and which do not materially affect the marketability of the same or interfere with the use thereof in the business of such Person, and (j) Liens in favor of Allegheny granted pursuant to the Tolling Agreement, which Liens shall be fully subordinate to liens in favor of any "Senior Lender" as defined in the Tolling Agreement.

"Person" means any Governmental Authority or any individual, firm, partnership, corporation, limited liability company, joint venture, trust, unincorporated organization or other entity or organization.

"Project Documents" is defined in Section 4.1(m)(ii).

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

"Purchase Price" is defined in Section 3.1.

"PURPA" is defined in Section 4.1(v).

"QF" is defined in Section 4.1(v).

"Real Property" is defined in Section 4.1(s).

"Records" means any and all of the books, records, contracts, agreements and files of SWP and any Subsidiary existing on the Closing Date and all increases and additions thereto after the Closing Date, including computer records and electronic copies of such information (but excluding electronic mail and other computer-based communications) whether maintained by Seller, SWP, or Buyer or, in each case, its Affiliate, but excluding in each case all information protected by any attorney/client, work product or like privilege.

"Schedules" means Seller's disclosure schedules attached to this Agreement.

"Securities Act" is defined in Section 4.2(i).

"Seller" is defined in the preamble.

"Seller Guaranty" means the Guaranty of Enron North America Corp. in substantially the form of Exhibit E.

"Seller Practice" is defined in Section 7.1(b)(i).

"Seller Indemnified Party" and "Seller Indemnified Parties" are defined in Section 11.2.

"Subordinated Note" means that certain Subordinated Note dated August 31, 1999 by Las Vegas Cogeneration Limited Partnership in favor of Enron North America Corp. (formerly known as Enron Capital & Trade Resources Corp.).

"Subsidiary" means any limited liability company or limited partnership of which at least a majority of the voting interests (i.e., member or partner interests entitled to vote for the election of directors or managers, but excluding interests entitled so to vote only upon the happening of some contingency unless such contingency has occurred) are owned directly or indirectly by SWP.

"SWP" is defined in the Recital.

"Tangible Personal Property" is defined in Section 4.1(r)(i).

"Tax" or "Taxes" means any and all taxes, including any interest, penalties, or other additions to tax that may become payable in respect thereof, imposed by any federal, state, local, or foreign government or any agency or political subdivision of any such government, which taxes shall include, without limiting the generality of the foregoing, all income or profits taxes, payroll and employee withholding taxes, unemployment insurance taxes, social security taxes, severance taxes, license charges, taxes on stock, sales and use taxes, ad valorem taxes, excise taxes, franchise taxes, gross receipts taxes, business license taxes, occupation taxes, real and personal property taxes, stamp taxes, environmental taxes, Transfer Taxes, workers' compensation, and other obligations of the same or of a similar nature to any of the foregoing.

"Tax Proceeding" is defined in Section 6.5.

"Tax Return" means any and all returns, reports, declarations, statements, bills, schedules, claims for refund, or written information of or with respect to any Tax which is required to be supplied to any taxing authority, including any schedule or attachment thereto, and including any amendment thereof.

"Title Commitment" means Title Commitment No. 99090132(A)LJJ dated as of June 5, 2001.

"Title Endorsement" means an endorsement to the Title Policy insuring Buyer against loss or damage sustained by reason of the Title Company denying liability under the Title Policy by reason of Knowledge of Seller.

"Title Policy" means that certain Final Title Insurance Policy No. 99090132LJJ, dated September 1, 1999.

"Tolling Agreement" means the Capacity and Ancillary Services Sale and Tolling Agreement, dated May 4, 2001, between LVC II and Allegheny.

"Transfer Taxes" means all transfer Taxes (excluding Taxes measured by net income), including without limitation sales, use, excise (including excise Taxes on petroleum, products of petroleum, petrochemicals and other taxable substances), stock, stamp, documentary, filing, recording, permit, license, authorization and similar Taxes, filing fees and similar charges.

"Transferred Contracts" is defined in Section 7.1(h).

"Transition Services" is defined in Section 7.1(e).

"Work Plan" means the activities to be undertaken and pursued by SWP and any Subsidiary until the Closing Date in connection with the development, construction and licensing of the Development Project, as set forth on Schedule 7.1.

1.2 References, Gender, Number.

All references in this Agreement to an "Article," "Section" or "subsection" shall be to an Article, Section, or subsection of this Agreement, unless the context requires otherwise. Unless the context otherwise requires, the words "this Agreement," "hereof," "hereunder," "herein," "hereby" or words of similar import shall refer to this Agreement as a whole and not to a particular Article, Section, subsection, clause or other subdivision hereof. Whenever the context requires, the words used herein shall include the masculine, feminine and neuter gender, and the singular and the plural.

ARTICLE 2
Purchase and Sale

On and subject to the terms and conditions of this Agreement, Seller agrees to sell and convey, or cause to be sold and conveyed, to Buyer, and Buyer agrees to purchase and receive, all of the LLC Interests.

ARTICLE 3
Purchase Price and Payment

3.1 Purchase Price.

The purchase price for the sale and conveyance of the LLC Interests to Buyer shall consist of a cash purchase price of \$71,250,000 (the "Purchase Price") subject to adjustment in accordance with the terms of this Agreement, and shall be payable by Buyer as provided in Sections 3.2, 3.3 and 3.4. The "Adjusted Purchase Price" shall be the Purchase Price, (i) plus all Transfer Taxes applicable to the transactions contemplated hereby, (ii) plus all Development Expenses which may be paid or incurred by Seller or by SWP or any Subsidiary through the Closing Date, and (iii) plus the principal amount of (not to exceed \$53,543,000), and accrued and unpaid interest on, the NatWest Loan on the Closing Date.

3.2 Payment.

The "Closing Payment" shall be an amount equal to the Estimated Adjusted Purchase Price. At the Closing, Buyer shall wire transfer the Closing Payment in immediately available funds to the account of the Seller. Upon payment of the Closing Payment to or for the account of Seller, (i) all indebtedness of Las Vegas Cogeneration II, L.L.C. to Enron North America Corp. incurred pursuant to that certain Amended and Restated Bridge Loan Agreement effective as of May 10, 2001, by and between Enron North America Corp., Joint Energy Development Investments II Limited Partnership, and Las Vegas Cogeneration II, L.L.C. (the "Bridge Loan") shall be deemed to have been paid in full and Buyer, SWP and its Subsidiaries shall be released of all liabilities and obligations thereunder and (ii) all indebtedness of Las Vegas Cogeneration Limited Partnership under the NatWest Loan and the Subordinated Note shall be deemed to have been paid in full and Buyer, SWP and its Subsidiaries shall be released of all liabilities and obligations thereunder.

3.3 Closing Statement.

Not later than three (3) Business Days prior to the Closing Date, Seller shall prepare and deliver to Buyer a statement (the "Closing Statement") of the estimated adjustments to the Purchase Price and the estimated Adjusted Purchase Price which statement shall, among other things, set forth in reasonable detail the estimated components thereof (the "Estimated Adjusted Purchase Price").

3.4 Post-Closing Adjustment to the Purchase Price.

(a) Revised Closing Statement. On or before the date that is sixty (60) days after the Closing Date, Seller shall prepare and deliver to Buyer a revised Closing Statement setting forth the actual Adjusted Purchase Price which statement shall, among other things, set forth in reasonable detail the components thereof. To the extent reasonably required by Seller, Buyer shall assist in the preparation of such revised Closing Statement. Seller shall provide to Buyer such data and information as Buyer may reasonably request supporting the amounts reflected on the revised Closing Statement. The revised Closing Statement shall become final and binding upon the Parties on the date (the "Final Settlement Date") that is sixty (60) days following receipt thereof by Buyer unless Buyer gives written notice of its disagreement ("Notice of Disagreement") to Seller prior to such date. Any Notice of Disagreement shall specify in detail the dollar amount, nature, and basis of any disagreement so asserted. If a Notice of Disagreement is received by Seller in a timely manner, then the Closing Statement (as revised in accordance with paragraph (b) or (c) below) shall become final and binding on the Parties on, and the Final Settlement Date shall be, the earlier of (i) the date upon which Seller and Buyer agree in writing with respect to all matters specified in the Notice of Disagreement or (ii) the date upon which the Final Closing Statement is issued by the Closing Statement Arbitrator.

(b) Final Closing Statement. During the thirty (30) days following the date upon which Seller receives the Notice of Disagreement, if any, Seller and Buyer shall attempt in good faith to resolve in writing any differences that they may have with respect to all matters specified in the Notice of Disagreement. If at the end of such thirty (30) day period (or earlier by mutual agreement), Buyer and Seller have not reached agreement on such matters, the matters

that remain in dispute may be submitted to an arbitrator (the "Closing Statement Arbitrator") by either Party for review and resolution. The Closing Statement Arbitrator shall be a nationally recognized independent public accounting firm that does not serve as Seller's or Buyer's independent auditor, as shall be agreed upon by Buyer and Seller in writing. The hearing date will be scheduled by the Closing Statement Arbitrator as soon as reasonably practicable, and shall be conducted on a confidential basis. Each Party shall, not later than seven (7) days prior to the hearing date set by the Closing Statement Arbitrator, submit a brief with dollar figures for settlement of the disputes as to the amount of the Adjusted Purchase Price (together with a proposed Closing Statement that reflects such figures). The figures submitted need not be the figures offered during prior negotiations. The Closing Statement Arbitrator shall render a decision limited to resolving the matters in dispute (which decision shall include a written statement of findings and conclusions) within three (3) Business Days after the conclusion of the hearing, unless the Parties reach agreement prior thereto and withdraw the dispute from arbitration. The Closing Statement Arbitrator shall provide to the Parties explanations in writing of the reasons for its decisions regarding the Adjusted Purchase Price and shall issue the Final Closing Statement reflecting such decisions. The decision of the Closing Statement Arbitrator shall be final and binding on the Parties. The cost of any arbitration (including the fees and expenses of the Closing Statement Arbitrator) pursuant to this Section 3.4(b) shall be borne equally by Buyer and Seller. The fees and disbursements of Seller's independent auditors incurred with the procedures performed with respect to the Closing Statement shall be borne by Seller and the fees and disbursements of Buyer's independent auditors incurred in connection with respect to the Notice of Disagreement shall be borne by Buyer. As used in this Agreement, the term "Final Closing Statement" shall mean the revised Closing Statement described in Section 3.4(a), as prepared by Seller and as may be subsequently adjusted to reflect any subsequent written agreement between the Parties with respect thereto, or if submitted to the Closing Statement Arbitrator, the Closing Statement issued by the Closing Statement Arbitrator.

(c) Final Settlement. If the amount of the Adjusted Purchase Price as set forth on the Final Closing Statement exceeds the amount of the Estimated Adjusted Purchase Price, then Buyer shall pay to Seller, within five (5) Business Days after the Final Settlement Date, the amount by which the Adjusted Purchase Price as set forth on the Final Closing Statement exceeds the amount of the Estimated Adjusted Purchase Price, together with interest on such excess amount from the Closing Date until paid at the Interest Rate. If the amount of the Adjusted Purchase Price as set forth on the Final Closing Statement is less than the amount of the Estimated Adjusted Purchase Price, then Seller shall pay to Buyer, within five (5) Business Days after the Final Settlement Date, the amount by which the Adjusted Purchase Price as set forth on the Final Closing Statement is less than the amount of the Estimated Adjusted Purchase Price, together with interest on such deficiency amount from the Closing Date until paid at the Interest Rate. Any post-Closing payment made pursuant to this Section 3.4(c) shall be made by means of a wire transfer of immediately available funds to a bank account designated by the Party receiving the funds.

3.5 Allocation of Purchase Price.

The Parties shall use their reasonable efforts to agree in good faith upon an allocation of the Adjusted Purchase Price consistent with Section 1060 of the Code and the Treasury regulations thereunder as follows: Buyer shall deliver to Seller a proposed allocation of the

Adjusted Purchase Price among the assets of SWP and the Subsidiaries (the "Proposed Allocation") as soon as practicable after the Closing Date. Within twenty (20) days after the receipt of the Proposed Allocation, Seller shall propose Seller's changes to the Proposed Allocation, if any. Any dispute with respect to the Proposed Allocation that Buyer and Seller, acting in good faith, are thereafter unable to resolve within twenty (20) days shall be conclusively resolved by a nationally recognized independent public accounting firm mutually agreed to in writing by Buyer and Seller to resolve such dispute, which resolution shall be final and binding between Buyer and Seller. The Parties shall report this transaction for federal income tax purposes in accordance with the allocation so agreed upon, and to file all federal (including without limitation Form 8594), state and local Tax Returns in accordance with such allocation after delivery by Seller of its proposed changes to the Proposed Allocation.

ARTICLE 4
Representations and Warranties

4.1 Representations and Warranties of Seller.

As of the date of this Agreement, Seller represents and warrants to Buyer as follows:

(a) Organization and Good Standing; Subsidiaries. Seller is a limited liability company duly organized, validly existing and in good standing under the Laws of the State of Delaware. SWP is a limited liability company duly organized, validly existing and in good standing under the Laws of the State of Delaware. SWP owns, directly or indirectly, no equity or other ownership interest in any Person, except for the Subsidiaries set forth on Schedule 4.1(a). Each Subsidiary is directly or indirectly wholly owned by SWP and is duly organized, validly existing and in good standing under the Laws of its jurisdiction of organization.

(b) Qualification of SWP and any Subsidiary; Business of LVC Finance. Each of SWP and any Subsidiary has the requisite limited liability company or partnership power to carry on its business as now being conducted and to own and use their respective assets. No filing, recording, publication or other act that has not been made or done is necessary in connection with the continuing existence and good standing of SWP or any Subsidiary or the conduct of their Business. Seller has prior to the execution of this Agreement delivered to Buyer true and complete copies of the certificate of formation, limited liability company agreements and partnership agreements, as applicable, of SWP and each Subsidiary as in effect on the date hereof, other than any such documents in respect of LVC Finance, copies of which shall be delivered prior to the Closing. SWP and each Subsidiary is duly qualified to do business in the State of Nevada and in all other places where necessary in light of the business it conducts and the Real Property it owns and intends to own and in light of the transactions contemplated hereby. Prior to taking possession of any equipment to be leased to LVC II, LVC Finance will be authorized and licensed in the State of Nevada as a company engaged in the business of purchasing goods for resale. Prior to the Closing Date, LVC Finance shall not have engaged in any business or operations other than the purchase of equipment for lease to, and the lease of such equipment to LVC II and related activities. The major items of equipment acquired to be incorporated into the Development Project will be acquired by LVC Finance as inventory held for resale.

(c) Authority. Seller has all requisite limited liability company power and authority to execute and deliver this Agreement and to perform its obligations hereunder. The execution, delivery and performance of this Agreement and the transactions contemplated hereby have been duly and validly authorized by all requisite limited liability company action on the part of Seller.

(d) Enforceability. This Agreement has been duly and validly executed and delivered by Seller and constitutes a legal, valid and binding obligation of Seller enforceable against it in accordance with its terms, subject to (i) applicable bankruptcy, insolvency, reorganization, moratorium, and other similar laws of general application from time to time in effect that affect creditors' rights generally, (ii) general principles of equity, and (iii) the power of a court to deny enforcement of remedies generally based upon public policy.

(e) LLC Interests. At the Closing, Seller will deliver, or cause to be delivered, to Buyer good and valid title to the LLC Interests free and clear of any Liens (except as created by this Agreement and restrictions on sales of securities under applicable securities laws). There exists no option, warrant, purchase right, or other contract or commitment (other than this Agreement) that would require the sale, transfer, or other disposition of any LLC Interests or member or partnership interests of any Subsidiary. There exists no voting trust, proxy, or other agreement or understanding with respect to the voting of any LLC Interests or member or partnership interests of any Subsidiary.

(f) Capitalization. The LLC Interests constitute all of the issued and outstanding membership interests of SWP. All of the LLC Interests have been duly authorized and are validly issued, fully paid, and nonassessable and were not issued in violation of the preemptive rights of any Person. SWP has no outstanding convertible security, call, preemptive right, option, warrant, purchase right, or other contract or commitment that would, directly or indirectly, require SWP to sell, issue, or otherwise create any membership interests in addition to the LLC Interests.

(g) No Violation or Breach. Except as set forth in Schedule 4.1(g), neither the execution and delivery of this Agreement nor the consummation of the transactions and performance of the terms and conditions hereof by Seller will (i) result in a violation or breach of any provision of the limited liability company agreement or other similar governing documents of Seller, SWP or any Subsidiary or any agreement, indenture or other instrument under which either Seller, SWP or any Subsidiary is bound, other than such breaches or violations of agreements, indentures, or other instruments that would not, individually or in the aggregate, have a Material Adverse Effect or adversely affect the ability of Seller to perform its obligations under this Agreement, (ii) violate any law applicable to Seller, SWP or any Subsidiary, the Operating Facility or the Development Project in any material respect, other than such violations that would not, individually or in the aggregate, have a Material Adverse Effect or adversely affect the ability of Seller to perform its obligations under this Agreement, or (iii) result in, or create any Lien (other than a Permitted Exception) upon or with respect to any of the Real Property or Personal Property now owned or hereafter acquired by SWP or any Subsidiary.

(h) Consents. No consent, approval, authorization or permit of, or filing with or notification to, any Person is required for or in connection with the execution and delivery of

this Agreement by Seller or for or in connection with the consummation of the transactions and performance of the terms and conditions contemplated hereby by Seller, except for (i) requirements of the FERC, if any, (ii) requirements under the HSR Act (which will be obtained or satisfied prior to the Closing Date), (iii) the consents, filings, and notices set forth on Schedule 4.1(h), and (iv) consents, approvals, authorizations, permits, filings or notices that, if not obtained or made, would not, individually or in the aggregate, have a Material Adverse Effect.

(i) Actions. Except as set forth on Schedule 4.1(i), there is no Action pending or, to the Knowledge of Seller, threatened against Seller, SWP or any Subsidiary, the Operating Facility or the Development Project, except for threatened Actions that are not reasonably expected by Seller, individually or in the aggregate, to have a Material Adverse Effect or adversely affect the ability of Seller to perform its obligations under this Agreement.

(j) Compliance With Laws. Except as set forth on Schedule 4.1(j), and except with respect to any Environmental Law, Tax Law or any employee matters, which are exclusively addressed in Sections 4.1(n), (o) and (p), respectively, no uncured violation of any Law by SWP or any Subsidiary or by Seller (which could reasonably be expected to relate to the Operating Facility, the Development Project, SWP or any Subsidiary) exists, other than violations of Law which could not reasonably be expected by Seller, individually or in the aggregate, to have a Material Adverse Effect.

(k) Brokerage Fees and Commissions. Neither Seller nor any Affiliate of Seller has incurred any obligation or entered into any agreement for any investment banking, brokerage, or finder's fee or commission in respect of the transactions contemplated by this Agreement for which Buyer or SWP or any Subsidiary shall have any liability.

(l) Bankruptcy. There are no bankruptcy, reorganization, or arrangement proceedings pending against, being contemplated by, or, to the Knowledge of Seller, threatened against Seller, SWP or any Subsidiary.

(m) Project Documents.

(i) Set forth in Part I of Schedule 4.1(m) is a list of the following agreements and contracts to which SWP or any Subsidiary is a party or by which SWP or any Subsidiary is bound and which relate to the Operating Facility:

(A) gas pipeline interconnection agreements, gas supply agreements, gas purchase and sale agreements, and gas transportation agreements;

(B) power purchase agreements, tolling services agreements, electricity transmission agreements, and electricity interconnection agreements;

(C) swap, exchange, commodity option or hedging agreements;

(D) operating and maintenance agreements;

(E) equipment purchase and sale contracts and construction contracts;

(F) any contract requiring a capital expenditure or a commitment by SWP or any Subsidiary in excess of \$50,000 in any calendar year;

(G) any pending sale or lease of real or personal property of SWP or any Subsidiary (other than sales of electric energy in the ordinary course of business) in excess of \$50,000;

(H) any loan agreements and related documents;

(I) any contract that contains a covenant not to compete applicable to SWP or any Subsidiary; and

(J) any amendment relating to any of the foregoing.

(ii) Set forth in Part II of Schedule 4.1(m) is a list of all agreements and contracts to which SWP or any Subsidiary is a party or by which SWP or any Subsidiary is bound and which relate to the Development Project. The agreements and contracts listed in Parts I and II of Schedule 4.1(m) are collectively referred to as the "Project Documents."

(iii) Set forth in Part III of Schedule 4.1(m) is a list of all material agreements and contracts to which SWP or any Subsidiary is a party or by which SWP or any Subsidiary is bound and which do not relate to the Operating Facility or the Development Project.

(iv) Except as set forth in Part IV of Schedule 4.1(m), to the Knowledge of Seller, neither SWP nor any Subsidiary is, in any material respect, in breach of or in default under, and no event has occurred and is continuing which would constitute a material breach or default by SWP or any Subsidiary under, any material provision of any Project Document and neither SWP nor any Subsidiary has received written notice from any other party to any Project Document that SWP or any Subsidiary is in breach of any Project Document which has not been remedied.

(v) True and complete copies of the Project Documents have been made available to Buyer.

(n) Environmental Matters. This Section 4.1(n) shall constitute the sole representations of Seller with respect to environmental matters. Except as set forth in Schedule 4.1(n), or as would not, individually or in the aggregate, have a Material Adverse Effect:

(i) there is no uncured violation of any Environmental Law by the Seller, SWP or any Subsidiary that would result in any remediation obligations of SWP or any Subsidiary under any Environmental Law;

(ii) there have been no written notices or written complaints received by Seller, SWP or any Subsidiary with respect to a violation of an Environmental Law by SWP or any Subsidiary;

(iii) no Lien has been imposed on any property of SWP or any Subsidiary by any Governmental Authority in connection with any violation of or noncompliance with Environmental Laws;

(iv) to the Knowledge of Seller, there are no facts, circumstances, conditions or occurrences that would reasonably be expected (A) to form the basis of an Environmental Claim against SWP or any Subsidiary, or (B) to cause SWP or any Subsidiary to be subject to any restrictions on ownership, occupancy, use or transferability under any Environmental Law inconsistent with the customary and standard operation of the Operating Facility or development of the Development Project;

(v) there are no past, pending or, to the Knowledge of Seller, threatened Environmental Claims against SWP or any Subsidiary;

(vi) to the Knowledge of Seller, Hazardous Materials are not now and have not at any time been used or released at, on, under or from the Real Property other than in compliance with applicable laws;

(vii) Seller has made available to Buyer all correspondence, studies, audits, reviews, investigations, analyses, and reports on material environmental matters relating to the Operating Facility or the Development Project that are in the possession of Seller, SWP or any Subsidiary; and

(viii) to the Knowledge of Seller, there are no underground storage tanks, active or abandoned, on the Real Property.

(o) Tax Matters. This Section 4.1(o) is the sole representation of Seller with respect to tax matters. With respect to each of SWP and any Subsidiary, except as set forth in Schedule 4.1(o) or as would not, individually or in the aggregate, have a Material Adverse Effect:

(i) all Tax Returns required to be filed by or with respect to SWP and any Subsidiary have been or will be timely filed with the appropriate taxing authorities in all jurisdictions in which such Tax Returns are required to be filed;

(ii) such Tax Returns are or will be true and correct in all material respects, and all Taxes reported on such Tax Returns have been or will be timely paid prior to Closing;

(iii) neither SWP nor any Subsidiary has extended or waived the application of any statute of limitations of any jurisdiction regarding the assessment or collection of any Tax;

(iv) to the Knowledge of Seller, there are no audits, claims, assessments, levies, administrative proceedings, or lawsuits pending or threatened against SWP or any Subsidiary by any taxing authority;

(v) there are no Liens for Taxes (other than for current Taxes not yet due or payable) upon the assets of either SWP or any Subsidiary);

(vi) neither SWP nor any Subsidiary has any liability for Taxes of any Person (other than SWP and any Subsidiary) as transferee from or successor to such Person;

(vii) no election has been made by SWP or any Subsidiary to be treated as a corporation for federal income tax purposes;

(viii) none of the assets of SWP or any Subsidiary directly or indirectly secures any debt the interest on which is tax exempt under Section 103(a) of the Code; and

(ix) Seller is not a person other than a United States person within the meaning of the Code and the transactions contemplated herein are not subject to the tax withholding provisions of Chapter 3 of the Code.

Notwithstanding anything in this Section 4.1(o) to the contrary, no representation or warranty is made with respect to the amount, availability, expiration, limitation, or reduction of any net operating losses of any of SWP or any Subsidiary.

(p) Employee Matters. This Section 4.1(p) is the sole representation of Seller with respect to employee matters. Part I of Schedule 4.1(p) sets forth a complete list of employees of either SWP or any Subsidiary as of the Effective Date. Buyer has agreed to provide employment for the employees identified in Part I of Schedule 4.1(p) in their current positions or in other substantially similar positions with Buyer. Except as set forth in Part II of Schedule 4.1(p), neither Seller nor SWP nor any Subsidiary is a party to or is bound by any collective bargaining or labor agreement with respect to any employees assigned to the business of SWP, and to the Knowledge of Seller, no present union organizing efforts are underway with respect to any such employees. Part III of Schedule 4.1(p) sets forth a complete listing of any employee benefit plan as defined in Section 3(3) of ERISA that is maintained or sponsored by SWP or any Subsidiary, or to which SWP or any Subsidiary is a party, or otherwise has any obligations or liability.

(q) Financial Condition.

(i) Part I of Schedule 4.1(q) hereto contains copies of (A) the audited financial statements of SWP (including the notes thereto) as of December 31, 2000 and for the year then ended, and (B) the unaudited financial statements of SWP (including the notes thereto) as of March 31, 2001 and for the period then ended, (collectively, the "Financial Statements"). The Financial Statements are in each case true, complete and correct and fairly present in all material respects the financial condition of SWP and any Subsidiary as of the date thereof, all in accordance with GAAP, consistently applied,

except as disclosed in Part I of Schedule 4.1(q), and in the case of the Financial Statements which have not been audited, except for the absence of footnote disclosure and the possibility of audit adjustments which shall not, in the aggregate, be material in amount.

(ii) As of the Effective Date, and except (A) as set forth in Part II of Schedule 4.1(q), (B) as reflected, reserved against or otherwise disclosed in the Financial Statements, (C) as have been incurred in the ordinary course of business of operating the Operating Facility consistent with past practice or which may have arisen or have been incurred under any Project Document, and (D) as would constitute Development Expenses specified in the Development Budget or otherwise approved by Buyer pursuant to Section 7.1(b), SWP and any Subsidiary do not have liabilities or obligations (whether contingent or absolute, matured or unmatured, known or unknown) which exceed \$50,000 in the aggregate.

(iii) Except as disclosed in Part III of Schedule 4.1(q), since the date set forth in each of the Financial Statements, there has not been any adverse change in the assets, liabilities, business, results of operation, or financial condition of SWP and any Subsidiary that would, individually or in the aggregate, have a Material Adverse Effect.

(r) Personal Property.

(i) SWP and each Subsidiary is in possession of and has good and valid title to, or has valid leasehold interests in or valid rights under contract to use, all of its assets constituting personal property (the "Tangible Personal Property"), and on the Closing Date a Subsidiary will have possession of and good and valid title to the Tangible Personal Property which is the subject of the Transferred Contracts, free and clear of all Liens, except: (A) Liens arising by operation of law for amounts not yet due and payable; (B) the rights of customers, suppliers, and subcontractors in the ordinary course of business under general principles of commercial law for amounts not in default; (C) Liens that would not reasonably be expected to have a Material Adverse Effect; (D) Liens in favor of Allegheny granted pursuant to the Tolling Agreement, which Liens shall be fully subordinate to liens in favor of any "Senior Lender" as defined in the Tolling Agreement; and (E) Liens listed on Schedule 4.1(r); it being ----- agreed that any such Liens relating to or securing the NatWest Loan, the Bridge Loan and/or the Subordinated Note shall be released at the Closing.

(ii) To the Knowledge of Seller, SWP and its Subsidiaries have the exclusive right to use the "Las Vegas Delight" brand name, all registrations with and applications to any Governmental Authority in respect of such brand name are in full force and effect, and such brand name is not being infringed by any other Person.

(s) Real Property. Schedule 4.1(s) lists all real property owned in whole or in part by SWP and each Subsidiary (the "Real Property"), and except as set forth on Schedule 4.1(s):

(i) SWP and each of the Subsidiaries has good and marketable fee simple title to all of the Real Property owned by it, free and clear of all Liens, except Permitted Exceptions, it being agreed that Permitted Exceptions relating to or securing the NatWest Loan, the Bridge Loan and/or the Subordinated Note shall be released at the Closing;

(ii) there are no leases, subleases, easements, licenses, concessions or other agreements (written or oral) granting to any Person (other than SWP or any Subsidiary) the right to use or occupy the Real Property or granting to any Person a right or interest in any of the Real Property, except as disclosed in the Title Commitment or which would otherwise be a Permitted Exception;

(iii) there are no outstanding options, rights of first offer or rights of first refusal to purchase the Real Property or any portion thereof or interests therein;

(iv) neither SWP nor any of its Subsidiaries has received any notice in writing or by publication of any appropriation, condemnation or like proceeding, or of any violation of any applicable zoning law, regulation or rule or other law, order, regulation, rule or requirement relating to or affecting any of the Real Property; and

(v) SWP does not owe any brokerage commissions with respect to the Real Property.

(t) Permits.

(i) Part I of Schedule 4.1(t) sets forth a list of all material permits, franchises, approvals, or other authorizations ("Permits") of Governmental Authorities required to operate the Operating Facility as currently operated. Each Permit is in full force and effect, SWP and each Subsidiary is in compliance in all material respects with all its obligations with respect thereto, and, to the Knowledge of Seller, no event has occurred which permits, or with or without the giving of notice or the passage of time or both would permit, the revocation or termination of any Permit.

(ii) Part II of Schedule 4.1(t) sets forth a list of all Permits obtained by Seller, SWP or any Subsidiary as of the Effective Date and a list of all applications for Permits filed with or requested from any Governmental Authority as of the Effective Date in connection with the Development Project. Seller has made available to Buyer a true and correct copy of each of (i) the material documents, reports and correspondence from SWP or Seller, (ii) the material documents provided by SWP or Seller to any Governmental Authority, and, to the Knowledge of Seller, the material documents and correspondence received by Seller from any Governmental Authority, in each case with respect to such applications.

(iii) Part III of Schedule 4.1(t) sets forth a list of all material permits, licenses, consents and approvals from a Governmental Authority which, to the Knowledge of Seller as of the Effective Date, are or will be required to be obtained by Seller, Buyer, SWP or any Subsidiary for the development, construction and ownership and operation of the Development Project.

(iv) SWP and each Subsidiary is in material compliance with each Permit issued to it or which governs its operations.

(u) Bank Accounts. Set forth on Schedule 4.1(u) are the names of each bank or other financial institution with which SWP or any Subsidiary has an account and description of such account.

(v) QF Status. The Operating Facility has been certified by the FERC as a qualifying cogeneration facility ("QF") pursuant to the Public Utility Regulatory Policy Act of 1978, as amended ("PURPA") and the FERC's regulations implementing PURPA in an order issued on October 17, 1991. The Operating Facility has satisfied the relevant criteria for QF status at all times after September 1, 1999, and to the Knowledge of Seller, at all times after October 17, 1991 and prior to September 1, 1999.

(w) Sole Purpose; Nature of Business. Neither SWP nor any Subsidiary has conducted at any time after August 31, 1999, and is not conducting, any business or operations, other than the operations of the Operating Facility and related operations and the development and construction of the Development Project and the leasing of assets to LVC II in connection with the Development Project.

(x) Status.

(i) None of Seller or any of its Affiliates is or will be by virtue of the execution, delivery, or performance of this Agreement (A) an "electric utility company," a "registered holding company" or either a "subsidiary company" or an "affiliate" of a "registered holding company," as such terms are defined in PUHCA, (B) subject to regulation under PUHCA except pursuant to Section 9(a)(2) thereof, or (C) subject to regulation under the applicable Law of the State of Nevada respecting the rates of electric utilities.

(ii) Neither SWP nor any Subsidiary is an "investment company" or a company "controlled" by an "investment company" within the meaning of the Investment Company Act of 1940 or an "investment advisor" within the meaning of the Investment Company Act of 1940.

(y) Affiliate Transactions. There is no indebtedness (other than indebtedness which will be paid in full prior to the Closing Date) between SWP or any Subsidiary, on the one hand, and Seller, any officer, director or Affiliate (other than SWP or any Subsidiary) of Seller, on the other.

(z) Utility Services. All customary utility services necessary in the development and operation of the Development Project (other than fuel supply and water supply, the procurement of which is part of the development of the Development Project), including as necessary, storm and sanitary services, electric and telephone services and facilities, are or will be available to the Development Project.

4.2 Representations and Warranties of Buyer.

Buyer represents and warrants to Seller as follows:

(a) Organization and Qualification. Buyer is a corporation duly organized, validly existing, and in good standing under the Laws of the State of Delaware and has the requisite power under its formation documents to carry on its business as now being conducted. Buyer is duly qualified to do business in each state in which it conducts business.

(b) Authority. Buyer has all requisite power and authority to execute and deliver this Agreement and to perform its obligations under this Agreement. The execution, delivery, and performance of this Agreement and the transactions contemplated hereby have been duly and validly authorized by all requisite corporate action on the part of Buyer.

(c) Enforceability. This Agreement has been duly and validly executed and delivered by Buyer and constitutes a valid and binding agreement of Buyer enforceable against it in accordance with its terms, subject to (i) applicable bankruptcy, insolvency, reorganization, moratorium, and other similar Laws of general application from time to time in effect that affect creditors' rights generally, (ii) general principles of equity, and (iii) the power of a court to deny enforcement of remedies generally based upon public policy.

(d) No Violation or Breach. Neither the execution and delivery of this Agreement nor the consummation of the transactions and performance of the terms and conditions hereof by Buyer will (i) result in a violation or breach of any provision of the governing documents of Buyer or any material agreement, indenture or other instrument under which Buyer is bound, other than such breaches or violations of agreements, indentures or other instruments that would not, individually or in the aggregate, reasonably be expected to have a material adverse effect on Buyer or adversely affect the ability of the Buyer to perform its obligations under this Agreement or (ii) violate any Law applicable to Buyer or the assets of Buyer other than such violations of Law that would not, individually or in the aggregate, reasonably be expected to have a material adverse effect on Buyer or adversely affect the ability of the Buyer to perform its obligations under this Agreement.

(e) Consents. No consent, approval, authorization, or permit of, or filing with or notification to, any Person is required for or in connection with the execution and delivery of this Agreement by Buyer or for or in connection with the consummation of the transactions and performance of the terms and conditions contemplated hereby by Buyer, except for any (i) requirements of the FERC, (ii) requirements under the HSR Act, and (iii) consents, approvals, authorizations, permits, filings or notices that, if not obtained or made, would not, individually or in the aggregate, have a material adverse effect on Buyer or its Affiliates.

(f) Actions. To the Knowledge of Buyer, there is no Action pending or threatened against Buyer, except for Actions which are not reasonably expected to have a material adverse effect on Buyer or its assets or adversely affect the ability of the Buyer to perform its obligations under this Agreement.

(g) Brokerage Fees and Commissions. Neither Buyer nor any Affiliate of Buyer has incurred any obligation or entered into any agreement for any investment banking

brokerage, or finder's fee or commission in respect of the transactions contemplated by this Agreement for which either Seller, SWP or any Subsidiary shall incur any liability.

(h) Funds. Buyer has, and at all times prior to Closing will have, sufficient funds available to it to enable Buyer to consummate the transactions contemplated hereby and to pay the Closing Payment, the other payments required of Buyer hereunder, and all fees and expenses of Buyer.

(i) Experienced Investor; No Distribution. The parent company of Buyer is an experienced and knowledgeable investor in the power generation and development business in the United States. Prior to entering into this Agreement, Buyer and its Affiliates were advised by counsel, accountants, financial advisors, and such other Persons deemed appropriate concerning this Agreement and has relied solely on an independent investigation and evaluation of, and appraisal and judgment with respect to, SWP and each Subsidiary and the revenue, price, and expense assumptions applicable thereto. Buyer hereby acknowledges that the LLC Interests are not registered under the Securities Act of 1933, as amended (the "Securities Act"), or registered or qualified for sale under any state securities laws and cannot be resold without registration thereunder or exemption therefrom. Buyer is an "accredited investor," as such term is defined in Regulation D of the Securities Act and will acquire the LLC Interests for its own account and not with a view to a sale or distribution thereof in violation of the Securities Act, and the rules and regulations thereunder, any applicable state blue sky laws or any other applicable securities laws. Buyer has sufficient knowledge and experience in financial and business matters to enable it to evaluate the risks of investment in the LLC Interests and has the ability to bear the economic risk of this investment for an indefinite period of time.

(j) Bankruptcy. There are no bankruptcy, reorganization, or arrangement proceedings pending against, being contemplated by, or to the Knowledge of Buyer threatened against, Buyer.

(k) Inspection. Buyer acknowledges that, prior to its execution of this Agreement, (i) it has been afforded access to and the opportunity to inspect the Operating Facility and the Development Project Site, and to review the Project Documents, and all other due diligence items made available by Seller with respect to SWP and any Subsidiary, (ii) it has inspected the Operating Facility and the Development Project Site and reviewed the Project Documents and Permits, and as of the Closing Date, it will have inspected the Operating Facility and the Development Project Site and all other due diligence items made available by Seller with respect to SWP and any Subsidiary to the extent it deems necessary or advisable, and (iii) it is relying upon its own inspections and investigation in order to satisfy itself as to the condition and suitability of the Operating Facility and the Development Project Site.

(l) Qualified Entity. Buyer is a "Qualified Entity" as that term is defined in the Tolling Agreement.

ARTICLE 5
Access and Confidentiality

5.1 General Access.

Promptly following the execution of this Agreement and until the Closing Date (or earlier termination of this Agreement), Seller shall permit (and with respect to SWP and each Subsidiary, Seller shall cause SWP and each Subsidiary to permit) Buyer and its representatives:

(a) to have reasonable access, at reasonable times and upon reasonable advance notice in Seller's and SWP's offices and in a manner so as not to interfere unduly with the business operations of Seller or SWP or any Subsidiary, to the books, records, contracts, and documents of each of SWP and any Subsidiary relating to their assets and operations, and of Seller to the extent directly relating to the Operating Facility or the Development Project, insofar as the same may be disclosed without (i) violating any legal constraints or any legal obligation (it being agreed that if Seller denies access to any materials pursuant to this clause (a), Seller shall disclose to Buyer the legal constraints or obligations requiring such denial and shall, at the request of Buyer, use commercially reasonable efforts to obtain any consents or waivers necessary to afford Buyer the requested access), (ii) waiving any attorney/client, work product, or like privilege, (iii) disclosing information about the activities of Seller or its Affiliates (other than SWP and any Subsidiary), or (iv) disclosing proprietary models of Seller or any of its Affiliates pertaining to energy project evaluation, energy or natural gas price curves or projections, or other economic predictive models; provided that all requests for access shall be directed to Jody Blackburn or such other persons as Seller may designate from time to time.

(b) subject to any required consent of any third Person and upon reasonable advance notice to Seller, to conduct at reasonable times and at Buyer's sole risk, cost, and expense, in the presence of representatives of Seller, reasonable inspections of the Operating Facility and the Development Project Site. Buyer agrees to indemnify and hold harmless, release and defend Seller Indemnified Parties and SWP and any Subsidiary from and against any and all losses arising, in whole or in part, from the acts or omissions of the Buyer Indemnified Parties in connection with Buyer's inspection of the Operating Facility, the Development Project Site and other assets and records of Seller or SWP and any Subsidiary, including claims for personal injuries, property damage, and reasonable attorneys' fees and expenses, except to the extent that any such losses arise from the acts or omissions of any one or more of the Seller Indemnified Parties.

Nothing in this Article 5 shall be construed to permit Buyer or its representatives to have access to any files, records, contracts, or documents of Seller or SWP or any Subsidiary relating to this Agreement or the contemplated transaction, including any bids or offers received by Seller or SWP or any Subsidiary for the sale of the LLC Interests or the Operating Facility or the Development Project Site, it being agreed that all such bids or offers shall be the sole property of Seller.

5.2 Confidential Information.

Buyer agrees to maintain all information made available to it under this Agreement confidential and to cause its officers, directors, agents, employees, representatives, consultants, and advisors to maintain all information made available to them under this Agreement confidential, all as provided in that certain confidentiality agreement dated October 13, 2000, as amended on May 11, 2001 (the "Confidentiality Agreement"), by and between Seller and Buyer which is attached hereto as Exhibit 5.2, the terms of which are incorporated herein by reference and made a part of this Agreement.

5.3 No Other Contract.

Buyer shall not contact or correspond with any customer, employee or other Person associated with the business of SWP without the prior written consent of Seller.

ARTICLE 6
Tax Matters

6.1 Preparation.

Any Tax Return to be prepared pursuant to the provisions of this Section 6.1 shall be prepared in a manner consistent with practices followed in prior years with respect to similar Tax Returns, except for changes required by changes in law or fact. Buyer shall not file an amended Tax Return for any period ending on or prior to the Closing Date without the consent of Seller, which may be withheld in Seller's sole discretion. The following provisions shall govern the allocation of responsibility as between Buyer and Seller for certain Tax matters following the Closing Date:

(a) Tax Periods Ending on or Before the Closing Date. Seller shall prepare or cause to be prepared and file or cause to be filed all Tax Returns for SWP and each Subsidiary for all periods ending on or prior to the Closing Date regardless of when they are to be filed. Seller shall pay the Taxes attributable to SWP and each Subsidiary with respect to such periods.

(b) Tax Periods Beginning Before and Ending After the Closing Date. Buyer shall prepare or cause to be prepared and file or cause to be filed any Tax Returns of SWP and each Subsidiary for Tax periods which end after the Closing Date. Seller shall pay to Buyer within fifteen (15) days after the date on which Buyer delivers substantiation of Taxes paid with respect to such periods an amount equal to the portion of such Taxes that relates to the portion of such Tax period ending on the Closing Date.

6.2 Access to Information.

After Closing, Seller shall grant to Buyer (or its designees) access at all reasonable times to all of the information, books, and records relating to SWP and any Subsidiary within the possession of Seller (including work papers and correspondence with taxing authorities), and shall afford Buyer (or its designees) the right (at Buyer's expense) to take extracts therefrom and to make copies thereof, to the extent reasonably necessary to permit Buyer (or its designees) to prepare Tax Returns and to conduct negotiations with taxing authorities. After Closing,

Buyer shall grant or cause SWP and any Subsidiary to grant to Seller (or its designees) access at all reasonable times to all of the information, books and records relating to SWP and any Subsidiary within the possession of Buyer or SWP and any Subsidiary (including work papers and correspondence with taxing authorities), and shall afford Seller (or its designees) the right (at Seller's expense) to take extracts therefrom and to make copies thereof, to the extent reasonably necessary to permit Seller (or its designees) to prepare Tax Returns and to conduct negotiations with Tax authorities.

6.3 Transfer Taxes.

Buyer shall be responsible for the payment of all Transfer Taxes resulting from the transactions contemplated by this Agreement.

6.4 Tax Sharing Agreements.

On or before the Closing Date, Seller shall ensure that no Tax indemnity agreement, Tax allocation agreement, or Tax sharing agreement with respect to SWP or any Subsidiary is in force or effect as to SWP or any Subsidiary and that there shall be no liability of SWP or any Subsidiary on and after the Effective Date under any such agreement.

6.5 Assistance and Cooperation.

After the Closing Date, in the case of any threatened or actual audit, examination, or other proceeding with respect to Taxes ("Tax Proceeding") for which Seller is or may be liable pursuant to this Agreement, Buyer shall inform Seller within ten (10) days of the receipt of any notice of such Tax Proceeding, and shall afford Seller, at Seller's expense, the opportunity to control the conduct of such Tax Proceedings. Buyer shall execute or cause to be executed powers of attorney or other documents necessary to enable Seller to take all actions desired by Seller with respect to such Tax Proceeding to the extent such Tax Proceeding may affect the amount of Taxes for which Seller is liable pursuant to this Agreement. Seller shall have the right to control any such Tax Proceedings and, if there is substantial authority therefor, to initiate any claim for refund, file any amended return or take any other action which it deems appropriate with respect to such Taxes.

6.6 Tax Indemnity.

Notwithstanding any other provisions of this Agreement, Sections 6.6 and 6.7 shall apply to indemnifications by Seller to Buyer for, and shall be the sole remedy of Buyer in respect of, Losses described in the following sentence. Seller agrees to indemnify and hold harmless Buyer from and against the entirety of any and all Losses that Buyer may suffer for any Taxes attributable to SWP or any Subsidiary with respect to any Tax year or portion thereof ending on or before the Closing Date (or for any Tax year beginning before and ending after the Closing Date to the extent allocable (determined in a manner consistent with Section 6.1(b)) to the portion of such period beginning before and ending on the Closing Date). No right to indemnity shall exist if the Loss is the result of actions of Buyer or its Affiliates.

6.7 Tax Indemnity Claims.

The provisions of this Section 6.7 shall apply only to the indemnification provided for under Section 6.6. If a claim for Taxes is made against Buyer and if Buyer intends to seek indemnity with respect thereto under Section 6.6, Buyer shall promptly furnish written notice to Seller of such claim. Failure of Buyer to so notify Seller within fifteen (15) days of the claim being made against Buyer shall terminate all rights of Buyer to indemnity by Seller as to such claim. Seller shall have thirty (30) days after receipt of such notice to undertake, conduct, and control (through counsel of its own choosing and at its own expense) the settlement or defense thereof, and Buyer shall cooperate with it in connection therewith. Seller shall permit Buyer to participate in such settlement or defense through counsel chosen by Buyer (but the fees and expenses of such counsel shall be paid by Buyer). So long as Seller, at Seller's cost and expense, (i) has undertaken the defense of, and assumed full responsibility for all indemnified Losses with respect to, such claim, (ii) is reasonably contesting such claim in good faith, by appropriate proceedings, and (iii) has taken such action (including the posting of a bond, deposit, or other security) as may be necessary to prevent any action to foreclose a lien against or attachment of the property of Buyer for payment of such claim, Buyer shall not pay or settle any such claim. Notwithstanding compliance by Seller with the preceding sentence, Buyer shall have the right to pay or settle any such claim, but in such event it shall waive any right to indemnity by Seller for such claim. If within thirty (30) days after the receipt of Buyer's notice of a claim of indemnity hereunder, Seller does not notify Buyer that it elects (at Seller's cost and expense) to undertake the defense thereof and assume full responsibility for all indemnified Losses with respect thereto, or gives such notice and thereafter fails to contest such claim in good faith or to prevent action to foreclose a lien against or attachment of Buyer's property as contemplated above, Buyer shall have the right to contest, settle, or compromise such claim and Buyer shall not thereby waive any right to indemnity for such claim under this Agreement.

6.8 Tax Refunds.

Refunds of Taxes paid or payable with respect to Taxes attributable to SWP or any Subsidiary shall be promptly paid as follows (or, to the extent payable but not paid due to offset against other Taxes, shall be promptly paid by the Party receiving the benefit of the offset as follows): (i) to Seller if attributable to Taxes with respect to any Tax year or portion thereof ending on or before the Closing Date (or for any Tax year beginning before and ending after the Closing Date to the extent allocable (determined in a manner consistent with Section 6.1(b)) to the portion of such period beginning before and ending on the Closing Date); and (ii) to Buyer if attributable to Taxes with respect to any Tax year or portion thereof beginning after the Closing Date (or for any Tax year beginning before and ending after the Closing Date to the extent allocable (determined in a manner consistent with Section 6.1) to the portion of such period ending after the Closing Date).

ARTICLE 7
Covenants of Seller and Buyer

7.1 Conduct of Business Pending Closing.

Subject to Section 7.2, except as disclosed in Schedule 7.1 or as otherwise consented to or approved by Buyer (which consent or approval shall not be unreasonably withheld, conditioned, or delayed), Seller covenants and agrees that:

(a) Changes in Business. Except as contemplated by Section 7.1(b) in respect of the Development Project, Seller shall cause SWP and each Subsidiary to comply with the following:

(i) SWP shall not make, nor permit any Subsidiary to make, any material change in the conduct of its business or operations, except as contemplated by the matters described in Schedule 7.1;

(ii) except in the ordinary course of business and consistent with past practices, and except for the transfer of the Transferred Contracts as provided in Section 7.1(h), SWP shall not, nor permit any Subsidiary to, enter into, assign, terminate, or amend in any material respect, any Project Document;

(iii) Neither SWP nor any Subsidiary shall:

(A) merge into or with or consolidate with any other corporation or acquire all or substantially all of the business or assets of any Person;

(B) make any material change in its certificate of formation or limited liability company agreement or partnership agreement;

(C) purchase any securities of any Person, except for investments made in the ordinary course of business and consistent with prior practices;

(D) declare or pay any dividends or make any distributions in respect of, or issue any of, its equity securities or securities convertible into its equity securities, or repurchase, redeem, or otherwise acquire any such securities or make or propose to make any other change in its capitalization; or

(E) except for obligations that will be repaid in full at or prior to the Closing, incur any obligations for borrowed money or guarantee or otherwise become liable for the obligations of, or make any loans or advances to, any Person not an Affiliate of Seller.

(iv) other than pursuant to the requirements of existing contracts or commitments, SWP shall not, nor permit any Subsidiary to, sell, lease, or otherwise dispose of any of its assets, except for (a) assets sold, leased, or otherwise disposed of in the ordinary course of business, (b) the sale or disposition of any item of personal property or equipment having a value of less than \$50,000, and (c) the transfer or other

disposition of the accounts receivable or advances due or owed to SWP or any Subsidiary from any Affiliate of Seller;

(v) SWP shall not, nor permit any Subsidiary to, take any action or enter into any commitment with respect to or in contemplation of any liquidation, dissolution, recapitalization, reorganization, or other winding up of its business or operations;

(vi) SWP shall not, nor permit any Subsidiary to, change its accounting policies or practices (including, without limitation, any change in depreciation or amortization policies), except as required under GAAP;

(vii) SWP shall not, nor permit any Subsidiary to, enter into any employment agreement not terminable by SWP or such Subsidiary at will and without cost to SWP or such Subsidiary; and

(viii) SWP shall not, nor permit any Subsidiary to, create any employee benefit plan (within the meaning of Section 3(3) of ERISA) or any other employee benefit plan or program not subject to ERISA, except as required by Law.

(b) Continued Development of Development Project. Notwithstanding anything contained in Section 7.1(a) to the contrary, until the Closing Date, Seller and SWP and any Subsidiary shall continue to pursue and control the development, permitting and construction of the Development Project, all as Seller and SWP and any Subsidiary deem appropriate, subject only to the express requirements of this Agreement. Except as otherwise expressly provided in this Agreement:

(i) all activities of Seller, SWP and any Subsidiary in connection with the development of the Development Project ("Development Project Activities") shall be undertaken and pursued in substantial accordance with the principles and practices which are applicable to Seller's power plant development projects generally at the time in question ("Seller Practice"); provided, that Seller shall cooperate and coordinate with Buyer through the Project Transition Committee as provided in Section 7.1(c) with respect to the development and construction of the Development Project and shall provide to Buyer, its agents, consultants and counsel upon reasonable prior notice (which may be delivered by telephone or facsimile transmission), access to the Development Project by Buyer's representatives on the Project Transition Committee at all reasonable times for purposes of observing Seller's development and construction activities and conducting (at Buyer's expense) any examinations and surveys as Buyer may reasonably request;

(ii) subject to Section 7.1(b)(i), SWP and any Subsidiary and Seller, on behalf of SWP and any Subsidiary, may spend or incur such Development Expenses as they deem appropriate in connection with the Development Project, provided that (x) no cost or expense incurred in connection with a Change Order under the EPC Contract shall be included in the Adjusted Purchase Price without Buyer's prior written consent (which consent shall not be unreasonably withheld, conditioned or delayed), it being understood

that in the event Buyer unreasonably withholds, conditions or delays any such consent to a Change Order which is performed under the EPC Contract the costs or expenses incurred in connection with such Change Order shall be included in the Adjusted Purchase Price and borne by Buyer and (y) no Development Expenses (other than expenses to satisfy obligations under the EPC Contract) in excess of 110% of the total amount of each line item of expenses set forth in the Development Budget (determined after the application by the Seller or SWP of any contingency amount included in the Development Budget) shall be included in the Adjusted Purchase Price without Buyer's prior written consent (which consent shall not be unreasonably withheld, conditioned or delayed), it being understood that in the event Buyer unreasonably withholds, conditions or delays any such consent to any such expense the costs or expenses incurred in connection therewith shall be included in the Adjusted Purchase Price and borne by Buyer;

(iii) Neither Seller nor SWP or any Subsidiary shall, without Buyer's prior written consent (which consent shall not be unreasonably withheld, conditioned or delayed), amend or supplement any existing Project Document, enter into any new agreement which is not consistent with Seller's Practice (an "Additional Project Agreement") in respect of the development, construction, ownership or operation of the Project which is material, or amend or supplement any Additional Project Agreement once entered into, if such amendment or supplement or Additional Project Agreement would cause a Material Adverse Effect or would result in a payment obligation, individually or in the aggregate, in excess of \$50,000;

(iv) SWP and any Subsidiary may deal and contract with Seller, and Seller and SWP and any Subsidiary may deal and contract with Affiliates of Seller, freely and without limitation or restriction of any kind and on such terms and conditions as SWP and any Subsidiary and Seller and such Affiliates deem appropriate, subject only to the requirement that any obligations of SWP and any Subsidiary paid or incurred to Seller or any Affiliates of Seller shall be for reasonably equivalent value on terms no less favorable to SWP and any Subsidiary than they could obtain in an arm's-length transaction with a Person that is not an Affiliate of Seller; and

(v) Seller and SWP and any Subsidiary may take or omit to take any action in connection with the Development Project, the existing Project Documents, the Additional Project Agreements or any of the Development Project Activities for any or no reason, as it deems appropriate. The phrase "deems appropriate," when used in this Agreement with respect to any decision, action, or inaction by Seller or SWP and any Subsidiary, means that the decision, action or inaction may be made or taken for any or no reason deemed appropriate in the sole discretion of Seller or either of SWP and any Subsidiary considering only its own interests and not the interests of any other Person (including, but not limited to, Buyer), subject only to any requirements of this Agreement.

(c) Transition Committee. Promptly after the Effective Date, Seller and Buyer shall establish a project transition committee (the "Project Transition Committee") for the purpose of facilitating ongoing communication between the Parties with respect to the

development of the Development Project prior to the Closing Date. The Project Transition Committee shall be comprised of four (4) members, two (2) appointed by Seller and two (2) appointed by Buyer. The Project Transition Committee shall meet no less frequently than weekly, or more often as the Parties may mutually agree or this Agreement may require. Meetings shall be held at such locations as the members of the Project Transition Committee may agree upon, on no less than twenty-four (24) hours' prior written notice of either Party (which notice may be waived in writing by both Parties), provided that either Party may call a special meeting to address an urgent matter on such notice as may be practicable under the circumstances. All meetings may be held telephonically and all representatives shall be available for meetings on short notice (and shall designate an alternate for purposes of unavailability). At each meeting, Seller shall provide an update on any Development Project Activities undertaken since the last weekly meeting of the Project Transition Committee (including an update of Development Expenses) and shall consult with Buyer regarding anticipated future Development Project Activities. The Parties shall discuss such other matters related to Development Project Activities generally as they may deem appropriate. Buyer shall designate one or more individuals (who may be a member of the Project Transition Committee) to be available on a twenty-four (24) hour per day basis to consult with Seller in respect of the Development Project and to be available to receive "time critical" requests from Seller pursuant to Section 7.1(d) (each such individual being a "Buyer's Construction Representative").

(d) All requests by Seller for consent by Buyer to Development Expenses for which Buyer's consent is required pursuant to Section 7.1(b)(ii) hereof shall be submitted exclusively to the Project Transition Committee (which submission may be made through any Buyer Construction Representative) and Seller shall have no obligation to submit such requests to any other Person, notwithstanding anything to the contrary provided herein. Buyer's representatives on the Project Transition Committee shall have authority to grant or deny such consent. Seller may designate certain events as "time critical" in the event Seller has determined in good faith that such events are material to the Development Project and are of such a nature that a decision related thereto by the Project Transition Committee must be reached immediately in order to serve the overall best interests of the Development Project. Buyer agrees that in the event Seller designates any such request as "time critical," Buyer's representatives will respond to such request with Buyer's consent or denial of consent within such time period as Seller may specify therefor, which shall not in any case be less than twelve (12) hours after Buyer's Construction Representative has personally received such request. Any such request for consent shall include such detail as is reasonably necessary for Buyer's representative to evaluate the merits of such request. It shall be presumptively unreasonable for Buyer to withhold, condition, delay or deny consent to any such item if it is substantially consistent with Seller Practice and the Work Plan.

(e) Buyer may, at its reasonable discretion, engage the services of Seller or its Affiliates for the purpose of providing any services deemed reasonable and necessary to assist Buyer or SWP and any Subsidiary with the development and management of the Development Project, including the services set forth in Part I on Schedule 7.1(e) (the "Transition Services"). Seller shall have and shall make available to Buyer and LLC that number of Seller employees which Seller reasonably believes is necessary to perform fully the Transition Services. Part II on Schedule 7.1(e) sets forth a list of the key Seller personnel whom Seller shall make available to render the Transition Services, together with a list of their hourly billing rates. In the event the

Parties mutually agree to utilize personnel not identified in Part I on Schedule 7.1(e), Seller shall bill Buyer or the LLC at an agreed-upon hourly costs for such Transition Services. Seller, in consultation with Buyer, shall have the right to exchange or reassign the personnel whom Seller shall make available to render the Transition Services. All requests from Buyer or SWP or any Subsidiary and all Transition Services performed by Seller or its affiliates under this Section 7.1(e) shall be consistent with applicable Laws.

(f) Liens. Seller shall not, and will cause SWP and each Subsidiary not to, grant any express Lien on any assets of SWP or any Subsidiary, except to the extent (i) required or permitted incident to the operation of the assets of SWP or any Subsidiary and the business of SWP or any Subsidiary or (ii) required or evidenced by any of the Project Documents.

(g) Operation of Operating Facility. Seller shall:

(i) cause the Operating Facility to be maintained and operated in the ordinary course of business consistent with past practices (including the repair or replacement of damaged, destroyed, obsolete, depreciated, non-working, or non-economical items of equipment or other personal property), and in accordance with Good Operating Practices, maintain insurance now in force with respect to such Facility, and pay or cause to be paid all costs and expenses in connection therewith promptly when due;

(ii) cause SWP and each Subsidiary responsible therefor to maintain the Operating Facility's QF status; and

(iii) cause SWP and each Subsidiary to use its reasonable efforts to maintain its relationships with suppliers, customers, and others having material business relationships with SWP and any Subsidiary with respect to the Operating Facility so that they will be preserved for Buyer on and after the Closing Date.

(h) Transferred Contracts. On or before the Closing Date, Seller shall cause each of the contracts described in Schedule 7.1(h) (the "Transferred Contracts") to be assigned and transferred to, and assumed by, SWP or its appropriate Subsidiary shown for each such Transferred Contract in Schedule 7.1(h).

(i) Permits. Seller and its Affiliates shall use all commercially reasonable efforts, and shall cause the SWP and any Subsidiary, to obtain all authorizations, consents, orders, and approvals of, and to give all notices to and make all filings with, all Governmental Authorities (including those pertaining to the Governmental Approvals) and third parties that may be or become necessary or desirable in connection with this Agreement and the transactions contemplated hereby in order to preserve and protect, and not to impair, the Permits (whether already obtained or applied for).

7.2 Qualifications on Conduct.

Seller, SWP and any Subsidiary may take (or not take, as the case may be) any of the actions described in Section 7.1 above if reasonably necessary under emergency circumstances

(or if required or prohibited pursuant to Law) and provided Buyer is notified as soon thereafter as practicable.

7.3 Public Announcements.

Prior to the Closing Date, without the prior written approval of the other Party (which approval shall not be unreasonably withheld, conditioned, or delayed), no Party will issue, or permit any agent or Affiliate of such Party to issue, any press releases or otherwise make, or cause any agent or Affiliate of such Party to make, any public statements with respect to this Agreement and the transactions contemplated hereby, except when such release or statement is deemed in good faith by the releasing Party to be required by Law or under the applicable rules and regulations of a stock exchange or market on which the securities of the releasing Party or any of its Affiliates are listed. In each case to which such exception applies, the releasing Party will use its reasonable efforts to provide a copy of such release or statement to the other Party and incorporate any reasonable changes which are suggested by the non-releasing Party prior to releasing or making the statement. After the Closing Date, the Parties will confer with each other regarding their initial public announcement for the transaction contemplated herein.

7.4 Actions by Parties.

Each Party agrees to use commercially reasonable efforts to satisfy the conditions to Closing set forth in Article 8 and to refrain from taking any action within its control which would cause a breach of a representation or warranty set forth herein.

7.5 Supplements to Schedules.

Seller may, from time to time prior to the Closing by written notice to Buyer, supplement or amend the Schedules to this Agreement to correct any matter that would constitute a breach of any representation or warranty of Seller in Section 4.1. For purposes of determining whether Buyer's condition set forth in Section 8.2(a) has been fulfilled, the Schedules shall be deemed to include only that information contained therein on the Effective Date and shall be deemed to exclude all information contained in any supplement or amendment thereto, but if the Closing shall occur, then all matters disclosed to Buyer pursuant to any such supplement or amendment at or prior to the Closing shall be deemed to be waived by Buyer and Buyer shall not be entitled to make any claim thereon or relating thereto under Section 11.1.

7.6 Further Assurances.

Seller and Buyer each agree that from time to time after the Closing Date, it will execute and deliver or cause its respective Affiliates (including SWP and each Subsidiary) to execute and deliver such further instruments, and take (or cause its respective Affiliates, including SWP and each Subsidiary, to take) such other action, as may be reasonably necessary to carry out the purposes and intents of this Agreement.

7.7 Records.

Buyer agrees to maintain, or cause SWP and each Subsidiary to maintain, the Records in existence on the Closing Date until the fifth (5th) anniversary of the Closing Date (or for such

longer period of time as Seller shall advise Buyer is necessary to have Records available with respect to open years for Tax audit purposes), or if any of the Records pertain to any claim or dispute pending on the fifth (5th) anniversary of the Closing Date, Buyer shall maintain any of the Records designated by Seller until such claim or dispute is finally resolved and the time for all appeals has been exhausted. After the Closing Date, Buyer shall provide or cause SWP and each Subsidiary to provide Seller and its representatives during normal business hours and upon reasonable notice, reasonable access to and the right to copy the Records at Seller's cost and expense, for the purposes of:

(i) preparing and delivering any accounting statement provided for under this Agreement and adjusting, prorating, and settling the charges and credits provided for in this Agreement;

(ii) complying with any Law affecting Seller's ownership of the LLC Interests or the Operating Facility, the Development Project or the Development Project Site prior to the Closing Date;

(iii) preparing any audit of the books and records of any Person relating to the LLC Interests or the Operating Facility or the Development Project prior to the Closing Date, or responding to any audit prepared by such third parties;

(iv) preparing Tax Returns;

(v) responding to or disputing any Tax audit; or

(vi) asserting, defending, or otherwise dealing with any claim or dispute under this Agreement or with respect to SWP or any Subsidiary or the Operating Facility or Development Project.

From and after the Closing Date until the fifth (5th) anniversary of the Closing Date, in no event shall Buyer, SWP or any Subsidiary, or any of their respective Affiliates destroy any Records without giving Seller at least sixty (60) days advance written notice thereof and the opportunity, at Seller's expense, for Seller to obtain such Records prior to their destruction. Additionally, Buyer shall not, and shall not permit SWP or any Subsidiary to, after the Closing Date, waive the attorney-client, work product or like privilege of Seller, its Affiliates, or SWP or any Subsidiary with respect to any of the Records existing as of the Closing Date, without Seller's prior written consent.

7.8 Assumption of Obligations of SWP and any Subsidiary.

From and after the Closing Date, Buyer agrees to cause SWP and each Subsidiary to fully perform and fulfill all of its obligations and commitments, whether existing as of the Closing Date or arising or incurred thereafter.

7.9 Regulatory and Other Authorizations and Consents.

(a) Filings. Each Party shall use all commercially reasonable efforts to obtain all authorizations, consents, orders, and approvals of, and to give all notices to and make all

filings with, all Governmental Authorities (including those pertaining to the Governmental Approvals) and third parties that may be or become necessary for its execution and delivery of, and the performance of its obligations under, this Agreement and will cooperate fully with the other Party in promptly seeking to obtain all such authorizations, consents, orders, and approvals, giving such notices, and making such filings. To the extent required by the HSR Act, each Party shall (i) file or cause to be filed, as promptly as practicable but in no event later than the tenth (10th) Business Day after the execution and delivery of this Agreement, with the Federal Trade Commission and the United States Department of Justice, all reports and other documents required to be filed by such Party under the HSR Act concerning the transactions contemplated hereby and (ii) promptly comply with or cause to be complied with any requests by the Federal Trade Commission or the United States Department of Justice for additional information concerning such transactions, in each case so that the initial thirty (30) day waiting period applicable to this Agreement and the transactions contemplated hereby under the HSR Act shall expire as soon as practicable after the execution and delivery of this Agreement. Each Party agrees to request, and to cooperate with the other Party in requesting, early termination of any applicable waiting period under the HSR Act. Seller and Buyer shall each pay one half of the filing fees in connection with the filings by the Parties required by the HSR Act.

(b) Additional Undertakings of Buyer. Without limiting the generality of Buyer's undertakings pursuant to Section 7.9(a), Buyer shall:

(i) take promptly any or all actions, including the following actions, to the extent necessary to eliminate any concerns on the part of any Governmental Authority regarding the legality, under any Law, of Buyer's acquisition of the LLC Interests: entering into negotiations, providing information, making proposals, entering into and performing agreements or submitting to judicial or administrative orders, holding separate (through the establishment of a trust or otherwise) particular assets or categories of assets, or businesses, of SWP and any Subsidiary or Buyer or its Affiliates, or agreeing to dispose of one or more assets or properties (whether owned by Buyer or its Affiliates or SWP or any Subsidiary) whether before or after the Closing; provided, however, that nothing in this Agreement shall require Buyer or its Affiliates or SWP or any Subsidiary to dispose of or sell assets or properties, hold separate particular assets or categories of assets, or businesses, or agree to dispose of or hold separate one or more assets or properties or to take any other action that could have a material adverse impact on Buyer or its Affiliates, or SWP or any Subsidiary;

(ii) use commercially reasonable efforts (including taking the steps contemplated by Section 7.9(b)(i)) to prevent the entry in a judicial, administrative or other proceeding brought under any Law by any Governmental Authority or any other Person for a permanent or preliminary injunction or other order that would make consummation of the transactions contemplated by this Agreement unlawful or that would prevent or delay such consummation; and

(iii) take promptly, in the event that such an injunction or order has been issued in such a proceeding, any and all reasonable steps, including the appeal thereof, the posting of a bond or the steps contemplated by Section 7.9(b)(i), necessary to

vacate, modify, or suspend such injunction or order so as to permit such consummation on a schedule as close as possible to that contemplated by this Agreement.

