



# *PowerChoice*

Settlement Document

Volume 1 - Agreement

**Niagara Mohawk Power Corporation  
PSC Case Nos. 94-E-0098 and 94-E-0099**

**Revised  
March 19, 1998**

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# **NY NIAGARA MOHAWK**

NIAGARA MOHAWK POWER CORPORATION/300 ERIE BOULEVARD WEST, SYRACUSE, N.Y. 13202/TELEPHONE (315) 474-1511

October 10, 1997

Hon. John C. Cray, Secretary  
NYS Department of Public Service  
Three Empire State Plaza 18th Floor  
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**Re: Niagara Mohawk Power Corporation  
Cases 94-E-0098 et al.**

Dear Secretary Cray:

Enclosed for filing with the Commission, pursuant to 16 NYCRR §§3.5(f) and 3.9, are an original and twenty-five copies of the Stipulation and Agreement setting forth the settlement of these proceedings. Niagara Mohawk is filing this Settlement with the expectation and understanding that Department of Public Service Commission Staff, Multiple Intervenors and others will sign it. We will provide signature pages as they become available. I ask that you kindly acknowledge receipt and filing of the enclosures by date-stamping the enclosed copy of this letter and returning it in the postage-paid envelope provided for your convenience.

As background to this filing, the Company notes that over two years ago, by its October 1995 PowerChoice proposal, Niagara Mohawk became the first energy company in the State of New York to propose a comprehensive restructuring of its electric business. However, because of the need to address growing and crippling payments to Independent Power Producers whose output the Company was required to purchase at government-mandated prices in excess of market prices, progress on PowerChoice was delayed. With this Settlement, it is now time to finalize and implement PowerChoice.

The Settlement is the result of intensive and lengthy negotiations among numerous parties having many differing perspectives on industry restructuring. It has been reached after extensive analysis, negotiation, and give-and-take, and the Company is offering it with the following five goals in mind:

- Stabilize the Company's financial condition through consummation of the Master Restructuring Agreement with the Settling Independent Power Producers ("SIPPs").
- Provide for the continued development of a competitive electric generation market through auction of all the Company's fossil and hydro generating plants to third parties.
- Promote jobs and economic development in Central New York by reducing industrial rates substantially and by providing choice for such customers immediately.



- Reduce prices and introduce customer choice and competition for all other customers over the next three years, while improving customer service.
- Maintain and improve the effectiveness of essential environmental and other public policy programs.

The Settlement further requires that the Company's stockholders absorb a significant portion of its stranded costs over the next five years, but affords the Company the opportunity to collect the remaining stranded costs through a competitive transition charge and exit fees.

In short, the Company believes that the Settlement balances the needs of all stakeholders and, therefore, should be approved.

Yours truly,

  
Paul J. Kalish

cc: Hon. William Bouteiller  
All Parties on Attached Service List

BY HAND



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# NIAGARA MOHAWK POWER CORPORATION POWERCHOICE SETTLEMENT AGREEMENT

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## SECTION 1.0 BACKGROUND

In February of 1994, Niagara Mohawk filed a comprehensive five-year rate proposal, which opened docket 94-E-0098. Following extensive public statement and evidentiary hearings, the proposal was split into two "phases" for briefing and decision by the Commission. The Commission decided the first phase, setting 1995 rates, in an April 21, 1995 "short order" and in Opinion 95-21.<sup>1</sup> The multi-year part of the record was never presented to the Commission. Rather, in the April 21 Order, the Commission urged the parties to attempt to negotiate a comprehensive long-term solution to Niagara Mohawk's escalating costs. The Commission ordered the parties, among other things, "to address [the Company's 1996-1999] rate levels, Niagara Mohawk's financial security, the protection of customer service quality, and regulatory changes reflecting increased competition. ... [and] improve the company's competitive position, without anti-competitive effects, by addressing the excessive generation cost burden." The Commission also directed the parties to develop a multi-year plan "consistent with policies being developed in connection with the review of competitive opportunities in Case 94-E-0952."<sup>2</sup>

The Company answered the Commission's call for a comprehensive solution and multi-year plan by filing its *PowerChoice* proposal on October 6, 1995, which followed informational sessions among all parties held June-September 1995. *PowerChoice* proposed an electricity price freeze for most customer classes and reductions for others for the period 1996-2000; financial concessions by the Company and the IPPs in proportion to their contribution to strandable costs in order to finance the price freeze; creation of competitive wholesale generation market in the Company's service territory through the formation of an Independent System Operator (ISO) and divestiture of all of Niagara Mohawk's generation, including its nuclear units; and introduction of customer choice for all classes over a three-year period. In exchange for the Company's willingness to undertake these initiatives, Niagara Mohawk asked that the State help in

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<sup>1</sup> Niagara Mohawk Power Corp., Cases 94-E-0098 and 94-E-0099, et al., Order Setting Electric, Electric Street Lighting and Gas Rates (April 21, 1995), and Opinion and Order Concerning Revenue Requirement and Rate Design (December 29, 1995.)

<sup>2</sup>In the Matter of Competitive Opportunities Regarding Electric Service, Cases 94-E-0952, et al. (also known as the "Competitive Opportunities Proceeding.").



reducing the costs of above market IPP contracts; for assurance of a reasonable opportunity to recover strandable costs remaining after concessions by Niagara Mohawk and the IPPs; and for permission to form a holding company whose unregulated subsidiaries would have a fair opportunity to compete in the new market.

In the nine months following the filing of *PowerChoice*, the Company engaged in extensive negotiations and discussions with all parties. During this time, proceedings were ongoing in the Competitive Opportunities Proceeding. Thereafter, in Opinion 96-12, Opinion and Order Regarding Competitive Opportunities for Electric Service (issued May 20, 1996), the Commission expressed its "vision for the future of the electric industry in light of competitive opportunities ...," and added that utilities and IPPs "... are strongly encouraged to pursue agreements that reduce rates to benefit ratepayers. If parties are unwilling, however, to restructure those contracts voluntarily, the Commission shall pursue policies to mitigate the impact of such contracts on rates." The Commission further directed the IPPs "to move forward aggressively in appropriate forums to seek solutions such as a buyout of contracts or renegotiations of them so as to align them more closely with a competitive framework." Opinion 96-12 went on to require each utility to file a rate/restructuring plan "consistent with our policy and vision for increased competition" by October 1, 1996. Niagara Mohawk was specifically excluded from that filing requirement because it had previously filed its *PowerChoice* plan.

By June 1996, it had become clear that no further progress in Niagara Mohawk's *PowerChoice* negotiations could be made until the Company could put forward a definitive rate plan, and a definitive rate plan would require a comprehensive settlement with the IPPs. The Company suspended *PowerChoice* negotiations and focused on negotiations with the IPPs.

On July 9, 1997, after 16 months of arduous and contentious negotiations against the backdrop of many years of court and administrative litigation and the very real prospect of years of future litigation, the Company executed the Master Restructuring Agreement, ("MRA") with 29 IPPs represented by 16 developers who collectively represent more than 80% of the Company's above-market IPP costs. These IPPs (the "Settling IPPs", or "SIPPs") agreed to restructure, amend or replace their current IPP contracts in exchange for:

- o \$3.6 billion in newly issued debt or cash;
- o 46 million shares of common stock (slightly less than 25% of the Company's equity); and



- o a portfolio of certain financial or physical delivery contracts.

On July 23, 1997, the Company filed a revised settlement offer for PowerChoice. Two months of intensive negotiations followed, with the Company, Staff and several intervenors reaching an Agreement in Principle on September 25, 1997.

More than sixty parties have intervened in this proceeding, with almost 30 parties participating actively in the settlement negotiations. Unlike the other New York electric utility restructuring proceedings, the Company, Staff and other parties negotiated without waiver of the Commission's Settlement regulations. Administrative Law Judge Stockholm has mediated the negotiations throughout, with Judges Lee and Brillling joining him since the Company's July 23, 1997 Settlement Offer filing.

The Settlement Agreement (also the Agreement or Settlement) that follows, like the MRA upon which it rests, resolves many complex and seemingly insoluble issues and is the product of much hard bargaining among the many, normally-adversarial parties to this proceeding. The signatories to this Settlement Agreement strongly recommend its swift approval.





## SECTION 2.0 RATE PLAN

### 2.1 INTRODUCTION AND SUMMARY

Price level targets and price designs are described in Section 4.0. This Section describes the Rate Plan, including the date on which the Agreement becomes effective, the treatment of costs during the term of the Agreement, and the mechanisms for adjusting prices over time.

***Rate Plan for Years One through Three.*** During years one through three of the Agreement, prices have been set at the targets listed in Table 4-1 and 4-2. During the first three years, prices may only be adjusted for a limited number of surcharges which could raise or lower prices. These surcharges include the New York Power Authority (NYPA) Hydropower Credit described in Section 2.4.3, a surcharge to account for variations from forecasted costs in the event a nuclear power plant is retired (described in Section 2.5 and 3.3.4) and an increase in spending levels for the System Benefits Charge (if ordered by the Commission, as described in Section 2.4.3).

However, during the first three years, certain costs or savings can be deferred for recovery or refund beginning in years four and five of the Agreement. The items that can be deferred are limited and are described in Section 2.6.

***Rate Plan for Years Four and Five.*** For years four and five of the Agreement, the Company can file for a rate increase, but that increase must be capped at 1% for all elements of rates except the market price of the electric commodity itself, and except as specified below. The details of this price cap plan are described in Section 2.4.1.2. In addition, Niagara Mohawk can begin to recover through a surcharge, the expenses that it was allowed to defer in the first three years of the Agreement. Surcharges applicable in years four and five are the surcharges applicable in the first three years as well as the generation auction incentive surcharge which is described in Section 2.4.3. Recovery of deferrals and the generation auction incentive in years four and five is limited such that these surcharges plus any allowed rate increase under the 1% price cap cannot exceed the rate of inflation. This mechanism is described in more detail in Section 2.4.3. Finally, the price cap and the inflation cap for deferral recovery exclude the recovery or refund of the difference between the actual and forecasted costs associated with certain approved IPP Indexed Contracts, which will begin in year four as described in Section 2.4.1.2.



**Stranded Cost Recovery.** Upon fulfilling certain commitments described herein, the Company shall have a reasonable opportunity to recover its stranded generation costs, including costs associated with its own generation as well as the costs associated with the Master Restructuring Agreement between the Company and the Settling Independent Power Producers (SIPPs) as described in Sections 2.3, 2.5 and 3.0.

## **2.2 TERM AND EFFECTIVE DATE OF RATES**

The Company proposes to implement the rate plan for a period of five years, commencing on the PowerChoice Implementation Date.

The PowerChoice Implementation Date is dependent upon receipt of Public Service Commission approval of this Settlement Agreement, as well as completion of other steps subsequent to PSC approval, including, but not limited to, obtaining various approvals to issue debt and sell equity, SIPPs settlement of their third party obligations and negotiation between the Company and the SIPPs of new contractual arrangements. New tariffs will not become effective until these steps are completed. The Company will file proposed tariffs to implement this agreement as soon as is reasonably possible following approval of this agreement, but in no event later than 60 days following approval of this agreement. The Company's objective is to consummate these steps as soon as possible. Many steps on the critical path to implementation are predicated on receiving written PSC approval. Any delays in receiving written PSC approval will result in a delay in the implementation of new rates. Any delay in the completion of subsequent steps would also delay the effective date.

For the purpose of defining the five year term of the rate plan, the first rate year begins with the PowerChoice Implementation Date and each subsequent rate year begins on the anniversary thereof.

## **2.3 MASTER RESTRUCTURING AGREEMENT (MRA)**

### **2.3.1 Prudence of the MRA**

The MRA and the contracts to be executed pursuant thereto are found to be prudent and recoverable to the extent provided herein. The specific details of debt and stock issuances required to finance the MRA will be subject to separate review and approval after filing.



### **2.3.2 Reasonable Opportunity to Recover Costs**

The Company will have a reasonable opportunity to recover stranded costs associated with the MRA, including all costs of the contracts to be executed pursuant to the MRA (as described in Appendix A and Section 3.4), except for the return on the regulatory asset, through the Competitive Transition Charge (CTC) or, where applicable, exit fees. The Commission will consider any request for a return on the regulatory asset post year five of the PowerChoice Settlement Agreement.

### **2.3.3 Recovery of Costs Associated with Termination of Related Gas Transportation and Peak Shaving Agreements**

The Parties agree that the Company will recover in gas rates certain costs associated with the termination of gas transportation and peak shaving agreements between the SIPPs and Niagara Mohawk, as described in Appendix B.

### **2.3.4 SIPP Cost Recovery**

The costs of the SIPP contract restructuring and termination resulting from the MRA and associated contracts will be deferred and amortized over a period not to exceed ten years. To achieve the price levels described in Tables 4-1 and 4-2, the Company proposes not to set a specific rate of return on the regulatory asset, although it is obvious from the financial forecast in Appendix C that little or no return is forecast to be earned on that asset during the term of the settlement agreement.

The Company will be taking the position with the Internal Revenue Service generally that the cash and common stock portion of the SIPP settlement costs are currently deductible, creating a Net Operating Loss carry back that would entitle the Company to a refund of prior years paid taxes. The refund would be used to fund a portion of the cash needed for the SIPP settlement, and would not be otherwise deferred for other rate making purposes.



## 2.4 OVERALL RATE AND REVENUE LEVELS

### 2.4.1 Average Prices

#### 2.4.1.1 Years One Through Three

The agreed upon prices for the major service classifications for years one through three are set forth in Tables 4-1 and 4-2 and described in greater detail in Section 4.0. The starting point for establishing the bundled retail prices that will apply for the duration of this agreement is the retail base rates that became effective April 27, 1995 adjusted to capture 1995 surcharges. Prices for distribution and transmission services will be increased during years one through three as described in Section 4.4.4, but offset by an equivalent reduction in the CTC to meet the overall price goals.

#### 2.4.1.2 Price Cap For Years Four And Five

Prices in years four and five can be increased by an amount not to exceed 1% of the all-in price except the commodity (e.g. inclusive of transmission, distribution and forecasted CTC charges) except for exclusions noted below. Unless an increase is sought, the Company is not required to file. Any rate increases to transmission prices approved by FERC that would be charged to retail customers would count towards the price cap increase.

The price cap excludes recovery of deferrals established pursuant to the Settlement Agreement and any generation sale incentive, and variations in the MRA contract costs due to the indexing provisions of the IPP contracts. The Company will be allowed to file for deferrals and generation sale incentive recovery pursuant to Section 2.4.3, without a filing for the price cap.

Beginning in year four, the Company will adjust the CTC quarterly for changes in the IPP Indexed Contracts through the CAC as described in Section 4.2.6. The Company agrees to file the amended or restated contracts with the Commission for its review and approval of the indexing provisions. The contracts shall be approved as just and reasonable if the indexing provisions are consistent with the terms and conditions for amended and restated contracts contained in Exhibit A of the MRA. In particular, the indexing formula, when calculated using the assumptions set forth in Exhibit A, Attachment A-5 of the MRA, will result in weighted average contract prices that do not exceed the weighted





average contract prices that are contained in Attachment A-3 to Exhibit A to the MRA, with such weighted average contract prices being subject to adjustment if one or more of the SIPPs do not consummate the contracts contemplated in the MRA.

#### **2.4.2 Revenues and Financial Forecast**

The Company's projection of the financial impacts of the MRA and this settlement agreement are presented in Appendix C.

#### **2.4.3 Rate Adjustment Mechanisms**

The projected prices are subject to change only as specified in this Agreement. The parties have agreed upon several specific mechanisms that could change prices periodically. These mechanisms include:

- **Systems Benefits Charge (SBC)**

As described in Section 7.0, the SBC will be used to collect the costs of public policy programs, to be imposed on all distribution customers except as otherwise provided herein. Spending for SBC-related programs will be set at \$15 million annually for years one through three. That level of spending is included within the pricing goals set forth in Tables 4-1 and 4-2. Additional spending, if approved by the PSC, would be collected through a surcharge to customers.

- **NYPA Residential Hydropower Credit**

In accordance with contracts between NYPA and the Company, residential customers are to receive the actual benefits of NYPA hydropower. The procedure to reflect actual benefits in residential prices is described in Section 4.3.3.

- **Generation Sale Incentive**

Section 3.2.2 describes the Company's incentive for the sale of fossil and hydro assets. To collect this incentive, the Company will include a surcharge in years four and five. The surcharge will be limited to an amount equal to inflation less amounts authorized under the price caps filing and deferral recovery. Unamortized amounts of incentive remaining at the end of year 5 will be amortized over a period not to exceed 3 years.



All customers who pay the CTC, or, where applicable, exit fees, will pay the generation incentive through a surcharge. Customers who do not pay the CTC or exit fees will not be obliged to pay the generation incentive.

To the extent the sales price of the assets is sufficiently in excess of book value to fund some or all of the incentive, the Company will retain that cash and the incentive surcharge will be reduced or eliminated (book value includes related costs, such as parts and fuel inventory, allocation of common facility costs, etc.). To the extent there is a net book gain (after auction costs and incentive) on the sale of the assets, the net gain will be used to reduce stranded costs for all customers that pay the CTC. To the extent there are unrecovered costs remaining (i.e., stranded costs), these costs will be deferred for recovery in year six over a period up to the remaining life of the assets sold, as provided herein.

- **Recovery of Deferrals**

The Company will file for recovery of deferrals from years one through three, beginning in year four. Deferrals will include those referred to herein. The amount of amortization and recovery will be limited to an amount equal to the rate of inflation less the amount allowed under the price caps filing and generation sale incentive recovery if any. The rate of inflation will be the latest Blue Chip indicator forecast of GDPPI at the time of the Commission decision. New deferrals recorded in year four will be factored into the year five deferral filing. Any remaining unamortized deferrals at the end of year five will be recovered over a period not to exceed five years beginning in year six.

Deferrals will be collected through appropriate rate mechanisms, depending upon the nature of the cost, i.e., generation-related deferrals such as changes in nuclear costs will be collected through a surcharge to all customers who pay a CTC. Customers who do not pay the CTC or exit fee will not be obliged to pay for generation deferrals. Distribution-related deferrals will be collected through a distribution surcharge.

When available, new deferred debits will be netted against new deferred credits arising during the term of this settlement agreement.



#### **2.4.4 Gross Receipts Tax (GRT) Reform**

New York State enacted legislation in 1997 phasing in a 1% reduction of the State gross receipts tax by 2000. Such reduction in the GRT, as realized, will be passed through to customers as described in Section 4.1.4.

#### **2.4.5 Securitization**

Further rate reductions could be achieved if the State of New York were to authorize "securitization" of certain costs in a way that reduces the borrowing cost of the Company. To the extent that it is not otherwise prohibited by any legislation authorizing securitization, the benefits of securitization should be used to further reduce prices to SC1, 2, and 3 customers. The Company and Staff recommend that the Commission consider allocating a portion of such savings for energy efficiency and clean technology.

### **2.5 STRANDED COST RECOVERY**

Niagara Mohawk will be entitled to recover allowable stranded costs through a non-bypassable Competitive Transition Charge (CTC) or, in some circumstances, an exit fee. The details of the CTC and the exit fee are contained in Section 4.0.

As described in Section 3.0, Niagara Mohawk will have a reasonable opportunity to recover stranded costs associated with its fossil and hydro units, which will be quantified through auction and divestiture.

Niagara Mohawk will have a reasonable opportunity to recover stranded costs associated with its nuclear generation during the term of this agreement, as described in Section 3.0. Recovery of stranded costs associated with retirement of a nuclear unit during the term of this agreement is subject to a separate Commission review process described in Section 3.0.

As described in Section 2.3.2 above, Niagara Mohawk will have a reasonable opportunity to recover stranded costs associated with the MRA, with the exception of the return on the regulatory asset related to the MRA. During the term of this agreement, Niagara Mohawk has limited its return on the regulatory asset, resulting in a low projected return on equity, as shown in Appendix C. The projected forgone returns represent Niagara Mohawk's share of stranded cost responsibility during the term of this agreement.



## **2.6 DEFERRALS**

### **2.6.1 Cost Categories Eligible for Deferrals**

Site Investigation and Remediation (SIR) costs are eligible for true-up and deferral. In addition, the following changes in forecast costs are eligible for deferral: changes in laws, regulations, rules and accounting that can be substantiated as increasing or decreasing the cost of doing business (in excess of \$500,000 per change) , and nuclear costs beyond management's control (including decommissioning, the Price Anderson Act covering nuclear accidents, fuel storage, disposal of waste (exclusive of cost increases unrelated to changes in laws, regulations, etc.), significant NRC actions and other government agency mandates and policy issues). Changes in regulations will include financial consequences associated with a final decision in Case 97-E-0251. In addition, some gross revenue losses associated with the customer service backout credit (See Section 5.0) will be deferred. Any penalties accrued under the Customer Service Quality Incentive (See Section 6.0) will be deferred to offset cost deferrals.

The Company will be entitled to petition for deferral and recovery of any other incremental costs not specifically anticipated in the financial forecast and not otherwise provided for in the first sentence of this subparagraph, including incremental costs associated with the Company's role as provider of last resort as well as incremental business retention price discounts as described in herein.

### **2.6.2 New York Power Authority Transmission Access Charge (NTAC) Deferral**

The Company shall be entitled to defer annually the actual NTAC costs up to a capped level reflecting the total of (1) the actual amount of leveraged co-funding and grants used for electric technologies, renewable projects and marketing and promotions related to energy efficiency or other projects qualifying for funding under the SBC, and (2) the actual amount of Low Income Customer Assistance Program (LICAP) program generated arrears forgiveness.

### **2.6.3 Tax Refunds/Payments**

The Company is subject to ongoing examinations by federal and state tax authorities. No amounts have been provided for in the financial forecast for resolution, either resulting in a refund or liability, of these examinations. To the extent that refunds or payments, including interest and penalties and net of any deferred taxes, individually exceed \$500,000, the Company will defer such refund or payment for disposition in rates as set forth in Section 2.4.3.





## **2.6.4 Additional IPP Contract Termination or Restructuring**

There may be additional opportunities to restructure or terminate IPP contracts not included in the current MRA. With respect to any such opportunities that are pure IPP buyouts, the Company will defer the up-front costs and amortize those costs over a five year period from the date of the buyout. The up-front costs will be accounted for on an accrual basis (including instances where the buyout payment is structured over a number of years). The Company will retain the savings from the buyout during the five year period of the PowerChoice settlement. Unamortized costs and savings remaining at the end of year five will be recovered or refunded in subsequent rate proceedings subject to prudence review.

With respect to restructuring of additional IPP contracts, the Company will submit to the Commission for approval and rate treatment each proposed restructuring, along with a calculation of the anticipated savings on both a nominal and NPV basis. The parties agree that the Company should be entitled to a share of savings to provide as a meaningful incentive to pursue restructuring. The sharing level shall be determined by the Commission on a case by case basis.

## **2.6.5 Disposition Of Existing Cost Deferrals Not Yet Reflected In Rates**

### **2.6.5.1 Generally**

Deferred debits and credits existing as of the PowerChoice Implementation Date shall be netted against each other, and the net balance shall be added/subtracted to/from any deferrals provided for herein. Appendix E sets forth the accounts and estimated balances to be netted.

The Company will discontinue true-up accounting for electric unbilled services. Revenues recorded by the Company in each year of this settlement agreement will reflect both billed and unbilled revenues of the period.

### **2.6.5.2. Site Investigation and Remediation Program**

The Company has conducted a Site Investigation and Remediation program (SIR) the purpose of which has been to efficiently and effectively manage a number of environmental clean-up activities over an extended period of time. The principal activities involve investigation and, where necessary, remediation and monitoring of manufactured gas plant sites and industrial waste sites. The Company expects to continue these activities



through the term of the settlement agreement. Under previous electric and gas rate orders, the Company has been permitted to defer cost differences from amounts provided for in rates. This treatment continues under the existing gas rate settlement through 1999. The Company will apply deferral accounting as described herein, to cost differences from amounts provided for in the financial forecast presented in Appendix C and described below.

The amount the Company proposes to include in rates has been affected by two recent events. First, the Company entered into an amended Order on Consent with the New York Department of Environmental Conservation (NYDEC) on May 12, 1997 that provides for an annual "cost cap" of approximately \$15 million on expenditures by the Company for 52 sites covered by the Order. The cost cap is not an absolute limit on the Company's annual or total spending on these sites, but represents an understanding between the Company and the NYDEC that it is in the best interests of both parties to provide for efficient management of the investigation and remediation process. However, where the NYDEC or the Company believes that public health and safety concerns warrant accelerated expenditures, the cost cap will be exceeded. Also, total annual expenditures may be influenced by requirements at sites over which the Company has little or no control (for example, where the Company is a "potentially responsible party"). The amended order also does not establish the method of remediation, which may vary site-by-site, creating uncertainty as to total required expenditures.

The Company has also been actively pursuing insurance recoveries for environmental remediation activities. Through December 31, 1996, the Company has reached settlements with a number of insurance carriers, resulting in payments to the Company of \$49.8 million before costs incurred in pursuing recoveries, which have amounted to \$13.4 million. The net proceeds have been deferred for disposition in this settlement agreement. In establishing an annual allowance for true-up, the Company proposes to amortize the proceeds, net of costs, over a ten year period. The resulting annual electric net allowance is approximately \$10.2 million. The Company is continuing to pursue additional recoveries, and to the extent that additional proceeds are received by the Company during the settlement period, these will be deferred, net of costs and will be used to offset SIR costs expected to be incurred in the years beyond this settlement period.



The Company will apply the accounting and ratemaking for certain net gains of property, the sale of timber, etc. on such land and any related land/mining lease revenues as set forth in Section III, A. of the Gas Stipulation and Agreement in Case 95-G-1095 and 95-G-0091. The Company will be permitted to conform prospectively the accounting for the electric allocable portion of the proceeds to the outcome of any gas proceeding during the first three years of this settlement, or propose different treatment as part of a price caps filing for year four.

## **2.7 SFAS NO. 71 APPLICABILITY**

The Company supports this settlement agreement in part because the agreement is consistent with the principles of SFAS No. 71. The parties agree that during the terms of this settlement, the Company should be regulated in a way that would allow it to continue the principles of SFAS No. 71 to its regulated operations (RegCo). The parties further agree that any material change in the allocation of risk as set forth in this settlement agreement, whether made during the approval process or during the term of the settlement agreement, could jeopardize the application of SFAS No. 71, as well as the financial stabilization and recovery of the Company.

It is the intent of the Parties, and the Commission by virtue of its approval of this Agreement, that the Agreement meets the accounting requirements of Statement of Financial Accounting Standards No. 71, throughout its term.

## **2.8 RATE FILING FOR PERIOD AFTER TERM OF THIS AGREEMENT**

The Company will be permitted to file a rate case for rates to be effective beginning immediately after the conclusion of the fifth year of this settlement agreement. If the Company elects not to file a rate case, unbundled prices (exclusive of surcharges described herein) would remain unchanged.



## SECTION 3.0 NIAGARA MOHAWK GENERATION

### 3.1 INTRODUCTION AND SUMMARY

#### 3.1.1 Generation Owned by Niagara Mohawk

Niagara Mohawk has agreed to divest all fossil and hydro generation as described below. Until such divestiture is completed, the company will functionally separate its fossil and hydro generation from its regulated activities. Divestiture will be accomplished either by an auction process or, if acceptable bids are not received, by creating a legally separate generation company as described herein.

Nuclear generation will remain part of RegCo, but will stay in a business unit functionally separate from RegCo's transmission and distribution and gas businesses. It will be subject to further study and disposition as described in Section 3.3 infra.

The rate treatment of generation owned by Niagara Mohawk is governed by the provisions of the Rate Plan described herein. However, for internal accounting purposes, and to define the generation component of unbundled prices, RegCo will enter into certain transition "contracts" with its fossil and hydro businesses and its nuclear business unit governing quantities and prices for fossil/hydro and nuclear generation, respectively. These "contracts" are designed to achieve the rates to which Niagara Mohawk is committed under this agreement. The fossil/hydro contracts have an initial term of 3 years, and the Company has agreed to explore an additional 2 years through the auction design. The nuclear "contracts" have 5 year terms, consistent with the term of this settlement.

When the fossil and hydro units are sold or spun to separate entities, the RegCo contracts will be sold with them. In that event, the contracts may govern the purchase of energy by RegCo from these independently owned generators for the remainder of the 3, or, if extended, 5-year term of the contracts<sup>3</sup>. After that point in time, the parties anticipate that the new owners of the former NMPC generating units will sell their output at market

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<sup>3</sup>The Contracts are intended to be structured as financial instruments allowing customers to purchase energy from the market immediately.





prices, either into a spot market or under bilateral contracts. They will have no remaining contract with or obligation to RegCo for the sale of energy or capacity.

Niagara Mohawk will define the terms and conditions of a two year extension in the fossil/hydro contract as part of the auction plan, which is subject to separate PSC approval. If the PSC determines that the 2-year extension is appropriate, then the net auction proceeds and CTC will reflect the incremental/decremental value of the contract extension.

As the generation transition contracts expire or are terminated, and if a nuclear plant is retired, the energy subject to them will become unhedged. The market prices of unhedged energy will be flowed through directly to customers, unless otherwise specified herein (See Section 4.0).

### **3.1.2 Generation Purchased from IPPs**

Contracts with IPPs who are not parties to the MRA shall continue in force and effect, subject to their own terms, except that Niagara Mohawk shall continue to pursue opportunities to restructure, auction, or buy out the IPP contracts. Rate treatment for such additional restructuring or buyouts is discussed in Section 2.6.4 herein.

Purchases of generation from IPPs who are parties to the MRA will be governed by the MRA and contracts executed pursuant to the MRA.

Some IPPs who are signatories to the MRA shall have their contracts terminated as a consequence. These IPPs will have discretion to sell their output to others, to sell to Niagara Mohawk at market prices, or to close their operations, among other options. Other IPPs who are signatories to the MRA shall have their contracts restated or amended as described therein.

## **3.2 GUIDING PRINCIPLES FOR FOSSIL/HYDRO GENERATION AUCTION**

### **3.2.1 Agreement to Divest Fossil/Hydro Generation**

#### **Divestiture**

Niagara Mohawk will commit to hold a broad-based auction of its non-nuclear generation assets (the auction) and at its discretion may include some IPP Power Purchase Agreements (inclusion of the IPP contracts will



be consistent with contractual rights or consent of the IPPs). Any hydro projects that are part of a nuclear license and any wind and solar generation projects described elsewhere in this agreement will be excluded from the auction and divestiture.

After the auction and/or spinoff transactions described herein are complete, Niagara Mohawk and its subsidiaries agree not to own any generation assets in New York State, with the exception of any sale/leaseback transactions and reorganizations necessary to close the MRA and except as otherwise provided for in this agreement. In the case of a reorganization transaction pursuant to the MRA, NMPC will either lease any project facilities acquired in the reorganization to a third party operator, or enter into a management and services contract with such a third party approved by the PSC, or operate the facility itself but only for the purpose of generating a source, or a backup source, of supply for its own use and not for re-sale. In addition, neither HoldCo nor RegCo will own any generation assets inside or outside of New York, except as otherwise provided for in this agreement. However, any other affiliate of HoldCo is not restricted in any way by this agreement from owning generation assets outside New York.

Because the PSC will review merger applications under the Public Service Law, nothing in this agreement will limit the Company's ability to merge with or be acquired by another entity owning generation. Moreover, nothing in this agreement will limit the Company's ability to form partnerships or affiliations with entities who own generation in New York State, provided that those partnerships or affiliations do not involve ownership of generation assets. An unregulated affiliate of HoldCo may enter into arms length contracts with an entity owning generation in New York State.

The sale/leaseback transactions, reorganizations, partnerships and affiliations and arms-length contracts referred to above are all subject to the restriction that they must not create a conflict between the interests of RegCo ratepayers and Company stockholders by tying the profitability of the Company to the profitability of another entity's generation business.

Any material violation of the above restrictions may result in, inter alia, an affiliate being prohibited from further transacting business with end users within the RegCo service territory or divestiture of the affiliate, provided, however, that the Company shall be given the opportunity to explain why a violation has not occurred and to remedy any such alleged violation in



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accordance with the procedures outlined in Section 9.3.9 regarding Corporate Structure and Affiliate Transactions.