(c) Transfer. If the transfer of any instrument, contract, license, lease, permit, or other document to Buyer hereunder shall require the consent of any party thereto other than Seller, then this Agreement shall not constitute an agreement to assign the same, and such item shall not be assigned to or assumed by Buyer, if an actual or attempted assignment thereof would constitute a breach thereof or default thereunder. In such case, Seller and Buyer shall cooperate and each shall use commercially reasonable efforts to obtain such consents to the extent required of such other parties and, if and when any such consents are obtained, to transfer the applicable instrument, contract, license, lease, permit, or other document. If any such consent cannot be obtained, Seller shall cooperate in any reasonable arrangement designed to obtain for Buyer all benefits, privileges, obligations and privileges of the applicable instrument, contract, license, lease, permit, or document.

(d) Third Party Consents. Buyer will use its best efforts to assist Seller in obtaining any consents of Persons and Governmental Authorities necessary or advisable in connection with the transactions contemplated by this Agreement, including providing to such Persons and Governmental Authorities such financial statements and other publicly available financial information with respect to Buyer and its parent company as such Persons or Governmental Authorities may reasonably request.

7.10 Fees and Expenses.

Except as otherwise expressly provided in this Agreement, all fees and expenses, including fees and expenses of counsel, financial advisors, and accountants, incurred in connection with this Agreement and the transactions contemplated hereby shall be paid by the Party incurring such fee or expense, whether or not the Closing shall have occurred. Buyer shall be obligated to pay any and all costs of any audit of SWP and any Subsidiary as may be required to enable Buyer to complete and file any filing by Buyer or an Affiliate of Buyer with the Securities and Exchange Commission.

7.11 Excluded Assets.

Notwithstanding Article 9 hereof, the transactions contemplated by this Agreement exclude, and prior to the Closing Date, Seller may cause SWP or any Subsidiary to transfer to Seller or any of its Affiliates (other than SWP and any Subsidiary) the following (the "Excluded Assets"):

(i) the assets listed or described on Schedule 7.11;

(ii) all insurance policies and rights under any insurance policies in respect to any and all claims made under such policies whether such claims are asserted before or after the Closing Date and all rights to any proceeds payable under any such policy; and

(iii) the Enron Marks.

Seller's representations and warranties in Article 4 shall not apply to any of the items described in clauses (i) through (iii) of the preceding sentence.

7.12 Guarantees and Other Affiliate Contracts.

Buyer shall cause, at the Closing Date, (i) the Guarantees and any liabilities related thereto to be released as to Seller and any Affiliate of Seller and (ii) substitute arrangements, if required, of Buyer or its Affiliates to be in effect for any such Guarantees. At the Closing Date, Seller may terminate those Project Documents described on Schedule 7.12 as the "Terminated Contracts."

7.13 Use of Enron Marks.

Enron Marks may appear on some of the assets of SWP or any Subsidiary, including signage at the Operating Facility and the Development Project Site, and on supplies, materials, stationery, brochures, advertising materials, manuals and similar consumable items of SWP and any Subsidiary. Buyer acknowledges and agrees that it obtains no right, title, interest, license, or any other right whatsoever to use the Enron Marks. Buyer shall, (i) within ninety (90) days after the Closing Date, remove the Enron Marks from the assets of SWP and any Subsidiary, including signage at the Operating Facility and the Development Project Site, and provide written verification thereof to Seller promptly after completing such removal and (ii) within two (2) weeks after the Closing Date, return or destroy (with proof of destruction) all other assets of SWP and any Subsidiary that contain any Enron Marks that are not removable. Buyer agrees never to challenge Seller's or its Affiliates' ownership of the Enron 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 SWP and any Subsidiary. Buyer will not do any business or offer any goods or services under the Enron Marks. Buyer will not send, or cause to be sent, any correspondence or other materials to any Person on any stationery that contains any Enron Marks or otherwise operate SWP and any Subsidiary in any manner which would or might confuse any Person into believing that Buyer has any right, title, interest, or license to use the Enron Marks.

7.14 Insurance.

Buyer acknowledges and agrees that, effective upon the Closing, the insurance policies of Seller related to SWP and any Subsidiary shall be terminated or modified to exclude coverage of all or any portion of SWP and any Subsidiary, and, as a result, Buyer shall be obligated at or before Closing to obtain at its sole cost and expense replacement insurance, including insurance required by any Person to be maintained by SWP and any Subsidiary. Buyer further acknowledges and agrees that Buyer may need to provide to certain Governmental Authorities and third parties evidence of such replacement or substitute insurance coverage for the continued operations of the Businesses of SWP and any Subsidiary following the Closing. Notwithstanding Section 7.11(ii), if any claims are made or losses occur prior to the Closing Date that relate solely to the Businesses of SWP and any Subsidiary and such claims, or the claims associated with such losses, may be made against the policies retained by Seller or its Affiliates under Section 7.11(ii) or under policies otherwise retained by Seller or its Affiliates after the Closing, then Seller shall use its reasonable commercial efforts so that SWP and any

Subsidiary can file, notice, and otherwise continue to pursue such claims pursuant to the terms of such policies. Seller and its Affiliates shall be reimbursed by Buyer (or otherwise indemnified and held harmless) for any Losses or other costs incurred by Seller or its Affiliates (including by way of any reduction in, or loss of, available insurance to cover other insurable losses or associated expenses of Seller or its Affiliates) arising out of SWP and any Subsidiary pursuing such claims under such policies.

7.15 Lending Matters.

Seller agrees to cooperate with Buyer and the Lender and to use commercially reasonable efforts to assist Buyer in obtaining (x) such consents from parties to the Project Documents as Buyer's lender may reasonably request, and (y) mechanics' lien waivers for all work completed and paid for through the Closing Date under the EPC Contract and material subcontracts thereunder relating to the Development Project, provided that the inability of Buyer to obtain any such item which (a) is not in a form reasonably customary for transactions of this nature or (b) is required to be obtained from any third party not an Affiliate of Seller shall not excuse Buyer's performance of its obligations hereunder.

ARTICLE 8
Closing Conditions

8.1 Seller's Closing Conditions.

The obligation of Seller to proceed with the Closing contemplated hereby is subject, at the option of Seller, to the satisfaction on or prior to the Closing Date of all of the following conditions:

(a) Representations, Warranties, and Covenants. The representations and warranties of Buyer contained in Section 4.2 of this Agreement shall be true and correct in all material respects on and as of the Closing Date, except for representations and warranties that speak as of a specific date or time other than the Closing Date (which need only be true and correct in all material respects as of such date or time) except that all representations and warranties which by their terms are qualified as to materiality shall be true in all respects as if made on and as of such date, and the covenants and agreements of Buyer to be performed on or before the Closing Date shall have been duly performed in all material respects in accordance with this Agreement, and Buyer shall have delivered to Seller a Certificate, dated the Closing Date and executed by a Vice President of Buyer, reasonably satisfactory in form and substance to Seller, confirming the foregoing.

(b) Closing Documents. On or prior to the Closing Date, Buyer shall have delivered, or be standing ready to deliver at the Closing, all agreements, instruments, and documents required to be delivered by Buyer under Section 9.3.

(c) No Action. On the Closing Date, no Action (excluding any such matter initiated by Seller or any of its Affiliates) shall be pending or threatened before any Governmental Authority of competent jurisdiction seeking to enjoin or restrain the consummation of the Closing or recover substantial damages from Seller or any Affiliate of Seller resulting therefrom.

(d) Waiting Period. The waiting period under the HSR Act applicable to the consummation of the transactions contemplated hereby shall have expired or been terminated or the Parties shall have otherwise complied with the HSR Act.

(e) Governmental Approvals. The Governmental Approvals and other consents, filings and notices required for the consummation of the transactions contemplated hereby, as identified on Schedules 4.1(n) and 8.1(e) hereto, shall have been obtained.

(f) Purchase Price. Buyer shall have delivered, or be ready, willing and able to deliver at the Closing, the Closing Payment to Seller by wire transfer in immediately available funds.

(g) Guarantees. The Guarantees shall be released as to Seller and its Affiliates and, if required, substitute arrangements of Buyer or its Affiliates shall be in effect.

(h) Financing Commitment. Buyer shall have provided Seller with a written commitment from its lender on or before August 24, 2001 acknowledging that all of the conditions precedent to such lender making its loan to finance the Adjusted Purchase Price are satisfied (other than the closing of the transactions contemplated by this Agreement and Buyer's lending documents).

8.2 Buyer's Closing Conditions.

The obligation of Buyer to proceed with the Closing contemplated hereby is subject, at the option of Buyer, to the satisfaction on or prior to the Closing Date of all of the following conditions:

(a) Representations, Warranties, and Covenants. The representations and warranties of Seller in Section 4.1 of this Agreement shall be true and correct in all material respects on and as of the Closing Date, except for representations and warranties that speak as of a specific date or time other than the Closing Date (which need only be true and correct in all material respects as of such date or time) except that all representations and warranties which by their terms are qualified as to materiality shall be true in all respects as if made on and as of such date, and the covenants and agreements of Seller to be performed on or before the Closing Date shall have been duly performed in all material respects in accordance with this Agreement, and Seller shall have delivered to Buyer a Certificate, dated the Closing Date and executed by a Vice President of Seller, reasonably satisfactory in form and substance to Buyer, confirming the foregoing.

(b) Closing Documents. On or prior to the Closing Date, Seller shall have delivered, or be standing ready to deliver at the Closing, all agreements, instruments, and documents required to be delivered by Seller pursuant to Section 9.2.

(c) No Action. On the Closing Date, no suit, action or other proceeding (excluding any such matter initiated by Buyer or any of its Affiliates) shall be pending or threatened before any court or governmental agency or body of competent jurisdiction seeking to enjoin or restrain the consummation of the Closing or recover substantial damages from Buyer or any Affiliate of Buyer resulting therefrom.

(d) Waiting Period. The waiting period under the HSR Act applicable to the consummation of the transactions contemplated hereby shall have expired or been terminated or the Parties shall have otherwise complied with the HSR Act.

(e) Governmental Approvals. The Governmental Approvals and other consents, filings and notices required for the consummation of the transactions contemplated hereby, as identified on Schedules 4.1(h) and 8.2(e) hereto, shall have been obtained.

(f) Equipment Procurement. At the Closing, Seller shall have caused to be assigned to SWP or any Subsidiary, the rights of Seller as "buyer" under those contracts and agreements described on Schedule 8.2(f), but only to the extent that such contracts and agreements relate to the specific items of equipment described therein.

(g) Payment of NatWest Loan and Bridge Loan. Buyer shall have received evidence satisfactory to it that the obligations of SWP and any Subsidiary with respect to NatWest Loan, the Bridge Loan and the Subordinated Note shall be paid in full from the proceeds of the Adjusted Purchase Price and evidence satisfactory to it of the release of Buyer and all Real Property therefrom for any liabilities, obligations or otherwise under any of the agreement, document or instrument with respect thereto, including the Subordinated Note and any interest rate swap or other hedge arrangement in connection with the NatWest Loan (including the Interest Rate Swap Transaction M186845 dated July 22, 1999 between Las Vegas Cogeneration Limited Partnership and Enron North America Corp. (formerly known as Enron Capital & Trade Resources Corp.)) and of any Liens securing such loans.

ARTICLE 9
Closing

9.1 Closing.

A closing (the "Closing") shall be held on the Closing Date at 10:00 a.m., Denver time, at the offices of LeBoeuf, Lamb, Greene & MacRae, LLP, in Denver, Colorado, or at such other time or place as Seller and Buyer may otherwise agree in writing. To facilitate the Closing, Buyer and Seller agree that a pre-closing at which all closing agreements shall be signed shall occur at least two Business Days prior to the Closing Date.

9.2 Seller's Closing Obligations.

At the Closing, Seller shall execute and deliver, or cause to be executed and delivered, to Buyer the following:

- (i) duly executed copies of the Assignment and Assumption Agreements;
- (ii) a duly executed copy of the Seller Guaranty;
- (iii) resignations or terminations of the officers, directors, and managers of each of SWP and each Subsidiary from their status as officers, directors, and managers effective as of the Closing;

(iv) the officer's certificate referred to in Section 8.2(a);

(v) an opinion of LeBoeuf, Lamb, Greene & MacRae, LLP or Seller's in-house counsel covering the matters described on Exhibit C, in form and substance reasonably satisfactory to Buyer;

(vi) a "non-imputation endorsement affidavit" in the form customarily used in the State of Nevada to allow Buyer to obtain the Title Endorsement to the Title Policy; and

(vii) any other documents or instruments reasonably required by Buyer to consummate the transactions contemplated hereunder.

9.3 Buyer's Closing Obligations.

At the Closing, Buyer shall deliver, or cause to be delivered, to Seller the following:

(i) the Closing Payment to Seller in immediately available funds to the bank account as provided in Section 3.2;

(ii) duly executed copies of the Assignment and Assumption Agreements;

(iii) the officer's certificate referred to in Section 8.1(a);

(iv) an opinion of Morgan, Lewis & Bockius LLP or Buyer's in-house counsel covering the matters described on Exhibit D, in form and substance reasonably satisfactory to Seller; and

(v) any other documents or instruments reasonably required by Seller to consummate the transaction contemplated hereunder.

ARTICLE 10 Limitations

10.1 Buyer's Review.

(a) No Reliance. Buyer has reviewed and had access to all documents, records and information which it has desired to review in connection with its decision to enter into this Agreement, and to consummate the transactions contemplated hereby. Buyer has not relied upon any representation, warranty, statement, advice, document, projection, or other information of any type provided by Seller or its Affiliates, SWP and any Subsidiary, or any of their representatives, except for those representations and warranties expressly set forth herein. In deciding to enter into this Agreement, and to consummate the transactions contemplated hereby, Buyer has relied solely upon its own knowledge, investigation, and analysis (and that of its representatives) and not on any disclosure or representation made by, or any duty to disclose on the part of, Seller or its Affiliates, SWP and any Subsidiary, or any of their representatives, other than the express representations and warranties of Seller set forth herein.

(b) Limited Duties. Any and all duties and obligations which either Party may have to the other with respect to or in connection with SWP and any Subsidiary, this Agreement, or the transactions contemplated hereby are limited to those set forth in this Agreement. Neither the duties nor obligations of either Party, nor the rights of either Party, shall be expanded beyond the terms of this Agreement on the basis of any legal or equitable principle or on any other basis whatsoever. Neither any equitable nor legal principle nor any implied obligation of good faith or fair dealing nor any other matter requires either Party to incur, suffer or perform any act, condition or obligation contrary to the terms of this Agreement, whether or not existing and whether foreseeable or unforeseeable. The Parties acknowledge that it would be unfair, and that they do not intend, to increase any of the obligations of any Party under this Agreement on the basis of any implied obligation or otherwise.

10.2 Disclaimer of Warranties.

(a) INFORMATION. EXCEPT AS PROVIDED IN SECTION 4.1, SELLER MAKES NO REPRESENTATION OR WARRANTY, EXPRESS, IMPLIED, AT COMMON LAW, STATUTORY OR OTHERWISE, WITH RESPECT TO THE ACCURACY OR COMPLETENESS OF THE INFORMATION, RECORDS, AND DATA NOW, HERETOFORE, OR HEREAFTER MADE AVAILABLE TO BUYER IN CONNECTION WITH THIS AGREEMENT (INCLUDING ANY DESCRIPTION OF SWP AND ANY SUBSIDIARY, THE OPERATING FACILITY, THE DEVELOPMENT PROJECT, REVENUE, PRICE AND EXPENSE ASSUMPTIONS, ELECTRICITY DEMAND FORECASTS, OR ENVIRONMENTAL INFORMATION, OR ANY OTHER INFORMATION FURNISHED TO BUYER BY SELLER OR ANY AFFILIATE OF SELLER OR ANY DIRECTOR, OFFICER, EMPLOYEE, COUNSEL, AGENT, OR ADVISOR THEREOF).

(b) Facilities. Notwithstanding anything contained to the contrary in any other provision of this Agreement, it is the explicit intent of each Party that Seller and its Affiliates are not making any representation or warranty whatsoever, express, implied, at common law, statutory or otherwise, except for the express representations or warranties given in this Agreement, and it is understood that Buyer, with such exceptions, takes the LLC Interests, the Operating Facility, the Development Project, and any other assets of SWP and any Subsidiary "as is" and "where is." Without limiting the generality of the immediately preceding sentence, except as expressly provided in this Agreement, Seller hereby expressly disclaims and negates any representation or warranty, express or implied, at common law, statutory, or otherwise, relating to (i) the condition of the Operating Facility, the Development Project, and other assets of SWP and any Subsidiary (including any implied or express warranty of merchantability or fitness for a particular purpose, or of conformity to models or samples of materials, or the presence or absence of any hazardous materials in or on, or disposed or discharged from, the Operating Facility, the Development Project Site and other assets of SWP and any Subsidiary) or (ii) the adequacy, completeness or accuracy of any plans or specifications for the Development Project, the appropriateness, fitness for use or condition of any equipment or materials intended to be used in connection with or incorporated into the Development Project, the accuracy or sufficiency of any schedules or budgets for completion of the Development Project or estimates of whether the Development Project, if completed, will perform at any projected levels or will comply with the terms of any permits or licenses, or any other matters relating to Development Project, or (iii) any infringement by Seller, SWP or any Subsidiary, or any of their Affiliates of any patent or proprietary right of any Person. Buyer has

agreed not to rely on any representation made by Seller with respect to the condition, quality, or state of the Operating Facility or the Development Project except for those in this Agreement, but rather, as a significant portion of the consideration given to Seller for this purchase and sale, has agreed to rely solely and exclusively upon its own evaluation of the SWP and any Subsidiary and the Operating Facility and the Development Project, except as expressly provided herein. The provisions contained in this Agreement are the result of extensive negotiations between Buyer and Seller and no other assurances, representations or warranties about the quality, condition, or state of SWP and any Subsidiary or the Operating Facility and the Development Project were made by Seller in the inducement thereof, except as expressly provided herein.

10.3 Waiver of Damages.

NOTWITHSTANDING ANYTHING CONTAINED TO THE CONTRARY IN THIS AGREEMENT, SELLER AND BUYER AGREE THAT, EXCEPT FOR THE LIQUIDATED DAMAGES SPECIFICALLY PROVIDED FOR IN SECTION 12.2, THE RECOVERY BY EITHER PARTY OF ANY DAMAGES SUFFERED OR INCURRED BY IT AS A RESULT OF ANY BREACH BY THE OTHER PARTY OF ANY OF ITS OBLIGATIONS UNDER THIS AGREEMENT SHALL BE LIMITED TO THE ACTUAL DAMAGES SUFFERED OR INCURRED BY THE NON-BREACHING PARTY AS A RESULT OF THE BREACH BY THE BREACHING PARTY OF ITS OBLIGATIONS HEREUNDER AND IN NO EVENT SHALL THE BREACHING PARTY BE LIABLE TO THE NON-BREACHING PARTY FOR ANY INDIRECT, CONSEQUENTIAL, SPECIAL, EXEMPLARY, OR PUNITIVE DAMAGES (INCLUDING ANY DAMAGES ON ACCOUNT OF LOST PROFITS OR OPPORTUNITIES OR LOST OR DELAYED GENERATION) SUFFERED OR INCURRED BY THE NON-BREACHING PARTY AS A RESULT OF THE BREACH BY THE BREACHING PARTY OF ANY OF ITS OBLIGATIONS HEREUNDER.

ARTICLE 11
Indemnification

11.1 Indemnification By Seller.

From and after the Closing, subject to the other terms and limitations in this Agreement, Seller shall indemnify, defend, reimburse, and hold harmless Buyer and its Affiliates, and its and their directors, officers, partners and employees (individually a "Buyer Indemnified Party" or collectively, the "Buyer Indemnified Parties") from and against any and all Losses asserted against or incurred by any of the Buyer Indemnified Parties (i) for any breach of Seller's representations or warranties made in this Agreement, (ii) for any breach of the covenants or obligations of Seller under this Agreement, or (iii) in respect of the Excluded Assets. In the event and to the extent that any such Losses incurred by the Buyer Indemnified Parties are adjudicated to be attributable to contributory negligence, concurrent liability or fault of the Buyer Indemnified Parties, Seller shall remain liable to indemnify the Buyer Indemnified Parties for all such Losses that are not so attributable.

11.2 Indemnification By Buyer.

From and after the Closing, subject to the other terms and limitations in this Agreement, Buyer shall indemnify, defend, reimburse, and hold harmless Seller, its Affiliates, and its and their directors, officers, partners, employees, consultants, agents, representatives, advisors,

successors, and assigns (individually a "Seller Indemnified Party" or collectively, the "Seller Indemnified Parties") from and against any and all Losses asserted against or incurred by any of the Seller Indemnified Parties (i) for any breach of Buyer's representations or warranties made in this Agreement, (ii) for any breach of the covenants or obligations of Buyer and its Affiliates under this Agreement, or (iii) that relate to or arise out of the businesses of SWP or any Subsidiary or the development, construction, ownership, operation, or maintenance of the Development Project or that otherwise relate to or arise out of SWP or any Subsidiary (whether relating to periods of time prior to or after the Closing Date) or to the extent such Losses are not properly asserted by Buyer (or any Buyer Indemnified Party) under the provisions of Section 6.6 or Section 11.1 (subject to the limitations in this Agreement) by the date specified in Section 11.5. Buyer acknowledges that the Losses described in clause (iii) of the preceding sentence shall be retained by and transferred with SWP or any Subsidiary and shall continue to be the responsibility of SWP or any Subsidiary and Buyer. In the event and to the extent that any such Losses incurred by the Seller Indemnified Parties are adjudicated to be attributable to contributory negligence, concurrent liability or fault of the Seller Indemnified Parties', Buyer shall remain liable to indemnify the Seller Indemnified Parties for all such Losses that are not so attributable.

11.3 Limitations on Indemnity.

None of the Buyer Indemnified Parties shall be entitled to assert any right to indemnification under Section 11.1 until the aggregate amount of all the Losses actually suffered by the Buyer Indemnified Parties exceeds the Deductible Amount, and then only to the extent such Losses exceed, in the aggregate, the Deductible Amount. Except as provided in the next succeeding sentence of this Section 11.3, in no event shall Seller ever be required to indemnify Buyer or the Buyer Indemnified Parties for Losses pursuant to Section 11.1, or any other provision of this Agreement, or pay any other amount in connection with or with respect to this Agreement or the transactions contemplated by this Agreement, in an amount exceeding, in the aggregate, the Purchase Price. Notwithstanding anything contained in this Section 11.3 to the contrary, Seller's maximum liability for Losses arising out of a breach of Seller's representations and warranties contained in the first and second sentences of Section 4.1(e) shall not exceed the Adjusted Purchase Price, and the limits on liability of the Seller contained in this Section shall not apply to indemnity claims pursuant to Section 6.6, and Sections 3.2(i) and 3.2(ii) relating to the release of all liabilities and obligations under the Bridge Loan, the NatWest Loan or the Subordinated Note.

11.4 Third Party Claims.

If a claim by a Person is made against a Seller Indemnified Party or a Buyer Indemnified Party (each, an "Indemnified Party"), and if such Indemnified Party intends to seek indemnity with respect thereto under Article 11, such Indemnified Party shall promptly furnish written notice to other party (the "Indemnifying Party") of such claim. The failure of the Indemnified Party to deliver prompt written notice of a claim shall not affect the indemnity obligations of the Indemnifying Party hereunder except to the extent the Indemnifying Party was substantially disadvantaged by such delay in delivery notice of such claim. The Indemnifying Party shall have thirty (30) days after receipt of such notice to undertake, conduct, and control (through counsel of its own choosing and at its own expense) the settlement or defense thereof, and

the Indemnified Party shall cooperate with it in connection therewith. The Indemnifying Party shall permit the Indemnified Party to participate in such settlement or defense through counsel chosen by such Indemnified Party (but the fees and expenses of such counsel shall be borne by such Indemnified Party). So long as the Indemnifying Party, at the Indemnifying Party's cost and expense, (i) has undertaken the defense of, and assumed full responsibility for all indemnified liabilities with respect to, such claim, (ii) is reasonably contesting such claim in good faith, by appropriate proceedings, and (iii) has taken such action (including the posting of a bond, deposit, or other security) as may be necessary to prevent any action to foreclose a Lien against or attachment of the property of the Indemnified Party for payment of such claim, the Indemnified Party shall not pay or settle any such claim. Notwithstanding compliance by the Indemnifying Party with the preceding sentence, the Indemnified Party shall have the right to pay or settle any such claim, but in such event it shall waive any right to indemnity by the Indemnifying Party for such claim. If within thirty (30) days after the receipt of the Indemnified Party's notice of a claim of indemnity hereunder, the Indemnifying Party does not notify the Indemnified Party that it elects (at the Indemnifying Party's cost and expense) to undertake the defense thereof and assume full responsibility for all indemnified liabilities with respect thereto, or gives such notice and thereafter fails to contest such claim in good faith or to prevent action to foreclose a Lien against or attachment of the Indemnified Party's property as contemplated above, the Indemnified Party shall have the right to contest, settle, or compromise such claim and the Indemnified Party shall not thereby waive any right to indemnity for such claim under this Agreement.

11.5 Survival and Time Limitation.

The terms and provisions of this Agreement shall survive the Closing of the transactions contemplated hereunder. Notwithstanding the foregoing, after Closing, any assertion by Buyer or any Buyer Indemnified Party that Seller is liable to Buyer or any Buyer Indemnified Party for indemnification under the terms of this Agreement or otherwise in connection with the transactions contemplated in this Agreement must be made in writing and must be given to Seller (or not at all) on or prior to the date that is eighteen (18) months after the Closing Date, except for indemnification for matters addressed in Sections 3.2(i), 3.2(ii), 4.1(e) and 6.6 which must be made in writing and must be given to Seller (or not at all) on or prior to the date that is ninety (90) days after the date on which the applicable statute of limitations expires with respect to the matters covered thereby.

11.6 Sole and Exclusive Remedy.

FROM AND AFTER THE CLOSING, EXCEPT AS PROVIDED IN SECTION 6.6 OF THIS AGREEMENT FOR ANY CLAIM IN RESPECT OF TAXES, THE INDEMNIFICATION PROVISIONS OF THIS ARTICLE 11 SHALL BE THE SOLE AND EXCLUSIVE REMEDY FOR ANY BREACH OF THE OTHER PARTY'S REPRESENTATIONS, WARRANTIES, COVENANTS, OR AGREEMENTS CONTAINED IN THIS AGREEMENT OR OTHERWISE WITH RESPECT TO THIS AGREEMENT OR THE TRANSACTIONS CONTEMPLATED HEREBY.

11.7 Compliance with Express Negligence Rule.

ALL RELEASES, DISCLAIMERS, LIMITATIONS ON LIABILITY, AND INDEMNITIES IN THIS AGREEMENT, INCLUDING THOSE IN THIS ARTICLE 11, SHALL APPLY EVEN IN THE EVENT OF THE SOLE, JOINT, AND/OR CONCURRENT NEGLIGENCE, STRICT LIABILITY, OR FAULT OF THE PARTY WHOSE LIABILITY IS RELEASED, DISCLAIMED, LIMITED, OR INDEMNIFIED.

ARTICLE 12
Termination and Remedies

12.1 Termination.

(a) Termination of Agreement. This Agreement and the transactions contemplated hereby may be terminated at any time prior to the Closing:

(i) by the mutual consent of Seller and Buyer; or

(ii) if the Closing has not occurred by the close of business on August 31, 2001, then by Seller if any condition specified in Section 8.1 has not been satisfied on or before such close of business, and shall not theretofore have been waived by Seller; provided, in each case, that the failure to consummate the transactions contemplated hereby on or before such date did not result from the failure by Seller to fulfill any undertaking or commitment provided for herein on the part of Seller that is required to be fulfilled on or prior to Closing; or

(iii) if the Closing has not occurred by the close of business on August 31, 2001, then by Buyer if any condition specified in Section 8.2 has not been satisfied or waived on or before such close of business, and shall not theretofore have been waived by Buyer, provided that the failure to consummate the transactions contemplated hereby on or before such date did not result from the failure by Buyer to fulfill any undertaking or commitment provided for herein on the part of Buyer that is required to be fulfilled on or prior to Closing.

(b) Effect of Termination. Without limiting Seller's and Buyer's respective remedies in the event of termination of this Agreement by Seller or Buyer pursuant to Section 12.1(a), written notice thereof shall promptly be given by the terminating Party to the other Party, and this Agreement shall thereupon terminate. Following any such termination, Buyer will continue to be bound by its obligations set forth in Sections 5.1 and 5.2. If this Agreement is terminated as provided herein, all filings, applications and other submissions made to any Governmental Authority shall, to the extent practicable, be withdrawn from the Governmental Authority to which they were made.

12.2 Remedies.

(a) Seller's Remedies. Notwithstanding anything herein to the contrary, upon the failure by Buyer to fulfill any undertaking or commitment provided for herein on the part of Buyer that is required to be fulfilled on or prior to August 31, 2001 (August 24, 2001 in the case of the condition described in Section 8.1(h)) for closing, Seller, at its sole option, may (i) enforce

specific performance of this Agreement or (ii) pursue any rights or remedies available at law or in equity.

(b) Buyer's Remedies. Notwithstanding anything herein provided to the contrary, upon failure of Seller to fulfill any undertaking or commitment provided for herein on the part of Seller that is required to be fulfilled on or prior to August 31, 2001, Buyer at its sole option may (i) enforce specific performance of this Agreement or (ii) pursue any rights or remedies available at law or in equity.

(c) Election of Remedies. If either Party elects to pursue singularly any remedy available to it under this Section 12.2, then such Party may at any time thereafter cease pursuing that remedy and elect to pursue any other remedy available to it under this Section 12.2.

ARTICLE 13
Other Provisions

13.1 Counterparts.

This Agreement may be executed in one or more counterparts, all of which shall be considered one and the same agreement, and shall become effective when one or more counterparts have been signed by each of the Parties and delivered to the other Party.

13.2 Governing Law.

THIS AGREEMENT AND THE RIGHTS AND OBLIGATIONS OF THE PARTIES HEREUNDER AND THE TRANSACTIONS CONTEMPLATED HEREBY SHALL BE GOVERNED BY, ENFORCED, AND INTERPRETED IN ACCORDANCE WITH THE LAWS OF THE STATE OF NEW YORK.

13.3 Arbitration.

Except for matters that are covered by Section 3.4, any claim, counterclaim, demand, cause of action, dispute, and controversy arising out of or relating to this Agreement (or any agreement delivered in connection with this Agreement) or in any way relating to the subject matter of this Agreement involving the Parties or their representatives (each a "Dispute"), even if such Disputes allegedly are extra-contractual in nature, sound in contract, tort or otherwise, or arise under state or federal Law, shall be resolved by final and binding arbitration. Arbitration shall be conducted in accordance with the rules of arbitration of the Federal Arbitration Act and, to the extent an issue is not addressed by the federal Law on arbitration, by the commercial arbitration rules of the American Arbitration Association. The validity, construction and interpretation of this Agreement to arbitrate, and all other procedural aspects of the arbitration conducted pursuant hereto shall be decided by the arbitrators. In deciding the substance of the Parties' Dispute, the arbitrators shall refer to the governing Law. The arbitrators shall have no authority to award treble, consequential, exemplary, or punitive damages of any type under any circumstances whether or not such damages may be available under state or federal Law, or under the Federal Arbitration Act, or under the commercial arbitration rules of the American Arbitration Association, the Parties hereby waiving their right, if any, to recover any such damages or to appeal or object to the enforcement of any decision or award by the arbitrators. Each Party agrees that any arbitration award against it may be enforced in any jurisdiction

in which such Party holds or keeps assets and that judgment on any arbitration award may be entered by any court having jurisdiction. The arbitration proceeding shall be conducted in Houston, Texas. Within thirty (30) days of the notice initiation of the arbitration procedure, each Party shall select one arbitrator. The two arbitrators shall select a third arbitrator. The third arbitrator shall be a Person who has over eight (8) years professional experience in power generation transactions and is not an Affiliate of and who has not previously been employed by either Party and does not have a direct or indirect interest in either Party or in any Person having an ownership interest in either Party or the subject matter of the arbitration. While the third arbitrator shall be neutral, the two Party appointed arbitrators are not required to be neutral, and it shall not be grounds for removal of either of the two Party appointed arbitrators or for vacating the arbitrators' award that either of such arbitrators has past or present minimal relationships with the Party that appointed such arbitrator. To the fullest extent permitted by Law, any arbitration proceeding and the arbitrators award shall be maintained in confidence by the Parties.

13.4 Entire Agreement.

This Agreement (including the Confidentiality Agreement) and the Schedules and Exhibits hereto contain the entire agreement between the Parties with respect to the subject matter hereof and there are no agreements, understandings, representations, or warranties between the Parties other than those set forth or referred to herein.

13.5 Notices.

All notices hereunder shall be sufficiently given for all purposes hereunder if in writing and delivered personally, sent by documented overnight delivery service or, to the extent receipt is confirmed, by United States Mail, telecopy or overnight delivery to the appropriate address or number as set forth below. Notices to Seller shall be addressed as follows:

TLS Investors, L.L.C.
1400 Smith Street
Houston, TX 77002
Attention: President
Telecopy No.: (503) 464-3740

with copy to:

Enron North America Corp.
121 SW Salmon Street, 3WTC0306
Portland, OR 97204
Attention: Dale Rasmussen
Telecopy No.: (503) 464-8058

or at such other address and to the attention of such other Person as Seller may designate by written notice to Buyer.

Notices to Buyer shall be addressed to:

Black Hills Energy Capital, Inc.
1075 Noel Avenue
Wheeling, IL 60090
Attention: Maurice Klefeker
Telecopy No.: (847) 459-4140

with copy to:

Morgan, Lewis & Bockius, LLP
300 South Grand Avenue, 22nd Floor
Los Angeles, CA 90071-3132
Attention: Richard A. Shortz, Esq.
Telecopy No.: (213) 612-2554

or at such other address and to the attention of such other Person as Buyer may designate by written notice to Seller.

Notice given by overnight delivery or mail shall be effective upon actual receipt. Notice given by telecopier shall be effective upon actual receipt if received during the recipient's normal business hours, or at the beginning of the recipient's next business day after receipt if not received during the recipient's normal business hours. All notices by telecopier shall be confirmed promptly after transmission in writing by certified mail or overnight delivery.

13.6 Successors and Assigns.

The rights and obligations of the Parties shall not be assigned or delegated by either Party without the written consent of the other Party, which may be withheld in such Party's sole discretion, except that (and without being released from any of its obligations hereunder) Buyer shall have the right, without the consent of Seller, (a) to transfer, pledge or assign this Agreement as security for any financing, or (b) transfer or assign this Agreement to any Affiliate of Buyer. In the event of an assignment by Buyer to an Affiliate, such assignee shall execute and deliver an agreement containing the assumption by such assignee of the performance and observance of each covenant and condition of this Agreement to be performed or observed by Buyer. Subject to the preceding, this Agreement shall be binding upon and inure to the benefit of the Parties and their successors and assigns.

13.7 Amendments and Waivers.

This Agreement may not be modified or amended except by an instrument or instruments in writing signed by the Party against whom enforcement of any such modification or amendment is sought. Any Party may, only by an instrument in writing, waive compliance by the other Party with any term or provision of this Agreement on the part of such other Party to be performed or complied with. The waiver by a Party of a breach of any term or provision of this Agreement shall not be construed as a waiver of any subsequent breach.

13.8 Schedules and Exhibits.

All Schedules and Exhibits hereto which are referred to herein are hereby made a part hereof and incorporated herein by such reference. Each Schedule to this Agreement shall be deemed to include and incorporate all disclosures made on the other Schedules to this Agreement. Certain information set forth in the Schedules is included solely for informational purposes, is not an admission of liability with respect to the matters covered by the information, and may not be required to be disclosed pursuant to this Agreement. The specification of any dollar amount in the representations and warranties contained in this Agreement or the inclusion of any specific item in the Schedules is not intended to imply that such amounts (or higher or lower amounts) are or are not material, and no Party shall use the fact of the setting of such amounts or the fact of the inclusion of any such item in the Schedules in any dispute or controversy between the Parties as to whether any obligation, item, or matter not described herein or included in a Schedule is or is not material for purposes of this Agreement.

13.9 Interpretation and Rules of Construction.

This Agreement shall not be construed against either Party, and no consideration shall be given or presumption made, on the basis of who drafted this Agreement or any particular provision hereof or who supplied the form of Agreement. In construing this Agreement:

(i) examples shall not be construed to limit, expressly or by implication, the matter they illustrate;

(ii) the word "includes" and its derivatives means "includes, but is not limited to" and corresponding derivative expressions;

(iii) a defined term has its defined meaning throughout this Agreement and each Exhibit and Schedule to this Agreement, regardless of whether it appears before or after the place where it is defined;

(iv) each Exhibit and Schedule to this Agreement is a part of this Agreement, but if there is any conflict or inconsistency between the main body of this Agreement and any Exhibit or Schedule, the provisions of the main body of this Agreement shall prevail; and

(v) the headings and titles herein are for convenience only and shall have no significance in the interpretation hereof.

13.10 Agreement for the Parties' Benefit Only.

Except as specified in Section 5.1 and Article 11, which are also intended to benefit and to be enforceable by the Seller Indemnified Parties, this Agreement is not intended to confer upon any Person not a party hereto any rights or remedies hereunder, and no Person, other than the Parties or the Seller Indemnified Parties, is entitled to rely on any representation, warranty, covenant, or agreement contained herein.

13.11 Attorneys' Fees.

The prevailing Party in any legal proceeding brought under or to enforce this Agreement shall be additionally entitled to recover court costs and reasonable attorneys' fees from the nonprevailing Party.

13.12 Severability.

If any term or other provision of this Agreement is invalid, illegal, or incapable of being enforced by any Law or public policy, all other conditions and provisions of this Agreement shall nevertheless remain in full force and effect so long as the economic or legal substance of the transactions contemplated hereby is not affected in any adverse manner to a Party. Upon such determination that any term or other provision is invalid, illegal, or incapable of being enforced, the Parties shall negotiate in good faith to modify this Agreement so as to effect the original intent of the Parties as closely as possible in an acceptable manner to the end that the transactions contemplated hereby are fulfilled to the extent possible.

13.13 Time of Essence.

Time is of the essence in this Agreement. If the date specified in this Agreement for giving any notice or taking any action is not a Business Day (or if the period during which any notice is required to be given or any action taken expires on a date which is not a Business Day), then the date for giving such notice or taking such action (and the expiration date of such period during which notice is required to be given or action taken) shall be the next day which is a Business Day.

13.14 Bulk Sales or Transfer Laws.

Seller and Buyer hereby waive compliance by either Party with the provisions of the bulk sales or transfer laws of all applicable jurisdictions.

ARTICLE 14
Letter of Credit; GUARANTY BY BKH

14.1 Letter of Credit.

In order to secure Buyer's obligations hereunder, it shall deliver to Seller on or before 5:00 p.m. Central time on June 21, 2001, an irrevocable letter of credit issued by (a) U.S. Bank or (b) another U.S. commercial bank or a foreign bank with a U.S. branch, in each case having a minimum market capitalization of \$500,000,000 with the long term senior unsecured debt of such bank having a credit rating of at least A- from S&P or A3 from Moody's, in a form reasonably acceptable to Seller, in the principal amount of U.S. \$15,000,000 (the "Letter of Credit"), which may be drawn upon by Seller in the amount of any Damage Award upon delivering to the issuing bank (i) a draw request stating that the Agreement has been terminated pursuant to Article 12 hereof, and (ii) a statement that an arbitral body, in accordance with Section 13.3 hereof, shall have awarded Seller damages (the "Damage Award") payable by Buyer resulting from the failure by Buyer to fulfill any undertaking or commitment provided for

herein. Buyer may, at any time prior to Closing, substitute for the Letter of Credit the BKH Guaranty as provided in Section 14.2 below.

14.2 Guaranty by BKH.

At Buyer's option, Buyer may at any time prior to Closing deliver to Seller in substitution for the Letter of Credit (a) an unconditional guaranty by BKH substantially in the form attached hereto as Exhibit F (the "BKH Guaranty"), guaranteeing the full payment by Buyer of the Adjusted Purchase Price; provided, however, that BKH shall in no event be obligated to pay pursuant to the BKH Guaranty any amounts exceeding, in the aggregate, U.S. \$15,000,000; and (b) an opinion of counsel satisfactory to Seller confirming that the BKH Guaranty constitutes a valid and binding agreement of BKH enforceable against BKH in accordance with its terms, subject to (x) applicable bankruptcy, insolvency, reorganization, moratorium, and other similar laws of general application from time to time in effect that affect creditors' rights generally, (y) general principles of equity, and (z) the power of a court to deny enforcement of remedies generally based upon public policy.

14.3 Effect of Failure to Deliver Letter of Credit or Guaranty.

If Buyer fails to deliver the Letter of Credit or the BKH Guaranty on or prior to 5:00 p.m. Central time on June 21, 2001, then Seller shall have the right, but not the obligation, to terminate this Agreement by providing notice to Buyer on or before 5:00 p.m. Central time on June 25, 2001, without any further liability or obligation to Buyer.

IN WITNESS WHEREOF, this Agreement has been signed by or on behalf of each of the Parties as of the day first above written.

Seller:

TLS Investors, L.L.C.

By: _____

Name: _____

Title: _____

Buyer:

BLACK HILLS ENERGY CAPITAL, INC.

By: _____

Name: _____

Title: _____

EXECUTION COPY

AGREEMENT FOR LEASE

between

WYGEN FUNDING, LIMITED PARTNERSHIP

and

BLACK HILLS GENERATION, INC.

Dated as of July 20, 2001

THIS AGREEMENT HAS BEEN ASSIGNED AS SECURITY
FOR INDEBTEDNESS OF OWNER. SEE SECTION 17.

This Agreement has been manually executed in 10 counterparts, numbered consecutively from 1 through 10, of which this is No. _____. To the extent, if any, that this Agreement constitutes chattel paper (as such term is defined in the Uniform Commercial Code as in effect in any applicable jurisdiction), no security interest in this Agreement may be created or perfected through the transfer or possession of any counterpart other than the original executed counterpart which shall be the counterpart identified as counterpart No. 1.

TABLE OF CONTENTS
(continued)

	Page
SECTION 1. DEFINITIONS.....	1
SECTION 2. APPOINTMENT OF AGENT.....	15
SECTION 3. ADVANCES. 18	
SECTION 4. CONDITIONS PRECEDENT TO THE INITIAL ADVANCE WITH RESPECT TO THE PROJECT.....	20
SECTION 5. CONDITIONS PRECEDENT TO OWNER'S OBLIGATION TO MAKE INTERIM ADVANCES AFTER THE INITIAL ADVANCE WITH RESPECT TO THE PROJECT.....	25
SECTION 6. CONDITIONS PRECEDENT TO THE FINAL ADVANCE WITH RESPECT TO THE PROJECT.....	26
SECTION 7. CONDITIONS PRECEDENT TO COMPLETION ADVANCES WITH RESPECT TO THE PROJECT.....	30
SECTION 8. REPRESENTATIONS AND WARRANTIES OF AGENT.....	32
SECTION 9. AFFIRMATIVE COVENANTS.....	40
SECTION 10. NEGATIVE COVENANTS.....	50
SECTION 11. EVENTS OF DEFAULT AND EVENTS OF PROJECT TERMINATION.....	52
SECTION 12. INDEMNITIES.....	63
SECTION 13. LEASEHOLD INTEREST.....	65
SECTION 14. PURCHASE OF THE PROJECT.....	65
SECTION 15. EVENTS OF LOSS; TERMINATION UPON CERTAIN EVENTS.....	65
SECTION 16. PERMITTED CONTESTS.....	67
SECTION 17. SALE OR ASSIGNMENT BY OWNER.....	68
SECTION 18. GENERAL CONDITIONS.....	68
Exhibit A	Form of Acquisition Certificate
Exhibit B	Form of Interim Advance Certificate
Exhibit C	Form of Certificate of Substantial Completion
Exhibit D	Form of Certificate of Increased Cost
Exhibit E	List of Project Contracts

Exhibit F List of Project Authorizations
Exhibit G Budget
Exhibit H Construction Drawdown Schedule

(i)

AGREEMENT FOR LEASE

Agreement for Lease, dated as of July 20, 2001 (as the same may be amended, restated, modified or supplemented from time to time, "this Agreement"), between WYGEN FUNDING, LIMITED PARTNERSHIP, a Delaware limited partnership ("Owner"), formed by Wygen Capital, Inc., its general partner, and BLACK HILLS GENERATION, INC., a Wyoming corporation ("Agent").

WHEREAS, Owner has acquired or will acquire on the date hereof a leasehold interest pursuant to a Ground Lease (hereinafter defined) in the Premises (hereinafter defined); and

WHEREAS, on or about the date of this Agreement, Owner and Agent propose to enter into the Lease (hereinafter defined), providing for the lease by Agent, as lessee, of the Project (hereinafter defined) which will be constructed and located on the Premises pursuant to the terms of this Agreement and the sublease by Agent of the Premises; and

WHEREAS, Owner desires to appoint Agent to act as agent for Owner in connection with the construction of the Project, and in connection with all matters related to such construction, and Agent wishes to accept such appointment;

NOW, THEREFORE, in consideration of the mutual covenants herein contained and other valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Owner and Agent hereby agree as follows:

SECTION 1. DEFINITIONS.

1.1 Defined Terms. For the purposes of this Agreement each of the following terms shall have the meaning specified with respect thereto:

Accrued Default Obligations: Defined pursuant to subsection 11.2 hereof.

Accrued Project Termination Obligations: With respect to any Event of Project Termination, all of the losses, damages, costs and expenses (including, without limitation, attorneys' fees and expenses incurred by Owner and any Assignee in connection with the exercise of their remedies thereunder, filing fees and sales or transfer taxes and all costs and expenses related to (i) the conduct of investigations, studies, sampling and/or testing of the Premises and (ii) the taking of any action, including, without limitation, any remedial measures or removal with respect to the Premises each as required by an Assignee pursuant to the terms of a Financing Arrangement) sustained by Owner by reason of such Event of Project Termination and the exercise of Owner's rights with respect thereto, including, without limitation, in the event of a sale by Owner of its interest in the Project pursuant to subsection 11.4 hereof, all costs and expenses associated with such sale, excluding, in all cases, costs or expenses included in the Acquisition Cost.

Acquisition Certificate: The certificate delivered by Agent to Owner pursuant to Section 4 hereof in connection with a request for the Initial Advance, substantially in the form of Exhibit A hereto.

Acquisition Cost: The sum of (a) the aggregate amount of advances made pursuant to this Agreement and (b) all other costs of Owner (including costs incurred by Agent but reimbursed by Owner) with respect to the Project (except costs for which Owner has been reimbursed by Agent pursuant to the provisions of Section 12 hereof) arising from the acquisition, construction, equipping, and financing (including, without limitation, Financing Costs and Owner's out-of-pocket expenses and fee obligations, including, without limitation the Management Fee that Owner is obligated to pay to Merrill Leasing pursuant to the terms of the Management Agreement, prior to the Effective Date).

Additional Rent: Defined pursuant to subsection 1.2 hereof.

Affiliate: Defined pursuant to subsection 1.2 hereof.

Agreement: This Agreement for Lease, as the same may be amended, restated, modified or supplemented from time to time.

Appraiser: Arthur Andersen & Co.

Assignee: Each Person to which any part of Owner's interest under this Agreement or in the Project shall at the time have been assigned, conditionally or otherwise, by Owner in accordance with Section 17 of this Agreement. For purposes of subsections 2.2, 8.4, 8.5 and 8.13, subsection 9.24, Section 12, clause (iii) of paragraph (a) of Section 16, the last sentence of paragraph (b) of Section 17 and subsections 18.3 and 18.4, the term "Assignee" shall include each lender (and any entity providing liquidity to a lender) to Owner, and any entity acting as an agent in any capacity for the benefit of such lenders (and such liquidity providers), under a Financing Arrangement.

Available Commitment: At the time of determination, an amount equal to the difference between (a) the sum of (i) the aggregate commitment to lend under all Financing Arrangements and (ii) Owner's existing equity capital and additional equity capital contributions then available to Owner and (b) the sum of (i) the aggregate amount of all advances theretofore made pursuant to Section 3 hereof and (ii) Financing Costs theretofore incurred by Owner or accrued and unpaid under all Financing Arrangements.

Basic Rent: Defined pursuant to subsection 1.2 hereof.

BHP: Black Hills Power, Inc., a South Dakota corporation, and its successors.

Budget: The itemized budget for the Project prepared by Agent and delivered to Owner and attached hereto as Exhibit G, as amended from time to time, which shall include, without limitation, (a) all costs incurred by Agent in performing its duties under subsections 2.1 and 2.2 hereof, including, without limitation, the purchase price of component parts and construction materials, survey and survey inspection charges, appraisal, architectural, engineering,

environmental analysis, soil analysis and market analysis fees, brokerage commissions, transfer fees and taxes that are customarily the responsibility of the purchaser, closing adjustments for taxes, utilities and the like, escrow and closing fees, recording and filing fees, and all related costs and expenses incurred in acquiring an interest in the Premises, whether incurred prior to or after the date hereof; (b) the costs incurred by Agent in connection with and pursuant to the terms of the EPC Contract (or any other construction contracts entered into by Agent in connection with the completion of the Project); (c) the costs incurred by Agent in connection with the construction of a 230kV transmission line interconnecting the Premises and the Wyodak Substation, including all appurtenant facilities and a step-up transformer; (d) the costs of architects', attorneys', engineers' and other professionals' fees and disbursements in connection with the construction and construction financing of the Project, including, without limitation, the fees and disbursements of Agent's counsel in connection with this Agreement, the Lease and the transactions contemplated hereby and thereby and the duties of Agent hereunder, under the EPC Contract and in all other matters involving or reasonably related to this transaction; (e) the costs of all insurance, real estate, property and excise tax assessments, sales and use taxes on materials used in construction, and other operating and carrying costs paid or accrued by Agent or levied upon the Project, Agent or Owner in connection with the Project during the term of this Agreement; (f) costs of Agent's project representatives (inspectors, consultants, etc.) incurred by Agent in its capacity as agent for Owner; (g) the fees and disbursements of Owner's counsel in connection with the preparation, execution and delivery by Owner of this Agreement and the Lease, and the consummation of the transactions contemplated hereby or thereby; (h) any financing costs incurred by Agent in connection with its payment of any Project Costs prior to the date hereof; (i) any internal out-of-pocket costs incurred by Agent in connection with the negotiation, execution and delivery of this Agreement, the Lease and the Project Contracts; (j) the Management Fee and all Financing Costs accruing during the term of this Agreement; and (k) a reasonable contingency amount with respect to the foregoing items, which amount shall include Financing Costs and otherwise shall be allocated to unexpected increases in the costs associated with the Project, including, without limitation, the payment of any liquidated damages or any performance bonus pursuant to the terms of any Project Contract; provided that any modification or supplement to the Budget shall be made in compliance with the provisions of subsection 2.2 hereof.

Business Day: Defined pursuant to subsection 1.2 hereof.

CERCLA: Defined pursuant to paragraph (h) of subsection 8.27 hereof.

CERCLIS: Defined pursuant to paragraph (h) of subsection 8.27 hereof.

Certificate of Increased Cost: The certificate delivered by Agent to Owner pursuant to Section 7 hereof in connection with a request for a Completion Advance, substantially in the form of Exhibit D hereto.

Certificate of Substantial Completion: The certificate delivered by Agent to Owner pursuant to Section 6 hereof in connection with a request for a Final Advance, substantially in the form of Exhibit C hereto.

Cheyenne Consent: The consent from Cheyenne Light, Fuel and Power Company to Owner and Assignee with respect to, among other things, the pledge of the Cheyenne Power Purchase Agreement, in form and substance satisfactory to Owner and Assignee in their reasonable discretion.

Code: The Internal Revenue Code of 1986, as amended.

Completion Advance: Any advance made by Owner upon satisfaction of the conditions set forth in Section 7 hereof.

Completion Amount: The maximum aggregate amount of the Completion Advance to be requested by Agent pursuant to Section 7 hereof.

Completion Date: September 30, 2003, unless such Completion Date is extended by the delivery of the Extension Option as a result of a Force Majeure Delay, casualty or temporary condemnation, as the case may be, in which case the Completion Date shall be the date to which the existing Completion Date is extended pursuant to the Extension Option.

Consent: Defined pursuant to subsection 1.2 hereof.

Construction Documents: The collective reference to the EPC Contract, the Plans, the Permits, the Insurance Requirements and all other agreements entered into by Agent with respect to constructing and equipping the Project.

Construction Drawdown Schedule: The schedule of projected construction drawdowns delivered to Owner pursuant to Section 4 hereof, a copy of which is attached as Exhibit H hereto.

Contaminant: Defined pursuant to subsection 1.2 hereof.

Easements: Defined pursuant to subsection 1.2 hereof.

Easement Agreement: The Easement Agreement, dated as of the date hereof, between Black Hills Power, Inc. and Wyodak Resources Development Corp., as grantors, and Owner, as grantee, as the same may be amended, restated, modified or supplemented from time to time.

Effective Date: Defined pursuant to subsection 1.2 hereof.

Environmental Approvals: Defined pursuant to subsection 1.2 hereof.

Environmental Consultant: Pilko & Associates, Inc. or such other environmental consulting firm qualified to evaluate environmental risks associated with the Project, as selected by Agent and satisfactory in all respects to Owner and Assignee.

Environmental Damages: Defined pursuant to subsection 1.2 hereof.

Environmental Event: Defined pursuant to subsection 1.2 hereof.

Environmental Lien: Defined pursuant to subsection 1.2 hereof.

Environmental Matters: Defined pursuant to subsection 1.2 hereof.

Environmental Requirements: Defined pursuant to subsection 1.2 hereof.

EPC Contract: The Engineering, Procurement and Construction Agreement dated as of December 27, 2000, as amended by a First Amendment to Engineering, Procurement and Construction Agreement dated as of April 11, 2001 (the "EPC First Amendment"), between Agent and the General Contractor with respect to the Project, as the same may be amended, restated, modified or supplemented from time to time in accordance with the terms hereof.

EPC Subcontracts: Collectively, the Subcontracts and Supply Contracts (each as defined in the EPC Contract) entered into by the General Contractor pursuant to the EPC Contract, as the same may be amended, restated, modified or supplemented from time to time in accordance with the terms hereof.

Equity Capital: Defined pursuant to subsection 1.2 hereof.

Event of Default: Any of the events specified in subsection 11.1 hereof; provided that any requirement for the giving of notice, the lapse of time, or both, or any other condition, has been satisfied.

Event of Loss: Any of the following events: (a) loss of all or a substantial portion of the Project or the use thereof due to destruction, damage beyond economical repair or rendition of the Project permanently unfit for the use contemplated by the Project Contracts on a commercially feasible basis for any reason whatsoever; (b) any event which results in an insurance settlement with respect to the Project on the basis of a total loss or constructive total loss and Agent fails to demonstrate to the reasonable satisfaction of Owner and Assignee that the restoration thereof can reasonably be expected to be completed within the limits of the Budget (taking into account insurance proceeds) so that the Project will be completed on or before the Completion Date; and (c) the condemnation or taking or requisition of title or use for an indefinite period or a period in excess of 180 days by any Governmental Authority which constitutes the taking of all or a substantial portion of the Project or all or such a substantial portion of the Premises such that the remainder is not sufficient to permit operation of the Project on a commercially feasible basis. A loss of a "substantial portion" of the Project shall be deemed to occur if, in the judgment of Owner and Assignee, after such event, (i) Agent will not be able to fully perform its obligations under this Agreement, the Lease, the Facility Support Agreement or the Project Contracts or (ii) a material diminution in the value, utility or economic useful life of the Project will occur.

Event of Project Termination: Any of the events specified in subsection 11.3 hereof; provided that, any requirement for the giving of notice, the lapse of time, or both, or any other condition, has been satisfied.

EWG: Defined pursuant to subsection 1.2 hereof.

Extension Option: Agent's extension of the Completion Date due to a Force Majeure Delay, casualty or temporary condemnation, as the case may be (which extension may be exercised one or more times); provided that Agent shall have delivered a written notice to Owner at least ten (10) days prior to the existing Completion Date (or in the case of a Force Majeure Delay, casualty or temporary condemnation, as the case may be, occurring after September 20, 2003, promptly after such occurrence), which notice shall:

(i) certify that (A)(1) a Force Majeure Delay, casualty or temporary condemnation, as the case may be, has occurred and describe the nature thereof and (2) such Force Majeure Delay, casualty or temporary condemnation, as the case may be, will prevent Substantial Completion from occurring on or prior to the existing Completion Date, and (B) no Event of Default or Event of Project Termination (other than an Event of Default or Event of Project Termination which has occurred solely as a result of the failure of Substantial Completion to have occurred on or prior to such date due to the Force Majeure Delay, casualty or temporary condemnation, as the case may be) has occurred and is continuing, which certifications shall be true; and

(ii) designate the date to which the existing Completion Date is to be extended, which extension shall be no longer than the time period reasonably necessary to remedy the event giving rise to the Force Majeure Delay, casualty or temporary condemnation, as the case may be.

In the event that such notice shall comply with the conditions and requirements set forth in clauses (i) and (ii) above, and subject to the further requirements that no Event of Default or Event of Project Termination (other than an Event of Default or Event of Project Termination which has occurred solely as a result of the failure of Substantial Completion to have occurred on or prior to such date due to the Force Majeure Delay, casualty or temporary condemnation, as the case may be) shall have occurred and be continuing on the existing Completion Date, the Completion Date shall, on the existing Completion Date, be extended to the date set forth in Agent's notice.

FERC: Defined pursuant to subsection 1.2 hereof.

Facility Support Agreement: The Facility Support Agreement, dated as of the date hereof, between Owner and Agent, as the same may be amended, restated, modified or supplemented from time to time.

Final Advance: The advance made by Owner upon satisfaction of the conditions set forth in Section 6 hereof.

Final Survey: Defined pursuant to paragraph (g) of Section 6 hereof.

Financing Arrangement: Defined pursuant to subsection 1.2 hereof.

Financing Costs: All interest (including, without limitation, interest at a default rate), commitment or similar fees and other costs, fees and expenses incurred by Owner under any

Financing Arrangement (including any such amounts accruing after the commencement of a bankruptcy or similar proceeding), premiums, breakage costs and other costs, fees and expenses incurred by Owner under all Financing Arrangements (including all costs and expenses arising in connection with the enforcement, collection or termination of any Financing Arrangement), all indemnity payments owing by Owner under any Financing Arrangement (except those for which Owner has been reimbursed by Agent pursuant to the provisions of Section 12 hereof); all costs and fees incurred in connection with obtaining, maintaining and terminating Owner's equity financing, including Return on Equity Capital, all fees payable to Owner's general partner under its partnership agreement and any premiums and breakage costs incurred by Owner under its partnership agreement; and all costs, fees and expenses of Owner incurred in the ordinary course of its business in connection with the transactions contemplated hereby, including, without limitation, the costs of attorneys', accountants' and other professionals' fees and disbursements.

Force Majeure Delay: Any circumstance not within the reasonable control, directly or indirectly, of Agent to the extent that (i) such circumstance, despite the exercise of reasonable diligence, cannot be or be caused to be prevented, avoided or removed by Agent, (ii) such event adversely affects (in cost and/or time) the ability of Agent to perform its obligations under this Agreement and any other Project Contract and Agent has taken reasonable steps to mitigate the consequences thereof, and (iii) Agent has given Owner notice of such Force Majeure Delay as soon as practicable upon becoming aware thereof, together with reasonable evidence of the nature of the delay and cost effect attributable to such Force Majeure Delay and its effect upon the time of performance, and a more precise statement of the mitigation measures taken or to be taken by Agent.

Fuel Supply Agreements: Collectively, (i) the Coal Supply Agreement, dated as of July 20, 2001, between Wyodak Resources Development Corp. and Agent; and (ii) the Agreement for Rights of Usage of Coal Silo and Coal Conveyer, dated as of July 20, 2001, between Black Hills Power, Inc. and Agent with respect to the supply of coal to the Project, in each case as the same may be amended, restated, modified, or supplemented from time to time.

GAAP: Defined pursuant to subsection 1.2 hereof.

GE Turbine Contract: The Purchase Order dated May 11, 2001 and the Terms and Conditions for Procurement and Shipment of Steam Turbine/Generator Equipment dated May 1, 2001, between General Electric Company and the General Contractor, as the same may be amended, restated, modified, or supplemented from time to time.

General Contractor: The Babcock & Wilcox Company, a Delaware corporation.

Governmental Action: Any action as defined in subsection 8.5 hereof.

Governmental Authority: Defined pursuant to subsection 1.2 hereof.

Ground Lease: Defined pursuant to subsection 1.2 hereof.

Guarantor: Black Hills Corporation, a South Dakota corporation, and its successors.

Guaranty: The Guaranty, dated as of the date hereof, by and between the Guarantor and Owner, as the same may be amended, restated, modified or supplemented from time to time.

Indebtedness: Defined pursuant to subsection 1.2 hereof.

Indemnified Person: Any Person as defined in paragraph (a) of Section 12 hereof.

Initial Advance: The advance made by Owner upon satisfaction of the conditions set forth in Section 4 hereof.

Insurance Broker: Palmer & Cay.

Insurance Requirements: Defined pursuant to subsection 1.2 hereof.

Intellectual Property Rights: Collectively, all patents, patent applications, trademarks (whether registered or not), trademark applications, trade names, proprietary computer software or copyrights (or any licenses, permits or agreements with respect to any of the foregoing) necessary to construct, operate, lease or use the Project or any part thereof.

Interconnections: The physical points of ongoing operational interconnection and jurisdictional boundary between the Project and the facilities located at or available to the Project which are owned, operated and maintained by Agent or any of its Affiliates and shared with the Project.

Interconnection Agreement: Defined pursuant to subsection 1.2 hereof.

Interim Advance: Any advance made by Owner upon satisfaction of the conditions set forth in Section 5 hereof.

Interim Advance Certificate: The certificate delivered by Agent to Owner pursuant to Section 5 hereof in connection with a request for an Interim Advance, substantially in the form of Exhibit B hereto.

Lease: The Lease Agreement, dated as of the date hereof, by and between Owner, as lessor or sublessor, and Agent, as lessee or sublessee, as the case may be, as the same may be amended, restated, modified or supplemented from time to time.

Legal Requirements: The term "Legal Requirements" shall have the meaning set forth opposite such term in the Lease, except that the phrase "from the date hereof through the term of this Agreement" shall substitute for the phrase "from the date hereof through the Initial Term, each Extended Term and any Renewal Term."

Letter of Credit: The Irrevocable Letter of Credit No. NY-20511-30029698, dated April 18, 2001, issued by CitiBank, N.A., in favor of Agent, as the same may be amended, restated, modified, supplemented, substituted or replaced from time to time.

Lien: Defined pursuant to subsection 1.2 hereof.

Loss Payment: At any time, an amount equal to the difference between (A)(x) 89.9% of the sum of (i) all amounts included in the Acquisition Cost of the Project that are capitalized into the basis of the Project in accordance with GAAP, plus (ii) all capitalizable Unreimbursed Project Costs, plus (y) 10.1% of any costs and expenses incurred by Owner in connection with the acquisition of the land comprising part of the Premises and (B) all Unreimbursed Project Costs.

Loss Payment Requirements: (a) Receipt by Owner of conveyancing, assignment, transfer, termination and other documents that are sufficient to (i) convey and assign to Owner (or a designated assignee of Owner or Assignee) on or before the earlier of (x) the date that is thirty (30) days after Owner terminated this Agreement or Agent's right to the use and possession of the Project in accordance with this Agreement or (y) the date Owner (or a designated assignee of Owner or Assignee), takes possession of the Project and assumes the obligations of Agent thereafter accruing under the Project Contracts, (A) good and marketable title to Agent's interest in the Project, free and clear of Liens (other than Permitted Liens identified in clauses (a), (b), (c), (f), (g), (h) (to the extent not attributable to acts or omissions of Agent) and (i) of the definition thereof), and (B) Agent's right, title and interest in the Project Contracts existing on such date (conditioned upon the assumption by Owner (or a designated assignee of Owner or Assignee), of Agent's obligations accruing under such Project Contracts from and after such date), free and clear of Liens, (ii) terminate on or before the earlier of (x) the date that is thirty (30) days after Owner terminated this Agreement or Agent's right to the use and possession of the Project in accordance with this Agreement or (y) the date Owner (or a designated assignee of Owner or Assignee), takes possession of the Project and assumes such obligations, all rights of Agent and all other Persons (other than Owner and Assignee and any other Person as may be designated by Owner and Assignee) in and to the Project, and (iii) deliver to Owner such title insurance policies and surveys as Owner or Assignee may reasonably require in connection with such conveyance;

(b) In the event the Project has been operated by Agent, receipt by Owner of evidence, satisfactory in scope and content to Owner and Assignee, to the effect that the Project is capable of being operated and maintained in compliance with the performance standards required for Operational Acceptance under the EPC Contract and all Legal Requirements;

(c) Receipt by Owner of evidence, satisfactory in scope and content to Owner and Assignee, that Agent's right, title and interest in all Permits and Intellectual Property Rights existing on such date and transferable by Agent have been transferred to Owner and can be transferred to any successor or designated assignee of Owner without further consent or approval by any Person;

(d) Receipt by Owner of all manuals, "as built" plans and design specifications for the Project (including all Turn Over Documentation and Work Product, each as defined in the EPC Contract), equipment inspection reports and, if applicable, maintenance records required to operate the Project in accordance with the Project Contracts, satisfactory in scope and content to Owner and Assignee; and

(e) Receipt by Owner of an environmental audit, satisfactory in scope and content to Owner and Assignee (in each case, in their reasonable discretion), prepared by the Environmental Consultant, to the effect that (i) no Environmental Matters exist with respect to the Project or the Premises as a result of the construction, operation and maintenance of the Project and (ii) the Project may be operated to its design capacity in accordance with the Project Contracts and in compliance with Environmental Requirements.

Management Agreement: The Management Agreement, dated as of the date hereof, between Owner and Merrill Leasing, as the same may be amended, restated, modified or supplemented from time to time.

Management Fee: (i) For each full monthly period commencing on or after the date hereof and ending on or prior to the Effective Date, an amount computed by multiplying the following:

- (a) the Acquisition Cost at the end of such monthly period, multiplied by
- (b) a fraction having a numerator equal to the number of days in such monthly period and a denominator of 360, multiplied by
- (c) 0.20%.

(ii) for any partial monthly period commencing on or after the date hereof and ending on or prior to the Effective Date, an amount computed by multiplying the following:

- (a) the Acquisition Cost at the end of such monthly period, multiplied by
- (b) a fraction having a numerator equal to the number of days the Project is subject to this Agreement and not under lease during such partial monthly period and a denominator of 360, multiplied by
- (c) 0.20%.

Material Adverse Change: Defined pursuant to subsection 8.10 hereof.

Material Subsidiary: Defined in the Guaranty.

MEAN Consent: The consent from Municipal Energy Agency of Nebraska to Owner and Assignee with respect to, among other things, the pledge of the MEAN Power Purchase Agreement, in form and substance satisfactory to Owner and Assignee in their reasonable discretion.

Merrill: Merrill Lynch Money Markets Inc., a Delaware corporation.

Merrill Leasing: ML Leasing Equipment Corp., a Delaware corporation.

Merrill Lynch: Merrill Lynch & Co., Inc., a Delaware corporation.

Monthly Cost of Project Equity: The weighted average percentage cost per annum (including as part of such cost any distributions or fees payable under or pursuant to the limited partnership agreement of Owner, but net of any investment earnings applied to the payment of costs) of equity contributions to Owner made under the limited partnership agreement at any time during the period from and including the first day of the monthly period for which Return on Equity Capital is being computed to and including the last day of the monthly period for which Return on Equity Capital is being computed (the "Computation Period") to finance or refinance the acquisition and ownership of the Project.

1935 Act: Defined pursuant to subsection 1.2 hereof.

NPL: Defined pursuant to paragraph (h) of subsection 8.27 hereof.

Operator: Agent, or such other entity designated as successor operator of the Project by Agent in accordance with the terms of the Lease.

Operative Documents: Defined pursuant to subsection 1.2 hereof.

Owner: Wygen Funding, Limited Partnership or any successor or successors to all of its rights and obligations as Owner hereunder.

PCBs: Defined pursuant to paragraph (l) of subsection 8.27 hereof.

Performance Bonds: Any payment and performance surety bonds delivered by subcontractors to the General Contractor and Agent pursuant to Section 3.1 of the EPC First Amendment.

Permits: All consents, licenses, building and operating permits or other Governmental Actions, including Environmental Approvals, required for ownership, leasing, design, construction, completion, and operation of the Project in accordance with and as contemplated by the Project Contracts, this Agreement and the Lease.

Permitted Contest: Defined pursuant to paragraph (a) of Section 16 hereof.

Permitted Liens: Defined pursuant to subsection 1.2 hereof.

Person: Defined pursuant to subsection 1.2 hereof.

Plans: The Scope of Work set forth in Exhibit A to the EPC Contract describing the specifications for the construction of the Project; provided that, any amendments, modifications or supplements to the Plans, as well as any subsequent deviation from the Plans, shall be made in compliance with the provisions of subsection 2.2 hereof.

Pledge Agreement: The Pledge Agreement, dated as of the date hereof, by and between Agent, as pledgor, and Owner, as pledgee, as the same may be amended, restated, modified, or supplemented from time to time.

Pledged Contracts: The EPC Contract, the Performance Bonds (from and after the date each such Performance Bond becomes effective), the Letter of Credit, the Retention Letter of Credit (if any), the EPC Subcontracts (from and after the date each such EPC Subcontract becomes effective), the Interconnection Agreement, the Services Agreement, the Fuel Supply Agreements and the Power Purchase Agreements, in each case as pledged pursuant to the Pledge Agreement.

Potential Default: Any event which, but for the lapse of time, or giving of notice, or both, would constitute an Event of Default.

Potential Event of Project Termination: Any event which, but for the lapse of time, or giving of notice, or both, would constitute an Event of Project Termination.

Power Purchase Agreements: Collectively, (i) the Power Purchase Agreement, dated as of February 16, 2001, between Agent and Cheyenne Light, Fuel and Power Company (the "Cheyenne Power Purchase Agreement"), and (ii) the Power Purchase Agreement, dated as of March 5, 2001, between Agent and Municipal Energy Agency of Nebraska (the "MEAN Power Purchase Agreement"), as each of the same may be amended, restated, modified, or supplemented from time to time, pursuant to which Agent will sell certain electric capacity to each such purchaser as specified therein.

Premises: Defined pursuant to subsection 1.2 hereof.

Project: Defined pursuant to subsection 1.2 hereof.

Project Contracts: The EPC Contract, the GE Turbine Contract, the Ground Lease, the Performance Bonds (from and after the date each such Performance Bond becomes effective), the Letter of Credit, the Retention Letter of Credit (if any), the EPC Subcontracts (from and after the date each such EPC Subcontract becomes effective), the Easement Agreement, the Required Easement Agreements (from and after the date each such Required Easement Agreement becomes effective), the Interconnection Agreement, the Services Agreement, the Fuel Supply Agreements and the Power Purchase Agreements, as each of the same may be amended, restated, modified or supplemented from time to time as permitted hereunder. A list of the Project Contracts in existence on the date hereof is attached as Exhibit E hereto.

Project Costs: All costs and expenses described in clauses (a) through (k) of the definition of "Budget".

Release: Defined pursuant to subsection 1.2 hereof.

Remedial Action: Defined pursuant to subsection 1.2 hereof.

"Required Easement Agreements: Defined pursuant to paragraph (d) of subsection 9.24 hereof.

Responsible Officer: The President, Vice President, Secretary or Treasurer of Agent.

Retention: Either (i) the Retention (as defined in the EPC Contract) to be withheld by Agent pursuant to Section 7.3 thereof, or (ii) the proceeds of a drawing made under the Retention Letter of Credit.

Retention Letter of Credit: The Retention Letter of Credit issued pursuant to Section 7.3 of the EPC Contract.

Return on Equity Capital: (i) For each full monthly period commencing on or after the date hereof and ending on or prior to the Effective Date, an amount computed by multiplying the following:

- (a) the Equity Capital at the end of such monthly period, multiplied by
- (b) a fraction having a numerator equal to the number of days in such monthly period and a denominator of 360, multiplied by
- (c) the decimal equivalent of a percentage equal to the Monthly Cost of Project Equity.

(ii) for any partial monthly period commencing on or after the date hereof and ending on or prior to the Effective Date, an amount computed by multiplying the following:

- (a) the Equity Capital at the end of such monthly period, multiplied by
- (b) a fraction having a numerator equal to the number of days the Project is subject to this Agreement and not under lease during such partial monthly period and a denominator of 360, multiplied by
- (c) the decimal referred to in paragraph (i)(c) above.

Services Agreement: Defined pursuant to subsection 1.2 hereof.

Substantial Completion: The satisfaction of all requirements of Section 6 hereof.

Survey: Defined pursuant to paragraph (b) of Section 9.24 hereof.

Surveyor: Eagle Surveying, Inc.

Termination Event: Defined pursuant to paragraph (b) of Section 15 hereof.

Termination Event Date: Defined pursuant to paragraph (b) of Section 15 hereof.

Termination Settlement Date: Defined pursuant to paragraph (c) of Section 15 hereof.

Title Company: Campbell County Abstract Co. or such other title insurance company as may be approved by Owner in writing.

Unrecovered Liabilities and Judgments: All liabilities of Owner, each general and limited partner of Owner, Merrill, Merrill Lynch, Merrill Leasing, each Assignee, and their respective successor or successors, and each Affiliate of each of them, and their respective officers, directors, trustees, incorporators, shareholders, partners (general and limited), employees, agents and servants, including, without limitation, taxes, losses, obligations, claims, damages (including, without limitation, Environmental Damages and strict liability in tort), penalties, premiums, breakage costs and causes of action, suits, costs and expenses (including, without limitation, reasonable attorneys', experts', consultants' and accountants' fees and expenses) or judgments of any nature against any of the foregoing Persons arising during or relating to any period prior to the Effective Date and relating to or in any way arising out of (i) Owner's acquisition, ownership and financing of the Project, (ii) Owner's acquisition of a leasehold interest in the Premises, (iii) Agent's construction of the Project or (iv) operation or use of the Premises or the Project by Agent or any agent or subcontractor of Agent, in each case to the extent that such Person has not received full indemnification for such liabilities or judgments by Agent.

Unreimbursed Project Costs: All Project Costs incurred by Agent and not reimbursed by Owner and which were not yet capitalized by Owner and included as an element of Acquisition Cost, as evidenced by a certificate from Agent in a form reasonably satisfactory to Owner and Assignee, (i) stating the total amount of such expenditures, the date or dates on which such expenditures were incurred, the name and address of each party to whom the expenditures were tendered, and such additional information as shall be requested by Owner or Assignee and (ii) attaching true copies of unreimbursed invoices, receipted bills and other similar supporting documentation. Owner's and Assignee's good faith determination of the amount of Unreimbursed Project Costs shall be conclusive and binding, absent manifest error.

1.2 Other Definitional Provisions.

(a) The terms "Additional Rent", "Affiliate", "Basic Rent", "Business Day", "Consent", "Contaminant", "Easements", "Effective Date", "Environmental Approvals", "Environmental Damages", "Environmental Event", "Environmental Lien", "Environmental Matters", "Environmental Requirements", "Equity Capital", "EWG", "FERC", "Financing Arrangement", "GAAP", "Governmental Authority", "Ground Lease", "Indebtedness", "Insurance Requirements", "Interconnection Agreement", "Lien", "1935 Act", "Operative Documents", "Permitted Liens", "Person", "Premises", "Project", "Release", "Remedial Action" and "Services Agreement" have the meanings set forth opposite those terms in the Lease, except that, for purposes of this Agreement, the terms "the Lessor", "the Lessee" and "this Lease" if used in those definitions in the Lease shall be deemed to be the terms "Owner", "Agent" and "this Agreement", respectively.

(b) All terms defined in this Agreement shall have their defined meanings when used in any certificate or other document made or delivered pursuant hereto.

(c) The words "hereof", "herein" and "hereunder" and words of similar import when used in this Agreement shall refer to this Agreement as a whole and not to any particular

provision of this Agreement, and section, subsection, paragraph, schedule and exhibit references are to this Agreement unless otherwise specified.

1.3 Intent of the Parties. (a) It is the intent of Agent and Owner that: (i) the Lease constitutes an operating lease from Owner to Agent for purposes of Agent's financial reporting, (ii) the Lease and other transactions contemplated hereby preserve the ownership of the Project in Agent for federal and state income tax and bankruptcy purposes, and (iii) the Lease grants to Owner a Lien on the Project. Agent and Owner agree that Owner shall be deemed to have a valid and binding security interest in and Lien on the Project, free and clear of all Liens, other than Permitted Liens, as security for the obligations of Agent under the Lease and this Agreement (it being understood and agreed that Agent does hereby grant a Lien, and convey, transfer, assign, mortgage and warrant to Owner and its successors, transferees and assigns, for the benefit of Owner and its successors, transferees and assigns, on the Project and any proceeds or products thereof, to have and hold the same as collateral security for the payment and performance of the obligations of Agent under this Agreement and the Lease).

(b) Specifically, without limiting the generality of paragraph (a) of this subsection 1.3, Agent and Owner intend and agree that in the event of any insolvency or receivership proceedings or a petition under the United States bankruptcy laws or any other applicable insolvency laws or statute of the United States of America or any State thereof affecting Agent, Owner, any Assignee or any collection actions relating thereto, the transactions evidenced by this Agreement and the Lease shall be regarded as loans made by Owner to Agent.

SECTION 2. APPOINTMENT OF AGENT.

2.1 Appointment and Duties of Agent. Owner hereby appoints Agent as its agent for the acquisition, design, construction, repair, maintenance, equipping, and installation of the Project and the provision of security against harm and damage thereto, and Agent hereby accepts such appointment. Agent agrees, all in accordance with its best business judgment and this Agreement, to supervise the good and workmanlike completion of the Project pursuant to the EPC Contract. Agent will also enter into such other contracts as are necessary for the completion of the Project pursuant to the EPC Contract; provided that (i) Agent shall, pursuant to the Pledge Agreement, collaterally assign to Owner, at no cost to Owner, all of Agent's right, title and interest in such contracts, and (ii) if any of such contracts could reasonably be expected to cause the Project Costs to exceed the Budget or adversely affect the performance of the General Contractor's obligations under the EPC Contract (including, without limitation, by providing a potential basis for a change order or a Force Majeure Delay or similar relief thereunder), Agent shall be required to obtain the consent of Owner and Assignee to such contract prior to its execution of such contract. Agent and Owner hereby agree that, at such time, if any, as the EPC Contract provides for the transfer of title to any portion of the Project to Agent, title to such portion or portions of the Project shall automatically be transferred to Owner, at no cost to Owner, and Agent shall, upon the request of Owner, execute or cause such General Contractor to execute, as the case may be, a bill of sale or similar conveyance instrument to evidence such transfer of title. For purposes of this Agreement, Owner and Agent acknowledge and agree that Agent is acting in the capacity of a general construction agent.

2.2 Cost and Completion of the Project. Agent agrees that the Acquisition Cost of the Project shall not exceed \$140,000,000. After receiving the Initial Advance, Agent may from time to time amend, modify or supplement the Plans or Budget; provided that no such amendment, modification or supplement shall (a) be made without Agent giving at least five (5) Business Days' prior written notice of such amendment, modification or supplement to Owner and Assignee and, if such amendment, modification or supplement shall have the effect of increasing the Budget, Agent shall provide an endorsement from the Title Company increasing the amount of coverage under the title policies delivered pursuant to Section 4 hereof in accordance with the amended Budget; (b) result in a breach under subsection 10.1 of this Agreement; (c) render Agent unable (or have a material adverse effect on its ability) to perform or observe all of its obligations, if any, under the Construction Documents, the Project Contracts, the Facility Support Agreement, this Agreement or the Lease, or otherwise reasonably be expected to have a material adverse effect on (i) the construction, operation, maintenance, leasing, ownership, use, value or regulatory status of the Project, (ii) the ability of the Guarantor to perform its obligations under the Guaranty in a timely manner, (iii) the business, assets, properties, financial condition, operations or prospects of Agent or the Guarantor or (iv) the rights or interests of Owner or Assignee under this Agreement, the Lease, the Facility Support Agreement, the Construction Documents or the Project Contracts; or (d) result in the Budget exceeding the amount specified in, or a breach of the restriction contained in, the first sentence of this subsection 2.2. In the event that any proposed amendment, modification or supplement to the Plans could reasonably be expected to (i) result in a material diminution in the value or usefulness of the Project, or (ii) result in a material adverse effect on the ability of Agent to perform its obligations under this Agreement, the Lease, the Facility Support Agreement, the Construction Documents or the Project Contracts, Agent must obtain the prior consent of Owner and Assignee to any such amendment, modification or supplement. Agent shall promptly deliver to Owner and any Assignee any such amended, modified or supplemented Plans or Budget.

2.3 Lease of the Project.

(a) When the requirements for Substantial Completion can be satisfied by Agent, Agent shall deliver to Owner and Assignee the Certificate of Substantial Completion, and Agent shall request the Final Advance which, subject to the provisions of paragraph (b) of this subsection 2.3, shall be sufficient to provide for payment of all the costs of constructing the Project and completing any open punch list items (other than those certain specifically identified and quantified costs that are not yet due to the General Contractor and which will be included as part of the Completion Advance, provided that the Available Commitment remaining after the Final Advance is equal to or exceeds the aggregate amount of all such identified and quantified costs). By delivery of the Certificate of Substantial Completion, Agent evidences the acceptability of the Project for lease by Agent under the Lease. If the conditions set forth in Section 6 hereof have been satisfied in the reasonable judgment of Owner and Assignee, Owner, within ten (10) Business Days of receipt of the Certificate of Substantial Completion, shall make the Final Advance. Execution and delivery by Agent of the Certificate of Substantial Completion shall constitute (i) acknowledgment by Agent that the Project has been accepted for lease by Agent as of the Effective Date, (ii) acknowledgment by Agent that the Project is subject to all of the covenants, terms and conditions of the Lease, and (iii) certification by Agent that the representations and warranties contained in Section 2 of the Lease are true and correct in all

material respects on and as of the Effective Date as though made on and as of such date and that there exists on such date no (1) Event of Default hereunder, Event of Default (as defined in the Lease), Event of Loss, Termination Event or Event of Project Termination or (2) Potential Default hereunder, Potential Default (as defined in the Lease) or Potential Event of Project Termination. In connection with the Final Advance, Owner, within five (5) Business Days of receipt of a request for such Final Advance and upon Agent's satisfaction of the conditions to such advance to the reasonable satisfaction of Owner and Assignee, shall adjust the Acquisition Cost and the Adjusted Acquisition Cost (as defined in the Lease) to reflect (i) the Completion Amount advanced to Agent hereunder and (ii) the Retention, if any. The making of the Completion Advance in the circumstances contemplated by this paragraph (a) shall be governed by paragraph (b) of this subsection 2.3.

(b) Subject to the terms of subsection 2.2 and 3.1 hereof, up to six (6) months after the Final Advance has been made, Agent may, by delivering a Certificate of Increased Cost, request the Completion Advance. On or before the fifth Business Day prior to the date upon which Agent receives the Final Advance, Agent shall designate the Completion Amount. After such designation the aggregate amount of the Completion Advance shall not exceed the Completion Amount. Agent's designation of the Completion Amount shall be accompanied by a detailed calculation of the Completion Amount which shall be satisfactory to Owner and Assignee and which shall reflect all Unreimbursed Project Costs for which Agent expects to seek reimbursement hereunder after the Final Advance less the proceeds that Agent expects to receive from the disposition of excess construction materials. The Completion Amount shall in no event exceed the aggregate amount of the Completion Advance that Agent is entitled to receive under the terms hereof. If no Completion Amount is designated as hereinabove provided, no Completion Advance will be made. Each Certificate of Increased Cost shall reflect all Unreimbursed Project Costs designated by Agent for payment by the Completion Advance and all costs incurred by Agent since the last advance to complete the Project. In the event that the aggregate amount of the Completion Advance made is less than the Completion Amount, on the day that is six (6) months after the date of the Final Advance, the Adjusted Acquisition Cost (as defined in the Lease) shall be reduced by the difference between the Completion Amount and the aggregate amount of the Completion Advance made. The amount of any proceeds from the disposition of excess construction materials that exceeds the amount for such disposition included in the calculation of the Completion Amount shall reduce the amount of the Completion Advance made by the amount of such excess, or, if the amount of such excess exceeds the Completion Amount, shall be paid to Owner. If any amounts are paid to Owner pursuant to the preceding sentence, the amount so paid shall be added to the decrease of the Adjusted Acquisition Cost pursuant to the second preceding sentence.

2.4 Powers of Agent. Agent shall have the right to act for and on behalf of Owner with full and complete authority to perform all obligations, to exercise all rights under the Construction Documents, to appear before each applicable Governmental Authority to resolve issues related to the platting, zoning and use of the Project, to obtain all Permits and Intellectual Property Rights, and to grant and obtain easements for the benefit of the Project or which are deemed reasonably necessary by Agent for the intended use of the Project; provided that if Owner or Assignee shall determine that any proposed action could reasonably be expected to

(a) result in a material diminution in the value or usefulness of the Project or (b) result in a material adverse effect on the ability of Agent to perform its obligations under this Agreement, the Lease, the Facility Support Agreement, the Construction Documents or the Project Contracts, Agent must receive the prior consent of Owner and Assignee to such action. In addition, Agent shall have the right to act for and on behalf of Owner with full and complete authority to appoint, employ and deal with the architects, engineers, consultants, contractors, vendors and suppliers, purchase and arrange for delivery of all materials, supplies, furniture, fixtures, and equipment, and to approve all related vouchers, invoices and statements relating to the Project.

SECTION 3. ADVANCES.

3.1 Agreement to Make Advances. Subject to the conditions and upon the terms herein provided, including, without limitation, (i) that the Available Commitment not be exceeded and (ii) to the extent funds are made available to Owner by the lenders under its Financing Arrangements, Owner agrees to make available to Agent advances from time to time to pay the Project Costs, up to an aggregate principal amount not to exceed the maximum amount for the Project set forth in subsection 2.2 hereof. Subject to the terms of this Agreement, and to the extent funds are made available to Owner by the lenders under its Financing Arrangements, Owner agrees to make (a) an Initial Advance in accordance with Section 4 of this Agreement, (b) Interim Advances from time to time in accordance with Section 5 of this Agreement, (c) a Final Advance in accordance with Section 6 of this Agreement and (d) a Completion Advance in accordance with paragraph (b) of subsection 2.3 and Section 7 of this Agreement.

3.2 Procedure for Advances. Agent shall give Owner notice in accordance with Sections 4, 5, 6 and 7 hereof, as the case may be, of its irrevocable request for an advance pursuant to this Agreement, specifying a Business Day on which such advance is to be made and the amount of the advance. Not later than 2:00 P.M. New York time on the date for the advance specified in such notice, provided all conditions to that advance have been satisfied, Owner shall provide to Agent, in immediately available funds, the amount of the advance then requested. Owner shall have no obligation to make advances (including the Completion Advance) more often than once every calendar month.

3.3 Determination of Amounts of Advances.

(a) Initial Advance. The amount of the Initial Advance shall be made in accordance with the Budget and the Acquisition Certificate, and shall be sufficient to pay in full any acquisition and closing costs of the Premises, all partially completed improvements to the Project, any amounts owing by Owner to its lenders under the terms of any interim financing arrangement with respect to the Project, and any other Project Costs incurred by Agent on or prior to the date of the Initial Advance. All such costs for which the Initial Advance is requested shall be specifically set forth in the Budget, and in the request for the Initial Advance, and Owner shall have no obligation to advance any funds in the Initial Advance which are not so specifically set forth in such documents.

(b) Interim Advances. Disbursements for Project Costs shall be made as the same are incurred within the limits of the Budget, based upon the certifications of Agent contained in an Interim Advance Certificate.

(c) Final Advance. The amount of the Final Advance shall be made in accordance with the Budget and the Certificate of Substantial Completion, and shall be sufficient, subject to the provisions of paragraph (d) of this subsection 3.3, for payment in full of all costs of designing, constructing, equipping and installing the Project (other than those costs that are not yet due in connection with the designing, constructing, equipping and installing of the Project and which will be included as part of the Completion Advance, provided that (i) the Available Commitment remaining after the Final Advance is equal to or exceeds the aggregate amount of all such costs and (ii) such costs will not exceed the limits of the Budget), free of all Liens other than Permitted Liens. Owner shall have no obligation to make the Final Advance unless Owner is satisfied that all such costs as set forth in the Budget, the Certificate of Substantial Completion, and the request for the Final Advance have been actually incurred, or will be incurred, in construction and equipping of the Project, free of all Liens, except for Permitted Liens, and shall not cause the Acquisition Cost (inclusive of all costs that are not yet due but will be subsequently included as part of a Completion Advance) to exceed the maximum amount for the Project set forth in subsection 2.2 hereof. Agent shall request the Final Advance within thirty (30) days of achieving Substantial Completion.

(d) Completion Advances. The amount of the Completion Advance shall be made in accordance with and shall not exceed the amount set forth in the related Certificate of Increased Cost, shall not cause the Acquisition Cost to exceed the maximum amount for the Project set forth in subsection 2.2 hereof, and shall be sufficient for payment of costs that were not the subject of any previous advance. Owner shall have no obligation to make the Completion Advance unless Owner is satisfied that all such costs are adequately set forth in the Certificate of Increased Cost and will be sufficient for payment in full of all costs due at the time of such Completion Advance with respect to the Project.

3.4 Partial Advances. If any or all conditions precedent to any advance have not been satisfied on the applicable date for a requested advance, Owner, in its sole discretion, and with the consent of Assignee (which consent may be granted or withheld in the absolute and sole discretion of Assignee) may, but shall have no obligation to, disburse a part of the requested advance.

3.5 Available Commitment. If the cost to complete construction of the Project shall exceed the amount described in the first sentence of subsection 2.2 hereof, upon the agreement of Agent, Owner and Assignee (which may be granted or withheld in the absolute and sole discretion of Assignee), the Available Commitment may be increased by an amount sufficient to complete construction of the Project, and upon such increase Agent shall continue diligently to complete construction of the Project in accordance with this Agreement. Amounts advanced to Agent by Owner to complete construction of the Project shall be included as part of Acquisition Cost.

SECTION 4. CONDITIONS PRECEDENT TO THE INITIAL ADVANCE WITH RESPECT TO THE PROJECT.

Owner's acquisition of the Project and Owner's obligation to make the Initial Advance shall both be subject to the satisfaction of the conditions set forth in this Section 4 and to the receipt by Owner and Assignee of the documents set forth in this Section 4, in each case in form and substance reasonably satisfactory to Owner and Assignee. Owner and Assignee shall have at least ten (10) Business Days to review the Acquisition Certificate and its attachments prior to making any Initial Advance. For purposes of the Initial Advance, Permitted Liens shall not include any taxes, assessments, governmental charges or levies, except to the extent that such taxes, assessments, governmental charges or levies are due and payable but not yet delinquent and are included in the Budget.

The following are the documents to be received by Owner and Assignee and the conditions to be satisfied:

(a) Lease, Facility Support Agreement, Guaranty, Consent, Pledge Agreement and Related Documents. A fully executed copy of the Lease, the Facility Support Agreement, the Guaranty, the Consent, the Pledge Agreement and any consent of the Guarantor as shall be requested by Owner or Assignee.

(b) Acquisition Certificate. A duly executed copy of an Acquisition Certificate certified true and correct as to all matters therein by Agent.

(c) Ground Lease. A copy of the Ground Lease (which Ground Lease shall not be subject to any Liens other than Permitted Liens), including a true and complete copy of the metes and bounds legal description of the Premises, along with any necessary estoppel certificates, recognition and attornment agreements, confirmations and subordinations required by Owner's and any Assignee's counsel regarding the Ground Lease, and two original counterparts of a memorandum of Ground Lease in the appropriate form for recording in the jurisdiction in which the Premises are located.

(d) Memorandum of Lease. Two original counterparts of a memorandum of Lease in the appropriate form for recording in the jurisdiction in which the Premises are located, executed by Agent, as lessee, and otherwise reasonably acceptable to Owner and Assignee.

(e) Certificates of Insurance. Certificates of insurance or other evidence reasonably acceptable to Owner and Assignee certifying that the insurance on the Project required by subsection 9.3 hereof is in effect, along with copies of each such policy.

(f) Taxes. Certification by Agent that all due and payable past and current taxes and assessments applicable to the Premises have been paid in full or are being contested by Agent as a Permitted Contest pursuant to paragraph (a) of Section 16 of this Agreement, and that all such taxes and assessments owed by Agent (or estimated amounts thereof) are included in the Budget.

(g) Availability of Utilities. Certification by Agent that all utility services and facilities (including, without limitation, gas, electrical, water, coal supply and storage and sewage services, Interconnections and facilities) (i) which are necessary and required during the construction period have been completed or will be available in such a manner as to assure Owner that construction will not be impeded by a lack thereof and (ii) which are necessary for operation and occupancy of the Project are or will be completed in such a manner and at such a time as will assure the opening and operation of the Project.

(h) Permits. All Permits and Governmental Actions required for the construction of the Project and for the use of the Premises in accordance with and as contemplated by the Project Contracts, this Agreement and the Lease or are otherwise required prior to the Initial Advance, have been issued or obtained, are in full force and effect, are final, are not under appeal, and all applicable appeal periods have expired. All conditions contained in such Permits and Governmental Actions have been satisfied by the required date except to the extent that failure to satisfy such conditions could not reasonably be expected to result in a material delay or loss or result in Environmental Damages. There are no proceedings pending or threatened which seek or which may be expected to rescind, terminate, modify, suspend or otherwise alter such Permits and Governmental Actions. All Permits and Governmental Actions required for the operation of the Project and for the use of the Premises in accordance with and as contemplated by the Project Contracts, this Agreement and the Lease have been duly applied for, or will in a timely manner be applied for, and Agent has no reason to believe that such Permits and Governmental Actions will not be granted in the ordinary course within a reasonable time, without burdensome conditions, and prior to the time required under applicable Legal Requirements.

(i) Site Plan. A site plan prepared on behalf of Agent, showing the proposed location of the Project to be constructed on the Premises.

(j) Plans. A copy of the Plans and, if requested by Owner, such other specifications for the construction of the Project as are available to Agent.

(k) Use of Proceeds, No Liens and Representations of Agent. (i) All costs and expenses which are the subject of the Initial Advance requested have been paid in full or will be paid in full out of the proceeds of the Initial Advance, (ii) there are no Liens on the Premises that are not Permitted Liens, (iii) all representations and warranties in this Agreement, in the Lease, and in connection with the Initial Advance, are and remain true and correct on and as of the date of the Initial Advance as if made on and as of the date of the Initial Advance and (iv) no Event of Loss, Termination Event, Event of Default, Potential Default, default under a Project Contract, a Construction Document, the Guaranty or the Pledge Agreement, or Event of Project Termination or Potential Event of Project Termination under this Agreement has occurred and is continuing on the date such Initial Advance is to be made or will exist by reason of giving effect to such Initial Advance.

(l) Environmental Report. An environmental report or reports certified to Owner and each Assignee and otherwise satisfactory to Owner and each Assignee in all respects, prepared by the Environmental Consultant.

(m) Opinions of Counsel for Agent. (i) An opinion of Morrill Thomas Nooney & Braun, LLP, local counsel for Agent, and (ii) an opinion of Morgan, Lewis & Bockius LLP, New York counsel for Agent, in each case in form and substance reasonably satisfactory to Owner and Assignee.

(n) Budget. Certification by Agent that the Budget attached hereto as Exhibit G (i) has not been amended, restated or supplemented as of the date of the Initial Advance, (ii) is true, complete and correct, (iii) is accurately representative of all expected costs of the Project, and (iv) is within the dollar limit set forth in the first sentence of subsection 2.2 hereof.

(o) Request for Initial Advance. A duly executed request for advance, stating the total amount of the Initial Advance requested, the date on which the advance is to be made, the name and address of the party to whom the Initial Advance is to be tendered, wiring instructions and an itemization of the various costs constituting the amount of the Initial Advance in such detail as will be necessary to provide disbursement instructions, including an accounting of expenditures for costs shown on the Budget for which payment or reimbursement is being requested.

(p) Project Contracts. A fully executed and complete copy of each of the Project Contracts in existence on the date hereof.

(q) Title Insurance Policy. Satisfactory evidence that Owner shall receive upon funding the Initial Advance an ALTA lessee's policy covering Owner's leasehold and easement interest in the Premises and covering Owner's fee ownership of the improvements with a pending improvements clause and a lender's policy with a pending disbursements clause for the benefit of each Assignee, in each case complying with the rules and regulations promulgated by the Wyoming Department of Insurance, issued by the Title Company in an amount at least equal to the maximum amount set forth in subsection 2.2 hereof, acceptable to Owner and Assignee in all respects (including a mechanics lien endorsement, a mineral rights endorsement and such other additional endorsements as may be reasonably requested by Owner or Assignee), together with legible photocopies of all underlying documents of record affecting the Premises as disclosed in the exceptions to coverage described in the title insurance policies. Owner also shall have received evidence satisfactory to it that all premiums in respect of such policies have been paid as of the date of the Initial Advance.

(r) Opinions of Counsel for Guarantor. (i) An opinion of Morrill Thomas Nooney & Braun, LLP, local counsel for the Guarantor, and (ii) an opinion of Morgan, Lewis & Bockius LLP, New York counsel for the Guarantor, in each case in form and substance satisfactory to Owner and Assignee.

(s) Representations and Warranties of Guarantor. All representations and warranties of the Guarantor set forth in the Guaranty are and remain true and correct on and as of the date of the Initial Advance as if made on and as of the date of the Initial Advance and no default under the Guaranty has occurred and is continuing on the date such Initial Advance is to be made or will exist by reason of giving effect to such Initial Advance.

(t) Insurance Report and Insurance Letter. (i) A report prepared by the Insurance Broker with respect to the insurance to be maintained on the Project, which report shall be satisfactory to Owner and Assignee in all respects, and (ii) a letter from an officer of Agent or one of its Affiliates or a member of the risk management group of Agent or one of its Affiliates certifying that the insurance required under subsection 9.3 hereof is in effect and that such insurance is reasonable in relation to the Project.

(u) Construction Drawdown Schedule. A copy of the Construction Drawdown Schedule prepared by Agent, which reflects Agent's best estimates as to the amount and timing of construction drawdowns at the time delivered.

(v) Construction Progress. If requested by Owner or Assignee, Owner and Assignee shall have received (i) all progress reports delivered under the EPC Contract and (ii) true copies of unpaid invoices, receipted bills and Lien waivers, and such other reasonably available supporting information as Owner or Assignee may reasonably request.

(w) No Other Security Interests. All materials and fixtures incorporated in the construction of the Project have been purchased so that title thereto may automatically be transferred to Owner pursuant to the EPC Contract, and there shall be no Liens on such materials and fixtures other than Permitted Liens.

(x) Material Adverse Change. Since December 31, 2000, there has been no material adverse change in the business, assets, properties, revenues, financial condition, operations or prospects of Agent or the Guarantor.

(y) Conditions Precedent Under Project Contracts. All conditions precedent under each Project Contract have been satisfied in full (other than those (i) relating to completion of construction of the Project, (ii) which the failure to satisfy could not reasonably be expected to have a material adverse effect on Agent's ability to perform its obligations under the Project Contracts or (iii) which will be fulfilled as a result of Agent's execution and delivery of and performance under this Agreement).

(z) Intellectual Property Rights. All Intellectual Property Rights necessary for the use and operation of the Project in accordance with and as contemplated by the Project Contracts, this Agreement and the Lease have been obtained and are in full force and effect. There has been no material breach under any such Intellectual Property Rights, and there are no pending or threatened claims or proceedings relating thereto which, if adversely determined, could reasonably be expected to have a material adverse

effect on (i) the construction, operation, maintenance, leasing, ownership, use, value or regulatory status of the Project, (ii) the ability of Agent to observe and perform its obligations under this Agreement, the Lease, the Pledge Agreement, the Facility Support Agreement, the Construction Documents or the Project Contracts in timely manner or the ability of the Guarantor to perform its obligations under the Guaranty in a timely manner, (iii) the business, assets, properties, financial condition, operations or prospects of Agent or the Guarantor or (iv) the rights or interests of Owner or Assignee under this Agreement, the Lease, the Construction Documents or the Project Contracts.

(aa) Easements. The Easements have been obtained and are in full force and effect and constitute all easements, rights-of-way and licenses contemplated to be in place under the Project Contracts, this Agreement and the Lease as of the date of the Initial Advance. There has been no material breach under any such easement, right-of-way or license, and there are no pending or, to the best of Agent's knowledge, threatened claims or proceedings relating thereto which, if adversely determined, could reasonably be expected to have a material adverse effect on (i) the construction, operation, maintenance, leasing, ownership, use, value or regulatory status of the Project, (ii) the ability of Agent to observe and perform its obligations under this Agreement, the Lease, the Pledge Agreement, the Facility Support Agreement, the Construction Documents or the Project Contracts in a timely manner or the ability of the Guarantor to perform its obligations under the Guaranty in a timely manner, (iii) the business, assets, properties, financial condition, operations or prospects of Agent or the Guarantor or (iv) the rights or interests of Owner or Assignee under this Agreement, the Lease, the Construction Documents or the Project Contracts.

(bb) Appraisal. An appraisal prepared by the Appraiser and reasonably satisfactory to Owner and Assignee in all respects, which appraisal shall include an initial fair market valuation of at least \$140,000,000 of the Project as constructed, and a fair market valuation at the end of the Initial Term (as such term is defined in the Lease) in an amount satisfactory to Owner and Assignee and indicating the relative value of the equipment and the improvements.

(cc) Notice to Commence Work. A copy of the Notice to Proceed (as defined in the EPC Contract) delivered or to be simultaneously delivered to the General Contractor pursuant to Section 24.10 of the EPC Contract authorizing the commencement of the work in accordance with the EPC Contract.

(dd) Notice to General Contractor. A copy of the notice delivered or to be simultaneously delivered to the General Contractor pursuant to Section 24.2 of the EPC Contract notifying the General Contractor of each Project Lender providing the Project Financing (as such terms are defined in the EPC Contract).

(ee) Additional Matters. Such other documents and legal matters in connection with a request for the Initial Advance as are reasonably requested by Owner or Assignee.

SECTION 5. CONDITIONS PRECEDENT TO OWNER'S OBLIGATION TO MAKE INTERIM ADVANCES AFTER THE INITIAL ADVANCE WITH RESPECT TO THE PROJECT.

Owner's obligation to make any Interim Advance after the Initial Advance shall be subject to the satisfaction of the conditions set forth in this Section 5 and to the receipt by Owner and Assignee of the documents set forth in this Section 5, in each case in form and substance reasonably satisfactory to Owner and Assignee. Owner shall have at least five (5) Business Days to review the Interim Advance Certificate and its attachments prior to making any Interim Advance.

The following are the documents to be received by Owner and Assignee and the conditions to be satisfied:

(a) Interim Advance Certificate. A duly executed Interim Advance Certificate certified true and correct as to all matters therein by Agent.

(b) Continuing Representations of Agent. (i) All representations and warranties in this Agreement (other than the representation and warranty made in subsection 8.10 hereof), in the Lease (other than the representation and warranty made in paragraph (i)(f) of Section 2 of the Lease) and in connection with the Interim Advance are and remain true and correct in all material respects on and as of the date of the Interim Advance as if made on and as of the date of the Interim Advance and (ii) no Event of Loss, Termination Event, Event of Default, Potential Default, default under a Project Contract, a Construction Document, the Guaranty, or the Pledge Agreement, or Event of Project Termination or Potential Event of Project Termination under this Agreement has occurred and is continuing on the date such Interim Advance is to be made or will exist by reason of giving effect to such Interim Advance.

(c) Construction Progress. Owner and Assignee shall have received, if requested by Owner or Assignee, (i) all progress reports delivered under the EPC Contract, (ii) true copies of unpaid invoices, receipted bills and Lien waivers, and such other reasonably available supporting information as Owner or any Assignee may reasonably request and (iii) a certificate from Agent certifying to Owner and Assignee the amount of Unreimbursed Project Costs outstanding on the date of such Interim Advance.

(d) No Other Security Interests. All materials and fixtures incorporated in the construction of the Project have been purchased so that title thereto may automatically be transferred to Owner pursuant to the EPC Contract, and there shall be no Liens on such materials and fixtures other than Permitted Liens.

(e) Request for Interim Advance. A duly executed request for advance, stating the total amount of the Interim Advance requested, the date on which such Interim Advance is to be made, wiring instructions and a specific breakdown of items and costs for which the Interim Advance is being made.

(f) Evidence of Compliance. Agent shall furnish Owner and any Assignee with such documents, reports, certificates, affidavits, Permits, Governmental Actions and other information, in form and substance satisfactory to Owner and any Assignee in their reasonable judgment, as Owner or any Assignee may require to evidence compliance by Agent with all of the provisions of this Agreement.

(g) Representations and Warranties of Guarantor. All representations and warranties of the Guarantor in the Guaranty (other than the representation and warranty contained in Section 4.7 thereof) are and remain true and correct in all material respects on and as of the date of the Interim Advance as if made on and as of the date of such Interim Advance and no default under the Guaranty has occurred and is continuing on the date such Interim Advance is to be made or will exist by reason of giving effect to such Interim Advance.

(h) Satisfactory Title. A notice of title continuation or date down endorsement issued by the Title Company in respect of Owner's title policy and Assignee's title policy indicating that, since the last advance, there have been no changes in the state of title, except for Permitted Liens, and increasing the pending disbursements/improvements coverage to include the amount of such Interim Advance costs.

SECTION 6. CONDITIONS PRECEDENT TO THE FINAL ADVANCE WITH RESPECT TO THE PROJECT

Owner's obligation to make the Final Advance shall be subject to the satisfaction of the conditions set forth in this Section 6 and to the receipt by Owner and Assignee of the documents set forth in this Section 6, in each case in form and substance reasonably satisfactory to Owner and Assignee. When all of the conditions set forth in this Section 6 shall have been satisfied, Substantial Completion shall be deemed to occur. Owner shall have at least ten (10) Business Days to review the Certificate of Substantial Completion and its attachments prior to making a Final Advance.

The following are the documents to be received by Owner and Assignee and the conditions to be satisfied:

(a) Certificate of Substantial Completion. A duly executed Certificate of Substantial Completion certified true and correct as to all matters therein by Agent.

(b) Final Advance. The Final Advance is sufficient to provide for the payment of all costs of constructing the Project (other than (1) the cost of completing any open Punchlist Items (as defined in the EPC Contract) and (2) those costs in connection with the designing, constructing, equipping and installing of the Project that are not yet due and which will be included as part of the Completion Advance, provided that (i) the Available Commitment remaining after the Final Advance is equal to or exceeds the aggregate amount of all such costs, (ii) all such costs fall within the limits of the Budget, and (iii) Agent demonstrates, to the reasonable satisfaction of Owner and Assignee, that all costs in connection with the designing, constructing, equipping and installing of the Project that are not yet due will not exceed such costs).

(c) Construction and Equipping of the Project. (i) The Project (exclusive of any Punchlist Items (as defined in the EPC Contract)) has been completed (including all performance testing, to the extent required under the EPC Contract as at the date of Operational Acceptance under the EPC Contract) in all material respects in accordance with the Plans, the terms of the EPC Contract, the Construction Documents and the Project Contracts, and (ii) Operational Acceptance (as defined in the EPC Contract) shall have been achieved, such that the Project is capable of operating at performance levels required under the EPC Contract while operating in a manner consistent with prudent industry practices, all applicable Permits, Governmental Actions, Intellectual Property Rights and Legal Requirements, and in accordance with the terms of this Agreement, the Lease and the Project Contracts.

(d) Commercial Operation. (i) Mechanical Completion of the Plant (as defined in the EPC Contract) shall have occurred under the EPC Contract and the Project shall be mechanically complete and checkout and start-up shall have occurred as evidenced by the execution and delivery of the Certificate of Mechanical Completion and Certificate of Commissioning of Start Up Systems (as defined in the EPC Contract); (ii) Operational Acceptance (as defined in the EPC Contract) shall have occurred under the EPC Contract as evidenced by (A) the execution and delivery of the Certificate of Successful Completion of a Commercial Operation Test (as defined in the EPC Contract), (B) successful completion of the Lime Consumption Guarantee Test (as defined in the EPC Contract) and (C) successful completion of the Performance Guarantee Test (as defined in the EPC Contract), in each case according to the procedures set forth in the EPC Contract; (iii) the Project's coal, steam and electrical systems shall have been properly connected to the facilities of BHP at Neil Simpson Unit 2 and the Project shall be capable of processing and delivering steam and electricity in the manner contemplated by the EPC Contract; and (iv) the Commercial Operation Date (as defined in the Power Purchase Agreements) shall have been achieved under each of the Power Purchase Agreements and the Power Purchase Agreements shall have become effective. In addition, if Agent elects not to request a Completion Advance, Agent shall satisfy the requirements of paragraph (g) of Section 7 hereof.

(e) Permits. All Permits and Governmental Actions necessary for the occupancy, use and operation of the Project and for the occupancy and use of the Premises in the manner contemplated in paragraph (c) above and in accordance with and as contemplated by the Project Contracts and the Lease have been issued or obtained, are in full force and effect, are final, are not under appeal, and all applicable appeal periods have expired. All conditions contained in such Permits and Governmental Actions have been satisfied by the required date except to the extent that failure to satisfy such conditions could not reasonably be expected to result in a material delay or loss or result in Environmental Damages. There are no proceedings pending or threatened which seek or which may be expected to rescind, terminate, modify, suspend or otherwise alter such Permits and Governmental Actions.

(f) Liens. The Project has been completed in the manner contemplated in paragraph (c) above, free of all Liens except for Permitted Liens (all of which Permitted Liens are to be itemized as to the nature, amount, claimant and status and provided that such Permitted Liens shall not include any mechanics' Liens other than those mechanics' Liens that are (i) to be satisfied or discharged out of the proceeds of the Final Advance or a Completion Advance or (ii) subject to a Permitted Contest and bonded or otherwise secured to the satisfaction of Owner and Assignee), and there are no claims outstanding with respect to any Project Contract (other than any such claims that are itemized as to the nature, amount, claimant and status and are bonded or otherwise secured to the satisfaction of Owner and Assignee) and no current Permitted Contests (or, if any Permitted Contest exists, the nature, amount, claimant and status thereof).

(g) Final Survey. A final as-built ALTA/ACSM Class A survey (the "Final Survey"), prepared by the Surveyor or another independent, licensed registered public land surveyor (reasonably satisfactory to Owner and Assignee) and certified to and in form and substance reasonably satisfactory to Owner and any Assignee, with a metes and bounds description of the perimeter of the Premises, and showing the completed Project, all servient and beneficial easements pertaining to the Premises, and indicating the location of access to the Premises. No encroachments are to exist by the Project onto premises outside the boundary lines of the Premises or by existing improvements located on adjacent premises onto the Premises other than those that are Permitted Liens or that may have been consented to by Owner and Assignee and all set-back requirements have been complied with. If any discrepancies exist between the legal description set forth on the Survey delivered pursuant to paragraph (b) of Section 9.24 hereof and the legal description set forth on the Final Survey delivered pursuant to this paragraph (g), Owner and Agent shall cooperate in amending the legal descriptions in all recorded documents creating or affecting the Premises, including, without limitation, any Easements, to reflect the correct as-built description.

(h) Utilities. Connection has been made to all appropriate utility facilities (including Interconnections) and the Project is capable of operation.

(i) Continuing Representations of Agent. (i) All representations and warranties in this Agreement (other than the representation and warranty made in subsection 8.10 hereof), in the Lease (other than the representation and warranty made in paragraph (i)(f) of Section 2 of the Lease), and in connection with the Final Advance are and remain true and correct in all material respects on and as of the date of the Final Advance as if made on and as of the date of the Final Advance and (ii) no Event of Loss, Termination Event, Event of Default, Potential Default, default under a Project Contract, a Construction Document, the Guaranty or the Pledge Agreement, or Event of Project Termination or Potential Event of Project Termination under this Agreement has occurred and is continuing on the date such Final Advance is to be made or will exist by reason of giving effect to such Final Advance.

(j) Exhibit E to the Lease. Exhibit E to the Lease shall be amended as necessary by Agent and Owner to reflect the Acquisition Cost of the Project.

(k) Request for Final Advance. A duly executed request for advance, stating the total amount of the Final Advance requested, the date on which such advance is to be made, wiring instructions and a breakdown of items and costs for which the Final Advance is to be made.

(l) Satisfactory Title. A notice of title continuation or an endorsement issued by the Title Company in respect of Owner's title policy increasing the amount thereof, if required, to reflect the Acquisition Cost of the Project as of such date, and indicating that since the most recent notice of title continuation or endorsement issued by the Title Company in respect of an Interim Advance for the Premises, there have been no changes in the state of title, except for Permitted Liens, and no additional survey exceptions not theretofore specifically approved in writing by Owner and Assignee and increasing the pending disbursements/improvements coverage to account for other advances. Title to the Project shall have been transferred to Owner pursuant to the EPC Contract. In addition, if Agent elects not to request a Completion Advance, Agent shall satisfy the requirements of paragraph (e) of Section 7 hereof.

(m) Representations and Warranties of Guarantor. All representations and warranties in the Guaranty (other than the representation and warranty contained in Section 4.7 thereof) are and remain true and correct in all material respects on and as of the date of the Final Advance as if made on and as of the date of the Final Advance and no default under the Guaranty has occurred and is continuing on the date such Final Advance is to be made or will exist by reason of giving effect to such Final Advance.

(n) Environmental Compliance. All compliance tests, emissions tests, filings, notices, certifications and other actions required by any Environmental Requirements as a precondition to Operational Acceptance (as defined in the EPC Contract) of the Project shall have been successfully completed.

(o) Intellectual Property Rights. All Intellectual Property Rights necessary for the use and operation of the Project in accordance with and as contemplated by the Project Contracts, this Agreement and the Lease have been obtained and are in full force and effect. There has been no material breach under any such Intellectual Property Rights, and there are no pending or threatened claims or proceedings relating thereto which, if adversely determined, could reasonably be expected to have a material adverse effect on (i) the construction, operation, maintenance, leasing, ownership, use, value or regulatory status of the Project, (ii) the ability of Agent to observe and perform its obligations under this Agreement, the Lease, the Pledge Agreement, the Facility Support Agreement, the Construction Documents or the Project Contracts in a timely manner or the ability of the Guarantor to perform its obligations under the Guaranty in a timely manner, (iii) the business, assets, properties, financial condition, operations or prospects of Agent or the Guarantor, or (iv) the rights or interests of Owner or Assignee under this Agreement, the Lease, the Construction Documents or the Project Contracts.

(p) Easements. The Easements have been obtained and are in full force and effect and are not subject to any Liens other than Permitted Liens and constitute all easements, rights-of-way and licenses contemplated to be in place under the Project Contracts, this Agreement and the Lease as of the date of the Final Advance and necessary for Agent's performance of its obligations under the Project Contracts. There has been no material breach under any such easement, right-of-way or license, and there are no pending or, to the best of Agent's knowledge, threatened claims or proceedings relating thereto which, if adversely determined, could reasonably be expected to have a material adverse effect on (i) the construction, operation, maintenance, leasing, ownership, use, value or regulatory status of the Project, (ii) the ability of Agent to observe and perform its obligations under this Agreement, the Lease, the Pledge Agreement, the Facility Support Agreement, the Construction Documents or the Project Contracts in a timely manner or the ability of the Guarantor to perform its obligations under the Guaranty in a timely manner, (iii) the business, assets, properties, financial condition, operations or prospects of Agent or the Guarantor, or (iv) the rights or interests of Owner or Assignee under this Agreement, the Lease, the Construction Documents or the Project Contracts.

(q) Construction Progress. Owner and Assignee shall have received, if requested by Owner or Assignee, (i) all progress reports delivered under the EPC Contract, (ii) true copies of unpaid invoices, receipted bills and Lien waivers, and such other reasonably available supporting information as Owner or Assignee may reasonably request and (iii) a certificate from Agent certifying to Owner and Assignee the amount of Unreimbursed Project Costs outstanding on the date of the Final Advance.

(r) No Other Security Interests. All materials and fixtures incorporated in the construction of the Project have been purchased so that title thereto has automatically been transferred to Owner pursuant to the EPC Contract, and there shall be no Liens on such materials and fixtures other than Permitted Liens.

SECTION 7. CONDITIONS PRECEDENT TO COMPLETION ADVANCES WITH RESPECT TO THE PROJECT.

Owner's obligation to make Completion Advances shall be subject to the satisfaction of the conditions set forth in this Section 7 and to the receipt by Owner and Assignee of the documents set forth in this Section 7, in each case in form and substance reasonably satisfactory to Owner and Assignee. Owner shall have at least ten (10) Business Days to review the Certificate of Increased Cost and its attachments prior to making a Completion Advance.

The following are the documents to be received by Owner and Assignee and the conditions to be satisfied:

(a) Certificate of Increased Cost. A duly executed Certificate of Increased Cost certified true and correct as to all matters therein by Agent.

(b) Completion Advance. The Completion Advance is sufficient to provide for the payment of (i) all costs of completing any open Punchlist Items (as defined in the EPC Contract), and (ii) all costs in connection with the designing, constructing, equipping and installing of the Project that were not included as part of the Final Advance; provided that all such costs fall within the limits of the Budget.

(c) Continuing Representations of Agent. All representations and warranties in this Agreement (other than the representation and warranty made in subsection 8.10 hereof), in the Lease (other than the representation and warranty made in paragraph (i)(f) of Section 2 of the Lease), and in connection with the Completion Advance are and remain true and correct in all material respects on and as of the date of the Completion Advance as if made on and as of the date of the Completion Advance and no Event of Loss, Termination Event, Event of Default, Potential Default, default under a Project Contract, a Construction Document, the Guaranty or the Pledge Agreement, or Event of Project Termination or Potential Event of Project Termination under this Agreement, or Event of Default or Potential Default (as each such term is defined in the Lease) has occurred and is continuing on the date the Completion Advance is to be made or will exist by reason of giving effect to the Completion Advance.

(d) Request for Completion Advance. A duly executed request for advance, stating the total amount of the Completion Advance requested, the date on which such advance is to be made, wiring instructions and a breakdown of items and costs for which the Completion Advance is to be made.

(e) Satisfactory Title. A notice of title continuation or endorsement issued by the Title Company in respect of Owner's title policy increasing the amount thereof, if required, to reflect the Acquisition Cost of the Project as of such date, and indicating that since the notice of title continuation or endorsement issued by the Title Company in respect of the Final Advance or the last Completion Advance, as the case may be, there have been no changes in the state of title, except for Permitted Liens, together with a "Completion of Improvements" endorsement which deletes the Title Company's exception to coverage with respect to mechanics' liens, removes the pending disbursements or pending improvements provision of the policy, as the case may be, and redates the survey coverage provided in the policy based on the Final Survey.

(f) Representations and Warranties of Guarantor. All representations and warranties in the Guaranty (other than the representation and warranty contained in Section 4.7 thereof) are and remain true and correct in all material respects on and as of the date of the Completion Advance as if made on and as of the date of the Completion Advance and no default under the Guaranty has occurred and is continuing on the date such Completion Advance is to be made or will exist by reason of giving effect to such Completion Advance.

(g) Final Acceptance. At the time Agent requests the Completion Advance, evidence satisfactory to Owner and Assignee that (i) Final Acceptance (as defined in the EPC Contract) has occurred or will occur as a result of such Completion Advance, as

evidenced by the execution and delivery of the Certificate of Final Acceptance (as defined in the EPC Contract) by Agent, (ii) the Project has satisfied the Guaranteed Performance Standards (as defined in the EPC Contract), and (iii) the Project has satisfied the Lime Consumption Guarantee (as defined in the EPC Contract), in each case according to the procedures set forth in the EPC Contract.

(h) Construction Progress. If requested by Owner or Assignee, Owner and Assignee shall have received (i) all progress reports delivered under the EPC Contract and (ii) true copies of unpaid invoices, receipted bills and Lien waivers, and such other reasonably available supporting information as Owner or Assignee may reasonably request.

(i) No Other Security Interests. All materials and fixtures incorporated in the construction of the Project have been purchased so that title thereto shall have vested solely in Owner, and there shall be no Liens on such materials and fixtures other than Permitted Liens. Title to the Project shall have vested solely in Owner in accordance with the terms of paragraph (m) of Section 6 hereof.

SECTION 8. REPRESENTATIONS AND WARRANTIES OF AGENT.

Agent represents and warrants to Owner now and on the date of each advance that:

8.1 Corporate Matters. Agent (a) has been duly incorporated and is validly existing as a corporation in good standing under the laws of the State of Wyoming, (b) has full power, authority and legal right to own and operate its properties and to conduct its business as presently conducted and to execute, deliver and perform its obligations under this Agreement, the Lease, any Consent, the Project Contracts, the Pledge Agreement, the Facility Support Agreement and the Construction Documents, and (c) is duly qualified to do business as a foreign corporation in good standing in each jurisdiction in which its ownership or leasing of properties or the conduct of its business requires such qualification.

8.2 Compliance with Other Instruments. The execution, delivery and performance by Agent of this Agreement, any Consent, the Project Contracts to which Agent is a party, the Pledge Agreement, the Facility Support Agreement and the Construction Documents will not result in any violation of any term of the articles of incorporation or the by-laws of Agent, do not require stockholder approval or the approval or consent of any trustee or holders of indebtedness of Agent except such as have been obtained prior to the date hereof and will not conflict with or result in a breach of any terms or provisions of, or constitute a default under, or result in the creation or imposition of any Lien (other than a Permitted Lien) upon any property or assets of Agent under, any indenture, mortgage or other agreement or instrument to which Agent is a party or by which it or any of its property is bound, or any existing applicable law, rule, regulation, license, judgment, order or decree of any Governmental Authority or court having jurisdiction over Agent or any of its activities or properties.

8.3 Binding Agreement. This Agreement and the Consent have been, and each of the Project Contracts to which Agent is a party, and the Construction Documents has been or will be, duly authorized, executed and delivered by Agent and, assuming the due authorization, execution and delivery of this Agreement by Owner and the Consent, the Project Contracts to which Agent is a party, and the Construction Documents by the parties thereto other than Agent, this Agreement and the Consent are, and each of the Project Contracts to which Agent is a party, and the Construction Documents, when executed and delivered was or will be, a legal, valid and binding obligation of Agent, enforceable according to its terms.

8.4 Litigation. There is no action, suit, claim, or counterclaim, proceeding or investigation, at law or in equity, by or before any court, governmental body, agency, commission or other tribunal now pending or threatened against or affecting the Project, Agent or the Guarantor or any property or rights of Agent or the Guarantor or questioning the enforceability of this Agreement, the Pledge Agreement, the Facility Support Agreement, the Consent, the Project Contracts or the Construction Documents, which, if adversely determined, could reasonably be expected to have a material adverse effect on (a) the construction, operation, maintenance, leasing, ownership, use, value or regulatory status of the Project, (b) the ability of Agent to observe and perform its obligations under this Agreement, the Lease, the Pledge Agreement, the Facility Support Agreement, the Consent, the Construction Documents or the Project Contracts in a timely manner or the ability of the Guarantor to perform its obligations under the Guaranty in a timely manner, (c) the business, assets, properties, financial condition, operations or prospects of Agent or the Guarantor, or (d) the rights or interests of Owner or Assignee under this Agreement, the Lease, the Pledge Agreement, the Facility Support Agreement, the Construction Documents, the Consent or the Project Contracts.

8.5 Governmental Consents. There are no consents, licenses, orders, authorizations, approvals, Environmental Approvals, Permits, waivers, exemptions, extensions or variances of, or notices to or registrations or filings with any Governmental Authority or public body (each a "Governmental Action") which are or will be required in connection with the valid execution, delivery and performance of this Agreement, the Pledge Agreement, the Facility Support Agreement, the Consent, the Project Contracts or the Construction Documents, or any Governmental Action (a) which is or will be required in connection with any participation by Owner or any Assignee in the transactions contemplated by the Project Contracts, the Construction Documents, the Pledge Agreement, the Facility Support Agreement, the Consent or this Agreement, (b) which is or will be required in connection with the acquisition or ownership by Owner of the Project and all equipment for use with respect thereto, (c) which is or will be required for the lease of the Project or the operation of the Project in accordance with and as contemplated by the Project Contracts and the Lease, or (d) which is or will be required to be obtained by Agent, Owner, Merrill, Merrill Lynch, Merrill Leasing, any Assignee or an Affiliate of the foregoing, during the term of this Agreement, the Lease or the Project Contracts, with respect to the Project or the Project Contracts, except for (i) the filing of an application for EWG status under Section 32 of the 1935 Act and (ii) filings, if any, required under Section 6111 of the Code, and except such Governmental Actions (i) each of which has been duly obtained, given or accomplished, is in full force and effect, is final, is not under appeal, and all applicable appeal periods have expired, with a true copy thereof delivered to Owner or (ii) as may be required by applicable law not now in effect.

8.6 Compliance with Legal Requirements and Insurance Requirements. The construction, operation, use, and physical condition of the Project are in full compliance with all Legal Requirements and Insurance Requirements and all premiums due with respect to such Insurance Requirements have been paid.

8.7 No Default. Neither Agent nor the Guarantor is in violation of or in default under or with respect to any Legal Requirement in any respect which could reasonably be expected to have a material adverse effect on (a) the construction, operation, maintenance, leasing, ownership, use, value or regulatory status of the Project, (b) the ability of Agent to observe and perform its obligations under this Agreement, the Lease, the Pledge Agreement, the Facility Support Agreement, the Consent, the Construction Documents or the Project Contracts in a timely manner or the ability of the Guarantor to perform its obligations under the Guaranty in a timely manner, (c) the business, assets, properties, financial condition, operations or prospects of Agent or the Guarantor, or (d) the rights or interests of Owner or Assignee under this Agreement, the Lease, the Pledge Agreement, the Facility Support Agreement, the Construction Documents, the Consent or the Project Contracts.

8.8 Liens. The Project is not subject to any Lien, except for Permitted Liens, and none of such Permitted Liens could reasonably be expected to materially interfere with the construction, use or possession of the Project or the use or exercise by Owner of its rights under this Agreement or any other document contemplated hereby or entered into in connection herewith.

8.9 Financial Statements. Agent has furnished to Owner copies of (a) Agent's annual unaudited financial statements for the year ended December 31, 2000 and its quarterly unaudited financial statements for the quarter ended March 31, 2001, and (b) the Guarantor's Annual Report on Form 10-K for the year ended December 31, 2000, and the Guarantor's Quarterly Report on Form 10-Q for the quarter ended March 31, 2001. The financial statements contained in such documents fairly present the financial position, results of operations and consolidated statements of cash flows of Agent and the Guarantor, as the case may be, as of the dates and for the periods indicated therein and have been prepared in accordance with GAAP.

8.10 Changes. Since December 31, 2000, there has been no material adverse change in the business, assets, properties, revenues, financial condition, operations or prospects of the Project, Agent or the Guarantor, nor any change which could reasonably be expected to have a material adverse effect on (a) the construction, operation, maintenance, leasing, ownership, use, value or regulatory status of the Project, (b) the ability of Agent to observe and perform its obligations under this Agreement, the Lease, the Pledge Agreement, the Facility Support Agreement, the Consent, the Project Contracts or the Construction Documents in a timely manner or the ability of the Guarantor to perform its obligations under the Guaranty in a timely manner, (c) the business, assets, properties, financial condition, operations or prospects of Agent or the Guarantor, or (d) the rights or interests of Owner or Assignee under this Agreement, the Lease, the Pledge Agreement, the Facility Support Agreement, the Construction Documents, the Consent or the Project Contracts (hereinafter referred to as a "Material Adverse Change").

8.11 Availability of Utilities. All utility services and facilities necessary for the construction of the Project without impediment or delay (including, without limitation, gas, electrical, water and sewage services and facilities) will be available at the boundaries of the Premises upon the commencement of construction or will be timely obtained, and all utility services and Interconnections necessary for the operation of the Project for its intended purpose will be available on commercially reasonable terms (and with respect to Interconnections, constructed and in place) at or within the boundaries of the Premises when needed.

8.12 ERISA. Agent has not established and does not maintain or contribute to any employee benefit plan that is covered by Title IV of the Employee Retirement Income Security Act of 1974, as amended from time to time.

8.13 Regulation. Neither Owner nor any Assignee nor any of their respective Affiliates is or will be, solely by reason of (a) its entering into this Agreement or any other document contemplated hereby, (b) the acquisition, ownership, leasing or financing of the Project (or any part thereof) or (c) the operation of the Project (or any part thereof) in accordance with and as contemplated by the Project Contracts and the Lease, during the term of this Agreement, the Lease or the Power Purchase Agreements, subject to regulation under any Legal Requirement (including any Legal Requirement (i) under the 1935 Act, (ii) imposed by any state or local public utility commission or other similar regulatory body, authority or group, or (iii) under the Federal Power Act, as amended).

8.14 Lease. The Lease has been duly authorized, executed and delivered by Agent and is a legal, valid and binding obligation of Agent, enforceable according to its terms.

8.15 Construction Documents. Each Construction Document to which Agent is a party has been duly authorized, executed and delivered by Agent and is a legal, valid and binding obligation of Agent, enforceable according to its terms. Agent has not received notice from, nor is there any basis for the receipt of a notice from, any party to a Construction Document that (a) such party is terminating any Construction Document, (b) a default has occurred under any Construction Document or any Person has alleged that a default has occurred under any Construction Document or (c) there are any claims for damages existing as a result of Agent's performance of or its failure to perform any of its obligations under any Construction Document.

8.16 Status of Agent. All of Agent's capital stock is owned (directly or indirectly) beneficially and of record by the Guarantor.

8.17 Project Authorizations. Agent has obtained, or shall in the ordinary course of business obtain prior to the time required, all certificates, Permits, Governmental Actions, licenses, authorizations and approvals required (a) in the management and operation of the Project in accordance with and as contemplated by the Project Contracts, the Facility Support Agreement and the Lease, (b) for any change or modification of the use of the Project, (c) for construction of any improvements thereto and (d) for acquisition of equipment related to the Project for use with respect thereto, and a list of all such certificates, Permits, Governmental Actions, licenses, authorizations and approvals required by all applicable law in effect on the date hereof is attached as Exhibit F hereto.

8.18 Compliance with Construction Documents and Project Contracts. The physical condition of the Project as it is presently constructed and as it will be constructed pursuant to the requirements of the EPC Contract complies with all material requirements of each Construction Document and each Project Contract and will enable Agent to perform all of its obligations under the Construction Documents, the Project Contracts, the Facility Support Agreement and the Lease in accordance with their respective terms.

8.19 Pledge Agreement. The Pledge Agreement has been duly authorized, executed and delivered by Agent and, assuming the due authorization, execution and delivery of the Pledge Agreement by Owner, is a legal, valid and binding obligation of Agent, enforceable according to its terms. The Pledge Agreement creates a valid first priority security interest in the Collateral (as defined in the Pledge Agreement), securing the payment of the Secured Obligations (as defined in the Pledge Agreement). All action necessary to perfect the security interest in the Collateral has been taken and such security interest has priority over any other Lien on the Collateral, except for Permitted Liens.

8.20 Intellectual Property. All Intellectual Property Rights required for the construction and operation of the Project in accordance with and as contemplated by the Project Contracts, this Agreement and the Lease, have been or will in the ordinary course of business be timely obtained and, once obtained, will remain in full force and effect. Agent owns or has the right to use all Intellectual Property Rights that are material and are required to construct the Project and to perform Agent's obligations under the Project Contracts without any conflict with the rights of others.

8.21 Taxes. Agent has filed or caused to be filed all tax returns which are required to be filed by it, and has paid all taxes shown to be due and payable on said returns or on any assessments made against it or any of its assets and properties and has paid all other taxes, fees or other charges imposed on it by any Governmental Authority (except taxes, fees and charges subject to a Permitted Contest).

8.22 Budgets. All budgets (including the Budget) furnished or to be furnished to Owner and Assignee by or on behalf of Agent and the summaries of significant assumptions related thereto, if any (a) have been and will be prepared with due care in accordance with prudent business practices, (b) fairly present, and will fairly present Agent's expectations as to the matters covered thereby as of their date, (c) are based on, and will be based on, assumptions that are reasonable as to all factual and legal matters material to the estimates therein and (d) are in all material respects consistent with, and will be in all material respects consistent with, the provisions of this Agreement, the Lease and the Project Contracts. The Budget includes all costs and expenses that could reasonably be expected to be incurred in connection with the construction of the Project.