### Auction

Niagara Mohawk commits to file a detailed auction plan within 30 days of the PSC Order approving the PowerChoice Settlement Agreement. The detailed auction plan will undergo Commission review, with an opportunity for comment by other parties, and approval. Winning bidders in the auction will be selected within 11 months of plan approval. Niagara Mohawk will use its best efforts to transfer title within 9 months of the selection of winning bidders, contingent on Niagara Mohawk and the buyer(s) receiving all necessary regulatory approvals to effectuate the transaction(s).

The auction process will include a screening stage to establish minimum standards for qualified bidders, and one or more bidding stages. The auction features may include the sale of the portfolio in its entirety, in any combination, or as individual plants or sites. (Likely sub-groupings are: (a) coal plants, (b) Albany, (c) Oswego, (d) 1-3 hydro plant combinations, (e) other generation, and (f) any IPP contracts included in the auction). After completion of the transactions resulting from the auction process as described herein, no fossil or hydro assets included in the auction and receiving positive bids will remain part of Niagara Mohawk.

Niagara Mohawk retains the right to reject the following types of bids for any asset or group of assets:

- (1) Any bids that are less than zero: The rejected bid will cap the level of mitigated stranded costs for assets whose bids were rejected. The assets whose bids are rejected will remain part of RegCo.
- (2) Bids that are greater than zero that are deemed too low: Niagara Mohawk reserves the right to reject any and all bids that it deems too low. If it rejects all bids for an asset or group of assets, then it commits to form a subsidiary consisting of the assets with non-negative bids, and spin the assets to a legally separate generating company. The greater of the rejected bid(s) or the average trading value of the stock of the spun entity for the 30 trading days after the stock is publicly traded, will determine the market value of the assets for the purpose of mitigating stranded costs. Nothing in this agreement precludes the Commission from ordering an alternative



to the rejected bid approach in its review and approval of the Company's auction plan.

To the extent that the IPP contracts are grouped with other generation assets, Niagara Mohawk waives its right to reject the bids for that group.

### **3.2.2 Non-Nuclear Generation Sale Incentive**

Niagara Mohawk will receive an incentive based on the net proceeds (gross sales price less auction costs (external third party costs)) of the auction as an incentive to obtain the maximum value in the sale of its generation assets, and to offset in part the stranded costs being absorbed by its shareholders as part of this settlement. The incentive will be recovered as described in Section 2.4.3. Niagara Mohawk will have the right to use the incentive in any manner it sees fit so long as it is consistent with this agreement. The incentive will not apply to bids rejected as described above.

The incentive will be calculated as follows:

- (a) For all fossil/hydro assets sold, except for the Oswego Steam Station, the Company will receive an incentive equal to the following percentage of net auction proceeds:
  - o 0% of the proceeds between 0 and \$250 million
  - o 12% of the proceeds between \$250 and \$500 million
  - o 18% of the proceeds between \$500 and \$750 million
  - o 10% of the proceeds above \$750 million
  
- (b) For the Oswego Steam Station:

The Company will receive an incentive equal to the following percentage of net auction proceeds:

- o 0% of the proceeds between \$0 and \$100 million
- o 5% of the proceeds above \$100 million





### 3.2.3 Labor Issues Associated with Divestiture

#### 3.2.3.1 Labor Contract Issues

The parties recognize that the Company and the IBEW Local 97, AFL-CIO, are bound by a collective bargaining agreement effective March 1, 1996 through May 31, 2001, which includes a provision at Article II entitled "Territory." Article II provides that:

1. The territory covered by this agreement shall include all the franchise territory of the Company.
2. This agreement shall bind the successors of the Company by merger or consolidation as to the provisions and territory covered by this agreement. For the purpose of preserving and protecting work opportunities and job security for the bargaining unit, it is agreed that:
  - a. An absolute precondition to the sale, lease, transfer, or takeover by sale, transfer, lease, assignment, corporate reorganization, receivership, or bankruptcy proceeding of the entire operation or any part thereof is that any purchaser, transferee, lessee, assignee, etc. shall agree and become party to and bound by all the terms, conditions, and obligations of this agreement.
  - b. Any increased or additional work of a continuing or permanent nature performed at or in conjunction with the Company's existing facilities or from a transfer of work occasioned by the closing or partial closing of an operation previously covered by this agreement shall be



deemed bargaining unit work  
and shall be fully covered by the  
terms, conditions, and  
obligations of this agreement.

- (a) Nothing in this Settlement Agreement adds to, subtracts from, or otherwise modifies any rights, duties, or obligations set forth in that collective bargaining agreement, except as otherwise indicated below.
- (b) The Company agrees to provide a copy of the collective bargaining agreement to any party that indicates an interest to bid in any auction of the Company's generation assets.

### **3.2.3.2 Retraining and Severance Costs**

The auction of generation assets could have an impact on Company employees. To address this prospect, up to \$10 million of incremental retraining costs and severance payment, out placement, voluntary early retirement program and related costs, if any, incurred in 1999-2002 will be provided for and deferred by the Company for later recovery. These activities are limited to direct consequences of the disposition of fossil/hydro generation assets, including the bumping process as set forth in the collective bargaining agreement. Although the deferral is not defined in reference to specific levels of management or represented employees, it is the understanding of the parties that approximately 75% of the existing employees in fossil/hydro generation are covered by the collective bargaining agreement. The actual costs incurred, up to the \$10 million cap, will be paid for through a reduction in the net proceeds of the auction that will determine stranded costs to be recovered.

### **3.2.4 Unhedged Energy and the CTC for Fossil/Hydro Assets**

The net sales proceeds less the incentive will be used to retire the capital structure. Consummation of the sale pursuant to an approved auction will establish the level of stranded cost recovery for the assets sold. Niagara Mohawk will be entitled to a reasonable opportunity to collect, in the CTC, or where applicable, exit fees, all remaining stranded costs from the non-nuclear assets sold in the auction.



When the fossil/hydro assets are sold or spun, and when RegCo's contract with the fossil/hydro assets expires, the quantity of energy that was previously purchased from those assets will become unhedged. The contribution to the CTC associated with the fossil/hydro assets will become a fixed amount reflecting the difference between the book cost of the assets and the market proceeds received for them (as adjusted, when applicable, for the generation auction incentive and for retraining and severance costs). The risk associated with the market price of the unhedged energy will be shifted to customers except as otherwise provided herein.

### **3.3 GUIDING PRINCIPLES FOR NUCLEAR ASSETS**

#### **3.3.1 Study to Determine Future Disposition**

The nuclear assets held by Niagara Mohawk will remain part of RegCo as a separate business unit until they are either transferred or divested.

Niagara Mohawk will continue to pursue Statewide solutions for its nuclear assets through discussions in formation of NYNOC and in any generic proceedings established by the Commission. Statewide solutions for nuclear plants will be explored before other potential solutions.

The proposed solutions for Niagara Mohawk's nuclear plants are contingent on the following:

- treatment of the nuclear plants meets all requirements of the NRC, and
- there is consistent regulatory treatment for sale and cost recovery for all the co-tenants of NMP2.

Absent a Statewide solution, Niagara Mohawk commits to file a detailed plan, analyzing the proposed solutions for its nuclear assets, within 24 months of this Settlement Agreement. The plan will consider the feasibility of auction, transfer, and/or divestiture of Niagara Mohawk's nuclear assets. The detailed plan will undergo an appropriate level of Commission review and approval to be concluded on an expedited basis.

#### **3.3.2 Recovery of Stranded Costs**

Subject to price-cap considerations discussed herein, nuclear will remain subject to cost-based regulation including a rate of return for the five year



term of this agreement or until the nuclear plants are divested or another statewide solution is developed.

- RegCo will be allowed annual deferrals during the term of this settlement for changes in costs for categories which are beyond management's control as described in Section 2.6.1.
- Customers will not be allowed to negotiate one time buyouts for all nuclear costs.

Subject to other provisions in this settlement, sunk capital costs, fuel inventory, and material and supplies inventory, and all decommissioning and shutdown costs (including O&M rampdown, property taxes and insurance, and fuel and low level waste storage and disposal) are considered to be unavoidable. To the extent that such cost levels are deemed prudent, they will be recovered through a non by-passable competitive transition charge.

Accordingly, Niagara Mohawk will be entitled to a reasonable opportunity to recover all nuclear sunk and decommissioning costs allocable to the five-year period of the settlement agreement (as described in Sections 3.3.3, 3.3.4 and 3.4.3) through the CTC or, where applicable, exit fees, during the five-year term of this agreement. If the assets are divested within the term of this agreement, Niagara Mohawk will be allowed to recover the full decommissioning costs and the return of and on the nuclear assets less the market value received in divestiture through the CTC or, where applicable, exit fees.

### **3.3.3 Cost Treatment if a Nuclear Plant is Sold, Transferred or Divested**

As part of its plan analyzing the feasibility of auction, transfer or divestiture of its nuclear plants (see Sec. 3.3.1), the Company will propose treatment for recovery of any remaining stranded costs consistent with the intent that (a) unhedged commodity risk be shifted to customers, and (b) that the CTC reflect revised nuclear costs for the Company (including recovery of sunk costs net of sale proceeds) and any remaining cost obligations that stay with the company such as decommissioning costs.

### **3.3.4 Cost Treatment in the Event of a Plant Retirement**

If Niagara Mohawk decides to retire or abandon a plant before a sale or auction, then it agrees to file an economic study with the Commission that justifies the decision. The Commission will review the study on an





expedited basis, and determine the prudence of the retirement decision before the plant is retired or abandoned.

If the Company retires a nuclear plant, the following will apply:

- Until the Company announces its intent to retire a plant, it will be responsible for replacement power costs as outlined in Sec. 3.4.3.
- On the date that the Company announces that it plans to retire the plant, if the plant is not then operating, the Company will begin passing through to customers (through the Commodity Adjustment Charge) the difference between the spot market price of energy and the nuclear plant's avoided fuel costs. Such passthrough will be in the form of temporary rates, subject to refund, as described below. On that same date, the difference between the level of nuclear O&M and decommissioning costs embedded in rates and the actual level of O&M and decommissioning costs incurred will be deferred on a monthly basis for later recovery. In any month in which such deferral shows a net credit and the spot market price exceeds the plant's avoided costs, the credit will be used to offset the passthrough. In the event the plant is operating when the Company announces its plans to retire the plant, the passthrough described above will commence on the date the plant is permanently shut down.
- The Company will prepare and file with the Commission a study assessing the economics of continued operation versus retirement, and explaining why it believes a retirement is prudent and in the ratepayers' interests. The study will include a proposal to account for, defer and recover estimated remaining unfunded decommissioning costs. The costs passed through to customers above will be subject to refund or adjustment, pending the Commission's finding that the retirement was prudent and that the cost impacts are justified.
- Upon PSC approval of the retirement decision, the CTC (competitive transition charge) for the nuclear plant will be recalculated consistent with the intent (a) that unhedged commodity risk be shifted to certain customers, and (b) that the CTC reflect revised nuclear costs (sunk costs and decommissioning costs (including rampdown and shutdown costs), and reduced operation and maintenance costs (including fuel cost savings).) The PSC approval will also address the amortization (in excess of \$500,000 per change) schedule of any deferral balance as created in Section 2.6.1.



In the event of a nuclear plant retirement, replacement power costs (RPC) (defined herein as the difference between the cost of commodity purchased at market prices and the cost of nuclear fuel), offset by any operations and maintenance cost reductions, should be flowed through to all customers that pay CTCs. It is the intent of the parties that cost deviations resulting solely from variations between actual and forecast market prices be flowed through only to customers with floating CTCs. The RPCs for customers with fixed CTC's will be determined based on forecasted rather than actual market prices. The forecast market prices used for this purpose will be based on the option chosen by the customers pursuant to Section 4.2. Forecast RPCs, offset by O & M savings in years 1 through 3, for SC 3A customers will be deferred for recovery from SC 3A customers in year 4 and beyond, subject to the price caps set forth herein.

### **3.4 TRANSITION CONTRACTS WITH GENERATORS**

#### **3.4.1 Design Features Common to All Generators**

##### **3.4.1.1 Transition Contract Overview**

The transition contracts utilize financial contract structures (financial swaps - Contracts-For-Differences (CFDs) and financial call options - swaptions) to allow the collection of strandable costs for a fixed time period, while requiring generators to participate in the market.

The fossil/hydro and nuclear contracts operate only as internal accounting devices within Niagara Mohawk until such assets are divested.

Details concerning financial contracts, including a general description of the primary design components and the general structure of the financial contracts, are provided in Appendix F and subsequent sections of this document.

##### **3.4.1.2 Primary Design Components**

Financial contracts have three primary design components: contract price, contract quantity, and contract term.



- The contract prices were developed using forecasted costs. Contracts will have a two part pricing design that includes a fixed cost charge and a volumetric price. For the swaptions, the fixed cost charge will become the reservation fee in the contract.
- The contract quantities have been developed primarily through the use of forecasted generator output to serve existing Niagara Mohawk retail load in Promod. Generator loads are metered at the generator busbar.
- The term for the financial contracts have been established based on the contract price, contract quantity, and total strandable costs to be collected. Financial contracts that have been negotiated between RegCo and generators will begin on the date that the existing Power Purchase Agreements of Settling IPPs are terminated.

The general structure of financial swaps and swaptions is described in Appendix F.

#### **3.4.2 NMPC Fossil and Hydro Generation Transition Contract(s)**

There will be separate financial swaption contracts for each Niagara Mohawk fossil unit. The contracts are established based on the forecasted revenue for fossil and hydro generation that fit within Niagara Mohawk's retail price commitments. The forecast of energy output to serve retail load serves as the basis for the contract quantity of the transition contracts. Tables 3-1a and 3-1b contain the aggregate annual contract quantities and contract prices and revenues for fossil and hydro.

The contract quantity for hydro generation will be adjusted annually to reflect variations in actual water flow. The expected output less 650 GWH (i.e., 2299 GWH) has a variable price of zero. The actual output less 2299 GWH is priced at the variable price described in Table 3-1b. The forecast of wholesale sales margins has been imputed as a credit against the generation fixed payment in the transition contract for each fossil unit.

Three-year transition contracts were developed for Niagara Mohawk fossil and hydro assets, which will begin on the PowerChoice implementation date. Niagara Mohawk will evaluate the cost/benefit of extending the transition contracts for two additional years in the auction process.



The quantity available under the swaption will be limited to the capacity of generation assets sold or spun (adjusted for availability, maintenance outages and unit minimums, response rates and cycling limitations, etc. ).

Niagara Mohawk's fossil and hydro generation and the transmission and distribution facilities were designed and constructed as integrated facilities with interdependent control and protection functions. Niagara Mohawk will prepare a separation agreement, prior to implementation of the contracts, which describes points of demarcation and any shared services agreements between RegCo and the entity purchasing generation.

	Contract Quantity (GWH)	Variable Contract Price <sup>A</sup> (\$/MWH)	Annual Fixed Payment (\$ million)	Retail Revenue <sup>B</sup> (\$ million)	Total Revenue <sup>C</sup> (\$ million)
1998	3,532	\$ 14.90	\$ 139.6	\$ 192.2	\$ 291.3
1999	3,562	\$ 14.62	\$ 137.8	\$ 189.9	\$ 282.1
2000	3,175	\$ 13.44	\$ 117.2	\$ 159.9	\$ 273.7

A Will vary by unit.

B Retail revenues are the sum of (1) contractual payments by RegCo to the generators under the contract, and (2) revenues received by the generators for physical sales into the spot market for the contract quantities.

C Total revenues are retail revenues plus imputed wholesale market revenues.





**Table 3-1b Hydro Contract Quantities, Contract Prices, and Revenue**

	Contract Quantity (GWH)	Variable Contract Price <sup>A</sup> (\$/MWH)	Annual Fixed Payment (\$ million)	Retail Revenue <sup>B</sup> (\$ million)
1998	2,949	\$ 10	\$ 62.4	\$ 68.9
1999	2,949	\$ 10	\$ 58.9	\$ 65.4
2000	2,949	\$ 10	\$ 60.6	\$ 67.1

<sup>A</sup> Applies to 650 GWH

<sup>B</sup> Retail revenues are the sum of (1) contractual payments by RegCo to the generators under the contract, and (2) revenues received by the generators for physical sales into the spot market for the contract quantities.

### **3.4.3 Nuclear Generation Transition Contracts**

For the five year term of this agreement Niagara Mohawk will have a transition contract (financial swap) for each of its nuclear plants reflecting its forecast level of going forward costs. This forecast will be updated for years four and five as part of the rate filing. Niagara Mohawk will terminate the transition contract if it retires a unit during the term of the contract, and the energy associated with the retired unit will become unhedged.

All forecast costs to operate the nuclear units are included within the rate goals in Tables 4-1 and 4-2.

After the initial five year period, RegCo will make a filing to the Commission for continued transition cost recovery treatment for the nuclear units.

The contract quantities, contract prices, and revenues for each unit are shown in the Tables 3-2a and 3-2b.



	Contract Quantity (GWH)	Variable Contract Price (\$/MWh)	Annual Fixed Payment (\$1,000)	Revenue (\$1,000)
1998	4,564	\$ 5.46	\$ 235,084	\$ 260,003
1999	4,027	\$ 4.79	\$ 239,240	\$ 258,529
2000	4,577	\$ 4.71	\$ 233,994	\$ 255,552
2001	4,027	\$ 4.73	\$ 247,175	\$ 266,223
2002	4,564	\$ 4.72	\$ 243,818	\$ 265,360

	Contract Quantity (GWH)	Variable Contract Price (\$/MWh)	Annual Fixed Payment (\$1,000)	Revenue (\$1,000)
1998	3,079	\$ 4.65	\$ 231,124	\$ 245,441
1999	3,489	\$ 4.87	\$ 240,721	\$ 257,712
2000	3,087	\$ 4.57	\$ 239,839	\$ 253,947
2001	3,489	\$ 4.73	\$ 239,038	\$ 255,541
2002	3,079	\$ 4.58	\$ 244,072	\$ 258,174

Note: Year to year variations are due to refueling and scheduled outages.

#### **3.4.4 Settling Independent Power Producers (SIPPs)**

A detailed description of the contracts for the Settling IPPs is included as Exhibit A of the Master Restructuring Agreement in Appendix A. An outline of the negotiated schedule of aggregate contract quantities, weighted average contract prices, and contract term are contained in Table 3-3. Variations in contract costs due to the indexing provisions of the contracts will be passed through to customers after year three, subject to the provisions described herein. The form of the individual



contracts remain to be negotiated between Niagara Mohawk and the IPPs. The dominant type of contracts will be financial swaps and swaptions. However, there will be some physical bilateral contracts between Niagara Mohawk and some of the IPPs.

	Contract Quantity (GWH)	Contract Price (\$/MWh)	Total Revenue (\$1,000)
1998	4,993	\$ 45.13	\$ 225,357
1999	4,993	\$ 45.56	\$ 227,484
2000	5,043	\$ 42.91	\$ 216,399
2001	5,083	\$ 44.90	\$ 228,215
2002	5,089	\$ 46.17	\$ 234,965
2003	7,108	\$ 50.18	\$ 356,645
2004	8,118	\$ 52.60	\$ 427,012
2005	9,131	\$ 54.51	\$ 497,760
2006	9,139	\$ 56.93	\$ 520,238
2007	9,151	\$ 60.24	\$ 551,219
2008	8,353	\$ 60.99	\$ 509,440
2009	8,353	\$ 61.11	\$ 510,424
2010	353	\$ 40.70	\$ 14,367
2011	353	\$ 41.90	\$ 14,791
2012	353	\$ 43.20	\$ 15,250
2013	353	\$ 44.50	\$ 15,709
2014	176	\$ 45.84	\$ 8,068

### 3.5 OTHER INDEPENDENT POWER PRODUCERS (IPPs)

Table 3-4 shows the current forecast of payments to the 109 IPP contracts that are not part of the buyout group. The contract quantities and prices represent the forecasted amounts in the existing Power Purchase Agreements (PPAs).



RegCo will update the level of transition cost recovery for approximately 109 IPP PPAs in the rate filing adjusting for rates in years four and five of this Agreement consistent with Section 2.6.4 of this Agreement. The forecast contract quantities, contract prices, and revenues in aggregate are shown in Table 3-4.

	Contract Quantity (GWH)	Total Contract Price (\$/MWh)	Total Revenue (\$1,000)
1998	3,839	\$ 64	\$ 246,530
1999	3,839	\$ 66	\$ 255,059
2000	3,839	\$ 68	\$ 261,913
2001	3,839	\$ 64	\$ 246,207
2002	3,839	\$ 64	\$ 247,255





## SECTION 4.0 ELECTRIC PRICES

### 4.1 OVERVIEW OF BUNDLED AND UNBUNDLED PRICES

In accordance with the schedule contained in Section 8, over the life of this agreement all Niagara Mohawk customers will come to have the option of selecting their own energy supplier.

Services and prices will be unbundled for all customers who have the option of choosing their own retail supplier even if they elect to continue taking energy service from Niagara Mohawk. The unbundling of services and prices will make available to customers who are eligible for retail access cost information for generation, transmission, customer service and distribution services.

An essential predicate for unbundling is the establishment of a Competitive Transition Charge (CTC).

Both the bundled and unbundled prices called for under this Agreement will be implemented through the filing of tariffs with the appropriate regulatory agencies. The Company will continue to work with the parties and resolve any outstanding issues so as to file unbundled prices on a minimum of 30 days prior to the *PowerChoice* Implementation date.

#### 4.1.1 Bundled Prices

Appendix D<sup>4</sup> sets forth the proposed prices for the major service classifications for the term of this agreement and shall become effective on the *PowerChoice* Implementation Date.

##### 4.1.1.1 Residential and Commercial Class Price Levels

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<sup>4</sup> The calculations contained in Appendix D assume a *PowerChoice* implementation date of January 1, 1998. If the *PowerChoice* implementation is later than January 1, 1998, then the prices shown in Tables 4-1 and 4-2 and Appendix D will apply to the first, second and third years of the settlement agreement, except for the table in Appendix D which reflects the market price forecast. For those market price forecasts, the calendar year amounts will be proportionately weighted to arrive at the market price forecast for the split rate year (e.g. if the implementation date slips to April 1, 1998, the first year's market price will be equal to 9/12 of the 1998 price and 3/12 of the 1999 price).



Table 4-1 summarizes the projected class-average prices for **Service Classifications 1, 2 and 3**, including the effects of the System Benefits Charge and currently planned gross receipts tax reductions. The Company expects that 1997 prices will generally be consistent with 1995 prices. If 1997 results vary, the percentage reductions may change but the price levels will not.

**TABLE 4-1**

**AVERAGE ELECTRICITY PRICES FOR THE YEARS 1998-2000  
BY CUSTOMER CLASS(C)**

		1997(A)	1998	1999	2000
SC1	Cents/KWh % Change (B)	12.724	12.623 -0.79%	12.503 -1.74%	12.286 -3.44%
SC1B	Cents/KWh % Change	8.557	8.557 0.00%	8.557 0.00%	8.557 0.00%
SC1C	Cents/KWh % Change	9.628	9.626 -0.02%	9.626 -0.02%	9.626 -0.02%
SC2ND	Cents/KWh % Change	16.492	16.37 -0.74%	16.224 -1.63%	15.968 -3.18%
SC2D	Cents/KWh % Change	11.945	11.853 -0.77%	11.747 -1.66%	11.562 -3.21%
SC3	Cents/KWh % Change	10.43	10.222 -1.99%	10.198 -2.22%	10.103 -3.14%

(A) Based on 1995 Freeze Prices applied to Company's 1997 Sales Forecast.

(B) Percentage reductions are as calculated based on 1997 projected prices. Actual percentage reductions may vary based on actual 1997 results.

(C) Inclusive of SBC and GRT.



#### 4.1.1.2 Industrial and Large Commercial Price Levels

Table 4-2 summarizes the Company's estimates of the individual class rate levels that would result from this settlement including the effects of the System Benefits Charge and currently enacted gross receipts tax reductions.

Table 4-2

#### Average Electricity Prices for the SC3A / SC4(>2MW) / ED Programs/SC11

<u>Rate Class</u>	<u>1997 Cents/kWh (A)</u>	<u>1998 Cents/kWh</u>	<u>1999 Cents/kWh</u>	<u>2000 Cents/kWh</u>	<u>% Change from 1997</u>
SC3A / SC4 / ERIR/EDR	7.98			5.99	-24.95%
Special Contracts	7.84			5.77	-26.40%
EDZR	7.99			3.00	-62.44%
<b>Total Class (B)</b>	<b>7.93</b>	<b>6.28</b>	<b>6.0</b>	<b>5.84</b>	<b>-26.38%</b>

(A) Values are full tariff based on 1995 Freeze Prices and Company's Hours Use Rate Design applied to Actual 1996 Billing Data

(B) Individual customer reductions may vary from the class average. Includes SBC and GRT

By the year 2000, Niagara Mohawk will supply and deliver power to larger commercial and industrial customers (S.C. No. 3A, large S.C. No. 4 and S.C. No. 11) at a forecasted class weighted average price (including ERIR, EDR and EDZR discounts) of approximately \$0.0585 per KWh (based on current load and price forecasts) inclusive of all currently enacted New York State gross receipts tax reductions. If the currently enacted gross receipts tax reductions are repealed, these prices will increase accordingly.

The company has allocated certain funds (\$17.1 million in 1998, \$17.8 million in 1999 and \$18.3 million in 2000) to incremental, uncommitted S.C. No. 11 and EDZR/EDR/ERIR discounts as a means of achieving its price goals. These funds are in addition to those funds necessary to



develop the phase-in plan for existing EDZR customers as described in Section 4.12. To the extent that the price goals are not met and these incremental uncommitted discounts are not ultimately issued, the company shall flow back either the unused discounts or an amount necessary to achieve the price goals, whichever is less, to S.C. No. 3A customers. Should implementation of this provision become necessary, it will be accomplished via a one time pass-back initiated during the 12-month period immediately following year three of this agreement.

Comparisons between annual price goals and actual billing experience shall be recorded following each of the first three years of this agreement, with carrying charges applied to the equivalent revenue discrepancies (plus or minus) in deriving an accumulated three year net discrepancy. The net revenue discrepancy so determined will be compared to the remaining uncommitted incremental discounts (as may exist). To the extent that the price goals are not met, the lesser of these two quantities shall become the amount to be passed back to S.C. No. 3A customers. The level of year 4 and 5 uncommitted incremental discounts will be determined in the proceeding setting rates for years 4 and 5, but in no event will the Company propose or recommend uncommitted incremental discount levels for years 4 and 5 less than the level of any excess uncommitted incremental discounts so determined after year 3. Should the Company forecast that actual incremental discounts will exceed the incremental uncommitted discount funds discussed above, the Company will notify the Parties, and the Company or any Party will have the right to petition the Commission for ratemaking treatment to fund additional discounts that may be needed for business retention and revitalization purposes.

#### **4.1.2. Methodology for Arriving at Bundled Prices**

##### **4.1.2.1. Calculation of "Base" 1997 Rates Before Decreases**

The starting point for establishing the bundled retail prices that will apply for the duration of this agreement is the retail base rates that became effective April 27, 1995 adjusted to capture surcharges. To capture the effect of external surcharge mechanisms that were in effect at that time, Niagara Mohawk rolled into base rates all surcharge balances that existed as of December 31, 1995. Surcharges applied volumetrically (e.g., FAC, DIRAM, IPP buyouts and fuel amortization) were translated into annual rates per KWh and added to the energy components of base rates; surcharges applied on a net base rate revenue basis (e.g., NERAM, MERIT, Regulatory Deferral and Extension of Suspension) were translated into class specific factors and applied to the net base rate revenue components of base rates. The resulting prices, when applied to





an individual customer's 1995 usage, would produce the same electric bill amounts as would be produced by the application of base rates and individual surcharges factors. The adjusted prices were applied to 1997 sales to produce 1997 revenues and 1997 class-average prices.

#### 4.1.2.2. Application of Percentage Decreases for SC 1, 2, & 3

Given the class-average prices developed above, the price reductions were implemented for residential (S.C. No. 1), small commercial (S.C. No. 2, and S.C. 2 Demand (S.C. 2D)) customers using the following five-step procedure:

- (1) The Company will reduce prices for these customers by approximately 2.2% over three years following the effective date of tariffs implementing the Settlement Agreement prices (the "PowerChoice" Implementation Date)<sup>5</sup>.
- (2) Class-Average 1997 prices were multiplied by projected 1998 sales to estimate 1998 revenues and class-average prices under the preceding year's rates. These average rates were reduced by approximately 0.7% to get 1998 class-average prices.
- (3) Class-average 1998 prices were multiplied by the forecast sales for 1999 to estimate 1999 revenues and class-average prices under the preceding year's rates. These average rates were reduced by approximately 0.7% again to derive 1999 class-average prices.
- (4) Class average 1999 prices were multiplied by the forecast sales for 2000 to estimate 2000 revenues and class average prices under the preceding year's rates. These average rates were reduced by approximately 0.8% to derive 2000 class-average prices.
- (5) Additional savings in New York State Gross Receipts Tax will be applied, as realized, pursuant to Subsection 4.1.4.

Smaller large general service (S.C. No. 3) customers and smaller customers taking a portion of their electric requirements from NYPA (S.C. No. 4 customers under 2 MW) would receive an approximate 2.2% phased in reduction over three years (composed of approximately 2.0% in 1998, an additional 0.1% in 1999 and an additional 0.1% in 2000). These customers will also receive the phased in reductions in New York State

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<sup>5</sup> As further described in Section 2, tariffs implementing the Settlement Agreement prices cannot become effective until certain conditions have been satisfied.



gross receipts tax, as they are realized, as specified in Section 4.1.4 below.

#### 4.1.2.3. Calculation of SC-3A Rates

As described in Section 4.1.1.2 and illustrated on Table 4-2, S.C. No. 3A rates have been designed to achieve targeted prices.

#### 4.1.3 Relationship to Dairylea Pilot

Niagara Mohawk is implementing a pilot retail access program for commercial farmers and food processors in compliance with the Commission's June 23, 1997 Order Establishing Retail Access Pilot Programs and September 18, 1997 order concerning compliance filings (the "Pilot Program Orders").<sup>6</sup> The lost margins associated with the Dairylea pilot program will count towards rate decreases outlined in Section 4.1.2. Such lost margins will be allocated to participating classes according to the estimates shown in Table 4-3.

Table 4-3  
Projected Cost of Dairylea Pilot

	<u>Lost Margin</u>
SC1	\$172,800
SC1B	\$11,600
SC1C	\$490,000
SC2ND	\$11,000
SC2D	\$118,000
SC3	\$395,400
SC3A	<u>\$271,500</u>
	\$1,470,300

<sup>6</sup>Lost margin estimate assumes less than 100% participation. With 100% participation, the lost margin would be approximately \$5 million.

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6 Case No. 96-E-0948, Petition of Dairylea Cooperative, Inc., to Establish an Open Access Pilot Program for Farm and Food Processor Electricity Customers.



#### **4.1.4 Planned Reductions Associated with Gross Receipts Tax Reform**

New York State has enacted legislation to reduce its gross receipts tax (GRT) by a phased-in 1% beginning in October 1998. These GRT reductions will be applied as realized.

#### **4.1.5 Potential Securitization Savings**

To the extent that it is not otherwise prohibited by legislation, the benefits of securitization should be used to further reduce prices to S.C. No. 1, S.C. No. 2 and S.C. No. 3 customers. The Company and Staff recommend that the Commission consider allocating a portion of such savings for energy efficiencies and clean technologies.

### **4.2 CTC AND MARKET PRICE HEDGING**

#### **4.2.1 Overview**

For most customers, the CTC floats inversely with the market price in order to guarantee the fixed total price levels in Years 1-3. The Commodity Adjustment Charge (CAC) is the mechanism that accomplishes this variation in the CTC.

Customers will have the option of a fixed CTC, as described in section 4.2.5 below.

In general, as more of Niagara Mohawk's supply portfolio becomes unhedged, more of the market price risk of energy is passed on to customers.