8.23 Operation of the Project. The Project is being constructed such that, on and after the achievement of Operational Acceptance (as defined in the EPC Contract) it will be able (a) to be operated on a safe and reasonably economic basis in compliance with all material Governmental Actions existing at the time, the Project Contracts, the Facility Support Agreement and the Lease for a period of at least 30 years thereafter, and (b) to be mechanically operated on

a safe basis in compliance with all existing material Governmental Actions for a period of at least 30 years thereafter.

8.24 Guaranty. The Guaranty has been duly authorized, executed and delivered by the Guarantor and constitutes a legal, valid and binding obligation of the Guarantor, enforceable according to its terms.

8.25 Facility Support Agreement. The Facility Support Agreement has been duly authorized, executed and delivered by Agent and, assuming the due authorization, execution and delivery of the Facility Support Agreement by Owner, is a legal, valid and binding obligation of Agent, enforceable according to its terms.

8.26 Disclosure. As of the date hereof, there is no fact known to Agent which could reasonably be expected to have a material adverse effect on (a) the construction, operation, maintenance, leasing, ownership, use, value or regulatory status of the Project, (b) the ability of Agent to observe and perform its obligations under this Agreement, the Lease, the Pledge Agreement, the Facility Support Agreement, the Consent, the Construction Documents or the Project Contracts in a timely manner or the ability of the Guarantor to perform its obligations under the Guaranty in a timely manner (c) the business, assets, properties, financial condition, operations or prospects of Agent or the Guarantor, or (d) the rights or interests of Owner or Assignee under this Agreement, the Lease, the Pledge Agreement, the Facility Support Agreement, the Construction Documents, the Consent or the Project Contracts, and which has not been set forth in this Agreement, the Lease or in the other documents, certificates and written statements furnished by Agent to Owner and Assignee prior to the date of execution of this Agreement in connection with the transactions contemplated hereby. The written documentation furnished to Owner and Assignee by Agent, taken as a whole, including, without limitation, updated or supplemented written information, is true and accurate in all material respects and such documentation does not omit to state any fact known to Agent which could reasonably be expected to have a material adverse effect as described in the immediately preceding sentence. None of the representations made by Agent in this Agreement or the Lease, or the financial statements referred to in subsection 8.9 hereof, contained as of its date any untrue statement of a material fact or omitted to state a material fact necessary in order to make the representations contained herein or the statements contained therein not misleading in light of the circumstances under which they were made.

8.27 Environmental Matters. Except as expressly identified in the environmental reports delivered pursuant to Section 4 of this Agreement:

(a) To the best knowledge of Agent, after due inquiry, Agent and the Project comply, and have at all times complied, with all Environmental Requirements applicable to the Project. Agent and the Project shall at all times comply with all material Environmental Requirements applicable to the Project, including, without limitation, the use, maintenance and operation of the Project, and all activities and conduct of business related thereto, including, without limitation, the treatment, remediation, removal, transport, storage and/or disposal of any Contaminant, and no material capital expenditures are anticipated to maintain or achieve compliance with Environmental Requirements;

(b) Agent has obtained or has taken appropriate steps, as required by Environmental Requirements, to obtain, and shall maintain all Environmental Approvals necessary for the construction and operation of the Project, or, in the case of Environmental Approvals necessary for operation, will take such steps as are necessary to secure such Environmental Approvals prior to the scheduled commencement of operation, all such Environmental Approvals already obtained are in good standing, are in full force and effect, are final, are not under appeal, and all applicable appeal periods have expired, and Agent and the Project are currently in material compliance and shall remain in material compliance with all terms and conditions of such Environmental Approvals. No material change in the facts or circumstances reported or assumed in the applications for or the granting of such Environmental Approvals exists. There are no proceedings pending or threatened which may be expected to rescind, terminate, modify, condition, suspend or otherwise alter such Environmental Approvals, or which would jeopardize the validity of, or the ability of Agent to obtain, maintain, or comply with, any such Environmental Approvals in a timely manner;

(c) Agent has not received any notice that any of the third parties with which Agent has arranged, engaged or contracted to accept, treat, transport, store, dispose or remove any Contaminant generated or present at the Project, or which otherwise participate or have participated in activities or conduct related to the Project, were not properly permitted at the relevant time to perform the foregoing activities or conduct;

(d) Agent has not received any notice that it or the Project is subject to any investigation, and is not subject to any judicial or administrative proceeding, notice, order, judgment, decree or settlement, alleging or addressing in connection with the Project (i) any violation of any Environmental Requirements, (ii) any Remedial Action, or (iii) any Environmental Damages, claims or liabilities and costs arising from the Release or threatened Release of any Contaminant;

(e) No Environmental Lien has attached to any portion of the Project, and Agent shall not cause or suffer any action or occurrence that will allow an Environmental Lien to attach;

(f) Agent has not received, and is not otherwise aware of, any notice, claim or other communication concerning (i) any alleged violation of any Environmental Requirements at the Project, whether or not corrected to the satisfaction of the appropriate authority, (ii) any alleged liability of Agent for Environmental Damages arising out of or related to the Project, or (iii) any alleged liability of Agent arising out of or related to the Project for the Release or threatened Release of a Contaminant at any location, and there exists no writ, injunction, decree, order or judgment outstanding, nor, to the best knowledge of Agent, after due inquiry, any lawsuit, claim, proceeding, citation, directive, summons or investigation, pending or threatened, relating to the condition, ownership, use, maintenance, construction or operation of the Project, or the suspected presence of Contaminants thereon or therefrom, nor does there exist any basis for such lawsuit, claim, proceeding, citation, directive, summons or investigation being instituted or filed;

(g) To the best knowledge of Agent, after due inquiry, there has been no Release of any Contaminants which would constitute a violation of any Environmental Requirement with

respect to the Project or which would require any Remedial Action at, to or from the Project, and Agent shall not cause or suffer any such Release during the term of this Agreement;

(h) The Project is not listed or proposed for listing on the National Priorities List ("NPL") pursuant to the Comprehensive Environmental Response, Compensation, and Liability Act, as amended ("CERCLA"), or listed on the Comprehensive Environmental Response Compensation Liability Information System List ("CERCLIS") or any similar state list of sites, and Agent is not aware of any conditions at the Project which, if known to a Governmental Authority, would qualify the Project for inclusion on any such list;

(i) Neither Agent nor, to the best knowledge of Agent, after due inquiry, any contractor engaged by Agent in connection with the Project has transported or arranged for the transport of any Contaminant from the Project to any facility or site for the purpose of treatment or disposal which (i) is included on the NPL, or (ii) to the best knowledge of Agent, is or was, at the time of disposal, subject to a Remedial Action requirement (other than routine, anticipated regulatory requirements, including, but not limited to, closure-related corrective action obligations affecting closed solid waste management units at such facility) issued under the federal Resource Conservation and Recovery Act or any state, local or foreign solid or hazardous waste regulatory law, or (iii) at the time of the disposal had received a notice of violation or was otherwise subject to a governmental enforcement action with respect to alleged violations of any Environmental Requirements, and Agent shall use its best efforts not to suffer or permit any such transportation or arrangement to any such facility or site during the term of this Agreement;

(j) Neither Agent nor, to the best knowledge of Agent, after due inquiry, any contractor engaged by Agent in connection with the Project has engaged in or permitted, nor shall Agent engage in or permit, any operations or activities upon, or any use or occupancy of the Project or any portion thereof, for the purpose of or in any way involving the illegal or improper release, discharge, refining or dumping of any Contaminant or the illegal or improper handling, storage, use or disposal of any Contaminant, nor has Agent or any other Person caused any Contaminant to be deposited, released, stored, disposed, leached or otherwise come to be located on, under, in or about the Premises, nor to the knowledge of Agent has any Contaminant migrated from the Premises onto or underneath other properties;

(k) To the best knowledge of Agent, after due inquiry, there is not constructed, placed, deposited, stored, disposed nor located on the Project or the Premises any asbestos in any form which has become or threatens to become friable, and Agent shall not cause or suffer the use of any asbestos containing material in connection with the construction of the Project during the term of this Agreement;

(l) To the best knowledge of Agent, after due inquiry, there is not constructed, placed, deposited, released, stored, disposed, leached nor located on the Project any mono- or poly-chlorinated biphenyls ("PCBs") or transformers, capacitors, ballasts, or other equipment which contain dielectric fluid containing PCBs. Agent shall not cause or suffer the use of any article containing PCBs at or on the Project during the term of this Agreement;

(m) To the best knowledge of Agent, Agent has no liability, and has neither received nor is otherwise aware of any notice, claim or other communication alleging liability on the part of Agent, for the violation of any Environmental Requirements, for Environmental Damages, or for the presence, Release, or threatened Release of any Contaminant in connection with the Project; and

(n) None of the matters identified in the environmental reports delivered pursuant to Section 4 of this Agreement, individually or in the aggregate, could reasonably be expected to have a material adverse effect on (i) the construction, operation, maintenance, leasing, ownership, use, value or regulatory status of the Project, (ii) the ability of Agent to observe and perform its obligations under this Agreement, the Lease, the Pledge Agreement, the Facility Support Agreement, the Consent, the Construction Documents or the Project Contracts in a timely manner or the ability of the Guarantor to perform its obligations under the Guaranty in a timely manner, (iii) the business, assets, properties, financial condition, operations or prospects of Agent or the Guarantor, or (iv) the rights or interests of Owner or Assignee under this Agreement, the Lease, the Pledge Agreement, the Facility Support Agreement, the Construction Documents, the Consent or the Project Contracts.

SECTION 9. AFFIRMATIVE COVENANTS.

Agent hereby agrees that, so long as this Agreement remains in effect, Agent shall keep and perform fully each and all of the following covenants:

9.1 Performance under Other Agreements. Agent shall duly perform and observe all of the covenants, agreements and conditions on its part which it is obligated to perform or observe under the Project Contracts, the Construction Documents, the Facility Support Agreement and all other agreements related to the Project. Agent shall perform and observe all of the terms, provisions, conditions and agreements of the Ground Lease on Owner's part as lessee thereunder to be performed and observed (including, without limitation, payment of all rent, additional rent and other amounts payable by Owner as lessee under such Ground Lease) to the end that all things shall be done which are necessary to keep unimpaired the rights of Owner under the Ground Lease.

9.2 No Encroachments. The Project shall be constructed entirely on the Premises or the various locations of the Easements and shall not encroach upon or overhang any property lying outside the boundaries of the Premises or the Easements (unless consented to by the affected property owner and unless the encroachment or overhang does not render the Project unmarketable, does not cause a reduction in the fair market value of the Project, and does not adversely affect the use of the Project and any easement or right-of-way on the land of the affected property owner, and when erected shall be wholly within any building restriction lines, however established. Upon the reasonable request of Owner, Agent shall cooperate in acquiring for Owner any easements deemed by Owner to be necessary or desirable for the benefit of the Project. Upon request of Owner, Agent shall furnish from time to time satisfactory evidence of compliance with the foregoing covenants, including, without limitation, a survey prepared by a registered surveyor or engineer. If any discrepancies exist between the legal description set forth

on the Survey described in paragraph (b) of Section 9.24 hereof and the Final Survey described in paragraph (g) of Section 6 hereof, Owner and Agent shall cooperate, at Agent's expense, in amending the legal descriptions in all recorded documents creating or affecting the Premises, including, without limitation, any Easements, to reflect the correct as-built description.

9.3 Insurance.

(a) Insurance with respect to the Project. Agent shall procure for Owner and maintain in full force and effect at all times throughout the term of this Agreement (and all costs relating thereto shall be reimbursed by Owner by means of advances under this Agreement, and shall be capitalized by Owner as an element of the Acquisition Cost of the Project) insurance policies with responsible insurance companies authorized to do business in the State of Wyoming with a Best Insurance Reports rating of "A" or better and a financial size category of "IX" or higher, or if not rated by Best, an S&P claims paying ability rating of "BBB+" or higher, or if not rated by either of the foregoing, shall be of substantially equivalent financial strength and creditworthiness of insurance companies that maintain such ratings (or such other company acceptable to Owner and Assignee), with such limits and coverage provisions as Agent shall deem reasonable, but in no event less than the limits and coverage provisions set forth below:

(i) Workers' Compensation Insurance. Workers' compensation insurance in accordance with and as required under the laws of the State of Wyoming.

(ii) Employer's Liability Insurance. Employer's liability insurance providing compensation for occupational diseases and for injuries sustained by or death resulting to employees of Agent or its subcontractors as required by law, including the laws of each state wherein any work is performed under this Agreement and where employment contracts of such employees were made, including employer's liability insurance coverage with a \$1,000,000 limit per accident.

(iii) Commercial General Liability Insurance. Liability insurance on an occurrence (or AEGIS or EIM claims-made form) basis against claims for personal injury (including bodily injury and death) and property damage. Such insurance shall provide coverage for products-completed operations, blanket contractual, explosion, collapse and underground coverage, broad form property damage, personal injury insurance, leased non-owned and hired motor vehicles, and the hostile fire exception to the pollution liability exclusion with a \$1,000,000 minimum limit per occurrence for combined bodily injury and property damage.

(iv) Automobile Liability Insurance. Automobile liability insurance against claims for personal injury (including bodily injury and death) and property damage covering all owned, leased non-owned and hired motor vehicles, including loading and unloading, with a \$1,000,000 minimum limit per occurrence for combined bodily injury and property damage and containing appropriate no-fault insurance provisions wherever applicable.

(v) Excess Liability Insurance. Excess liability insurance on an occurrence (or AEGIS or EIM claims-made form) basis covering claims in excess of the underlying insurance described in the foregoing clause (iii), with a \$100,000,000 minimum limit per occurrence; provided, however, in the event the available limit of liability is less than \$50,000,000 due to claims against such excess liability insurance, Agent shall purchase additional coverage so that the available limit of liability under such excess liability insurance is not less than \$100,000,000.

The amounts of insurance required in the foregoing clause (iii) and this clause (v) may be satisfied by Agent purchasing coverage in the amounts specified or by any combination of primary and excess insurance, so long as the total amount of insurance meets the requirements specified above.

(vi) All Risk Builders' Insurance. All Risk Builders' Risk Completed Value Non-Reporting Form Insurance including boiler and machinery, collapse coverage and fire insurance with extended coverage, in an amount equal to the greater of (A) one hundred percent (100%) of the completed insurable value of the Project, or (B) the Acquisition Cost of the Project. For purposes of this clause (a)(vi), the term "completed insurable value" shall mean the actual replacement cost of the Project, including the cost of debris removal, but excluding the cost of constructing foundation and footings. Notwithstanding anything to the contrary contained in this subsection 9.3 or in Section 10 of the Lease, in the event that Agent demonstrates to the reasonable satisfaction of Owner and Assignee that the Project can and will be rebuilt hereunder in a timely manner, that the insurance proceeds plus any Available Commitment are sufficient to rebuild the Project, that no Event of Default hereunder has occurred and is continuing, that no Event of Default (as defined in the Lease) has occurred and is continuing under the Lease and that no default has occurred and is continuing under the Project Contracts, the proceeds from such insurance shall be payable to the General Contractor in accordance with the terms of the EPC Contract.

(vii) Environmental Impairment Liability Insurance. Environmental impairment liability insurance for third party damages and injuries arising from a sudden and accidental occurrence, in an amount not less than \$10,000,000 per occurrence.

(b) Agent shall comply with the insurance provisions described in Section 10 of the Lease following paragraph (b), except that the terms "Owner", "Agent" and "this Agreement" shall substitute for the terms "the Lessor", "the Lessee" and for "this Lease", respectively.

(c) Agent covenants that it will not use, carry on construction with respect to, or occupy the Project or permit the use, construction, or occupancy of the Project at a time when the insurance required by paragraph (a) of this subsection 9.3 is not in force with respect to the Project.

9.4 Inspection of Books and Records. During reasonable business hours, Owner and Assignee or designated representatives of either of them shall have the right of entry and free

access to the Project, and the right to inspect all work done, labor performed and materials furnished in and about the Project and at reasonable times the right to inspect all books, contracts and records of Agent relating to the Project. Notwithstanding the foregoing, neither Owner nor any Assignee shall have any duty to make any such inspection.

9.5 Expenses. Owner shall pay directly and simultaneously capitalize into the Acquisition Cost of the Project or reimburse Agent and simultaneously capitalize into the Acquisition Cost of the Project all obligations, costs and expenses with respect to any and all transactions contemplated herein and the preparation of any document reasonably required hereunder and the prosecution or defense of any action or proceeding or other litigation affecting Agent or the Project, including (without limiting the generality of the foregoing) all Financing Costs and amounts required to pay Owner for its obligations, costs and expenses arising in connection with the termination of any Financing Arrangement (whether as a result of a default thereunder or otherwise), all interest (including, without limitation, interest at a default rate) and other costs, fees and expenses incurred by Owner under any Financing Arrangement (including any such accruing after the commencement of a bankruptcy or similar proceeding), costs incurred in connection with obtaining, maintaining and terminating Owner's equity financing and refinancing (including, without limitation, any amounts owing by Owner to its partners as a result of a sale of limited partner interests by any limited partner of Owner or a modification of the terms of such equity financing), title and conveyancing charges, recording and filing fees and taxes, title search fees, rent under the Ground Lease, mortgage taxes, intangible personal property taxes, escrow fees, revenue and tax stamp expenses, insurance premiums, brokerage commissions, finders' fees, placement fees, court costs, surveyors', photographers', appraisers', architects', engineers', industry consultants', insurance advisors', rating agencies', accountants' and reasonable attorneys' fees and disbursements.

9.6 Delivery of Information. Agent shall deliver to Owner and Assignee from time to time, (i) (A) promptly, and in any event not more than 120 days after the end of each fiscal year of Agent (commencing with the fiscal year 2001), copies of Agent's annual audited financial statements and promptly, and in any event not more than 60 days after the end of each of the first three fiscal quarters of each relevant fiscal year of Agent, copies of Agent's quarterly unaudited financial statements, both prepared in accordance with GAAP, and (B) promptly, and in any event not more than 120 days after each fiscal year of the Guarantor, copies of the Guarantor's Annual Report on Form 10-K and promptly, and in any event not more than 60 days after the end of each of the first three fiscal quarters of each relevant fiscal year of the Guarantor, copies of the Guarantor's Quarterly Reports on Form 10-Q and promptly any other reports the Guarantor files with the Securities and Exchange Commission pursuant to the Securities Exchange Act of 1934, (ii) promptly upon request, such other information with respect to Agent's or the Guarantor's operations, business, properties, assets, financial condition or litigation as Owner or any Assignee shall reasonably request, (iii) promptly after a Responsible Officer obtains knowledge of any Event of Default, Potential Default, Event of Loss, Termination Event, Event of Project Termination or Potential Event of Project Termination hereunder or any default or alleged default by the other party thereto under any Project Contract or Construction Document or any other Operative Document, or of any claims for damages existing as a result of Agent's performance of, or its failure to perform any of its obligations under, any Project Contract or Construction Document, a certificate of a Responsible Officer specifying the nature and period

of existence of such Event of Default, Potential Default, Event of Loss, Termination Event, Event of Project Termination or Potential Event of Project Termination or default or alleged default under any Project Contract or Construction Document or any other Operative Document, and what action, if any, Agent has taken, is taking, or proposes to take with respect thereto, (iv) promptly after a Responsible Officer obtains knowledge of any material adverse change in the financial condition or business of Agent, or of any liabilities or obligations arising as a result of tortious action or omission or Environmental Damages or in respect of governmental fines or obligations (other than taxes) or liabilities or obligations arising as a result of Environmental Matters, or of any material adverse change in the financial condition or business of the Guarantor or of any litigation of the type described in subsection 8.4, a certificate of a Responsible Officer describing such change, liabilities, obligations or litigation, as the case may be, and what action, if any, Agent has taken, is taking, or proposes to take with respect thereto, (v) simultaneously with the delivery of each set of annual and quarterly financial statements referred to in clause (i)(A) of this subsection 9.6, a certificate of a Responsible Officer stating, to the best knowledge of such Responsible Officer after reasonable inquiry, whether there exists on the date of such certificate any Event of Default, Potential Default, Event of Loss, Termination Event, Event of Project Termination, Potential Event of Project Termination or default under any Project Contract or Construction Document, and if any Event of Default, Potential Default, Event of Loss, Termination Event, Event of Project Termination, Potential Event of Project Termination or default under any Project Contract or Construction Document exists, specifying the nature and period of existence thereof and what action, if any, Agent has taken, is taking, or proposes to take with respect thereto, and (vi) promptly after a Responsible Officer obtains knowledge of any legal, governmental or regulatory proceeding that could have a material adverse effect on (a) the construction, operation, maintenance, leasing, ownership, use, value or regulatory status of the Project, (b) the ability of Agent to observe and perform its obligations under this Agreement, the Lease, the Pledge Agreement, the Facility Support Agreement, the Consent, the Construction Documents or the Project Contracts in a timely manner or the ability of the Guarantor to perform its obligations under the Guaranty in a timely manner, (c) the business, assets, properties, financial condition, operations or prospects of Agent or the Guarantor, or (d) the rights or interests of Owner or Assignee under this Agreement, the Lease, the Pledge Agreement, the Facility Support Agreement, the Construction Documents, the Consent or the Project Contracts, a certificate of a Responsible Officer describing each such proceeding and what action, if any, Agent has taken, is taking, or proposes to take with respect thereto.

9.7 Conduct of Business and Maintenance of Corporate Existence. Agent shall (i) preserve, renew and keep in full force and effect its existence as a corporation in good standing under the laws of the State of Wyoming, and (ii) maintain all rights, privileges and franchises material to the conduct of its business; provided, however, that nothing contained in this subsection 9.7 shall prevent Agent from consummating any merger, consolidation or sale permitted by the provisions of subsection 10.2 hereof.

9.8 Notices. Agent shall give notice to Owner and Assignee promptly upon the occurrence of:

(a) any notice given pursuant to any of the Construction Documents or other Project Contracts that a default by Agent has occurred thereunder;

(b) any notice given by Agent alleging that a default has occurred pursuant to any of the Construction Documents or any Project Contract;

(c) any condition which constitutes a delay for force majeure under any Construction Document or any Project Contract with respect to construction or completion of the Project;

(d) the imposition of any Lien, including Permitted Liens;

(e) any notices received from any party to any Project Contract that (i) such party is amending, modifying or waiving any term of any Project Contract (including any change orders under the EPC Contract), (ii) such party is commencing or proposes to commence any dispute resolution procedure under the terms of any Project Contract, (iii) such party is terminating or has proposed to terminate any Project Contract, (iv) a default has occurred under any Project Contract or any Person has alleged that a default has occurred under any Project Contract, or (v) there are claims for damages existing as a result of Agent's performance of or its failure to perform any of its obligations under any Project Contract;

(f) any pending or threatened litigation or proceeding affecting the Project in which the amount of damages requested exceeds \$100,000 or more or in which injunctive or similar relief is sought; and

(g) any litigation or proceeding known to Agent affecting BHP or the General Contractor or the Operator (if any) that could reasonably be expected to materially impair the ability of such party to perform its obligations under the Project Contracts.

Each notice pursuant to this subsection 9.8 shall be accompanied by a statement of a Responsible Officer setting forth details of the occurrence referred to therein and stating what action, if any, Agent proposes to take with respect thereto.

9.9 Legal Requirements and Insurance Requirements. Agent shall comply with every Insurance Requirement and Legal Requirement (including, without limitation, Environmental Requirements) affecting the execution, delivery and performance of this Agreement, the Project Contracts and the Construction Documents and the Project; and Agent will not do or permit any act or thing which is contrary to any Insurance Requirement or which is contrary to any Legal Requirement, or which might impair, other than in the normal use thereof, the value or usefulness of the Project.

9.10 Payment of Taxes. With respect to the Project, Agent shall make all required reports to the appropriate taxing authorities and shall pay during the term of this Agreement the taxes that Agent would be required to pay under paragraph (c) of Section 9 of the Lease. Payment of such taxes shall be on the terms set forth in paragraph (c) of Section 9 of the Lease. Owner shall reimburse Agent by means of advances under this Agreement, for all of such costs, which shall be capitalized by Owner and included as an element of the Acquisition Cost of the Project.

9.11 Filings, Etc. Agent shall promptly and duly execute, deliver, file, and record, at Agent's expense, all such documents, statements, filings, and registrations, and take such further action as Owner shall from time to time reasonably request in writing in order to establish, perfect and maintain Owner's title to and interest in the Project and any Assignee's interest in this Agreement or the Project as against Agent or any third party claiming by or through Agent in any applicable jurisdiction.

9.12 Use of Proceeds. The proceeds of each advance shall be used by Agent for payment or reimbursement of costs specified in the applicable request for the advance and in accordance with the Budget.

9.13 Compliance with Project Contracts and Other Requirements. (a) Agent shall use every reasonable precaution to prevent loss or damage to the Project and to prevent injury to third Persons or property of third Persons, including, without limitation, the provision of security on and around the Project such that access to the Project is limited to employees of Agent and subcontractors appointed to perform work in connection with the construction of the Project and to others to whom Agent elects to provide access in furtherance of Agent's business practices. Agent shall cooperate fully with Owner and all insurance companies providing insurance pursuant to subsection 9.3 hereof in the investigation and defense of any claims or suits arising from the ownership or operation of equipment or ownership, use, or occupancy of the Project; provided, that nothing contained in this subsection 9.13 shall be construed as imposing on Owner any duty to investigate or defend any such claims or suits. Agent shall comply and shall use its best efforts to cause all Persons operating equipment on, using or occupying the Project (including, without limitation, the parcels of land with respect to which the Easements are granted) to comply with every Insurance Requirement and Legal Requirement regarding acquiring, titling, registering, leasing, subleasing, insuring, using, occupying, operating and disposing of the Project, and, if applicable, the licensing of operators thereof.

(b) Agent shall require the General Contractor to obtain all Performance Bonds required to be delivered by its subcontractors in accordance with the provisions of the EPC Contract and shall promptly deliver to Owner and Assignee from time to time copies of such Performance Bonds. 9.14 Operation of Project. Agent shall, with respect to any operation of the Project at any time prior to its Effective Date, perform and observe, and cause the Operator to perform and observe, all of the agreements and conditions set forth in Sections 8 and 9 of the Lease with respect to the Project, except that this Agreement shall substitute the terms "Owner" for "the Lessor" and "Agent" for "the Lessee".

9.15 Construction of Project. Agent agrees (a) to construct, maintain, repair, equip, use and cause the operation of the Project in the manner and for the purpose contemplated by the Project Contracts and to use its best commercial efforts to achieve Substantial Completion on or before the Completion Date and (b) to complete construction of the Project in the manner contemplated by this Agreement and in accordance with the total amount of the Budget. Agent shall obtain in a timely manner and maintain in full force and effect all Governmental Actions required to perform its obligations under the

Project Contracts and will promptly upon the request of Owner or any Assignee provide a copy of each such Governmental Action to Owner and any Assignee.

9.16 Technology. Agent shall obtain and maintain, or cause to be obtained and maintained, all Intellectual Property Rights necessary in connection with the construction, operation and maintenance of the Project in accordance with the requirements of the Project Contracts.

9.17 Project Information. Agent shall furnish to Owner and Assignee:

(a) all material written communications relating to any pending or threatened investigations, claims or proceedings with respect to any Governmental Action or proposing to amend, modify or affect any Governmental Action then required to be in effect;

(b) written notice of the occurrence of any event giving rise (or that could reasonably be expected to give rise) to a claim under any insurance policy maintained pursuant to the terms of this Agreement in an amount greater than \$100,000 together with copies of any document relating thereto (including copies of any such claim) in the possession or control of Agent;

(c) promptly after preparation thereof, any and all revisions to the Budget or the Construction Drawdown Schedule; and

(d) written notice of the occurrence of any event giving rise or that could reasonably be expected to give rise to the Project failing to achieve Operational Acceptance under the EPC Contract prior to the Completion Date, as such Completion Date may be extended pursuant to the terms of the Extension Option.

9.18 Lease Covenants. Agent shall perform and observe all of the agreements and conditions set forth in paragraphs (ii)(a), (ii)(b), (ii)(c), (ii)(d) and (ii)(g) of Section 2 of the Lease as if set forth in full herein.

9.19 Governmental Approvals. Agent shall (a) duly obtain, or cause to be obtained, on or prior to such date as the same become legally required, and (b) thereafter maintain, or cause to be maintained, in effect as long as legally required, all authorizations, consents, approvals, waivers, exemptions, variances, registrations, leases, tariffs, certifications, franchises, permissions, Permits, Governmental Actions and licenses of, and filings and declarations with, and rulings by, any Governmental Authority (including, without limitation, Environmental Approvals and those with respect to zoning and other land use laws, ordinances and regulations) necessary for the construction, ownership, use, maintenance and operation of the Project in accordance with and as contemplated by the Project Contracts, this Agreement and the Lease.

9.20 Events of Project Termination. Commencing upon the occurrence of any Event of Project Termination, Agent shall satisfy all Loss Payment Requirements and shall, upon the request of Owner or Assignee, exercise all commercially reasonable efforts (a) to provide Owner

(or a designated assignee of Owner or Assignee) with all easements, manuals and other matters and services to be provided by the Operator (to the extent such easements, manuals and other matters and services are not being provided pursuant to the Project Contracts) necessary to enable the Project to operate on commercially reasonable terms, (b) to provide Owner (or a designated assignee of Owner or Assignee) with any Project Contracts not assigned to Owner (or a designated assignee of Owner or Assignee) pursuant to paragraph (a)(i)(B) of the definition of "Loss Payment Requirements" herein, (c) to provide Owner (or a designated assignee of Owner or Assignee) with any Permits, Governmental Actions or Intellectual Property Rights not assigned to Owner (or a designated assignee of Owner or Assignee) pursuant to paragraph (c) of the definition of "Loss Payment Requirements" herein that are necessary to enable the Project to operate on commercially reasonable terms in connection with its operation as an EWG, (d) to provide Owner (or a designated assignee of Owner or Assignee) with any other permits, licenses or other Governmental Actions required to enable such party (provided that such party is not a "public-utility company", as such term is defined in Section 2(a)(5) of the 1935 Act, or otherwise subject to regulation as a public utility by any relevant Governmental Authority under the laws of any state or locality) to operate the Project on commercially reasonable terms as an EWG and (e) to negotiate in good faith with Owner (or a designated assignee of Owner or Assignee), or exercise all commercially reasonable efforts to locate a third party reasonably acceptable to Owner and Assignee who is capable of operating the Project for Owner (or a designated assignee of Owner or Assignee), to operate the Project for Owner (or such designated assignee of Owner or Assignee) for fair market value compensation for such services. Agent's obligations contained in this subsection 9.20 shall survive the expiration or other termination of this Agreement until Owner receives payment of (i) all amounts owing pursuant to this Agreement, (ii) all losses, damages, costs and expenses (including, without limitation, attorneys' fees and expenses, commissions, filing fees and sales or transfer taxes) sustained by Owner, (iii) all amounts owing under the Financing Arrangements, all Equity Capital, and all Return on Equity Capital owing hereunder and (iv) any unreimbursed costs incurred by Owner or Assignee with respect to the Project or the Project Contracts after the term of this Agreement, net of any revenues received from the operation of the Project.

9.21 Further Assurances. Agent shall from time to time promptly execute and deliver to Owner and Assignee all such documents and instruments and do all such other acts and things as Owner or Assignee may reasonably request to obtain the full benefits of this Agreement, to allow Owner and Assignee to exercise and enforce its rights and remedies hereunder and under the security interests, respectively, and to protect Owner's and Assignee's rights and interests in and to the Project. Agent shall furnish to Owner and Assignee upon request any information, agreements and documents to assist Owner and Assignee in the preparation of its federal, state, local, and other tax returns, and in the maintenance of accurate books of account and records of all transactions relating to the construction or operation of the Project.

9.22 Force Majeure Delay, Casualty or Condemnation. (a) Upon the occurrence of a Force Majeure Delay, casualty or temporary condemnation, as the case may be, which could reasonably be expected to cause the Effective Date to be delayed, Agent shall use its best efforts to effect Substantial Completion of the Project and to resolve the event or condition causing such Force Majeure Delay, casualty or temporary condemnation, as the case may be, as promptly as practicable.

(b) Owner and Agent hereby acknowledge and agree that in the event Agent requests an extension of the Completion Date due to a Force Majeure Delay which shall have the effect of extending the Completion Date beyond six (6) months in the aggregate, in addition to the conditions and requirements set forth in the definition of "Extension Option", Agent shall also deliver to Owner and Assignee a certificate from an independent qualified expert (which may be the General Contractor, an independent engineer or such other expert qualified to evaluate such risks) as selected by Agent and satisfactory to Owner and Assignee, stating that in the opinion of such party, the requested extension of the Completion Date is reasonable and necessary to avoid an Event of Project Termination pursuant to paragraph (a) of subsection 11.3 hereof.

(c) Notwithstanding anything to the contrary set forth herein, if by reason of a Force Majeure Delay, funds are no longer made available to Owner under any Financing Arrangement, Owner shall have the right to terminate this Agreement and/or Owner's obligations to make any further advances hereunder, whereupon Agent shall be released from all obligations hereunder (other than indemnity obligations for which Owner has full recourse against Agent in accordance with the terms of this Agreement), and Agent shall transfer to Owner all of Agent's right, title and interest in and to the Project.

9.23 Payment of Insurance Premiums. Agent shall apply the proceeds of each advance made by Owner under Sections 4, 5, 6 and 7 of this Agreement for payment in full of all amounts due and owing (if any) with respect to obtaining and maintaining all insurance policies required by the provisions of paragraph (a) of subsection 9.3 hereof.

9.24 Delivery of Certain Documents. Agent shall deliver to Owner and Assignee on or prior to the date that is sixty -five (65) days from the date of this Agreement:

(a) a fully executed and complete copy of the Cheyenne Consent and the MEAN Consent;

(b) a current survey of the Premises (including the lands encumbered by the Required Easement Agreements) dated as of the date of delivery (the "Survey"), certified by the Surveyor to the Title Company, Agent, Owner and Assignee and in form and substance satisfactory to Owner and Assignee in all respects;

(c) a certification by the Surveyor on the Survey or an official of an appropriate Governmental Authority as to the flood zone designation of the Premises;

(d) any blanket easements contained in the Easement Agreement shall be specifically located, and all easement agreements for the benefit of Owner as are necessary for the construction and operation of the Project over lands adjacent to the Premises, including, without limitation, easements for access to a public road, gas lines, transmission lines, water service, sewer service, coal storage and delivery of coal by conveyors (collectively, the "Required Easement Agreements"), together with collateral assignments of such Required Easement Agreements in favor of Assignee;

(e) subordination and/or non-disturbance agreements from any lienholders of the lands encumbered by the Required Easement Agreements, in recordable form;

(f) an American Land Title Association 1999 Class A Survey of the Premises and the lands encumbered by the Required Easement Agreements, certified to the Title Company, Agent, Owner and Assignee;

(g) an endorsement to the title policy for the Premises deleting any Survey exception, adding the lands encumbered by the Required Easement Agreements and containing no additional exceptions not acceptable to Owner and Assignee, subject only to Permitted Liens (excluding, however, any exceptions to the title as set forth in the title insurance policy delivered to Owner and Assignee under Section 4 hereof which are not acceptable to Owner and Assignee);

(h) amendments reasonably requested by Owner and Assignee to any of the Operative Documents reflecting the addition of the Required Easement Agreements;

(i) amendments reasonably requested by Owner and Assignee, to this Agreement, the Lease, the Memorandum of Lease, any mortgage granted by Agent and any financing statements filed, reflecting the addition of the Required Easement Agreements;

(j) all Project Contracts necessary for the operation and maintenance of the Project, including, without limitation, an agreement for interconnection service and a services and facilities agreement with any neighboring power plants shall be available to the Project on commercially reasonable terms and copies thereof shall have been delivered to Owner and Assignee upon reasonable request;

(k) evidence of approval from the appropriate Governmental Authority of Owner's application for EWG status or a representation that Agent has not received, nor is aware or has any knowledge of, any objections to such application for EWG status; and

(m) if requested by Owner and Assignee, an opinion of Morrill Thomas Nooney & Braun, LLP, local counsel and project counsel for Agent, in form and substance reasonably satisfactory to Owner and Assignee.

SECTION 10. NEGATIVE COVENANTS.

Agent hereby agrees that, so long as this Agreement remains in effect, Agent shall not directly or indirectly:

10.1 Changes in Plans. (a) Modify or supplement in any material respect the Plans without the prior written consent of Owner and Assignee and (if required) of all Governmental Authorities which previously have approved the matters to be changed or (b) issue, direct, authorize, consent to or permit to be effective any change order under the EPC Contract that could reasonably be expected to have a material adverse effect on the construction, operation,

maintenance, leasing, ownership, use, value or regulatory status of the Project, without the prior written consent of Owner and Assignee.

10.2 Prohibition of Fundamental Changes. Consolidate with or merge into any other Person except as set forth in Section 25 of the Lease, provided that the term "Owner" shall substitute for the term "the Lessor" and the term "Agent" shall substitute for the term "the Lessee".

10.3 Assignment of Obligations. Assign any of its obligations hereunder to any other party, except to an Affiliate of Agent; provided, that (i) such Affiliate shall assume the obligations of Agent hereunder, under the Lease, the Construction Documents and the Project Contracts, by execution and delivery of instruments satisfactory to Owner and Assignee (including, without limitation, consents under the applicable Construction Documents and Project Contracts (if required), the execution of an assignment and assumption agreement and the reaffirmation of the Guaranty, in each case in form and substance satisfactory to Owner and Assignee), (ii) no Potential Default, Potential Event of Project Termination, Event of Default or Event of Project Termination shall occur by reason of giving effect to such assignment, (iii) such assignment shall not affect Agent's or such successor agent's ability to achieve Substantial Completion within the Budget by the Completion Date, and (iv) such assignee shall have complied with any requirements set forth in the Project Contracts.

10.4 Project Contracts. (a) Create, incur, assume or permit to exist any Lien (other than the Lien of the Pledge Agreement) upon Agent's rights with respect to any Project Contract, or sell or assign Agent's interest in any Project Contract, other than as permitted pursuant to a Financing Arrangement and the Pledge Agreement, or (b) without the prior written consent of Owner and any Assignee, terminate any Project Contract (except for the expiration of the EPC Contract in accordance with its terms), or amend, modify, supplement, restate, replace, grant any consent under, or grant or request any waiver pursuant to any Project Contract (other than change orders in the manner and to the extent permitted under Article 8 of the EPC Contract, and any amendment, modification, supplement, restatement, consent or waiver which could not reasonably be expected to have a material adverse effect on (i) the construction, operation, maintenance, leasing, ownership, use, value or regulatory status of the Project, (ii) the ability of Agent to observe and perform its obligations under this Agreement, the Lease, the Pledge Agreement, the Facility Support Agreement, the Consent, the Project Contracts or the Construction Documents in a timely manner or the ability of the Guarantor to perform its obligations under the Guaranty in a timely manner, (iii) the business, assets, properties, financial condition, operations or prospects of Agent or the Guarantor, or (iv) the rights or interests of Owner or Assignee under this Agreement, the Lease, the Pledge Agreement, the Facility Support Agreement, the Construction Documents, the Consent or the Project Contracts).

10.5 No Liens. Agent shall not, without the prior written consent of Owner, create, incur, assume or permit to exist any Lien upon the Project or create any Lien upon the Premises other than Permitted Liens.

10.6 Additional Project Costs. Upon the occurrence of a Material Adverse Change or an Event of Project Termination, Agent shall not, without the prior written consent of Owner and

Assignee, incur any Project Costs, or seek reimbursement from Owner pursuant to Section 5, 6 or 7 hereof of any Project Costs incurred after the occurrence of a Material Adverse Change or such Event of Project Termination, as the case may be.

10.7 Environmental. Agent shall not use or dispose of any Contaminant or allow any Contaminant to be brought onto or stored or used on or transported or Released to or from the Project, other than in the ordinary course of business and in compliance in all material respects with all applicable Environmental Requirements.

SECTION 11. EVENTS OF DEFAULT AND EVENTS OF PROJECT TERMINATION.

11.1 Events of Default. The occurrence of any of the following shall constitute an Event of Default:

(a) Involuntary Bankruptcy, Etc. The entry of a decree or order for relief in respect of Agent or the Guarantor by a court having jurisdiction in the premises or the appointment of a receiver, liquidator, assignee, custodian, trustee, sequestrator (or similar official) of Agent or the Guarantor or of any substantial part of Agent's or the Guarantor's property, or ordering the winding up or liquidation of Agent's or the Guarantor's affairs, in an involuntary case under the Federal bankruptcy laws, as now or hereafter constituted, or any other applicable Federal or state bankruptcy, insolvency or other similar law, and such decree or order remains unstayed and in effect for thirty (30) consecutive days; or the commencement against Agent or the Guarantor of an involuntary case under the Federal bankruptcy laws, as now or hereafter constituted, or any other applicable Federal or state bankruptcy, insolvency or other similar law, and the continuance of any such case unstayed and in effect for a period of thirty (30) consecutive days.

(b) Voluntary Bankruptcy, Etc. The suspension or discontinuance of Agent's or the Guarantor's business operations, or Agent's or the Guarantor's insolvency (however evidenced), or Agent's or the Guarantor's admission of insolvency or bankruptcy, or the commencement by Agent or the Guarantor of a voluntary case under the Federal bankruptcy laws, as now or hereafter constituted, or any other applicable Federal or state bankruptcy, insolvency or other similar law, or the consent by Agent or the Guarantor to the appointment of or taking possession by a receiver, liquidator, assignee, custodian, trustee, sequestrator (or other similar official) of Agent or the Guarantor or of any substantial part of Agent's or the Guarantor's property, or the making by Agent or the Guarantor of an assignment for the benefit of creditors, or the failure of Agent or the Guarantor generally to pay its debts as such debts become due, or the taking of corporate action by Agent or the Guarantor in furtherance of any such action.

(c) Environmental Matters. The occurrence of any event or circumstance relating to Environmental Matters that (A) has arisen directly or indirectly from Agent's

actions or failures to act or from any actions or failures to act on the part of any contractors or subcontractors of Agent and (B) has had or could reasonably be expected to have a material adverse effect on (i) the construction, operation, maintenance, leasing, ownership, use, value or regulatory status of the Project, (ii) the ability of Agent to observe and perform its obligations under this Agreement, the Lease, the Pledge Agreement, the Facility Support Agreement, the Consent or the Project Contracts in a timely manner or the ability of the Guarantor to perform its obligations under the Guaranty in a timely manner, (iii) the business, assets, properties, financial condition, operations or prospects of Agent or the Guarantor, or (iv) the rights or interests of Owner or Assignee under this Agreement, the Lease, the Pledge Agreement, the Facility Support Agreement, the Construction Documents, the Consent or the Project Contracts.

(d) Other Events. Any of the events referred to in subsection 11.3 hereof shall occur as a result of any direct or indirect fraudulent act, illegal act, misapplication of funds or willful misconduct on the part of Agent or any Person directly or indirectly controlling Agent or under the direct or indirect control of Agent.

(e) Other Defaults. Agent, or any Person under the direct or indirect control of Agent, shall commit, directly or indirectly, any fraudulent act, illegal act, willful misconduct or misapplication of funds, including, without limitation, Agent's failure to comply with the covenant contained in subsection 9.23 hereof.

11.2 Owner's Rights upon an Event of Default. Upon the occurrence and continuation of any Event of Default, Owner may in its discretion declare this Agreement to be in default and do any one or more of the following:

(a) Terminate this Agreement and/or Owner's obligations to make any further advances hereunder;

(b) Take immediate possession of the Project and remove any equipment or property of Owner in the possession of Agent, wherever situated, and for such purpose, enter upon the Premises without liability to Agent for so doing;

(c) Whether or not any action has been taken under (a) or (b) above, sell Owner's interest in the Project (with or without the concurrence or request of Agent);

(d) Hold, use, occupy, operate, repair, remove, lease, sublease or keep idle the Project as Owner in its sole discretion may determine, without any duty to mitigate damages with respect to any such action or inaction or with respect to any proceeds thereof; and

(e) Exercise any other right or remedy which may be available under applicable law and in general proceed by appropriate judicial proceedings, either at law or in equity, to enforce the terms hereof or to recover damages provided for in this subsection 11.2.

Suit or suits for the recovery of any default in the payment of any sum due hereunder or for damages may be brought by Owner from time to time at Owner's election, and nothing herein contained shall be deemed to require Owner to await the date whereon this Agreement or the term hereof would have expired by limitation had there been no such default by Agent or no such termination or cancellation.

The receipt of any payments under this Agreement by Owner with knowledge of any breach of this Agreement by Agent or of any default by Agent in the performance of any of the terms, covenants or conditions of this Agreement, shall not be deemed to be a waiver of any provision of this Agreement.

No receipt of moneys by Owner from Agent after the termination or cancellation hereof in any lawful manner shall reinstate or continue this Agreement, or operate as a waiver of the right of Owner to recover possession of the Project by proper suit, action, proceedings or remedy or operate as a waiver of the right to receive any and all amounts owing by Agent to or on behalf of Owner hereunder; it being agreed that, after the service of notice to terminate or cancel this Agreement, and the expiration of the time therein specified, if the default has not been cured in the meantime, or after the commencement of suit, action or summary proceedings or of any other remedy, or after a final order, warrant or judgment for the possession of the Project, Owner may demand, receive and collect any moneys payable hereunder, without in any manner affecting such notice, proceedings, suit, action, order, warrant or judgment. Acceptance of the keys to the Project, or any similar act, by Owner, or any agent or employee of Owner, during the term hereof, shall not be deemed to be an acceptance of a surrender of the Project unless Owner and Assignee shall consent thereto in writing.

After any Event of Default, Agent shall be liable for, and Owner may recover from Agent, (i) all amounts payable pursuant to Section 12 hereof, and (ii) all of the losses, damages, costs and expenses (including, without limitation, attorneys' fees and expenses incurred by Owner and any Assignee in connection with the exercise of their remedies hereunder, filing fees and sales or transfer taxes and all costs and expenses related to (x) the conduct of investigations, studies, sampling and/or testing of the Premises and (y) the taking of any action, including, without limitation, any remedial measures or removal with respect to the Premises, each as required by an Assignee pursuant to the terms of a Financing Arrangement) sustained by Owner by reason of such Event of Default and the exercise of Owner's remedies with respect thereto, including, without limitation, in the event of a sale by Owner of its interest in the Project pursuant to this subsection 11.2, all costs and expenses associated with such sale, and all other amounts owing by Agent hereunder that are not covered by the liquidated damages provisions of this Agreement, excluding, in all cases, costs or expenses included in the Acquisition Cost. The amounts payable in clauses (i) and (ii) above are hereinafter sometimes referred to as the "Accrued Default Obligations".

After an Event of Default, Owner may sell its interest in the Project upon any terms that Owner deems satisfactory, free of any rights of Agent or any Person claiming through or under Agent (including, without limitation, any rights hereunder or under the Lease or the Project Contracts). In the event of any such sale, in addition to the Accrued Default Obligations, Owner shall be entitled to recover from Agent, as liquidated damages and not as a penalty, an amount

equal to the Acquisition Cost, minus the proceeds of such sale received by Owner. Proceeds of sale received by Owner in excess of the Acquisition Cost shall be credited against the Accrued Default Obligations Agent is required to pay under this subsection 11.2. If such excess proceeds and/or such amounts exceed the Accrued Default Obligations plus the Unrecovered Liabilities and Judgments, and if Agent has indefeasibly paid all other amounts required to be paid under this subsection 11.2, such excess shall be paid by Owner to Agent; provided, however, that Agent shall be liable for any Unrecovered Liabilities and Judgments that arise after the payment of such excess proceeds to the extent such Unrecovered Liabilities and Judgments arise from or relate to acts or omissions occurring, or circumstances or conditions created or existing, at any time as of or prior to the expiration or termination of this Agreement. As an alternative to any such sale, or if Agent converts the Project after an Event of Default, or if the Project is lost or destroyed after an Event of Default has occurred, in addition to the Accrued Default Obligations, Owner may cause Agent to pay to Owner, and Agent shall pay to Owner, as liquidated damages and not as a penalty, an amount equal to the Acquisition Cost, and Owner shall have no further obligation to reimburse Agent for any Unreimbursed Project Costs. In the event Owner receives indefeasible payment of the Acquisition Cost, the Accrued Default Obligations and the Unrecovered Liabilities and Judgments, Owner shall transfer all of Owner's right, title and interest in and to the Project, including without limitation, the delivery of the documents contemplated in Section 14 below, to Agent.

In the event of a sale pursuant to this subsection 11.2, upon indefeasible receipt by Owner of the amounts payable hereunder, Owner shall transfer all of Owner's right, title and interest in and to the Project to a purchaser other than Agent or to Agent, as the case may be.

In the event Owner is not paid an amount equal to the Acquisition Cost plus the Accrued Default Obligations and Unrecovered Liabilities and Judgments, then, in addition to Owner's other rights in this subsection 11.2, Agent shall upon Owner's request (i) assign (or if not legally assignable, cooperate and assist to the extent necessary or required in the transfer or reissuance thereof) to Owner (or to an assignee designated by Owner or Assignee), at no cost, all right, title and interest of Agent in, to and under all Construction Documents, Governmental Actions and Intellectual Property Rights needed for the equipping, maintenance, operation or use of the Project and obtained and held by Agent at that time, (ii) assign to Owner (or to a foreclosure purchaser designated by Owner or Assignee), at no cost, all right, title and interest of Agent in, to and under the Project Contracts, and in the event any additional consent of any party to a Project Contract is required as a precondition thereunder to an assignment to any other third party assignee designated by Owner or Assignee, use its best efforts to obtain any such required consent to such proposed non-foreclosure assignment and assumption of the Project Contracts and (iii) assign to Owner, at no cost, all right, title and interest of Agent in, to and under all service agreements in existence at the time of such sale and transferable by Agent and easements available to Agent and transferable by Agent in connection with the equipping, maintenance, operation or use of the Project. Agent acknowledges that it would be difficult to ascertain the value to Owner of Agent's agreement to assign, transfer or have reissued to Owner such Construction Documents, Governmental Actions and Intellectual Property Rights, to assign such Project Contracts (and, if necessary, to obtain such consents to such assignment) and to assign to Owner such service agreements and easements or to adequately compensate Owner by an award

of damages for Agent's failure to assign to Owner such Construction Documents, Governmental Actions and Intellectual Property Rights, to assign such Project Contracts (and, if necessary, to obtain such consents to such assignment) and to assign to Owner such service agreements and easements, and that therefore Owner would not have an adequate remedy at law for breach by Agent of its agreement hereunder to Owner. Accordingly, Agent acknowledges that Owner shall be entitled to obtain specific performance of Agent's obligation to assign to Owner such Construction Documents, Governmental Actions and Intellectual Property Rights, to obtain such consents to such assignment and to assign to Owner the service agreements and easements. In the event Agent fails to obtain any consents required in clause (ii) of the third preceding sentence, at the request of Owner or such purchaser, as the case may be, Agent shall agree to (1) at the expense of such purchaser or Owner, as the case may be, continue to perform under and maintain in full force and effect the Project Contracts and pay all sums received under the Project Contracts to such third party or Owner, as the case may be, (2) at the expense of such third party or Owner, as the case may be, and subject to receipt of indemnification reasonably acceptable to Agent, take all actions requested by such third party or Owner, as the case may be, with respect to such Project Contracts (including all actions with respect to the enforcement of Agent's rights and remedies under such Project Contracts), and (3) not amend, modify, supplement, waive a provision of, grant any consent under or terminate any such Project Contract without the prior written consent of such third party or Owner, as the case may be.

In addition to its other rights in this subsection 11.2, Owner may exercise its various rights under the Facility Support Agreement or transfer such rights to the purchaser in a sale and Agent acknowledges hereby its agreement to perform its obligations thereunder.

No remedy referred to in this subsection 11.2 is intended to be exclusive, but each shall be cumulative and in addition to any other remedy referred to above or otherwise available to Owner at law or in equity, and the exercise in whole or in part by Owner of any one or more of such remedies shall not preclude the simultaneous or later exercise by Owner of any or all such other remedies. No waiver by Owner of any Event of Default hereunder shall in any way be, or be construed to be, a waiver of any future or subsequent Event of Default.

With respect to the termination of this Agreement as a result of an Event of Default, Agent hereby waives service of any notice of intention to re-enter. To the extent permitted by applicable law, Agent hereby waives any and all rights to recover or regain possession of the Project or to reinstate this Agreement as permitted or provided by or under any statute, law or decision now or hereafter in force and effect.

11.3 Events of Project Termination. The occurrence of any of the following (which does not constitute an Event of Default, except to the extent contemplated by subsection 11.1(d) hereof) shall constitute an Event of Project Termination:

(a) Failure to Complete. If (i) as of the close of business on the Completion Date, Substantial Completion has not occurred as herein provided or (ii) the Certificate of Substantial Completion has not been executed and delivered by the Completion Date.

(b) Failure to Make Payments. Failure of Agent to pay amounts due to Owner at the time of any scheduled sale of the Project hereunder or upon any date of purchase or termination of the Project as contemplated herein under subsection 11.2, 11.4 (including, without limitation, failure to pay the Loss Payment when due) or 18.11 hereof, or failure of Agent to pay any other amount hereunder within ten (10) days from demand for such payment, to the extent demand is required, and, if not required, from the date due.

(c) Other Defaults. Agent shall default in the performance or observance of any other term, covenant, condition or obligation contained in this Agreement and, in the case of such default (other than a default arising under subsection 9.3, 9.6(iii), 9.7, 9.18, 9.20 or 9.24 hereof, each of which shall not be subject to any grace period, or as otherwise provided in this subsection 11.3), such default shall continue for thirty (30) days after the earlier of the date (i) Agent becomes aware of such default or (ii) written notice shall have been given to Agent by Owner specifying such default and requiring such default to be remedied.

(d) Defaults under Construction Documents. Any default by Agent shall occur under any of the Construction Documents which could reasonably be expected to have a material adverse effect on (i) the construction, operation, maintenance, leasing, ownership, use, value or regulatory status of the Project, (ii) the ability of Agent to observe and perform its obligations under this Agreement, the Lease, the Pledge Agreement, the Facility Support Agreement, the Consent or the Project Contracts in a timely manner or the ability of the Guarantor to perform its obligations under the Guaranty in a timely manner, (iii) the business, assets, properties, financial condition, operations or prospects of Agent or the Guarantor or (iv) the rights or interests of Owner or Assignee under this Agreement, the Lease, the Pledge Agreement, the Facility Support Agreement, the Construction Documents, the Consent or the Project Contracts and any required notice shall have been given and/or any applicable grace period shall have expired and such default shall not have been cured by Agent or waived by Owner and Assignee in writing prior to the expiration of such grace period.

(e) Negative Covenants. Agent shall default in the performance or observance of any agreement, covenant or condition contained in Section 10 hereof.

(f) Misrepresentations. Any representation or warranty made by Agent herein or in any Consent or which is contained in any certificate, document or financial or other statement furnished under or in connection with this Agreement shall prove to have been false, misleading or inaccurate in any material respect on or as of the date made or deemed made.

(g) Other Security Agreements. If (i) Agent executes any chattel mortgage or other security agreement on a material amount of any materials, fixtures or articles of personal property used in the construction or operation of the Project or if a material amount of any such materials, fixtures or articles are purchased pursuant to any conditional sales contract or other security agreement or otherwise so that the title thereto will not vest in Owner, free from encumbrance, except Permitted Liens or (ii) any such materials, fixtures or articles are not in accordance with the Plans or (iii) Agent does not furnish to Owner upon request the contracts, bills of sale, statements, receipted vouchers and other agreements and documents, or any of them, under which Owner claims title to such materials, fixtures or articles.

(h) Permits. (i) If Agent, after using its best efforts, shall fail to obtain or be unable to obtain any Permit by the date such Permit is needed, and such failure shall occur as a result of Agent's actions or failures to act or from any actions or failures to act on the part of any contractors or subcontractors of Agent, or (ii) if any Permit shall be modified, revoked or otherwise cease to be in full force and effect unless Agent shall have obtained reinstatement or reissuance of such Permit within thirty (30) days after the revocation or expiration thereof, or if such reinstatement or reissuance is of a nature that it cannot be completely effected within thirty (30) days, Owner and Assignee shall be reasonably satisfied that such reinstatement or reissuance will be effected and the delay in such reinstatement or reissuance will not have a material adverse effect on (a) the construction, operation, maintenance, leasing, ownership, use, value or regulatory status of the Project, (b) the ability of Agent to observe and perform its obligations under this Agreement, the Lease, the Pledge Agreement, the Facility Support Agreement, the Consent, the Construction Documents or the Project Contracts in a timely manner or the ability of the Guarantor to perform its obligations under the Guaranty in a timely manner, (c) the business, assets, properties, financial condition, operations or prospects of Agent or the Guarantor, or (d) the rights or interests of Owner or Assignee under this Agreement, the Lease, the Pledge Agreement, the Facility Support Agreement, the Construction Documents, the Consent or the Project Contracts, and Agent shall have diligently commenced application for such reinstatement or reissuance and shall thereafter be diligently proceeding to complete said reinstatement or reissuance.

(i) Environmental Matters. The occurrence of any event or circumstance relating to Environmental Matters (other than any event or circumstance described in paragraph (c) of subsection 11.1 hereof) that has had or could reasonably be expected to have a material adverse effect on (i) the construction, operation, maintenance, leasing, ownership, use, value or regulatory status of the Project, (ii) the ability of Agent to observe and perform its obligations under this Agreement, the Lease, the Pledge Agreement, the Facility Support Agreement, the Consent or the Project Contracts in a timely manner or the ability of the Guarantor to perform its obligations under the Guaranty in a timely manner, (iii) the business, assets, properties, financial condition, operations or prospects of Agent or the Guarantor, or (iv) the rights or interests of Owner or Assignee under this Agreement, the Lease, the Pledge Agreement, the Facility Support Agreement, the Construction Documents, the Consent or the Project Contracts.

(j) Event of Loss. An Event of Loss shall occur as a result of Agent's actions or failure to act or from any actions or failures to act on the part of any contractors or subcontractors of Agent.

(k) Payment of Obligations. Agent or the Guarantor or any of its Material Subsidiaries shall fail to pay any principal of or premium or interest on any Indebtedness

which is outstanding in a principal amount of at least \$10,000,000 in the aggregate of Agent or the Guarantor or any such Material Subsidiary (as the case may be), when the same becomes due and payable (whether by scheduled maturity, required prepayment, acceleration, demand or otherwise), and such failure shall continue after the applicable grace period, if any, specified in the agreement or instrument relating to such Indebtedness; or any other event shall occur or condition shall exist under any agreement or instrument relating to any such Indebtedness and shall continue after the applicable grace period, if any, specified in such agreement or instrument, if the effect of such event or condition is to accelerate, or to permit the acceleration of, the scheduled maturity of such Indebtedness; or any such Indebtedness shall be declared to be due and payable, or required to be prepaid (other than by a regularly scheduled required prepayment), prior to the stated maturity thereof.

(l) Undischarged Judgments. Final judgment or judgments for the payment of money in excess of \$10,000,000 in the aggregate shall be rendered against Agent or the Guarantor by any court of competent jurisdiction and the same shall remain undischarged for a period of thirty (30) days, during which execution of such judgment or judgments shall not be effectively stayed.

(m) Ground Lease. One or more of the events referred to in the Ground Lease shall occur which would cause the Ground Lease to terminate without notice or action by the landlord thereunder or which would entitle the landlord under the Ground Lease to terminate the Ground Lease and the term thereof by the giving of notice to Owner without opportunity to cure, as tenant thereunder, or if the Ground Lease shall be terminated or canceled for any reason or under any circumstance whatsoever.

(n) The Pledge Agreement. (i) The Pledge Agreement ceases to be in full force and effect, (ii) Agent defaults in the performance of any obligation or covenant contained in the Pledge Agreement, any required notice of such default shall have been given, and any applicable grace period shall have expired, or (iii) the representation contained in the second or third sentence of subsection 8.19 shall at any time become untrue.

(o) The Guaranty. (i) The Guaranty ceases to be in full force and effect prior to the termination thereof in accordance with its terms, (ii) the Guarantor asserts that the Guaranty is not valid or in full force and effect, (iii) the Guarantor shall take any action which impairs in any material respect the ability of the Guarantor to fulfill its obligations under the Guaranty, (iv) the Guarantor defaults in the performance of any obligation or covenant contained in the Guaranty, any required notice of such default shall have been given, and any applicable grace period shall have expired, or (v) an Event of Default (as defined in the Guaranty) shall occur under the Guaranty.

(p) Guarantor Representations. Any representation or warranty made by the Guarantor in the Guaranty or in any Consent or in any document contemplated hereby or thereby shall prove to have been false, misleading or inaccurate in any material respect on or as of the date made or deemed made.

(q) Project Contracts.

(i) If Agent shall receive notice from a party to any Project Contract alleging or asserting that such party has (or after the passage of any applicable grace period will have) the right to terminate such Project Contract, or that such Project Contract is being terminated by such party, as a result of a default by Agent under such Project Contract; or

(ii) If a party to any Project Contract has received notice from Agent that such Project Contract is being terminated by Agent without the prior written consent of Owner and Assignee (other than as a result of a default by such party); or

(iii) If any default by Agent shall occur under any of the Project Contracts which would, after the giving of any required notice and/or the expiration of any applicable grace period, entitle the other party to such Project Contract to terminate such Project Contract as a result of such default by Agent.

11.4 Owner's Rights upon Event of Project Termination. Upon the occurrence and continuation of any Event of Project Termination, Owner may do any one or more of the following (subject to the provisions of subsection 18.11 of this Agreement):

(i) Terminate this Agreement and/or Owner's obligations to make any further advances hereunder;

(ii) Take immediate possession of the Project and remove any or all other equipment or property of Owner in the possession of Agent, wherever situated, and for such purpose, enter upon the Premises without liability to Agent for so doing;

(iii) Whether or not any action has been taken under clause (i) or (ii) above, sell Owner's interest in the Project (with or without the concurrence or request of Agent);

(iv) Hold, use, occupy, operate, repair, remove, lease or keep idle the Project as Owner in its sole discretion may determine, without any duty to mitigate damages with respect to any such action or inaction or with respect to any proceeds thereof; and

(v) Exercise any other right or remedy which may be available under applicable law and in general proceed by appropriate judicial proceedings, either at law or in equity, to enforce the terms hereof or to recover damages provided for in this subsection 11.4 hereof.

Suit or suits for the recovery of any failure to pay any sum due hereunder or for damages may be brought by Owner from time to time at Owner's election, and nothing herein contained shall be deemed to require Owner to await the date whereon this Agreement or the term hereof

would have expired by limitation had there been no such Event of Project Termination or no such termination or cancellation.

The receipt of any payments under this Agreement by Owner with knowledge of any Event of Project Termination shall not be deemed to be a waiver of any provision of this Agreement.

No receipt of moneys by Owner from Agent after the termination or cancellation hereof in any lawful manner shall reinstate, continue or extend this Agreement, or operate as a waiver of the right of Owner to recover possession of the Project by proper suit, action, proceedings or remedy or operate as a waiver of the right to receive any and all amounts owing by Agent to or on behalf of Owner hereunder; it being agreed that, after the service of notice to terminate or cancel this Agreement, and the expiration of the time therein specified, if the Event of Project Termination has not been cured in the meantime, or after the commencement of any suit, action or summary proceedings or of any other remedy, or after a final order, warrant or judgment for the possession of the Project, Owner may demand, receive and collect any moneys payable hereunder, without in any manner affecting such notice, proceedings, suit, action, order, warrant or judgment. Acceptance of the keys to the Project, or any similar act, by Owner, or any agent or employee of Owner, during the term hereof, shall not be deemed to be an acceptance of a surrender of the Project unless Owner and Assignee shall consent thereto in writing.

After an Event of Project Termination, Owner may sell its interest in the Project upon any terms that Owner deems satisfactory, free of any rights of Agent or any Person claiming through or under Agent (including, without limitation, any rights hereunder or under the Lease or the Project Contracts). In the event of any such sale, in addition to all amounts payable pursuant to Section 12 hereof and any other provision hereof, Owner shall be entitled to recover from Agent, as liquidated damages and not as a penalty, an amount equal to the Loss Payment. Proceeds of sale received by Owner in excess of the Acquisition Cost less the Loss Payment shall be credited against the Accrued Project Termination Obligations and all amounts payable pursuant to Section 12 hereof and any other provision hereof. If such excess proceeds exceed the sum of (i) the Accrued Project Termination Obligations and all amounts payable pursuant to Section 12 hereof and any other provision hereof, plus (ii) the Unrecovered Liabilities and Judgments and if Agent has indefeasibly paid the Loss Payment, the Accrued Project Termination Obligations and all amounts payable pursuant to Section 12 hereof and any other provision hereof and the Unrecovered Liabilities and Judgments, and if Agent has indefeasibly paid all other amounts required to be paid under this subsection 11.4, such excess shall be paid by Owner to Agent; provided, however, that Agent shall be liable for any Unrecovered Liabilities and Judgments that arise after the payment of such excess proceeds to the extent such Unrecovered Liabilities and Judgments arise from or relate to acts or omissions occurring, or circumstances or conditions created or existing, at any time as of or prior to the expiration or termination of this Agreement. As an alternative to any such sale, in addition to all amounts payable pursuant to Section 12 hereof and any other provision hereof, Owner may (and, at the direction of Assignee, shall) cause Agent to pay to Owner upon the occurrence of an Event of Project Termination, and Agent shall pay to Owner upon the occurrence of an Event of Project Termination, as liquidated damages and not as a penalty, an amount equal to the Loss Payment. If Agent converts the Project or any part thereof after an Event of Project Termination, or if the Project is lost or destroyed as a result

of Agent's fraudulent act, illegal act, misapplication of funds or willful misconduct at the time of the Event of Project Termination, in addition to the Accrued Project Termination Obligations and all amounts payable pursuant to Section 12 hereof and any other provision hereof, Owner may cause Agent to pay to Owner, and Agent shall pay to Owner, as liquidated damages and not as a penalty, an amount equal to the Acquisition Cost, and Owner shall have no further obligation to reimburse Agent for any Unreimbursed Project Costs. In the event Owner receives indefeasible payment of the Acquisition Cost, the Accrued Project Termination Obligations and all amounts payable pursuant to Section 12 hereof and the Unrecovered Liabilities and Judgments, Owner shall transfer all of Owner's right, title and interest in and to the Project, including without limitation, the delivery of the documents contemplated in Section 14 below, to Agent.

In the event of a sale pursuant to this subsection 11.4, upon indefeasible receipt by Owner of the amounts payable hereunder, Owner shall transfer all of Owner's right, title and interest in and to the Project to a purchaser other than Agent or to Agent, as the case may be.