#### **4.2.2 General Calculation and Application**

Except as otherwise provided in this agreement, all customers, regardless of their energy supplier, will be assessed a non-bypassable CTC to cover their strandable cost allocation. During the first three years of this agreement, the CTC for each service classification will be derived by deducting from the Company's bundled retail prices, i) an Energy Commodity Charge, ii) a transmission charge, and iii) a customer service and distribution charge. During years 4-5, the CTC may not be reduced to totally offset increases in transmission or distribution prices. In



addition, the CTC will be subject to certain adjustment mechanisms, deferrals and incentives as described in Section 4.3 :

As described in Subsection 4.2.3, the CTC will be a function of the market price of electricity. This approach will produce a location-specific CTC.

#### **4.2.3 Commodity Adjustment Charge**

A Commodity Adjustment Charge will be implemented to adjust the CTC for those customers with floating CTCs. This will generally include customers served under S.C. No. 1, S.C. No. 2 Demand (S.C. No. 2D), S.C. No. 2 Non-Demand (S.C. No. 2ND), S.C. No. 3, and S.C. No 4 (customers < 2MW only).

The CTC for each service classification reflects a location specific estimate of the market price of electric energy and capacity. The Commodity Adjustment Charge will be implemented by location, voltage delivery level, load factor and service classification in order to reconcile the actual market price with the forecast of market prices upon which the CTC is initially set.

Customers served on S.C. No. 3A, S.C. No. 4 (greater than 2 MW only), S.C. No. 11, and certain other customers (described in Section 4.2.5) will not be subject to the Commodity Adjustment Charge.

#### **4.2.4. Significance of Hedged and Unhedged Energy**

The Company has hedged a large portion of its transition costs through the contracts described in Section 3. Except as otherwise provided in Section 4.2.5, the Company is bearing the risk of the amount of unhedged energy in the forecast, except for any changes in prices associated with unhedged energy resulting from a nuclear plant retirement (which shall be addressed as provided in Section 3.3.4). Over time, as described in detail in Section 3.2 for fossil/hydro assets, and Section 3.3 for nuclear assets, an increasing proportion of energy purchased by RegCo will become unhedged. The parties agree that the CTC in years four and five should be designed: (1) to recover allowable stranded costs and (2) to pass through to certain customers the market price of unhedged energy. In the event of a nuclear retirement within the first three years of this agreement, the related unhedged energy effects on the CTC are discussed in Section 3.3.4.





## 4.2.5 CTC Options and Market Price Forecast

The Company will make available fixed CTC options as described below. The options described below do not preclude adjustments to the CTC that may otherwise be provided for in this agreement. If the Company should retire a nuclear unit, energy prices and the CTC will be adjusted in a manner consistent with Section 3.3.4.

### 4.2.5.1 For S.C. No. 3A and S.C. No. 4 (>2 MW) customers:

Thirty days prior to the *PowerChoice* implementation date, SC# 3A and SC# 4 customers greater than 2 MW will have a choice of three pricing options. Following this one time thirty day selection period, the only offer available to S.C.# 3A customers will be the default (option 1) program described below. Tariffs for each of these options will be available at least sixty days prior to the *PowerChoice* Implementation Date, subject to Commission approval. Existing SC#11 customers with expiring contracts will have the choice of either taking the standard tariff or extending their SC#11 contracts on the same terms and conditions through the term of this settlement agreement. Such SC#11 customers choosing the standard tariff will only be allowed to choose option 1. The implementation of these options will be in conjunction with the Company's hours use design and individual customer load profiles.

(1) Option 1 (Default): Fixed CTC and Floating Commodity Price

- Compute CTC to reflect the "revised" market price forecast in Appendix D, page 28. The estimate of the market price forecast varies by region, service class, load factor and voltage level.
- The Floating Commodity Price will be the Energy Commodity Charge discussed in Section 4.4.1.

Appendix D contains the market price forecast (also called energy backout rate) for each service classification and voltage level. Appendix D will be adjusted for the final rate



year as discussed in Section 4.1.1. These prices are measured at the customer meter. Market prices for years four and five will be reforecasted in year three.

(2) Option 2a: Fixed CTC and Fixed Commodity Charge

- This option will be designed with the "original" market price forecast (contained in Appendix D at page 27), such that if all SC-3A customers choose this option, the rate goal will be met.
- Customers commit to contract to purchase forecast quantity of electricity from Niagara Mohawk for the five year period.

(3) Option 2b: Customers who select Option 2a can purchase the right to exit the contract on six months notice. The purchase price of the option to exit will be provided by the Company as part of its tariff filing. The fee would be paid during the five-year period regardless of whether the option to exit the contract is exercised.

(4) Prior to December 1, 1997, the Company must elect one of the following alternatives.

- a) After customers have chosen option 2a or 2b, the Company will solicit and award bids for the right and obligation to provide the commodity to customers that choose Option 2a or 2b, but only subject to customer approval; or
- b) The Company will offer a 5-year fixed CTC, Floating Commodity Price Option (in addition to the 3-year fixed CTC Floating Commodity Price Option, above) which shall be based upon the "original" market price forecast underlying Options 2a and 2b, above.

(5) For all customers who choose an alternative supplier and return, they return to the Floating Commodity Price and the fixed CTC option originally selected by the customer. If a customer's SC-11 contract expires and they do not choose



to renew it, then they return to the default of a floating commodity price and a fixed CTC.

**4.2.5.2 For S.C. Nos. 1, 2, 3 customers:**

(1) Option 1: Fixed CTC and Floating Commodity Price and Fixed CTC

An amount of energy up to 75 percent of the amount of forecasted energy necessary to serve SC-3A customers choosing Option 2 (fixed CTC and fixed commodity charge) will be made available for those SC-1, 2 and 3 customers who have retail access.

- Customers who choose this option will have their CTC based on the "revised" market price forecast, adjusted for region and load shape as shown in Appendix D, page 28.
- For customers who choose an alternative supplier and return, they return to the default of Option 2, floating CTC and floating commodity price.

(2) Option 2 (Default): Floating CTC and Floating Commodity.

The CTC is adjusted to reflect the level of unhedged energy after adjustments to reflect customers choosing the fixed CTC and floating commodity option described above.

(3) The parties will continue to pursue mechanisms to increase the availability of fixed CTCs for SC 1, 2, and 3 customers in Years 3 and beyond. Any final resolution of this issue will not negate the Company's obligation to cover unhedged energy in years one through three.

**4.2.6 Adjustments to the CTC in Years Four and Five**

The CTC will be adjusted to reflect a new market price forecast for years four and five. The CTC may also be adjusted in years four and five due to generation-related deferrals, recovery of a generation sale incentive (Section 2.4.3), and if a nuclear plant is retired, sold or divested (Section



3.3). In addition, variations between the actual and forecasted cost of the indexing provisions of certain IPP contracts, as described in Section 2.4, will be passed through the Commodity Adjustment Charge beginning in year four.

#### **4.2.7 Alcan and Sithe/Independence**

Alcan and/or Sithe/Independence's stranded cost responsibility with respect to service to Alcan will be handled in accordance with the Order issued and effective 11-3-94 in Case No. 94-E-0136. Accordingly, Alcan and/or Sithe/Independence will not be assessed a CTC access fee or exit fee for Alcan load served by Sithe/Independence, except as provided for in Case No. 94-E-0136. The Company reserves the right to petition the Commission for changes in those obligations in accordance with the Order in that case.

### **4.3 SURCHARGE AND RECONCILIATION MECHANISMS**

#### **4.3.1 Surcharge Mechanisms That Will Be Abolished**

Upon the *PowerChoice* Implementation Date, the following surcharge mechanisms will be abolished:

**Rule 29:** Adjustment in Accordance With Changes in The Cost of Fuel (inclusive of the FAC, fuel amortizations, and DIRAM), except that the deferred FAC fuel balance at the *PowerChoice* Implementation Date will be flowed through to customers over the next two complete monthly billing cycles following the *PowerChoice* Implementation Date.

**Rule 43:** Adjustment of Charges Pursuant to the Measured Equity Return Incentive Term (MERIT)

**Rule 44:** Adjustment of Charges Pursuant to the Niagara Mohawk Electric Revenue Adjustment Mechanism (NERAM)

**Rule 46:** Adjustment of Charges Pursuant to the Regulatory Surcharge Mechanism

**Rule 47:** Adjustment of Charges Pursuant to the Extension of Suspension Period Surcharge Mechanism





#### **4.3.2 Municipal Gross Receipts Tax Surcharge**

For the terms of this Agreement and beyond, the surcharge for PSC No. 207 Rule 32 - Increase in Rates Applicable in Municipality Where Service is Supplied, more commonly referred to as Gross Receipts Tax (GRT), will continue to be applied as a surcharge due to variances in tax rates by municipal taxing authorities.

#### **4.3.3 NYPA Hydropower Benefit Reconciliation**

A New York Power Authority (NYPA) Hydropower Benefit Reconciliation Mechanism for residential service will be established. Under certain contracts for the sale of low-cost hydropower to Niagara Mohawk, the price benefits of that power are to be passed on to the Company's residential customers. As a result of the elimination of the FAC, a new reconciliation mechanism must be established to ensure that Niagara Mohawk can fulfill this requirement.

Because 1995 FAC surcharge balances were rolled into 1995 base rates, as described in Subsection 4.1.2, the resulting residential prices reflect NYPA hydropower benefits that accrued in 1995. Accordingly, the Company will perform an annual reconciliation comparing actual benefits received in 1998 and subsequent years with those that were received in 1995. The variance resulting from the reconciliation (credit or debit) will be applied as an annualized reconciliation factor during the 12 months following completion of the reconciliation. For residential customers who are ineligible for retail access, a reconciliation factor will be applied to their overall bill. For residential customers who have a choice of power suppliers, a reconciliation factor will be applied to the CTC.

Due to reporting lag, the 1998 calendar year reconciliation cannot be performed until February 1999, which will delay the application of the annualized reconciliation factor until March 1999.

#### **4.3.4 System Benefits Charge**

As further described in Section 7, a System Benefits Charge (SBC) will be implemented as part of customer service and distribution charges, although stipulated as a distinctly separate charge, for all customer service classifications (with the exception of Economic Development Zone power, S.C. No. 11 contracts (except as specifically allowed by contract) and certain NYPA allocations) in order to recover costs associated with



public policy programs. Table 4-4 shows the projected SBC recoveries for 1998-2000.

Table 4-4  
Projected SBC Recoveries

	1998	1999	2000
1. Base Public Policy Programs (\$000)	15,000	15,000	15,000
2. Sales Forecast (Mwh) subject to SBC recoveries	24,174,398	24,472,671	24,650,753
3. SBC Charge (Line 1)/(Line 2) (\$/KWh)	.000620	.000613	.000609

#### 4.3.5 Deferrals

The cost categories eligible for deferrals are described in Section 2.6.

Starting in year four, deferrals will be collected through appropriate rate mechanisms, depending upon the nature of the cost, i.e., generation-related deferrals such as changes in nuclear costs will be collected through a surcharge to all customers who pay a CTC, distribution-related deferrals will be collected through a distribution surcharge. Customers who do not pay the CTC will not pay generation related deferrals.

#### 4.3.6 Recovery of Generation Sale Incentive

As described in Section 3.2.2, the Company will receive an incentive for the sale of fossil and hydro assets. All customers who pay the CTC or, where applicable, exit fees will pay the generation incentive through a surcharge. Customers who do not pay the CTC will not pay the generation incentive.

Table 4-5 summarizes all of the adjustment mechanisms described in Sections 4.2 and 4.3 and their applicability to service classifications.



Table 4-5  
 Surcharges and Reconciliation Mechanisms

	S.C. No. 1/1B/1C	S.C. No. 2D/2ND	S.C. No. 3 (Small S.C. No. 4) and S.C. No. 7	S.C. No. 3A (Including Large S.C. No. 4)	S.C. No. 11
Gross Receipts Tax	Yes	Yes	Yes	Yes	Yes
NYPA Hydropower Benefit	Yes	No	No	No	No
Commodity Adjustment Charge	Yes***	Yes***	Yes***	No	No
SBC	Yes	Yes	Yes****	Yes****	*
Deferrals**/Generation Incentive	Yes	Yes	Yes****	Yes****	*

\*Contract Specific

\*\*Applies to years 4-5 only

\*\*\*Assumes default option is chosen

\*\*\*\* Except as provided for certain NYPA customers in Section 4.14 and Table 4-6



## 4.4 UNBUNDLED SERVICES AND PRICES

### 4.4.1 Unbundled Energy Commodity Charge

To ensure that customers receive correct price signals, it is important to establish a reliable proxy for the generation commodity price embedded in Niagara Mohawk's bundled retail rates. Prior to the time the ISO tariff becomes effective, the actual market price of electricity will be based upon Niagara Mohawk's Commission approved methodology for determining marginal cost. This document is on file with the Commission (entitled Technical Administrative Rules and Procedures ("TARPS")) and is associated with S.C. No. 11 and the now expired S.C. No. 8. These prices will be delineated by hour, month and voltage level for each class. In addition, the Company will adjust the TARPS prices, on a revenue neutral basis, to reflect differences in prices for the western, central and eastern regions. If, prior to the effectiveness of an ISO tariff, the New York Power Pool (NYPP) begins to calculate and publish location-specific marginal prices of power, Niagara Mohawk reserves the right to employ those prices instead of the TARPS values.

If the TARP's prices are used in the Company's unbundled prices, the Company will, after consulting with the parties, develop rules and/or procedures designed to oversee and audit the Company's development of the TARP process. The Company will submit these rules and/or procedures to the Commission for review.

Once the ISO tariff becomes effective, assuming a fully functioning ISO and a viable market, the commodity value represented in retail tariffs will be based upon locational prices posted by the ISO.

The CTC inherently reflects a forecast of commodity prices. A portion of the differential between forecasted and actual commodity prices will be reconciled and refunded to or recovered from customers with floating CTC's through the Commodity Adjustment Charge.

There will be no prudence review associated with RegCo's energy or capacity purchases during the period of this rate Settlement Agreement. As described above, commodity prices will be capped by the spot market price. RegCo is free to enter into longer term contracts, other than those described in Section 3.0, for capacity and energy, but will bear the full risks of such contracts (i.e., will keep any savings or absorb any losses).





during the five year period). If RegCo enters into a contract for energy and capacity whose duration is longer than five years (i.e., whose duration extends beyond the term of this Settlement Agreement), the cost associated with that contract will be subject to the normal revenue requirements review that occurs in the next rate case RegCo files for rates beyond the fifth year. If RegCo does not enter into any longer-term contract, there will be no prudence review associated with its not having entered into longer-term contracts.

#### **4.4.2 Unbundled Transmission Charges**

Niagara Mohawk's retail access tariff will be filed with the Commission and the FERC and cover all components of the retail access tariff described herein. The transmission component of such retail access tariffs will be provided under Niagara Mohawk's Open Access Transmission Tariff ("OATT").

Network service charges under the OATT are calculated as the FERC approved annual revenue requirement multiplied by the customer's load ratio share (the 12-month rolling average of the customer MW load divided by the total demand on the Transmission System at the time of the monthly transmission peak). To ease the administrative burden of applying this formula to calculate and bill the transmission charges applicable to each customer under the OATT, and decreasing the distribution charge by that value, Niagara Mohawk proposes to implement a procedure whereby the total delivery charge (transmission and distribution) does not require an individual, customer-specific OATT value. That is, the total delivery charge will be designed to recover both the transmission and distribution revenue requirements using PSC rules for the assignment of costs even as transmission service is provided under the terms and conditions of the OATT applicable to each customer. Niagara Mohawk will seek from the FERC a waiver to implement this administrative simplification.

#### **4.4.3 Unbundled Distribution Charges**

Distribution services include power delivery services other than transmission services, and encompass not only local "wires" services but also metering, billing, collections, and customer service telephone. Distribution prices are cost-based. Distribution prices for 1998 were estimated to recover fully the costs associated with distribution services,



and allocated to rate classes and rate components based on the Company's latest cost of service studies. Distribution service prices for the years two through five will be increased according to the Price Cap plan described in Section 4.4.4 and the price goals described in Section 4.1.

#### **4.4.4 Price Cap Plan for Transmission and Distribution Services**

A price cap plan for the Company's transmission and distribution services will apply for years 2 through 5 of this settlement.

##### **4.4.4.1 T&D Rate Increases**

The Company may increase its prices for transmission and distribution services up to a cap in each year except as otherwise provided herein. The cap will be based on the projected increase in the cost of providing transmission and distribution services as set forth in the financial forecast in Appendix C.

##### **4.4.4.2 CTC Offsets to Increased T&D Prices**

Except as provided in Section 4.14, in years 2 and 3, any increase in T&D prices will be exactly offset by a decrease in the CTC charges for those years in order to satisfy the overall bundled price targets outlined in Sections 4.5 through 4.8. In years 4 and 5, there will be no explicit offset to the CTC for increases in T&D prices.

##### **4.4.4.3 Price Cap for Years 4 and 5**

As described in Section 2.4.1.2, prices in years four and five can be increased by an amount not to exceed 1% of the all-in price excluding the commodity (e.g. inclusive of transmission, distribution and forecasted CTC charges). The price cap excludes recovery of deferrals and the generation sale incentive. The price cap also excludes the variations in contract costs due to the indexing provisions of IPP indexed contracts (See Section 2). The filing to propose an increase under the cap or to recover deferred costs or to recover the generation sale incentive will address the design of the rate recovery mechanism.



#### **4.4.5 Availability of Unbundled Prices for Informational Purposes**

Prior to the time a customer becomes eligible for retail access, Niagara Mohawk, upon request, will provide the customer with unbundled price data for the customer's use.

#### **4.4.6 Relationship to Generation Separation**

A reallocation of costs between the transmission/distribution and CTC components of unbundled prices may be necessary as a result of a sale, spin off or transfer of generation assets. To the extent this reallocation is necessary, it will be done on a class-average revenue neutral basis.

#### **4.4.7 Customer Service Backout Credit**

The customer service backout credit is described in Section 5. Once the credit is designed, customers who select an alternate supplier will receive an appropriate credit for the particular Company services provided by the ESCO, and a minimum credit regardless of the services offered.

### **4.5 RESIDENTIAL PRICING DESIGNS**

#### **4.5.1 Service Classification No. 1 - Standard Residential Rate**

##### **4.5.1.1 Flat Rate Structure**

The design will remain a flat rate structure consisting of a single energy rate with a customer charge.

##### **4.5.1.2 Phased-In Rebalancing of Customer and Energy Charge**

The customer charge will be phased in to achieve a \$17.44 level in the year 2000 with additional changes to be considered in years 4 and 5. The Company and Staff share the objective of continuing to move volumetric charges toward marginal energy costs. The increase in customer charge revenue will be offset by an equal reduction in the energy charge revenues to ensure that the rebalancing of



customer and energy charge is revenue neutral on a class-average basis.

#### **4.5.1.3 Phased-in Discount from Initial Price Levels**

As described in Section 4.1, over the three years beginning with the *PowerChoice* Implementation Date, tariff rate reductions will be phased-in so as to ultimately produce an approximate 2.2 percent reduction in class average prices. (As described in Section 4.1.4, additional savings associated with currently planned reductions in New York gross receipts taxes will be applied as realized). These reductions will be applied to the energy rate. The pricing designs and resulting bill impacts are illustrated in Appendix D.

#### **4.5.2 Service Classification Nos. 1B and 1C - Residential Time-of-Use Rates**

Currently the Company has two Time-of-Use (TOU) offerings for residential customers. Service Classification No. 1B is a voluntary offering; approximately 3700 customers take service under this rate. Service Classification No. 1C is a mandatory rate for all residential and farm customers who consume greater than 30,000 KWh annually. There are approximately 12,000 customers served under S.C. No. 1C.

As of the *PowerChoice* Implementation Date, S.C. No. 1B will be closed to new subscribers other than subscribers who will use geothermal technology. Existing S.C. 1B customers will have the option of remaining under the existing program or changing to S.C. No. 1 service. No price reductions will be applied to the S.C. No. 1B class.

As of the *PowerChoice* Implementation Date, S.C. No. 1C will no longer be mandatory. S.C. No 1C will become the optional TOU offering for residential customers. Customers served under this service classification will have the option of remaining under the existing program or changing to S.C. No. 1. No price reductions will be applied to the S.C. No. 1C class.





#### **4.5.3 Service Classification No. 1H - Optional Residential Rate**

This option consists of higher customer charge and a lower flat energy charge. On the PowerChoice Implementation Date, S.C. No. 1H will be closed to new subscribers. Existing S.C. No. 1H customers will have the option of remaining under the existing program until the beginning of year 4 of this agreement at which time they will be transferred to S.C. No. 1. These customers will have the option to migrate to S.C. No. 1 at any time prior to year 4 of this agreement. No price reductions will be applied to the SC No. 1H rate.

#### **4.5.4. CTC**

The CTC will be recovered volumetrically in accordance with the actual usage of each residential customer.

### **4.6 COMMERCIAL PRICING DESIGNS**

#### **4.6.1 Service Classification No. 2ND - Small General Service Rates**

##### **4.6.1.1 Flat Rate**

Under S.C. No. 2ND, the design will remain a flat rate structure consisting of a single energy rate with a customer charge.

##### **4.6.1.2 Phased-in Rebalancing of Customer and Energy Charges**

The customer charge will be phased in to achieve a \$23.95 level in the year 2000 with additional changes to be considered in years 4 and 5. The Company and Staff share the objective of continuing to move volumetric charges toward marginal energy costs. The increases in customer charge revenues will be offset by an equal reduction in the energy charge revenues to ensure that the rebalancing of customer and energy charge is revenue neutral on a class-average basis.



#### **4.6.1.3 Phased-in Discount from Initial Price Levels**

As described in Section 4.1, over the three years beginning with the *PowerChoice* Implementation Date, rate reductions will be phased-in so as to produce an approximate 2.2 percent reduction in class average prices. (As described in Section 4.1.4, additional savings associated with currently planned reductions in New York gross receipts taxes will be applied as realized). These reductions will be applied to the energy rates. The pricing designs and resulting bill impacts are illustrated in Appendix D.

#### **4.6.2 Service Classification No. 2D - Small General Service Rates**

Upon the *PowerChoice* Implementation date, the design of Niagara Mohawk's Small General Demand Service (S.C.2 Demand (S.C. No. 2D)) will be altered as described below:

##### **4.6.2.1 Phased-In Rebalancing of Customer and Energy Charges**

The customer charge for S.C. No. 2D will be phased-in to achieve a \$63.49 level in the years 2000 with additional changes to be considered in years 4 and 5. The Company and Staff share the objective of continuing to move volumetric charges toward marginal energy costs. The increases in customer charge revenues will be offset by equal reductions in the energy charge revenues to ensure that the rebalancing of customer and energy charges is revenue neutral on a class-average basis. The existing demand charge for S.C. No. 2D will remain unchanged for the first three years of this agreement.

##### **4.6.2.2 Phased-in Discount from Initial Price Levels**

As described in Section 4.1, over the three years beginning with the *PowerChoice* Implementation Date, rate reductions will be phased-in so as to produce an approximate 2.2 percent reduction in class average prices. (As described in Section 4.1.4, additional savings associated with currently planned reductions in New York gross receipts taxes will be



applied as realized). These reductions will be applied to the energy rate. The pricing designs and resulting bill impacts are illustrated in Appendix D.

#### **4.6.3 CTC**

The CTC will include per KW (where applicable) and per KWh charges applied to 100 percent of actual demand and usage quantities of each commercial customer for the billing period.

### **4.7 LARGE GENERAL SERVICE (S.C. NOS. 3, 3A, 4 AND 5) PRICING DESIGNS**

Prices for Niagara Mohawk's S.C. No. 3, S.C. No. 3A, and S.C. No. 4 (customers who also take power from NYPA), will be structured as declining block rates as described below. Unbundled prices will include a CTC if applicable.

#### **4.7.1 S.C. No. 3 (Large General, Service < 2MW) and Smaller S.C. No. 4 Customers (<2MW)**

Prices for customers taking service under S.C. No. 3 and customers taking service under S.C. No. 4 whose demand (exclusive of the portion of demand served by NYPA) is less than 2 megawatts will be developed as follows:

##### **4.7.1.1 Rate Design**

Prices will include a customer charge, a demand charge, a reactive demand charge and energy charges based on two blocks. The blocks will be established based on the usage above and below 450 hours of use of the peak demand (61.6% load factor). This design is referred to as an "hours use" design. The pricing designs and resulting bill impacts are illustrated on Appendix D.

##### **4.7.1.2 Initial Price Levels**

As described in Subsection 4.1, the class average prices for S.C. No. 3 and smaller S.C. No. 4 customers will be reduced by approximately 2.2 percent. The reduction will be



reflected in the tail block energy price. (As described in Section 4.1.4, additional savings associated with currently planned reductions in New York gross receipts taxes will be applied as realized).

#### 4.7.1.3 CTC

The CTC will include per KW and per KWh charges applied to 100 percent of actual demand and usage quantities for each customer during the billing period.

#### 4.7.2 S.C. No. 3A (Large General Service, Mandatory Time of Use, High Demand) and Large S.C. No. 4 Customers (>2MW)

Prices for customers taking service under S.C. No. 3A and customers taking service under S.C. No. 4 whose demand (exclusive of the portion of demand served by NYPA) is greater than 2 megawatts will be developed as follows:

##### 4.7.2.1 Rate Design

Prices will include a customer charge, a demand charge, a reactive demand charge and energy charges based on declining blocks. Effective upon the *PowerChoice* Implementation Date, two blocks will be established based on the usage above and below 250 hours of use at the peak demand (34.2% load factor). One year later, a third block will be established at 400 hours of use (54.8% load factor). This design is referred to as an "hours use" design. The pricing designs and resulting bill impacts are illustrated on Appendix D.

##### 4.7.2.2 Initial Price Levels

Price reductions are designed to be phased-in during the three years following the *PowerChoice* Implementation Date such that the average price, based on current forecasts, in the year 2000 for all customers under S.C. Nos. 3A, 11, and large S.C. No. 4 (including ERIR, EDR, and EDZR discounts) will be \$.0585 per KWh inclusive of all currently





enacted New York State gross receipts tax reductions. If the currently enacted gross receipts tax reductions are repealed, the prices will increase accordingly.

#### **4.7.2.3 Rebalancing of Demand Charges**

While the demand charge for S.C. No. 4 is currently based on the peak demand occurring within the billing period, the demand charge under S.C. No. 3A is based entirely on the customer's maximum demand during peak hours. Niagara Mohawk will file tariff revisions to establish a demand charge based on the customer's maximum demand during all hours to cover transmission and distribution costs. The on-peak demand charge has been reduced to offset the revenue increases resulting from this change.

#### **4.7.2.4 CTC**

The CTC will include per KW (based on the maximum demand occurring during peak hours) and per KWh charges applied to 100 percent of actual demand and usage quantities for the billing period.

#### **4.7.3 S.C. No. 5 (Combination 25 & 60 Cycle Power)**

The Company currently provides combination 25 cycle and 60 cycle power to approximately 7 customers. The Company will freeze the existing 25 cycle S.C. No. 5 rates (which were approved in April 1995) and hold them constant for the term of this Agreement. The Company will reduce the rates for 60 cycle service to those contained in S.C. No. 2, S.C. No. 3 or S.C. No. 3A, depending on the size of the customer. The Customer will then be eligible to receive unbundled 60 cycle electric service according to the otherwise applicable service classification.

#### **4.7.4 Projected Industrial Prices**

The weighted average price has been computed by summing the forecasted revenues associated with the S.C. No. 3A, "large" S.C. No. 4, S.C. No. 11 (those qualifying for S.C. No. 3A) and dividing by the



forecasted kilowatt-hours associated with the same classes. (This will include all economic development riders with the exception of revenues and sales associated with EDP customers). The Company plans to administer the phased-in price reductions in a manner similar to that contained in Table 4-2.

#### **4.8 CUSTOMERS WITH S.C. NO. 11 CONTRACTS AND ECONOMIC DEVELOPMENT PROGRAMS**

The Company will honor all existing S.C. No. 11 contracts through their normal expiration.

Upon implementation of the ISO, the Company will revise the definition and calculation of marginal cost under tariff to: 1) incorporate the prices, terms and conditions of the ISO tariff and 2) calculate and administer a system-wide weighted average marginal cost consistent with the existing S.C. No. 11 tariff for the billing of S.C. No. 11 contracts entered into prior to July 23, 1997.

In the event that an existing Customer's S.C. No.11 contract expires during the term of this agreement, at the Customer's request and upon 60 days prior notice, the Company will extend the S.C. No. 11 contract on the same terms and conditions for the remaining term of this agreement, or until the Company files for a rate increase or otherwise petitions the Commission post year five, after which such contract shall expire unless otherwise specifically agreed to between the Company and Customer.

The Company will offer EDR and ERIR customers a choice of their existing rider, the otherwise applicable tariff rate, or if eligible, retail access.

The Company will not petition the Commission to modify or cancel its current S.C. No. 11, ERIR or EDR tariffs until an adequate replacement tariff is developed that meets the economic development objectives of the existing tariffs. The Company will contemporaneously file its replacement tariff with its petition to cancel or modify its current SC-11, ERIR and EDR tariffs.

The Company will continue to work with the parties to design the S.C. No. 11 replacement tariff with the objective that the revised tariff will be filed as soon as possible, but in no event later than December 31, 1997.



Under no circumstances will the Company require that a customer purchase the commodity from the Company in order to qualify for an S.C. No. 11 contract.

The Company will not be precluded from proposing other programs of general applicability to address economic development issues.

#### **4.9 OPTIONAL TARIFFS FOR NON-RESIDENTIAL CUSTOMERS**

The Company will cease signing Customers to the Optional Tariff Schedules effective with the *PowerChoice* Implementation Date. Customers currently served on the Optional Pricing Schedules will be given the option to continue to receive their optional provisions until such customers become eligible for retail access after which optional pricing schedules will be eliminated; provided, however, that the optional rates will continue to be changed to reflect changes in the marginal cost of electricity. Customers who choose to retain their optional provisions prior to their eligibility for retail access will be subject to the rates in effect on April 27, 1995 for the Contract Load portion of their bill.

#### **4.10 CUSTOMERS SELLING POWER TO NIAGARA MOHAWK UNDER S.C. NO. 6**

- (a) Separate S.C. No. 6 buy back rates shall be determined for Load Areas 1, 2, 3, and 4. Niagara Mohawk's payments for deliveries from Independence Station shall be the applicable rates (as set forth in paragraphs b and c below) for Area 2.
- (b) Commencing January 1, 1998 until the date the Master Restructuring Agreement ("MRA") is consummated as defined in Section 10.2 of that agreement ("Consummation Date"), the buy back rates shall be the time-differentiated price by month. Appendix D sets forth the prices to be used in the tariff. Area 3 prices are equal to Area 2 prices plus one mill.
- (c) Commencing with the MRA Consummation Date, the buy back rates for each Load Area shall be the time-differentiated prices, set forth by month in Appendix D hereto. The rates set forth in Appendix D shall remain in effect until December 31, 1998.
- (d) Commencing no later than August 1, 1998, the parties shall convene technical conferences to, (i) (assuming there is an operating ISO/PE on August 1, 1998) determine the appropriateness of using the ISO market data to set 1999 SC 6 buy-back rates, and the specific market data from



the ISO/PE which should be used to calculate a market-based buy back rate that is consistent with PURPA, or (ii) administratively redetermine the S.C. No. 6 rates for the rate year commencing January 1, 1999 if a transition to market-based rates will not occur on January 1, 1999.

- (e) If, after such technical conferences, the parties do not reach a consensus as to the appropriate rates or mechanism for setting the 1999 S.C. No. 6 rates, then on or before October 1, 1998, the parties will jointly request the assistance of a settlement judge to resolve these issues. If after a reasonable period of intervention by the settlement judge, an S.C. No. 6 rate or mechanism has not been reached by consensus of the affected parties, any party may request evidentiary hearings followed by briefs and a recommended decision to the Commission that will enable the Commission to issue an order on the 1999 S.C. No. 6 rates prior to January 1, 1999. Any S.C. No. 6 rate filing shall be subject to discovery under the Commission's Rules and to public comment under the State Administrative Procedures Act.

#### **4.11 CUSTOMERS TAKING SERVICE UNDER S.C. NO. 7 (SALE, BACKUP, MAINTENANCE AND SUPPLEMENTAL ENERGY AND CAPACITY TO CUSTOMERS WITH ON-SITE GENERATION FACILITIES) AND EXIT FEES FOR CUSTOMERS WHO BYPASS THE COMPANY'S DELIVERY SERVICE.**

##### **4.11.1 Rationale**

The intention of the Exit Fee and the CTC provisions of SC#7 is to discourage uneconomic bypass of the Company's services and charges in cases where such bypass is not economic from society's standpoint and would therefore shift costs to other stakeholders.

##### **4.11.2 Applicability**

The following table sets forth the applicability of the Exit Fee and SC#7 in specific circumstances. In addition, applicability of exit fees for NYPA allocations will be determined in accordance with Section 4.14 and Table 4-6 of this Settlement. For circumstances not included in this table, or contemplated herein, the company will be permitted to petition the Commission to assess an Exit Fee or apply SC#7 in accordance with the intentions of this Section 4.11.





**Exit Fee and SC#7 Applicability**

	<u>Circumstance</u>	<u>Exit Fee</u>	<u>SC# 7</u>
1.	Municipalization, including cases where the municipal disconnects from the Company's delivery system.	Yes	No
2.	Customer remains in the same location, disconnects from the Company's delivery system and connects to another utility's delivery system such as that of another utility or IPP.	Yes	No
3.	Self generation with backup from the company's delivery system.	No	Yes
4.	Self generation where the customer disconnects from the interconnected system or is not connected to the interconnected system.	No	No
5.	Customers that received an SC#11 Contract prior to 7/23/97 based on a showing of a viable cogeneration threat up to the electric capacity of the demonstrated viable cogeneration project.	No	No
6.	Customers that relocate or close their operation.	No	No

**4.11.3**

**Exit Fee**

- (a) Exit Fee Calculation Methodology



The Company will use a "revenues lost" exit fee methodology similar to that proposed by the FERC in Order 888. The exit fee would be calculated on a one-time basis. However, the Company is willing to entertain levelized annual payments or other options that may be negotiated between the Company and the customer, subject to adequate security. The "revenues lost" formula is equal to the net present value (at the Company's weighted average cost of capital) over Y years of:

(R-E)

Where,

R shall equal the annual estimated revenue from the customer using the bundled price designs contained in the settlement agreement. There will be no credit for transmission related revenues, as proposed in FERC Order 888, since the customer will not be using the Company's delivery system.

E is the Company's estimate of the annual revenues that it can receive by selling the released capacity and associated energy. As in FERC Order 888, the customer will have the option to market a portion of the released capacity and associated energy.

Y is the number of years required for the Company to recover its full stranded costs. Since Y is dependent upon a number of factors, including the timing of the departure, the Company will address Y on a case-by-case basis.

In addition, the Company will charge departing customers for their allocation of nuclear decommissioning costs through time.

(b) Accounting for Exit Fees

The Company agrees with the concept that any exit fees received should be deferred to affect stranded costs. The Company will work with the parties to develop the specific accounting, and subsequent amortization, of the deferral for exit fees. To the extent that exit fees are received during the term of this settlement that result in a reduction in revenues otherwise expected to be collected by the Company through the CTC, the parties agree that a portion



of the exit fee can be recognized during the term of the Settlement to hold the Company harmless.

**4.11.4      S.C. No. 7**

Effective with the PowerChoice Implementation Date, S.C. No. 7 will be closed to new subscribers.

**4.11.4.1      Existing Customers**

Existing customers shall be subject to the S.C. No. 7 prices in effect on July 23, 1997, as well as any applicable surcharges as identified on Table 4-5.

At such time as all or the majority of the Company's Fossil and Hydro units are divested and the commodity portion of backup, supplemental and maintenance service are available on a competitive basis, the rates for existing S.C. No. 7 users shall be changed to those described in 4.11.4.2 below.

The Company agrees to use its best efforts to acquire ancillary services from the competitive market at the time of divestiture. The Company, however, will not be required to create new systems to allow for the procurement of such services on a competitive basis.

**4.11.4.2      New Subscribers and Existing S.C. No. 7 Customers Following Divestiture of the Company's Fossil and Hydro Assets**

New tariff leaves shall be added which will apply to all non-residential customers with on-site generation (except as provided for under circumstance no. 5 of Section 4.11.2) and existing customers with on-site generation who are not currently served under S.C. No. 7. In addition, these new tariff leaves shall apply to existing S.C. No. 7 customers at a later date as provided in Section 4.11.4.1. These tariff leaves shall provide for rates which include: i) a combination of an access charge and an energy charge for the baseline



customer load ("CL") and, ii) the rates contained in the customer's otherwise applicable service classification (or S.C. No. 11, if qualified) for any load which exceeds the CL, where:

- The CL shall be based on the customer's load in a historic period.
- The access charge for load at or below the CL shall be equal to the customer's contribution to the Company's fixed costs during the historic period. The access charge shall be subject to adjustment for surcharges as identified on Table 4-5.
- The energy charge for load at or below the CL shall equal the commodity cost under the otherwise applicable tariff, if the commodity is purchased from the Company.

#### **4.12 ECONOMIC DEVELOPMENT ZONE RIDER (EDZR)**

The Parties will continue to work on developing a rate plan that will result in current economic development zone rates that are equal to full marginal commodity and distribution cost (excluding the SBC) and full transmission cost by the end of the five year settlement period for customers taking service under the current rider. The rate plan will be developed as soon as possible but in no event later than December 31, 1997.

In developing the EDZR rate plan the following principles shall govern:

- (a) Non-contestable customers will be phased into full marginal costs on an accelerated schedule that takes into account the level of rate impacts on individual customers.
- (b) Contestable loads will be phased in over the full five years of the settlement period.
- (c) For a limited number of customers that may need special economic development considerations, the Company will work with the parties to address these special cases.





For new EDZR customers or new growth, the tariff rate will be equal to full marginal commodity and distribution cost (excluding the SBC) and full transmission cost.

#### **4.13 PRICING DESIGNS FOR SERVICE CLASSIFICATIONS UNDER PSC NO. 214 -- ELECTRICITY**

Niagara Mohawk's prices for outdoor lighting services are set forth in PSC No. 214 -- Electricity (formerly PSC No. 213 -- Electricity). Service Classification Nos. 1, 2, 3 and 6 under PSC No. 214 represent private area and street lighting. The Company is proposing a rebalancing of the facility-specific and volumetric charges. The proposed facility charges have been set at marginal cost as calculated under the current long-run incremental cost of service studies. The proposed volumetric component of these service classifications has been increased to offset the decrease in facility specific charges to ensure that the rebalancing is revenue neutral. The prices for these service classifications are attached in Appendix D. The Company will phase in these price changes over the first three years of this agreement.

Service Classification No. 4 of PSC No. 214 - Traffic Signals, is energy and delivery-only related. The charge for this classification does not include the cost of owning or maintaining facilities and therefore has not been changed.

The resulting volumetric charges under PSC No. 214 will be unbundled when customers become eligible for retail access.

#### **4.14 APPLICATION OF UNBUNDLED PRICES TO NYPA ALLOCATIONS**

##### **(a) NYPA Economic Development Power Allocations**

The Company agrees to maintain for existing EDP allocations its existing tariff rates for the first three years of the settlement. For new allocations the Company will use its unbundled rate schedules and the sales will be conducted as a direct sale from NYPA.

##### **(b) NYPA Rural and Domestic (R & D) Hydro Credit**

The benefits of the R & D hydro credit will flow through to consumers in accordance with the 1990 Contract. NMPC and NYPA agree to work in



good faith to modify as appropriate, the 1990 Contract to reflect the changes in industry structure.

- (c) Table 4-6 delineates the treatment of NYPA allocations. A "yes" under a column heading means the charge identified in the column heading applies to the allocation. A "no" means the charges shall not apply.

Table 4-6  
Application of Unbundled Prices to NYPA Allocations (3)

	<u>Transmission &amp; Distribution</u>	<u>CTC</u>	<u>Exit Fees</u>		<u>SBC</u>
			<u>Distribution Related</u>	<u>Supply Related</u>	
Replacement Power 445 MW	(4)	no	no	no	no
Expansion Power(1) 250 MW	(4)	no	no	no	no
EDP < 46 MW	(4)	no	no	no	no
EDP >46 MW HLFF	(4)	yes	yes	yes	yes
Schedule A & First 50MW Replacement(2)	(4)	no	no	no	no
HLFF above Schedule A & First 50MW Replacement(2)	(4)	yes	yes	yes	yes

- (d) Notes to Table 4-6:

- (1) Except deliveries of EP allocated pursuant to paragraph 13(b) of Section 1005 of the Public Authorities Law for revitalization purposes will be subject to the CTC if and to the extent that the



amount of any allocation when added to the then existing EP sales in NMPC service area exceeds 210 MW.

- (2) Schedule A as provided for in the Agreement Among Niagara Mohawk Corporation, New York Power Authority and Department of Public Service Resolving and Settling Certain Disputes, dated May 22, 1997. The first 50MW of replacement refers to a provision of the May 22, 1997 agreement that allows the Power Authority to replace certain HLFF allocation prior to the PowerChoice Implementation Date.
- (3) All rights and responsibilities contained in the "May 22, 1997 Agreement" shall remain legally binding in accordance with its terms, and nothing contained in the PowerChoice Settlement or this Section shall be construed to overrule, explain or otherwise modify the May 22, 1997 Agreement except that in the event of any conflict between the provisions of paragraph 5 of the May 22, 1997 Agreement entitled "Delivery of Expansion and Replacement Power" and the provisions of this Section 4.14 and Table 4-6 relating to Expansion and Replacement Power, the provisions of this Section 4.14 and Table 4-6 shall prevail. The following abbreviations apply to Table 4-6: Expansion Power ("EP"); Economic Development Power ("EDP"); High Load Factor Power ("HLF"); Replacement Power ("RP").
- (4) Delivery service for all NYPA Replacement, Expansion, EDP and HLF Power transmitted and delivered by NMPC are governed by existing agreements and/or authorities, provided however that nothing herein shall be construed as an admission or agreement by NMPC or NYPA or any other party that delivery services provided to new EP, RP or other customers or modifications of delivery services provided to existing EP, RP or other customers shall or shall not be provided under NMPC's Open Access Transmission Tariff filed with the Federal Energy Regulatory Commission and a separate agreement for local distribution services, and provided further that nothing contained herein shall be regarded as a waiver by NMPC of its rate change rights under any existing agreement between NMPC and NYPA except as expressly specified herein.



#### 4.15 ANNUAL TARIFF FILINGS

The Company will file tariff amendments to implement the initial rates and terms of this agreement as soon as practicable after the conditions described in Section 2 have been satisfied. During the term of this agreement, the Company may make annual tariff filings to be effective on each anniversary of the *PowerChoice* Implementation Date. These annual filings will be made approximately 120 days prior to their effective date and will reflect the terms of this agreement including the pricing design changes, deferrals (years 4-5 only), the generation sale incentive (years 4-5 only) and transmission/distribution price escalation.

#### 4.16 RATE FLEXIBILITY

##### 4.16.1 General

During the term of this Agreement, the Company will have the right to seek rate changes that are revenue-neutral on a class average basis. Such rate proposals will be filed with the Commission and subject to regulatory approval. The type of changes that may be proposed include:

- a. changes in service class segmentation by consumption levels, load factors, end-use purposes, or any other distinguishing factors;
- b. reallocation of revenue within classes between demand, energy and customer charges;
- c. reallocation of revenue among customer groups based on cost-of-service and competitive analyses;
- d. additions, deletions or other changes to rate blocks or rating periods; and
- e. changes to establish uniform transmission and distribution rates across rate classifications offset, if necessary, by changes to the CTC.

This Agreement will not preclude the Company from proposing pricing changes in response to competitive developments.





**4.16.2 Optional Rates and Services**

The initial services contained in this agreement would be available to all qualified customers for the term of this agreement. The Company may, additionally, propose optional rates and/or services at any time. Tariffs for such rates and/or services would become effective 30 days after they are filed.

**4.17 MISCELLANEOUS TARIFF AMENDMENTS**

The Company will make amendments to its tariff to reflect the following issues:

**4.17.1 Aggregation of Demand and Customer Charges**

Since the prices contained in this Agreement for service classifications that include demand and customer charges have been calculated based on historical non-coincident customer demands, the aggregation of customers in those service classes likely would result in the shifting of costs to other customers or to the Company. ESCOs accordingly will not be permitted to aggregate customers' loads and pay demand and customer charges based on their coincident demands. The benefits of load diversity have already been reflected in the calculation of these charges. It is not the intent of this Section 4.17.1 to prohibit ESCOs from aggregating the commodity for customers eligible for retail access.

**4.17.2 Low Voltage Bypass**

Customers may be reconnected to a delivery point at a higher voltage level at no additional cost to the customer if in the Company's sole judgment, such reconnection will alleviate reliability or safety problems; provided, however, that the Company may permit such reconnection in other circumstances if the customer agrees to pay 1) the differential in distribution charges and CTC, and 2) the incremental reconnection costs.



## **SECTION 5.0 CUSTOMER SERVICE BACKOUT CREDIT**

The details of a customer service backout credit will be established by December 31, 1997 through continued negotiations among the parties, based on agreement on the following general principles:

### **5.1 GROSS REVENUE EXPOSURE**

The Company's gross revenue exposure attributable to the customer service backout credit will be limited as follows:

Year 1	\$6M
Year 2	\$10M
Year 3	\$14M

The Company may defer for future recovery pursuant to Section 2.4.3 and 2.6 one-half of each dollar of lost revenue.

If the limits of Company liability and deferrals outlined above are reached, the backout credit will be capped, either by numbers of customers, amount of load, or other method.

### **5.2 DESIGN PRINCIPLES**

- (1) Several categories of the backout credit will be established so that different amounts will be backed out depending on which services are taken over by the ESCo. However, there would be a minimum credit that will be backed out regardless of the services offered.
- (2) The credit could be calculated volumetrically or per customer.
- (3) There will be different levels of the backout rate by service class.



- (4) The Company will provide a study of avoidable customer service costs by June 1999. Upon petition of any party after the end of Year 2 of this agreement, the Commission can revisit the customer service backout credit, including the appropriate level of any credit or alternate mechanisms for handling the movement of customers to other suppliers (See Section 8.2.8). In any event, the Company's gross revenue exposure in year 3 shall not exceed the caps set forth above in 5.1.

### **5.3 RELATIONSHIP TO A GENERIC PROCEEDING**

If there is a final PSC Order or an order which has not been stayed pending appeal in a Generic Proceeding regarding customer services currently provided by regulated utilities which should be made competitive and/or the method for determining avoided costs associated with those services, that Order shall supersede this agreement. Whether or not there is a Generic Order regarding customer services, the Company's gross revenue exposure in years 1-3 shall not exceed the caps in 5.1. In years four and five the backout shall not exceed the Company's avoided costs unless the incremental exposure is offset by other revenue sources (e.g. deferrals). If there is no Generic Order regarding competitive customer services, the Company's study, including comments of other parties thereon, will provide the basis for determining the Company's avoided customer service costs in years 4 and 5.

This Agreement does not limit any Party's rights to challenge or otherwise petition for relief from any proposed policy in the Generic Proceeding.



## SECTION 6.0 SERVICE QUALITY INCENTIVE

There will be a service quality incentive whose total value is 30 basis points or \$6.6 million, where 1 basis point for both electric and gas will be valued at \$220,000 after-tax, or \$338,000 before-tax, for the purposes of this agreement. All of the amounts reflected below are after-tax dollars.

### 6.1 CUSTOMER SERVICE PERFORMANCE

For 1998 and beyond, the Customer Service Performance incentive is equal to a maximum of \$3.3 million per year. The measures of customer service performance described in this Section 6.1 supersede the provisions of Section VIII, Customer Service Guarantees set forth in the Stipulation and Agreement approved by the Commission in Niagara Mohawk Cases 96-G-1095 and 96-G-0091, Opinion No. 96-32 (December 19, 1996).

#### 6.1.1 PSC Complaint Rate

The PSC Complaint Rate is the 12-month complaint rate, measured at each year end. The targets are average monthly rates of total complaints per 100,000 customers, including collection-related complaints. The maximum penalty is \$1,100K.

<u>Rate Interval</u>	<u>Max. Penalty within Scaled Interval</u>
< 10	\$0
10.0 - 10.9	\$220K
11.0 - 11.9	\$660K
12.0 and above	\$1,100K

#### 6.1.2 Corporate Residential Transaction Satisfaction Index

The Corporate Residential Transaction Satisfaction Index is the cumulative index of 4 quarterly surveys of customers who have had transactions with the Company. It excludes collections transactions. The maximum penalty is \$1,100K.





<u>CSI Interval</u>	<u>Max. Penalty within Scaled Interval</u>
$80.0 \leq \text{CSI}$	\$0
$78.0 \leq \text{CSI} < 80.0$	\$220K
$76.0 \leq \text{CSI} < 78.0$	\$660K
$\text{CSI} < 76.0$	\$1,100K

### 6.1.3 Low Income Customer Assistance Program

A Low Income Customer Assistance Program (LICAP) performance incentive mechanism will be negotiated prior to December 31, 1997. The mechanism will include enrollments and energy service targets. The maximum penalty is \$1,100K.

## 6.2 STATEMENT OF INTENT

There is agreement in principle to consider whether a program of individual customer service guarantees may in part or wholly replace the broad-based penalty measures adopted above, including within the time frame of this agreement. The Company will continue to work with Staff on the development of customer service guarantees as a mechanism for insuring a high level of customer service. Specifically and initially, the Company and Staff have a mutual interest in improving customer convenience and satisfaction with scheduling of appointments.

## 6.3 SERVICE RELIABILITY INCENTIVE

The maximum penalty for service reliability performance is \$3,300K.

### 6.3.1 System Interruption Frequency (SIF)

The maximum penalty for System Interruption Frequency (SIF) performance is \$1,320K. Targets are the number of outages per customer, excluding major storms.

<u>SIF Interval</u>	<u>Penalty</u>
$0.93 \leq \text{SIF}$	\$1,320K
$\text{SIF} < 0.93$	\$0



### 6.3.2 Customer Interruption Duration (CID)

The maximum penalty for CID performance is \$1,320K. The targets are the average hours per interruption, excluding major storms.

<u>CID Interval</u>	<u>Penalty</u>
$2.07 \leq \text{CID}$	\$1,320K
$\text{CID} < 2.07$	\$0

### 6.3.3 Power Quality

The maximum penalty for Power Quality is \$660K. Targets will be updated annually based on most recent four year data. Targets displayed below are for 1997.

<u>Interval</u>	<u>Penalty</u>
<u>115KV</u>	
$294 \leq \text{Momentaries}$	\$220K
$247 \leq \text{Momentaries} < 294$	\$110K
$\text{Momentaries} < 247$	\$0
<u>23-69KV</u>	
$848 \leq \text{Momentaries}$	\$220K
$743 \leq \text{Momentaries} < 848$	\$110K
$\text{Momentaries} < 743$	\$0
<u>Distribution</u>	
$2095 \leq \text{Momentaries}$	\$220K
$1951 \leq \text{Momentaries} < 2095$	\$110K
$\text{Momentaries} < 1951$	\$0

## 6.4 ACCOUNTING MECHANISM

Any penalties accrued will be used to offset cost deferrals.



## SECTION 7.0 SYSTEM BENEFITS CHARGE PROGRAMS

### 7.1 SYSTEM BENEFITS CHARGE

#### 7.1.1 Programs and Funding Levels

The parties agree that the System Benefits Charge (SBC) applies as follows:

1. The SBC covers programs related to demand-side management (DSM), Research and Development (R&D), and low income energy efficiency.
2. Spending levels will be set at \$15 million (approximately 1995 spending levels) for years 1 through 3 with an equal amount removed from base rates, i.e., spending levels are included within the pricing (rate) goals in Tables 4-1 and 4-2.
3. The continuation of the SBC and appropriate funding levels will be revisited in a proceeding for year 4 notwithstanding the assumptions in Appendix C.
4. Activities that are integral to RegCo business functions will not be funded through the SBC. These include, for example, activities which are part of a bundled package of services that allow RegCo to maintain customer satisfaction and service including outreach, information, education, dialogue, and customer consultation programs and other activity that are not within the scope of the System Benefit Charge as set by the Commission and the third party administrator.
5. Unexpended SBC funds will be accumulated for future SBC program use.
6. New programs that the Commission orders or expansion of existing programs that would increase spending above the \$15 million target will be passed through to customers outside of the price caps.



### 7.1.2 State-Wide, Third Party Administrator

The Company will propose the use of a state-wide, third party administrator for DSM and R&D program spending consistent with PSC policy on the SBC and the other PSC approved utility settlement agreements. The Company will work with the parties to accomplish the transition from the Company-administered programs to a third party administrator as rapidly as possible, recognizing the funding that has been committed to certain projects. RegCo and unregulated affiliates will be allowed to bid to implement various DSM and R&D projects.

Until a third party administrator is established, the Company will file a Public Policy Plan annually for Commission approval. In developing the Public Policy Plan, the company will establish a Public Policy Advisory Panel, comprised of representatives from various constituencies to provide advice and guidance to program development.

Nothing in this agreement will prohibit the Statewide administrator from allocating a significant portion of the total SBC revenues derived from Niagara Mohawk customers to be disbursed within Niagara Mohawk's service territory through competitive standard performance contracts which provide for stipulated pricing for energy efficiency, consistent with any generic guidelines for SBC expenditures separately developed from this proceeding by the PSC.

### 7.1.3 Low Income Customer Assistance Program (LICAP)

The energy efficiency portion of the LICAP program will be funded through the SBC.

## 7.2 MISCELLANEOUS:

- (i) The Company will continue to develop detailed annual forecasts of transmission and distribution ("T&D") capital budget requirements and will identify for each major T&D project (i.e., projects of \$2.5 million or more), the location, reason for project, scope of project, projected capital costs, appropriate load and other data. The Company will also perform load monitoring consisting of monitors at a significant sample of the transmission and area substations





scheduled for expansion/upgrade in the five-year T&D capital plan. The Company will evaluate and implement cost-effective measures as alternatives to major T&D projects that defer major T&D system projects through the use of technologies or services that could reduce peak T&D loads. For such cost-effective projects, consideration will be given to technologies or services that minimize the environmental impacts of electricity usage including demand side and other new cost effective technologies (such as wind, solar and distributed generation) where practicable. The Company will continue to seek to minimize costs and environmental impacts for T&D projects that are not major T&D projects. The Company will include testimony in its next rate case discussing alternatives to transmission and distribution capital spending, including on site generation and demand side management programs and the relationship between current rate structures, energy efficiency alternatives and distribution revenues and profits.

- (ii) Plum Street Enterprises or any successor companies shall offer to all its retail electric commercial and industrial customers for-profit energy efficiency services; and will make a good faith effort to market for-profit energy efficiency services or products for all of its residential and small commercial customers. Plum Street Enterprises or any successor companies will offer a green pricing program designed, in cooperation with interested parties, as a profit making enterprise to aggregate demand of customers interested in receiving electric power from renewable energy resources (e.g. wind, solar and biomass).
- (iii) NMPC agrees to donate 5,000 SO<sub>2</sub> allowances to the Adirondack Council for retirement.
- (iv) Niagara Mohawk agrees to donate to the State of New York, in fee, 1000± acres of high intrinsic habitat value lands surrounding Dead Creek, Town of Piercefield within the Adirondack Park and commits to negotiate in good faith with the State of New York for the sale of a conservation and development right easement for the remaining 2400± acres surrounding Dead Creek (Town of Piercefield).
- (v) The Company commits to negotiate in good faith with the State of New York for the sale of a conservation and development right



easement for 1000± acres that are on the west side of Carry Falls Reservoir. NMPC agrees to offer to the State of New York fee interest to 600± acres on the east side of Carry Falls Reservoir for a set price of \$258.00 per acre which represents a 50% donation of our appraisal value. (This amounts to a donation of \$155,000 in value.) The Company commits to also making the offer contained in sections 7.1(v) through 7.1(x) in the Raquette River relicensing negotiations. In consideration of reaching a mutually satisfying settlement of the Raquette River relicensing negotiations, the Company commits to donate to New York State fee interest to 600± acres on the east side of Carry Falls Reservoir.

- (vi) The Company commits to donate to the State of New York in fee a portion of land at the southern tip of Carry Falls being a parcel or parcels of lands of approximately 200 acres ±, less any lands necessary for Niagara Mohawk's FERC Project purposes. (This amounts to a donation of \$92,000 in value.)
- (vii) Niagara Mohawk commits to negotiate in good faith with the State of New York for the sale of a conservation and development rights easement for 2200± acres of land on the northern side of Rainbow Falls Reservoir.
- (viii) Niagara Mohawk commits to negotiate in good faith with the State of New York for the sale of fee interest in the 135± acres on the easterly and westerly sides of Stark Reservoir.
- (ix) Niagara Mohawk commits to negotiate in good faith with the State of New York for the sale of a conservation and development rights easement for 1639± acres of land surrounding Blake Reservoir.
- (x) Niagara Mohawk commits to negotiate in good faith with the State of New York for the sale of a conservation and development rights easement for a 1943± acres of land on Five Falls and South Colton Reservoir.
- (xi) The Company will develop 10 MW of wind power generation and 1.6 MW of photovoltaic generation that will be funded through available third party funds/grants and the SBC funding provided for in this agreement (See Section 7.1.1). The SBC funding will be based on the debt service of the cost of the facilities in excess of



third party funding, subject to an amortization schedule within the five years of the Agreement. Any electricity produced from these facilities will be sold to a third party marketer for resale under a competitive bidding process designed to attract purchasers engaged in green pricing offers in the retail market. At the end of the fifth year, the Company will seek bids to sell these facilities to the market. Any proceeds from the sale of the electricity and the sale of the facilities will go to fund future SBC projects. T&D facilities constructed to connect these projects to the system will be amortized over the projected life of the projects and recovered as part of the project cost during the first five years of this Agreement and as part of T&D revenue requirements after the first five years. Nothing in this paragraph shall limit the third party administrator's ability to override this provision.

- (xii) A portion of the SBC will be used to fund existing long-term ecological monitoring programs such as the Adirondack Lake Survey (ALS). The parties expect that these activities will be funded by the Statewide SBC administrator in proportion to contributions from each utility. In the event that other utilities' SBC funds are not available, then funding sufficient to continue the ALS shall be made available from the SBC established in this agreement (not to exceed 5% of available funds). Nothing in this paragraph shall limit the third party administrator's ability to override this provision.
- (xiii) The Company will continue to offer information to all customers regarding available energy efficiency services (e.g., bill stuffers and referrals to companies offering energy audits and other services) and facilitate customer access to energy efficiency products and services available in the market by third party product vendors and service providers (e.g., by arranging manufacturers' rebates). These activities shall be carried out in a manner which does not give preferential treatment to any energy service provider.
- (xiv) The Company will support legislation or state agency rulemaking which would upgrade New York State building codes to meet the 1995 Model Energy Codes and ASHRAE Standard 90.1. The Company believes that the implementation of such legislation or state agency rulemaking should consider the economic impact to the State of New York of the building codes.



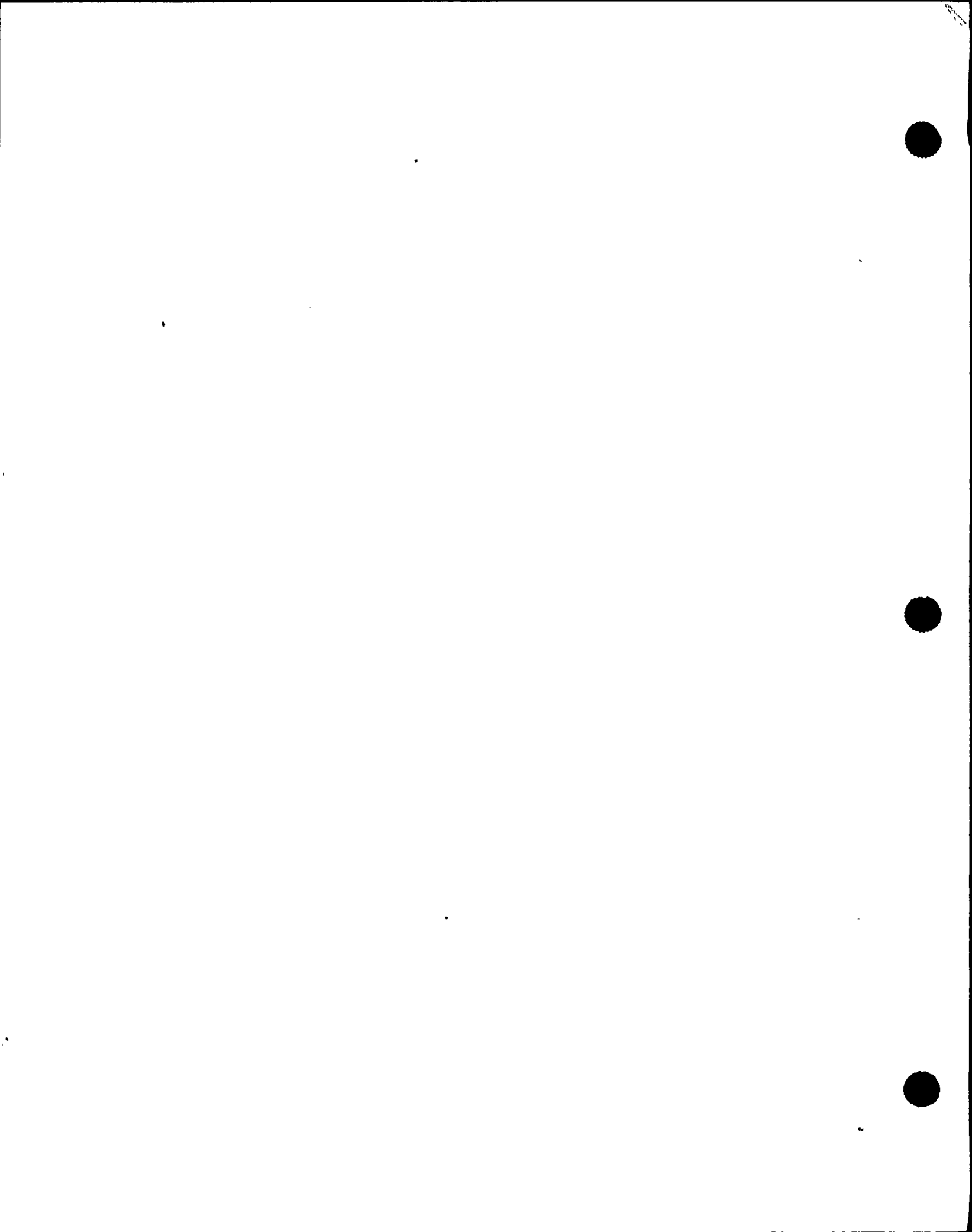
- (xv) The Company will support the inclusion of environmental protection provisions in federal utility restructuring legislation, insofar as congressional consideration of such provisions does not unduly delay progress toward creating a deregulated and open competitive market for electricity in the United States. With regard to such environmental measures:
- a) The Company will support establishment of a national system benefits trust (national wires charge), with the understanding that such a trust would not be constituted in a manner which would competitively disadvantage companies in a state that has established a parallel, state-level system benefits charge.
  - b) The Company will support nationwide "environmental comparability" requirement for fossil generating units for nitrogen oxides (NOx) emissions (i.e., a uniform generation performance standard implemented in combination with an emissions "cap and trade" program), with the understanding such a standard would apply uniformly throughout the entire United States and with the understanding such a standard would be phased in so that its imposition would not unreasonably devalue current fossil generation assets.
  - c) The Company will support national environmental disclosure requirements for emissions that would apply to all energy retailers, with the understanding such disclosure requirements would be practical and not unreasonably burdensome to administer. Niagara Mohawk recognizes that in a competitive market, some retailers may choose to go beyond the minimum requirements with respect to characterizing the environmental aspects of the energy they provide.
  - d) The Company will support a clean energy portfolio standard that requires all vendors to have a minimum amount of renewables and other non-emitting or ultra low emitting (e.g., fuel cells) energy sources in their generating mix and that avoids unintended and undesirable economic incentives; i.e., the Company will support a standard that would prevent





any bypass of the requirement and utilizes a renewable energy credits purchase provision.