In the event Owner is not paid an amount equal to the Acquisition Cost plus the Accrued Project Termination Obligations and all amounts payable pursuant to Section 12 hereof and all Unrecovered Liabilities and Judgments, then, in addition to Owner's other rights in this subsection 11.4, Agent shall upon Owner's request (i) assign (or, if not legally assignable, cooperate and assist to the extent necessary or required in the transfer or reissuance thereof) to Owner (or to an assignee designated by Owner or Assignee), at no cost, all right, title and interest of Agent in, to and under all Construction Documents, Governmental Actions and Intellectual Property Rights needed for the equipping, maintenance, operation or use of the Project and obtained and held by Agent at that time, (ii) assign to Owner (or to a foreclosure purchaser designated by Owner or Assignee), at no cost, all right, title and interest of Agent in, to and under the Project Contracts, and in the event any additional consent of any party to a Project Contract is required as a precondition thereunder to an assignment to any other third party assignee designated by Owner or Assignee, and use its best efforts to obtain any such required consent to such proposed non-foreclosure assignment and assumption of the Project Contracts, and (iii) assign to Owner, at no cost, all right, title and interest of Agent in, to and under all service agreements in existence at the time of such sale and easements available to Agent in connection with the equipping, maintenance, operation or use of the Project. Agent acknowledges that it would be difficult to ascertain the value to Owner of Agent's agreement to assign, transfer or have reissued to Owner such Construction Documents, Governmental Actions and Intellectual Property Rights, to assign such Project Contracts (and, if necessary, to obtain such consents to such assignment) and to assign to Owner such service agreements and easements or to adequately compensate Owner by an award of damages for Agent's failure to assign to Owner such Construction Documents, Governmental Actions and Intellectual Property Rights, to assign such Project Contracts (and, if necessary, to obtain such consents to such assignment) and to assign to Owner such service agreements and easements, and that therefore Owner would not have an adequate remedy at law for breach by Agent of its agreement hereunder to Owner. Accordingly, Agent acknowledges that Owner shall be entitled to obtain specific performance of Agent's obligation to assign to Owner such Construction Documents, Governmental Actions and Intellectual Property Rights, to obtain such consents to such assignment, and to assign to Owner the service agreements and easements. In the event Agent fails to obtain any consents required in clause (ii) of the third preceding sentence, at the request

of Owner or such purchaser, as the case may be, Agent shall agree to (A) at the expense of such purchaser or Owner, as the case may be, continue to perform under and maintain in full force and effect the Project Contracts and pay all sums received under the Project Contracts to such third party or Owner, as the case may be, (B) at the expense of such third party or Owner, as the case may be, and subject to receipt of indemnification reasonably acceptable to Agent, take all actions requested by such third party or Owner, as the case may be, with respect to such Project Contracts (including all actions with respect to the enforcement of Agent's rights and remedies under such Project Contracts), and (C) not amend, modify, supplement, waive a provision of, grant any consent under or terminate any such Project Contract without the prior written consent of such third party or Owner, as the case may be.

In addition to its other rights in this subsection 11.4, Owner may exercise its various rights under the Facility Support Agreement or transfer such rights to the purchaser in a sale and Agent acknowledges hereby its agreement to perform its obligations thereunder.

No remedy referred to in this subsection 11.4 is intended to be exclusive, but each shall be cumulative and in addition to any other right referred to above or otherwise available to Owner at law or in equity, and the exercise in whole or in part by Owner of any one or more of such rights shall not preclude the simultaneous or later exercise by Owner of any or all such other rights. No waiver by Owner of any Event of Project Termination hereunder shall in any way be, or be construed to be, a waiver of any future or subsequent Event of Project Termination.

With respect to the termination of this Agreement as a result of an Event of Project Termination, Agent hereby waives service of any notice of intention to re-enter. To the extent permitted by applicable law, Agent hereby waives any and all rights to recover or regain possession of the Project or to reinstate this Agreement as permitted or provided by or under any statute, law or decision now or hereafter in force and effect.

SECTION 12. INDEMNITIES.

(a) Agent shall indemnify, defend, protect and hold harmless Owner and each successor or successors (each of the foregoing an "Indemnified Person") from and against any and all liabilities (including, without limitation, strict liability in tort), taxes, losses, obligations (including, without limitation, all obligations of Owner under or in respect of any Financing Arrangement), claims, damages, penalties, causes of action, suits, costs and expenses (including, without limitation, reasonable attorneys', experts', consultants' and accountants' fees and expenses) or judgments of any nature relating to or in any way arising out of:

(i) the ordering, delivery, acquisition, purchase agreement for the acquisition, construction, title on acquisition, rejection, installation, possession, titling, retitling, registration, re-registration, custody by Agent of title and registration documents, use, non-use, misuse, financing, lease, sublease, security interest in, operation, transportation, securing, repair, control, lease under the Ground Lease or disposition of the Project or any portion thereof;

(ii) the entering into, performance or enforcement of the Project Contracts and the Construction Documents or any violation, or alleged violation, of the Project Contracts and the Construction Documents;

(iii) any breach of a representation, warranty or covenant made herein, in the Lease or in the Guaranty or which is contained in any certificate, document or financial or other statement furnished by or on behalf of Agent or the Guarantor under or in connection with this Agreement, the Lease or the Guaranty;

(iv) any default by Agent in the performance or observance of any term, covenant, condition or obligation contained in this Agreement or any failure by Agent to comply with the Ground Lease, the Easements, the Facility Support Agreement or any Project Contract; and

(v) any of the claims, liabilities, demands, fees, taxes, violations of contract, or any other matter or situation described in or contemplated by the indemnification provisions of subparagraphs (a) and (b) of Section 11 of the Lease, except that this Agreement shall substitute the terms "Owner" for "the Lessor" and "Agent" for "the Lessee", or "this Agreement" for "this Lease", as the context shall require and the term "Acquisition Cost" for purposes of this Section 12 shall mean Acquisition Cost as defined in this Agreement;

provided, that Agent shall only have to indemnify such Indemnified Person for the matters described in this paragraph (a) to the extent caused directly or indirectly by, or resulting directly or indirectly from Agent's actions or failure to act while in possession or control of the Premises or the Project. Agent and Owner hereby acknowledge and agree that, as used in this Section 12, "Agent's actions or failure to act while in possession or control of the Premises or the Project" include any action or failure to act on the part of any subcontractors of Agent or any other Person permitted by Agent to enter upon the Premises, provided that, for purposes of this Section 12, Agent shall be deemed to be in possession and control of the Premises and Project as long as this Agreement is in effect.

(b) In addition to Agent's obligations set forth in the foregoing paragraph (a) above, Agent shall indemnify, defend, protect and hold harmless Owner, each general and limited partner of Owner, Merrill, Merrill Lynch, Merrill Leasing, each Assignee and their respective assigns and successors and each Affiliate thereof, and their respective officers, directors, incorporators, shareholders, members, partners, employees, agents and servants from and against any and all Environmental Damages relating to or in any way arising out of the Project arising from or relating to acts or omissions occurring, or circumstances or conditions created or existing, at any time as of or prior to August 26, 1999. Agent shall indemnify, defend, protect and hold harmless Owner and each successor or successors from and against any and all Environmental Damages arising from or relating to any period as of or prior to the Effective Date.

(c) The indemnification required under this Section 12 shall be upon the terms provided in the paragraphs of Section 11 of the Lease following paragraph (b) thereof, except

that (i) this Agreement shall substitute the terms in the same manner as described in subparagraph (a)(v) above and (ii) all references to "Indemnified Person" in the Lease shall mean any Person entitled to indemnity under this Section 12.

(d) The indemnities contained in this Section 12 shall survive and not be affected by any expiration or termination of this Agreement.

(e) Agent agrees that any payment made by Agent to Owner hereunder, shall constitute an acknowledgement that such payment is, as to Agent, in all respects, in full compliance with the terms of this Section 12.

SECTION 13. LEASEHOLD INTEREST.

The provisions of paragraphs (a) and (c) of Section 28 of the Lease shall govern the Ground Lease hereunder, except this Agreement shall substitute the terms "Owner" for "the Lessor" and "Agent" for "the Lessee" and "Section 13" for "Section 28".

SECTION 14. PURCHASE OF THE PROJECT.

In connection with, and as a condition to, the purchase of the Project by Agent pursuant hereto, (a) Agent shall pay at the time of purchase, in addition to the Acquisition Cost and all other amounts payable by Agent under this Agreement, including, without limitation, all amounts payable pursuant to Section 12 hereof and all losses, damages, costs and expenses (including, without limitation, attorneys' fees and expenses, commissions, filing fees, sales or transfer taxes, transfer gains taxes, mortgage recording tax, if any, recording and filing fees and all other similar taxes, fees, expenses and closing costs) sustained by Owner by reason of such purchase or in connection with the conveyance of the Project to Agent and all other amounts owing hereunder after taking into account such purchase, and (b) upon indefeasible receipt of such amounts, Owner shall deliver to Agent a bill of sale, deed or similar document assigning and conveying to Agent all of Owner's right, title and interest in and to the Project, the Ground Lease, the Easements, the EPC Contract and, if applicable, any Project Contract and, to the extent transferable, any title insurance policies issued to Owner, and when Owner transfers title, such transfer shall be on an as-is, non-installment sale basis, without warranty by, or recourse to, Owner (provided that such purchase price, exclusive of the other amounts payable hereunder in connection with such purchase, shall equal the Acquisition Cost).

SECTION 15. EVENTS OF LOSS; TERMINATION UPON CERTAIN EVENTS.

(a) If (1) an Event of Loss shall occur and (2) such Event of Loss does not arise as a result of Agent's actions or the failure of Agent to act or Agent's fraudulent act, illegal act, misapplication of funds or willful misconduct, then in any such event, (A) Agent shall promptly notify Owner in writing of such event, (B) Agent shall either (x) promptly commence the restoration and reconstruction of the Project or (y) promptly pay to Owner, an amount equal to

the Acquisition Cost (less, to the extent any such amounts have been paid, the amount of insurance or condemnation proceeds received by Owner as a result of such Event of Loss). In the event Agent elects to restore and reconstruct the Project pursuant to the immediately preceding sentence, (i) Owner shall continue to be obligated to make advances to Agent pursuant to the terms of Section 5, 6 and 7 of this Agreement, (ii) any insurance or condemnation proceeds payable with respect to such Event of Loss will be held in the Operating Account for reimbursement to Agent during the course of Agent's restoration and reconstruction of the Project pursuant to the provisions of Section 5, 6 and 7 of this Agreement, and (iii) any such insurance or condemnation proceeds received by Owner shall reduce Acquisition Cost by the amount of such proceeds. In the event Agent elects to pay Owner the amount described in clause (2)(B)(y) of the first sentence of this paragraph (a), upon receipt of such amount, Owner shall deliver to Agent a bill of sale, deed or similar document assigning and conveying to Agent all of Owner's right, title and interest in and to the Project, the Ground Lease, the Easements, the EPC Contract and, if applicable, any Project Contract and, to the extent transferable, any title insurance policies issued to Owner, and when Owner transfers title, such transfer shall be on an as-is, non-installment sale basis, without warranty by, or recourse to, Owner. Insurance and condemnation proceeds, if any, received by Owner in excess of the Acquisition Cost plus the Unrecovered Liabilities and Judgments, so long as no Event of Default or Event of Project Termination has occurred and is continuing, shall be paid by Owner to Agent. In addition, Agent will use its best efforts to prevent an Event of Loss, including, without limitation promptly and with due diligence to contest such action by all appropriate proceedings at law and in equity (including the filing of all appeals), to institute claims and counterclaims against third parties and to do all things necessary or desirable to preserve the rights and interests of Owner in the Project.

(b) This Agreement shall terminate and Agent shall be required to purchase the Project under this Agreement upon the happening of the following events during the term of this Agreement and Owner's written notice to Agent of Owner's election to terminate this Agreement (a "Termination Event"): (1) an Event of Loss occurs as a result of Agent's fraudulent act, illegal act, misapplication of funds or willful misconduct, or (2) any cessation of construction of the Project occurs for any period after the date construction shall commence in excess of sixty (60) days in the aggregate arising as a result of any fraudulent act, illegal act, misapplication of funds or willful misconduct on the part of Agent. The date of the occurrence of any Termination Event is herein called the "Termination Event Date".

(c) In the case of any Termination Event, this Agreement shall terminate on the Termination Settlement Date. As soon as possible after Agent shall receive notice of a Termination Event, Agent shall confirm notice thereof to Owner, which confirming notice shall state that on the twentieth day of the calendar month next succeeding the Termination Event Date (such date being herein called the "Termination Settlement Date"), Agent shall be required to pay to Owner, as the purchase price for Owner's interest in the Project, the Acquisition Cost as of the Termination Settlement Date. In connection with any purchase under this paragraph (c), on the Termination Settlement Date, Agent shall pay to Owner, in addition to any purchase price payable, all amounts payable by Agent pursuant to Section 12 hereof, all Unrecovered Liabilities and Judgments and all losses, damages, costs and expenses (including, without limitation, attorneys' fees and expenses, commissions, filing fees, sales or transfer taxes, transfer gains taxes, mortgage recording tax, if any, recording and filing fees and all other similar taxes,

fees (including, without limitation, brokerage fees), expenses and closing costs (including reasonable attorneys' fees)) sustained by Owner by reason of such Termination Event or in connection with the conveyance of the Project to Agent as contemplated herein, after taking into account such purchase. Upon the delivery of Owner's notice to Agent as provided in this paragraph (c), Agent shall become obligated to make the payment required on the Termination Settlement Date to the same extent as if it had acknowledged in writing its obligation so to do. Agent's obligation to make such payment if and when due shall be unconditional and unaffected by any event or matter whatsoever.

SECTION 16. PERMITTED CONTESTS.

(a) Agent shall not be required, nor shall Owner have the right, to pay, discharge or remove any tax, assessment, levy, fee, rent, charge or Lien, or to comply or cause the Project to comply with any Legal Requirement applicable to the Project or the occupancy, use or operation thereof, so long as no Potential Default or Potential Event of Project Termination and no Event of Default, Event of Project Termination or Termination Event exists under this Agreement, and, in the reasonable judgment of Agent's counsel, Agent shall have reasonable grounds to contest the existence, amount, applicability or validity thereof by appropriate proceedings, which proceedings in the reasonable judgment of Owner and Assignee, (i) shall not involve any danger that the Project or any portion thereof would be subject to sale, forfeiture or loss, as a result of failure to comply therewith, (ii) shall not affect the payment of any sums due and payable hereunder, (iii) will not place either Owner or any Assignee in any danger of civil liability or subject Owner or any Assignee to any danger of criminal liability, (iv) if involving taxes, shall suspend the collection of the taxes (unless Agent has provided a bond for the full amount in dispute), (v) are consistent with prudent business practices, and (vi) shall be permitted under and be conducted in accordance with the provisions of any other instrument to which Agent or the Project is subject and shall not constitute a default thereunder (the "Permitted Contest"). Agent shall conduct all Permitted Contests in good faith and with due diligence and shall promptly after the final determination (including appeals) of any Permitted Contest (or, if earlier, upon any of the above criteria no longer being satisfied) pay and discharge all amounts which shall be determined to be payable therein. Owner shall cooperate in good faith with Agent with respect to all Permitted Contests conducted by Agent pursuant to this Section 16.

(b) In the event Owner or any Assignee deems, in its reasonable discretion, that its interests under this Agreement or in the Project are not adequately protected in connection with a Permitted Contest brought by Agent as permitted under this Section 16, Agent shall give such reasonable security, as may be demanded by Owner or any Assignee to ensure payment of such tax, assessment, levy, fee, rent, charge or Lien and compliance with Legal Requirements and to prevent any sale or forfeiture of the Project or any portion thereof or any amounts owing hereunder by reason of such nonpayment or noncompliance. Agent hereby agrees that Owner may assign such security provided by Agent to any Assignee.

(c) At least ten (10) Business Days prior to the commencement of any Permitted Contest, Agent shall notify Owner and Assignee in writing of any such proceeding in which the amount in contest exceeds \$100,000, and shall describe such proceeding in reasonable detail. In

the event that a taxing authority or subdivision thereof proposes an additional assessment or levy of any tax for which Agent is obligated to reimburse Owner under this Agreement, or in the event that Owner is notified of the commencement of an audit or similar proceeding which could result in such an additional assessment, then Owner shall in a timely manner notify Agent in writing of such proposed levy or proceeding.

SECTION 17. SALE OR ASSIGNMENT BY OWNER.

(a) Owner shall have the right to obtain debt and equity financing for the acquisition and ownership of the Project by selling or assigning its right, title and interest in any or all amounts due from Agent or any third Person under this Agreement and granting a security interest in this Agreement and the Project to a lender or lenders under a Financing Arrangement (or any entity acting in the capacity of an agent in connection therewith), notice of the identity of which has been given to Agent; provided that any sale or assignment by Owner shall be made consistent with the terms of this Agreement and shall be subject to Permitted Liens and the rights and interests of Agent under this Agreement and the Lease.

(b) Any Assignee shall, except as otherwise agreed by Owner and such Assignee, have all the rights, powers, privileges and remedies of Owner hereunder, and Agent's obligations as between itself and such Assignee hereunder shall not be subject to any claims or defense that Agent may have against Owner. Upon written notice to Agent of any such assignment, Agent shall thereafter make payments of any and all sums due hereunder to Assignee, to the extent specified in such notice, and such payments shall discharge the obligation of Agent to Owner hereunder to the extent of such payments. Anything contained herein to the contrary notwithstanding, no Assignee shall be obligated to perform any duty, covenant or condition required to be performed by Owner hereunder, and any such duty, covenant or condition shall be and remain the sole obligation of Owner.

SECTION 18. GENERAL CONDITIONS.

The following conditions shall be applicable throughout the term of this Agreement:

18.1 Survival. Except as otherwise provided in the Lease, all agreements, indemnities, representations and warranties shall survive until the expiration or other termination hereof, provided that (a) any obligations under this Agreement accrued at the time of or related to periods prior to such expiration or other termination (including, without limitation, any obligation to pay Unrecovered Liabilities and Judgments) shall survive such expiration or other termination, and (b) any obligation under this Agreement which is expressly provided to be performed after or to survive the expiration or termination of this Agreement shall survive the expiration or other termination hereof.

18.2 No Waivers. No advance hereunder shall constitute a waiver of any of the conditions of Owner's obligation to make further advances nor, in the event Agent is unable to

satisfy any such condition, shall any waiver of such condition have the effect of precluding Owner from thereafter declaring such inability to be an Event of Default or Event of Project Termination as herein provided. Any advance made by Owner and any sums expended by Owner pursuant to this Agreement shall be deemed to have been made pursuant to this Agreement, notwithstanding the existence of an uncured Event of Default or Event of Project Termination. No advance shall constitute a waiver of the right of Owner to require compliance with the covenant contained in subsection 10.1 hereof with respect to any such defects or material departures from any Plans not theretofore approved by Owner and Assignee. No advance at a time when an Event of Default or Event of Project Termination exists shall constitute a waiver of any right or remedy of Owner existing by reason of such Event of Default or Event of Project Termination, including, without limitation, the right to refuse to make further advances.

18.3 Owner and Assignee Sole Beneficiaries. All conditions of the obligation of Owner to make advances hereunder are imposed solely and exclusively for the benefit of Owner and any Assignee and their assigns, and no other Person shall have standing to require satisfaction of such conditions in accordance with their terms or be entitled to assume that Owner will refuse to make advances in the absence of strict compliance with any or all thereof and no other Person shall, under any circumstances, be deemed to be a beneficiary of such conditions, any or all of which may be freely waived in whole or in part by Owner, with the consent of Assignee, at any time if in its sole discretion it deems it advisable to do so. Inspections and approvals of any Plans and the Project and the workmanship and materials used therein impose no responsibility or liability of any nature whatsoever on Owner or any Assignee, and no Person shall, under any circumstances, be entitled to rely upon such inspections and approvals by Owner or any Assignee for any reason.

18.4 No Offsets, Etc. The obligations of Agent to pay all amounts payable pursuant to this Agreement (including specifically and without limitation amounts payable under Section 12 hereof) and to purchase the Project when required hereunder shall be absolute and unconditional under any and all circumstances of any character, and such amounts shall be paid without notice, demand, defense, set-off, deduction or counterclaim and without abatement, suspension, deferment, diminution or reduction of any kind whatsoever, except as herein expressly otherwise provided. The obligation of Agent to lease or sublease and pay Basic Rent and Additional Rent and any other amounts due under the Lease for the Project commencing upon the Effective Date is without any warranty or representation, express or implied, as to any matter whatsoever on the part of Owner or any Assignee or any Affiliate of either, or anyone acting on behalf of any of them.

AGENT HAS SELECTED THE PROJECT ON THE BASIS OF ITS OWN JUDGMENT. EXCEPT AS OTHERWISE EXPRESSLY PROVIDED HEREIN, UPON A TRANSFER OF OWNER'S INTEREST IN THE PROJECT TO AGENT, NEITHER OWNER NOR ANY ASSIGNEE NOR ANY AFFILIATE OF EITHER, NOR ANYONE ACTING ON BEHALF OF ANY OF THEM, MAKES ANY REPRESENTATION OR WARRANTY OF ANY KIND WHATSOEVER, EXPRESS OR IMPLIED, INCLUDING, WITHOUT LIMITATION, AS TO THE SAFETY, TITLE, CONDITION, QUALITY, QUANTITY, FITNESS FOR USE, MERCHANTABILITY, CONFORMITY TO SPECIFICATION, OR ANY OTHER CHARACTERISTIC, OF THE PROJECT, OR AS TO WHETHER THE PROJECT, OR

THE OWNERSHIP, USE, OCCUPANCY OR POSSESSION THEREOF COMPLIES WITH ANY LAWS, RULES, REGULATIONS OR REQUIREMENTS OF ANY KIND. AS BETWEEN OWNER AND AGENT, ANY ASSIGNEE OR ANY INDEMNIFIED PERSON, AGENT ASSUMES ALL RISKS AND WAIVES ANY AND ALL DEFENSES, SET-OFFS, RECOUPMENTS, ABATEMENTS, DEDUCTIONS, COUNTERCLAIMS (OR OTHER RIGHTS), EXISTING OR FUTURE, AS TO AGENT'S OBLIGATION TO PAY ALL AMOUNTS PAYABLE HEREUNDER, INCLUDING, WITHOUT LIMITATION, ANY RELATING TO:

(A) THE SAFETY, TITLE, CONDITION, QUALITY, QUANTITY, FITNESS FOR USE, MERCHANTABILITY, CONFORMITY TO SPECIFICATION, OR ANY OTHER QUALITY OR CHARACTERISTIC OF THE PROJECT, LATENT OR NOT;

(B) ANY SET-OFF, COUNTERCLAIM, RECOUPMENT, ABATEMENT, DEFENSE OR OTHER RIGHT WHICH AGENT MAY HAVE AGAINST OWNER, ANY ASSIGNEE OR ANY INDEMNIFIED PERSON FOR ANY REASON WHATSOEVER ARISING OUT OF THIS OR ANY OTHER TRANSACTION OR MATTER;

(C) ANY DEFECT IN TITLE OR OWNERSHIP OF THE PROJECT OR ANY TITLE ENCUMBRANCE NOW OR HEREAFTER EXISTING WITH RESPECT TO THE PROJECT;

(D) ANY FAILURE OR DELAY IN DELIVERY OR ANY LOSS, THEFT OR DESTRUCTION OF, OR DAMAGE TO THE PROJECT IN WHOLE OR IN PART, OR CESSATION OF THE USE OR POSSESSION OF THE PROJECT BY AGENT FOR ANY REASON WHATSOEVER AND OF WHATEVER DURATION, OR ANY CONDEMNATION, CONFISCATION, REQUISITION, SEIZURE, PURCHASE, TAKING OR FORFEITURE OF THE PROJECT, IN WHOLE OR IN PART;

(E) ANY INABILITY OR ILLEGALITY WITH RESPECT TO THE USE, OWNERSHIP, OCCUPANCY OR POSSESSION OF THE PROJECT BY AGENT;

(F) ANY INSOLVENCY, BANKRUPTCY, REORGANIZATION OR SIMILAR PROCEEDING BY OR AGAINST AGENT OR OWNER OR ANY ASSIGNEE;

(G) ANY FAILURE TO OBTAIN, OR EXPIRATION, SUSPENSION OR OTHER TERMINATION OF, OR INTERRUPTION TO, ANY REQUIRED LICENSES, PERMITS, CONSENTS, AUTHORIZATIONS, APPROVALS OR OTHER LEGAL REQUIREMENTS;

(H) THE INVALIDITY OR UNENFORCEABILITY OF THIS AGREEMENT OR ANY OTHER INFIRMITY HEREIN OR ANY LACK OF POWER OR AUTHORITY OF OWNER OR AGENT TO ENTER INTO THIS AGREEMENT; OR

(I) ANY OTHER CIRCUMSTANCES OR HAPPENING WHATSOEVER, WHETHER OR NOT SIMILAR TO ANY OF THE FOREGOING.

AGENT HEREBY WAIVES, TO THE EXTENT PERMITTED BY APPLICABLE LAW, ANY AND ALL RIGHTS WHICH IT MAY NOW HAVE OR WHICH AT ANY TIME HEREAFTER MAY BE CONFERRED UPON IT, BY STATUTE OR OTHERWISE, TO TERMINATE, CANCEL, QUIT, RESCIND OR SURRENDER THIS AGREEMENT EXCEPT IN ACCORDANCE WITH THE EXPRESS TERMS HEREOF.

18.5 No Recourse.

Owner's obligations hereunder are intended to be the obligations of the limited partnership and of the corporation which is the general partner thereof only and no recourse for the payment of any amount due under this Agreement, any Project Contract, any Construction Document, the Ground Lease or any other agreement contemplated hereby, or for any claim based thereon or otherwise in respect thereof, shall be had against any limited partner of Owner or any incorporator, shareholder, officer, director or Affiliate, as such, past, present or future of such corporate general partner or any corporate limited partner or of any successor corporation to such corporate general partner or to any corporate limited partner of Owner, or against any direct or indirect parent corporation of such corporate general partner or of any limited partner of Owner or any other subsidiary or Affiliate or any such direct or indirect parent corporation or any incorporator, shareholder, officer or director, as such, past, present or future, of any such parent or other subsidiary or Affiliate. Nothing contained in this subsection 18.5 shall be construed to limit the exercise or enforcement, in accordance with the terms of this Agreement, the Lease, the Project Contracts and the Construction Documents and any other documents referred to herein, of rights and remedies against the limited partnership or the corporate general partner of Owner or the assets of the limited partnership or the corporate general partner of Owner.

18.6 Notices.

(a) All notices, offers, acceptances, approvals, waivers, requests, demands and other communications hereunder or under any other instrument, certificate or other document delivered in connection with the transactions described herein shall be in writing, shall be addressed as provided below and shall be considered as properly given (a) if delivered in person, (b) if sent by express courier service (including, without limitation, Federal Express, Emery, DHL, Airborne Express, and other similar express delivery services), (c) in the event overnight delivery services are not readily available, if mailed through the United States Postal Service, postage prepaid, registered or certified with return receipt requested, or (d) if sent by telecopy and confirmed; provided that, in the case of a notice by telecopy, the sender shall in addition confirm such notice by writing sent in the manner specified in clauses (a), (b) or (c) of this subsection 18.6. All notices shall be effective upon receipt by the addressee; provided, however, that, if any notice is tendered to an addressee and the delivery thereof is refused by such addressee, such notice shall be effective upon such tender. For the purposes of notice, the addresses of the parties shall be as set forth below; provided, however, that any party shall have the right to change its address for notice hereunder to any other location by giving written notice

to the other party in the manner set forth herein. The initial addresses of the parties hereto are as follows:

If to Owner:

Wygen Funding, Limited Partnership
c/o ML Leasing Equipment Corp.
Controller's Office
95 Greene Street, 7th Floor
Jersey City, New Jersey 07302

Attention: Kira Toone
Telephone: (201) 671-0334
Facsimile: (201) 671-4511

with a copy of each such notice to be simultaneously given, delivered, or served to the following:

ML Leasing Equipment Corp.
95 Greene Street, 7th Floor
Jersey City, New Jersey 07302

Attention: Frank Conley
Facsimile: (201) 671-4511

If to Agent:

Black Hills Generation, Inc.
625 Ninth Street
Rapid City
South Dakota 57701

Attention: Mark Thies
Telephone: (605) 721-2331
Telecopy: (605) 721-2597

with a copy to any Assignee at such address as such Assignee may specify by written notice to Owner and Agent.

(b) Owner shall within five (5) Business Days give to Agent a copy of all notices received by Owner pursuant to any Financing Arrangement and any other notices received with respect to the Project.

18.7 Modifications. Neither this Agreement nor any provision hereof may be changed, waived or terminated orally, but only by an instrument in writing signed by the party against whom enforcement of the change, waiver or termination is sought.

18.8 Rights Cumulative. All rights, powers and remedies herein given to Owner are cumulative and not alternative, and are in addition to all statutes or rules of law; any forbearance or delay by Owner in exercising the same shall not be deemed to be a waiver thereof, and the exercise of any right or partial exercise thereof shall not preclude the further exercise thereof, and the same shall continue in full force and effect until specifically waived by an instrument in writing executed by Owner. All representations and covenants by Agent shall survive the making of the advances, and the provisions hereof shall be binding upon and inure to the benefit of the respective successors and permitted assigns, if any, of the parties hereto.

18.9 Governing Law and Consent to Jurisdiction; Waiver of Jury Trial. THIS AGREEMENT HAS BEEN EXECUTED AND DELIVERED IN THE STATE OF NEW YORK. AGENT AND OWNER AGREE THAT, TO THE MAXIMUM EXTENT PERMITTED BY THE LAWS OF THE STATE OF NEW YORK, THIS AGREEMENT, AND THE RIGHTS AND DUTIES OF AGENT AND OWNER HEREUNDER, SHALL BE GOVERNED BY, AND CONSTRUED IN ACCORDANCE WITH, THE LAWS OF THE STATE OF NEW YORK (INCLUDING, WITHOUT LIMITATION, SECTIONS 5-1401 AND 5-1402 OF THE NEW YORK GENERAL OBLIGATIONS LAW) IN ALL RESPECTS, INCLUDING, WITHOUT LIMITATION, IN RESPECT OF ALL MATTERS OF CONSTRUCTION, VALIDITY AND PERFORMANCE. AGENT HEREBY IRREVOCABLY SUBMITS, FOR ITSELF AND ITS PROPERTIES, TO THE JURISDICTION OF THE UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF NEW YORK AND THE SUPREME COURT OF THE STATE OF NEW YORK IN THE COUNTY OF NEW YORK IN ANY ACTION, SUIT OR PROCEEDING BROUGHT AGAINST IT AND RELATED TO OR IN CONNECTION WITH THIS AGREEMENT, AND TO THE EXTENT PERMITTED BY APPLICABLE LAW, AGENT HEREBY WAIVES AND AGREES NOT TO ASSERT BY WAY OF MOTION, AS A DEFENSE OR OTHERWISE IN ANY SUCH SUIT, ACTION OR PROCEEDING, ANY CLAIM THAT IT IS NOT PERSONALLY SUBJECT TO THE JURISDICTION OF SUCH COURT, THAT THE SUIT, ACTION OR PROCEEDING IS BROUGHT IN AN INCONVENIENT FORUM, THAT THE VENUE OF THE SUIT, ACTION OR PROCEEDING IS IMPROPER, OR THAT THIS AGREEMENT OR THE SUBJECT MATTER HEREOF MAY NOT BE LITIGATED IN OR BY SUCH COURT. THIS SUBMISSION TO JURISDICTION IS NONEXCLUSIVE AND DOES NOT PRECLUDE OWNER OR ANY ASSIGNEE FROM OBTAINING JURISDICTION OVER AGENT IN ANY COURT OTHERWISE HAVING JURISDICTION. TO THE EXTENT PERMITTED BY APPLICABLE LAW, AGENT AGREES NOT TO SEEK AND HEREBY WAIVES THE RIGHT TO ANY REVIEW OF THE JUDGMENT OF ANY SUCH COURT BY ANY COURT OF ANY OTHER NATION OR JURISDICTION WHICH MAY BE CALLED UPON TO GRANT AN ENFORCEMENT OF SUCH JUDGMENT. AGENT AGREES THAT SERVICE OF PROCESS MAY BE MADE UPON IT BY CERTIFIED OR REGISTERED MAIL TO THE ADDRESS FOR NOTICES SET FORTH IN THIS AGREEMENT OR ANY METHOD AUTHORIZED BY THE LAWS OF NEW YORK. OWNER APPOINTS CT CORPORATION SYSTEM WHICH CURRENTLY MAINTAINS A NEW YORK CITY OFFICE SITUATED AT 111 EIGHTH AVENUE, 13TH FLOOR, NEW YORK, NEW YORK 10011, UNITED STATES,

AS ITS AGENT TO RECEIVE SERVICE OF PROCESS AND AGREES, SO LONG AS OWNER HAS ANY OBLIGATION UNDER THIS AGREEMENT, THAT IT WILL MAINTAIN A DULY APPOINTED AGENT IN NEW YORK CITY FOR THE SERVICE OF SUCH PROCESS, AND FURTHER AGREES THAT IF IT FAILS TO MAINTAIN SUCH AN AGENT, ANY SERVICE OF PROCESS MAY BE MADE UPON IT BY CERTIFIED OR REGISTERED MAIL TO THE ADDRESS FOR NOTICES SET FORTH IN THIS AGREEMENT OR ANY METHOD AUTHORIZED BY THE LAWS OF NEW YORK. OWNER AND AGENT EXPRESSLY WAIVE ALL RIGHT TO TRIAL BY JURY IN ANY ACTION, PROCEEDING OR COUNTERCLAIM RELATED TO THIS AGREEMENT OR THE TRANSACTIONS CONTEMPLATED HEREBY. OWNER AND AGENT ACKNOWLEDGE THAT THE PROVISIONS OF THIS SUBSECTION 18.9 HAVE BEEN BARGAINED FOR AND THAT THEY HAVE BEEN REPRESENTED BY COUNSEL IN CONNECTION THEREWITH.

18.10 Captions. The captions in this Agreement are for convenience of reference only, and shall not be deemed to affect the meaning or construction of any of the provisions hereof.

18.11 Purchase by Agent. Upon the occurrence of an Event of Project Termination and upon the written request of Agent, which shall be received not later than fifteen (15) Business Days subsequent to receipt of notice from Owner or any Assignee pursuant to this Agreement that such Event of Project Termination has occurred, Agent shall have the right, not later than thirty (30) Business Days after Owner's receipt of such request, to purchase the Project at a price equal to the Acquisition Cost; provided that the purchase option contained in this subsection 18.11 shall only be available to Agent if (a) in the reasonable judgment of Owner and any Assignee, the purchase price and all other amounts paid by Agent will not in the circumstances in which such payment is made constitute a preferential payment or a voidable transfer or otherwise be subject to recapture pursuant to the provisions of the Federal Bankruptcy Code in a bankruptcy proceeding by or against Agent and will not otherwise result in the payment being subject to recapture from Owner or (b) the Guarantor has provided a guaranty of the payment of such purchase price and all other amounts required to be paid by Agent under this subsection 18.11, which guaranty shall be in form and substance reasonably satisfactory to Owner and any Assignee. In connection with, and as a condition to, the purchase of the Project pursuant hereto, (i) Agent shall pay at the time of purchase, in addition to the Acquisition Cost, all other amounts payable by Agent under this Agreement, including, without limitation, all Accrued Project Termination Obligations (after taking into account the application under the Financing Arrangements of such purchase price and other payments made hereunder), all amounts payable pursuant to Section 12 hereof, and all transfer taxes, transfer gains taxes, mortgage recording taxes, if any, recording and filing fees and all other similar taxes, fees, expenses and closing costs (including reasonable attorney's fees) in connection with the conveyance of the Project to Agent and all other amounts owing hereunder as of the date of such purchase and all Unrecovered Liabilities and Judgments, and (ii) when Owner transfers title, such transfer shall be of all of Owner's right, title and interest in and to the Project, but on an as-is, non-installment sale basis, without warranty by, or recourse to, Owner.

18.12 Reassignment of Ground Lease and other Project Contracts. In connection with the purchase of the Project by Agent or any third party pursuant to the provisions of this

Agreement, Owner shall assign, and Agent (or such third party, as the case may be) shall accept an assignment of, Owner's interest in the Ground Lease, the EPC Contract and, if applicable, any other Project Contract, such assignment to be without warranty by, or recourse to, Owner (provided that, the purchase price, exclusive of the other amounts payable hereunder in connection with such purchase, shall equal the Acquisition Cost).

18.13 Right to Perform for Agent. If Agent fails to perform or comply with any of its covenants or agreements contained in this Agreement, and any period to cure such failure has expired without Agent curing such failure, Owner may, upon notice to Agent but without waiving or releasing any obligations or default, itself perform or comply with such covenant or agreement, and the amount of the reasonable expenses of Owner incurred in connection with such performance or compliance shall be capitalized by Owner into the Acquisition Cost of the Project.

[Signature Page Follows]

IN WITNESS WHEREOF, the parties have executed this Agreement the day and year first above written.

WYGEN FUNDING, LIMITED PARTNERSHIP,
By Wygen Capital, Inc.,
its General Partner

By _____
Name:
Title:

BLACK HILLS GENERATION, INC.

By _____
Name:
Title:

EXHIBIT A

FORM OF ACQUISITION CERTIFICATE

BLACK HILLS GENERATION, INC. ("Agent"), Agent under a certain Agreement for Lease (the "Agreement"), dated as of July 20, 2001, entered into with WYGEN FUNDING, LIMITED PARTNERSHIP ("Owner"), delivers this Acquisition Certificate pursuant to Section 4 of the Agreement. All terms used in this Certificate shall have the meanings given to such terms in the Agreement. Agent hereby certifies to Owner and Assignee as follows:

1. Ground Lease. Attached hereto at Tab 1 is a copy of the Ground Lease (which Ground Lease is not subject to any Liens other than Permitted Liens), including a true and complete copy of the metes and bounds legal description of the Premises, along with any necessary estoppel certificates, recognition and attornment agreements, confirmations and subordinations required by Owner's and any Assignee's counsel regarding the Ground Lease, and two original counterparts of a memorandum of Ground Lease in the appropriate form for recording in the jurisdiction in which the Premises are located.
2. Memorandum of Lease Agreement. Attached hereto at Tab 2 are two original counterparts of a memorandum of Lease in the appropriate form for recording in the jurisdiction in which the Premises are located, executed by Agent, as lessee, and otherwise reasonably acceptable to Owner and Assignee.
3. Certificates of Insurance. Attached hereto at Tab 3 are certificates of insurance or other evidence reasonably acceptable to Owner and Assignee certifying that the insurance on the Project required by subsection 9.3 of the Agreement is in effect, along with copies of each such policy.
4. Taxes. All due and payable past and current taxes and assessments applicable to the Premises have been paid in full or are being contested by Agent as a Permitted Contest pursuant to paragraph (a) of Section 16 of the Agreement, and all such taxes and assessments owed by Agent (or estimated amounts thereof) are included in the Budget.
5. Availability of Utilities. All utility services and facilities (including, without limitation, gas, electrical, water, coal supply and storage and sewage services, Interconnections and facilities) (a) which are necessary and required during the construction period have been completed or will be available in such a manner as to assure Owner that construction will not be impeded by a lack thereof and (b) which are necessary for operation and occupancy of the Project are or will be completed in such a manner and at such a time as will assure the opening and operation of the Project.

6. Permits. All Permits and Governmental Actions required for the construction of the Project and for the use of the Premises in accordance with and as contemplated by the Project Contracts, the Agreement and the Lease or are otherwise required prior to this Initial Advance, have been issued or obtained, are in full force and effect, are final, are not under appeal, and all applicable appeal periods have expired. All conditions contained in such Permits and Governmental Actions have been satisfied by the required date except to the extent that failure to satisfy such conditions could not reasonably be expected to result in a material delay or loss or result in Environmental Damages. There are no proceedings pending or threatened which seek or which may be expected to rescind, terminate, modify, suspend or otherwise alter such Permits and Governmental Actions. All Permits and Governmental Actions required for the operation of the Project and for the use of the Premises in accordance with and as contemplated by the Project Contracts, the Agreement and the Lease have been duly applied for, or will in a timely manner be applied for, and Agent has no reason to believe that such Permits and Governmental Actions will not be granted in the ordinary course within a reasonable time, without burdensome conditions, and prior to the time required under applicable Legal Requirements.
7. Site Plan. Attached hereto at Tab 4 is a site plan prepared on behalf of Agent, showing the proposed location of the Project to be constructed on the Premises.
8. Plans. Attached hereto at Tab 5 is a copy of the Plans and, as requested by Owner, such other specifications for the construction of the Project as are available to Agent.
9. Use of Proceeds, No Liens and Representations of Agent. (a) All costs and expenses which are the subject of the Initial Advance requested have been paid in full or will be paid in full out of the proceeds of this Initial Advance, (b) there are no Liens on the Premises that are not Permitted Liens, (c) all representations and warranties in the Agreement, in the Lease, and in connection with this Initial Advance, are and remain true and correct on and as of the date of this Initial Advance as if made on and as of the date of this Initial Advance and (d) no Event of Loss, Termination Event, Event of Default, Potential Default, default under a Project Contract, a Construction Document, the Guaranty or the Pledge Agreement, or Event of Project Termination or Potential Event of Project Termination under the Agreement has occurred and is continuing on the date this Initial Advance is to be made or will exist by reason of giving effect to this Initial Advance.

10. Environmental Report. Attached hereto at Tab 6 is an environmental report or reports complying with paragraph (l) of Section 4 of the Agreement.
11. Opinions of Counsel for Agent. (a) Attached hereto at Tab 7 is an opinion of Morrill Thomas Nooney & Braun, LLP, local counsel for Agent, and (b) attached hereto at Tab 8 is an opinion of Morgan, Lewis & Bockius LLP, New York counsel for Agent.
12. Budget. The Budget attached as Exhibit G to the Agreement (a) has not been amended, restated or supplemented as of the date of this Initial Advance, (b) is true, complete and correct, (c) is accurately representative of all expected costs of the Project, and (d) is within the dollar limit set forth in the first sentence of subsection 2.2 of the Agreement.
13. Request for Initial Advance. Attached hereto at Tab 9 is a duly executed Request for Initial Advance complying with paragraph (o) of Section 4 of the Agreement.
14. Project Contracts. Attached hereto at Tab 10 is a fully executed and complete copy of each of the Project Contracts in existence on the date hereof.
15. Title Insurance Policy. Attached hereto at Tab 11 are copies of pro-forma policies of insurance complying with paragraph (s) of Section 4 of the Agreement.
16. Opinions of Counsel for Guarantor. (a) Attached hereto at Tab 12 is an opinion of Morrill Thomas Nooney & Braun, LLP, counsel for the Guarantor, and (b) attached hereto at Tab 13 is an opinion of Morgan, Lewis & Bockius LLP, New York counsel for the Guarantor.
17. Representations and Warranties of Guarantor. All representations and warranties of the Guarantor set forth in the Guaranty are and remain true and correct on and as of the date of this Initial Advance as if made on and as of the date of this Initial Advance and no default under the Guaranty has occurred and is continuing on the date this Initial Advance is to be made or will exist by reason of giving effect to this Initial Advance.
18. Insurance Report and Insurance Letter. (a) Attached hereto at Tab 14 is a report prepared by the Insurance Broker with respect to the insurance to be maintained on the Project, and (b) attached hereto at Tab 15 is a letter from an officer of Agent or one of its Affiliates or a member of the risk management group of Agent or one of its Affiliates certifying that the insurance required under subsection 9.3 of the Agreement is in effect and that such insurance is reasonable in relation to the Project.

19. Construction Drawdown Schedule. Attached hereto at Tab 16 is a copy of the Construction Drawdown Schedule prepared by Agent, which reflects Agent's best estimates as to the amount and timing of construction drawdowns on the date of this Initial Advance.
20. Construction Progress. Attached hereto at Tab 17 are (a) copies of all progress reports delivered under the EPC Contract and requested by Owner or Assignee and (b) true copies of unpaid invoices, receipted bills and Lien waivers requested by Owner or Assignee, and such other reasonably available supporting information as Owner or Assignee may have reasonably requested.
21. No Other Security Interests. All materials and fixtures incorporated in the construction of the Project have been purchased so that title thereto has automatically been transferred to Owner pursuant to the EPC Contract, and there are no Liens on such materials and fixtures other than Permitted Liens.
22. Material Adverse Change. Since December 31, 2000, there has been no material adverse change in the business, assets, properties, revenues, financial condition, operations or prospects of Agent or the Guarantor.
23. Conditions Precedent Under Project Contracts. All conditions precedent under each Project Contract have been satisfied in full (other than those (a) relating to completion of construction of the Project, (b) which the failure to satisfy could not reasonably be expected to have a material adverse effect on Agent's ability to perform its obligations under the Project Contracts or (c) which will be fulfilled as a result of Agent's execution and delivery of and performance under the Agreement).
24. Intellectual Property Rights. All Intellectual Property Rights necessary for the use and operation of the Project in accordance with and as contemplated by the Project Contracts, the Agreement and the Lease have been obtained and are in full force and effect. There has been no material breach under any such Intellectual Property Rights, and there are no pending or threatened claims or proceedings relating thereto which, if adversely determined, could reasonably be expected to have a material adverse effect on (a) the construction, operation, maintenance, leasing, ownership, use, value or regulatory status of the Project, (b) the ability of Agent to observe and perform its obligations under the Agreement, the Lease, the Pledge Agreement, the Facility Support Agreement, the Construction Documents or the Project Contracts in timely manner or the ability of the Guarantor to perform its obligations under the Guaranty in a timely manner, (c) the business, assets, properties, financial condition, operations or prospects of Agent or the Guarantor or (d) the rights or interests of Owner or Assignee under the Agreement, the Lease or the Project Contracts.

25. Easements. The Easements have been obtained and are in full force and effect and constitute all easements, rights-of-way and licenses contemplated to be in place under the Project Contracts, the Agreement and the Lease as of the date of this Initial Advance. There has been no material breach under any such easement, right-of-way or license, and there are no pending or, to the best of Agent's knowledge, threatened claims or proceedings relating thereto which, if adversely determined, could reasonably be expected to have a material adverse effect on (a) the construction, operation, maintenance, leasing, ownership, use, value or regulatory status of the Project, (b) the ability of Agent to observe and perform its obligations under the Agreement, the Lease, the Pledge Agreement, the Facility Support Agreement, the Construction Documents or the Project Contracts in a timely manner or the ability of the Guarantor to perform its obligations under the Guaranty in a timely manner, (c) the business, assets, properties, financial condition, operations or prospects of Agent or the Guarantor or (d) the rights or interests of Owner or Assignee under the Agreement, the Lease or the Project Contracts.
26. Appraisal. Attached hereto at Tab 18 is an appraisal prepared by the Appraiser complying with paragraph (bb) of Section 4 of the Agreement.
27. Notice to Commence Work. Attached hereto at Tab 19 is a copy of the Notice to Proceed (as defined in the EPC Contract) delivered to the General Contractor pursuant to Section 24.10 of the EPC Contract authorizing the commencement of the work in accordance with the EPC Contract.
28. Notice to General Contractor. Attached hereto at Tab 20 is a copy of the notice delivered to the General Contractor pursuant to Section 24.2 of the EPC Contract notifying the General Contractor of each Project Lender providing the Project Financing (as such terms are defined in the EPC Contract).
29. Additional Matters. Attached hereto at Tab 21 are such other documents and legal matters in connection with a request for the Initial Advance as are reasonably requested by Owner or Assignee.

Dated: _____, ____

BLACK HILLS GENERATION, INC.

By:

Name:

Title:

EXHIBIT B

FORM OF INTERIM ADVANCE CERTIFICATE

BLACK HILLS GENERATION, INC. ("Agent"), Agent under a certain Agreement for Lease (the "Agreement"), dated as of July 20, 2001, entered into with WYGEN FUNDING, LIMITED PARTNERSHIP ("Owner"), delivers this Interim Advance Certificate pursuant to Section 5 of the Agreement. All terms used in this Certificate shall have the meanings given to such terms in the Agreement. Agent hereby certifies to Owner and Assignee as follows:

1. Continuing Representations of Agent. (a) All representations and warranties in the Agreement (other than the representation and warranty made in subsection 8.10 of the Agreement), in the Lease (other than the representation and warranty made in paragraph (i)(f) of Section 2 of the Lease) and in connection with this Interim Advance are and remain true and correct in all material respects on and as of the date of this Interim Advance as if made on and as of the date of this Interim Advance and (b) no Event of Loss, Termination Event, Event of Default, Potential Default, default under a Project Contract, a Construction Document, the Guaranty, or the Pledge Agreement, or Event of Project Termination or Potential Event of Project Termination under the Agreement has occurred and is continuing on the date this Interim Advance is to be made or will exist by reason of giving effect to this Interim Advance.
2. Construction Progress. Attached hereto at Tab 1 are (a) all progress reports delivered under the EPC Contract and requested by Owner or Assignee, (b) true copies of unpaid invoices, receipted bills and Lien waivers requested by Owner or Assignee, and such other reasonably requested supporting information as has been requested by Owner or Assignee and (c) a certificate from Agent certifying to Owner and Assignee the amount of Unreimbursed Project Costs outstanding on the date of this Interim Advance.
3. No Other Security Interests. All materials and fixtures incorporated in the construction of the Project have been purchased so that title thereto has automatically been transferred to Owner pursuant to the EPC Contract, and there are no Liens on such materials and fixtures other than Permitted Liens.
4. Request for Interim Advance. Attached hereto at Tab 2 is a duly executed Request for Interim Advance complying with paragraph (e) of Section 5 of the Agreement.
5. Evidence of Compliance. Attached hereto at Tab 3 are such documents, reports, certificates, affidavits, Permits, Governmental Actions and other information as has been requested by Owner or Assignee to evidence compliance by Agent with all of the provisions of the Agreement.

6. Representations and Warranties of Guarantor. All representations and warranties of the Guarantor in the Guaranty (other than the representation and warranty contained in Section 4.7 thereof) are and remain true and correct in all material respects on and as of the date of this Interim Advance as if made on and as of the date of this Interim Advance and no default under the Guaranty has occurred and is continuing on the date this Interim Advance is to be made or will exist by reason of giving effect to this Interim Advance.
7. Satisfactory Title. Attached hereto at Tab 4 is a notice of title continuation or endorsement issued by the Title Company and complying with paragraph (h) of Section 5 of the Agreement.

Dated: _____, ____

BLACK HILLS GENERATION, INC.

By:

Name:
Title:

B-2

EXHIBIT C

FORM OF CERTIFICATE OF SUBSTANTIAL COMPLETION

BLACK HILLS GENERATION, INC. ("Agent"), Agent under a certain Agreement for Lease (the "Agreement"), dated as of July 20, 2001, entered into with WYGEN FUNDING, LIMITED PARTNERSHIP ("Owner"), delivers this Certificate of Substantial Completion pursuant to Section 6 of the Agreement. All terms used in this Certificate shall have the meanings given to such terms in the Agreement. Agent hereby certifies to Owner and Assignee as follows:

1. Payment of All Costs. The Final Advance is sufficient to provide for the payment of all costs of constructing the Project (other than (a) the cost of completing any open Punchlist Items (as defined in the EPC Contract) and (b) those costs in connection with the designing, constructing, equipping and installing of the Project that are not yet due and which will be included as part of the Completion Advance, provided that (i) the Available Commitment remaining after the Final Advance is equal to or exceeds the aggregate amount of all such costs, (ii) all such costs fall within the limits of the Budget, and (iii) Agent demonstrates, to the reasonable satisfaction of Owner and Assignee, that all costs in connection with the designing, constructing, equipping and installing of the Project that are not yet due will not exceed such costs).
2. Construction and Equipping of the Project. (a) The Project (exclusive of any Punchlist Items (as defined in the EPC Contract)) has been completed (including all performance testing, to the extent required under the EPC Contract as at the date of Operational Acceptance under the EPC Contract) in all material respects in accordance with the Plans, the terms of the EPC Contract, the Construction Documents and the Project Contracts, and (b) Operational Acceptance (as defined in the EPC Contract) has been achieved, such that the Project is capable of operating at performance levels required under the EPC Contract while operating in a manner consistent with prudent industry practices, all applicable Permits, Governmental Actions, Intellectual Property Rights and Legal Requirements, and in accordance with the terms of the Agreement, the Lease and the Project Contracts.
3. Commercial Operation. (a) Mechanical Completion of the Plant (as defined in the EPC Contract) has occurred under the EPC Contract and the Project is mechanically complete and checkout and start-up has occurred as evidenced by the execution and delivery of the Certificate of Mechanical Completion and Certificate of Commissioning of Start Up Systems (as defined in the EPC Contract); (b) Operational Acceptance (as defined in the EPC Contract) has occurred under the EPC Contract as evidenced by (i) the execution and delivery of the Certificate of Successful

Completion of a Commercial Operation Test (as defined in the EPC Contract), (ii) successful completion of the Lime Consumption Guarantee Test (as defined in the EPC Contract) and (iii) successful completion of the Performance Guarantee Test (as defined in the EPC Contract), in each case according to the procedures set forth in the EPC Contract; (c) the Project's coal, steam and electrical systems have been properly connected to the facilities of BHP at Neil Simpson Unit 2 and the Project is capable of processing and delivering steam and electricity in the manner contemplated by the EPC Contract; and (d) the Commercial Operation Date (as defined in the Power Purchase Agreements) shall have been achieved under each of the Power Purchase Agreements and the Power Purchase Agreements shall have become effective. [In addition, only if Agent has elected not to request a Completion Advance, Agent shall satisfy the requirements of paragraph (g) of Section 7 of the Agreement.]

4. Permits. All Permits and Governmental Actions necessary for the occupancy, use and operation of the Project and for the occupancy and use of the Premises in the manner contemplated in paragraph 3 above and in accordance with and as contemplated by the Project Contracts and the Lease have been issued or obtained, are in full force and effect, are final, are not under appeal, and all applicable appeal periods have expired. All conditions contained in such Permits and Governmental Actions have been satisfied by the required date except to the extent that failure to satisfy such conditions could not reasonably be expected to result in a material delay or loss or result in Environmental Damages. There are no proceedings pending or threatened which seek or which may be expected to rescind, terminate, modify, suspend or otherwise alter such Permits and Governmental Actions.
5. Liens. (a) The Project has been completed in the manner contemplated in paragraph 3 above free of all Liens, except for Permitted Liens (all of which Permitted Liens are itemized in Tab 1 attached hereto, as to the nature, amount, claimant and status thereof, and which Permitted Liens do not include any mechanics' Liens other than those mechanics' Liens that are (i) to be satisfied or discharged out of the proceeds of this Final Advance or a Completion Advance or (ii) subject to a Permitted Contest and bonded or otherwise secured to the satisfaction of Owner and Assignee), (b) there are no claims outstanding with respect to any Project Contract (other than claims which are itemized in Tab 2 attached hereto, as to the nature, amount, claimant and status thereof and which claims are bonded or otherwise secured to the satisfaction of Owner and Assignee), and (c) [there are no current Permitted Contests] [OR] [the Permitted Contests in existence as of the date of this Final Advance are itemized in Tab 3 attached hereto, as to the nature, amount, claimant and status thereof].

6. Final Survey. Attached hereto at Tab 4 is a final survey complying with the requirements of paragraph (g) of Section 6 of the Agreement.
7. Utilities. Connection has been made to all appropriate utility facilities (including Interconnections) and the Project is capable of operation.
8. Continuing Representations of Agent. (a) All representations and warranties in the Agreement (other than the representation and warranty made in subsection 8.10 of the Agreement), in the Lease (other than the representation and warranty made in paragraph (i)(f) of Section 2 of the Lease), and in connection with this Final Advance are and remain true and correct in all material respects on and as of the date of this Final Advance as if made on and as of the date of this Final Advance and (b) no Event of Loss, Termination Event, Event of Default, Potential Default, default under a Project Contract, a Construction Document, the Guaranty or the Pledge Agreement, or Event of Project Termination or Potential Event of Project Termination under the Agreement has occurred and is continuing on the date this Final Advance is to be made or will exist by reason of giving effect to this Final Advance.
9. Exhibit E to the Lease. Attached hereto at Tab 5 is a copy of Exhibit E to the Lease.
10. Request for Final Advance. Attached hereto at Tab 6 is a duly executed Request for Final Advance complying with paragraph (k) of Section 6 of the Agreement.
11. Satisfactory Title. Attached hereto at Tab 7 is a notice of title continuation or endorsement issued by the Title Company and complying with paragraph (l) of Section 6 of the Agreement.
12. Representations and Warranties of Guarantor. All representations and warranties of the Guarantor in the Guaranty (other than the representation and warranty contained in Section 4.7 thereof) are and remain true and correct in all material respects on and as of the date of this Final Advance as if made on and as of the date of this Final Advance and no default under the Guaranty has occurred and is continuing on the date this Final Advance is to be made or will exist by reason of giving effect to this Final Advance.
13. Environmental Compliance. All compliance tests, emissions tests, filings, notices, certifications and other actions required by any Environmental Requirements as a precondition to Operational Acceptance (as defined in the EPC Contract) of the Project has been successfully completed.

14. Intellectual Property Rights. All Intellectual Property Rights necessary for the use and operation of the Project in accordance with and as contemplated by the Project Contracts, the Agreement and the Lease have been obtained and are in full force and effect. There has been no material breach under any such Intellectual Property Rights, and there are no pending or threatened claims or proceedings relating thereto which, if adversely determined, could reasonably be expected to have a material adverse effect on (a) the construction, operation, maintenance, leasing, ownership, use, value or regulatory status of the Project, (b) the ability of Agent to observe and perform its obligations under the Agreement, the Lease, the Pledge Agreement, the Facility Support Agreement, the Construction Documents or the Project Contracts in a timely manner or the ability of the Guarantor to perform its obligations under the Guaranty in a timely manner, (c) the business, assets, properties, financial condition, operations or prospects of Agent or the Guarantor, or (d) the rights or interests of Owner or Assignee under the Agreement, Lease or the Project Contracts.
15. Easements. The Easements have been obtained and are in full force and effect and are not subject to any Liens other than Permitted Liens and constitute all easements, rights-of-way and licenses contemplated to be in place under the Project Contracts, the Agreement and the Lease as of the date of this Final Advance and necessary for Agent's performance of its obligations under the Project Contracts. There has been no material breach under any such easement, right-of-way or license, and there are no pending or, to the best of Agent's knowledge, threatened claims or proceedings relating thereto which, if adversely determined, could reasonably be expected to have a material adverse effect on (a) the construction, operation, maintenance, leasing, ownership, use, value or regulatory status of the Project, (b) the ability of Agent to observe and perform its obligations under the Agreement, the Lease, the Pledge Agreement, the Facility Support Agreement, the Construction Documents or the Project Contracts in a timely manner or the ability of the Guarantor to perform its obligations under the Guaranty in a timely manner, (c) the business, assets, properties, financial condition, operations or prospects of Agent or the Guarantor, or (d) the rights or interests of Owner or Assignee under the Agreement, the Lease or the Project Contracts.
16. Construction Progress. Attached hereto at Tab 8 are (a) copies of all progress reports delivered under the EPC Contract and requested by Owner or Assignee, (b) true copies of unpaid invoices, receipted bills and Lien waivers requested by Owner or Assignee, and such other reasonably available supporting information as shall have been reasonably requested by Owner or Assignee and (c) a certificate from Agent certifying to Owner and Assignee the amount of Unreimbursed Project Costs outstanding on the date of this Final Advance.

17. No Other Security Interests. All materials and fixtures incorporated in the construction of the Project have been purchased so that title thereto has automatically been transferred to Owner pursuant to the EPC Contract, and there are no Liens on such materials and fixtures other than Permitted Liens.

Dated: _____, _____

BLACK HILLS GENERATION, INC.

By:

Name:
Title:

C-5

EXHIBIT D

FORM OF CERTIFICATE OF INCREASED COST

BLACK HILLS GENERATION, INC. ("Agent"), Agent under a certain Agreement for Lease (the "Agreement"), dated as of July 20, 2001, entered into with WYGEN FUNDING, LIMITED PARTNERSHIP ("Owner"), delivers this Certificate of Increased Cost pursuant to Section 7 of the Agreement. All terms used in this Certificate shall have the meanings given to such terms in the Agreement. Agent hereby certifies to Owner and Assignee as follows:

1. Payment of All Costs. The Completion Advance is sufficient to provide for the payment of (i) all costs of completing any open Punchlist Items (as defined in the EPC Contract), and (ii) all costs in connection with the designing, constructing, equipping and installing of the Project that were not included as part of the Final Advance; provided that all such costs fall within the limits of the Budget.
2. Continuing Representations of Agent. (a) All representations and warranties in the Agreement (other than the representation and warranty made in subsection 8.10 of the Agreement), in the Lease (other than the representation and warranty made in paragraph (i)(f) of Section 2 of the Lease), and in connection with this Completion Advance are and remain true and correct in all material respects on and as of the date of this Completion Advance as if made on and as of the date of this Completion Advance and (b) no Event of Loss, Termination Event, Event of Default, Potential Default, default under a Project Contract, a Construction Document, the Guaranty or the Pledge Agreement, or Event of Project Termination or Potential Event of Project Termination under the Agreement, or Event of Default or Potential Default (as each such term is defined in the Lease) has occurred and is continuing on the date this Completion Advance is to be made or will exist by reason of giving effect to this Completion Advance.
3. Request for Completion Advance. Attached hereto at Tab 1 is a duly executed Request for Completion Advance complying with paragraph (d) of Section 7 of the Agreement.
4. Satisfactory Title. Attached hereto at Tab 2 is a notice of title continuation or endorsement issued by the Title Company complying with paragraph (e) of Section 7 of the Agreement.

5. Representations and Warranties of Guarantor. All representations and warranties of the Guarantor in the Guaranty (other than the representation and warranty contained in Section 4.7 thereof) are and remain true and correct in all material respects on and as of the date of this Completion Advance as if made on and as of the date of this Completion Advance and no default under the Guaranty has occurred and is continuing on the date this Completion Advance is to be made or will exist by reason of giving effect to this Completion Advance.
6. Final Acceptance. Evidence satisfactory to Owner and Assignee that (a) Final Acceptance (as defined in the EPC Contract) has occurred or will occur as a result of this Completion Advance, as evidenced by the execution and delivery of the Certificate of Final Acceptance (as defined in the EPC Contract) by Agent, (b) the Project has satisfied the Guaranteed Performance Standards (as defined in the EPC Contract), and (c) the Project has satisfied the Lime Consumption Guarantee (as defined in the EPC Contract), in each case according to the procedures set forth in the EPC Contract.
7. Construction Progress. Attached hereto at Tab 3 are (a) copies of all progress reports delivered under the EPC Contract and requested by Owner or Assignee and (b) true copies of unpaid invoices, receipted bills and Lien waivers requested by Owner or Assignee, and such other reasonably available supporting information as may have reasonably been requested by Owner or Assignee.
8. No Other Security Interests. All materials and fixtures incorporated in the construction of the Project have been purchased so that title thereto has automatically been transferred to Owner pursuant to the EPC Contract, and there are no Liens on such materials and fixtures other than Permitted Liens.

Dated: _____, _____

BLACK HILLS GENERATION, INC.

By:

EXHIBIT E

LIST OF PROJECT CONTRACTS

- o The Engineering, Procurement and Construction Agreement dated as of December 27, 2000, as amended by a First Amendment to Engineering, Procurement and Construction Agreement dated as of April 11, 2001, between Agent and the General Contractor.
- o The Irrevocable Letter of Credit No. NY-20511-30029698, dated April 18, 2001, issued by CitiBank, N.A., in favor of Agent.
- o The Performance Bonds issued by subcontractors pursuant to the EPC Contract.
- o The Subcontracts and Supply Contracts entered into by the General Contractor pursuant to the EPC Contract.
- o The equipment purchase contract to be entered into by and between General Electric Company and the General Contractor.
- o The Ground Lease Agreement, dated as of July 20, 2001, between Agent, as ground lessor, and Owner, as ground lessee.
- o The Easement Agreement, dated as of July 20, 2001, between Black Hills Power, Inc. and Wyodak Resources Development Corp., as grantors, and Owner, as grantee.
- o The Power Purchase Agreement, dated as of February 16, 2001, between Agent and Cheyenne Light, Fuel and Power Company.
- o The Power Purchase Agreement, dated as of March 5, 2001, between Agent and Municipal Energy Agency of Nebraska.
- o The Coal Supply Agreement, dated as of July 20, 2001, between Wyodak Resources Development Corp. and Agent.
- o The Agreement for Rights of Usage of Coal Silo and Coal Conveyer, dated as of July 20, 2001, between Black Hills Power, Inc. and Agent.
- o The Agreement for Interconnection Service, dated as of July 20, 2001, between Black Hills Power, Inc. and Agent.
- o The Services Agreement, dated as of July 20, 2001, between Black Hills Power, Inc. and Agent.

EXHIBIT F

LIST OF PROJECT AUTHORIZATIONS

- o Air Quality Permit No. CT-1236, as modified in Permit No. MD-510A.
- o Determination of No Hazard to Air Navigation issued by the Federal Aviation Administration on February 28, 2001.
- o Determination of Exempt Wholesale Generation Status dated April 10, 2001, 95 F.E.R.C.ss.62.025; 2001 WL 357465.
- o Acceptance for filing of rate schedule of market-based rates, June 22, 2001, F.E.R.C. Docket No. ER01-1844-000.

EXHIBIT G

BUDGET

G-1

EXHIBIT H
CONSTRUCTION DRAWDOWN SCHEDULE

H-1

AMENDMENT NO. 1

Dated as of December 20, 2001

to

AGREEMENT FOR LEASE

Dated as of July 20, 2001

between

WYGEN FUNDING, LIMITED PARTNERSHIP

as Owner

and

BLACK HILLS GENERATION, INC.

as Agent

This Amendment No. 1 has been manually executed in 10 counterparts, numbered consecutively from 1 through 10, of which this is No. _____. To the extent, if any, that this Amendment constitutes chattel paper (as such term is defined in the Uniform Commercial Code as in effect in any jurisdiction), no security interest in this Amendment may be created or perfected through the transfer or possession of any counterpart other than the original executed counterpart which shall be the counterpart identified as counterpart No.1.

This Amendment No. 1 to Agreement for Lease ("this Amendment No. 1"), dated as of December 20, 2001, between WYGEN FUNDING, LIMITED PARTNERSHIP, a Delaware limited partnership ("Owner"), and BLACK HILLS GENERATION, INC., a Wyoming corporation ("Agent"), amending the Agreement for Lease referred to below.

WHEREAS, Owner and Agent have heretofore entered into an Agreement for Lease dated as of July 20, 2001 (the "Original Agreement for Lease") (the Original Agreement for Lease, as amended hereby and as may hereafter be further amended, modified, supplemented or restated from time to time, the "Agreement for Lease"); and

WHEREAS, Owner and Agent wish to further amend the Agreement for Lease as hereinafter provided;

NOW, THEREFORE, Owner and Agent hereby agree that the Agreement for Lease is amended as follows:

SECTION 1. DEFINITIONS. Capitalized terms used but not defined herein shall have the meanings assigned to such terms in the Original Agreement for Lease.

SECTION 2. AMENDMENTS. The Original Agreement for Lease is hereby amended as follows:

2.1 Subsection 1.1 of the Agreement for Lease is amended by deleting the definition of "Project Contracts" and inserting the following in its place:

"Project Contracts: The EPC Contract, the GE Turbine Contract, the Ground Lease, the Performance Bonds (from and after the date each such Performance Bond becomes effective), the Letter of Credit, the Retention Letter of Credit (if any), the EPC Subcontracts (from and after the date each such EPC Subcontract becomes effective), the Easement Agreement, the Required Easement Agreements (from and after the date each such Required Easement Agreement becomes effective), the Interconnection Agreement, the Services Agreement, the Facility Support Agreement, the Fuel Supply Agreements and the Power Purchase Agreements, as each of the same may be amended, restated, modified or supplemented from time to time as permitted hereunder. A list of the Project Contracts in existence on the date hereof is attached as Exhibit E hereto."

2.2 Paragraph (a) of Section 15 of the Agreement for Lease is amended by deleting such paragraph in its entirety and inserting the following in its place:

"(a) If (1) an Event of Loss shall occur and (2) such Event of Loss does not arise as a result of Agent's actions or the failure of Agent to act or Agent's fraudulent act, illegal act, misapplication of

funds or willful misconduct, then in any such event, (A) Agent shall promptly notify Owner in writing of such event,

(B) Agent shall either (x) promptly commence the restoration and reconstruction of the Project or (y) promptly pay to Owner, an amount equal to the Acquisition Cost (less, to the extent any such amounts have been paid, the amount of insurance or condemnation proceeds received by Owner as a result of such Event of Loss); provided, however, that any such election to restore and reconstruct the Project shall be subject to the written consent of Owner and Assignee; provided, further, that if Owner and Assignee shall fail to grant such consent to restore and reconstruct the Project, Owner shall have the right to terminate this Agreement and/or Owner's obligations to make any further advances hereunder, whereupon Agent shall be released from all obligations hereunder (other than insurance and condemnation proceeds, if any, received by Agent and indemnity obligations for which Owner has full recourse against Agent in accordance with the terms of this Agreement), and Agent shall transfer to Owner all of Agent's right, title and interest in and to the Project. In the event Agent elects to restore and reconstruct the Project pursuant to the immediately preceding sentence, (i) Owner shall continue to be obligated to make advances to Agent pursuant to the terms of Section 5, 6 and 7 of this Agreement, (ii) any insurance or condemnation proceeds payable with respect to such Event of Loss will be held in the Operating Account for reimbursement to Agent during the course of Agent's restoration and reconstruction of the Project pursuant to the provisions of Section 5, 6 and 7 of this Agreement, and (iii) any such insurance or condemnation proceeds received by Owner shall reduce Acquisition Cost by the amount of such proceeds. In the event Agent elects to pay Owner the amount described in clause (2)(B)(y) of the first sentence of this paragraph (a), upon receipt of such amount, Owner shall deliver to Agent a bill of sale, deed or similar document assigning and conveying to Agent all of Owner's right, title and interest in and to the Project, the Ground Lease, the Easements, the EPC Contract and, if applicable, any Project Contract and, to the extent transferable, any title insurance policies issued to Owner, and when Owner transfers title, such transfer shall be on an as-is, non-installment sale basis, without warranty by, or recourse to, Owner. Insurance and condemnation proceeds, if any, received by Owner in excess of the Acquisition Cost plus the Unrecovered Liabilities and Judgments, so long as no Event of Default or Event of Project Termination has occurred and is continuing, shall be paid by Owner to Agent. In addition, Agent will use its best efforts to prevent an Event of Loss, including, without limitation promptly and with due diligence to contest such action by all appropriate proceedings at law and in equity (including the filing of all appeals), to institute claims and counterclaims against third parties and to do all things necessary or desirable to preserve the rights and interests of Owner in the Project."

SECTION 3. MISCELLANEOUS.

3.1 Except as provided herein, all provisions, terms and conditions of the Agreement for Lease shall remain in full force and effect. As amended hereby, the Agreement for Lease is ratified and confirmed in all respects.

3.2 This Amendment No. 1 shall in all respects be governed by, and construed and enforced in accordance with, the laws of the State of New York, without regard to the conflict of law rules thereof (other than Section 5-1401 of the New York General Obligations Law).

3.3 This Amendment No. 1 may be executed in any number of counterparts, each of which shall, when executed, be deemed to be an original and all of which taken together shall be deemed to be one and the same agreement.

[Signature Page Follows]

IN WITNESS WHEREOF, the parties have executed this Amendment No. 1 the day and year first above written.

WYGEN FUNDING, LIMITED PARTNERSHIP

By: WYGEN CAPITAL, INC.
its General Partner

By: _____
Name:
Title:

BLACK HILLS GENERATION, INC.

By: _____
Name:
Title:

CONFIDENTIAL AND PROPRIETARY

LEASE AGREEMENT

Dated as of July 20, 2001

BETWEEN

WYGEN FUNDING, LIMITED PARTNERSHIP

as Lessor

and

BLACK HILLS GENERATION, INC.

as Lessee

THIS LEASE HAS BEEN ASSIGNED AS SECURITY
FOR INDEBTEDNESS OF THE LESSOR. SEE SECTION 20.

This Lease has been manually executed in 10 counterparts, numbered consecutively from 1 through 10, of which this is No. _____. To the extent, if any, that this Lease constitutes chattel paper (as such term is defined in the Uniform Commercial Code as in effect in any applicable jurisdiction) no security interest in this Lease may be created or perfected through the transfer or possession of any counterpart other than the original executed counterpart which shall be the counterpart identified as counterpart No. 1.

TABLE OF CONTENTS

	Page
SECTION 1. DEFINED TERMS.....	1
SECTION 2. REPRESENTATIONS, WARRANTIES AND COVENANTS OF LESSEE.....	15
SECTION 3. LEASE OF THE PROJECT.....	25
SECTION 4. OPERATING LEASE.....	26
SECTION 5. ABSOLUTE OBLIGATION.....	26
SECTION 6. INITIAL TERM; EXTENDED TERM.....	29
SECTION 7. RENT AND OTHER PAYMENTS.....	29
SECTION 8. RESTRICTED USE; COMPLIANCE WITH LAWS.....	31
SECTION 9. MAINTENANCE, IMPROVEMENT AND REPAIR OF THE PROJECT.....	34
SECTION 10. INSURANCE.....	36
SECTION 11. INDEMNITIES.....	43
SECTION 12. LESSEE'S RIGHT TO TERMINATE.....	47
SECTION 13. LESSEE'S RIGHTS OF PURCHASE AND RENEWAL.....	50
SECTION 14. LESSOR'S RIGHT TO TERMINATE.....	52
SECTION 15. LOSS OF OR DAMAGE TO THE PROJECT.....	53
SECTION 16. CONDEMNATION AND DEDICATION OF THE PROJECT; EASEMENTS.....	54
SECTION 17. SURRENDER OF THE PROJECT.....	55
SECTION 18. EVENTS OF DEFAULT.....	55
SECTION 19. RIGHTS UPON DEFAULT.....	58
SECTION 20. SALE OR ASSIGNMENT BY LESSOR.....	61
SECTION 21. INCOME TAXES.....	62
SECTION 22. NOTICES AND REQUESTS.....	62

SECTION 23. COVENANT OF QUIET ENJOYMENT.....63
SECTION 24. RIGHT TO PERFORM FOR LESSEE.....64
SECTION 25. MERGER, CONSOLIDATION OR SALE OF ASSETS.....64
SECTION 26. EXPENSES.....64
SECTION 27. PERMITTED CONTESTS.....64
SECTION 28. LEASEHOLD INTERESTS.....65

SECTION 29. MISCELLANEOUS.....66
SECTION 30. NO RECOURSE.....69
SECTION 31. NO MERGER OF ESTATES.....70

- Exhibit A - Legal Description of Land
- Exhibit B - Intentionally Omitted
- Exhibit C - List of Project Contracts
- Exhibit D - List of Project Authorizations
- Exhibit E - Monthly Rent Component

CONFIDENTIAL

LEASE AGREEMENT

Lease Agreement, dated as of July 20, 2001 (as the same may be amended, restated, modified or supplemented from time to time, "this Lease"), between WYGEN FUNDING, LIMITED PARTNERSHIP, a Delaware limited partnership, as lessor (the "Lessor"), formed by Wygen Capital, Inc., its general partner, and BLACK HILLS GENERATION, INC., a Wyoming corporation, as lessee (the "Lessee").

SECTION 1. DEFINED TERMS.

Unless the context otherwise requires, each term defined in this Section 1 shall, when used in this Lease, have the meaning indicated:

"Accrued Default Obligations" has the meaning set forth in Section 19 hereof.

"Acquisition Cost" means the Acquisition Cost (as defined in the Agreement for Lease) under the Agreement for Lease after making the Final Advance, plus (i) the Completion Amount and (ii) the Retention, if any.

"Additional Rent" has the meaning set forth in paragraph (d) of Section 7 hereof.

"Adjusted Acquisition Cost" means, at the time of determination, the Acquisition Cost of the Project plus any increase in Adjusted Acquisition Cost provided for under subsection 2.3 of the Agreement for Lease (as adjusted pursuant to Section 3 of this Lease) less (i) the aggregate amount of all Monthly Rent Components theretofore included as portions of Basic Rent for any periods for which Basic Rent has been paid, less (ii) any reduction in Adjusted Acquisition Cost provided for under paragraph (i) of Section 10 or paragraph (b) of Section 16 of this Lease.

"Affiliate" of any Person means any other Person controlling, controlled by or under direct or indirect common control with such Person. For the purposes of this definition, "control," when used with respect to any specified Person, means the power to direct the management and policies of such Person, directly or indirectly, whether through the ownership of voting securities, by contract or otherwise; and the terms "controlling" and "controlled" have meanings correlative to the foregoing.

"Agreement for Lease" means the Agreement for Lease, dated as of the date hereof, between the Lessor, as owner, and the Lessee, as agent, providing for the acquisition, design, construction and equipping of the Project, as the same may be amended, restated, modified or supplemented from time to time.

"Appraisal Procedure" means the following procedure whereby an independent appraiser shall be appointed by the Lessor and the Lessee, with the consent of Assignee, to determine (i) the amount of wear and tear in excess of that attributable to normal use of the Project to which the provisions of paragraph (b) (iii) or paragraph (c)(iii) of Section 12 apply or (ii) the fair market value of the Project, if such determination is required under paragraph (d) of Section 13 of this Lease. If no such appraiser is appointed by the mutual agreement of the Lessor and the Lessee within thirty (30) days of the written request of either the Lessor or the Lessee that an appraiser be appointed, the Lessor and the Lessee shall each appoint an independent appraiser within thirty (30) days thereafter, and the two appraisers so appointed shall appoint a third independent appraiser. Each appraiser appointed pursuant to the foregoing procedure shall, within thirty (30) days after appointment of the last appraiser, independently determine the amount of wear and tear in excess of that attributable to normal use or the fair market value of the Project, as the case may be. If the Lessor or the Lessee shall fail to appoint an independent appraiser within the above-mentioned thirty (30) day period, the appraiser appointed by the other party shall determine such amount or value. If a single appraiser is appointed, such appraiser's determination shall be final. If three appraisers are appointed, the amounts or values determined by the three appraisers shall be averaged, the amount or value which differs the most from such average shall be excluded, the remaining two amounts or values shall be averaged and such average shall be final. The expenses of all appraisers shall be paid by the Lessee. Each appraiser appointed pursuant to an "Appraisal Procedure" shall have experience in appraising coal-fired power plants similar in size and capacity to the Project.

"Assignee" means each Person to which any part of the Lessor's interest under this Lease or in the Project shall at the time have been assigned, conditionally or otherwise, by the Lessor in accordance with Section 20 of this Lease. For purposes of paragraphs (i)(d), (i)(g) and paragraphs (ii)(c) and (d) of Section 2, paragraphs (a) and (b) of Section 5, paragraphs (d) and (h) of Section 8, paragraph (b) of Section 9, clause (iii) of paragraph (b) of Section 10, Section 11, the last sentence of paragraph (b) of Section 20 and clause (iii) of paragraph (a) of Section 27, the term "Assignee" shall include each lender (and any entity providing liquidity to a lender) to the Lessor, and any entity acting as an agent in any capacity for the benefit of such lenders (and such liquidity providers), under a Financing Arrangement.

"Assignment" means each assignment agreement referred to in Section 20 hereof, between the Lessor and a third party, pursuant to which the Lessor assigns certain of its rights under this Lease to such third party, as the same may be amended, restated, modified or supplemented from time to time.

"Basic Rent" means:

(a) At each Basic Rent Payment Date during the Initial Term and any Extended Term, the sum of the Monthly Rent Component plus an amount (the "Variable Component of Basic Rent") equal to the sum of (X) plus (Y) plus (Z), where (X), (Y) and (Z) have the following meanings:

(X) (i) the Equity Capital before payment of Basic Rent for such monthly period, multiplied by

(ii) a fraction having a numerator equal to the number of days in such monthly period and a denominator of 360, multiplied by

(iii) the decimal equivalent of a percentage equal to the Monthly Cost of Project Equity.

(Y) (i) the Debt Capital before payment of Basic Rent for such monthly period multiplied by

(ii) a fraction having a numerator equal to the number of days in such monthly period and a denominator of 360, multiplied by

(iii) the decimal equivalent of a percentage equal to the Monthly Cost of Project Debt.

(Z) (i) the Adjusted Acquisition Cost before payment of Basic Rent for such monthly period, multiplied by

(ii) a fraction having a numerator equal to the number of days in such monthly period and a denominator of 360, multiplied by

(iii) 0.20%.

(b) For any partial monthly period during the Initial Term and any Extended Term, an amount equal to the sum of (X) plus (Y) plus (Z), where (X), (Y) and (Z) have the following meanings:

(X) (i) the Equity Capital, multiplied by

(ii) a fraction having a numerator equal to the number of days the Project is under lease during such partial monthly period and a denominator of 360 multiplied by

(iii) the applicable decimal referred to in paragraph (a)(X)(iii) above; provided that, if the Effective Date falls on or after the Lease Rate Date during such partial monthly period such decimal shall be the decimal determined as of the next succeeding Lease Rate Date.

(Y) (i) the Debt Capital multiplied by

(ii) a fraction having a numerator equal to the number of days the Project is under lease during such partial monthly period and a denominator of 360, multiplied by

(iii) the decimal equivalent of a percentage equal to the Monthly Cost of Project Debt; provided that, if the Effective Date falls on or after the Lease Rate Date during such partial monthly period, the Monthly Cost of Project Debt shall be determined as of the next succeeding Lease Rate Date.

(Z) (i) the Adjusted Acquisition Cost, multiplied by

(ii) a fraction having a numerator equal to the number of days the Project is under lease during such partial monthly period and a denominator of 360, multiplied by

(iii) 0.20%.

(c) For each monthly period during the Renewal Term of the Project, if any, an amount equal to the fair market rental value thereof, determined as provided in paragraph (d) of Section 13 hereof.

"Basic Rent Payment Date" means the twentieth (20th) day of each calendar month during the Initial Term, any Extended Term or any Renewal Term, or, if such day is not a Business Day, the next succeeding Business Day.

"BHP" means Black Hills Power, Inc., a South Dakota corporation, and its successors.

"Budget" has the meaning set forth in the Agreement for Lease.

"Business Day" means any day other than a Saturday, a Sunday or a day on which banking institutions in the City of New York or the State of Wyoming are authorized by law to close.

"Cash Proceeds" has the meaning set forth in paragraph (a) of Section 12 hereof.

"CERCLA" has the meaning set forth in paragraph (i)(o) of Section 2 hereof.

"CERCLIS" has the meaning set forth in paragraph (i)(o) of Section 2 hereof.

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

"Completion Amount" has the meaning set forth in the Agreement for Lease.

"Computation Period" has the meaning set forth in the definition of Monthly Cost of Project Debt in this Section 1.

"Consent" means each consent of the Lessee to an Assignment, pursuant to which the Lessee consents to the terms of such Assignment insofar as they relate to this Lease and the Agreement for Lease, as the same may be amended, restated, modified or supplemented from time to time.

"Contaminant" means any pollutant or substance that is or may be harmful to human health, natural resources or the environment and any hazardous substance, radioactive substance, hazardous material, toxic substance, hazardous waste, medical or infectious waste, radioactive waste, special waste, industrial waste, petroleum or petroleum-derived substance or

waste, asbestos, PCBs, pesticide, explosive, paint or coating containing lead or mercury, urea formaldehyde, radon, or any hazardous, toxic, radioactive, or infectious constituent thereof defined as such or, regulated under Environmental Requirements as harmful to human health, natural resources or the environment.

"Debt Capital" means, at the time of determination, an amount equal to Adjusted Acquisition Cost minus Equity Capital.

"Easements" means (i) the easements and licenses granted or to be granted to the Lessor by the Lessee or third parties under or pursuant to the Ground Lease and (ii) the easements and licenses granted to the Lessor by Black Hills Power, Inc. and Wyodak Resources Development Corp. under the Easement Agreement, in each case as such easements and licenses may be amended, restated, modified or supplemented from time to time in accordance with the terms hereof.

"Easement Agreement" means the Easement Agreement, dated as of the date hereof, between Black Hills Power, Inc. and Wyodak Resources Development Corp., as grantors, and the Lessor, as grantee, as the same may be amended, restated, modified or supplemented from time to time.

"Effective Date" means the date provided in paragraph (a) of Section 3 of this Lease.

"Environmental Approvals" means all Permits (as defined in the Agreement for Lease), consents, licenses, orders, waivers, extensions, variances, notices to or registration or filings with any governmental or public body or authority, and other approvals or authorizations which are or will be required under applicable Environmental Requirements.

"Environmental Damages" means any and all claims, judgments, damages (including, without limitation, punitive damages), losses, penalties, fines, interest, fees, liabilities (including, without limitation, strict liability), taxes, obligations, encumbrances, liens, costs and expenses (including, without limitation, costs and expenses of investigation and defense of any claim, whether or not such claim is ultimately defeated, and of any good faith settlement or judgment), of whatever kind or nature, contingent or otherwise, matured or unmatured, foreseeable or unforeseeable, direct or indirect, including, without limitation, reasonable attorneys' fees and disbursements and consultants' fees (collectively "Damages"), any of which are asserted, imposed or incurred at any time pursuant to Environmental Requirements, including, without limitation:

(i) Damages arising from the existence of Contaminants at any location or compliance or noncompliance with, or violation of, Environmental Requirements, including any material capital expenditure to achieve or maintain compliance with Environmental Requirements;

(ii) Damages for personal injury or threatened personal injury (including sickness, disease or death), or injury or threatened injury to property or natural resources, foreseeable or unforeseeable, including, without limitation, the cost of demolition and rebuilding of any improvements on real property;

(iii) Damages associated with Environmental Matters;

(iv) Damages arising out of any liability in contribution or indemnity to any third person or Governmental Authority in connection with the items referenced in clauses (i), (ii), (iii) and (v) of this definition; and

(v) Reasonable fees incurred for the services of attorneys, consultants, contractors, doctors, experts, laboratories and all other reasonable costs incurred in connection with any damages as described in clauses (i) through (iv) of this definition, and the investigation or remediation of Contaminants or the suspected presence of Contaminants or the violation or threatened violation of Environmental Requirements, including, but not limited to, the preparation of any feasibility studies or reports or the performance of any investigation, cleanup, treatment, remediation, removal, response, abatement, containment, closure, storage, disposal, transport, restoration or monitoring work required by any federal, state, local or foreign governmental agency or political subdivision, or otherwise expended in connection with such conditions, and including, without limitation, any reasonable attorneys' fees, costs and expenses incurred in enforcing this Lease or the Agreement for Lease or collecting any sums due hereunder or thereunder.

"Environmental Event" has the meaning set forth in paragraph (ii)(f) of Section 2 hereof.

"Environmental Lien" means a Lien in favor of any Governmental Authority for any (a) liability under any Environmental Requirement, or (b) damages arising from, or costs incurred by, such Governmental Authority in response to a Release or threatened Release of a Contaminant into the environment.

"Environmental Matters" means any matter, fact or situation relating to or arising from (a) any violation or alleged violation of, or failure to meet, an Environmental Requirement relating to the Project, (b) any Release or threatened Release of any Contaminant at, on, under, emanating to or from the Project or the presence of any Contaminant which has come to be located at, on, from or under the Project from another location, (c) the generation, treatment, transport or disposal of any Contaminant at, on, under, to or from the Project, (d) any injury or threatened injury to human health or safety or the environment by reason of the matters described in clauses (a), (b) and (c) above, or (e) any revocation, expiration, termination or failure to obtain or maintain any Environmental Approval applicable to or required for the Project.

"Environmental Requirements" means all existing and future applicable federal, state, local and foreign laws (including duties under the common law), statutes, codes, ordinances, rules, regulations, directives, binding policies, permits, authorizations, consent decrees or orders relating to or addressing the environment, natural resources, land use or human health or safety, including, but not limited to, any law, statute, code, ordinance, rule, regulation, directive, binding policy, permit, authorization, consent decree or order relating to (a) the use, handling, disposal, Release or threatened Release of any Contaminant or (b) worker or public health.

"EPC Contract" means the Engineering, Procurement and Construction Agreement dated as of December 27, 2000, as amended by a First Amendment to Engineering, Procurement and Construction Agreement dated as of April 11, 2001 (the "EPC First Amendment"), between the Lessee and the General Contractor with respect to the Project, as the same may be amended, restated, modified or supplemented from time to time in accordance with the terms thereof.

"EPC Subcontracts" means collectively, the Subcontracts and Supply Contracts (each as defined in the EPC Contract) entered into by the General Contractor pursuant to the EPC Contract, as the same may be amended, restated, modified or supplemented from time to time in accordance with the terms hereof.

"Equity Capital" means, at the time of determination, the aggregate amount of cash contributions to the Lessor's capitalization made by the Lessor's general partner and limited partners constituting a part of Adjusted Acquisition Cost, less the aggregate amount of any returns of capital made to such partners at such time.

"ERISA" has the meaning set forth in paragraph (i)(m) of Section 2 hereof.

"Event of Default" has the meaning set forth in Section 18 hereof.

"Event of Loss" means any of the following events: (a) loss of all or a substantial portion of the Project or the use thereof due to destruction, damage beyond economical repair or rendition of the Project permanently unfit for the use contemplated by the Project Contracts on a commercially feasible basis for any reason whatsoever; (b) any event which results in an insurance settlement with respect to the Project on the basis of a total loss or constructive total loss; or (c) the repair and restoration of the Project cannot be completed by the expiry of the existing Lease Term. A loss of a "substantial portion" of the Project shall be deemed to occur if, in the reasonable judgment of the Lessor and Assignee, after such event, (i) the Project cannot operate to generate electricity in accordance with all applicable Permits (as defined in the Agreement for Lease) and at levels and efficiencies in compliance with the performance standards required for Operational Acceptance under the EPC Contract, (ii) the Lessee will not be able to fully perform its obligations under the Project Contracts, the Facility Support Agreement or this Lease or (iii) a material diminution in the value, utility or remaining economic useful life of the Project will occur.

"Extended Term" has the meaning set forth in paragraph (b) of Section 6 hereof.

"EWG" means an Exempt Wholesale Generator, as defined in Section 32(a)(1) of the 1935 Act.

"Facility Support Agreement" means the Facility Support Agreement, dated as of the date hereof, between the Lessor and the Lessee, as the same may be amended, restated, modified or supplemented from time to time.

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

"Financing Arrangement" means each credit agreement, note purchase agreement, subordinated loan agreement, security agreement, indenture, mortgage, deed of trust and each other agreement or arrangement between the Lessor and a lender or lenders (including any entity acting in the capacity of an agent in connection therewith and any entity providing liquidity to any such lender or lenders) to the Lessor or other Person or Persons providing credit support to the Lessor or to debt issued by or on behalf of the Lessor related to the financing or refinancing of the Project, as any of the same may be amended, restated, modified or supplemented from time to time.

"First Extended Term" has the meaning set forth in paragraph (b) of Section 6 hereof.

"Fuel Supply Agreements" means collectively, (i) the Coal Supply Agreement, dated as of July 20, 2001, between Wyodak Resources Development Corp. and the Lessee; and (ii) the Agreement for Rights of Usage of Coal Silo and Coal Conveyer, dated as of July 20, 2001, between Black Hills Power, Inc. and the Lessee with respect to the supply of coal to the Project, in each case as the same may be amended, restated, modified, or supplemented from time to time.

"GAAP" means generally accepted accounting principles as in effect from time to time in the United States, applied on a consistent basis.

"GE Turbine Contract" means the Purchase Order dated May 11, 2001 and the Terms and Conditions for Procurement and Shipment of Steam Turbine/Generator Equipment dated May 1, 2001, between General Electric Company and the General Contractor, as the same may be amended, restated, modified, or supplemented from time to time.

"General Contractor" means The Babcock & Wilcox Company, a Delaware corporation.

"Governmental Action" has the meaning set forth in paragraph (i)(d) of Section 2 hereof.

"Governmental Authority" means any agency, department, commission, court or other administrative, legislative or regulatory authority of any federal, state, local or foreign governmental body.

"Ground Lease" means the Ground Lease, dated as of the date hereof, between the Lessee, as ground lessor, and the Lessor, as ground lessee, relating to the Premises, as the same may be amended, restated, modified or supplemented from time to time in accordance with the terms thereof.

"Guarantor" means Black Hills Corporation, a South Dakota corporation, and its successors.

"Guaranty" means the Guaranty, dated as of the date hereof, by and between the Guarantor and the Lessor, as the same may be amended, restated, modified, or supplemented from time to time.

"Indebtedness" of any Person means, without duplication, (a) all indebtedness of such Person for borrowed money, (b) all obligations of such Person for the deferred purchase price of property or services (other than trade payables not overdue by more than 60 days incurred in the ordinary course of such Person's business), (c) all obligations of such Person evidenced by notes, bonds, debentures or other similar instruments, (d) all obligations of such Person as lessee under leases that have been, in accordance with GAAP, recorded as capital leases, (e) all obligations of such Person in respect of reimbursement agreements with respect to acceptances, letters of credit (other than trade letters of credit) or similar extensions of credit, (f) all guaranties, and (g) all reasonably quantifiable obligations under indemnities or under support or capital contribution agreements, and other reasonably quantifiable obligations (contingent or otherwise) to purchase or otherwise to assure a creditor against loss in respect of, or to assure an obligee against loss in respect of, all Indebtedness of others referred to in clauses (a) through (f) above guaranteed directly or indirectly in any manner by such Person, or in effect guaranteed directly or indirectly by such Person through an agreement (i) to pay or purchase such Indebtedness or to advance or supply funds for the payment or purchase of such Indebtedness, (ii) to purchase, sell or lease (as lessee or lessor) property, or to purchase or sell services, primarily for the purpose of enabling the debtor to make payment of such Indebtedness or to assure the holder of such Indebtedness against loss, (iii) to supply funds to or in any other manner invest in the debtor (including any agreement to pay for property or services irrespective of whether such property is received or such services are rendered) or (iv) otherwise to assure a creditor against loss.

"Indemnified Person" has the meaning set forth in Section 11 hereof.

"Initial Term" has the meaning set forth in Section 6 hereof.

"Insurance Requirements" means all insurance required to be obtained with respect to the Project pursuant to Section 10 hereof and all terms of any insurance policy covering or applicable to the Project, all requirements of the issuer of any such policy, all statutory requirements and all orders, rules, regulations and other requirements of any governmental body related to insurance applicable to the Project.

"Intellectual Property Rights" means, collectively, all patents, patent applications, trademarks (whether registered or not), trademark applications, trade names, proprietary computer software or copyrights (or any licenses, permits or agreements with respect to any of the foregoing) necessary to design, construct, operate, lease or use the Project or any part thereof.

"Interconnections" means the physical points of ongoing operational interconnection and jurisdictional boundary between the Project and the facilities located at or available to the Project which are owned, operated and maintained by the Lessee or any of its Affiliates and shared with the Project.

"Interconnection Agreement" means the Agreement for Interconnection Service, dated as of July 20, 2001, between Black Hills Power, Inc. and the Lessee.

"Land" means the premises described in Exhibit A attached hereto.

"Lease Rate Date" has the meaning set forth in paragraph (b) of Section 7 hereof.

"Lease Term" means the Initial Term, plus, if this Lease is extended, the First Extended Term and the Second Extended Term.

"Legal Requirements" means all laws, treaties, directives, judgments, decrees, ordinances and regulations and any other governmental rules, orders and determinations and all requirements having the force of law, now or hereinafter enacted, made or issued, whether or not presently contemplated, and all agreements, covenants, conditions and restrictions, applicable to the Project and/or the construction, ownership, operation or use thereof, including, without limitation, all requirements of labor laws and Environmental Requirements, compliance with which is required at any time from the date hereof through the Initial Term, each Extended Term and any Renewal Term, whether or not such compliance shall require structural, unforeseen or extraordinary changes to the Project or the operation, occupancy or use thereof.

"Lessee" has the meaning set forth in the first paragraph of this Lease.

"Lessor" means Wygen Funding, Limited Partnership or any successor or successors to all of its rights and obligations as the Lessor hereunder and, for purposes of Section 11 hereof, shall include any partnership (general or limited), corporation, limited liability company, trust, individual or other entity which computes its liability for income or other taxes on a consolidated basis with Wygen Funding, Limited Partnership or the income of which for purposes of such taxes is, or may be, determined or affected directly or indirectly by the income of the Lessor or its successor or successors. "Letter of Credit" means the Irrevocable Letter of Credit No. NY-20511-30029698, dated April 18, 2001, issued by CitiBank, N.A., in favor of the Lessee, as the same may be amended, restated, modified, supplemented, substituted or replaced from time to time.

"Lien" means any security interest, mortgage, pledge, hypothecation, assignment, encumbrance, lien (statutory or other), or other security agreement of any kind or nature whatsoever (including, without limitation, any conditional sale or other title retention agreement, any financing lease having substantially the same economic effect as any of the foregoing, and the filing of any financing statement under the Uniform Commercial Code or comparable law of any jurisdiction in respect of any of the foregoing).

"Management Agreement" means the Management Agreement, dated as of the date hereof, between the Lessor and Merrill Leasing, as the same may be amended, restated, modified or supplemented from time to time.

"Material Subsidiary" has the meaning set forth in the Guaranty.

"Merrill" means Merrill Lynch Money Markets Inc., a Delaware corporation.

"Merrill Leasing" means ML Leasing Equipment Corp., a Delaware corporation.

"Merrill Lynch" means Merrill Lynch & Co., Inc., a Delaware corporation.

"Monthly Cost of Project Debt" means the weighted average percentage cost per annum (including as part of such cost any fees payable under or pursuant to any Financing Arrangements, but net of any investment earnings applied to the payment of costs) of borrowings outstanding under any Financing Arrangements (whether or not interest is accruing at a default rate) at any time during the period from and including the first day of the monthly period for which Basic Rent is being computed to and including the last day of the monthly period for which Basic Rent is being computed (the "Computation Period") to finance or refinance the acquisition and ownership of the Project.

"Monthly Cost of Project Equity" means the weighted average percentage cost per annum (including as part of such cost distributions and any fees payable under or pursuant to the limited partnership agreement of the Lessor, but net of any investment earnings applied to the payment of costs) of equity contributions to the Lessor made pursuant to the limited partnership agreement at any time during the Computation Period to finance or refinance the acquisition and ownership of the Project.

"Monthly Rent Component" means, with respect to each monthly period during the Lease Term, the amount (if any) set forth on Exhibit E hereto, as such Exhibit E may be amended from time to time pursuant to the terms of this Lease.

"1935 Act" means the Public Utility Holding Company Act of 1935, as amended, and any related Legal Requirement.

"NPL" has the meaning set forth in paragraph (i)(o) of Section 2 hereof.

"Operative Documents" has the meaning set forth in the Guaranty.

"Operator" means the Lessee, or such other entity designated as successor operator of the Project by the Lessee in accordance with the terms hereof.

"Operating Account" means the Collateral Account (as such term is defined in any Financing Arrangement).

"PCBs" has the meaning set forth in paragraph (i)(o) of Section 2 hereof.

"Performance Bonds" means any payment and performance surety bonds delivered by subcontractors to the General Contractor and the Lessee pursuant to Section 3.1 of the EPC First Amendment.

"Permitted Contest" has the meaning set forth in paragraph (a) of Section 27 hereof.

"Permitted Liens" means the following Liens and other matters affecting the Project: (a) Liens securing the payment of taxes, assessments and other governmental charges or levies which are either not delinquent or, if delinquent, are being contested by the Lessee in good faith as a Permitted Contest (provided that the Lessee is in compliance with any security

requirements under paragraph (b) of Section 27 hereof relating thereto); (b) zoning and planning restrictions, subdivision and platting restrictions, easements, rights-of-way, licenses, reservations, covenants, conditions, waivers, restrictions on the use of the Project, minor encroachments or minor irregularities of title, none of which individually or in the aggregate could reasonably be expected to materially impair the intended use or value of the Project; (c) reservations of mineral interests, none of which individually or in the aggregate could reasonably be expected to materially impair the intended use or value of the Project; (d) the Liens created pursuant to any Financing Arrangement; (e) the rights and interest of any sublessee under a sublease permitted by paragraph (e) of Section 8 of this Lease; (f) other leases and licenses in effect with respect to the Project which are permitted by this Lease or which are delivered to and accepted by the Lessor and Assignee prior to the Effective Date; (g) other exceptions to the title of the Project as set forth in the title insurance policy delivered to the Lessor and Assignee under Section 4 of the Agreement for Lease (for the period prior to Substantial Completion), as such exceptions are revised by the endorsement issued pursuant to Section 9.24(g) of the Agreement for Lease, and in a notice of continuation or endorsement to the title insurance policy delivered to the Lessor and Assignee under Section 6 of the Agreement for Lease (for the period on and after Substantial Completion) other than Liens securing the payment of taxes, assessments and other governmental charges or levies; (h) inchoate mechanics' Liens arising in the ordinary course of business on or in respect of the Project and for amounts the payment of which is either not yet delinquent or is the subject of a Permitted Contest (provided that the Lessee is in compliance with any security requirements under paragraph (b) of Section 27 hereof relating thereto); and (i) such other or additional matters as may be approved in writing by the Lessor and each Assignee.

"Person" means any individual, corporation, partnership, limited liability company, private limited company, joint venture, association, joint-stock company, trust, unincorporated organization of government or any agency or political subdivision thereof.

"Pledge Agreement" means the Pledge Agreement, dated as of the date hereof, by and between the Lessee, as pledgor, and the Lessor, as pledgee, as the same may be amended, restated, modified or supplemented from time to time.

"Pledged Contracts" means the EPC Contract, the Performance Bonds (from and after the date each such Performance Bond becomes effective), the Letter of Credit, the Retention Letter of Credit (if any), the EPC Subcontracts (from and after the date each such EPC Subcontract becomes effective), the Interconnection Agreement, the Services Agreement, the Fuel Supply Agreements and the Power Purchase Agreements, in each case as pledged pursuant to the Pledge Agreement.

"Potential Default" means any event which, but for the lapse of time or giving of notice, or both, would constitute an Event of Default.

"Power Purchase Agreements" means collectively, (i) the Power Purchase Agreement, dated as of February 16, 2001, between the Lessee and Cheyenne Light, Fuel and Power Company, and (ii) the Power Purchase Agreement, dated as of March 5, 2001, between the Lessee and Municipal Energy Agency of Nebraska, as each of the same may be amended,

restated, modified, or supplemented from time to time, pursuant to which the Lessee will sell certain electric capacity to each such purchaser as specified therein.

"Premises" means collectively the Land and the Easements.

"Project" means the Premises and the improvements and equipment (including all related appliances, appurtenances, accessions, controls, interconnection facilities, transmission lines, wiring, furnishings, materials and parts, and other related facilities and equipment, along with any replacements thereof) constructed thereon pursuant to the EPC Contract (or any other construction contracts entered into by the Lessor or the Lessee) and the Agreement for Lease, which constitute an approximately 90 megawatt coal-fired power plant known as Wygen #1, consisting of steam turbine generators and related equipment.

"Project Contracts" means the EPC Contract, the GE Turbine Contract, the Ground Lease, the Performance Bonds (from and after the date each such Performance Bond becomes effective), the Letter of Credit, the Retention Letter of Credit (if any), the EPC Subcontracts (from and after the date each such EPC Subcontract becomes effective), the Easement Agreement, the Required Easement Agreements (from and after the date each such Required Easement Agreement becomes effective), the Interconnection Agreement, the Services Agreement, the Fuel Supply Agreements and the Power Purchase Agreements, as each of the same may be amended, restated, modified or supplemented from time to time as permitted hereunder. A list of the Project Contracts in existence on the date hereof is attached as Exhibit C hereto.

"Reconciliation Amount" has the meaning set forth in paragraph (f) of Section 7 hereof.

"Release" means the release, spill, emission, leaking, pumping, injection, deposit, disposal, discharge, dispersal, leaching or migrating into the indoor or outdoor environment of any Contaminant through or in the air, soil, surface water, groundwater, or any structure.

"Remedial Action" means actions required or undertaken by a Governmental Authority, or which are appropriate as a matter of prudent business practice and commercial reasonableness, to (i) clean up, remove, treat, contain or in any other way address Contaminants in the indoor or outdoor environment; (ii) prevent the Release or threat of Release or minimize the further Release of Contaminants; (iii) investigate and determine if a removal or remedial response is needed; or (iv) design such a response and post-remedial investigation, monitoring, operation, maintenance and care.

"Removable Improvements" has the meaning set forth in paragraph (b) of Section 8 hereof.

"Renewal Notice" has the meaning set forth in paragraph (c) of Section 13 hereof.

"Renewal Term" has the meaning set forth in paragraph (c) of Section 13 hereof.

"Required Easement Agreements" has the meaning set forth in the Agreement for Lease.

"Responsible Officer" shall mean the President, Vice President, Secretary or Treasurer of the Lessee.

"Retention" has the meaning set forth in the Agreement for Lease.

"Retention Letter of Credit" shall mean the Retention Letter of Credit issued pursuant to Section 7.3 of the EPC Contract.

"S&P" means Standard & Poor's Ratings Group, a division of McGraw-Hill, Inc., and any successor thereto which is a nationally recognized statistical rating organization.

"Second Extended Term" has the meaning set forth in paragraph (b) of Section 6 hereof.

"Services Agreement" means the Services Agreement, dated as of July 20, 2001, between Black Hills Power, Inc. and the Lessee, as the same may be amended, restated, modified or supplemented from time to time.

"Substantial Completion" has the meaning set forth in the Agreement for Lease.

"Taking" means the requisition, taking or sale in, by or on account of actual or threatened eminent domain proceedings or other action by any person or authority having the power of eminent domain.

"Termination Conditions" means the following conditions made by the Lessee to the Lessor as a condition to the sale of the Project pursuant to Section 12 hereof: on the date of such sale (i) no Event of Loss, Taking, Termination Event, Event of Default or Potential Default shall have occurred and be continuing, (ii) the Project shall not be undergoing any repairs, additions or alterations that could reasonably be expected to diminish the fair market value, utility or remaining economic useful life which the Project would have had at such time had such repair, addition or alteration not been undergoing (assuming the Project is in the condition required hereby), (iii) the Project shall be in compliance with all Legal Requirements, (iv) the Lessee shall, at its expense, deliver to the Lessor an environmental audit satisfactory in scope and content to the Lessor and Assignee in their reasonable discretion, to the effect that (A) no Environmental Matters exist with respect to the Project as a result of the construction, operation and maintenance of the Project and (B) the Project may be operated to its design capacity in accordance with the Project Contracts and in compliance with Environmental Requirements, and (v) the Lessee shall deliver to the Lessor and Assignee a report of an independent engineer reasonably satisfactory to the Lessor and Assignee, to the effect that the Project (A) has been maintained in accordance with the terms and conditions of Section 9 of this Lease and (B) is capable of being operated in accordance with (1) the design specifications required by the EPC Contract, taking into account normal and proper wear and tear resulting from the operation of the Project, (2) the performance standards required for Operational Acceptance under the EPC Contract, taking into account normal and proper wear and tear resulting from the operation of the Project and (3) prudent industry practices.

"Termination Date" has the meaning set forth in paragraph (a) of Section 12 hereof.

"Termination Event" has the meaning set forth in paragraph (a) of Section 14 hereof.

"Termination Notice" has the meaning set forth in paragraph (a) of Section 12 hereof.

"Unrecovered Liabilities and Judgments" means all liabilities of an Indemnified Person, including, without limitation, taxes, losses, obligations, claims, damages (including, without limitation, Environmental Damages and strict liability in tort), penalties, premiums, breakage costs, causes of action, suits, costs and expenses (including, without limitation, reasonable attorneys', experts', consultants' and accountants' fees and expenses) or judgments of any nature against an Indemnified Person relating to or in any way arising during the term of the Agreement for Lease and relating to or in any way arising out of (i) the Lessor's acquisition, ownership and financing of the Project, (ii) the Lessor's acquisition of a leasehold interest in the Premises, (iii) the Lessee's construction of the Project or (iv) the operation or use of the Premises or the Project by the Lessee or any agent or subcontractor of the Lessee, in each case to the extent that such Indemnified Person has not received full indemnification for such liabilities or judgments by the Lessee.

"Variable Component of Basic Rent" has the meaning set forth in the definition of Basic Rent in Section 1 hereof.

SECTION 2. REPRESENTATIONS, WARRANTIES AND COVENANTS OF LESSEE.

(i) The Lessee represents and warrants to the Lessor:

(a) Corporate Matters. The Lessee (i) has been duly incorporated and is validly existing as a corporation in good standing under the laws of the State of Wyoming, (ii) has full power, authority and legal right to own and operate its properties and to conduct its business as presently conducted and to execute, deliver and perform its obligations under this Lease, the Agreement for Lease, the Project Contracts, the Pledge Agreement, the Facility Support Agreement and any Consent, and (iii) is duly qualified to do business as a foreign corporation in good standing in each jurisdiction in which its ownership or leasing of properties or the conduct of its business requires such qualification.

(b) Binding Agreement. This Lease and the Consent have been duly authorized, executed and delivered by the Lessee and, assuming the due authorization, execution and delivery of this Lease by the Lessor and the Consent by the parties thereto other than the Lessee, this Lease and the Consent is a legal, valid and binding obligation of the Lessee, enforceable according to its terms.

(c) Compliance with Other Instruments. The execution, delivery and performance by the Lessee of this Lease, the Project Contracts to which the Lessee is a party,

the Facility Support Agreement, the Pledge Agreement and any Consent will not result in any violation of any term of the articles of incorporation or the by-laws of the Lessee, do not require stockholder approval or the approval or consent of any trustee or holders of indebtedness of the Lessee except such as have been obtained prior to the date hereof and will not conflict with or result in a breach of any terms or provisions of, or constitute a default under, or result in the creation or imposition of any Lien (other than a Permitted Lien) upon any property or assets of the Lessee under, any indenture, mortgage or other agreement or instrument to which the Lessee is a party or by which it or any of its property is bound, or any existing applicable law, rule, regulation, license, judgment, order or decree of any Governmental Authority or court having jurisdiction over the Lessee or any of its activities or properties.

(d) Governmental Consents. There are no consents, licenses, orders, authorizations, approvals, Environmental Approvals, Permits (as defined in the Agreement for Lease), waivers, exemptions, extensions or variances of, or notices to or registrations or filings with any Governmental Authority or public body (each a "Governmental Action") which are or will be required in connection with the valid execution, delivery and performance of this Lease, the Agreement for Lease, the Pledge Agreement, the Facility Support Agreement, the Consent or the Project Contracts, or any Governmental Action (i) which is or will be required in connection with any participation by the Lessor or any Assignee in the transactions contemplated by the Project Contracts, the Pledge Agreement, the Facility Support Agreement, the Consent, this Lease or the Agreement for Lease, (ii) which is or will be required in connection with the acquisition or ownership by the Lessor of the Project and all equipment for use with respect thereto, (iii) which is or will be required for the lease of the Project or the operation of the Project in accordance with and as contemplated by the Project Contracts and this Lease, or (iv) which is or will be required to be obtained by the Lessee, the Lessor, Merrill, Merrill Lynch, Merrill Leasing, any Assignee or any Affiliate of the foregoing, during the term of this Lease, the Agreement for Lease or the Project Contracts, with respect to the Project or the Project Contracts, except for (i) the filing of an application for EWG status under Section 32 of the 1935 Act and (ii) filings, if any, required under Section 6111 of the Code, and except such Governmental Actions (A) each of which has been duly obtained, given or accomplished, is in full force and effect, is final, is not under appeal, and all applicable appeal periods have expired, with a true copy thereof delivered to the Lessor or (B) as may be required by applicable law not now in effect.

(e) Financial Statements. The Lessee has furnished to the Lessor copies of (i) the Lessee's annual unaudited financial statements for the year ended December 31, 2000 and its quarterly unaudited financial statements for the quarter ended March 31, 2001, and (ii) the Guarantor's Annual Report on Form 10-K for the year ended December 31, 2000, and the Guarantor's Quarterly Report on Form 10-Q for the quarter ended March 31, 2001. The financial statements contained in such documents fairly present the financial position, results of operations and consolidated statements of cash flows of the Lessee and the Guarantor, as the case may be, as of the dates and for the periods indicated therein and have been prepared in accordance with GAAP.

(f) Changes. Since December 31, 2000, there has been no material adverse change in the business, assets, properties, revenues, financial condition, operations or prospects of the Project, the Lessee or the Guarantor, nor any change which could reasonably be expected

to have a material adverse effect on (i) the construction, operation, maintenance, leasing, ownership, use, value or regulatory status of the Project, (ii) the ability of the Lessee to observe and perform its obligations under this Lease, the Agreement for Lease, the Pledge Agreement, the Facility Support Agreement, the Consent or the Project Contracts in a timely manner or the ability of the Guarantor to perform its obligations under the Guaranty in a timely manner, (iii) the business, assets, properties, financial condition, operations or prospects of the Lessee or the Guarantor, or (iv) the rights or interests of the Lessor or Assignee under this Lease, the Agreement for Lease, the Pledge Agreement, the Facility Support Agreement, the Consent or the Project Contracts.

(g) Litigation. There is no action, suit, claim, or counterclaim, proceeding or investigation, at law or in equity, by or before any court, governmental body, agency, commission or other tribunal now pending or threatened against or affecting the Project, the Lessee or the Guarantor or any property or rights of the Lessee or the Guarantor or questioning the enforceability of this Lease, the Pledge Agreement, the Facility Support Agreement, the Consent or the Project Contracts, which, if adversely determined, could reasonably be expected to have a material adverse effect on (i) the construction, operation, maintenance, leasing, ownership, use, value or regulatory status of the Project, (ii) the ability of the Lessee to observe and perform its obligations under this Lease, the Agreement for Lease, the Pledge Agreement, the Facility Support Agreement, the Consent or the Project Contracts in a timely manner or the ability of the Guarantor to perform its obligations under the Guaranty in a timely manner, (iii) the business, assets, properties, financial condition, operations or prospects of the Lessee or the Guarantor, or (iv) the rights or interests of the Lessor or Assignee under this Lease, the Agreement for Lease, the Pledge Agreement, the Facility Support Agreement, the Consent or the Project Contracts.

(h) Intellectual Property. All Intellectual Property Rights required for the construction and operation of the Project in accordance with and as contemplated by the Project Contracts or this Lease, have been or will in the ordinary course of business be timely obtained and, once obtained, will remain in full force and effect. The Lessee owns or has the right to use all Intellectual Property Rights that are material and are required to perform the Lessee's obligations under the Project Contracts without any conflict with the rights of others.

(i) Project Contracts. Each Project Contract in existence on the date hereof has been duly authorized, executed and delivered by the parties thereto and is a legal, valid and binding obligation of the parties thereto, enforceable according to its terms. The Lessee has not received notice from any party to a Project Contract that (i) such party is terminating any Project Contract, (ii) a default has occurred under any Project Contract or any Person has alleged that a default has occurred under any Project Contract or (iii) there are any claims for damages existing as a result of the Lessee's performance of or its failure to perform any of its obligations under any Project Contract. No default has occurred and is continuing under any Project Contract on the date hereof.

(j) Compliance with Legal Requirements and Insurance Requirements. The construction, operation, use, and physical condition of the Project are in full compliance with all Legal Requirements and Insurance Requirements and all premiums due with respect to such Insurance Requirements have been paid.

(k) Liens. The Project is not subject to any Lien, except Permitted Liens, and none of such Permitted Liens could reasonably be expected to materially interfere with the use or possession of the Project or the use or exercise by the Lessor of its rights under this Lease or any other document contemplated hereby or entered into in connection herewith.

(l) Agreement for Lease. The Project has been built in accordance with the terms of the Agreement for Lease. The representations and warranties of the Lessee, as agent, in the Agreement for Lease are true and correct in all material respects.

(m) ERISA. The Lessee has not established and does not maintain or contribute to any employee benefit plan that is covered by Title IV of the Employee Retirement Income Security Act of 1974, as amended from time to time ("ERISA").

(n) Status of Lessee. All of the Lessee's capital stock is owned (directly or indirectly) beneficially and of record by the Guarantor.

(o) Environmental Matters. Except as expressly identified in the environmental reports delivered pursuant to Section 4 of the Agreement for Lease:

(i) To the best knowledge of the Lessee, after due inquiry, the Lessee and the Project comply, and have at all times complied, with all Environmental Requirements applicable to the Project. The Lessee and the Project shall at all times comply with all material Environmental Requirements applicable to the Project, including, without limitation, the use, maintenance and operation of the Project, and all activities and conduct of business related thereto, including, without limitation, the treatment, remediation, removal, transport, storage and/or disposal of any Contaminant, and no material capital expenditures are anticipated to maintain or achieve compliance with Environmental Requirements;

(ii) The Lessee has obtained or has taken appropriate steps, as required by Environmental Requirements, to obtain, and shall maintain all Environmental Approvals necessary for the construction and operation of the Project, and, in the case of Environmental Approvals necessary for operation, will take such steps as are necessary to secure such Environmental Approvals prior to the scheduled commencement of operation, all such Environmental Approvals already obtained are in good standing, are in full force and effect, are final, are not under appeal, and all applicable appeal periods have expired, and the Lessee and the Project are currently in material compliance and shall remain in material compliance with all terms and conditions of such Environmental Approvals. No material change in the facts or circumstances reported or assumed in the applications for or the granting of such Environmental Approvals exists. There are no proceedings pending or threatened which may be expected to rescind, terminate, modify, condition, suspend or otherwise alter such Environmental Approvals, or which would jeopardize the validity of, or the ability of the Lessee to obtain, maintain, or comply with, any such Environmental Approvals in a timely manner;

(iii) The Lessee has not received any notice that any of the third parties with which the Lessee has arranged, engaged or contracted to accept, treat,

transport, store, dispose or remove any Contaminant generated or present at the Project, or which otherwise participate or have participated in activities or conduct related to the Project, were not properly permitted at the relevant time to perform the foregoing activities or conduct;

(iv) The Lessee has not received any notice that it or the Project is subject to any investigation, and is not subject to any judicial or administrative proceeding, notice, order, judgment, decree or settlement, alleging or addressing in connection with the Project (A) any violation of any Environmental Requirements, (B) any Remedial Action, or (C) any Environmental Damages, claims or liabilities and costs arising from the Release or threatened Release of any Contaminant;

(v) No Environmental Lien has attached to any portion of the Project, and the Lessee shall not cause or suffer any action or occurrence that will allow an Environmental Lien to attach to any portion of the Project;

(vi) The Lessee has not received, and is not otherwise aware of, any notice, claim or other communication concerning (A) any alleged violation of any Environmental Requirements at the Project, whether or not corrected to the satisfaction of the appropriate authority, (B) any alleged liability of the Lessee for Environmental Damages arising out of or related to the Project, or (C) any alleged liability of the Lessee arising out of or related to the Project for the Release or threatened Release of a Contaminant at any location, and there exists no writ, injunction, decree, order or judgment outstanding, nor, to the best knowledge of the Lessee, after due inquiry, any lawsuit, claim, proceeding, citation, directive, summons or investigation, pending or threatened, relating to the condition, ownership, use, maintenance, construction or operation of the Project, or the suspected presence of Contaminants thereon or therefrom, nor does there exist any basis for such lawsuit, claim, proceeding, citation, directive, summons or investigation being instituted or filed;

(vii) To the best knowledge of the Lessee, after due inquiry, there has been no Release of any Contaminants which would constitute a violation of any Environmental Requirement with respect to the Project or which would require any Remedial Action at, to or from the Project, and the Lessee shall not cause or suffer any such Release during the term of this Lease;

(viii) The Project is not listed or proposed for listing on the National Priorities List ("NPL") pursuant to the Comprehensive Environmental Response, Compensation, and Liability Act, as amended ("CERCLA"), or listed on the Comprehensive Environmental Response Compensation Liability Information System List ("CERCLIS") or any similar state list of sites, and the Lessee is not aware of any conditions at the Project which, if known to a Governmental Authority, would qualify the Project for inclusion on any such list;

(ix) Neither the Lessee nor, to the best knowledge of the Lessee, after due inquiry, any contractor engaged by the Lessee in connection with the Project has transported or arranged for the transport of any Contaminant from the Project to any

facility or site for the purpose of treatment or disposal which (A) is included on the NPL, or (B) to the best knowledge of the Lessee, is or was, at the time of disposal, subject to a Remedial Action requirement (other than routine, anticipated regulatory requirements, including, but not limited to, closure-related corrective action obligations affecting closed solid waste management units at such facility) issued under the federal Resource Conservation and Recovery Act or any state, local or foreign solid or hazardous waste regulatory law, or (C) at the time of the disposal had received a notice of violation or was otherwise subject to a governmental enforcement action with respect to alleged violations of any Environmental Requirements, and the Lessee shall use its best efforts not to suffer or permit any such transportation or arrangement to any such facility or site during the term of this Lease;

(x) Neither the Lessee nor, to the best knowledge of the Lessee, after due inquiry, any contractor engaged by the Lessee in connection with the Project has engaged in or permitted, nor shall the Lessee engage in or permit, any operations or activities upon, or any use or occupancy of the Project or any portion thereof, for the purpose of or in any way involving the illegal or improper release, discharge, refining or dumping of any Contaminant or the illegal or improper handling, storage, use or disposal of any Contaminant, nor has the Lessee or any other Person caused any Contaminant to be deposited, released, stored, disposed, leached or otherwise come to be located on, under, in or about the Premises, nor to the knowledge of the Lessee has any Contaminant migrated from the Premises onto or underneath other properties;

(xi) To the best knowledge of the Lessee, after due inquiry, there is not constructed, placed, deposited, stored, disposed nor located on the Project or the Premises any asbestos in any form which has become or threatens to become friable. The Lease shall not cause or suffer the use of any asbestos containing material in connection with its management and operation of the Project during the term of this Lease;

(xii) To the best knowledge of the Lessee, after due inquiry, there is not constructed, placed, deposited, released, stored, disposed, leached nor located on the Project any mono- or poly-chlorinated biphenyls ("PCBs") or transformers, capacitors, ballasts, or other equipment which contain dielectric fluid containing PCBs. The Lessee shall not cause or suffer the use of any article containing PCBs at or on the Project during the term of this Lease;

(xiii) To the best knowledge of the Lessee, the Lessee has no liability, and has neither received nor is otherwise aware of any notice, claim or other communication alleging liability on the part of the Lessee, for the violation of any Environmental Requirements, for Environmental Damages, or for the presence, Release, or threatened Release of any Contaminant in connection with the Project; and

(xiv) None of the matters identified in the environmental reports delivered pursuant to Section 4 of the Agreement for Lease, individually or in the aggregate, could reasonably be expected to have a material adverse effect on (A) the construction, operation, maintenance, leasing, ownership, use, value or regulatory status of the Project, (B) the ability of the Lessee to observe and perform its obligations under this Lease, the Agreement for Lease, the Pledge Agreement, the Facility Support Agreement, the Consent or the Project Contracts in a timely manner or the ability of the Guarantor to perform its obligations under the Guaranty in a timely manner, (C) the business, assets, properties, financial condition, operations or prospects of the Lessee or the Guarantor, or (D) the rights or interests of the Lessor or Assignee under this Lease, the Agreement for Lease, the Pledge Agreement, the Facility Support Agreement, the Consent or the Project Contracts.

(p) Project Authorizations. The Lessee has obtained, or shall in the ordinary course of business obtain prior to the time required, all certificates, Permits, Governmental Actions, licenses, authorizations and approvals required (i) in the management and operation of the Project in accordance with and as contemplated by the Project Contracts, the Facility Support Agreement and this Lease, (ii) for any change or modification of the use of the Project, (iii) for construction of any improvements thereto and (iv) for acquisition of equipment related to the Project for use with respect thereto, and a list of all such certificates, Permits, Governmental Actions, licenses, authorizations and approvals required by all applicable law in effect on the date hereof is attached as Exhibit D hereto.

(q) Compliance with Project Contracts. The physical condition of the Project as it is presently constructed complies with all material requirements of each Project Contract and will enable the Lessee to perform all of its obligations under the Project Contracts, the Facility Support Agreement and this Lease in accordance with their respective terms.

(r) Pledge Agreement. The Pledge Agreement has been duly authorized, executed and delivered by the Lessee and, assuming the due authorization, execution and delivery of the Pledge Agreement by the Lessor, is a legal, valid and binding obligation of the Lessee, enforceable according to its terms. The Pledge Agreement creates a valid first priority security interest in the Collateral (as defined in the Pledge Agreement), securing the payment of the Secured Obligations (as defined in the Pledge Agreement). All action necessary to perfect the security interest in the Collateral has been taken and such security interest has priority over any other Lien on the Collateral, except for Permitted Liens.

(s) Operation of the Project. The Project is being constructed such that, on and after the achievement of Operational Acceptance (as such term is defined in the EPC Contract) it will be able (i) to be operated on a safe and reasonably economic basis in compliance with all material Governmental Actions existing at the time, the Project Contracts, the Facility Support Agreement and this Lease for a period of at least 30 years thereafter, and (ii) to be mechanically operated on a safe basis in compliance with all existing material Governmental Actions for a period of at least 30 years thereafter.

(t) Utility Availability. All utility services and Interconnections necessary for the operation of the Project (including, without limitation, gas, electrical, water, coal supply and storage and sewage services and facilities) are available for use at the boundaries of the Premises or within a reasonable distance from the Premises.

(u) Guaranty. The Guaranty has been duly authorized, executed and delivered by the Guarantor and constitutes a legal, valid and binding obligation of the Guarantor, enforceable according to its terms.

(v) Disclosure. None of the representations made by the Lessee in this Lease or the Agreement for Lease or the financial statements referred to in paragraph (i)(e) of Section 2 hereof, contained as of its date any untrue statement of a material fact or omitted to state a material fact necessary in order to make the representations contained herein or the statements contained therein not misleading in light of the circumstances under which they were made.

(w) No Default. Neither the Lessee nor the Guarantor is in violation of or in default under or with respect to any Legal Requirement in any respect which could reasonably be expected to have a material adverse effect on (i) the construction, operation, maintenance, leasing, ownership, use, value or regulatory status of the Project, (ii) the ability of the Lessee to observe and perform its obligations under this Lease, the Agreement for Lease, the Pledge Agreement, the Facility Support Agreement, the Consent or the Project Contracts in a timely manner or the ability of the Guarantor to perform its obligations under the Guaranty in a timely manner, (iii) the business, assets, properties, financial condition, operations or prospects of the Lessee or the Guarantor, or (iv) the rights or interests of the Lessor or Assignee under this Lease, the Agreement for Lease, the Pledge Agreement, the Facility Support Agreement, the Consent or the Project Contracts.

(x) Taxes. The Lessee has filed or caused to be filed all tax returns which are required to be filed by it, and has paid all taxes shown to be due and payable on said returns or on any assessments made against it or any of its assets and properties and has paid all other taxes, fees or other charges imposed on it by any Governmental Authority (except taxes, fees and charges subject to a Permitted Contest).

(y) Budgets. All budgets (including the Budget) furnished or to be furnished to the Lessor and Assignee by or on behalf of the Lessee and the summaries of significant assumptions related thereto, if any (i) have been and will be prepared with due care in accordance with prudent business practices, (ii) fairly present, and will fairly present the Lessee's expectations as to the matters covered thereby as of their date, (iii) are based on, and will be based on, assumptions that are reasonable as to all factual and legal matters material to the estimates therein and (iv) are in all material respects consistent with, and will be in all material respects consistent with, the provisions of this Lease, the Agreement for Lease and the Project Contracts. The Budget includes all costs and expenses that could reasonably be expected to be incurred in connection with the construction of the Project.

(z) Facility Support Agreement. The Facility Support Agreement has been duly authorized, executed and delivered by the Lessee and, assuming the due authorization, execution and delivery of the Facility Support Agreement by the Lessor, is a legal, valid and binding obligation of the Lessee, enforceable according to its terms.

(ii) The Lessee covenants to the Lessor:

(a) Distributions in Default. So long as an Event of Default pursuant to paragraph (a) of Section 18 hereof has occurred and is continuing, the Lessee will not make any distributions or return of capital of any kind to any of its equity investors or any payment of management fees or any payments of principal or interest on any subordinated debt.

(b) Conduct of Business and Maintenance of Corporate Existence. The Lessee will (i) preserve, renew and keep in full force and effect its existence as a corporation in good standing under the laws of the State of Wyoming until the expiration or other termination of this Lease and the indefeasible payment of all amounts owing hereunder, and (ii) maintain all rights, privileges and franchises material to the conduct of its business; provided, however, that nothing contained in this paragraph (b) shall prevent the Lessee from consummating any merger, consolidation or sale permitted by the provisions of Section 25 hereof.

(c) Delivery of Information. The Lessee shall deliver to the Lessor and Assignee from time to time, (i) (A) promptly, and in any event not more than 120 days after the end of each fiscal year of the Lessee (commencing with the fiscal year 2001), copies of the Lessee's annual audited financial statements and promptly, and in any event not more than 60 days after the end of each of the first three fiscal quarters of each relevant fiscal year of the Lessee, copies of the Lessee's quarterly unaudited financial statements, both prepared in accordance with GAAP, and (B) promptly, and in any event not more than 120 days after each fiscal year of the Guarantor, copies of the Guarantor's Annual Report on Form 10-K and promptly, and in any event not more than 60 days after the end of each of the first three fiscal quarters of each relevant fiscal year of the Guarantor, copies of the Guarantor's Quarterly Reports on Form 10-Q and promptly any other reports the Guarantor files with the Securities and Exchange Commission pursuant to the Securities Exchange Act of 1934, (ii) promptly upon request, such other information with respect to the Lessee's or the Guarantor's operations, business, properties, assets, financial condition or litigation as the Lessor or any Assignee shall reasonably request, (iii) promptly after a Responsible Officer obtains knowledge of any Event of Default, Potential Default, Event of Loss, Taking or Termination Event, a certificate of a Responsible Officer specifying the nature and period of existence of such Event of Default, Potential Default, Event of Loss, Taking or Termination Event, and what action, if any, the Lessee has taken, is taking, or proposes to take with respect thereto, (iv) promptly after a Responsible Officer obtains knowledge of any material adverse change in the financial condition or business of the Lessee, or of any liabilities or obligations arising as a result of tortious action or omission or Environmental Damages or in respect of governmental fines or obligations (other than taxes) or liabilities or obligations arising as a result of Environmental Matters, or of any material adverse change in the financial condition or business of the Guarantor or of any litigation of the type described in paragraph (i)(g) of this Section 2, a certificate of a Responsible Officer describing such change, liabilities, obligations or litigation, as the case may be, and what action, if any, the Lessee has taken, is taking, or proposes to take with respect thereto, (v) simultaneously with the delivery of each set of annual and quarterly financial statements referred to in clause (i) of this paragraph (c), a certificate of a Responsible Officer stating, to the best knowledge of such Responsible Officer after reasonable inquiry, whether there exists on the date of such certificate any Event of Default, Potential Default, Event of Loss, Taking or Termination Event or default under any Project Contract, and if any Event of Default, Potential Default, Event of Loss, Taking or Termination Event or default under any Project Contract exists, specifying the nature and period of existence thereof and what action, if any, the Lessee has taken, is taking, or

proposes to take with respect thereto and (vi) promptly after a Responsible Officer obtains knowledge of any legal, governmental or regulatory proceeding that could have a material adverse effect on (A) the construction, operation, maintenance, leasing, ownership, use, value or regulatory status of the Project, (B) the ability of the Lessee to observe and perform its obligations under this Lease, the Agreement for Lease, the Pledge Agreement, the Facility Support Agreement, the Consent or the Project Contracts in a timely manner or the ability of the Guarantor to perform its obligations under the Guaranty in a timely manner, (C) the business, assets, properties, financial condition, operations or prospects of the Lessee or the Guarantor or (D) the rights or interests of the Lessor or Assignee under this Lease, the Agreement for Lease, the Pledge Agreement, the Facility Support Agreement, the Consent or the Project Contracts, a certificate of a Responsible Officer describing each such proceeding and what action, if any, the Lessee has taken, is taking, or proposes to take with respect thereto.

(d) Regulation. Neither the Lessor nor any Assignee nor any of their respective Affiliates is or will be, solely by reason of (i) its entering into this Lease, the Agreement for Lease or any other document contemplated hereby, (ii) the acquisition, ownership, leasing or financing of the Project (or any part thereof) or (iii) the operation of the Project (or any part thereof) in accordance with and as contemplated by the Project Contracts and this Lease, during the term of this Lease, the Agreement for Lease or the Power Purchase Agreements, subject to regulation under any Legal Requirement (including any Legal Requirement (A) under the 1935 Act, (B) imposed by any state or local public utility commission or other similar regulatory body, authority or group, or (C) under the Federal Power Act, as amended).

(e) Project Information. The Lessee shall furnish to the Lessor and Assignee:

(i) all material written communications relating to any pending or threatened investigations, claims or proceedings with respect to any Governmental Action or proposing to amend, modify or affect any Governmental Action then required to be in effect with respect to the Project;

(ii) written notice of the occurrence of any event giving rise (or that could reasonably be expected to give rise) to a claim under any insurance policy maintained pursuant to the terms of this Lease in an amount greater than \$100,000 together with copies of any document relating thereto (including copies of any such claim) in the possession or control of the Lessee; and

(iii) promptly upon its execution, a copy of any replacement Project Contract.