- (xvi) The Company and Staff agree that customer choice would be enhanced by the availability of environmental information concerning the power being provided to them. To effectuate such disclosure, the Company and Staff agree to work with load serving entities and others to develop and implement, where feasible, meaningful and cost-effective, an approach to providing customers with fuel mix and emission characteristics of the generation sources relied on by the load serving entity. Such an approach would facilitate informed customer choice, promote resource diversity and improve environmental quality.
- (xvii) To the extent the accounting for such revenues is not otherwise provided herein, all revenues derived from sales will be accounted for in accordance with the Uniform System of Accounts.



## **SECTION 8.0 RETAIL ACCESS**

### **8.1 CONDITIONS NECESSARY FOR RETAIL ACCESS**

In addition to other conditions described in this agreement, retail choice depends upon proper metering and appropriate billing and settlement procedures.

#### **8.1.1 Proper Metering**

As described in Section 8.3, it is essential that proper metering, meter reading and billing be performed to insure the integrity of the new retail access system. In addition, the parties agree that customers will pay all incremental costs associated with these requirements as provided by Niagara Mohawk.

#### **8.1.2 Billing and Settlement Procedures Consistent with Market**

Billing and settlement procedures that are consistent with the demands of the market must be established.

Niagara Mohawk will prepare its settlement and billing system to accommodate retail access within a wholesale electricity market and bulk power transmission system operated by an independent system operator and one or more power exchanges. The billing and settlement system described in Section 8.3 supporting the retail access schedule will be designed and developed to function within the market structure proposed by the member systems of the New York Power Pool in their January 31, 1997 FERC filing.<sup>7</sup> The FERC proceeding to review this filing is in progress and the timing of a decision is therefore uncertain.

Until the ISO and the other new market institutions are in operation, RegCo will develop methods to facilitate wholesale settlement with marketers and ESCOs within the framework of the New York Power Pool. When the new institutions are in place, RegCo will modify its settlement

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<sup>7</sup>See, "Comprehensive Proposal to Restructure the New York Wholesale Electric Market," FERC Docket ER-97-1523-000.



approaches to ensure consistency with the new market environment. In the event that key features of the market structure are modified substantially from those proposed in the filing, the Company reserves the right to petition the Commission for approval to adjust the schedule for retail access to permit corresponding changes to be incorporated into the billing and settlement systems. Key features include, but are not limited to, the two settlement system, locational based marginal pricing and the ISO Open Access Transmission Tariff.

## 8.2 RETAIL ACCESS TIMETABLE

Retail access for customers in Niagara Mohawk's service territory will be offered on a schedule shown in Table 8-1. As described below, customers will receive access in several phases.

### 8.2.1 Farm & Food Processor (Dairylea) Pilot

On February 25, 1997 the Public Service Commission issued an order<sup>8</sup> to Niagara Mohawk and three other utilities to develop retail access programs for commercial farms and food processors. In response to that order, on April 11, 1997 NMPC filed its proposal<sup>9</sup>, including a draft tariff. On June 23, 1997, the Commission issued an order<sup>10</sup> to implement the program, requiring a tariff filing by August 4, 1997 and the commencement of retail deliveries by November 1, 1997. On September 18, 1997 the Commission issued an additional order directing certain changes to the August tariff filing.<sup>11</sup>

The Company's plan to introduce retail access has been designed to accommodate the Farm & Food Processor (F&FP) pilot program. Table 8-1 includes the F&FP program for illustrative purposes only. If implementation of the F&FP program is delayed due to rehearing,

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<sup>8</sup>Order Concerning Retail Access Proposals, PSC cases 94-E-0948 and 94-E-0385.

<sup>9</sup>Proposal of Niagara Mohawk Power Corporation for a Retail Access Pilot Program for Commercial Farms and Food Processors, PSC cases 94-E-0948 and 94-E-0385.

<sup>10</sup>Order Establishing Retail Access Pilot Programs, case 96-E-0948.

<sup>11</sup>Order Concerning Compliance Filings, case 96-E-0948



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litigation, or other causes, the timetable for retail access for other customers will not be affected.

Reflecting the Commission's desire for expedited implementation, the F&FP proposal utilizes methods that Niagara Mohawk does not necessarily propose to use when retail access is extended to its other customers. The Company does not view the methods used for the pilot as precedent-setting or binding in any way.

Customers participating in the F&FP program will be offered the option to be removed from the pilot and served under the full retail access program when other customers of their rate class, size, and voltage delivery become eligible for retail access.

It is the intent of the Parties that this agreement and the Dairylea Pilot fulfills the obligation of the Company in cases 94-E-0385 et al. and 95-E-0924.

#### **8.2.2 Group 1**

Group 1 consists of all customers in rate class SC-3A served at transmission voltages (greater than 60 kV), plus customers in rate class SC-4 served at transmission voltages with demands served by Niagara Mohawk of 2 MW or more. The timing of retail choice for these customers will be no later than one month after the *PowerChoice* Implementation Date.

#### **8.2.3 Group 2**

Group 2 consists of all remaining SC-3A and SC-4 customers with peak demands of 2 MW or more. The timing of retail choice for these customers will be no later than seven months after the *PowerChoice* Implementation Date.

#### **8.2.4 Group 3**

Group 3 consists of all remaining customers served at transmission and subtransmission voltage levels (22 kV and above). This group will become eligible no later than May 1, 1999.





#### **8.2.5 Group 4**

Group 4 consists of all remaining residential customers not already participating in the Farm and Food Processor pilot program. Retail access for these residential customers will begin no later than April 2, 1999, and will be completed no later than December 31, 1999. All parties agree to work on a good faith basis during 1998 to develop a residential phase-in plan, which includes processes and procedures that achieve as smooth and workable a transition as possible, taking into account different ways to resolve the POLR obligation, and the desire to minimize financial impact on the Company, ensure customer satisfaction, and address the needs of marketers and ESCos. The plan will be completed by December 31, 1998.

As part of the residential retail access phase-in plan, the Company commits to developing, in consultation with other parties, and implementing an outreach and education program to help residential customers understand and act upon their right to choose their energy supplier.

The Company reserves the right to conduct a pilot of retail access in a defined geographic area, but, if it chooses to do so, the pilot will not have the effect of delaying the schedule for residential customers, nor will it delay the possibility for earlier access for residential customers.

#### **8.2.6 Group 5**

Group 5 consists of all remaining non-residential customers except for 25 cycle customers. These customers will receive retail access no later than August 1, 1999. If the Company chooses to conduct an area pilot, this date will not be affected, nor will the pilot delay the possibility of earlier access for this group of customers.

#### **8.2.7 Customers With Special Contracts**

Unless otherwise provided for in their contracts, customers with special contracts will become eligible for retail access when the later of the following occurs: (a) the customer groups to which they belong become eligible (as shown in Table 8-1), or (b) their contracts expire.

#### **8.2.8 Monitoring Progress Through Time**

Over the longer-term, all parties agree to work together on a good faith basis during 1998 and 1999 to evaluate the response of customers to



retail access, both here and in other areas, to determine whether the transition process is working well or should be modified. Alternatives that could be considered include but are not necessarily limited to: (i) alternative ways of satisfying the POLR responsibility, (ii) whether a fixed CTC option should be offered to a larger number of customers, (and, in particular, whether a fixed CTC is needed for residential customers), (iii) whether a mandatory balloting process should be employed to require customers to choose their supplier, and (iv) the mandatory assignment of customers to alternate suppliers. The parties will also consider whether a viable competitive market exists, including a fully functioning ISO.

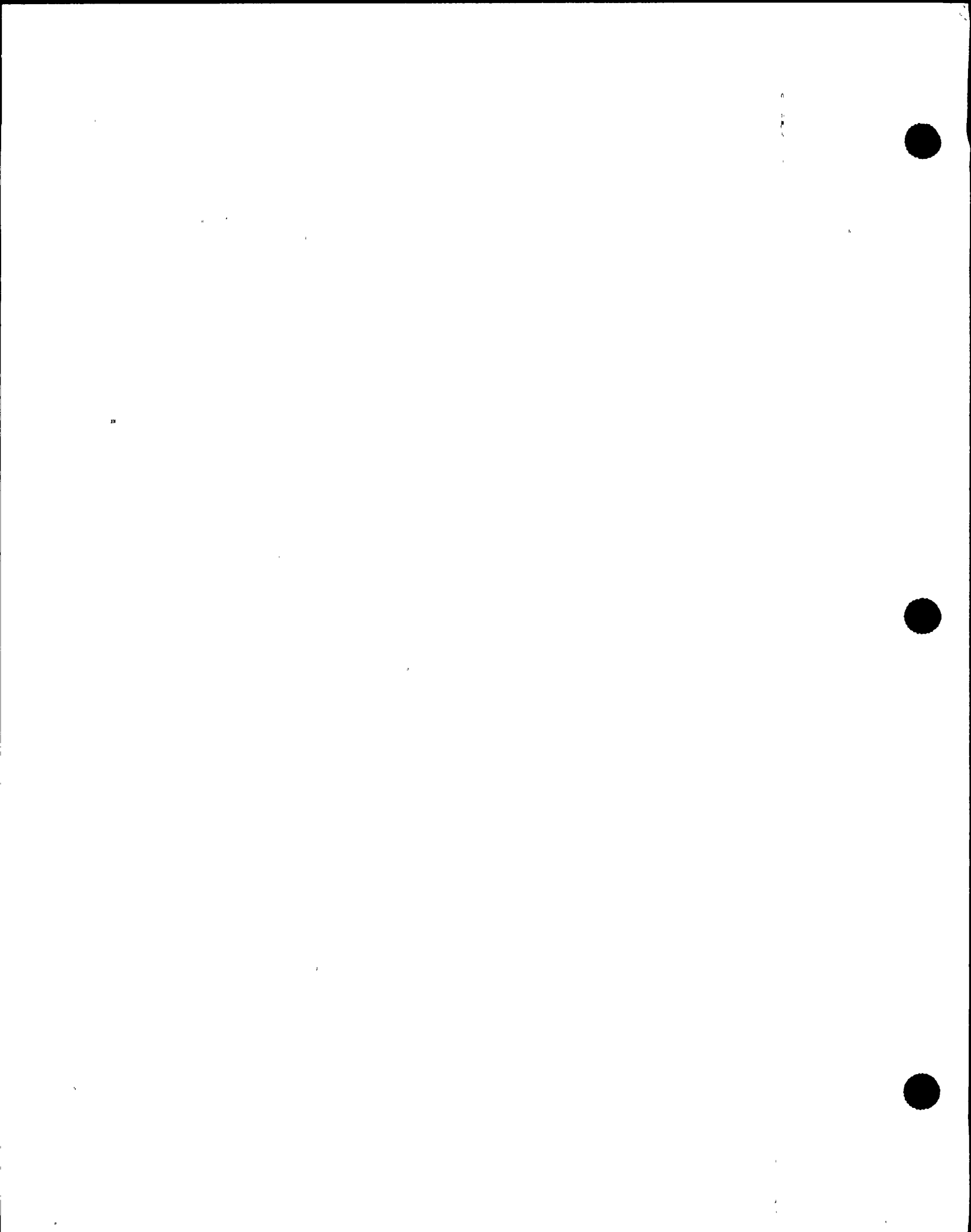
### **8.2.9 Contingencies**

The dates for initiating access for residential and small non-residential customers are not formally linked to having an operational statewide Independent System Operator (ISO). However, the Company retains the right to petition the Commission to alter the schedule if the ISO that is ultimately implemented differs substantially from the proposal filed with FERC on January 31, 1997 by the members of the New York Power Pool, and if implementing the revised ISO proposal on the current schedule would likely cause serious implementation problems (such as major cost shifting or mass confusion). In addition, the dates for retail access for customers in groups 3, 4 and 5 are contingent upon timely receipt of regulatory approvals from the PSC. (A delay of several months should not affect the residential and small non-residential access timetable unless such a delay affects the ability of the Company to implement the MRA and the overall settlement.)

### **8.3 RETAIL ACCESS SETTLEMENT METHOD**

To enable retail access within its service territory, RegCo will develop a billing and settlement system that will provide the following features. These features will be modified as necessary to comply with any Commission orders regarding billing and metering in a restructured market environment but this Agreement does not limit any Party's rights to challenge or otherwise petition for relief from any proposed policy in the Generic Proceeding.

- o RegCo will bill customers taking service from its transmission and distribution systems for services provided by the Company.
- o ESCos will have the option of billing their customers directly for the services they provide, or requesting RegCo to provide billing services for them for a fee.



- o ESCos will be able to arrange physical bilateral purchases with wholesale suppliers, and RegCo will handle the scheduling of these transactions with the NYPP or ISO, as the case may be at different points in time.
- o ESCos will be able to purchase power from the spot markets, as administered by power exchanges and/or the ISO, and RegCo will provide any ESCo interfaces that may not otherwise be accommodated by these institutions.
- o All charges incurred by RegCo as a consequence of its role in providing interfaces for ESCos with power exchanges or the ISO shall be passed along to the ESCos responsible for those costs. This includes any charges or costs for losses<sup>12</sup>, transmission services, ancillary services, balancing, uplift, transmission congestion rents, etc.
- o RegCo will meter or determine through load shape methods all customer loads by hour, location, and voltage for the purposes of determining total load for each ESCo by those categories. Loads for customers receiving power directly from RegCo will be determined in the same method to ensure that no cross-subsidization occurs.
- o RegCo will be permitted to include reasonable charges for the services it provides in the administration of the retail access system. These charges will be included in the tariffs filed by the Company, implementing the terms of this Settlement Agreement.

Figure 8-1 illustrates the approach RegCo intends to take in performing these functions. Should the statewide ISO and/or power exchanges, when operational, provide settlement services that enable ESCos to interact directly with those institutions, RegCo will modify or discontinue use of those features of this settlement system as appropriate.

### **8.3.1 Forecasting and Scheduling Requirements**

ESCos or their agents will be required to submit to RegCo at least a day in advance (or multiple days in advance for weekends and holidays) hourly bilateral scheduled deliveries including the source of generation supply and location of the load being supplied. When the power exchanges and the ISO are operational, ESCos will also be required to provide hourly load forecasts, and specify what portion of their forecasted loads should be served from the day-ahead energy market. RegCo will

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<sup>12</sup>Losses include adjustments for transmission and distribution losses, theft of service, etc.



accommodate load management bids provided by ESCOs to the extent possible within the bidding provisions of the power exchanges and the ISO.

### **8.3.2 Metering Requirements**

In order to facilitate retail access, all customers in classes SC-3 and above will be required to have a meter whose capabilities are at least equivalent to a single directional meter with a recorder capable of registering hourly (or shorter) integrated readings (interval metering), whether or not they choose an alternate supplier. The incremental costs of metering will be borne by these customers.

All other customers will be permitted to continue to utilize existing kWh meters. For settlement purposes, RegCo will use load shapes applicable to the customer's class to estimate hourly usage. Since load shapes have not been used in RegCo's area for this purpose, the company reserves the right to modify the specific techniques as necessary to attain reasonable and accurate results. Customer classes may be subdivided if deemed necessary to ensure that representative load shapes are applied. Any customer not otherwise required to have interval metering may request that interval metering be installed provided that the customer bears the incremental costs of such metering.

RegCo will adjust its methodology for the application of load shapes and/or interval meters as necessary based on experience, and in conformance with Commission orders resulting from the ongoing metering and billing efforts in the Competitive Opportunities Proceeding.

In the event that meter availability or installation resources result in some customers in the SC-3 class not having hourly metering at the time they otherwise would become eligible for retail access, access will be permitted and load shapes utilized on an interim basis until the metering is in place.

### **8.3.3 Services Not Covered by the Settlement System**

Certain services acquired by ESCOs will not be included in the settlement system. RegCo will not be involved in payments between ESCOs and generators for bilateral transactions between them. The ISO may have installed reserve requirements that all load serving entities must fulfill; RegCo does not intend to serve as a broker for the acquisition of installed capacity for ESCOs (although ESCOs will be free to separately negotiate for purchase of installed capacity from Niagara Mohawk or its subsidiaries, if desired). In general, RegCo does not intend to include in its settlement





system any service for which appropriate billing and payment methods are available directly between supplier and ESCo.

#### **8.3.4 Nondiscriminatory Treatment of Customers**

RegCo will implement the curtailment procedures of NYPP or the ISO (as applicable) consistent with its existing transmission arrangements and will not discriminate between those bilateral transactions serving ESCo customers and those serving RegCo customers.

RegCo will conform to all operating criteria and guidelines established by the ISO and the PSC. RegCo will not discriminate in any way in providing reliable service to customers that receive energy supply from RegCo or those that are supplied from ESCos. Customers of RegCo and customers of ESCos will be subject to the same emergency load curtailment provisions.

#### **8.3.5 Auditing of the Settlement Function**

To ensure that the settlement functions performed by RegCo to facilitate retail access are being performed in accordance with appropriate procedures that treat all market participants equitably, audits of these functions may be performed under the direction of the PSC. The scope of these audits shall be limited to those functions and procedures related to the determination and assessment of charges to the ESCos obtaining retail access through RegCo. All audits shall be performed either by the Staff of the PSC, or by an independent auditing firm with a national practice selected by the PSC.

Any incremental costs associated with the auditing of the settlement functions that are incurred by RegCo shall be borne by all ESCos serving retail load through RegCo's retail access framework, and RegCo itself, in proportion to the total energy served by these entities in the three-month period preceding the commencement of the audit. Incremental costs shall include auditor costs invoiced directly to RegCo, auditor costs invoiced separately to RegCo by the PSC, and any RegCo costs incurred specifically in response to audit requirements.

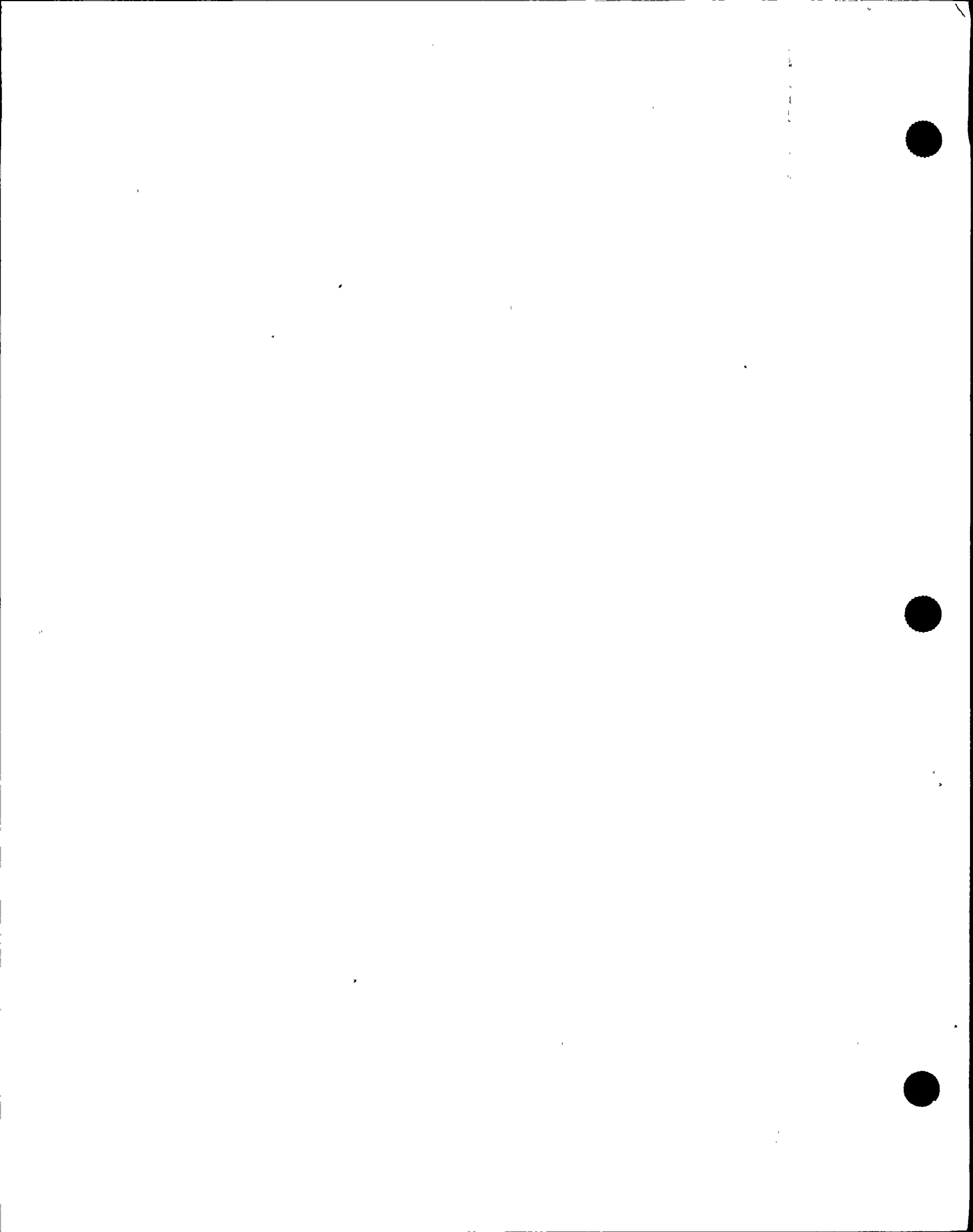
All data provided for audit purposes to the PSC or to another auditor shall be regarded as confidential and shall not be disclosed to any market participant, or to the general public, unless such data is already accessible to the public through separately established regulations or procedures except as otherwise decided by the Commission or its records



access officer. Audit reports and findings, excluding confidential data, shall be made available to all market participants and the general public.

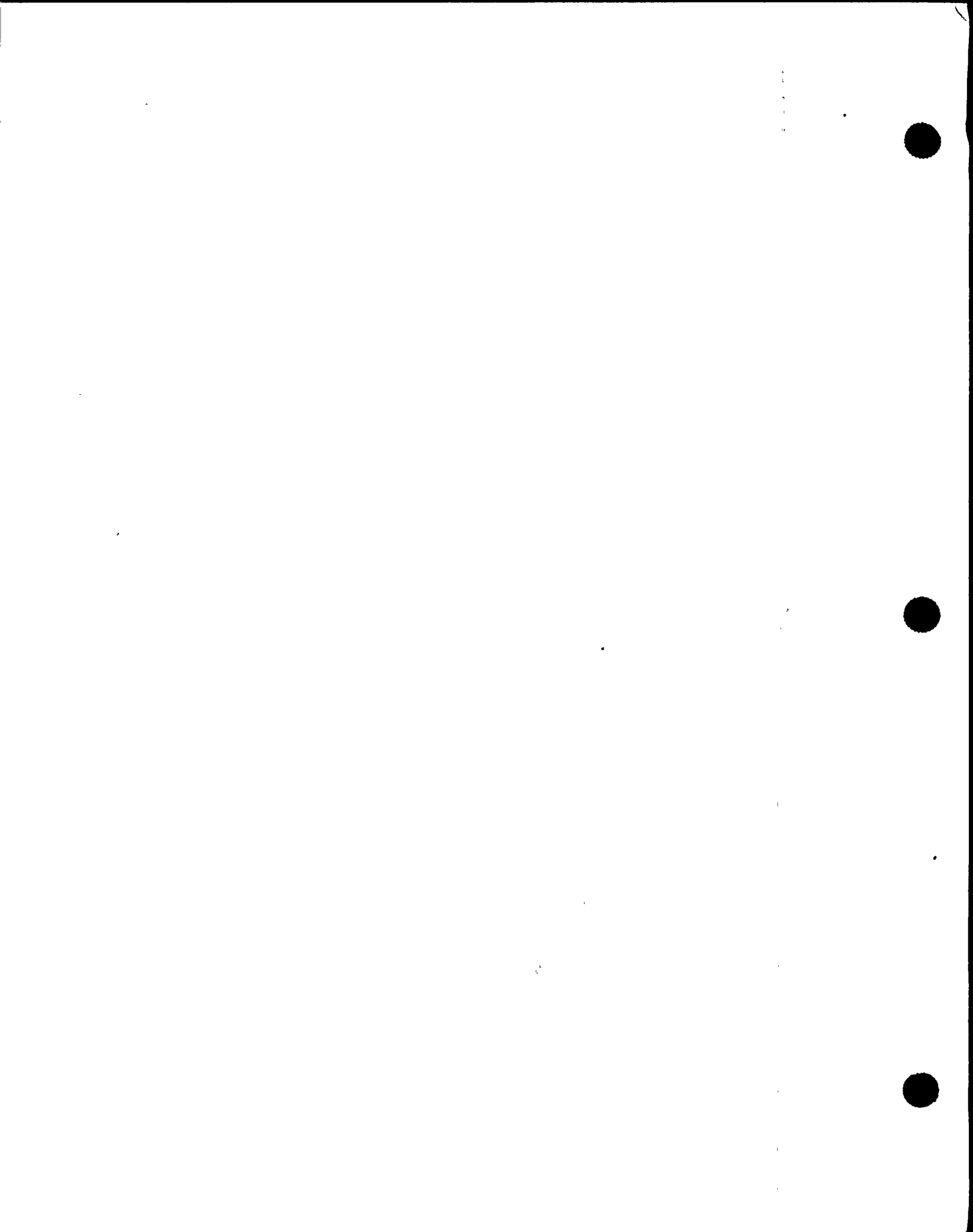
#### **8.4 Reciprocity Assurances**

Full retail access in Niagara Mohawk's service territory may occur before comparable access is available in other electric utilities' service territories. Other energy service providers may gain access to customers in Niagara Mohawk's service territory before Niagara Mohawk is able to gain comparable access to customers in other electric utilities' service territories. If there is such a disparity in the companies' relative degrees of access, Niagara Mohawk is concerned that it could experience substantial financial disadvantage. However, as part of this settlement, the Company agrees there will be no restrictions on commodity sales to retail customers unless the Company petitions the Commission for relief and the Commission approves the restriction.



**Table 8-1**  
**Retail Access Phase-In Schedule and Statistics**

Group	Number of Customers	Timing of Retail Choice	Revenue		Sales		
			\$ Millions	% of Total	MWh	% of Total	Cumulative % of Total
<b>Farm &amp; Food Processor Pilot</b>							
Commercial Farms <sup>1</sup>	22,237	11/1/97	41.8	1.4	384,025	1.3	
Food Processors <sup>2</sup>	589		44.0	1.4	479,000	1.7	
<b>F&amp;FP Pilot Total</b>	22,826		85.9	2.8	863,025	3.0	3.0
<b>Group 1</b> Transmission level SC-3A and SC-4 customers <sup>3</sup>	98	t+1 mo.	348.0	11.2	4,590,144	16.0	19.0
<b>Group 2</b> All remaining customers >2 MW	158	t+7 mo.	213.7	6.9	2,517,270	8.8	27.8
<b>Group 3</b> All remaining transmission and subtransmission level customers <sup>4</sup>	229	5/1/99	68.8	2.2	800,879	2.8	30.6
<b>Group 4</b> All remaining residential customers	1,402,657	Phased in, 4/2/99 through 12/31/99	1,200.1	38.8	9,440,920	32.9	63.5
<b>Group 5</b> All remaining non-residential customers <sup>5</sup>	149,706	8/1/99	1,179.2	38.1	10,482,296	36.5	100.0
<b>Totals</b>	1,575,674		3,095.6	100.0	28,694,534	100.0	100.0



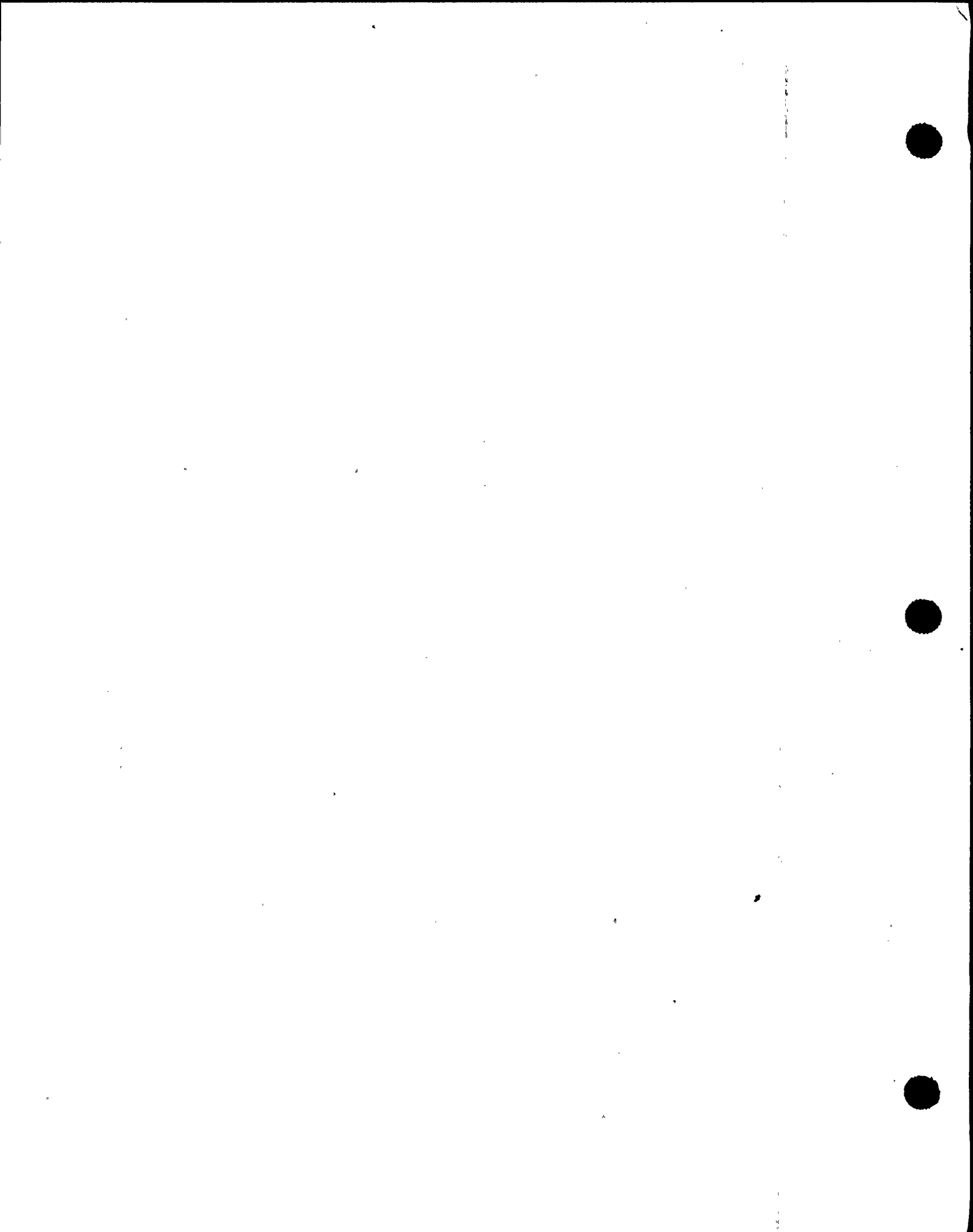
## Notes on Table 8-1

Statistics are based on 1998 forecast data. Revenue estimates reflect Base Rate for 1998.

Customers with special contracts will not become eligible until expiration of their contracts. The table estimates do not reflect possible delayed eligibility due to special contracts.

t = The *PowerChoice* Implementation Date

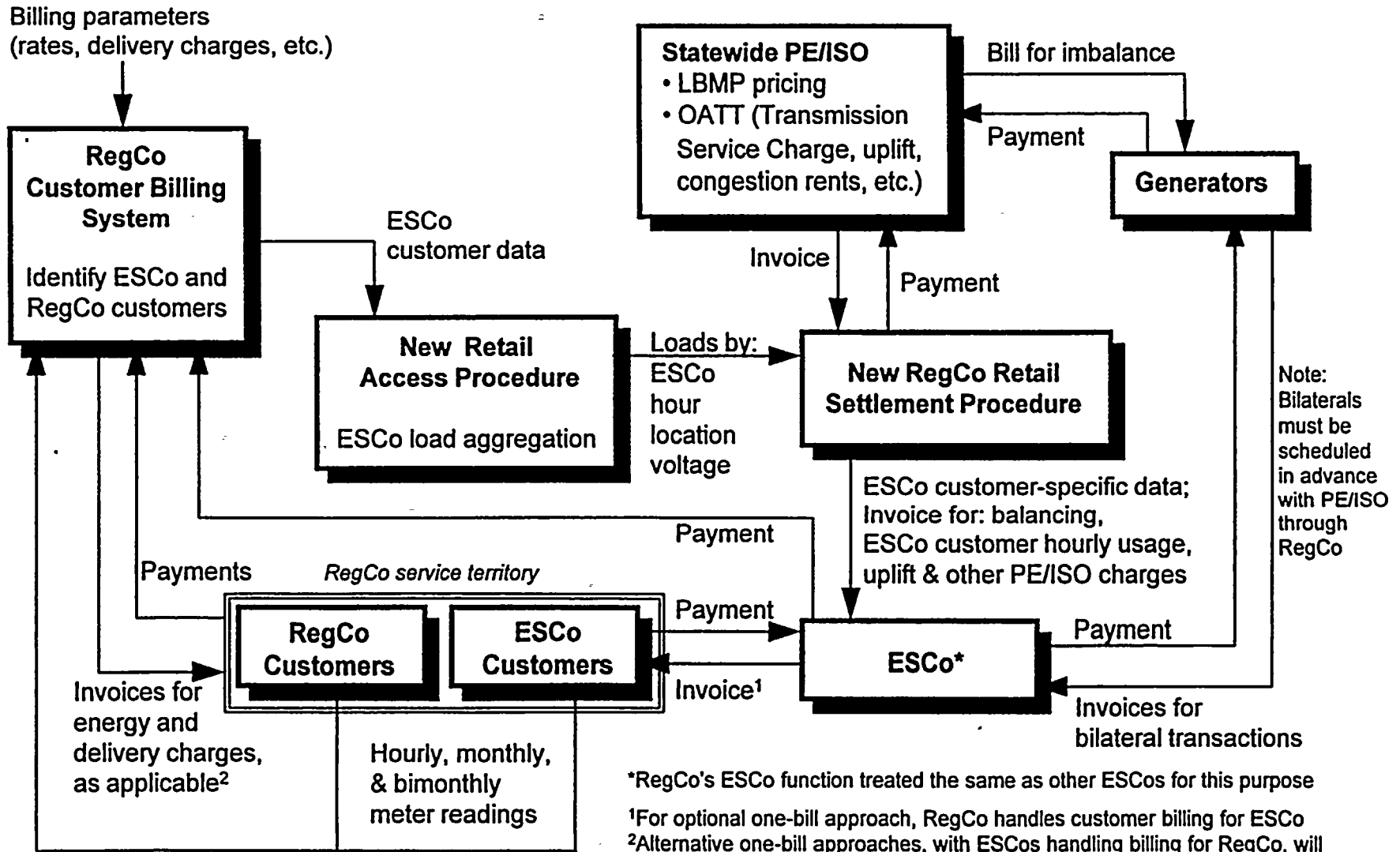
1. Rough estimates based on full participation of all customers currently shown in Company records as farms. Actual participation is likely to be lower; however, the Company does not have sufficient data to more accurately predict actual eligibility or participation prior to program implementation.
2. Assumes eligibility and participation of all customers with SIC codes of 2000 to 2099; special contract rates, economic development discounts, or optional pricing schedules may make some customers ineligible.
3. SC-4 customers must also have 2 MW of NMPC demand to qualify. Transmission level is above 60 kV.
4. Subtransmission level is 22 kV and above.
5. Excludes 25 cycle customers.





# Figure 8-1: Retail Settlement & Billing

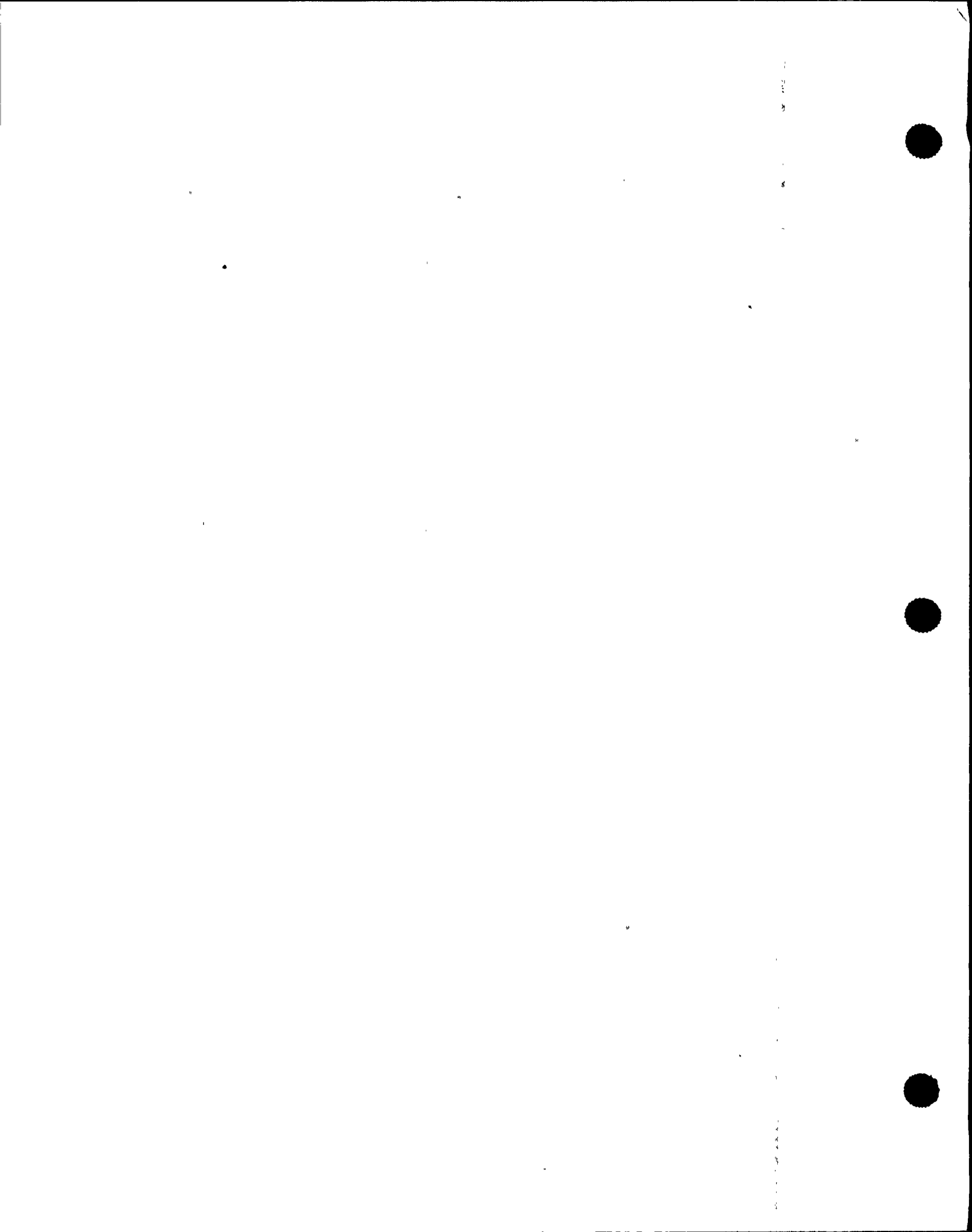
One- or two-bill system with ESCo load aggregation and load shapes



\*RegCo's ESCo function treated the same as other ESCOs for this purpose

<sup>1</sup>For optional one-bill approach, RegCo handles customer billing for ESCo

<sup>2</sup>Alternative one-bill approaches, with ESCOs handling billing for RegCo, will be accommodated as necessary to comply with any Commission orders regarding billing and metering in a restructured market environment but this Agreement does not limit any Party's rights to challenge or otherwise petition for relief from any proposed policy in the Generic Proceeding.



## SECTION 9.0 CORPORATE STRUCTURE AND AFFILIATE RULES

### 9.1 PROPOSED CORPORATE STRUCTURE

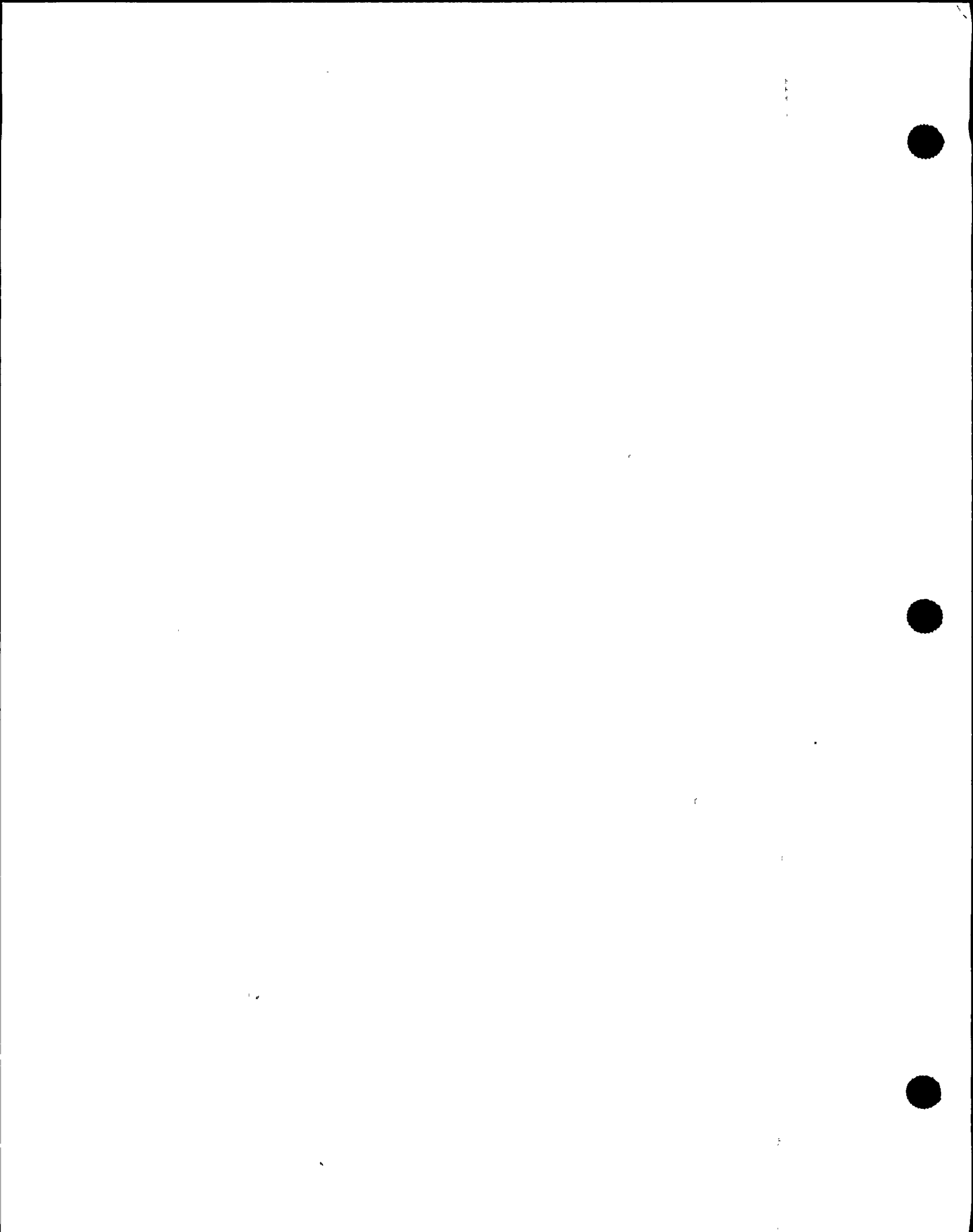
Niagara Mohawk shall separate its existing operations, as indicated below or as described in any petition filed by Niagara Mohawk within one year of the approval of this settlement proposing the formation of a holding company in substantially the same structure described below:

HoldCo: The HoldCo may be, at the Company's option, a legally distinct entity that directly owns no state or federal jurisdictional assets and, therefore, is unregulated or a functionally separate unit serving the same purposes of a holding company.

RegCo: RegCo shall be a wholly owned subsidiary of HoldCo or a utility parent owning in whole or in part one or more regulated and/or unregulated subsidiaries. The RegCo shall carry on the full range of Niagara Mohawk's regulated transmission and electric and gas distribution services. To the extent not carried on through a statewide nuclear operating company and subject to the other provisions of this settlement regarding nuclear assets, Niagara Mohawk's nuclear operations may remain a part of RegCo.

Plum Street Enterprises/Unregulated Affiliates: Niagara Mohawk may form unregulated or lightly regulated affiliates, which may be owned, in whole or in part, by HoldCo or may be a subsidiary of a utility parent under either proposed corporate structure. If Niagara Mohawk seeks to form subsidiaries of RegCo, it will be subject to all applicable regulatory requirements including Section 107 and 69 of the Public Service Law.

Transition GenCo: Niagara Mohawk may form all subsidiaries necessary to effectuate the fossil and hydro asset auction contemplated in this settlement. Prior to that auction, Niagara Mohawk may maintain its current functional unbundling of its fossil and hydro generation business.



## 9.2 RULES GOVERNING AFFILIATE TRANSACTIONS

### 9.2.1 Organization

#### 9.2.1.1 Separation and Location

RegCo, HoldCo, and the HoldCo's other subsidiaries will each be operated as separate entities and will maintain separate books and records of account. HoldCo's unregulated subsidiaries and RegCo will operate from physically separate buildings. RegCo and HoldCo may occupy the same building.

#### 9.2.1.2 Board of Directors Membership and Fiduciary Duty

A majority of the RegCo Board of Directors will be Outside Directors (i.e., neither an officer nor director of HoldCo or any HoldCo unregulated affiliate).

In any calendar year RegCo will limit dividends paid to HoldCo as follows:

<u>Years</u>	<u>Dividend Limitation: Net Income Available for Common Dividends Plus:</u>
1998	\$50 million
1999	\$75 million
2000	\$100 million
2001	\$100 million
2002	\$100 million
2003	\$80 million
2004	\$60 million
2005	\$40 million
2006	\$20 million
2007 and beyond	\$ 0

The calculation of net income will exclude any one-time, non-cash accounting charges, and the dividend limitation will exclude any one-time dividends to HoldCo attributable to major transactions such as asset sales, the



transfer of generating assets associated with HoldCo and subsidiary formation as necessary to implement the terms of this settlement, or securitization.

Notwithstanding the above, if the Company files for rates for years 2003, 2004, 2005, 2006, or 2007, the measure for the dividend limitation will be reassessed in the context of the rate filing.

### **9.2.1.3 Cost Allocation**

Appropriate cost allocation procedures will be followed by HoldCo and its affiliates to assure the proper allocation on a fully distributed basis, to HoldCo, RegCo, PSE or other affiliates of the costs of any HoldCo personnel, property or services used by RegCo or other affiliates or HoldCo.

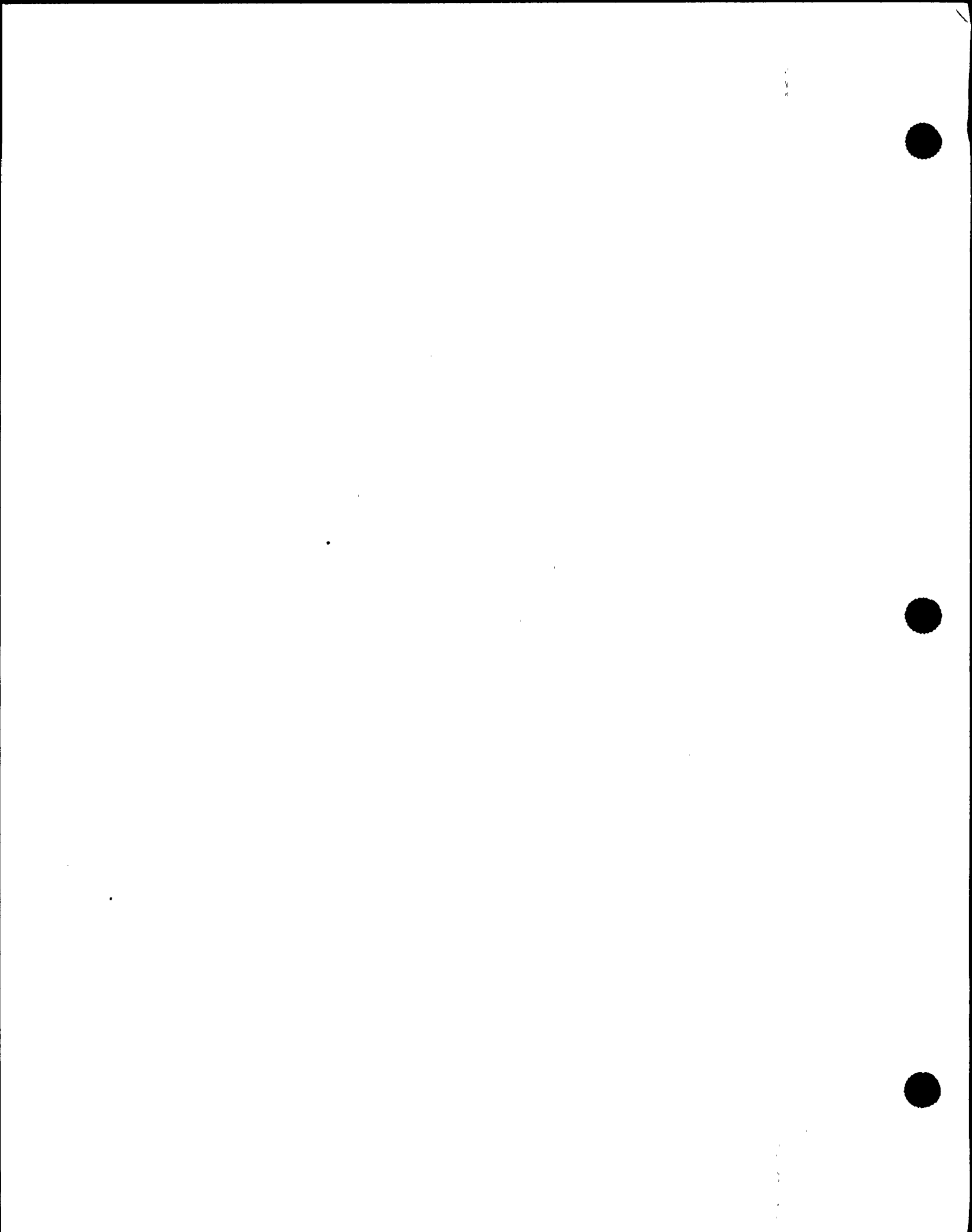
A complete manual of cost allocation guidelines will be developed and filed with the Director of the Office of Accounting and Finance of the Department of Public Service. All amendments and supplements to these guidelines will be filed thirty days prior to the effective date of such amendments and supplements. The cost to develop these guidelines, accounting, auditing and monitoring systems for affiliates will be paid by shareholders.

### **9.2.2 Transfer of Non-Generation Assets**

Transfers of non-generation assets (or rights to use such assets) from RegCo to an affiliate will be priced at the higher of book value or fair market value.

### **9.2.3 Transfer of Services**

RegCo may provide tariffed and corporate services (such as corporate governance, administrative, legal and accounting) to HoldCo and HoldCo's other subsidiaries. The provision of corporate services shall be subject to a written contract that, as applicable, identifies the personnel, assets, and services which will be provided. The services will be provided on a fully loaded cost basis. Such services may be provided by RegCo so long as RegCo's total assets are equal to or greater than 85% of the consolidated total assets of HoldCo.





At such time as RegCo's total assets are less than 85% of the consolidated total assets of HoldCo, corporate services may not be provided by RegCo to HoldCo and its other subsidiaries; however, HoldCo may provide corporate services to RegCo and its other subsidiaries at any time provided that such services are priced at not higher than fully loaded cost and are pursuant to a written contract that, as applicable, identifies the personnel, assets, and services to be provided. RegCo will not purchase any other products or services from HoldCo or its unregulated affiliates unless these are purchased as a result of a fair and open competitive bidding process.

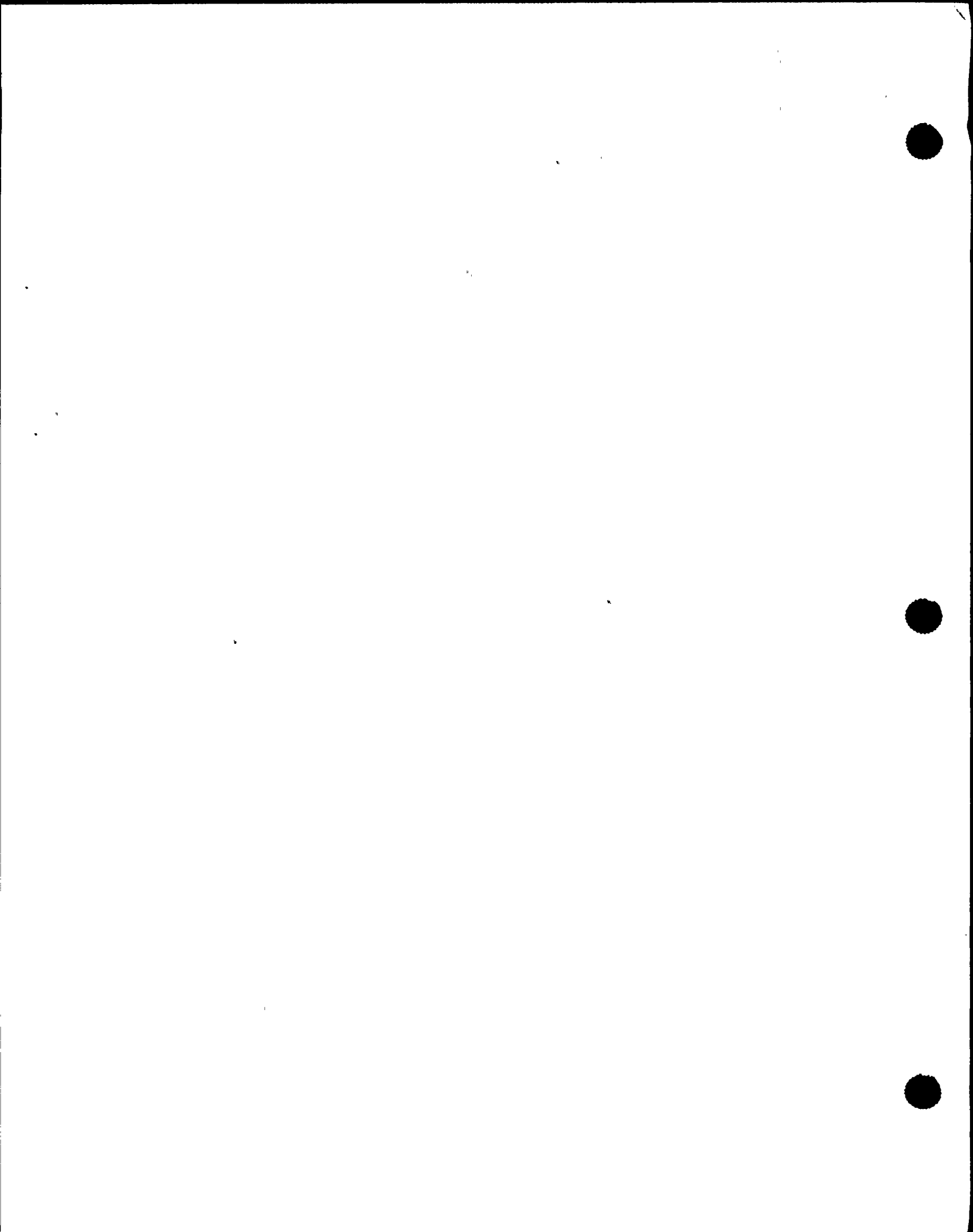
To the extent that the Company does not move the function to RegCo, the existing Energy Services and Gas Services contracts with Plum Street will be subject to a fair and open competitive bidding process by December 31, 2000, or at the renewal or expiration dates of the current agreements, whichever is earlier. Any such contract will be filed with the Public Service Commission in accordance with Public Service Law Section 110. The Company will meet with Staff to determine which, if any, functions should return to RegCo. Furthermore, any generic order regarding the provision of these services will supersede this agreement.

The RegCo, the HoldCo and the unregulated affiliates may be covered by common property/casualty and other business insurance policies. The costs of such policies shall be allocated among the RegCo, the HoldCo and the unregulated affiliates in an equitable manner as defined in the cost allocation manual.

#### **9.2.4 Special Services**

The Company through RegCo will not provide or offer to provide services to customers that are normally provided by Energy Services Companies (ESCOs) such as energy audits, energy efficiency equipment, etc. without prior Commission approval except as provided for in Section 7.2 (xiii). The Company will be allowed to provide operation, maintenance and construction services to customer's equipment at a customer's explicit request that is related to energy delivery services (Rule 28 of P.S.C. 207). Any such services provided by the Company will be subject to the following:

- (1) Under no circumstances will such customer-requested services provided by RegCo to individual customers impose a cost on other utility ratepayers. Customers will be charged fully loaded rates for these services.



- (2) The Company will provide these services on a first-come, first-served basis to customers who request them on non-discriminatory terms and conditions, i.e., similarly situated customers would be charged the same rates.
- (3) The Company will make customers aware if there are other entities that may be able to provide the requested services.
- (4) The utility will maintain records relative to all such services, including scope of work, copies of customer requests including acknowledgment that the customer was aware of alternate suppliers, revenues received, any profits made as a result of providing the services, and identifying any direct or indirect benefits to other ratepayers that the Company estimates was derived from the provision of the service.
- (5) The Company will provide the Commission in Year 3 an analysis of the impact of the Company providing such service and the Commission will then decide if the Company will be allowed to continue the provision of such services.
- (6) RegCo will not hire any additional employees or purchase additional equipment in order to provide these services.

To the extent the Company's current or planned provision of the services described above requires Commission authorization pursuant to Public Service Law Section 107, that authorization is in the public interest and in approving this settlement, the Commission thereby grants that authorization for the term of this settlement.

#### **9.2.5 Human Resources**

##### **9.2.5.1 Separation of Employees and Officers**

RegCo and the unregulated subsidiaries will have separate operating employees. Operating officers (i.e., those officers providing other than corporate services) of RegCo will not be operating officers of any of the unregulated subsidiaries. Officers of HoldCo may be officers of RegCo or an unregulated affiliate, provided that a HoldCo officer may not be an officer of both RegCo and an unregulated affiliate.



### **9.2.5.2 Employee Transfers**

If a RegCo employee accepts a position with an unregulated subsidiary, he or she will be required to resign from RegCo unless there is a conflict with the collective bargaining agreement in which case the collective bargaining agreement would control. Any such employee shall be prohibited from copying or taking any non-public customer or competitively sensitive market information from RegCo.

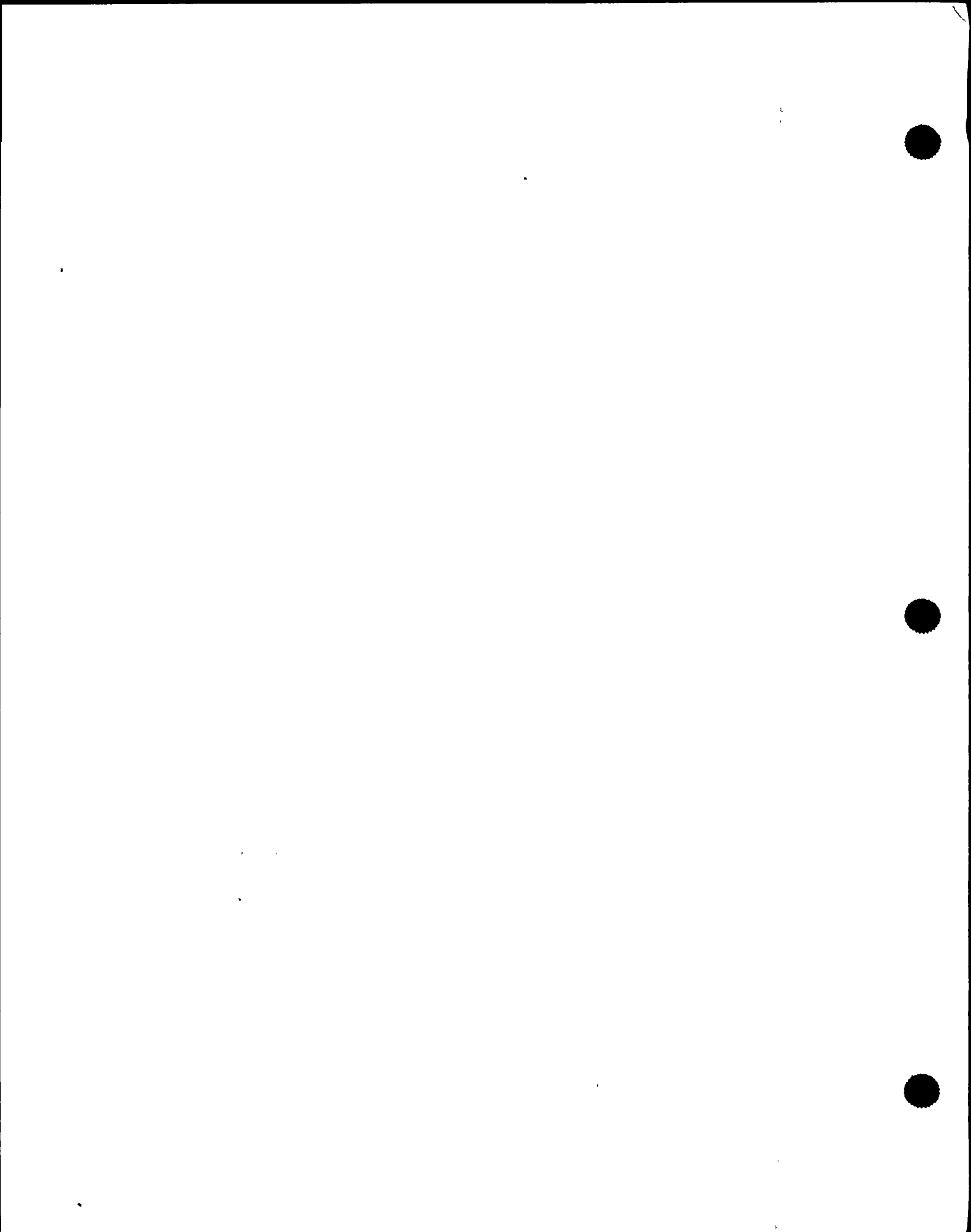
Employees may be transferred from RegCo to an affiliate. Transferred employees may not be reemployed by RegCo for a minimum of one year after transfer. Employees returning to RegCo may not be transferred again to an unregulated affiliate for a minimum of one year. RegCo will file annual reports to the Commission, beginning 45 days after the end of the first calendar quarter following formation of HoldCo showing transfers between RegCo and unregulated affiliates by employee name, former company, former position, new company, new position, and salary or annualized base compensation. There will not be any temporary employee transfers between RegCo, HoldCo and any HoldCo unregulated affiliates.

### **9.2.5.3 Employee Loans in an Emergency**

The foregoing provisions in no way restrict any affiliate from loaning employees to RegCo to respond to an emergency that threatens the safety or reliability of service to consumers.

### **9.2.5.4 Compensation for Transfers**

An employee transfer credit equal to 25% of the employee's salary will be applied to reduce any stranded costs. This fee will apply for all transfers except for (i) the initial transfer of RegCo employees to HoldCo on or within the 30 days after the formation of HoldCo, (ii) the transfer of RegCo employees from one regulated subsidiary to another regulated subsidiary, (iii) the transfer of RegCo employees to an affiliate if their function is no longer regulated, (iv) any represented or other employee covered by a collective bargaining agreement targeted by a layoff in the one year following the implementation date of PowerChoice, and (v) the transfer of employees involved in the performance of corporate services to HoldCo when RegCo no longer constitutes more than 85% of HoldCo's assets as per section 9.2.3.