(f) Notice of Environmental Events:

(i) The Lessee shall promptly, but in any case within five (5) Business Days of receiving actual or constructive notice thereof, notify the Lessor and Assignee if, after the date of this Lease, (A) any Environmental Matter has occurred involving the Project or any part thereof (including, but not limited to, the presence, emission or unpermitted Release of Contaminants or the violation of any applicable Environmental Requirements) that could reasonably be expected to result in penalties or other liabilities

in excess of \$100,000, or (B) the Lessee has received notification that it, the Project or any part thereof is the subject of a proceeding that could reasonably be expected to result in any ordered remediation or corrective action or other liability related to an Environmental Matter, the cost of which liability is reasonably expected to exceed \$100,000 (each of (A) and (B) an "Environmental Event").

(ii) Following the receipt of a notice pursuant to (i) above, the Lessor and Assignee, in each case in their sole discretion, may require the Lessee to cause to be conducted by a qualified environmental consultant satisfactory in all respects to the Lessor and Assignee, an environmental audit of the Project or related operation on which the Lessor or Assignee may rely, the scope of which audit shall be limited to confirming the magnitude and anticipated cost of the liability resulting from the Environmental Event and to provide a copy of such environmental consultant's report on its audit to the Lessor and Assignee.

(iii) The Lessee shall immediately initiate, or cause to be initiated at no cost to the Lessor or Assignee, such actions as may be necessary to comply in all respects with all applicable Environmental Requirements and to alleviate any significant risk to human health or the environment if the same arises from a condition on or in respect of the Project or any part thereof, whether existing prior to, on or after the date of this Lease. Once the Lessee commences such actions, the Lessee shall thereafter diligently and expeditiously proceed to comply materially and in a timely manner with all Environmental Requirements and to eliminate any significant risk to human health or the environment and shall, at the request of the Lessor or Assignee during the Initial Term or any Extended Term, give periodic progress reports on its compliance efforts and actions.

(g) Environmental. The Lessee shall not use or dispose of any Contaminant or allow any Contaminant to be brought onto or stored or used on or transported or Released to or from the Project, other than in the ordinary course of business and in compliance in all material respects with all applicable Environmental Requirements.

SECTION 3. LEASE OF THE PROJECT.

(a) The date upon which the Lessee receives the Final Advance (as defined in the Agreement for Lease) under the Agreement for Lease, shall be the "Effective Date". From and after the Effective Date, and during the Initial Term and any Extended Term and any Renewal Term, the Lessor does hereby lease the Project (including a sublease of the Lessor's interest in the Premises) to the Lessee and the Project and the rights and obligations of the Lessor and the Lessee shall be governed by this Lease and not the Agreement for Lease, except to the extent otherwise expressly provided in this Lease and the Agreement for Lease. On the Effective Date, the Lessee shall be deemed to have certified that all representations and warranties of the Lessee contained in this Lease are true and correct in all material respects on and as of the Effective Date. As provided in the Agreement for Lease, on the Effective Date, the Acquisition Cost and the Adjusted Acquisition Cost shall be adjusted, if necessary, to reflect (i) the Completion Amount advanced to the Lessee under the Agreement for Lease and (ii) the Retention, if any.

(b) Up to six (6) months after the Final Advance (as defined in the Agreement for Lease), the Lessee may request a Completion Advance under the Agreement for Lease by delivering a Certificate of Increased Cost (as defined in the Agreement for Lease) to the Lessor and otherwise complying with the terms of Section 7 of the Agreement for Lease. On or before the fifth Business Day prior to the date upon which the Lessee receives the Final Advance (as defined in the Agreement for Lease), the Lessee shall designate the Completion Amount. After such designation the aggregate amount of the Completion Advance shall not exceed the Completion Amount. The provisions of paragraph (b) of subsection 2.3 and Section 7 of the Agreement for Lease shall govern (i) the designation of the Completion Amount, (ii) the making of the Completion Advance and (iii) any adjustments to the Acquisition Cost and the Adjusted Acquisition Cost occasioned thereby. At the time the Completion Advance is made, the Lessee shall be deemed to have certified that all representations and warranties of the Lessee contained in this Lease are true and correct in all material respects on and as of such date.

SECTION 4. OPERATING LEASE.

(a) It is the intent of the Lessee and the Lessor that: (i) this Lease constitutes an operating lease from the Lessor to the Lessee for purposes of the Lessee's financial reporting, (ii) this Lease and other transactions contemplated hereby preserve the ownership of the Project in the Lessee for federal, state and local income tax and bankruptcy purposes, and (iii) this Lease grants to the Lessor a Lien on the Project. The Lessee and the Lessor agree that the Lessor shall be deemed to have a valid and binding security interest in and Lien on the Project, free and clear of all Liens, other than Permitted Liens, as security for the obligations of the Lessee under this Lease and the Agreement for Lease (it being understood and agreed that the Lessee does hereby grant a Lien, and convey, transfer, assign, mortgage and warrant to the Lessor and its successors, transferees and assigns, for the benefit of the Lessor and its successors, transferees and assigns, on the Project and any proceeds or products thereof, to have and hold the same as collateral security for the payment and performance of the obligations of the Lessee under this Lease and the Agreement for Lease).

(b) Specifically, without limiting the generality of paragraph (a) of this Section 4, the Lessee and the Lessor intend and agree that in the event of any insolvency or receivership proceedings or a petition under the United States bankruptcy laws or any other applicable insolvency laws or statute of the United States of America or any State thereof affecting the Lessee, the Lessor, any Assignee or any collection actions relating thereto, the transactions evidenced by the Agreement for Lease and this Lease shall be regarded as loans made by the Lessor to the Lessee.

SECTION 5. ABSOLUTE OBLIGATION.

(a) The obligations of the Lessee to pay all amounts payable pursuant to this Lease (including specifically and without limitation amounts payable under Sections 7 and 11 hereof) shall be absolute and unconditional under any and all circumstances of any character, and such amounts shall be paid without notice, demand, defense, set-off, deduction or counterclaim and without abatement, suspension, deferment, diminution or reduction of any kind whatsoever,

except as herein expressly otherwise provided. The obligation of the Lessee to lease and pay Basic Rent, Additional Rent, and any other amounts due hereunder (including, without limitation, the amounts required to be paid pursuant to paragraph (e) of Section 7 hereof) for the Project accepted for lease pursuant to this Lease is without any warranty or representation, express or implied, as to any matter whatsoever on the part of the Lessor or any Assignee or any Affiliate of either, or anyone acting on behalf of any of them.

THE LESSEE HAS SELECTED THE PROJECT ON THE BASIS OF ITS OWN JUDGMENT. EXCEPT AS OTHERWISE EXPRESSLY PROVIDED HEREIN UPON A TRANSFER OF THE LESSOR'S INTEREST IN THE PROJECT TO THE LESSEE OR A THIRD PARTY, NEITHER THE LESSOR NOR ANY ASSIGNEE NOR ANY AFFILIATE OF EITHER, NOR ANYONE ACTING ON BEHALF OF ANY OF THEM MAKES ANY REPRESENTATION OR WARRANTY OF ANY KIND WHATSOEVER, EXPRESS OR IMPLIED, INCLUDING, WITHOUT LIMITATION, AS TO THE SAFETY, TITLE, CONDITION, QUALITY, QUANTITY, FITNESS FOR USE, MERCHANTABILITY, CONFORMITY TO SPECIFICATION, OR ANY OTHER CHARACTERISTIC, OF THE PROJECT, OR AS TO WHETHER THE PROJECT OR THE OWNERSHIP, USE, OCCUPANCY OR POSSESSION THEREOF COMPLIES WITH ANY LAWS, RULES, REGULATIONS OR REQUIREMENTS OF ANY KIND.

AS BETWEEN THE LESSEE AND THE LESSOR, ANY ASSIGNEE OR ANY INDEMNIFIED PERSON, THE LESSEE ASSUMES ALL RISKS AND WAIVES ANY AND ALL DEFENSES, SET-OFFS, DEDUCTIONS, COUNTERCLAIMS (OR OTHER RIGHTS), EXISTING OR FUTURE, AS TO THE LESSEE'S OBLIGATION TO PAY BASIC RENT AND ALL OTHER AMOUNTS PAYABLE HEREUNDER, INCLUDING, WITHOUT LIMITATION, ANY RELATING TO:

(A) THE SAFETY, TITLE, CONDITION, QUALITY, FITNESS FOR USE, MERCHANTABILITY, CONFORMITY TO SPECIFICATION, OR ANY OTHER QUALITY OR CHARACTERISTIC OF THE PROJECT, LATENT OR NOT;

(B) ANY SET-OFF, COUNTERCLAIM, RECOUPMENT, ABATEMENT, DEFENSE OR OTHER RIGHT WHICH THE LESSEE MAY HAVE AGAINST THE LESSOR, ANY ASSIGNEE OR ANY INDEMNIFIED PERSON FOR ANY REASON WHATSOEVER ARISING OUT OF THIS OR ANY OTHER TRANSACTION OR MATTER;

(C) ANY DEFECT IN TITLE OR OWNERSHIP OF THE PROJECT OR ANY TITLE ENCUMBRANCE NOW OR HEREAFTER EXISTING WITH RESPECT TO THE PROJECT;

(D) ANY FAILURE OR DELAY IN DELIVERY OR ANY LOSS, THEFT OR DESTRUCTION OF, OR DAMAGE TO, THE PROJECT, IN WHOLE OR IN PART, OR CESSATION OF THE USE OR POSSESSION OF THE PROJECT BY THE LESSEE FOR ANY REASON WHATSOEVER AND OF WHATEVER DURATION, OR ANY CONDEMNATION, CONFISCATION, REQUISITION, SEIZURE, PURCHASE, TAKING OR FORFEITURE OF THE PROJECT, IN WHOLE OR IN PART;

(E) ANY INABILITY OR ILLEGALITY WITH RESPECT TO THE USE, OWNERSHIP, OCCUPANCY OR POSSESSION OF THE PROJECT BY THE LESSEE;

(F) ANY INSOLVENCY, BANKRUPTCY, REORGANIZATION OR SIMILAR PROCEEDING BY OR AGAINST THE LESSEE OR THE LESSOR OR ANY ASSIGNEE;

(G) ANY FAILURE TO OBTAIN, OR EXPIRATION, SUSPENSION OR OTHER TERMINATION OF, OR INTERRUPTION TO, ANY REQUIRED LICENSES, PERMITS, CONSENTS, AUTHORIZATIONS, APPROVALS OR OTHER LEGAL REQUIREMENTS;

(H) THE INVALIDITY OR UNENFORCEABILITY OF THIS LEASE OR ANY OTHER INFIRMITY HEREIN OR ANY LACK OF POWER OR AUTHORITY OF THE LESSOR OR THE LESSEE TO ENTER INTO THIS CONTRACT;

(I) THE INVALIDITY OR UNENFORCEABILITY OF ANY BILL OF SALE EXECUTED IN CONNECTION WITH THIS LEASE OR ANY OTHER INFIRMITY THEREIN OR LACK OF POWER OR AUTHORITY OF ANY PARTY THERETO TO ENTER INTO SUCH BILL OF SALE; OR

(J) ANY OTHER CIRCUMSTANCES OR HAPPENING WHATSOEVER, WHETHER OR NOT SIMILAR TO ANY OF THE FOREGOING.

THE LESSEE HEREBY WAIVES, TO THE EXTENT PERMITTED BY APPLICABLE LAW, ANY AND ALL RIGHTS WHICH IT MAY NOW HAVE OR WHICH AT ANY TIME HEREAFTER MAY BE CONFERRED UPON IT, BY STATUTE OR OTHERWISE, TO TERMINATE, CANCEL, QUIT, RESCIND OR SURRENDER THIS LEASE EXCEPT IN ACCORDANCE WITH THE EXPRESS TERMS HEREOF. Each payment of Basic Rent, Additional Rent and any other amount due hereunder made by the Lessee shall be final, and the Lessee, without waiving any other remedies it may have, will not seek or have any right to recover all or any part of such payment from the Lessor or any Assignee for any reason whatsoever.

(b) Notwithstanding any other provision contained in this Lease, it is specifically understood and agreed that neither the Lessor nor any Assignee nor any Affiliate of either, nor anyone acting on behalf of any of them makes any warranties or representations or has any responsibility to disclose any relevant information, nor, except as set forth in Section 21 of this Lease, has the Lessor or any Assignee or any Affiliate of either, or anyone acting on behalf of any of them made any covenants or undertakings or has any other responsibility or duty, as to the accounting treatment to be accorded the Lessee or as to the U.S. Federal or any state income or any other tax consequences, if any, to the Lessee as a result of or by virtue of the transactions contemplated by this Lease.

SECTION 6. INITIAL TERM; EXTENDED TERM.

(a) The "Initial Term" shall commence on the Effective Date and shall continue until June 30, 2008, unless terminated earlier pursuant to Section 13, 14, 15, 16 or 19 hereof.

(b) The "First Extended Term" shall commence on the day following the last day of the Initial Term and shall continue for up to sixty (60) months, unless terminated earlier pursuant to Section 12, 13, 14, 15, 16 or 19 hereof. The "Second Extended Term" shall commence on the day following the last day of the First Extended Term and shall continue for up to sixty (60) months, unless terminated earlier pursuant to Section 12, 13, 14, 15, 16 or 19 hereof. The First Extended Term and the Second Extended Term shall be collectively referred to herein as the "Extended Term".

SECTION 7. RENT AND OTHER PAYMENTS.

(a) The Lessee hereby agrees to pay the Lessor on each Basic Rent Payment Date, in immediately available funds, as provided in paragraph (e) of this Section 7, Basic Rent for the calendar month (or part thereof) in which such Basic Rent Payment Date falls; provided that, if the Effective Date is on or after the Lease Rate Date in any first partial monthly period of the Initial Term, Basic Rent for such partial monthly period shall be payable on the next succeeding Basic Rent Payment Date.

(b) The Lessor shall furnish to the Lessee on the 16th day of each calendar month in which a Basic Rent Payment Date falls the Monthly Cost of Project Debt for such monthly period, or, if such day is not a Business Day, on the next succeeding Business Day (the "Lease Rate Date"). Prior to each Basic Rent Payment Date, the Lessor shall furnish the Lessee with a summary of the calculations of Basic Rent for such Basic Rent Payment Date.

(c) The Lessee hereby agrees to pay on demand all amounts (other than Basic Rent) payable hereunder, including, without limitation, all amounts payable to any Indemnified Person pursuant to Section 11 hereof.

(d) Without prejudice to the full exercise by the Lessor of its rights under Sections 18 and 19 hereof, the Lessee shall pay to the Lessor from time to time, on demand, as additional rent ("Additional Rent") (i) amounts required to reimburse the Lessor for its obligations, costs and expenses (not previously included in Basic Rent or Acquisition Cost) incurred in acquiring, financing (including obtaining equity financing and refinancing (including without limitation any amounts owing by the Lessor to its partners as a result of a sale of limited partnership interests by a limited partner of the Lessor or a modification of the terms of such equity financing) and maintaining security for and exercising remedies in connection with any such financing) and leasing the Project (including, without limitation, all obligations, costs and expenses of the Lessor arising in connection with the termination of any Financing Arrangement (whether as a result of a default thereunder or otherwise)), all interest (including, without limitation, interest at a default rate), breakage costs and other costs, fees and expenses incurred by the Lessor under any Financing Arrangement (including any such accruing after the commencement of a bankruptcy or similar proceeding), fees owing to the general partner of the

Lessor under the terms of the Lessor's partnership agreement, rent under the Ground Lease and amounts owing under any Project Contracts and (ii) to the extent legally enforceable, an amount computed by multiplying (A) all sums not paid by the Lessee to the Lessor as provided in this Lease on or before the date such payments are due, by (B) the decimal equivalent of the Monthly Cost of Project Debt as most recently furnished by the Lessor, and by (C) a fraction having a numerator equal to the number of days in the period from but excluding such due date to and including the date of payment thereof and a denominator of 360. The Lessee shall also pay to the Lessor on demand an amount equal to any expenses incurred by the Lessor in collecting such unpaid sums.

(e) Basic Rent and Additional Rent and any other amount payable by the Lessee to the Lessor shall be paid such that immediately available funds in the full amount due are available on the date due, to the account of the Lessor at such bank, or to such account of such other Person at such bank, or otherwise as the Lessor may from time to time designate.

(f) During the Lease Term the Lessor shall calculate, on each Lease Rate Date (except the first Lease Rate Date hereunder), the difference, if any, between (i) the Variable Component of Basic Rent paid by the Lessee for the previous calendar month and (ii) an amount equal to what the Variable Component of Basic Rent would have been for such calendar month had the Variable Component of Basic Rent been calculated using the weighted average equivalent percentage cost per annum of borrowings outstanding at any time (as specified in the definition of Monthly Cost of Project Debt) and equity contributions made (as specified in the definition of Monthly Cost of Project Equity) during the previous calendar month (rather than during the applicable Computation Period); provided, that with respect to the Variable Component of Basic Rent for the last month of the Lease Term, such calculation shall occur on the last day of the Lease Term. On or about August 16 of each year of the Lease Term, and on the last day of the Lease Term, the Lessor shall furnish to the Lessee a calculation of the aggregate difference between the amounts determined under clause (i) above and the correlating amounts determined under clause (ii) above (the "Reconciliation Amount") for each calendar month since the date of this Lease or each calendar month since the last time the Reconciliation Amount was calculated, whichever is later. The Lessor and the Lessee agree that if the Reconciliation Amount is a positive number, then such amount shall be credited against the amount of Basic Rent that the Lessee is required to pay on the next Basic Rent Payment Date (or Basic Rent Payment Dates, if such amount shall exceed the amount of Basic Rent payable in the next succeeding month), and if the Reconciliation Amount is a negative number, then such amount shall be payable by the Lessee on the next Basic Rent Payment Date in addition to the amount of Basic Rent due and payable on such Basic Rent Payment Date, except that with respect to the Reconciliation Amount computed on the last day of the Lease Term, such amount shall be paid by the Lessor to the Lessee (in the case of a positive number) or by the Lessee to the Lessor (in the case of a negative number) on the last day of the Lease Term. Any notices required by this paragraph (f) which are furnished to the Lessee by the Lessor shall be conclusive, absent manifest error, as to the contents thereof.

SECTION 8. RESTRICTED USE; COMPLIANCE WITH LAWS.

(a) The Lessee will not do or permit any act or thing which might impair, other than normal wear and tear arising out of the proper and normal use thereof, the value or usefulness of the Project.

(b) The Lessee shall promptly and duly execute, deliver, file and record, at the Lessee's expense, all such documents, statements, filings and registrations, and take such further action, as the Lessor shall from time to time reasonably request in order to establish, perfect and maintain the Lessor's title to and interest in the Project (other than Removable Improvements) and any Assignee's interest in this Lease or the Project as against the Lessee or any third party in any applicable jurisdiction. Equipment, machinery, apparatus, fixtures, structures and installations may be substituted for portions of the Project (other than Removable Improvements) if (i) the Lessor and Assignee consent to such substitution, such consent not to be unreasonably withheld or denied, (ii) the Lessor and Assignee shall determine that such substitution is consistent with prudent business practices and could not reasonably be expected to adversely affect the Lessee's ability to perform its obligations under this Lease, the Facility Support Agreement and the Project Contracts nor result in a reduction in the value, utility or remaining economic useful life of the Project (assuming the Project is in the condition required hereby), or (iii) such substitution is performed by the Lessee or the Operator in the normal course of operating and maintaining the Project in accordance with the Project Contracts and is consistent with prudent industry practices. As equipment, machinery, apparatus, fixtures, structures and installations are added to, or substituted for, portions of the Project (other than Removable Improvements), title to such additional or substitute equipment, machinery, apparatus, fixtures, structures and installations shall automatically be transferred to the Lessor and such equipment, machinery, apparatus, fixtures, structures and installations shall become a part of the Project and shall be subject to this Lease and title to the existing equipment, machinery, apparatus, fixtures, structures and installations which are being substituted for (other than Removable Improvements) shall be released by the Lessor to the Lessee. The Lessee may, so long as no Potential Default, Event of Default, Event of Loss, Taking or Termination Event has occurred and is continuing, remove any Removable Improvement in its entirety. "Removable Improvement", for the purposes hereof, shall mean any part that (i) is in addition to, and not in replacement of or substitution for (x) any part originally incorporated or installed in or attached to the Project on the Effective Date or (y) any part in replacement of, or substitution for, any such part, (ii) is not required to be incorporated or installed in or attached or added to the Project pursuant to the terms of the Plans (as defined in the Agreement for Lease), the Project Contracts or this Lease and (iii) can be removed from the Project without causing damage to the Project or any portion thereof, without adversely affecting the ability of the Project to operate in accordance with the Project Contracts, the Facility Support Agreement and this Lease and without diminishing the value, utility or remaining economic useful life which the Project would have had at such time had such alteration, modification or addition not been made (assuming the Project is in the condition required hereby). Upon the removal by the Lessee of any Removable Improvement as provided in the immediately preceding two sentences, title thereto shall, without further act, vest in the Lessee and such Removable Improvement will no longer be deemed part of the Project. Any Removable Improvement not removed by the Lessee prior to the return of the Project to the Lessor hereunder shall remain the property of the Lessor.

(c) The Lessee shall use every reasonable precaution to prevent loss or damage to the Project and to prevent injury to third persons or property of third persons. The Lessee shall cooperate fully with the Lessor and all insurance companies providing insurance pursuant to Section 10 hereof in the investigation and defense of any claims or suits arising from the ownership, operation, occupancy or use of the Project; provided that nothing contained in this paragraph (c) shall be construed as imposing on the Lessor any duty to investigate or defend any such claims or suits. The Lessee shall comply and shall cause all Persons using, operating or occupying the Project to comply with the Project Contracts and with all Insurance Requirements and Legal Requirements applicable to the Project, to the Lessee or such Person in connection with such Person's use, operation or occupancy of the Project (as the case may be) and to the acquiring, titling, registering, leasing, insuring, using, occupying, operating and disposing of the Project or any part thereof, and the licensing of operators thereof.

(d) The Lessor or any Assignee, or any authorized representative of either, may during reasonable business hours from time to time inspect the Project and deeds, registration certificates, certificates of title and related documents, including as to Environmental Matters, covering the Project wherever the same may be located, but neither the Lessor nor any Assignee shall have any duty to make any such inspection.

(e) The Lessee shall not, without the prior written consent of the Lessor, permit, or suffer to exist, any Lien upon the Project, including mechanics' liens or create any Lien upon the Premises, other than Permitted Liens, nor may it sell or assign any right or interest herein or in the Project. The Lessee shall not relinquish possession of the Project or any part thereof, except to the Operator, the General Contractor and to any other contractor for use in performing work on the Project for the Lessee pursuant to and in accordance with the Project Contracts; provided that such relinquishment of possession shall in no way affect the obligations of the Lessee or the rights of the Lessor hereunder and with respect to the Project. The Lessee may sublease the Project; provided, that (i) the terms of the instrument of sublease and the identity of the sublessee shall be subject to the prior written approval of the Lessor and any Assignee, which approval shall not be unreasonably withheld or delayed, (ii) each such sublease shall expressly be made subject and subordinate to the provisions hereof and shall, at the sole option of the Lessor and Assignee, by its terms be subject to termination upon the termination for any reason of this Lease, (iii) no such sublease shall modify or limit any right or power of the Lessor or Assignee hereunder or affect or reduce any obligation of the Lessee hereunder, and all such obligations shall continue in full force and effect as obligations of a principal and not of a guarantor or surety, as though no such subletting had been made, and (iv) any such sublease made otherwise than as expressly permitted by this paragraph (e) shall be void and of no force and effect. As additional security to the Lessor for the performance of the Lessee's obligations under this Lease, the Lessee hereby assigns to the Lessor and Assignee all of its right, title and interest in and to all subleases permitted hereby and agrees to cause any sublessee to enter into attornment agreements with the Lessor as the Lessor or Assignee shall request. The Lessor shall have the present and continuing right to collect and enjoy all rents and other sums of money payable under any such sublease, and the Lessee hereby irrevocably assigns such rents and other sums to the Lessor for the benefit and protection of the Lessor; provided that, unless an Event of Default, Event of Loss, Taking or Termination Event shall have occurred and be continuing hereunder, the Lessee shall be entitled to collect and enjoy such rents and other sums. The Lessee shall, within thirty (30) days after the execution of any such sublease, deliver

a conformed copy thereof to the Lessor and Assignee. Nothing contained in this Lease shall be construed as constituting the consent or request of the Lessor or Assignee, express or implied, to or for the performance by any contractor, laborer, materialman or vendor of any labor or services or for the furnishing of any materials for any construction, alteration, addition, repair or demolition of or to the Project or any part thereof. Notice is hereby given that the Lessor will not be liable for any labor, services or materials furnished or to be furnished to the Lessee, or to anyone holding the Project or any part thereof through or under the Lessee, and that no mechanics' or other liens for any such labor, services or materials shall attach to or affect the interest of the Lessor or Assignee in and to the Project.

(f) If any Lien or charge of any kind or any judgment, decree or order of any court or other Governmental Authority (including, without limitation, any state or local tax lien affecting the Project), whether or not valid, shall be asserted or entered which might interfere with the due and timely payment of any sum payable or the exercise of any of the rights or the performance of any of the duties or responsibilities under this Lease, the Lessee shall, upon obtaining knowledge thereof or upon receipt of notice to that effect from the Lessor, promptly take such action as may be necessary to prevent or terminate such interference.

(g) So long as this Lease is in effect or thereafter if the Lessee remains as party to any Project Contract as a result of its failure to assign to the Lessor (or its designated purchaser) all right, title and interest of the Lessee in and to such Project Contract pursuant to the terms of this Lease, the Lessee shall not create, incur, assume or permit to exist any Lien upon the Lessee's rights or obligations with respect to any Project Contract (other than the Lien of the Pledge Agreement), or sell or assign the Lessee's interest in any Project Contract, other than as permitted pursuant to a Financing Arrangement and the Pledge Agreement. The Lessee agrees that without the prior written consent of the Lessor and Assignee, no amendment, modification, supplement or restatement shall be made to any Project Contract, nor shall any Project Contract be terminated or replaced by a substitute agreement, nor shall the Lessee grant or request any waiver pursuant to any Project Contract other than (i) change orders under the EPC Contract in the manner and to the extent permitted under the Agreement for Lease, (ii) the expiration of the EPC Contract in accordance with its terms, and (iii) any amendment, modification, supplement, restatement consent or waiver which could not reasonably be expected to have a material adverse effect on (A) the construction, operation, maintenance, leasing, ownership, use, value or regulatory status of the Project, (B) the ability of the Lessee to observe and perform its obligations under this Lease, the Agreement for Lease, the Pledge Agreement, the Facility Support Agreement, the Consent or the Project Contracts in a timely manner or the ability of the Guarantor to perform its obligations under the Guaranty in a timely manner, (C) the business, assets, properties, financial condition, operations or prospects of the Lessee or the Guarantor, or (D) the rights or interests of the Lessor or Assignee under this Lease, the Agreement for Lease, the Pledge Agreement, the Facility Support Agreement, the Consent or the Project Contracts.

(h) The Project shall be maintained and operated solely as contemplated by the Project Contracts. The Lessee shall at its own expense take all actions as may from time to time be necessary so that neither the Lessor, Assignee nor any of their Affiliates will, solely as a result of entering into this Lease or any other document contemplated hereby or entered into in connection herewith or the transactions contemplated hereby or thereby (including, without limitation, the acquisition, operation, leasing, ownership or financing of the Project (or any

part thereof) or the delivery of electricity) be deemed to be, or be subject to regulation as, a public utility, an electric utility or a public utility holding company under any Legal Requirement, and the Lessee shall promptly and duly prepare and, if necessary, execute and file, and prepare for execution and filing by the Lessor, Assignee or any Affiliate thereof, such notices, applications and other documents as shall be necessary so that the Lessor, Assignee or any such Affiliate, as the case may be, shall be free of all such regulation. The Lessor, Assignee or any Affiliate thereof shall cooperate with the Lessee with respect to all actions of the Lessee required by this paragraph (h).

SECTION 9. MAINTENANCE, IMPROVEMENT AND REPAIR OF THE PROJECT.

(a) Upon the request of the Lessee, the Lessor will, so long as no Event of Default shall have occurred and be continuing, assign or otherwise make available to the Lessee any and all rights the Lessor may have under any vendor's or manufacturer's warranties or undertakings with respect to any equipment constituting a part of the Project.

(b) The Lessee shall pay all costs, expenses, fees and charges incurred in connection with the ownership, use, operation or occupancy of the Project. Except as otherwise provided in Section 15, the Lessee shall at all times, at its own expense, and subject to reasonable wear and tear, maintain or cause the Operator to maintain the Project as contemplated by, and during the term of, the Project Contracts, and upon the expiration of the Project Contracts to maintain the Project in accordance with generally accepted industry practices. The Lessee hereby agrees to indemnify and hold the Lessor and each Assignee harmless from and against all costs, expenses, claims, losses, damages, fines or penalties, including reasonable counsel fees, arising out of or due to the Lessee's failure to fulfill its obligations under this paragraph (b).

(c) The Lessee shall pay or discharge: (i) all taxes, assessments, levies, fees, water and sewer rents and charges, and all other governmental charges, general and special, ordinary and extraordinary, foreseen and unforeseen, which are, at any time, imposed or levied upon or assessed against (A) the Project, (B) any Basic Rent, any Additional Rent or other sum payable hereunder or (C) this Lease or the leasehold estate hereby created, or which arises in respect of the ownership, operation, occupancy, possession or use of the Project; (ii) all gross receipts or similar taxes (i.e., taxes based upon gross income which fail to take into account all customary deductions (e.g., ordinary operating expenses, depreciation and interest) relating to the Project) imposed or levied upon, assessed against or measured by any Basic Rent, or any Additional Rent or other sum payable hereunder; (iii) all sales, value added, use and similar taxes at any time levied, assessed or payable on account of the acquisition, leasing or use of the Project; and (iv) all charges of utilities and communications services serving the Project. Notwithstanding the previous sentence, the Lessee shall not be required to pay any estate, income or similar tax of the Lessor or any of its Affiliates (other than any tax referred to in clause (ii) above) unless such tax is imposed, levied or assessed in substitution for any other tax, assessment, charge or levy which the Lessee is required to pay pursuant to this paragraph (c); provided, however, that, if at any time during the term of this Lease, the method of taxation shall be such that there shall be levied, assessed or imposed on the Lessor a capital levy or other tax

directly on the rents received therefrom, or upon the value of the Project or any present or any future improvement or improvements on the Project, then all such taxes, assessments, levies or charges or the part thereof so measured or based, shall be payable by the Lessee, and the Lessee shall pay and discharge the same as herein provided; provided, further, that the provisions of this paragraph (c) shall not apply to taxes which are excluded from the indemnity provisions of paragraph (b) of Section 11 hereof. The Lessee will furnish to the Lessor, promptly after demand therefor, proof of payment of all items referred to above which are payable by the Lessee. If any such assessments may legally be paid in installments, the Lessee may pay such assessment in installments. The Lessee will pay and discharge, or cause to be paid and discharged, all taxes, assessments and governmental charges or levies imposed upon it or its income or properties, prior to the date on which penalties attach thereto, except to the extent that any such tax, assessment, governmental charge or levy is the subject of a Permitted Contest.

(d) So long as no Potential Default, Event of Default, Event of Loss, Taking or Termination Event shall have occurred and be continuing, the Lessee may, at its expense, make or permit additions to and alterations to the Project; provided that the Lessee has obtained the prior approval of the Lessor and Assignee that during construction and upon completion of such additions or alterations (i) neither the fair market value of the Project shall be lessened thereby nor the condition of the Project impaired, below the value, utility or condition thereof immediately prior to such action (assuming the Project was then of a condition and repair required to be maintained pursuant to paragraph (b) of Section 9 hereof), (ii) such work shall be completed in a good and workmanlike manner in accordance with generally accepted and prudent engineering and construction practices and in compliance with all applicable Legal Requirements and Insurance Requirements applicable to it and (iii) at all times the Project will be capable of delivering electricity at or above the level of its capability prior to the undertaking of such additions or alterations and will continue to be able to fully perform under (without any default or excuse to performance) all Project Contracts and this Lease.

(e) The Lessee agrees to, or to cause the Operator to, maintain at the Project at all times the necessary equipment in such condition so as to enable the Project to be operated and maintained in accordance with generally accepted and prudent industry practices and any other standards required by the Project Contracts and this Lease. The Lessee shall obtain or cause to be obtained in a timely manner and maintain or cause to be maintained in full force and effect all Governmental Actions required for the ownership, construction, leasing, operation and maintenance of the Project in accordance with and as contemplated by the Project Contracts and this Lease and as otherwise necessary to perform its obligations under the Project Contracts and the Facility Support Agreement and will promptly upon the request of the Lessor or Assignee provide a copy of each such Governmental Action to the Lessor and Assignee. The Lessee shall obtain and maintain, or cause to be obtained and maintained, all Intellectual Property Rights necessary in connection with the construction, operation and maintenance of the Project.

(f) The Lessee shall give notice to the Lessor promptly upon the receipt of any notices from any party to any Project Contract that (i) such party is amending, modifying or waiving or has proposed to amend, modify or waive any term of any Project Contract, (ii) such party is commencing or proposes to commence any dispute resolution procedure under the terms of any Project Contract, (iii) such party is terminating or has proposed to terminate any Project Contract, (iv) a default or a force majeure event has occurred under any Project Contract or any

Person has alleged that a default or a force majeure event has occurred under any Project Contract, or (v) there are claims for damages existing as a result of the Lessee's performance of or its failure to perform any of its obligations under any Project Contract.

SECTION 10. INSURANCE.

(a) Insurance pursuant to the Project Contracts. The Lessee shall maintain or cause to be maintained in full force and effect at all times insurance required by the terms of the Project Contracts.

(b) Insurance by the Lessee.

(i) The Lessee shall procure at its own cost and expense and maintain in full force and effect at all times on and after the Effective Date (except with respect to the physical damage described in clause (ii) below), and continuing throughout the term of this Lease insurance policies with responsible insurance companies authorized to do business in the State of Wyoming with a Best Insurance Reports rating of "A" or better and a financial size category of "IX" or higher, or if not rated by Best, an S&P claims paying ability rating of "BBB+" or higher, or, if not rated by either of the foregoing, the Lessee's insurance companies shall be of substantially equivalent financial strength and creditworthiness of insurance companies that maintain such ratings (or such other company acceptable to the Lessor and Assignee), with such deductibles as are approved by the Lessor and Assignee, and with such limits and coverage as is consistent with prudent industry practices, but in no event less than the limits and coverage provisions set forth below:

- (1) Workers' Compensation Insurance. Workers' compensation insurance in accordance with and as required under the laws of the State of Wyoming.
- (2) Employer's Liability Insurance. Employer's liability insurance providing compensation for occupational diseases and for injuries sustained by or death resulting to employees of the Lessee or its subcontractors as required by law, including the laws of each state wherein any work is performed under the Lease and where employment contracts of such employees were made, including employer's liability insurance coverage with a \$1,000,000 minimum limit per accident.
- (3) Commercial General Liability Insurance. Liability insurance on an occurrence (or AEGIS or EIM claims-made form) basis against claims for personal injury (including bodily injury and death) and property damage. Such insurance shall provide coverage for products-completed operations, blanket contractual, explosion, collapse and underground coverage, broad form property damage, personal injury insurance, and the hostile fire exception to the pollution liability exclusion with a \$1,000,000 minimum limit per occurrence for combined bodily injury and property damage.

- (4) Automobile Liability Insurance. Automobile liability insurance against claims for personal injury (including bodily injury and death) and property damage covering all owned, leased non-owned and hired motor vehicles, including loading and unloading, with a \$1,000,000 minimum limit per occurrence for combined bodily injury and property damage and containing appropriate no-fault insurance provisions wherever applicable.
- (5) Excess Liability Insurance. Excess liability insurance on an occurrence (or AEGIS or EIM claims-made form) basis covering claims in excess of the underlying insurance described in the foregoing subsections (2), (3) and (4), with a \$100,000,000 minimum limit per occurrence; provided, however, in the event the available limit of liability is less than \$50,000,000 due to claims against such excess liability insurance, the Lessee shall purchase additional coverage so that the available limit of liability under such excess liability insurance is not less than \$100,000,000.

The amounts of insurance required in the foregoing subsections (2), (3), (4) and this subsection (5) may be satisfied by the Lessee purchasing coverage in the amounts specified or by any combination of primary and excess insurance, so long as the total amount of insurance meets the requirements specified above.

(ii) The Lessee shall procure at its own cost and expense and maintain in full force and effect at all times on and after the Effective Date and continuing throughout the term of this Lease insurance policies with responsible insurance companies authorized to do business in the State of Wyoming with a Best Insurance Reports rating of "A" or better and a financial size category of "IX" or higher, or if not rated by Best, an S&P's claims paying ability rating of "BBB+" or higher, or, if not rated by either of the foregoing, the Lessee's insurance companies shall be of substantially equivalent financial strength and creditworthiness of insurance companies that maintain such ratings (or such other company acceptable to the Lessor and Assignee), with such limits and coverage provisions sufficient to satisfy the requirements set forth in each of the Project Contracts, but in no event less than the limits and coverage provisions set forth below:

All Risk Property Insurance. Property damage insurance on an "all risk" basis, boiler and machinery insurance on a comprehensive basis (covering all production machinery, including but not limited to pressure vessels, electrical turbines, generators, transformers and other related equipment, motors, air tanks, boilers, machinery, pressure piping or any other similar objects) including coverage against damage or loss caused by earth movement (including but not limited to earthquake, landslide, subsidence and volcanic eruption) fire, lightning and flood and providing coverage for (1) the Project in a minimum aggregate amount equal to the "full insurable value" of the Project, but in no event less than the Adjusted Acquisition Cost of the Project, (2) transit including ocean marine transit, if applicable, with sub-limits of \$5,000,000, (3) gas, steam and electrical transmission lines along with related equipment for which the Lessee has an insurable

interest, (4) foundations and other property below the surface of the ground and (5) attorneys' fees, engineering and other consulting costs, and permit fees directly incurred in order to repair or replace damaged insured property in a minimum amount of \$1,000,000. For purposes of this Section 10(b)(ii), "full insurable value" shall mean the full replacement value of the Project, including any improvements, equipment, spare parts, fuel and supplies, without deduction for physical depreciation and/or obsolescence. All such insurance may have deductibles of not greater than \$250,000 per occurrence. Such insurance shall (1) not include any coinsurance provision, (2) provide for increased cost of construction and loss to undamaged property as the result of enforcement of building laws or ordinances, and (3) include debris removal with sub-limits not less than \$1,000,000. The earth movement coverage may be insured with a sub-limit not less than \$100,000,000, and the flood coverage may be insured with a sub-limit not less than \$50,000,000. The property damage coverage shall not contain an exclusion for freezing, mechanical breakdown, loss or damage covered under any guaranty or warranty, or resultant damage caused by faulty workmanship, design or materials.

If the insurance company providing the physical damage insurance is different from the insurance company providing the boiler & machinery insurance required in this Section 10, then a joint loss agreement between such companies will be required and included as part of the respective policies.

Environmental Impairment Liability Insurance. Environmental impairment liability insurance for third party damages and injuries arising from a sudden and accidental occurrence, in an amount not less than \$10,000,000 per occurrence.

(iii) Endorsements. All policies of insurance required by this Section 10 shall provide for waivers of subrogation by the insurers in favor of the Lessor, Merrill, Merrill Lynch, Merrill Leasing, the general partner of the Lessor and its shareholders, officers and directors, the limited partners of the Lessor and Assignee and their respective officers, directors, members, trustees and employees (and such other Persons as may be required by the Project Contracts).

All policies of liability insurance required to be maintained by the Lessee under paragraphs (b)(i)(3), (4) and (5) of this Section 10 shall be endorsed as follows:

- (1) To provide a severability of interest or cross liability clause;
- (2) Such that the insurance shall be primary and not excess to or contributing with any insurance or self-insurance maintained by the Lessor, Merrill, Merrill Lynch, Merrill Leasing, the general partner of the Lessor and its shareholders, officers and directors, the limited partners of the Lessor or Assignee;

- (3) To name Merrill, Merrill Lynch, Merrill Leasing, the general partner of the Lessor and its shareholders, officers and directors, the limited partners of the Lessor and Assignee and their respective officers, directors, members, trustees and employees (and such other Persons as may be required by the Project Contracts) as additional insureds; and
- (4) To name the Lessor and its respective officers and employees as a named insured or an additional insured, as the Lessor may require.

All policies of insurance required to be maintained by the Lessee under paragraph (b)(ii) of this Section 10 shall name the Lessor as a named insured and name Merrill, Merrill Lynch, Merrill Leasing, the general partner of the Lessor and its shareholders, officers and directors, the limited partners of the Lessor and Assignee and its respective officers and employees (and such other Persons as may be required by the Project Contracts) as additional insureds.

(iv) Waiver of Subrogation. The Lessee hereby waives any and all claims for recovery from the Lessor, Merrill, Merrill Lynch, Merrill Leasing, the general partner of the Lessor and its shareholders, officers and directors, the limited partners of the Lessor and Assignee and their respective officers, directors, members, trustees and employees for any and all loss or damage covered by any of the insurance policies to be maintained under this Lease to the extent that such loss or damage is recovered under any such policy. Inasmuch as the foregoing waiver will preclude the assignment of any such claim to the extent of such recovery, by subrogation (or otherwise), to an insurance company (or other Person), the Lessee shall give written notice of the terms of such waiver to each insurance company which has issued, or which may issue in the future, any such policy of insurance (if such notice is required by the insurance policy) and shall cause each such insurance policy to be properly endorsed by the issuer thereof, or to otherwise contain one or more provisions that prevent the invalidation of the insurance coverage provided thereunder by reason of such waiver.

(c) Additional Requirements.

(i) The Lessee shall promptly notify the Lessor and Assignee of any loss in excess of \$100,000 covered by any insurance maintained pursuant to paragraph (b)(ii) of this Section 10.

(ii) All policies of insurance required to be maintained pursuant to paragraph (b)(ii) of this Section 10 shall provide that Assignee shall be the sole loss payee thereunder and that the proceeds of such policies shall be payable solely to the Operating Account pursuant to a standard first mortgage endorsement substantially equivalent to the Lenders Loss Payable Endorsement 438BFU or ISO endorsement CP12181091, without contribution. The Lessor and Assignee shall have the right to join the Lessee in adjusting any loss in excess of \$100,000. All policies (other than in respect to liability or workers compensation insurance) shall insure the interests of the Lessor, Merrill, Merrill Lynch, Merrill Leasing, the general partner of the Lessor, the limited partners of the Lessor and Assignee regardless of any breach or violation by the Lessee or Lessor of any warranties,

declarations or conditions contained in such policies, any action or inaction of the Lessee or the Lessor or others, or any foreclosure relating to the Project or any change in ownership of all or any portion of the Project.

(iii) A loss under any insurance required to be carried under paragraph (b)(ii) of this Section 10 shall be adjusted with the insurance companies, including the filing in a timely manner of appropriate proceedings by the Lessee, subject to the approval of the Lessor and Assignee if such loss is in excess of \$100,000. In addition the Lessee may in its reasonable judgment consent to the settlement of any loss; provided that, in the event that the amount of the loss exceeds \$100,000, the terms of such settlement shall be consented to by the Lessor and Assignee.

(iv) All policies of insurance required to be maintained pursuant to paragraph (b) of this Section 10 shall be endorsed so that if at any time they should be canceled, or coverage shall be reduced in a manner which affects the interests of the Lessor, Merrill, Merrill Lynch, Merrill Leasing, the general partner of the Lessor, the limited partners of the Lessor or Assignee, such cancellation or reductions shall not be effective as to the Lessor, Merrill, Merrill Lynch, Merrill Leasing, the general partner of the Lessor, officers and directors, the limited partners of the Lessor and Assignee for 60 days (except for non-payment of any premium, which shall be for 10 days), after receipt by the Lessor and Assignee of written notice from such insurer of such cancellation or reduction.

(v) All policies of insurance required to be maintained pursuant to paragraph (b)(ii) of this Section 10 shall not include any annual or term aggregate limits of liability or clause requiring the payment of additional premium to reinstate the limits after loss except as regards the insurance applicable to the perils of flood, earth movement, sabotage and terrorism.

(vi) The Lessee may, at its own cost and expense, prosecute any claim against any insurer or contest any settlement proposed by any insurer, and the Lessee may bring any such prosecution or contest in the name of the Lessor, the Lessee, or both, and the Lessor will join therein at the Lessee's request, provided that the Lessee shall indemnify the Lessor against any losses, costs or expenses (including reasonable attorney's fees) which the Lessor may incur in connection with such prosecution or contest.

(d) Evidence of Insurance. On the date of this Lease and on an annual basis at least 10 days prior to each policy anniversary, the Lessee shall furnish the Lessor and Assignee with (1) a certificate or other evidence reasonably acceptable to the Lessor and Assignee that all insurance required under this Section 10 is in force with respect to the Project and (2) a schedule of the insurance policies held by or for the benefit of the Lessee and required to be in force by the provisions of paragraph (b) of this Section 10. Each certificate shall be executed by each insurer or by an authorized representative of each insurer where it is not practical for such insurer to execute the certificate itself. Upon request, the Lessee will promptly furnish the Lessor and Assignee with copies of all insurance policies, binders and cover notes or other evidence of such insurance relating to the insurance required to be maintained by the Lessee.

(e) Reports. Upon the request of the Lessor, concurrently with the furnishing of the certificate referred to in paragraph (d) above, the Lessee shall furnish the Lessor and Assignee with a letter, signed by an officer of the Lessee or one of its Affiliates or a member of the risk management group of the Lessee or one of its Affiliates, stating that in the opinion of such officer or member, the insurance then carried or to be renewed is in accordance with the terms of paragraph (b) of this Section 10 and attaching an updated copy of the schedule of insurance required by paragraph (d) above. In addition, the Lessee will advise the Lessor and Assignee in writing promptly of any default in the payment of any premium and of any other act or omission on the part of the Lessee which may invalidate or render unenforceable, in whole or in part, any insurance being maintained by the Lessee pursuant to paragraph (b) of this Section 10.

(f) Failure to Maintain Insurance. In the event the Lessee fails to maintain the full insurance coverage required by paragraph (b) of this Section 10, the Lessor or Assignee, upon 30 days' prior notice (unless the aforementioned insurance would lapse within such period, in which event notice should be given as soon as reasonably possible) to the Lessee of any such failure, may (but shall not be obligated to) take out the required policies of insurance and pay the premiums on the same.

(g) No Duty of the Lessor or Assignee to Verify or Review. No provision of this Section 10, or any provision of this Lease or any Project Contract, shall impose on the Lessor or Assignee any duty or obligation to verify the existence or adequacy of the insurance coverage maintained by the Lessee, nor shall the Lessor or Assignee be responsible for any representations or warranties made by or on behalf of the Lessee to any insurance company or underwriter. Any failure on the part of the Lessor or Assignee to pursue or obtain the evidence of insurance required by this Lease from the Lessee and/or failure of the Lessor or Assignee to point out any non-compliance of such evidence of insurance shall not constitute a waiver of any of the insurance requirements in this Lease.

(h) Application of Insurance and Other Proceeds for and Event of Loss and Certain Takings. It is agreed that (i) any insurance payments received as the result of the occurrence of any Event of Loss, and (ii) any amounts received in connection with any event of Taking described in paragraph (a) of Section 16 hereof, shall be paid to the Operating Account and disposed of as set forth in paragraph (c) of Section 15 hereof.

(i) Application of Insurance and Other Proceeds for Other than Loss or Taking. The insurance proceeds of any property damage loss to the Project not constituting an Event of Loss, or any amounts received in connection with any event of Taking described in paragraph (b) of Section 16 hereof will be held in the Operating Account and applied in payment (or to reimburse the Lessee) for repairs or replacement in accordance with the terms of paragraph (b) of Section 15 hereof or paragraph (b) of Section 16 hereof. The Lessee shall be entitled, subject to its compliance with the immediately succeeding sentence, (i) to receive the amounts so deposited against certificates, invoices or bills reasonably satisfactory to the Lessor, delivered to the Lessor from time to time as such work or repair progresses, and (ii) to direct the investment of the amounts so deposited as provided in paragraph (j) of this Section 10. To the extent that the Lessor reasonably estimates that the cost of such work or repair shall exceed the amount of proceeds, the Lessee shall make adequate provisions for the payment thereof, which provisions

shall be reasonably acceptable to the Lessor and Assignee (as to the terms of the commitment and the creditworthiness of the funding party). Any moneys remaining in the aforesaid account after final payment for repairs has been made shall be used by the Lessor to reduce the Adjusted Acquisition Cost by such amount. Thereupon, the Lessor shall adjust the Adjusted Acquisition Cost to reflect such reduction.

(j) Investment. The Lessor, at the Lessee's instruction, shall invest the amounts deposited with the Lessor pursuant to paragraph (i) of this Section 10 in any investments permitted under a Financing Arrangement. Such investments shall mature in such amounts and on such dates so as to provide that amounts shall be available on the draw dates sufficient to pay the amounts requested by and due to the Lessee. Any interest earned on investments of such funds shall be paid to the Lessee. The Lessor shall not be liable for any loss resulting from the liquidation of each and every such investment and the Lessee shall bear the risk of such loss, if any.

(k) Application. Any amount referred to in paragraphs (c)(ii), (i) or (j) of this Section 10 which is payable to the Lessee shall not be paid to the Lessee or, if it has been previously paid to the Lessee, shall not be retained by the Lessee, if at the time of such payment any Potential Default, Event of Default, Event of Loss, Taking or Termination Event shall have occurred and be continuing. In such event, all such amounts shall be paid to and held by the Lessor as security for the obligations of the Lessee hereunder or, at the Lessor's option, applied by the Lessor toward payment of any of such obligations of the Lessee at the time due hereunder as the Lessor may elect. At such time as there shall not be continuing any Potential Default, Event of Default, Event of Loss or Taking, all such amounts at the time held by the Lessor in excess of the amount, if any, which the Lessor shall have elected to apply as above provided shall be paid to the Lessee.

(l) "Claims Made" Policies for Certain Types of Insurance. If any liability insurance required under the provisions of this Section 10 is allowed to be written on a "claims made" basis, then such insurance shall include the following:

- (i) The retroactive date (as such term is specified in each of such policies) shall be no later than the date of this Lease; and
- (ii) each time any policy written on a "claims made" basis is not renewed or the retroactive date of such policy is to be changed, the Lessee shall obtain or cause to be obtained for each such policy or policies the broadest extended reporting period coverage, or "tail" reasonably available in the commercial insurance market for each such policy or policies, as determined in the reasonable judgment of the Lessor and Assignee, but in no event less than two years after the expiration of such policy or policies.

(m) Use or Operation of the Project. The Lessee covenants that it will not use, occupy or operate the Project or permit the use, occupancy or operation of the Project at a time when the insurance required by this Section 10 is not in force.

SECTION 11. INDEMNITIES.

(a) The Lessee shall indemnify, protect, defend and hold harmless the Lessor, each general and limited partner of the Lessor, Merrill, Merrill Lynch, Merrill Leasing, each Assignee, and their respective assigns and successors, and each Affiliate of each of them, and their respective officers, directors, trustees, incorporators, shareholders, members, partners (general and limited), employees, agents and servants (each of the foregoing an "Indemnified Person") from and against any and all liabilities (including, without limitation, Environmental Damages and strict liability in tort), taxes, losses, obligations, claims, damages, penalties, causes of action, suits, costs and expenses (including, without limitation, attorneys', experts', consultants' and accountants' fees and expenses) or judgments of any nature relating to or in any way arising out of:

(i) the purchasing, ordering, delivery, acquisition, construction, title on acquisition, rejection, installation, possession, titling, retitling, registration, re-registration, custody by the Lessee of title and registration documents, ownership, leasehold or easement interest in the Premises, lease, sublease, lease or easement interests under the Ground Lease, use, non-use, misuse, financing (including, without limitation, all obligations of the Lessor under or in respect of any Financing Arrangement), operation, transportation, repair or control of the Project or any part thereof, and any accident, injury, death or property damage on or about the Project, the Project Contracts, or any other event, act or omission arising from or relating to the execution, performance, termination or enforcement of this Lease or any other Operative Document or the transactions contemplated therein, (A) except to the extent that such costs are included in the Acquisition Cost or Adjusted Acquisition Cost of the Project or have been paid by the Lessee as Basic Rent or Additional Rent, (B) except for any general administrative expenses of the Lessor, (C) except the income taxes with respect to which indemnification is excluded under paragraph (b) of this Section 11 and (D) except that this indemnity shall not increase any payment required to be made by the Lessee pursuant to paragraph (b)(iii)(A) or (c)(iii)(A) of Section 12 of this Lease;

(ii) the assertion of any claim or demand based upon any infringement or alleged infringement of any patent or other right, by or in respect of the Project or any part thereof; provided, however, that, upon request of the Lessee, the Lessor will make available to the Lessee the Lessor's rights under any similar indemnification arising from any manufacturer's or vendor's warranties or undertakings with respect to any equipment constituting a part of the Project;

(iii) any violation, or alleged violation, by the Lessee of this Lease, the Project Contracts, any Operative Document or of any contracts or agreements to which the Lessee is a party or by which it is bound or of any laws, rules, regulations, orders, writs, injunctions, decrees, consents, approvals, exemptions, authorizations, licenses and withholdings of objection, of any governmental or public body or authority and all other Legal Requirements applicable to the Project;

(iv) any breach of a representation, warranty or covenant made herein, in the Agreement for Lease or in the Guaranty or which is contained in any certificate,

document or financial or other statement furnished by or on behalf of the Lessee or the Guarantor under or in connection with this Lease, the Agreement for Lease or the Guaranty;

(v) any default by the Lessee in the performance or observance of any term, covenant, condition or obligation contained in this Lease or any failure by the Lessee to comply with the Ground Lease, the Easements, the Facility Support Agreement, any Project Contract or any other Operative Document;

(vi) any and all Environmental Damages relating to or in any way arising out of the Project, including, without limitation:

(A) the violation or alleged violation of or compliance or non-compliance with any Environmental Requirements (i) in connection with the ownership or operation of the Project, and (ii) by any prior owner or operator of the Premises in connection with the ownership or operation of the Premises;

(B) the Release or threatened Release at, to or from any location of any Contaminants, or Remedial Action or corrective action (as the latter term is used in Section 3004(u), 3004(v), and 3008(h) of the Resource Conservation and Recovery Act or any equivalent state, local or foreign law) to address any Contaminants, (i) generated, treated, recycled, stored, processed, used or disposed by or on behalf of the Lessee at or in connection with the Project, (ii) generated, treated, recycled, stored, processed, used or disposed by or on behalf of any prior owner or operator of the Premises in connection with the ownership or operation of the Premises, (iii) transported by or on behalf of the Lessee or any other Person to or from the Project for treatment, recycling, processing, use or disposal at any location, or (iv) removed by any Person from any portion of the Project; and

(C) the presence or alleged presence of any Contaminant at, in, on or under the Project;

(D) the failure to report, disclose or remediate any of the foregoing or to comply with any applicable consent order or voluntary agreement with any Governmental Authority; and

(E) any allegations of any of the foregoing; and

(vii) the Project Contracts and the Operative Documents.

(b) The Lessee agrees to indemnify, protect, defend and hold harmless each Indemnified Person from and against all U.S. Federal, state, county, municipal, foreign or other fees and taxes of whatsoever nature, including, but not limited to, license, qualification, franchise, rental, withholding, sales, use, net income, gross income, gross receipts, ad valorem, business, personal property, real estate, value added, excise, motor vehicle, occupation fees and stamp or other taxes or tolls of any nature whatsoever, and penalties and interest thereon, whether assessed, levied against or payable by the Lessor or any Indemnified Person, with respect to the Project or the acquisition, purchase, sale, rental, use, operation, control or

ownership of the Project (including, without limitation, any claim by any Governmental Authority for transfer tax, transfer gains tax, mortgage recording tax, filing or other similar taxes or fees in connection with the acquisition of the Project by the Lessor or otherwise in connection with this Lease) or measured in any way by the value thereof or by the business of, investment in, or ownership by the Lessor with respect thereto; provided that this indemnity shall not apply to (x) Federal, state or local taxes that are based upon or measured by net income or taxes in lieu of net income taxes (including taxes based on capital gains and minimum taxes) imposed directly upon any of the limited or general partners of Wygen Funding, Limited Partnership, or upon Wygen Funding, Limited Partnership itself, except that such indemnity shall apply to (1) such net income taxes imposed by a state or local government or other taxing authority thereof (A) as a result of the location or use of the Project within the jurisdiction of such government or taxing authority or (B) to the extent imposed in whole or in part by reason of a relationship or asserted relationship between such government or other taxing authority and the Project or the transactions contemplated herein, and (2) such net income taxes to the extent imposed as a result of the inability to claim, or disallowance or other loss of deductions customarily allowed in computing net income relating directly or indirectly to the Project (e.g., interest expense, financing, administrative, ordinary operating expenses and other fees and expenses); (y) any taxes imposed upon an Indemnified Person with respect to any voluntary transfer, sale, financing or other voluntary disposition of any interest in the Project or any part thereof, or any interest therein or any interest under this Lease (other than any transfer, sale or other disposition (i) pursuant to the terms of this Lease, (ii) after the occurrence of an Event of Default, or (iii) in connection with an Event of Loss); and (z) taxes imposed on an assignee to the extent that any such taxes exceed the taxes that would have been imposed had no such assignment taken place, determined under the law as in effect on the date of such assignment; provided, that this exclusion shall not apply to an assignee that acquires the interest of an Indemnified Person pursuant to an assignment during the continuance of an Event of Default.

(c) Subject to paragraph (a) of Section 27 hereof, the Lessee shall forthwith upon demand, reimburse any Indemnified Person for any sum or sums expended with respect to any of the foregoing or, upon request from any Indemnified Person, shall pay such amounts directly. Any payment made to, or on behalf of, any Indemnified Person pursuant to this Section 11 shall be increased to such amount as will, after taking into account all taxes imposed with respect to the accrual or receipt of such payment (as the same may be increased pursuant to this sentence), equal the amount of the payment, reduced by the amount of any savings in such taxes actually realized by the Indemnified Person as a result of the payment or accrual of the amounts in respect of which the payment to or on behalf of the Indemnified Person hereunder is made. To the extent that the Lessee in fact indemnifies any Indemnified Person under the indemnity provisions of this Lease, the Lessee shall be subrogated to such Indemnified Person's rights in the affected transaction and shall have a right to determine the settlement of such indemnified claims therein.

(d) The indemnities contained in this Section 11 shall not be affected by any termination or expiration of this Lease.

(e) Notwithstanding any provisions of this Section 11 to the contrary, the Lessee shall not indemnify and hold harmless any Indemnified Person against any claims and

liabilities to the extent arising solely from the gross negligence or willful misconduct of such Indemnified Person.

(f) In the event the Lessor or any Indemnified Person shall be a party defendant to any litigation arising out of any provision contained in this Lease for which the Lessee has given indemnification, the Lessor or such other Indemnified Person shall give prompt notice thereof to the Lessee by telephone and in writing and shall consult and cooperate, at the Lessee's expenses with the Lessee, and if the Lessor shall not have appeared or pleaded to any such action then the Lessor does hereby empower any attorney of any court of record appointed by the Lessee (who shall give prompt written notice to the Lessor of such appointment) to appear for the Lessor and in good faith and with due diligence defend such action, to enter counterclaims, to institute actions against third parties and to do all things necessary or desirable in the judgment of such attorney after consultation with the Lessor and the Lessee to preserve the rights of the Lessor and the Lessee, all at the Lessee's own cost and expense. No failure or delay of the Lessor to give the notice required by this Section 11 shall excuse the obligation of the Lessee to indemnify the Lessor with respect to such litigation except to the extent that any increase in liability is a direct result of such failure or delay.

(g) The Lessee or its agent shall withhold any taxes required to be withheld on any payment to or on behalf of the Lessor as a result of such Indemnified Person not being a United States person within the meaning of Section 7701 of the Code. The amount payable to the Lessor shall be reduced by the amount of any such withholding taxes required to be withheld by the Lessee pursuant to the preceding sentence and the Lessee shall have no liability or obligation to any Indemnified Person with respect to such withholding taxes, except to the extent that such withholding taxes arise as the result of a change in Legal Requirements in which case the Lessee and the Guarantor shall be responsible for, and shall indemnify and hold harmless any Indemnified Person (without duplication of any indemnification required in paragraph (b) of this Section 11) against, any claims regarding such withholding taxes made against the Lessor to the extent, but only to the extent, the Lessor and its agent has actually paid funds to a taxing authority with respect to such withholding taxes or receives a demand for such payments from any taxing authority. In the event there is a change in Legal Requirements and a withholding tax is otherwise indemnifiable under paragraph (b) of this Section 11, any payments made after the change in Legal Requirements hereunder to the Lessor shall be increased to the amount necessary so that the amount received by the Lessor equals the amount that would have been received if no withholding tax were payable. If an Indemnified Person is permitted under Legal Requirements to file or complete a form, certificate or other document that would entitle such Indemnified Person to an exemption from or reduction in a withholding tax indemnified hereunder, the Lessee shall provide such form, certificate or other document to such Indemnified Person on a timely basis, and each such Indemnified Person hereby covenants to execute and deliver to the Lessee any such form, certificate or other document in such manner as shall entitle such Indemnified Person to enjoy such exemption or reduction to the fullest extent permitted under Legal Requirements with respect to each payment hereunder unless such Indemnified Person reasonably determines in its sole discretion that providing such form, certificate or other document will adversely affect it. In accepting and carrying out its duties with respect to withholding taxes pursuant to this paragraph (g), the Lessor shall act as the duly authorized agent of the Lessee under the withholding provisions of Chapter 3 of the Code. The Lessee shall file notice of such appointment with the Director of Foreign Operations District of the Internal

Revenue Service in accordance with Treas. Reg. Section 1.1441-7(b). Such agency shall terminate in the event that Legal Requirements are amended so as to release the Lessee of the obligation to withhold taxes with respect to payments made by the Lessee under this Lease and in any event upon termination or expiration of this Lease. For purposes of this paragraph (g), it shall be assumed that this Lease constitutes a loan for United States federal income tax purposes (as is the parties' intention).

SECTION 12. LESSEE'S RIGHT TO TERMINATE.

(a) So long as the Lessee can satisfy the Termination Conditions, the Lessee shall have the right, upon eighteen (18) months' notice to the Lessor (the "Termination Notice"), to terminate the lease of the Project as a whole (i) on the last day of the Initial Term or (ii) on the last day of any Extended Term or Renewal Term (either of such dates as identified in the Termination Notice being hereinafter called the "Termination Date"), by arranging, at its own cost and expense, for the sale of the Project in an arm's-length transaction on the Termination Date and the receipt by the Lessor of cash in an amount equal to the sale price of the Project (the "Cash Proceeds"). In the event the Lessee has given a Termination Notice pursuant to this paragraph (a) and has failed to arrange for the sale of the Project in an arm's-length transaction on the last day of the Initial Term pursuant to paragraph (b) of this Section 12, or on the last day of any Extended Term or Renewal Term pursuant to paragraph (c) of this Section 12, the Cash Proceeds shall be deemed to be \$1.

In the event the Lessee is unable to satisfy the Termination Conditions on the Termination Date, the Lessee shall not terminate this Lease pursuant to this paragraph (a), and the Lessee shall purchase the Project as provided in paragraph (e) of Section 13 hereof, unless the Lessee has obtained the prior written consent of the Lessor and Assignee to such termination of this Lease and the sale of the Project. In addition, if the Lessee has given a Termination Notice and an Event of Default occurs, the Termination Notice shall be invalidated and the Lessee shall no longer have the right to cause the termination of the lease of the Project and sale of the Project to its designee in accordance with the terms of this paragraph (a). At the time the Project is sold pursuant to this Section 12, the Lessor shall deliver the documents described in paragraph (h) of Section 29 hereof, and the Lessor's rights and obligations in respect of the Ground Lease, the Easements, the EPC Contract and any other Project Contract to which the Lessor is a party, shall be assumed by the purchaser, with the Lessor released from liability in respect thereof. In addition, (i) the Lessee shall assign (or if not legally assignable, cooperate and assist to the extent necessary or required in the transfer or reissuance thereof) to the purchaser, at no cost, all right, title and interest of the Lessee in, to and under all Governmental Actions and Intellectual Property Rights needed for the equipping, maintenance, operation or use of the Project and obtained and held by the Lessee at that time, (ii) the Lessee shall assign to the purchaser, at no cost, and the purchaser shall assume, all right, title and interest of the Lessee in, to and under the Project Contracts, and in the event any additional consent of any party to a Project Contract is required as a precondition thereunder to an assignment to any such non-foreclosure purchaser designated by the Lessee, to use its best efforts to obtain any such required consent to such proposed non-foreclosure assignment and assumption of the Project Contracts, (iii) the Lessee shall assign to the purchaser, at no cost, all right, title and interest of the Lessee in, to and under all service agreements in existence at that time in connection with the equipping,

maintenance, operation or use of the Project, and (iv) as a condition to such sale, the purchaser shall be entitled to succeed to the Lessor's rights and obligations under the Facility Support Agreement. In the event the Lessee fails to obtain any consents required in clause (ii) of the immediately preceding sentence, at the request of such purchaser, the Lessee shall agree to (1) at the expense of such purchaser, continue to perform under and maintain in full force and effect the Project Contracts and pay all sums received under the Project Contracts to such purchaser, (2) at the expense of such purchaser, and subject to the receipt of indemnification reasonably acceptable to the Lessee, take all actions requested by such purchaser with respect to such Project Contracts (including all actions with respect to the enforcement of the Lessee's rights and remedies under such Project Contracts), and (3) not amend, modify, supplement, waive a provision of, grant any consent under or terminate any such Project Contract without the prior written consent of such purchaser.