Transfer charges for employees transferred to Plum Street to date are reflected in rate levels.

#### **9.2.5.5 Employee Compensation and Benefits**

The compensation of RegCo employees may not be tied to the performance of any of the unregulated subsidiaries, provided, however, that stock of the HoldCo may be used as an element of compensation and the compensation of common officers of the HoldCo and RegCo may be based upon the operations of the HoldCo and RegCo.

Employees of HoldCo, RegCo and the unregulated subsidiaries may participate in common pension and benefit plans.

#### **9.2.5.6 Legal Representation**

The affiliates of HoldCo other than RegCo and Canadian Niagara shall have their own Chief Legal Officer/General Counsel, who shall report to the affiliate's management and not be an employee or officer of RegCo. The same law firm may represent RegCo and any affiliate on any matter other than transactions between RegCo and that affiliate. On any matter not involving such an intracorporate transaction in which the interests of RegCo may be adverse to the interests of an affiliate, RegCo will take appropriate steps to ensure that RegCo's interests are vigorously and independently protected (such steps, by way of example and not limitation, could include having separate attorneys if a single law firm is used and creating a Chinese wall between such attorneys). With respect to all matters handled by outside counsel, HoldCo and its affiliates shall instruct outside counsel to take all reasonable steps to ensure the non-public customer and competitively sensitive information in the possession of RegCo is not communicated to an affiliate.

#### **9.2.6 Maintaining Financial Integrity**

Niagara Mohawk will agree to the following financial restrictions: (i) RegCo assets will not be used as collateral for affiliate debt; and (ii) debt and equity requirements will be established for RegCo through the regulatory process. RegCo will not provide any financial assistance to its affiliates through loans, loan guarantees, letters of credit or other commitments.





Nothing in these restrictions will prevent Niagara Mohawk from transferring funds from its Opinac affiliate to any other affiliate at any time without Commission authorization.

#### **9.2.7 Access to Books, Records and Reports**

Staff will have full access, on reasonable notice, and subject to resolution of confidentiality and privilege (e.g., attorney client, attorney work product, self critical) issues, to: 1) the books and records of HoldCo and the HoldCo majority owned subsidiaries; and 2) the books and records of all other HoldCo subsidiaries to the extent necessary to audit and monitor any transactions which have occurred between the RegCo and such subsidiaries.

#### **9.2.8 Reporting**

Annually, RegCo will file reports on: Transfers of assets, cost allocations, employee transfers and employees in common benefit plans. Quarterly, HoldCo will file a list of all SEC filings with the Commission.

### **9.3 STANDARDS OF COMPETITIVE CONDUCT**

The following standards of competitive conduct shall govern RegCo's relationship with any unregulated affiliates.

#### **9.3.1 Use of Corporate Name and Royalties**

The rate plan in this settlement shall be in lieu of any and all "royalty" payments that could or might be asserted to be payable by any affiliate or imputed to the RegCo or credited to RegCo customers at any time, including after the expiration of this settlement.

There are no restrictions on any affiliate using the same name, trade names, trademarks, service names, service marks or a derivative of a name of the HoldCo or RegCo, or in identifying itself as being affiliated with the HoldCo or RegCo.

Promotional material may identify the affiliate as being affiliated with RegCo or HoldCo.



### **9.3.2 Sales Leads**

RegCo will not provide sales leads involving customers in its service territory to any affiliate.

### **9.3.3 Customer Inquires**

If a customer requests information about securing any service or product offered by ESCos, the RegCo may provide a list of all known ESCos operating in the area which may include its unregulated affiliate.

### **9.3.4 No Advantage Gained by Dealing with Affiliate**

RegCo will refrain from giving any appearance that RegCo speaks on behalf of an affiliate or that an affiliate speaks on behalf of the RegCo. RegCo will not participate in any joint promotion or marketing with its affiliates.

The RegCo will not represent to any customer, supplier or third party that an advantage may accrue to such customer, supplier or third party in the use of the RegCo's services as a result of that customer, supplier or third party dealing with any affiliate.

RegCo's affiliates will not represent to any customer, supplier or third party that an advantage may accrue to such customer, supplier or third party in the use of the affiliate services as a result of that customer, supplier or third party dealing with RegCo.

These provisions do not restrict the use of the name of HoldCo or RegCo as set forth in Section 9.3.1.

### **9.3.5 No Rate Discrimination**

All similarly situated customers, including ESCos and customers of ESCos, whether affiliated or unaffiliated, will pay the same rates for the RegCo's utility services. If there is discretion in the application of any tariff provision, RegCo must not offer its affiliate more favorable terms and conditions than it has offered to all similarly situated competitors of the affiliate.



### **9.3.6 FERC Jurisdiction**

Transactions subject to FERC's jurisdiction will be governed by FERC's orders or standards as applicable.

### **9.3.7 Customer Information**

RegCo will provide 24 months of a customer's data to that customer or its authorized ESCo at no charge, except as provided by law consistent with the Commission orders in the Generic Proceeding related to Metering and Billing (94-E-0952). Additional customer billing information will be provided to a customer for a reasonable fee to be established pursuant to a tariff. If the Company releases other information, it will do so for a fee and on a non-discriminatory basis.

### **9.3.8 Other Information**

Other customer or market information in the Company's possession will be released as necessary, as authorized or required under FERC and PSC regulations, subject to protection of confidential information and recovery of attendant costs. RegCo will not disclose to any affiliate any market information relative to its service territory, which is not otherwise public, that it has not disclosed contemporaneously on an equal basis to all potential competitors of its affiliate.

### **9.3.9 Complaint Procedures**

Any competitor or customer of RegCo or competitor of any HoldCo subsidiary who believes that RegCo or HoldCo or its subsidiaries has violated these principles may file a complaint with the PSC and serve a copy on the Company which shall respond in writing in fourteen business days, with a copy to the PSC. Thereafter, the complainant and the Company shall meet to resolve the complaint informally. If no resolution can be reached within thirty days after RegCo's response, either party may notify the Secretary of the PSC. The Secretary shall send a copy of such notice to the other party, and shall promptly address the complaint pursuant to the Commission's complaint procedures.

If the Commission determines, per the procedure outlined above or as a result of its own investigation, that the RegCo or HoldCo has violated these



standards, it shall provide the RegCo/HoldCo an opportunity to remedy such conduct or explain why such conduct is not a violation. If the RegCo/HoldCo fails to remedy such conduct within a reasonable time after receiving such notice, the Commission may take such remedial action for which it has authority under the Public Service Law.

#### **9.4 MISCELLANEOUS**

##### **9.4.1 Applicability of Settlement Standards of Conduct**

The standards of conduct set forth in this Agreement will apply in lieu of any existing generic standards of conduct (e.g., the interim gas standards established in Case 93-G-0932) and in lieu of any future generic standards of conduct established by the Commission during the term of this Agreement. Before the Commission makes any changes to these standards, either through a generic or specific Company proceeding, it will consider the Company's specific circumstances, including its performance under the existing standards.

##### **9.4.2 Annual Meeting**

Senior management of RegCo and HoldCo will meet annually with senior Commission Staff to discuss the Company's plans related to capital attraction and financial performance.

##### **9.4.3 Training and Certification**

HoldCo and RegCo shall conduct training on these principles for officers, directors and senior managers. The officers, directors and senior managers of HoldCo, RegCo, and unregulated affiliates shall certify familiarity with these principles within forty-five days of PSC approval. New officers, directors and senior management should similarly certify familiarity within 45 days after taking their positions.

On an annual basis, designated officers should provide certification to the PSC of the companies' adherence to these standards.





#### **9.4.4 Telergy**

The rate plan and standards of conduct in this settlement shall constitute settlement of the issues that have arisen with regard to or resulting from the so-called "Telergy" venture, including those identified in Case No. 96-M-0138 pertaining to adequate compensation for the use of Niagara Mohawk's rights-of-way, and use of "Telergy" Calling Cards.

### **9.5 MERGERS AND ACQUISITIONS**

#### **9.5.1 Recovery of Premium**

Pursuant to a petition filed jointly or individually by the Company, Niagara Mohawk shall have the flexibility to retain, on a cumulative basis, all savings associated with the acquisition or merger with another utility for a period of five years from the date of closing of any such merger or acquisition up to the amount of acquisition premium paid over the lesser of book value or fair market value of assets merged or acquired. Savings in excess of that recovery will be disposed of by order of the Commission.

#### **9.5.2 Relationship to Divestiture**

Because the PSC will review merger applications under the Public Service Law, nothing in this agreement will limit the Company's ability to merge with or be acquired by another entity owning generation.

#### **9.5.3 Applicability of this Agreement Post Merger**

The provisions of this agreement shall continue in any merged entity.

#### **9.5.4 Expedited Review**

Staff and the Commission will give expedited review and treatment to any petition by RegCo or HoldCo in connection with a merger with another utility.



**SECTION 10.0**  
**SUPPLIER OF LAST RESORT**  
**OBLIGATION AND IMPLEMENTATION**

**10.1 OBLIGATION TO SERVE**

The Public Service Law requires regulated utilities to provide safe and adequate electric service at just and reasonable rates. RegCo will maintain an obligation to provide the electricity commodity to all customers during the term of this settlement, as further described in Section 4.0. The Company agrees to work with other parties, in the continuing proceedings in Case 94-E-0952 and other forums as appropriate, to develop a definition of the obligation to serve that is consistent with a competitive generation market and a competitive energy services market.

**10.2 IMPLEMENTATION**

**10.2.1 Energy Service Providers, Marketers and Brokers**

Niagara Mohawk will accept financial risk for the performance of energy service companies if the Company is allowed to employ reasonable standards of operational conduct and acceptable standards of commercial credit worthiness. To the extent that Niagara Mohawk has incurred costs to provide energy to balance an ESCo's customers loads, it will collect its costs for doing so from that ESCo and/or from customers as provided for below. Niagara Mohawk's ESCo will have the same requirements as other ESCos.

As discussed in Section 8.3 RegCo will bill customers directly for transmission and distribution services. An ESCO will have the option of billing customers for its services directly (two bill model) or having RegCo bill on its behalf (one bill model).

Under the one bill model, issues concerning operational conduct and credit worthiness can be addressed in the commercial terms established under service level contracts with the ESCos. Therefore, no additional credit or security requirements shall apply.



With respect to the two bill model, the Company has a greater level of business risk from balancing services. This business risk can be mitigated by establishment of reasonable standards of operational performance and credit worthiness. The following procedures address these operational business risks:

- ESCOs are required to maintain a credit requirement with the Company or provide adequate security in lieu of such credit requirement, in an amount that is equal to or greater than the summation of the kilowatthours of all customers under each ESCo's service, multiplied by the Company's highest monthly average on peak energy buy back rate during the preceding twelve month period (the current rate under S.C. 6 is \$.02333 per kilowatthour). The Company reserves the right to revise the rate as appropriate to reflect changes in tariff provisions. This credit requirement will be updated on a continuous basis.
  
- A customer's kilowatthour summation for credit requirement purposes only, will be determined by computing the two highest monthly billing cycle kilowatthour consumptions or the highest bi-monthly billing cycle kilowatthour consumptions over the prior twelve-month period for the eligible customers. If a prior twelve-month period does not exist, the kilowatthour summation will be determined by computing the two highest kilowatthour consumptions or the highest bi-monthly kilowatthour consumptions over the prior twelve-month period for an "average customer" of the same rate class and voltage level of the eligible customer.

The application of these ESCo credit worthiness standards will be accomplished by performing the evaluation as described more fully in Section 10.2.3.2 of this settlement.

- An interim imbalance billing may be presented to the ESCo with payment due within 21 days of receipt of the billing when actual deliveries fall below 75% of the required scheduled deliveries during a seven day period. If payment from the ESCo is not received, the Company may institute an expedited proceeding with the PSC to revoke or suspend the ESCo's eligibility, and to propose a transition plan to convert the ESCo's customers to an



alternative supplier. The Company expects a decision on this petition to be completed within 23 days of such filing.

- To the extent that the PSC does not respond to the petition request or alters the conversion date of the ESCo's customers, beyond sixty days from the beginning of the period that generated the interim imbalance bill or 23 days from the filing of the petition with the PSC, whichever is greater, the Company will not be at risk of loss associated with imbalance services for those customers from this date through the conversion date set forth in the PSC decision. The Company would seek to recover such losses first, from any remaining security from the ESCo, second through the transition plan for the ESCo's customers as approved by the PSC, and lastly from ratepayers in general, consistent with deferral provisions contained in Section 2.0 Rate Plan of this settlement. The Company will continue to use its best efforts to pursue recovery of all losses from the ESCo and to the extent additional recoveries are achieved, such recoveries will be offset against deferrals.

These procedures will be revised as necessary upon the establishment of a fully operational ISO and Power Exchange.

#### **10.2.2 Customer Operations Procedures**

To facilitate the Company's operations under the rate plan, provisions of Part 11, Part 13, Part 140 and Part 273 of 16 NYCRR and the requirements for a plain language bill format adopted in Case 28080, Order Requiring Gas and Electric Utilities to File Revised Billing Formats (Oct. 31, 1985), are waived to the extent that any such provisions are inconsistent with the Company's ability to:

- a. institute non-discriminatory procedures which require an applicant to provide reasonable proof of the applicant's identity as a condition of service;
- b. modify its bill content and format in response to industry restructuring; provided, however, the Company's bills will contain the following:

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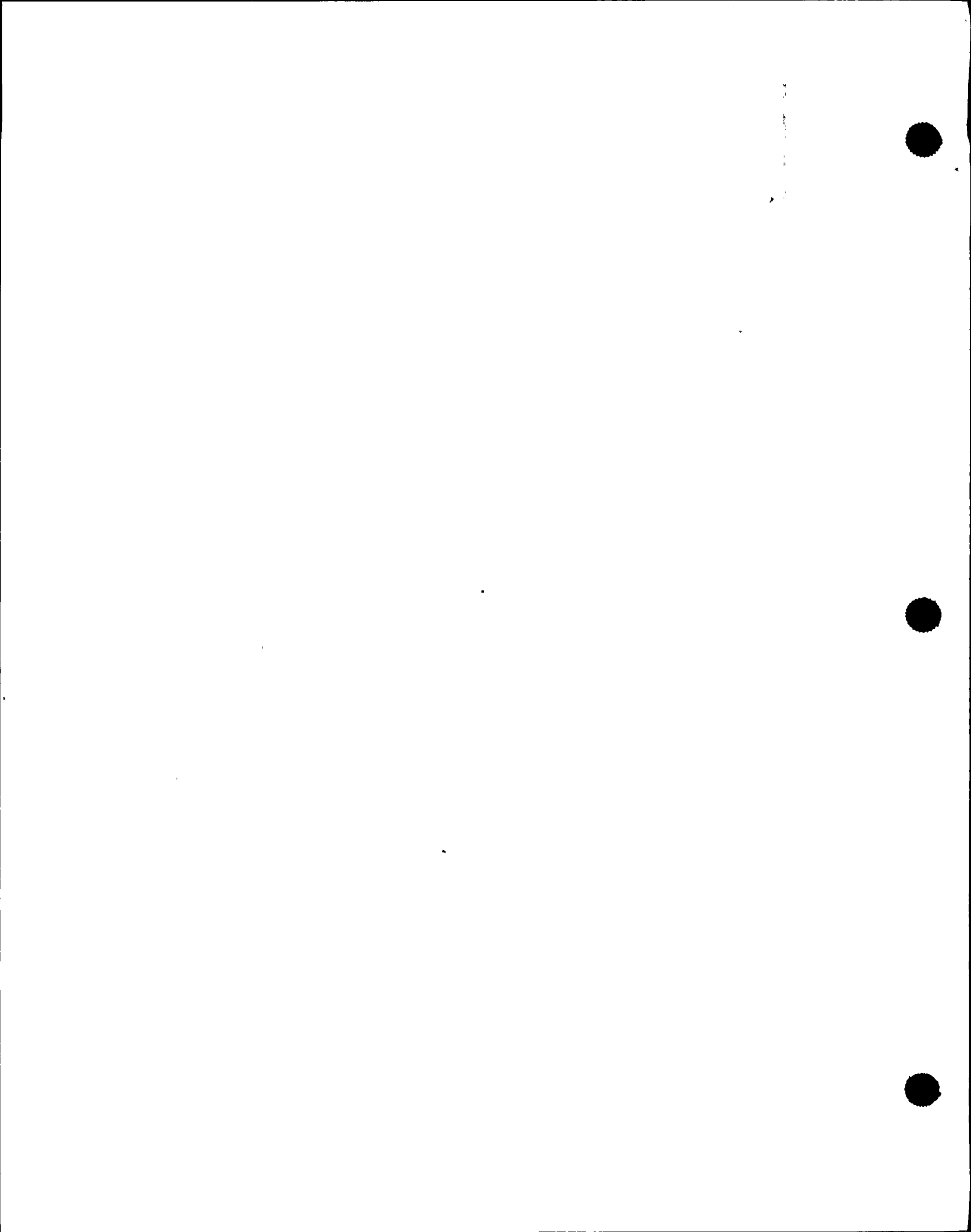




- an explanation of how bills may be paid
  - total charges due
  - due date
  - unit price of energy consumed or other appropriate itemization of charges (including sales taxes and other informative tax itemization)
  - complete name and address of customer
  - unique account number or customer number assigned to the customer
  - meter readings
  - period of time associated with each product or service
  - name of entity rendering bill
  - local or toll-free telephone number customers may call with inquiries
  - plain language
  - basis of calculations of billed amounts
  - late payment charges that apply
  - estimated reads, if applicable
  - posting of cash receipts to previous balance
- c. include non-tariffed items in a bill; provided, however, that customer payments are credited first to tariffed items and service cannot be terminated for failure to pay non-tariffed items.

Niagara Mohawk will be permitted to disclose to other service providers: whether or not a deposit could be requested from the customers by Niagara Mohawk due to delinquency, as defined in 16 NYCRR Section 11.12(d)(2) or in 16 NYCRR Section 13.1(b)(13), or for any reason provided in 16 NYCRR Section 13.7(a)(1); whether or not a customer could be denied service by Niagara Mohawk due to unpaid bills on an existing or prior account; or, whether a customer's service could be terminated by Niagara Mohawk provided that:

- such information is to be used by other service providers only for the purposes of determining whether unregulated energy services will be provided to the customer, whether a deposit will be collected from such customer, or for other purposes approved by the Commission; and,



- such information request is made by a service provider in response to a bona fide request from the customer to the service provider for electric service or with other customer consent.

The Company will be permitted to accept credit card payments for utility service, provided, however, that any costs imposed on Niagara Mohawk associated with the receipt of payment by credit card are to be considered among the general costs of doing business and will not be a separate additional charge to the customers whose payments are made by credit card.

### **10.2.3 Credit and Collection Matters**

#### **10.2.3.1 Customer Creditworthiness**

Change to Parts 11 and 13 of the Commission's Regulations are expected to be made and necessary for the Company to mitigate its risks of being the supplier of last resort. In Case 96-M-0706, for example, the Company proposes changes to the Regulations, including (1) requiring payment in full of security deposits prior to initiation of service for some customers; (2) requiring alternate payment plans for certain applicants and for customers who have defaulted on deferred payment agreements (DPA); (3) requiring completed applications for service; (4) increasing minimum DPA payments and down payments; (5) revising the standards for determining financial need; (6) allowing utilities to deny service under certain circumstances to those who have breached DPAs; and (7) reducing the duration of DPAs. The Company plans to pursue changes as described above as part of the generic proceeding covering these issues, however, it reserves the right to petition for further waiver of such rules as necessary.



### 10.2.3.2 ESCo Creditworthiness Evaluation

Niagara Mohawk will establish credit limits or security requirements for all energy suppliers prior to their serving customers on Niagara Mohawk's system by applying, on a consistent, non-discriminatory basis, the same financial evaluation standards it currently employs in determining creditworthiness of energy suppliers providing supply services to its gas transportation customers (See Appendix G). Energy suppliers will be notified of the established credit limit within two weeks of receipt of a completed credit application accompanied by the two most current years of audited financial statements. Credit limits must be maintained and will be reviewed continually.

If an entity is assigned a credit limit that is not sufficient to meet the requirements of this section, it may meet the requirements by paying any outstanding balances due to Niagara Mohawk and providing security in the form of (1) an advance deposit; (2) an irrevocable letter of credit in such form, and drawn upon such bank, as are satisfactory to Niagara Mohawk; (3) a security interest in collateral satisfactory to Niagara Mohawk; or (4) a guarantee, in form acceptable to Niagara Mohawk, by another entity which is assigned a credit limit adequate to meet the requirements of this section (e.g., parental guarantee). Such security must be in an amount at least sufficient to cover the difference between the credit limit assigned to the entity by Niagara Mohawk and the credit limit required by this section.

In the event the level of credit indicates security is no longer required, and in conjunction with a creditworthiness evaluation, such security will be returned in kind, within two weeks of such determination. Security deposits held by Niagara Mohawk Power Corporation for energy suppliers will accrue interest at the Commission's "Other Customer Capital Rate." If Niagara Mohawk is unable to establish a credit limit based on information available



from acceptable financial reporting agencies or commercial credit reporting organizations, and the financial statements noted above, an energy supplier must provide such supplemental financial and credit information as Niagara Mohawk may deem necessary. This may include information as to the energy supplier's legal structure; its officers, partners, or proprietors; trade references; recent financial statements; and such other credit information as might reasonably be required in the exercise of due diligence by a potential creditor of the energy supplier.

#### **10.2.4 Termination Decisions**

RegCo will serve as the supplier of last resort, thus it will make all service termination decisions associated with non-payment of amounts owed to the Company. Its termination decisions will continue to be guided by regulation.

RegCo will not charge for a customer's initial switch from RegCo to an alternative energy supplier. If a competitive ESCo wants to discontinue electric service, it will notify the customer and RegCo of the termination in writing at least 21 days before the customer's next cycle meter reading date. If a customer wants to discontinue service from an ESCo, it will notify the ESCo and RegCo of the termination in writing at least 21 days before the customer's next meter reading date. If, after receiving the ESCo's written termination notice, or sending its own written termination notice, the customer has not contacted RegCo or some other ESCo during the 21 day period, service would thereafter be provided by RegCo. RegCo will charge customers a switching charge that fully reflects all incremental costs as provided under tariffs. RegCo also will charge customers who return to RegCo for commodity service rates for energy supply according to the rates for their applicable rate class. Any other charges associated with the discontinuance and/or reconnection of service will be borne by the ESCo. RegCo may recover those charges from the ESCo by acquiring a commensurate amount of the ESCo's security and receiving a replacement amount of security from the ESCo.





### 10.2.5 Cost Recovery

RegCo's revenue sources may be in jeopardy to the extent welfare reform on the state and federal levels limits public assistance and Home Energy Assistance Program benefits that customers now use to pay their utility bills. RegCo may incur a revenue shortfall from those sources that is not currently being mitigated. To mitigate that shortfall, RegCo has the right to petition for recovery of losses consistent with the treatment of deferrals as described in Section 2.0, Rate Plan of this settlement.



## SECTION 11.0 REGULATORY CHANGES AND APPROVALS

### 11.1 ELIMINATION OF CERTAIN REGULATORY REQUIREMENTS

#### 11.1.1 Regulatory Reporting Requirements

Niagara Mohawk will continue its participation in the Reporting Requirements Working Group of Case 94-E-0952 - Competitive Opportunities Proceeding - Phase II.

The reporting requirements that may be established in Case 94-E-0952 by a final, Commission order or an order which has not been stayed pending appeal will apply during the term of this Agreement.

#### 11.1.2 Treatment of Future Refunds

The Company is subject to ongoing examinations by federal and state tax authorities. No amounts have been provided for in the financial forecast for resolution, either resulting in a refund or liability, of these examinations. To the extent that refunds or payments, including interest and penalties and net of any deferred taxes, individually exceed \$500,000, the Company will defer such refund or payment for disposition in rates after the term of the settlement agreement. When available, new deferred debits will be netted against new deferred credits arising during the term of this settlement agreement.

In addition, the Company expects to receive a tax benefit resulting from the offset of the common stock, equity, and cash it will provide under the MRA against tax amounts paid in past and future years, as described in Section 2.3.4.

During the term of this settlement, the treatment described above covers all refunds and tax benefits that might otherwise have been passed back to customers. Thus, in approving this settlement, the Commission thereby approves the treatment of all such refunds and the total amount of the tax benefit described



above. The Company will not be required to file any formal notice of tax refunds under Section 89.3 of the Commission's Regulations (16 NYCRR Section 89.3). No hearings will be held pursuant to Section 113(2). However, the Company will provide Staff with documentation and supporting workpapers of any such tax refunds on a timely basis. This settlement constitutes full compliance with the provisions of Section 113(2) and the Commission's Regulations.

## **11.2 REGULATORY APPROVALS**

### **11.2.1 Commercialization of Products and Technologies Developed as a Result of Research and Development**

During the term of this Agreement, Niagara Mohawk will not defer and true up its cost of investment in research and development (R&D) activities. Nor will the Company defer and true up any royalty revenue it receives from commercialization of products and technologies that emerge from such R&D activities.

The Company's affiliates may invest in commercialization of R&D products and technologies developed by RegCo consistent with affiliate rules generally and with Sec. 9.2.2 specifically. If an affiliate elects to invest, it will fairly compensate RegCo, assume the business risk(s) and will be entitled to the benefits associated with that investment.

### **11.2.2 PSL Sections 69 and 70 Approval of the Sale, Leasing, or Financing of Building Facilities**

Niagara Mohawk intends to implement an Occupancy Cost Reduction Initiative ("OCRI"). The purpose of this initiative is to reduce the total occupancy cost to, and revenue requirements of, Niagara Mohawk, while increasing corporate flexibility and enhancing operational efficiency. One key objective of OCRI will be to realign the Company's asset base to maximize flexibility and minimize capital commitment as the needs of the Company change. Niagara Mohawk wishes to achieve this objective by disposing of least cost-effective space; bringing all facilities to fully-utilized status; and extracting capital from surplus assets.



Annexed hereto as Appendix H is a list of Niagara Mohawk facilities that have been identified as potential candidates for sale, leasing, or sale leaseback transactions. For each facility, Appendix H sets forth its associated net book value.

During the term of this Agreement, Niagara Mohawk will observe the following procedures in connection with the sale, leasing, or sale-leaseback of its Appendix H facilities:

- 11.2.2.1 If and when a facility is no longer needed to provide electric and gas services, the Company will evaluate the best utilization or disposition of the facility, including, but not limited to, sale to NM Holdings or sale or lease to a third party.
- 11.2.2.2 In the event Niagara Mohawk decides to sell or lease a facility, the Company may utilize brokers or other service providers to identify prospective buyers or tenants. Niagara Mohawk will use every effort to obtain the highest market value for the facility based upon independent appraisals and market conditions. Any sale will require the prior approval of Niagara Mohawk's Board of Directors. Any lease will require the approval of a Niagara Mohawk officer.
- 11.2.2.3 Under no circumstances will the sale or lease of a facility prevent Niagara Mohawk from providing electric and gas services to its customers, or from otherwise being able to discharge its public service responsibilities and to meet its electric and gas load requirements.
- 11.2.2.4 To the extent the accounting for such revenues is not otherwise provided for herein, all revenues derived from sales will be accounted for in accordance with the Uniform System of Accounts.
- 11.2.2.5 All contract documents will include provisions limiting Niagara Mohawk's liabilities, such as environmental liabilities. In the case of lease transactions, tenants will also be required, inter alia, to maintain insurance





coverage, protect Niagara Mohawk property, and observe all Niagara Mohawk rules and regulations regarding the use of the premises. Any initial lease term shall not exceed five (5) years.

**11.2.2.6** Any sale-leaseback transaction will be revenue neutral or will reduce revenue requirements.

To the extent implementation of the OCRI requires Commission authorization under Public Service Law Sections 69 and 70, that authorization is in the public interest for the sale, lease or financing of facilities of \$3 million or less. In approving this settlement, the Commission thereby grants that authorization for the term of this settlement. Sale, lease or financing of facilities in excess of \$3 million will be subject to a separate petition.

**11.2.3 Conversion of 25 Cycle Customers**

In its Western Region, several of the Company's customers maintain equipment that requires 25 cycle electricity rather than the 60 cycle power the Company provides elsewhere on its system. The Company will eliminate 25 cycle service to all such customers on December 31, 2007. Prior to that time, in the event of failure of significant 25 cycle equipment, e.g., transformers, frequency changers, the Company will not repair or replace such equipment unless it secures agreements from the affected customer(s) to pay the cost of such repair or replacement.



## **SECTION 12.0**

### **LOW INCOME CUSTOMER ASSISTANCE PROGRAM (LICAP)**

RegCo will seek, at the lowest possible cost, to assist low-income customers who are unable to pay fully for their electric and gas usage, and to thereby minimize uncollectible accounts expense. As part of its provider of last resort responsibilities, RegCo will pursue these objectives by expanding the availability of Niagara Mohawk's Low Income Customer Assistance Afford/Ability Plan to all low-income customers who do not receive public assistance and who, on the basis of objective criteria, are unable to pay their full energy bills. Based on research conducted in the Fall of 1995, it is estimated that approximately 29,000 customers will be eligible for services under the expanded Afford/Ability Plan. RegCo expects to have enrolled approximately 9,000 customers by the end of 1997 and to have enrolled all eligible customers by 2002 with the program continuing through the end of this Agreement.

RegCo will also offer Afford/Ability Plan services on a pilot basis to a number of customers who receive public assistance and have accounts that are in arrears, but whose accounts are not paid directly by county departments of social services. If the results indicate that Afford/Ability Plan services are more cost effective than current procedures for obtaining direct county payment of utility bills, RegCo will further expand the Afford/Ability Plan to include public assistance customers.

#### **12.1 ELIGIBILITY CRITERIA**

Current eligibility criteria for the Afford/Ability Plan include receipt of Federal Home Energy Assistance Program ("HEAP") grants, a negative cash flow (as determined using Department of Social Services Form 3596), and a history of broken payment agreements. Given the future uncertainty of the HEAP program, RegCo may be required to implement alternative methods of identifying and verifying eligible candidates for Afford/Ability Plan services.

#### **12.2 PROGRAM DESCRIPTION**

The Afford/Ability Plan involves three steps. First, based on the customer's financial circumstances as measured by objective standards, the utility will agree to accept partial payment for future energy use. Second, the customer must agree to participate in an energy use management program designed to reduce overall usage. Program



services include weatherization, attendance at an energy services workshop, an electric appliance retrofit analysis (including, where appropriate, refrigerator replacement) and an in-home energy service education packet. To ensure cost-effectiveness, specific energy use management services will be provided to customers on the basis of the customer's previous usage and location. While the investment per customer will vary according to the package of services provided, the total annual program cost for energy use management services will approximate Niagara Mohawk's expenditure for the former Utility Low Income Energy Efficiency Program. Third, at the end of each year, the utility will forgive a percentage of arrearages for those Afford/Ability Plan customers who have made all their agreed monthly payments. Continued participation in the Afford/Ability Plan will require annual recertification. It is a condition of recertification that the customer has made all agreed partial payments during the previous year.

### **12.3 PROGRAM FUNDING**

The cost of the energy efficiency services outlined above will be funded through the SBC. The costs associated with arrears forgiveness for years one through three under the program will be absorbed by the Company except as otherwise provided for under Section 2.6.2. The costs of any other low income programs that may be required by any new legislation or regulation or of additional Afford/Ability Plan services that may be offered as a result of the pilot study will also be funded through SBC. The Afford/Ability Plan will be evaluated on an ongoing basis to ensure that the program remains cost effective. The Company will budget expenditures under the LICAP Program to be \$4.377 million in 1998, \$4.952 million in 1999 and \$5.598 million in 2000. Year four and five budgets will be established in the proceedings that will set rates for years four and five.



## **SECTION 13.0 MISCELLANEOUS**

### **13.1 FORCE MAJEURE**

If a circumstance occurs which, in the judgment of the Company, threatens the Company's economic viability, including its ability to access capital markets at reasonable rates, or its ability to maintain safe and adequate service, the Company will be permitted to petition the Commission for relief from the terms of this Agreement, including filing for an increase in its prices.