(b) In the event the Lessee exercises its right to terminate the lease of the Project pursuant to this Section 12 on the last day of the Initial Term, or in the event a termination of the lease of the Project occurs pursuant to paragraph (a) of Section 14 hereof on or before the last day of the Initial Term and the Lessee chooses to effect a sale pursuant to this Section 12:

- (i) if the Cash Proceeds (or deemed proceeds) are greater than the Adjusted Acquisition Cost, the Lessor shall pay to the Lessee the amount by which such Cash Proceeds exceed the Adjusted Acquisition Cost;
- (ii) if the Cash Proceeds (or deemed proceeds) are equal to the Adjusted Acquisition Cost, no additional payments shall be required under this clause (ii); and
- (iii) if the Cash Proceeds (or deemed proceeds) are less than the Adjusted Acquisition Cost (the difference being the "Section 12(b) Shortfall"), the Lessee shall pay to the Lessor an amount equal to the sum of (A) the lesser of (1) the Section 12(b) Shortfall and (2) 83.5% of the Adjusted Acquisition Cost plus (B) the amount by which the residual value of the Project has been reduced by wear and tear in excess of that attributable to normal and proper use (the amount of such excess wear and tear to be such amount as the Lessor and the Lessee agree, or if no agreement is reached, the amount determined pursuant to the Appraisal Procedure).

(c) In the event the Lessee exercises its right to terminate the lease of the Project pursuant to this Section 12 on the last day of any Extended Term or any Renewal Term, or in the event a termination of the lease of the Project occurs pursuant to paragraph (a) of Section 14 hereof, or in the event the Lessee exercises its option under paragraph (e) of Section 13 to arrange for the Project to be sold (or if a sale shall be deemed to occur pursuant to such Section 13(e)), and the date on which such termination occurs is during any Extended Term or any Renewal Term and the Lessee chooses to effect a sale pursuant to this Section 12:

- (i) if the Cash Proceeds (or deemed proceeds) are greater than the Adjusted Acquisition Cost, the Lessor shall pay to the Lessee the amount by which such Cash Proceeds exceed the Adjusted Acquisition Cost;
- (ii) if the Cash Proceeds (or deemed proceeds) are equal to the Adjusted Acquisition Cost, no additional payments shall be required under this clause (ii); and
- (iii) if the Cash Proceeds (or deemed proceeds) are less than the Adjusted Acquisition Cost (the difference being the "Section 12(c) Shortfall"), the Lessee shall pay to the Lessor an amount equal to the sum of (A) the lesser of (1) the Section 12(c) Shortfall and (2) 83.5% of the Adjusted Acquisition Cost plus (B) the amount by which the residual value of the Project has been reduced by wear and tear in excess of that attributable to normal and proper use (the amount of such excess wear and tear to be such amount as the Lessor and the Lessee agree, or if no agreement is reached, the amount determined pursuant to the Appraisal Procedure.

(d) All payments and credits referred to in paragraphs (b) and (c) above shall be made on the Termination Date of the Project pursuant to this Section 12, and the parties shall account to each other for such payments and credits, and the Lessee shall pay to the Lessor (i) all Basic Rent payable through the date of termination of this Lease, (ii) the Variable Component of Basic Rent accrued through the date of termination of this Lease, (iii) any Additional Rent owing, (iv) all amounts payable pursuant to Sections 11, 24 and 26 hereof, (v) all losses, damages, costs and expenses (including, without limitation, attorneys' fees and expenses, commissions, filing fees and sales or transfer taxes) sustained by the Lessor by reason of such sale, and (vi) all other amounts owing hereunder (after taking into account the application under the Financing Arrangements of such purchase price and other payments hereunder), each as of the Termination Date. Upon indefeasible receipt by the Lessor of the Cash Proceeds and all other amounts then due and owing hereunder, including, without limitation, the amount of excess wear and tear determined pursuant to paragraph (b)(iii) or (c)(iii) of Section 12, as the case may be, the Lessor shall transfer its interest in the Project to the purchaser at the sale designated by the Lessee. The "Cash Proceeds" referred to in paragraphs (b) and (c) of this Section 12 shall mean the cash proceeds (or deemed proceeds) of sale without reduction for any amounts paid by the Lessee. In the event of a sale pursuant to this Section 12, neither the Lessee nor any Affiliate of the Lessee shall purchase the Project.

(e) In its Termination Notice given pursuant to paragraph (a) of this Section 12, the Lessee shall advise the Lessor if the sale provided for in such Termination Notice will result in Cash Proceeds (or deemed proceeds) of less than 16.5% of the Adjusted Acquisition Cost (in the case of paragraph (b)(iii) above) or 16.5% of the Adjusted Acquisition Cost (in the case of paragraph (c)(iii) above). If such Termination Notice does not indicate such sale will result in cash proceeds of less than 16.5% of Adjusted Acquisition Cost, then the Lessee may not thereafter arrange for a sale which will result in the application of clause (A)(2) of paragraph (b)(iii) or (c)(iii) of Section 12 hereof. If the Lessee advises the Lessor that such Cash Proceeds will be applicable, the Lessor shall have the right to arrange for a sale of the Project to be made to a purchaser designated by the Lessor, if such purchaser will pay an amount greater than the

amount offered by the Lessee's purchaser. Unless the Lessor shall arrange for such sale and shall give the Lessee notice thereof within one hundred eighty (180) days of the Lessor's receipt of the Termination Notice, the Lessee may proceed with the sale to a purchaser designated by it. Within thirty (30) days of the Lessee's receipt of the Lessor's notice provided for in the preceding sentence, the Lessee may arrange for such sale to be made to another purchaser designated by it, if such purchaser shall pay an amount equal to or greater than 16.5% of the Adjusted Acquisition Cost (in the case of paragraph (b)(iii) above) or 16.5% of the Adjusted Acquisition Cost (in the case of paragraph (c)(iii) above).

SECTION 13. LESSEE'S RIGHTS OF PURCHASE AND RENEWAL

(a) The Lessee shall have the right, upon ninety (90) days' written notice to the Lessor, to purchase the Project as a whole on any Basic Rent Payment Date for an amount equal to its Adjusted Acquisition Cost; provided, however, that, if an Event of Default has occurred and is continuing, and, prior to the purchase by the Lessee pursuant to this paragraph (a), the Lessor arranges for the sale of the Project to a third party purchaser, the Lessee shall no longer have the right to purchase the Project in accordance with the terms of this paragraph (a). In connection with, and as a condition to, any purchase under this Section 13, on the Basic Rent Payment Date upon which such purchase occurs, the Lessee shall pay to the Lessor (i) the purchase price, (ii) all Basic Rent payable through the date of purchase, (iii) the Variable Component of Basic Rent accrued through the date of purchase, (iv) any Additional Rent owing, (v) all amounts payable pursuant to Sections 11, 24 and 26 hereof, (vi) all Unrecovered Liabilities and Judgments, (vii) all losses, damages, costs and expenses (including, without limitation, attorneys' fees and expenses, commissions, filing fees and sales or transfer taxes) sustained by the Lessor by reason of such purchase, and (viii) all other amounts owing hereunder (after taking into account the application under the Financing Arrangements of such purchase price and other payments hereunder). At the time the Project is sold pursuant to this paragraph (a), the Lessor shall deliver the documents described in paragraph (h) of Section 29 hereof, and the Lessor's rights and obligations in respect of the Ground Lease, the Easements, the EPC Contract and any other Project Contract shall be assumed by the Lessee, with the Lessor released from liability in respect of each thereof.

(b) Upon the occurrence of an Event of Default and upon the written request of the Lessee, which shall be received no later than fifteen (15) Business Days subsequent to receipt of notice from the Lessor or any Assignee pursuant to this Lease that an Event of Default has occurred, the Lessee shall have the right, not later than thirty (30) Business Days after the Lessor's receipt of such request, to purchase the Project as a whole at a price equal to its then Adjusted Acquisition Cost; provided that the purchase option contained in this paragraph shall only be available to the Lessee if (i) in the reasonable judgment of the Lessor and any Assignee, the purchase price and all other amounts paid by the Lessee will not in the circumstances in which such payment is made constitute a preferential payment or a voidable transfer or otherwise be subject to recapture pursuant to the provisions of the Federal Bankruptcy Code in a bankruptcy proceeding by or against the Lessee and will not otherwise result in the payment being subject to recapture from the Lessor or (ii) the Guarantor has provided a guaranty of the payment of such purchase price and all other amounts required to be paid by the Lessee under this paragraph (b) in the event payment of such amounts is recovered as such a preferential

payment or a voidable transfer, which guaranty shall be in form and substance reasonably satisfactory to the Lessor and any Assignee. In connection with, and as a condition to, the purchase of the Project pursuant hereto, (i) the Lessee shall pay at the time of purchase, in addition to the purchase price, (A) all Basic Rent owing through the date of termination, (B) the Variable Component of Basic Rent accrued through the date of termination of this Lease, (C) any Additional Rent owing, (D) all amounts payable pursuant to Sections 11, 24 and 26 hereof, (E) all Unrecovered Liabilities and Judgments, (F) all losses, damages, costs and expenses (including, without limitation, attorneys' fees and expenses, commissions, filing fees and sales or transfer taxes), sustained by the Lessor by reason of such purchase, and (G) all other amounts owing by the Lessee hereunder as of the date of termination, and (ii) when the Lessor transfers title, such transfer shall be on an as-is, non-installment sale basis, without warranty by, or recourse to, the Lessor. At the time the Project is sold pursuant to this paragraph (b), the Lessor shall deliver the documents described in paragraph (h) of Section 29 hereof, and the Lessor's rights and obligations in respect of the Ground Lease, the Easements, the EPC Contract and any other Project Contract shall be assumed by the Lessee, with the Lessor released from liability in respect of each thereof.

(c) Subject to the provisions of paragraph (a) of Section 14 of this Lease, so long as (i) no Event of Default, Event of Loss, Taking or Termination Event has occurred and is continuing and (ii) all amounts owing under any Financing Arrangements and all Equity Capital have been indefeasibly paid in full (after taking into account the application under the Financing Arrangements of all payments hereunder), the Lessee shall have the right, upon twelve (12) months' written notice to the Lessor (the "Renewal Notice"), to renew the lease of the Project for an additional term (the "Renewal Term") to be determined by the Lessee, commencing on the first day of the calendar month following the last day of the Second Extended Term, on the same terms and conditions (including, without limitation, being subject to all rights and remedies of the Lessor and any Assignee relating to Events of Default and Events of Loss) as existed during the Lease Term, at the fair market value rental.

(d) The fair market value rental of the Project for purposes of paragraph (c) of this Section 13 shall be an amount agreed to by the Lessor and the Lessee or, if they are unable to agree, an amount determined pursuant to the Appraisal Procedure.

(e) In the event the Lessee does not deliver the Renewal Notice in accordance with the provisions of paragraph (c) of this Section 13, the Lessee shall be required to select one of the following two options: (i) to purchase, on the last day of the Lease Term or the Renewal Term, as the case may be, the Lessor's interest in the Project for cash at its Adjusted Acquisition Cost, in accordance with the provisions of paragraph (a) of this Section 13 (including the payment of all amounts described in such paragraph (a)); or (ii) if the Lessee has provided the Termination Notice to the Lessor in accordance with the provisions of paragraph (a) of Section 12 hereof, to arrange for the Project to be sold in accordance with the provisions of Section 12 hereof and with the consequences therein provided (including, without limitation, receipt by the Lessor of the Cash Proceeds and all other amounts described in such Section 12), except that such sale must occur on the last day of such Lease Term or the Renewal Term, as the case may be; provided, however, that if (A) the Lessee has provided the Termination Notice to the Lessor in a timely manner and has complied with all of the other terms and conditions of Section 12, (B) the Project is not sold pursuant to Section 12 hereof on the last day of the Lease Term or the

Renewal Term, as the case may be and (C) the Lessee does not purchase the Project pursuant to clause (i) above on the last day of the Lease Term or the Renewal Term, as the case may be, then a sale of the Lessee's interest in the Project to the Lessor pursuant to Section 12 shall be deemed to occur, the Cash Proceeds shall be deemed to be \$1, and the provisions of Section 12 and the eighth paragraph of Section 19 hereof shall be applicable.

SECTION 14. LESSOR'S RIGHT TO TERMINATE.

(a) The Lessor shall have the right, upon written notice to the Lessee, to terminate the lease of the Project as a whole as of a date stipulated in such notice, if (i) for any reason (other than an Event of Default by the Lessor under a Financing Arrangement (as therein defined)) the Lessor does not arrange for financing to finance or refinance the Project upon terms reasonably acceptable to the Lessor, and the Lessor may no longer continue its financing under a Financing Arrangement sufficient to finance or refinance the Project or (ii) any of the following events (each a "Termination Event") shall occur during the term of this Lease: (A) solely as a result of this Lease, the Agreement for Lease, a Financing Arrangement, the Project Contracts and the transactions contemplated hereby or thereby, the Lessor becomes (or with the passage of time would become), or is declared by any Governmental Authority to be a "public-utility company" as defined in the 1935 Act, or the Lessor, Merrill, Merrill Leasing, Merrill Lynch, any Assignee, any Affiliate of the foregoing or their respective officers, directors, members, trustees, shareholders, partners (general and limited, including, without limitation, the general and limited partners of the Lessor) or employees shall become subject to regulation under the 1935 Act; (B) solely as a result of this Lease, the Agreement for Lease, a Financing Arrangement, the Project Contracts and the transactions contemplated hereby or thereby, the Lessor becomes (or with the passage of time would become), or is declared by the Secretary of Energy (or any successor thereto) or the FERC to be, a public utility, an electric utility or a utility holding company subject to regulation under the Federal Power Act, as amended, or the Lessor, Merrill, Merrill Leasing, Merrill Lynch, any Assignee, any Affiliate of the foregoing or their respective officers, directors, shareholders, partners (general and limited, including, without limitation, the general and limited partners of the Lessor) or employees shall become subject to regulation by the FERC; (C) solely as a result of this Lease, the Agreement for Lease, a Financing Arrangement, the Project Contracts and the transactions contemplated hereby or thereby, the Lessor becomes (or with the passage of time would become), or is declared by any relevant Governmental Authority under the laws of any state or locality to be, subject to regulation as a public utility, an electric utility or a utility holding company or the Lessor, Merrill, Merrill Leasing, Merrill Lynch, any Assignee, any Affiliate of the foregoing or their respective officers, directors, shareholders, partners (general and limited, including, without limitation, the general and limited partners of the Lessor) or employees shall become subject to regulation as a public utility, an electric utility or a utility holding company under any such laws; or (D) any law or regulation or interpretation of any law or regulation shall be adopted or enforced by any Governmental Authority (including, without limitation, the Secretary of Energy, the FERC, the public service commission of any state or any similar commission of any locality and the Securities and Exchange Commission), and as a result of such adoption or enforcement, approval of this Lease, the Agreement for Lease, a Financing Arrangement, the Facility Support Agreement, any Project Contract or the transactions contemplated thereby shall be required and shall not have been obtained within any grace period after such adoption or enforcement, or as a result of which adoption or enforcement this Lease,

the Agreement for Lease, a Financing Arrangement, the Facility Support Agreement, any Project Contract or the transactions contemplated thereby, including any payments to be made by or to the Lessee or the ownership of the Project by the Lessor, shall be or become unlawful or unenforceable or the performance of this Lease, the Agreement for Lease, a Financing Arrangement, the Facility Support Agreement, any Project Contract or the transactions contemplated thereby shall be rendered impracticable in any material way. Promptly upon learning of any action or event, the effect of which results in any Termination Event, the Lessee shall notify the Lessor of such action or event.

(b) In the event of a termination with respect to the Project pursuant to paragraph (a) of this Section 14, the Lessee shall be required, at its option, either (i) to arrange for the Project to be sold in accordance with the terms of Section 12 above and with the consequences therein provided, except that if such sale does not occur on or before the date stipulated in the written notice contemplated in paragraph (a) of this Section 14 (which date shall be at least ninety (90) days after the date such notice is given) and the Lessee does not purchase the Project pursuant to clause (ii) below on the date stipulated in such notice, then a sale of the Lessee's interest in the Project to the Lessor pursuant to Section 12 shall be deemed to occur, the Cash Proceeds shall be deemed to be \$1, and the provisions of Section 12 and the eighth paragraph of Section 19 hereof shall be applicable, or (ii) to purchase, on the date stipulated in the written notice contemplated by paragraph (a) of this Section 14, the Project for cash at its Adjusted Acquisition Cost. In connection with, and as a condition to, any purchase under this paragraph, on the date upon which such purchase occurs, the Lessee shall pay to the Lessor, in addition to any purchase price payable, all other amounts owing hereunder as of the date of such purchase including, without limitation, (i) all Basic Rent payable and the Variable Component of Basic Rent accrued through the date of purchase, (ii) any Additional Rent owing, (iii) all amounts payable pursuant to Sections 11, 24 and 26 hereof, (iv) all losses, damages, costs and expenses (including, without limitation, attorneys' fees and expenses, commissions, filing fees and sales or transfer taxes) sustained by the Lessor by reason of such purchase, (v) all Unrecovered Liabilities and Judgments and (vi) all other amounts owing hereunder (after taking into account the application under the Financing Arrangements of such purchase price and other payments hereunder). At the time the Project is sold pursuant to this paragraph (b), the Lessor shall deliver the documents described in paragraph (h) of Section 29 hereof, and the Lessor's rights and obligations in respect of the Ground Lease, the Easements, the EPC Contract and any other Project Contract shall be assumed by the purchaser, with the Lessor released from liability in respect thereof.

SECTION 15. LOSS OF OR DAMAGE TO THE PROJECT.

(a) The Lessee hereby assumes all risk of loss of or damage to the Project, however caused. No loss of, or damage to, the Project shall impair any obligation of the Lessee under this Lease, which shall continue in full force and effect regardless of such loss or damage. The foregoing shall not be construed as requiring the Lessee to repair the Project when it is not otherwise required to do so under paragraph (b) of this Section 15.

(b) In the event of damage of any kind whatsoever to the Project, (i) the Lessee shall promptly notify the Lessor and Assignee in writing of such event, and (ii) the

Lessee (unless the same is reasonably determined by the Lessor and Assignee to be an Event of Loss), at its own cost and expense, shall place the same in good operating order, repair, condition and appearance. The Lessee's right to any proceeds paid under any insurance policy or policies required under Section 10 of this Lease with respect to any such damage to the Project which has been so placed by the Lessee in good operating order, repair, condition and appearance is governed by paragraph (i) of Section 10 hereof.

(c) If (A) an Event of Loss shall occur, or (B) a Taking as described in paragraph (a) of Section 16 shall occur, then in any such event, (i) the Lessee shall promptly notify the Lessor and Assignee in writing of such event, (ii) within one hundred eighty (180) days of such event the Lessee shall pay to the Lessor an amount equal to the Adjusted Acquisition Cost and all other amounts described in this paragraph (c) and (iii) the Lease Term or Renewal Term shall continue until the Lessor receives payment from the Lessee of the amount payable pursuant to this paragraph (c) including, without limitation, (1) all Basic Rent payable and the Variable Component of Basic Rent accrued through the date of purchase, (2) any Additional Rent owing, (3) all Unrecovered Liabilities and Judgments and all amounts payable pursuant to Sections 24 and 26 hereof, (4) all losses, damages, costs and expenses (including, without limitation, attorneys' fees and expenses, commissions, filing fees and sales or transfer taxes) sustained by the Lessor by reason of such event and (5) all other amounts owing hereunder after taking into account the application under the Financing Arrangements of such payments hereunder, and shall thereupon terminate. Upon the indefeasible payment by the Lessee of all amounts referred to in the immediately preceding sentence, (i) all insurance and condemnation proceeds (net of all collection costs and all Unrecovered Liabilities and Judgments), shall be paid by the Lessor to the Lessee, (ii) the Lessee shall be subrogated to the Lessor's rights resulting from the events described in clauses (A) and (B) above, and (iii) upon payment by the Lessee to the Lessor of all Unrecovered Liabilities and Judgments not satisfied from insurance and condemnation proceeds, the Lessor shall convey title to the Project pursuant to the documents described in paragraph (h) of Section 29 hereof, including, without limitation, the Lessor's interest in the Easements, the Ground Lease and the EPC Contract, to the Lessee, free and clear of the Lien pursuant to any Financing Arrangement.

SECTION 16. CONDEMNATION AND DEDICATION OF THE PROJECT; EASEMENTS.

(a) If the use, occupancy or title to all or a substantial portion of the Project is subject to a Taking, then the Lessee shall make the payment provided in, and the Lease Term or Renewal Term shall terminate as provided in, paragraph (c) of Section 15 hereof. The portion of the proceeds from any award or sale made in connection with such Taking attributable to the Lessor's interest in the Project shall be deposited in the Operating Account and, upon the indefeasible payment by the Lessee of all amounts referred to in respect of clause (B) of paragraph (c) of Section 15 hereof, such amount shall be paid to the Lessee. A Taking shall be deemed to affect a "substantial portion" of the Project if, in the reasonable judgment of the Lessor and Assignee, after such Taking, (i) the Lessee is not able to fully perform its obligations under the Project Contracts or this Lease, or (ii) a material diminution in the value, utility or remaining economic useful life of the Project will occur, or (iii) the Project cannot be restored by the expiry of the existing Lease Term.

(b) If less than a substantial portion of the Project is subject to a Taking, then this Lease shall continue in effect as to the portion of the Project not taken and any net proceeds, so long as (i) no Potential Default, Event of Default, Event of Loss or Termination Event has occurred and is continuing, and (ii) the Lessor and Assignee shall determine that restoration of the Project is consistent with prudent business practices and that sufficient funds are available to complete such restoration, shall be deposited in the Operating Account and made available to the Lessee for the restoration of the Project in accordance with paragraph (i) of Section 10 hereof; provided that, if either of the conditions set forth in clauses (i) or (ii) above are not satisfied, then the net proceeds held in the Operating Account shall be paid to the Lessor and if and to the extent that such proceeds are not applied to (or paid to the Lessee in reimbursement for) the restoration of the Project, the Adjusted Acquisition Cost shall be reduced by the Lessor by the amount of such proceeds. Thereupon, the Lessor shall adjust the Adjusted Acquisition Cost to reflect such reduction.

SECTION 17. SURRENDER OF THE PROJECT.

(a) Subject to the provisions of Sections 12, 13, 14, 15 or 19 hereof, upon termination of the lease of the Project under this Lease, the Lessee shall surrender the Project to the Lessor, and the Lessee's rights and obligations in respect of all Project Contracts shall be assumed by the Lessor, with the Lessee released from liability in respect thereof. The Project shall be surrendered in the condition required by paragraph (b) of Section 9.

(b) Upon the surrender of the Project, to the extent possessed by the Lessee, the Lessee shall deliver to the Lessor or its designee all logs, manuals, inspection data, books and records or copies thereof and other information, which are necessary to operate the Project and which are in accordance with sound industry practice customarily retained (or that the Lessee actually did retain) or are required by law to be retained with respect to similar property and equipment, including, without limitation, all software and manuals applicable to the Project and all design plans, know-how, records and information used by the Lessee or the Operator during the prior 12 months of operation of the Project.

SECTION 18. EVENTS OF DEFAULT.

Any of the following events of default shall constitute an "Event of Default" and shall give rise to the rights on the part of the Lessor described in Section 19 hereof:

(a) Failure of the Lessee to pay amounts due to the Lessor at the time of any scheduled sale or deemed sale of the Project hereunder, or under paragraph (c) of Section 15 hereof, or failure of the Lessee to pay Basic Rent for more than five (5) days after such payment is due pursuant to Section 7 hereof or failure of the Lessee to pay any other amount payable by the Lessee hereunder for more than ten (10) days after such payment is due (or if no due date is specified, ten (10) days after demand therefor); or

(b) Failure to maintain the insurance required by Section 10 hereof, or default in the performance of the covenants contained in paragraphs (ii)(a), (ii)(b), (ii)(c), or (ii)(f) of

Section 2, paragraph (g) of Section 8, paragraph (m) of Section 10, Section 25 or paragraph (i) of Section 29; or

(c) The Lessee shall default in the performance or observance of any other term, covenant, condition or obligation contained in this Lease and, in the case of such default, such default shall continue for thirty (30) days after the earlier of the date (i) the Lessee becomes aware of such default or (ii) written notice shall have been given to the Lessee by the Lessor specifying such default and requiring such default to be remedied; or

(d) One or more of the events referred to in the Ground Lease shall occur which would cause the Ground Lease to terminate without notice or action by the landlord thereunder or which would entitle the landlord under the Ground Lease to terminate the Ground Lease and the term thereof by the giving of notice to the Lessor without opportunity to cure, as tenant thereunder, or if the Ground Lease shall be terminated or canceled for any reason or under any circumstance whatsoever; or

(e) The occurrence of any event or circumstance relating to Environmental Matters with respect to the Project that could reasonably be expected to have a material adverse effect on (i) the construction, operation, maintenance, leasing, ownership, use, value or regulatory status of the Project, (ii) the ability of the Lessee to observe and perform its obligations under this Lease, the Agreement for Lease, the Pledge Agreement, the Facility Support Agreement, the Consent or the Project Contracts in a timely manner or the ability of the Guarantor to perform its obligations under the Guaranty in a timely manner, (iii) the business, assets, properties, financial condition, operations or prospects of the Lessee or the Guarantor, or (iv) the rights or interests of the Lessor or Assignee under this Lease, the Agreement for Lease, the Pledge Agreement, the Facility Support Agreement, the Consent or the Project Contracts; or

(f) Any representation or warranty made by the Lessee herein or in any Consent or which is contained in any certificate, document or financial or other statement furnished under or in connection with this Lease shall prove to have been false, misleading or inaccurate in any material respect on or as of the date made or deemed made; or

(g) (i) The Pledge Agreement ceases to be in full force and effect, (ii) the Lessee defaults in the performance of any obligation or covenant contained in the Pledge Agreement, any required notice of such default shall have been given, and any applicable grace period shall have expired, or (iii) the representation contained in the second or third sentence of paragraph (i)(r) of Section 2 shall at any time become untrue; or

(h) (i) If the Lessee shall receive notice from a party to any Project Contract alleging or asserting that such party has (or after the passage of any applicable grace period will have) the right to terminate such Project Contract, or that such Project Contract is being terminated by such party, as a result of a default by the Lessee under such Project Contract; or

(ii) If a party to any Project Contract has received notice from the Lessee that such Project Contract is being terminated by the Lessee without the prior

written consent of the Lessor and Assignee (other than as a result of a default by such party); or

(iii) If any default by the Lessee shall occur under any of the Project Contracts which would, after the giving of any required notice and/or the expiration of any applicable grace period, entitle the other party to such Project Contract to terminate such Project Contract as a result of such default by the Lessee; or

(i) The entry of a decree or order for relief in respect of the Lessee or the Guarantor by a court having jurisdiction in the premises or the appointment of a receiver, liquidator, assignee, custodian, trustee, sequestrator (or similar official) of the Lessee or the Guarantor or of any substantial part of the Lessee's or the Guarantor's property, or ordering the winding up or liquidation of the Lessee's or the Guarantor's affairs, in an involuntary case under the Federal bankruptcy laws, as now or hereafter constituted, or any other applicable Federal or state bankruptcy, insolvency or other similar law, and such decree or order remains unstayed and in effect for thirty (30) consecutive days; or the commencement against the Lessee or the Guarantor of an involuntary case under the Federal bankruptcy laws, as now or hereafter constituted, or any other applicable Federal or state bankruptcy, insolvency or other similar law, and the continuance of any such case unstayed and in effect for a period of thirty (30) consecutive days; or

(j) The suspension or discontinuance of the Lessee's or the Guarantor's business operations, or the Lessee's or the Guarantor's insolvency (however evidenced), or the Lessee's or the Guarantor's admission of insolvency or bankruptcy, or the commencement by the Lessee or the Guarantor of a voluntary case under the Federal bankruptcy laws, as now or hereafter constituted, or any other applicable Federal or state bankruptcy, insolvency or other similar law, or the consent by the Lessee or the Guarantor to the appointment of or taking possession by a receiver, liquidator, assignee, custodian, trustee, sequestrator (or other similar official) of the Lessee or the Guarantor or of any substantial part of the Lessee's or the Guarantor's property, or the making by the Lessee or the Guarantor of an assignment for the benefit of creditors, or the failure of the Lessee or the Guarantor generally to pay its debts as such debts become due, or the taking of corporate action by the Lessee or the Guarantor in furtherance of any such action; or

(k) (i) The Guaranty ceases to be in full force and effect prior to the termination thereof in accordance with its terms, (ii) the Guarantor asserts that the Guaranty is not valid or in full force and effect, (iii) the Guarantor shall take any action which impairs in any material respect the ability of the Guarantor to fulfill its obligations under the Guaranty, (iv) the Guarantor defaults in the performance of any obligation or covenant contained in the Guaranty, any required notice of such default shall have been given, and any applicable grace period shall have expired, or (v) an Event of Default (as defined in the Guaranty) shall occur under the Guaranty; or

(l) Any representation or warranty made by the Guarantor in the Guaranty or in any Consent or in any document contemplated hereby or thereby shall prove to have been false, misleading or inaccurate in any material respect on or as of the date made or deemed made; or

(m) The Lessee or the Guarantor or any of its Material Subsidiaries shall fail to pay any principal of or premium or interest on any Indebtedness which is outstanding in a principal amount of at least \$10,000,000 in the aggregate of the Lessee or the Guarantor or any such Material Subsidiary (as the case may be), when the same becomes due and payable (whether by scheduled maturity, required prepayment, acceleration, demand or otherwise), and such failure shall continue after the applicable grace period, if any, specified in the agreement or instrument relating to such Indebtedness; or any other event shall occur or condition shall exist under any agreement or instrument relating to any such Indebtedness and shall continue after the applicable grace period, if any, specified in such agreement or instrument, if the effect of such event or condition is to accelerate, or to permit the acceleration of, the scheduled maturity of such Indebtedness; or any such Indebtedness shall be declared to be due and payable, or required to be prepaid (other than by a regularly scheduled required prepayment), prior to the stated maturity thereof; or

(n) Final judgment or judgments for the payment of money in excess of \$10,000,000 in the aggregate shall be rendered against the Lessee or the Guarantor by any court of competent jurisdiction and the same shall remain undischarged for a period of thirty (30) days during which execution of such judgment or judgments shall not be effectively stayed.

SECTION 19. RIGHTS UPON DEFAULT.

Upon the occurrence and continuation of any Event of Default, the Lessor may do any one or more of the following (subject to the provisions of paragraph (b) of Section 13 of this Lease):

(i) Terminate the lease of the Project hereunder;

(ii) Whether or not the lease of the Project is terminated, take immediate possession of the Project and remove any equipment or property of the Lessor in the possession of the Lessee, wherever situated, and for such purpose, enter upon the Premises without liability to the Lessee for so doing;

(iii) Whether or not any action has been taken under clause (i) or (ii) above, sell the Project (with or without the concurrence or request of the Lessee);

(iv) Hold, use, occupy, operate, repair, remove, lease or keep idle the Project as the Lessor in its sole discretion may determine, without any duty to mitigate damages with respect to any such action or inaction or with respect to any proceeds thereof; and

(v) Exercise any other right or remedy which may be available under applicable law and in general proceed by appropriate judicial proceedings, either at law or in equity, to enforce the terms hereof.

Suit or suits for the recovery of any default in the payment of any sum due hereunder or for damages may be brought by the Lessor from time to time at the Lessor's election, and nothing herein contained shall be deemed to require the Lessor to await the date

whereon this Lease or the term hereof would have expired by limitation had there been no such default by the Lessee or no such termination or cancellation.

The receipt of any payments under this Lease by the Lessor with knowledge of any breach of this Lease by the Lessee or of any default by the Lessee in the performance of any of the terms, covenants or conditions of this Lease, shall not be deemed to be a waiver of any provision of this Lease.

No receipt of moneys by the Lessor from the Lessee after the termination or cancellation hereof in any lawful manner shall reinstate, continue or extend the Lease Term or Renewal Term, or affect any notice theretofore given to the Lessee, or operate as a waiver of the right of the Lessor to enforce the payment of Basic Rent or Additional Rent or other charges payable hereunder, or operate as a waiver of the right of the Lessor to recover possession of by proper suit, action, proceedings or remedy; it being agreed that, after the service of notice to terminate or cancel this Lease, and the expiration of the time therein specified, if the default has not been cured in the meantime, or after the commencement of any suit, action or summary proceedings or of any other remedy, or after a final order, warrant or judgment for the possession of the Project, the Lessor may demand, receive and collect any moneys payable hereunder, without in any manner affecting such notice, proceedings, suit, action, order, warrant or judgment. Acceptance of the keys to the Project, or any similar act, by the Lessor, or any agent or employee of the Lessor, during the term hereof, shall not be deemed to be an acceptance of a surrender of the Project unless the Lessor and Assignee shall consent thereto in writing.

After any Event of Default, the Lessee shall be liable for, and the Lessor may recover from the Lessee, (i) all Basic Rent payable and the Variable Component of Basic Rent accrued through the date of termination of this Lease, (ii) any Additional Rent owing, (iii) all amounts payable pursuant to Sections 11, 24 and 26 hereof, (iv) all losses, damages, costs and expenses (including, without limitation, attorneys' fees and expenses, commissions, filing fees and sales or transfer taxes and all costs and expenses related to (x) the conduct of investigations, studies, sampling and/or testing of the Premises and (y) the taking of any action, including, without limitation, any remedial measures or removal with respect to the Premises, each as required by an Assignee pursuant to the terms of a Financing Arrangement) sustained by the Lessor by reason of such Event of Default and the exercise of the Lessor's remedies with respect thereto, including without limitation, in the event of a sale by the Lessor of its interest in the Project pursuant to this Section 19, all costs and expenses associated with such sale and (v) all other amounts owing hereunder (after taking into account the application under the Financing Arrangements of any payments made under this Section 19) excluding, in all cases, costs or expenses included in Adjusted Acquisition Cost. The amounts payable in clauses (i) through (v) above are hereinafter sometimes referred to as the "Accrued Default Obligations".

After an Event of Default, the Lessor may sell its interest in the Project upon any terms that the Lessor deems satisfactory, free of any rights of the Lessee or any Person claiming through or under the Lessee (including, without limitation, any rights hereunder or under the Agreement for Lease). In the event of any such sale, the Lessor shall be entitled to recover from the Lessee, as liquidated damages and not as a penalty, and subject to the second succeeding sentence, an amount equal to the Adjusted Acquisition Cost. Proceeds of sale received by the Lessor in excess of the Adjusted Acquisition Cost shall be credited against the amounts the

Lessee is required to pay under this Section 19 and any other provision hereof. If such proceeds plus the Adjusted Acquisition Cost, exceed the sum of (i) the Adjusted Acquisition Cost and (ii) any Unrecovered Liabilities and Judgments, and if the Lessee has indefeasibly paid the Adjusted Acquisition Cost, plus all Unrecovered Liabilities and Judgments and all other amounts required to be paid under this Section 19 and any other provision hereof, such excess shall be paid by the Lessor to the Lessee; provided, however, that the Lessee shall remain liable for any Unrecovered Liabilities and Judgments that arise after the payment of such excess proceeds to the extent such Unrecovered Liabilities and Judgments arise from or relate to acts or omissions occurring, or circumstances or conditions created or existing at any time as of or prior to the expiration or termination of this Lease. As an alternative to any such sale, the Lessor may require the Lessee to pay to the Lessor, and the Lessee shall pay to the Lessor, as liquidated damages and not as a penalty, an amount equal to the Adjusted Acquisition Cost. If the Lessor subsequently sells its interest in the Project, the proceeds of any such sale shall be distributed as provided in the third and fourth sentences of this paragraph. If the Lessee converts the Project or any part thereof after an Event of Default, or if the Project suffers an Event of Loss or is otherwise lost or destroyed at the time of the Event of Default the Lessor may require the Lessee to pay to the Lessor, and the Lessee shall pay to the Lessor, as liquidated damages and not as a penalty, an amount equal to the Adjusted Acquisition Cost. In the event the Lessor receives indefeasible payment from the Lessee of the Adjusted Acquisition Cost of the Project and all Unrecovered Liabilities and Judgments, the Lessor shall transfer all of the Lessor's right, title and interest in and to the Project, the Ground Lease, the Easements, the EPC Contract and any other Project Contract to the Lessee.

In the event of a sale pursuant to this Section 19, upon indefeasible receipt by the Lessor of the amounts payable hereunder, the Lessor shall transfer all of the Lessor's right, title and interest in and to the Project to a purchaser other than the Lessee or to the Lessee, as the case may be.

In the event the Lessor is not paid an amount equal to the Adjusted Acquisition Cost and all Unrecovered Liabilities and Judgments, then, in addition to the Lessor's other rights in this Section 19, the Lessee shall upon the Lessor's request (i) assign (or if not legally assignable, cooperate and assist to the extent necessary or required in the transfer or reissuance thereof) to the Lessor (or to an assignee designated by the Lessor or Assignee), at no cost, all right, title and interest of the Lessee in, to and under all Governmental Actions and Intellectual Property Rights needed for the equipping, maintenance, operation or use of the Project and obtained and held by the Lessee at that time, (ii) assign to the Lessor (or to a foreclosure purchaser designated by the Lessor or Assignee), at no cost, all right, title and interest of the Lessee in, to and under the Project Contracts, and in the event any additional consent of any party to a Project Contract is required as a precondition thereunder to an assignment to any other third party assignee designated by the Lessor or Assignee, use its best efforts to obtain any such required consent to such proposed non-foreclosure assignment and assumption of the Project Contracts; and (iii) assign to the Lessor, at no cost, all right, title and interest of the Lessee in, to and under all service agreements in existence at the time of such sale and transferable by the Lessee and any easements available to the Lessee and transferable by the Lessee in connection with the equipping, maintenance, operation or use of the Project. The Lessee acknowledges that it would be difficult to ascertain the value to the Lessor of the Lessee's agreement to assign, transfer or have reissued to the Lessor such Governmental Actions and Intellectual Property

Rights, to assign such Project Contracts (and, if necessary, to obtain such consents to such assignment) and to assign to the Lessor such service agreements and easements or to adequately compensate the Lessor by an award of damages for the Lessee's failure to assign to the Lessor such Governmental Actions and Intellectual Property Rights, to assign such Project Contracts (and, if necessary, to obtain such consents to such assignment) and to assign to the Lessor such service agreements and easements, and that therefore the Lessor would not have an adequate remedy at law for breach by the Lessee of its agreement hereunder to the Lessor. Accordingly, the Lessee acknowledges that the Lessor shall be entitled to obtain specific performance of the Lessee's obligation to assign to the Lessor such Governmental Actions and Intellectual Property Rights, to obtain such consents to such assignment and to assign to the Lessor the service agreements and easements. In the event the Lessee fails to obtain any consents required in clause (ii) of the third preceding sentence, at the request of the Lessor or such purchaser, as the case may be, the Lessee shall agree to (A) at the expense of such purchaser or the Lessor, as the case may be, continue to perform under and maintain in full force and effect the Project Contracts and pay all sums received under the Project Contracts to such third party or the Lessor, as the case may be, (B) at the expense of such third party or the Lessor, as the case may be, and subject to the receipt of indemnification reasonably acceptable to the Lessee, take all actions requested by such third party or the Lessor, as the case may be, with respect to such Project Contracts (including all actions with respect to the enforcement of the Lessee's rights and remedies under such Project Contracts), and (C) not amend, modify, supplement, waive a provision of, grant any consent under or terminate any such Project Contract without the prior written consent of such third party or the Lessor, as the case may be.

In addition to its other rights in this Section 19, the Lessor may exercise its various rights under the Facility Support Agreement or transfer such rights to the purchaser in a sale and the Lessee acknowledges hereby its agreement to perform its obligations thereunder.

No remedy referred to in this Section 19 is intended to be exclusive, but each shall be cumulative and in addition to any other remedy referred to above or otherwise available to the Lessor at law or in equity, and the exercise in whole or in part by the Lessor of any one or more of such remedies shall not preclude the simultaneous or later exercise by the Lessor of any or all such other remedies.

No waiver by the Lessor of any Event of Default hereunder shall in any way be, or be construed to be, a waiver of any future or subsequent Event of Default.

With respect to the termination of this Lease as a result of an Event of Default, the Lessee hereby waives service of any notice of intention to re-enter. The Lessee hereby waives any and all rights to recover or regain possession of the Project or to reinstate this Lease as permitted or provided by or under any statute, law or decision now or hereafter in force and effect.

SECTION 20. SALE OR ASSIGNMENT BY LESSOR.

(a) The Lessor shall have the right to obtain equity and debt financing for the acquisition and ownership of the Project by selling or assigning its right, title and interest in any

or all amounts due from the Lessee or any third party under this Lease and granting a security interest in this Lease and the Project to a lender or lenders under a Financing Arrangement (or any entity acting in the capacity of an agent in connection therewith), notice of the identity of which shall be given to the Lessee; provided that, any sale or assignment by the Lessor shall be made consistent with the terms of this Lease and shall be subject to Permitted Liens and the rights and interests of the Lessee under this Lease and the Agreement for Lease.

(b) Any Assignee shall, except as otherwise agreed by the Lessor and such Assignee, have all the rights, powers, privileges and remedies of the Lessor hereunder, and the Lessee's obligations as between itself and such Assignee hereunder shall not be subject to any claims or defense that the Lessee may have against the Lessor. Upon written notice to the Lessee of any such assignment, the Lessee shall thereafter make payments of Basic Rent and the Variable Component of Basic Rent, Additional Rent and other sums due hereunder to Assignee, to the extent specified in such notice, and such payments shall discharge the obligation of the Lessee to the Lessor hereunder to the extent of such payments. Anything contained herein to the contrary notwithstanding, no Assignee shall be obligated to perform any duty, covenant or condition required to be performed by the Lessor hereunder, and any such duty, covenant or condition shall be and remain the sole obligation of the Lessor.

SECTION 21. INCOME TAXES.

The Lessor agrees that it will not file any Federal, state or local income tax returns or state or local sales tax returns during the Initial Term, or any Extended Term or Renewal Term with respect to the Project that are inconsistent with the treatment of the Lessee as owner of the Project for Federal, state and local income tax purposes and state and local sales tax purposes.

SECTION 22. NOTICES AND REQUESTS.

All notices, offers, acceptances, approvals, waivers, requests, demands and other communications hereunder or under any other instrument, certificate or other document delivered in connection with the transactions described herein shall be in writing, shall be addressed as provided below and shall be considered as properly given (a) if delivered in person, (b) if sent by express courier service (including, without limitation, Federal Express, Emery, DHL, Airborne Express, and other similar express delivery services), (c) in the event overnight delivery services are not readily available, if mailed through the United States Postal Service, postage prepaid, registered or certified with return receipt requested, or (d) if sent by telecopy and confirmed; provided that, in the case of a notice by telecopy, the sender shall in addition confirm such notice by writing sent in the manner specified in clause (a), (b) or (c) of this Section 22. All notices shall be effective upon receipt by the addressee; provided, however, that, if any notice is tendered to an addressee and the delivery thereof is refused by such addressee, such notice shall be effective upon such tender. For the purposes of notice, the addresses of the parties shall be as set forth below; provided, however, that any party shall have the right to change its address for notice hereunder to any other location by giving written notice to the other party in the manner set forth herein. The initial addresses of the parties hereto are as follows:

If to the Lessor:

Wygen Funding, Limited Partnership
c/o ML Leasing Equipment Corp.
Controller's Office
95 Greene Street, 7th Floor
Jersey City, New Jersey 07302

Attention: Kira Toone
Telephone: (201) 671-0334
Facsimile: (201) 671-4511

With a copy of all notices under this Section 22 to be simultaneously given, delivered or served to the following:

ML Leasing Equipment Corp.
95 Greene Street, 7th Floor
Jersey City, New Jersey 07302

Attention: Frank Conley
Facsimile: (201) 671-4511

If to the Lessee:

Black Hills Generation, Inc.
625 Ninth Street
Rapid City
South Dakota 57701

Attention: Mark Thies
Telephone: (605) 721-2331
Telecopy: (605) 721-2597

with a copy of all notices under this Section 22 to Assignee at such address as such Assignee may specify by written notice to the Lessor and the Lessee.

SECTION 23. COVENANT OF QUIET ENJOYMENT.

During the Initial Term, or any Extended Term or Renewal Term hereunder and so long as no Event of Default, Event of Loss, Taking or Termination Event shall have occurred and be continuing, the Lessor recognizes the Lessee's right to quiet enjoyment of the Project on the terms and conditions provided in this Lease without any interference from the Lessor or anyone claiming through or under the Lessor.

SECTION 24. RIGHT TO PERFORM FOR LESSEE.

(a) If the Lessee fails to perform or comply with any of its covenants or agreements contained in this Lease, and any period to cure such failure has expired without the Lessee curing such failure, the Lessor may, upon notice to the Lessee but without waiving or releasing any obligations or default, itself perform or comply with such covenant or agreement, and the amount of the reasonable expenses of the Lessor incurred in connection with such performance or compliance shall be payable by the Lessee, not later than ten (10) days after written notice by the Lessor.

(b) Without in any way limiting the obligations of the Lessee hereunder, the Lessee hereby irrevocably appoints the Lessor as its agent and attorney at the time at which the Lessee is obligated to deliver possession of the Project to the Lessor, to demand and take possession of the Project in the name and on behalf of the Lessee from whomsoever shall be at the time in possession thereof.

SECTION 25. MERGER, CONSOLIDATION OR SALE OF ASSETS.

The Lessee may consolidate with or merge into any other corporation or sell all or substantially all of its assets to any Person; provided that, following such consolidation, merger or sale of assets, (a) the Guarantor shall own beneficially and of record greater than fifty percent (50%) of the capital stock of the Lessee (in the case of a consolidation or merger) or greater than fifty percent (50%) of the equity interests of the transferee (in the case of a sale of assets), and (b) no Event of Default shall exist under this Lease. The terms and provisions of this Lease shall be binding upon and inure to the benefit of the Lessee and its respective successors and assigns.

SECTION 26. EXPENSES.

The Lessee shall pay all of the out-of-pocket costs and expenses incurred by the Lessor and any Assignee in connection with this Lease, including, without limitation, the reasonable fees and disbursements of counsel to the Lessor and counsel to any Assignee.

SECTION 27. PERMITTED CONTESTS.

(a) The Lessee shall not be required, nor shall the Lessor have the right, to pay, discharge or remove any tax, assessment, levy, fee, rent, charge or Lien, or to comply or cause the Project to comply with any Legal Requirements applicable thereto or the occupancy, use or operation thereof, so long as no Potential Default, Event of Default, Event of Loss, Taking or Termination Event exists under this Lease, and, in the reasonable judgment of the Lessee's counsel, the Lessee shall have reasonable grounds to contest the existence, amount, applicability or validity thereof by appropriate proceedings, which proceedings in the reasonable judgment of the Lessor and Assignee (i) shall not involve any danger that the Project or any portion thereof or any Basic Rent or any Additional Rent would be subject to sale, forfeiture or loss, as a result of failure to comply therewith, (ii) shall not affect the payment of any Basic Rent or any Additional Rent or other sums due and payable hereunder or result in any such sums being payable to any Person other than the Lessor or any Assignee, (iii) will not place either the Lessor or any

Assignee in any danger of civil liability or subject the Lessor or any Assignee to any danger of criminal liability, (iv) if involving taxes, shall suspend the collection of taxes (unless the Lessee has provided a bond for the full amount in dispute), (v) are consistent with prudent business practices, and (vi) shall be permitted under and be conducted in accordance with the provisions of any other instrument to which the Lessee or the Project is subject and shall not constitute a default thereunder (a "Permitted Contest"). The Lessee shall conduct all Permitted Contests in good faith and with due diligence and shall promptly after the final determination (including appeals) of any Permitted Contest (or, if earlier, upon any of the above criteria no longer being satisfied) pay and discharge all amounts which shall be determined to be payable therein. The Lessor shall cooperate in good faith with the Lessee with respect to all Permitted Contests conducted by the Lessee pursuant to this Section 27.

(b) In the event the Lessor or Assignee deems, in its reasonable discretion, that its interests under this Lease or in the Project are not adequately protected in connection with a Permitted Contest brought by the Lessee as permitted under this Section 27, the Lessee shall give such reasonable security as may be demanded by the Lessor or any Assignee to ensure payment of such tax, assessment, levy, fee, rent, charge or Lien and compliance with Legal Requirements and to prevent any sale or forfeiture of the Project or any portion thereof, any Basic Rent or any Additional Rent by reason of such nonpayment or noncompliance. The Lessee hereby agrees that the Lessor may assign such security provided by the Lessee to any Assignee.

(c) At least ten (10) days prior to the commencement of any Permitted Contest, the Lessee shall notify the Lessor in writing thereof if the amount in contest exceeds \$100,000, and shall describe such proceeding in reasonable detail. In the event that a taxing authority or subdivision thereof proposes an additional assessment or levy of any tax for which the Lessee is obligated to reimburse the Lessor under this Lease, or in the event that the Lessor is notified of the commencement of an audit or similar proceeding which could result in such an additional assessment, then the Lessor shall in a timely manner notify the Lessee in writing of such proposed levy or proceeding.

SECTION 28. LEASEHOLD INTERESTS.

(a) The Lessee hereunder covenants and agrees to perform and to observe all of the terms, covenants, provisions, conditions and agreements of the Ground Lease on the Lessor's part as lessee and grantee thereunder to be performed and observed to the end that all things shall be done which are necessary to keep unimpaired the rights of the lessee under the Ground Lease and the rights of the Lessor as grantee with respect to the Easements, except to the extent such performance is solely under the control of the Lessor.

(b) The Lessee covenants and agrees pursuant to Section 11 hereof to indemnify and hold harmless the Lessor and each Assignee from and against any and all liability, loss, damage, suits, penalties, claims and demands of every kind and nature (including, without limitation, reasonable attorneys' fees and expenses) by reason of the Lessee's failure to comply with the Ground Lease, the Easements or the provisions of this Section 28 other than to the extent arising solely from the gross negligence or willful misconduct of the Lessor.

(c) The Lessor and the Lessee agree that during the term of this Lease and the Agreement for Lease the Lessor shall have no obligation or responsibility to provide services or equipment required to be provided or repairs or restorations required to be made in accordance with the provisions of the Ground Lease by the lessee or grantee thereunder. The Lessor shall in no event be liable to the Lessee nor shall the obligations of the Lessee hereunder be impaired or the performance thereof excused because of any failure or delay on the part of the Lessor as the lessee under the Ground Lease or with respect to the Easements in providing such services or equipment or making such restorations or repairs and such failure or delay shall not constitute a basis for any claim against the Lessor or any offset against any amount payable to the Lessor under this Lease.

SECTION 29. MISCELLANEOUS.

(a) All agreements, indemnities, representations and warranties, and the obligation to pay Basic Rent and the Variable Component of Basic Rent, Additional Rent and other amounts contained in this Lease shall survive until the expiration or other termination of this Lease, provided that (i) any obligations under this Lease accrued at the time of or related to periods prior to such expiration or other termination (including, without limitation, any obligation to pay Unrecovered Liabilities and Judgments) shall survive such expiration or other termination, and (ii) any obligation under this Lease which is expressly provided to be performed after or to survive the expiration or termination of this Lease shall survive the expiration or other termination hereof.

(b) This Lease and the instruments, documents or agreements referred to herein constitute the entire agreement between the parties and no representations, warranties, promises, guarantees or agreements, oral or written, express or implied, have been made by any party hereto with respect to this Lease or the Project, except as provided herein or therein.

(c) This Lease may not be amended, modified or terminated, nor may any obligation hereunder be waived orally, and no such amendment, modification, termination or waiver shall be effective for any purpose unless it is in writing, signed by the party against whom enforcement thereof is sought. A waiver on one occasion shall not be construed to be a waiver with respect to any other occasion.

(d) The captions in this Lease are for convenience of reference only and shall not be deemed to affect the meaning or construction of any of the provisions hereof. Any provision of this Lease which is prohibited by law or unenforceable in any jurisdiction shall, as to such jurisdiction, be ineffective to the extent of such prohibition or unenforceability without invalidating the remaining provisions hereof, and the parties hereto shall negotiate in good faith appropriate modifications to reflect such changes as may be required by law, and, as nearly as possible, to produce the same economic, financial and tax effects as the provision which is prohibited or unenforceable; and any such prohibition or unenforceability in any jurisdiction shall not invalidate or render unenforceable such provision in any other jurisdiction. To the extent permitted by applicable law, the Lessee and the Lessor hereby waive any provision of law which renders any provision hereof prohibited or unenforceable in any respect. THIS LEASE HAS BEEN EXECUTED AND DELIVERED IN THE STATE OF NEW YORK. THE LESSEE AND THE LESSOR AGREE THAT, TO THE MAXIMUM EXTENT

PERMITTED BY THE LAW OF THE STATE OF NEW YORK, THIS LEASE, AND THE RIGHTS AND DUTIES OF THE LESSEE AND THE LESSOR HEREUNDER, SHALL BE GOVERNED BY, AND CONSTRUED IN ACCORDANCE WITH, THE LAWS OF THE STATE OF NEW YORK (INCLUDING, WITHOUT LIMITATION, SECTIONS 5-1401 AND 5-1402 OF THE NEW YORK GENERAL OBLIGATIONS LAW) IN ALL RESPECTS, INCLUDING, WITHOUT LIMITATION, IN RESPECT OF ALL MATTERS OF CONSTRUCTION, VALIDITY AND PERFORMANCE. THE LESSEE HEREBY IRREVOCABLY SUBMITS, FOR ITSELF AND ITS PROPERTIES, TO THE JURISDICTION OF THE UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF NEW YORK AND THE SUPREME COURT OF THE STATE OF NEW YORK IN THE COUNTY OF NEW YORK IN ANY ACTION, SUIT OR PROCEEDING BROUGHT AGAINST IT AND RELATED TO OR IN CONNECTION WITH THIS LEASE, AND TO THE EXTENT PERMITTED BY APPLICABLE LAW, THE LESSEE HEREBY WAIVES AND AGREES NOT TO ASSERT BY WAY OF MOTION, AS A DEFENSE OR OTHERWISE IN ANY SUCH SUIT, ACTION OR PROCEEDING, ANY CLAIM THAT IT IS NOT PERSONALLY SUBJECT TO THE JURISDICTION OF SUCH COURT, THAT THE SUIT, ACTION OR PROCEEDING IS BROUGHT IN AN INCONVENIENT FORUM, THAT THE VENUE OF THE SUIT, ACTION OR PROCEEDING IS IMPROPER, OR THAT THIS LEASE OR THE SUBJECT MATTER HEREOF MAY NOT BE LITIGATED IN OR BY SUCH COURT. THIS SUBMISSION TO JURISDICTION IS NONEXCLUSIVE AND DOES NOT PRECLUDE LESSOR OR ANY ASSIGNEE FROM OBTAINING JURISDICTION OVER THE LESSEE IN ANY COURT OTHERWISE HAVING JURISDICTION. TO THE EXTENT PERMITTED BY APPLICABLE LAW, THE LESSEE AGREES NOT TO SEEK AND HEREBY WAIVES THE RIGHT TO ANY REVIEW OF THE JUDGMENT OF ANY SUCH COURT BY ANY COURT OF ANY OTHER NATION OR JURISDICTION WHICH MAY BE CALLED UPON TO GRANT AN ENFORCEMENT OF SUCH JUDGMENT. THE LESSEE AGREES THAT SERVICE OF PROCESS MAY BE MADE UPON IT BY CERTIFIED OR REGISTERED MAIL TO THE ADDRESS FOR NOTICES SET FORTH IN THIS LEASE OR ANY METHOD AUTHORIZED BY THE LAWS OF NEW YORK. THE LESSOR APPOINTS CT CORPORATION SYSTEM WHICH CURRENTLY MAINTAINS A NEW YORK CITY OFFICE SITUATED AT 111 EIGHTH AVENUE, 13TH FLOOR, NEW YORK, NEW YORK 10011, UNITED STATES, AS ITS AGENT TO RECEIVE SERVICE OF PROCESS AND AGREES, SO LONG AS THE LESSOR HAS ANY OBLIGATION UNDER THIS LEASE, THAT IT WILL MAINTAIN A DULY APPOINTED AGENT IN NEW YORK CITY FOR THE SERVICE OF SUCH PROCESS, AND FURTHER AGREES THAT IF IT FAILS TO MAINTAIN SUCH AN AGENT, ANY SERVICE OF PROCESS MAY BE MADE UPON IT BY CERTIFIED OR REGISTERED MAIL TO THE ADDRESS FOR NOTICES SET FORTH IN THIS AGREEMENT OR ANY METHOD AUTHORIZED BY THE LAWS OF NEW YORK. THE LESSOR AND THE LESSEE EXPRESSLY WAIVE ALL RIGHT TO TRIAL BY JURY IN ANY ACTION, PROCEEDING OR COUNTERCLAIM RELATED TO THIS LEASE OR THE TRANSACTIONS CONTEMPLATED HEREBY. THE LESSOR AND THE LESSEE ACKNOWLEDGE THAT THE PROVISIONS OF THIS PARAGRAPH (D) OF SECTION 29 HAVE BEEN BARGAINED FOR AND THAT THEY HAVE BEEN REPRESENTED BY COUNSEL IN CONNECTION THEREWITH.

(e) In connection with any sale of the Project pursuant to Section 12, 13, 14, 15 or 19 of this Lease, when the Lessor transfers title, such transfer shall be on an as-is, non-installment sale basis, without warranty by, or recourse to, the Lessor.

(f) In connection with the sale or purchase of the Project pursuant to Section 12, 13, 14, 15 or 19 of this Lease, the Lessee shall pay or shall cause the purchaser of the Project to pay, in addition to the purchase price, all transfer taxes, transfer gains taxes, mortgage recording tax, if any, recording and filing fees and all other similar taxes, fees, expenses and closing costs (including reasonable attorneys' fees) in connection with the conveyance of the Project to the Lessee or any purchaser.

(g) Each time that the Adjusted Acquisition Cost is increased or decreased pursuant to the terms of this Lease (other than a decrease in connection with the amortization of the Acquisition Cost of the Project as contemplated by this Lease), the Lessor shall promptly revise Exhibit E hereto to reflect such increase or decrease pro rata over all remaining payments of Monthly Rent Component and shall provide the Lessee and Assignee a copy of such revised Exhibit E within three (3) Business Days of such increase or decrease.

(h) In connection with the purchase of the Project by the Lessee or any third party pursuant to the provisions of this Lease, the Lessor shall deliver to the Lessee or such third party, as the case may be, a bill of sale, deed or similar document assigning and conveying to the Lessee or such third party, as the case may be, and the Lessee or such third party, as the case may be, shall accept an assignment of, the Lessor's interest in the Ground Lease, the Easements, the EPC Contract, the Facility Support Agreement and, if applicable, any other Project Contract, such assignment, conveyance, or other documents to be without warranty by, or recourse to, the Lessor (provided that the purchase price paid by the Lessee to the Lessor, exclusive of the other amounts payable hereunder in connection with such purchase, shall equal the Adjusted Acquisition Cost).

(i) In the event of any Event of Default, or if a sale of the Project to the Lessor is deemed to occur pursuant to paragraph (e) of Section 13, the Lessee shall, to the extent required by the Lessor or Assignee, exercise all commercially reasonable efforts (i) to provide the Lessor (or a designated assignee of the Lessor or Assignee) with all easements, manuals and other matters and services to be provided by the Operator (to the extent such easements, manuals and other matters and services are not being provided pursuant to the Project Contracts) necessary to enable the Project to operate on commercially reasonable terms, (ii) to provide the Lessor (or a designated assignee of the Lessor or Assignee) with any Project Contracts, Governmental Actions and Intellectual Property Rights not assigned to the Lessor (or a designated assignee of the Lessor or Assignee) pursuant to the applicable terms hereof that are necessary to enable the Project to operate on commercially reasonable terms, (iii) to provide the Lessor (or a designated assignee of the Lessor or Assignee) with any permits, licenses or other Governmental Actions (to the extent not already provided to such party by the Lessee or the Guarantor) that are necessary to enable the Project to operate on commercially reasonable terms in connection with its operation as an EWG, including without limitation all permits, licenses or other Governmental Actions required to enable such party (provided that such party is not a "public-utility company", as such term is defined in Section 2(a)(5) of the 1935 Act, or otherwise subject to regulation as a public utility by any relevant governmental body or similar entity under the laws of any state or locality) to operate the Project on commercially reasonable terms as an

EWG, and (iv) to negotiate in good faith with the Lessor (or a designated assignee of the Lessor or Assignee), or exercise all commercially reasonable efforts to locate a third party reasonably acceptable to the Lessor and Assignee who is capable of operating the Project for the Lessor (or a designated assignee of the Lessor or Assignee), to operate the Project for the Lessor (or such designated assignee of the Lessor or Assignee), for fair market value compensation for such services. The Lessee's obligations contained in this paragraph (i) shall survive the expiration or other termination of this Lease until the Lessor receives payment of (1) all amounts payable pursuant to this Lease and the Agreement for Lease, (2) all losses, damages, costs and expenses (including, without limitation, attorneys' fees and expenses, commissions, filing fees and sales or transfer taxes) sustained by the Lessor, (3) all amounts owing under the Financing Arrangements and (4) any unreimbursed costs incurred by the Lessor or Assignee with respect to the Project or the Project Contracts after the term of this Lease, net of any revenues received from the operation of the Project.

(j) The Lessee may not assign any of its obligations under this Lease to any other party, except to an Affiliate of the Lessee; provided, that (i) such Affiliate shall assume the obligations of the Lessee hereunder, under the Agreement for Lease and the Project Contracts, by execution and delivery of instruments satisfactory to the Lessor and Assignee (including, without limitation, consents under the applicable Project Contracts (if required), the execution of an assignment and assumption agreement and the reaffirmation of the Guaranty, in each case in form and substance satisfactory to the Lessor and Assignee, (ii) no Potential Default, Event of Default or Termination Event shall occur by reason of giving effect to such assignment, and (iii) such assignee shall have complied with any requirements set forth in the Project Contracts.

SECTION 30. NO RECOURSE.

The Lessor's obligations hereunder are intended to be the obligations of the limited partnership and of the corporation which is the general partner thereof only and no recourse for the payment of any amount due under this Lease, any Project Contract, or any other agreement contemplated hereby, or for any claim based thereon or otherwise in respect thereof, shall be had against any limited partner of the Lessor or any incorporator, shareholder, officer, director or Affiliate, as such, past, present or future of such corporate general partner or of any corporate limited partner or of any successor corporation to such corporate general partner or any corporate limited partner of the Lessor, or against any direct or indirect parent corporation of such corporate general partner or of any limited partner of the Lessor or any other subsidiary or Affiliate of any such direct or indirect parent corporation or any incorporator, shareholder, officer or director, as such, past, present or future, of any such parent or other subsidiary or Affiliate. Nothing contained in this Section 30 shall be construed to limit the exercise or enforcement, in accordance with the terms of this Lease, the Project Contracts and any other documents referred to herein, of rights and remedies against the limited partnership or the corporate general partner of the Lessor or the assets of the limited partnership or the corporate general partner of the Lessor.

SECTION 31. NO MERGER OF ESTATES.

There shall be no merger of this Lease or of the leasehold estate hereby created with the fee estate in the Project by reason of the fact that the same person acquires or holds, directly or indirectly, this Lease or the leasehold estate hereby created or any interest herein or in such leasehold estate as well as the fee estate in the Project or any interest in such fee estate.

[Signature Page Follows]

IN WITNESS WHEREOF, the Lessor and the Lessee have caused this Lease to be executed and delivered as of the day and year first above written.

WYGEN FUNDING, LIMITED PARTNERSHIP,
By Wygen Capital, Inc.,
its General Partner

By _____
Name:
Title:

BLACK HILLS GENERATION, INC.

By _____
Name:
Title:

EXHIBIT A
LEGAL DESCRIPTION OF LAND

A-1

EXHIBIT B
INTENTIONALLY OMITTED

B-1

EXHIBIT C

LIST OF PROJECT CONTRACTS

- o The Engineering, Procurement and Construction Agreement dated as of December 27, 2000, as amended by a First Amendment to Engineering, Procurement and Construction Agreement dated as of April 11, 2001, between the Lessee and the General Contractor.
- o The Irrevocable Letter of Credit No. NY-20511-30029698, dated April 18, 2001, issued by CitiBank, N.A., in favor of the Lessee.
- o The Performance Bonds issued by subcontractors pursuant to the EPC Contract.
- o The Subcontracts and Supply Contracts entered into by the General Contractor pursuant to the EPC Contract.
- o The equipment purchase contract to be entered into by and between General Electric Company and the General Contractor.
- o The Ground Lease Agreement, dated as of July 20, 2001, between the Lessee, as ground lessor, and the Lessor, as ground lessee.
- o The Easement Agreement, dated as of July 20, 2001, between Black Hills Power, Inc. and Wyodak Resources Development Corp., as grantors, and the Lessor, as grantee.
- o The Power Purchase Agreement, dated as of February 16, 2001, between the Lessee and Cheyenne Light, Fuel and Power Company.
- o The Power Purchase Agreement, dated as of March 5, 2001, between the Lessee and Municipal Energy Agency of Nebraska.
- o The Coal Supply Agreement, dated as of July 20, 2001, between Wyodak Resources Development Corp. and the Lessee.
- o The Agreement for Rights of Usage of Coal Silo and Coal Conveyer, dated as of July 20, 2001, between Black Hills Power, Inc. and the Lessee.
- o The Agreement for Interconnection Service, dated as of July 20, 2001, between Black Hills Power, Inc. and the Lessee.
- o The Services Agreement, dated as of July 20, 2001, between Black Hills Power, Inc. and the Lessee.

EXHIBIT D

LIST OF PROJECT AUTHORIZATIONS

- o Air Quality Permit No. CT-1236, as modified in Permit No. MD-510A.
- o Determination of No Hazard to Air Navigation issued by the Federal Aviation Administration on February 28, 2001.
- o Determination of Exempt Wholesale Generation Status dated April 10, 2001, 95 F.E.R.C.ss.62.025; 2001 WL 357465.
- o Acceptance for filing of rate schedule of market-based rates, June 22, 2001, F.E.R.C. Docket No. ER01-1844-000.

EXHIBIT E
MONTHLY RENT COMPONENT

[As of the date of this Lease, there is no Monthly Rent Component.]

E-1

Black Hills Corporation
625 Ninth Street
Rapid City, SD 57701

LETTER TO COMMISSION PURSUANT TO TEMPORARY NOTE 3T

March 25, 2002

Securities and Exchange Commission
450 Fifth Street, N.W.
Washington, D.C. 20549

Ladies and Gentlemen:

Pursuant to Temporary Note 3T to Article 3 of Regulation S-X, Black Hills Corporation has obtained a letter of representation from Arthur Andersen LLP stating that the December 31, 2001 audit was subject to their quality control system for the U.S. accounting and auditing practice to provide reasonable assurance that the engagement was conducted in compliance with professional standards, that there was appropriate continuity of Arthur Andersen LLP personnel working on the audit and availability of national office consultation to conduct the relevant portions of the audit. Availability of personnel at foreign affiliates of Arthur Andersen is not relevant to this audit.

Very truly yours,

Black Hills Corporation

/s/ Mark T. Thies

Mark T. Thies
Senior Vice President and
Chief Financial Officer