### **13.2 COMMISSION AUTHORITY**

Nothing in this Agreement shall be construed to limit the Commission's authority to reduce the Company's rates should it determine, in accordance with the provisions of the Public Service Law, that the established rates are in excess of just and reasonable rates for the Company's electric service.

### **13.3 PROVISIONS NOT SEPARABLE: EFFECT OF COMMISSION MODIFICATION**

The parties have negotiated and accepted this agreement in toto with each provision in consideration for, in support of, and dependent on the others. If the Commission does not approve this agreement in its entirety, without modification, any signatory may withdraw its acceptance of this agreement by serving written notice on the other parties, and shall be free to pursue its position in this proceeding without prejudice.

If the Commission approves this Settlement Agreement or modifies it in a manner acceptable to the parties, the parties intend that this settlement thereafter be implemented in accordance with its terms. If a material modification is thereafter authorized or required by the Commission that is unacceptable to any party to this Settlement Agreement adversely affected by such modification, then, in addition to any other remedies a party may have, such party may withdraw from the agreement and will not be bound thereafter to its provisions.





#### **13.4 PROVISIONS NOT PRECEDENT**

The terms and provisions of this Agreement apply solely to and are binding only in the context of the purposes and results of this Agreement. None of the terms and provisions of this Agreement and none of the positions herein by any party may be referred to, cited or relied upon by any other party in any fashion as precedent in any other proceeding before this Commission or any other regulatory agency or before any court of law except in furtherance of the purposes and results of this Agreement.

#### **13.5 DISPUTE RESOLUTION**

In the event of any disagreement over the interpretation of this Settlement or the implementation of any of the provisions of this Settlement, which cannot be resolved informally among the Parties, such disagreement shall be resolved in the following manner unless otherwise provided herein: The Parties shall promptly convene a conference and in good faith shall attempt to resolve such disagreement. If any such disagreement cannot be resolved by the Parties, any Party may petition the Commission for relief on a disputed matter.

#### **13.6 WITHDRAWAL FROM LITIGATION**

In consideration for the foregoing, the Company, upon final approval of this Settlement by the Commission, agrees to petition the Appellate Division of the Supreme Court for permission to withdraw as a party to the appeal in the Article 78 proceeding brought to challenge Opinion 96-12, Energy Association v. Public Service Commission (Sup. Ct. Albany Co. Index No. 5830-96). The Company's withdrawal as a party to the Energy Association case shall be effected through Stipulations of Withdrawal, mutually agreed to by the Company and the Commission. Until the aforementioned petition with respect to the Energy Association case is granted, the Company will discontinue its litigation activities to the extent that it is able to do so without prejudicing its rights in the Article 78 proceeding.

#### **13.7 CONSTRUCTION OF TERMS**

This Settlement Agreement was written to reflect formation of a legally separate HoldCo. In the event that the HoldCo is not a legally separate



entity, the terms and conditions of this Settlement shall be read to give full effect to their meaning and intent.

### **13.8 STEAM HOST ISSUES**

The parties to this Agreement recognize the need for certain of the SIPPs and companies ("the Steam Hosts Action Group" or "SHAG") that have contracts with those SIPPS regarding steam/thermal arrangements in the post-MRA period to conduct negotiations to reach a satisfactory settlement of issues related to changes in SIPP operations as a result of the MRA. The parties to this Agreement acknowledge, among other priorities, the importance to the economy of the State of New York of addressing steam/thermal issues as expeditiously as possible. The following parties - Empire State Development by the Department of Economic Development, the Job Development Authority and the Empire State Development Corporation (Urban Development Corp.), Niagara Mohawk Power Corporation, New York Power Authority, Multiple Intervenors, the SHAG, and the SIPPS, Joint Supporters and the National Association of Energy Service Companies - specifically agree, in a good faith effort, to pursue diligently ways to minimize any economic or operational difficulties due to changes in SIPP steam production which could occur as a result of the MRA and to otherwise reach a mutually satisfactory settlement of the issues.

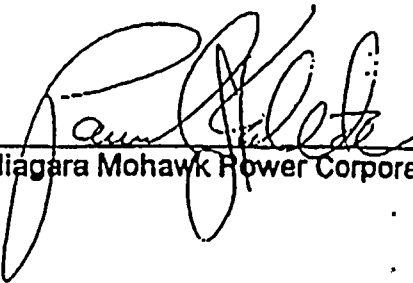
No party to this Agreement shall be deemed to waive (including, but not limited to, in connection with the Commission's review of this Agreement), any right to recommend to the Commission, or to oppose any such recommendation or to take any other position (including, but not limited to, with respect to Commission jurisdiction), that the Commission undertake any specific course of action regarding the resolution of these negotiations between such SIPPs and SHAG, except that all parties specifically waive any right to challenge the prudence of the MRA, and the contracts executed pursuant thereto.



**SECTION 14.0**  
**TERM OF THIS AGREEMENT**

Except as otherwise provided herein, the term of this Agreement shall be five years from the *PowerChoice* Implementation Date.





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Niagara Mohawk Power Corporation

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Staff of the Department  
of Public Service

(Signatures continued on the following pages)





Charles Conner (P)

Thomas J. Conner

IBEW Local 97

10-10-97



*See Monty by 10/10/97*  
New York State Community  
Action Association



Joint Supporters  
by The E Cubed Company

Ruben J. Brown



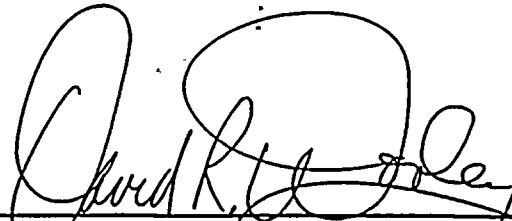
National Association of Energy Service Companies  
by

*Ruben J. Brown*

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Pace Energy Project  
Natural Resource Defense Council  
Adirondack Council  
Association for Energy Affordability  
New York Rivers United



Niagara Mohawk Power Corporation  
Case Nos. 94-E-0098 and 94-E-0099

*Caroline A. Liberman*  
Staff of the Department of Public Service



Niagara Mohawk Power Corporation  
Case Nos. 94-E-0098 and 94-E-0099

*Don M. Zamb* for the  
Settling Independent Power Producers



Niagara Mohawk Power Corporation  
Case Nos. 94-E-0098 and 94-E-0099

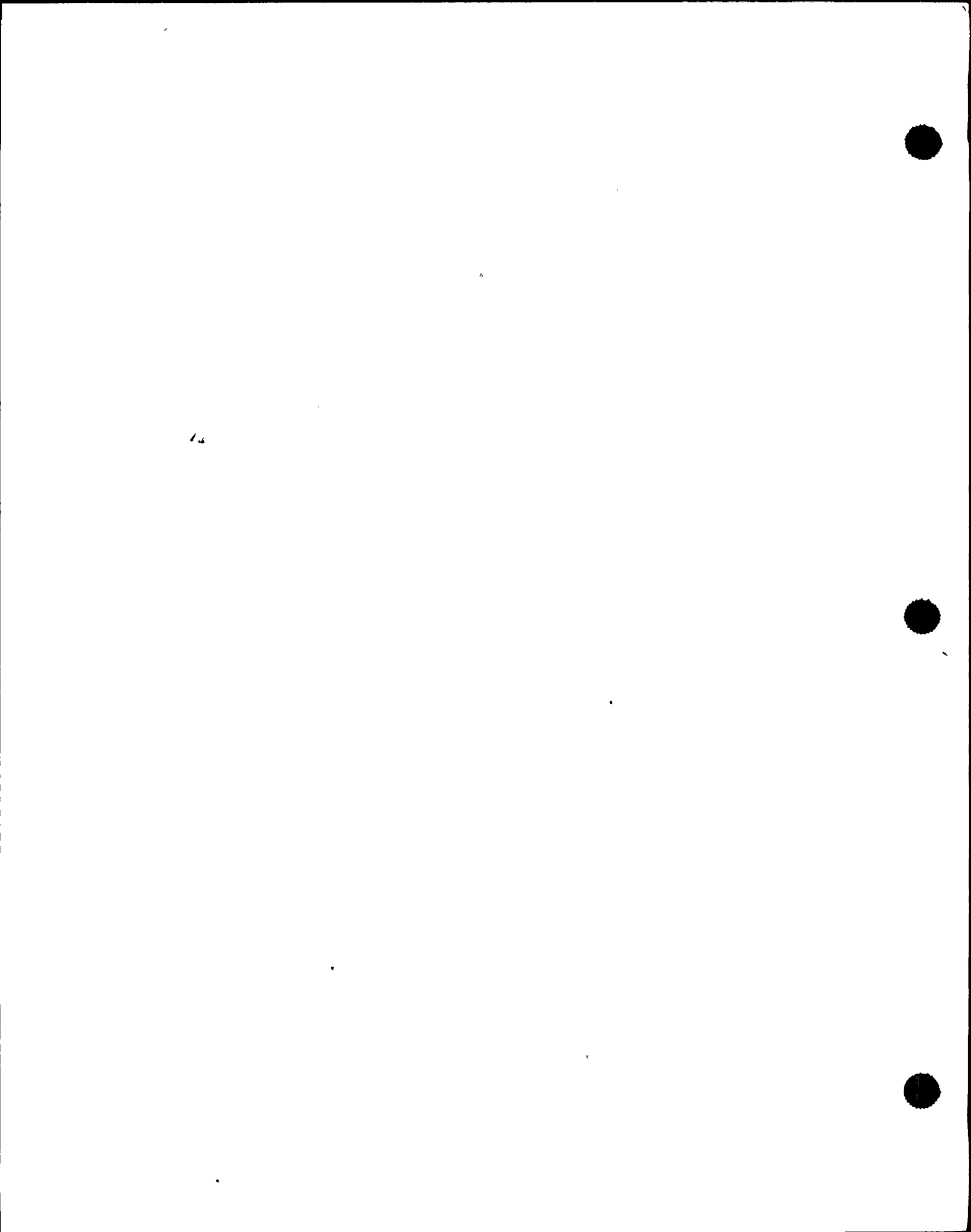
  
Independent Power Producers of NY, Inc.





Niagara Mohawk Power Corporation  
Case Nos. 94-E-0098 and 94-E-0099

Robert E. Jernigan  
Sithe/Independence Power Partners, L.P.




Niagara Mohawk Power Corporation  
Case Nos. 94-E-0098 and 94-E-0099

  
\_\_\_\_\_  
Multiple Intervenors



Niagara Mohawk Power Corporation  
Case Nos. 94-E-0098 and 94-E-0099

  
\_\_\_\_\_  
Steam Host Action Group




*James H. Hayes*  
NEW YORK POWER AUTHORITY

*Acting Sr. V.P. Marketing &  
Economic Development*





 Jeffrey Schuur  
New York State Department of  
Economic Development 10/10/97

 J. M. Bickell 10/10/97  
Empire State Development  
Corporation

Job Development Authority

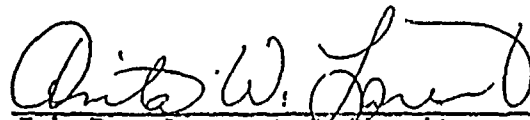


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New York State Department of  
Economic Development

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Empire State Development  
Corporation

  
Anita W. Lundy  

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Job Development Authority



**NM NIAGARA  
MOHAWK**

***PowerChoice***

**Settlement Document**

**Volume 2 - Appendices**

**Niagara Mohawk Power Corporation**

**PSC Case Nos. 94-E-0098 and 94-E-0099**

**October 10, 1997**



**POWERCHOICE SETTLEMENT PROPOSAL**  
**October 6, 1997**

**APPENDICES**

- A - Master Restructuring Agreement**
- B - Recovery of Costs Associated with Termination of Gas Transportation and Peak Shaving Agreements**
- C - Niagara Mohawk Power Corporation Five-Year Financial Forecast**
- D - Electric Prices**
- E - Balances of Deferred Debits and Credits Not Yet Reflected in Rates**
- F - General Structure of Financial Swaps and Swaption**
- G - Credit Worthiness Evaluation**
- H - List of Facilities That Are Potential Candidates for Sale, Lease or Sale Leaseback Transactions**





**APPENDIX A**

**MASTER RESTRUCTURING AGREEMENT  
BY AND BETWEEN  
NIAGARA MOHAWK POWER CORPORATION  
AND INDEPENDENT POWER PRODUCERS**



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**MASTER RESTRUCTURING AGREEMENT**

**BY AND BETWEEN**

**NIAGARA MOHAWK POWER CORPORATION**

**AND**

**INDEPENDENT POWER PRODUCERS**

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**JULY 9, 1997**

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# MASTER RESTRUCTURING AGREEMENT

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## MASTER RESTRUCTURING AGREEMENT

THIS MASTER RESTRUCTURING AGREEMENT is entered into on July 9, 1997 (the "Agreement") by and between NIAGARA MOHAWK POWER CORPORATION, a New York corporation ("NMPC" or the "Company"), and the several independent power producers identified as such on the signature pages and on Schedule A hereto (the "Independent Power Producers" or "IPPs").

### RECITALS

(A) The Company, among other things, is a regulated utility engaged in the business of generating, transmitting and distributing electric power to customers in the State of New York;

(B) The Independent Power Producers are owners and operators of co-generation and small power production facilities;

(C) The Company previously has entered into twenty-nine (29) separate power purchase agreements with the IPPs (referred to herein as "Existing PPAs");

(D) The Company has offered to amend, amend and restate or terminate the Existing PPAs, upon and subject to the terms and conditions contained herein; and

(E) The IPPs are not willing to amend, amend and restate or terminate each of the Existing PPAs, except upon and subject to the terms and conditions contained herein.

NOW, THEREFORE, in consideration of the foregoing premises and for other good and valuable consideration, the receipt and adequacy of which is hereby acknowledged, the Parties hereby agree as follows:

#### 1. DEFINITIONS

For purposes of this Agreement (including any Exhibit or Schedule hereto, unless otherwise defined therein), the terms set forth below shall have the following meanings:

"Additional Cash Payment" shall have the meaning set forth in Section 3.2.

"Affiliate" shall mean, with respect to any Party, any other person or entity which controls, is controlled by, or is under common control with, such Party, wherein the term "control" shall mean the power to direct the management and policies by or of such Party through ownership of voting securities, by contract or otherwise.

"Affiliate IPPs" shall mean, with respect to any IPP, any other IPP which is an Affiliate of such IPP.

"Agreement" or "Master Restructuring Agreement" shall mean this Master Restructuring Agreement, including the Exhibits and Schedules hereto, as amended and in effect from time to time.

"Allocable Consideration" shall have the meaning set forth in Section 3.1.

"Allocation" shall have the meaning set forth in Section 3.4.

"Amended PPA" shall have the meaning set forth in Section 2.2.

"Bankruptcy Code" shall mean Title 11 of the United States Code, as amended.

"Base Share Price" shall have the meaning set forth in Section 3.5(a).

"Business Day" shall mean any day other than a Saturday, Sunday or other day on which banks in the State of New York are authorized or required to be closed.

"Cash Payment" shall have the meaning set forth in Section 3.1(a).

"Class A PPAs" shall mean those Existing PPAs with respect to which an IPP will receive a portion of the Allocable Consideration, but not the Amended PPA or a Restated Contract.

"Class B PPAs" shall mean those Existing PPAs with respect to which an IPP will receive a Restated Contract(s) (but not the Amended PPA), whether or not such IPP will receive a portion of the Allocable Consideration.

"Class D PPA" shall mean the Existing PPA with respect to which the IPP party thereto will receive a portion of the Allocable Consideration and will receive the Amended PPA.

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

"Common Stock" shall mean the Company's common stock, \$1.00 par value per share.

"Company" or "NMPC" shall mean Niagara Mohawk Power Corporation, a New York corporation.

"Company Shares" shall have the meaning set forth in Section 3.1(b).

"Competitive Transition Charge" shall mean a charge, however designated, for recovery of strandable costs.

"Conditions Determination Date" shall mean the date which is the later to occur of (i) December 1, 1997 and (ii) ninety (90) days after the PSC Approval Date, except as otherwise provided in Section 2.7(b).

"Consummation" shall have the meaning set forth in Section 10.2.

"Consummation Date" shall have the meaning set forth in Section 10.2.

"Contract Adjustment" shall have the meaning set forth in Section 2.9.

"Contract Adjustment Allocation" shall have the meaning set forth in Section 3.4(a).

"Contract Year" shall have the meaning set forth in Exhibit A.

"Contracts" shall have the meaning set forth in Section 2.8.

"Contracts Allocation" shall have the meaning set forth in Section 3.4(a).

"Curtailment" shall mean any curtailment of electricity under the provisions of 18 C.F.R. § 292.304(f) (1997), or any subsequent or similar rule or regulation adopted by the PSC or the FERC, or any rule or order of the PSC, the FERC, or any other Governmental Authority interpreting or applying those provisions or authorizing the Company to reserve any rights under those provisions.

"Debt Registration Statement" shall have the meaning set forth in Section 6.1(b).

"Debt Securities" shall have the meaning set forth in Section 6.1.

"Deposit Agreement" shall have the meaning set forth in Section 3.3.

"Depository" shall mean such bank or trust company as may be selected by the Parties to act as the Depository hereunder.

"DLJ" shall mean Donaldson, Lufkin & Jenrette Securities Corporation.

"DRIP Plan" shall mean the Company's Dividend Reinvestment and Stock Purchase Plan.

**"Effective Time"** shall mean 11:59:59 p.m. on the Consummation Date.

**"Escrow Agent"** shall mean Akin, Gump, Strauss, Hauer & Feld, L.L.P.

**"Escrow Agreement"** shall have the meaning set forth in Section 2.8.

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

**"Existing PPAs"** shall mean those power purchase agreements in effect as of the date of this Agreement between the Company and the several IPPs, as listed on Schedules 2.1, 2.2 and 2.3 hereto.

**"Expiration Date"** shall mean April 1, 1998, except as otherwise provided in Sections 2.7(b) and 12.3(b).

**"EWG"** shall have the meaning set forth in Section 11.1(b).

**"FERC"** shall mean the Federal Energy Regulatory Commission.

**"Fixed Price Swap Contracts"** shall have the meaning set forth in Section 2.4.

**"Gas IPPs"** shall mean those IPPs which produce power using primarily natural gas.

**"Gas Mitigation Third Party"** shall mean a natural gas supplier or natural gas transporter with whom any Gas IPP has a contract or agreement as of the date of this Agreement and any counterparty under any hedging or other financial instrument existing as of the date of this Agreement with respect to the supply or transportation of natural gas under any such contract or agreement, with respect to which any Gas IPP desires that its obligations thereunder be released, satisfied or amended in connection with the transactions contemplated by this Agreement.

**"Governmental Authority"** shall mean any federal, state, municipal or local governmental authority, department, commission, board, agency, body or official, whether executive, legislative, administrative, regulatory or judicial, including but not limited to the FERC and the PSC.

**"Hart-Scott-Rodino Act"** shall mean the Hart-Scott-Rodino Antitrust Improvements Act of 1976, as amended.

**"Independent Power Producers"** or **"IPPs"** shall mean the several independent power producers identified as such on the signature pages and on Schedule A hereto. If this Agreement shall be terminated in accordance with the terms hereof with respect to

one or more but less than all of the IPPs, then, except with respect to any provisions hereof which expressly or by their terms survive any termination of this Agreement, upon any such termination such terminated IPP shall cease to be an "IPP" for purposes of this Agreement.

"Indexed Swap Contracts" shall have the meaning set forth in Exhibit A.

"IPP Approval" shall have the meaning set forth in Section 8.10.

"IPP Regulatory Approval" shall have the meaning set forth in Section 6.6(b).

"IPP Representatives" shall mean WP&Co., the IPPs' Special Counsel and the IPPs' Local Regulatory Counsel.

"IPP Status Notice" shall have the meaning set forth in Section 10.1(c).

"IPP/Third Party Consent" shall have the meaning set forth in Section 8.10.

"IPPs' Local Regulatory Counsel" shall mean Read and Laniado, LLP.

"IPPs' Local Regulatory Counsel Fee Letter" shall have the meaning set forth in Section 14.9.

"IPPs' Special Counsel" shall mean Akin, Gump, Strauss, Hauer & Feld, L.L.P.

"IPPs' Special Counsel Fee Letter" shall have the meaning set forth in Section 14.9.

"Material Adverse Effect" shall mean, with respect to any Party, either (i) a material and adverse effect on the business, properties, operations or condition (financial or otherwise) of such Party and its subsidiaries, taken as a whole, or (ii) a material and adverse effect on such Party's ability to enter into and perform its obligations under this Agreement or any other agreements to be executed by such Party pursuant hereto.

"NMPC Regulatory Approval" shall have the meaning set forth in Section 6.6(a).

"NMPC Restructuring" shall have the meaning set forth in Section 6.4.

"NMPC Status Notice" shall have the meaning set forth in Section 10.1(b).

"NMPC/Third Party Agreement" shall have the meaning set forth in Section 6.8(b).

"NMPC/Third Party Consent" shall have the meaning set forth in Section 4.2.

"NMPC/Third Party Release" shall have the meaning set forth in Section 6.8(b).

"NorCon" shall mean NorCon Power Partners, L.P.

"NorCon Agreement" shall have the meaning set forth in Section 2.5.

"NYPSL" shall mean the New York Public Service Law, as amended.

"NYSE" shall mean the New York Stock Exchange.

"Oxbow" shall mean Oxbow Power of North Tonawanda, New York, Inc.

"Oxbow Agreement" shall have the meaning set forth in Section 2.6.

"Party(ies)" shall mean the Company and the several IPPs. If this Agreement shall be terminated in accordance with the terms hereof with respect to one or more but less than all of the IPPs, then, except with respect to any provisions hereof which expressly survive any termination of this Agreement, upon any such termination such terminated IPP shall cease to be a "Party" hereunder.

"Power Put Contract" shall have the meaning set forth in Exhibit A.

"Project" shall mean each IPP's generation and production facilities, including the property, plant and equipment and associated real property and fixtures.

"Proxy Statement" shall have the meaning set forth in Section 6.3.

"PSC" shall mean the New York State Public Service Commission.

"PSC Approval" shall have the meaning set forth in Section 6.6(c).

"PSC Approval Date" shall mean the date on which the PSC issues the order containing the PSC Approval.

"Public Offering" shall have the meaning set forth in Section 6.1.

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

"PURPA" shall mean the Public Utility Regulatory Policies Act of 1978, as amended.

"QF" shall have the meaning set forth in Section 11.1.

"QF Monitoring Program" shall mean any program of the Company, whether authorized, implemented or proposed, designed to monitor any IPP's status under PURPA as a qualifying cogeneration or small power production facility or under NYPSL as a cogeneration facility, including any right to demand or receive information from any IPP, third party or Governmental Authority.

"Reasonable Best Efforts" shall mean, with respect to any Party, such Party's diligent pursuance of the course of action or result stated as determined by such Party itself in good faith, but shall not require such Party to pay any sum or other consideration or incur or assume any liability or obligation that is not otherwise expressly required to be paid, incurred or assumed pursuant to this Agreement, excluding (i) normal and customary incidental out-of-pocket costs and expenses and (ii) attorneys' fees (except, with respect to any IPP, attorneys' fees required to be paid by the Company pursuant to the IPPs' Special Counsel Fee Letter or the IPPs' Local Regulatory Counsel Fee Letter).

"Registration Rights Agreement" shall have the meaning set forth in Section 3.6(b).

"Regulatory Approvals" shall mean the PSC Approval and all other consents, approvals, qualifications, orders, authorizations, extensions, waivers, exemptions and other actions or inactions of the FERC, the PSC or any other Governmental Authority (including expirations of applicable waiting periods under the Hart-Scott-Rodino Act) as may be required by applicable law or desired by any Party with respect to this Agreement and the consummation of this Agreement and the transactions contemplated hereunder, including but not limited to the execution, delivery and performance of the Contracts. For purposes hereof "Regulatory Approvals" shall not include any SEC approvals which may be required in connection with the Shelf Registration Statement, Debt Registration Statement or Proxy Statement.

"Restated Contract" shall have the meaning set forth in Exhibit A.

"Restructuring" shall have the meaning set forth in Section 2.

"SEC" shall mean the Securities and Exchange Commission.

"SEC Reports" shall mean (i) the Company's Annual Report on Form 10-K for the fiscal year ended December 31, 1996, as amended by Form 10-KA filed with the SEC on May 1, 1997, (ii) the Company's Current Report on Form 8-K dated March 10, 1997, (iii) the Company's Proxy Statement filed with the SEC on April 7, 1997, (iv) the Company's Form U-3A-2 filed pursuant to PUHCA on April 2, 1997, (v) the Company's

Quarterly Report on Form 10-Q for the fiscal quarter ended March 31, 1997, and (vi) all subsequent filings, up to the Consummation Date, required to be made by the Company under the Exchange Act or any other securities laws applicable to the Company.

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

"Scheduled Date" shall have the meaning set forth in Section 10.2.

"Shareholders Agreement" shall have the meaning set forth in Section 3.7.

"Shelf Registration Statement" shall have the meaning set forth in Section 3.6.

"Short-Term Notes" shall have the meaning set forth in Section 3.2.

"Solid Fuel IPPs" shall mean those IPPs which produce power using primarily coal or waste fuels.

"Terminating PPAs" shall have the meaning set forth in Section 2.1.

"Termination Agreement" shall have the meaning set forth in Section 2.1.

"Underwriters" shall have the meaning set forth in Section 6.1(c).

"WP&Co." shall mean Wasserstein Perella & Co., Inc.

"WP&Co. Fee Letter" shall have the meaning set forth in Section 14.8.

## 2. RESTRUCTURING

Subject to the terms and conditions of this Agreement, effective as of the Consummation Date, the Parties shall enter into the following transactions (referred to herein collectively as the "Restructuring"):

2.1. Terminating PPAs. The Company and each IPP which is a party to an Existing PPA listed on Schedule 2.1 hereto (a "Terminating PPA") shall enter into an agreement, substantially in the form annexed as Exhibit 2.1 (a "Termination Agreement"), pursuant to which, effective as of the Effective Time, all rights, duties and obligations of the Company and such IPP under each such Terminating PPA and under any associated gas transportation and peak shaving agreement and, if the IPP so elects, interconnection agreement and existing interconnection arrangements, between the Company (or any Affiliate of the Company) and such IPP shall be terminated, released



and discharged, and containing such other terms and conditions as the Company and each such IPP may mutually agree.

2.2. Amended PPAs. The Company and the IPP which is a party to the Existing PPA listed on Schedule 2.2 hereto shall enter into an amendment to such Existing PPA (the "Amended PPA"), as described in Exhibit A hereto, including the related Attachments to Exhibit A, effective as of the Effective Time.

2.3. Restated Contracts. The Company and each IPP which is a party to an Existing PPA listed on Schedule 2.3 hereto shall conduct good faith negotiations and use their Reasonable Best Efforts to enter into a Restated Contract, as defined in Exhibit A hereto. Each Restated Contract shall be an amendment and/or restatement of each such Existing PPA, shall be dated as of the date of each such Existing PPA and the terms of such amendment and/or restatement shall be effective as of the Effective Time. As a part of such process, the IPPs which are parties to the Existing PPAs listed on Schedule 2.3 hereto shall use their Reasonable Best Efforts to enter into Restated Contracts which will include option provisions with respect to an aggregate of 500 GWh of electricity per annum over a term of up to six Contract Years for periods within each year that are mutually agreed upon; provided such option provisions include a term, periods, contract quantities, contract prices and other terms and conditions which are acceptable to the applicable IPP, and provided, further, that no IPP will be obligated to include such option provisions if such provisions, in such IPP's judgment, are not economically neutral in comparison to the Contract Allocation of such applicable IPP before giving effect to such option provisions. With respect to each IPP entering into a Restated Contract, as applicable, (a) the Company shall continue to provide local gas transportation under its existing agreements with such IPP (and, if requested by such IPP, the Company shall conduct good faith negotiations concerning the amendment of such gas transportation agreements, and, if requested by the Company, the IPP shall conduct good faith negotiations to amend such existing agreements to insure that the Company has a reasonable ability to interrupt such transportation due to system emergencies), (b) peak shaving obligations on the part of such IPP shall be eliminated, effective as of the Consummation Date, without penalty to the IPP or compensation to the Company and without reducing the value of the Allocable Consideration or in any way affecting the Restated Contracts, (c) minimum take and demand charges in existing gas transportation agreements between the Company and such IPP shall remain in full force and effect (subject to the good faith negotiations described in clause (a) above) and (d) if such IPP has eliminated its peak shaving arrangements with the Company and will have gas supply and transportation arrangements after the Consummation Date, it shall use Reasonable Best Efforts to assist the Company to arrange for replacement of peak shaving services.

2.4. Fixed Price Swap Contracts. The Company also shall execute and deliver to the Escrow Agent, for the benefit of and at the direction of all of the IPPs or their respective designees, a series of Fixed Price Swap Contracts as defined in and in

accordance with the terms and conditions set forth in Exhibit A hereto, including the related Attachments to Exhibit A (the "Fixed Price Swap Contracts"). The Fixed Price Swap Contracts shall be in such denominations and with such counterparties as the IPPs shall designate to the Company not later than eight (8) Business Days prior to the Consummation Date, provided that each such counterparty shall (i) be an IPP, (ii) be a Gas Mitigation Third Party or (iii) meet the requirements for an "Approved Assignee" (as such term is defined in Section 2 of the termsheet attached as Attachment A-11 to Exhibit A) of an IPP or a Gas Mitigation Third Party.

2.5. NorCon. The Company and NorCon shall conduct separate good faith negotiations to enter into an agreement (the "NorCon Agreement") regarding the amendment, amendment and restatement, other restructuring or termination of NorCon's Existing PPA. The Company and NorCon agree to commence such negotiations, at a mutually agreeable location(s), promptly following the date of this Agreement and to meet not less frequently than weekly during the first month following the date of this Agreement and thereafter as the Company and NorCon may mutually agree. Although there is no obligation on the Company's part to agree to any further consideration to NorCon, should the Company and NorCon mutually so determine, NorCon may receive consideration pursuant to the NorCon Agreement which is in addition to the portion of the Allocable Consideration and the Restated Contracts allocated to NorCon in the Allocation (the "NorCon Allocation"). Any such additional consideration shall not affect the Allocation, increase or reduce the Allocable Consideration payable to any other IPP (i.e., the Allocable Consideration less the NorCon Allocation), nor in any way affect the Short-Term Notes or Additional Cash Payment, as applicable, or the terms of the Amended PPAs or Restated Contracts to be received by any other IPP or the Fixed Price Swap Contracts. In the event that the Company and NorCon should agree that NorCon's Existing PPA shall be a Terminating PPA, then the contract quantity and the installed capacity under the Restated Contracts each shall be reduced by the contract quantity and the installed capacity under the Restated Contracts allocated to NorCon pursuant to the original Allocation, and the aggregate contract adjustment identified on Attachment A-3 to Exhibit A shall be reduced by the portion of the Contract Adjustment allocated to NorCon pursuant to the original Allocation, if any, and in such event such reduction shall not affect the terms and conditions, including contract price, of any of the Restated Contracts to be entered into by any other IPPs. In the event the Company and NorCon are unable to agree in writing on the additional consideration, if any, to be received by NorCon within seventy-five (75) days after the date of this Agreement (which date may be extended with the mutual agreement of the Company and NorCon), then (i) this Agreement shall terminate with respect to NorCon, with the effect described in Section 12.4(b), and except as otherwise provided in Section 6.9(d), and (ii) the provisions of Section 12.5 shall apply with respect to NorCon's Existing PPA.

2.6. Oxbow. The Company and Oxbow shall conduct separate good faith negotiations to enter into an agreement (the "Oxbow Agreement") regarding the

termination of Oxbow's Existing PPA pursuant to Section 2.1. Although there is no obligation on the Company's part to agree to modify the form of consideration to Oxbow, should the Company and Oxbow mutually so determine, Oxbow may receive consideration pursuant to the Oxbow Agreement which is in lieu of the portion of the Restated Contracts allocated to Oxbow in the Allocation (the "Oxbow Allocation"). Any such substitute consideration shall not affect the Allocation, increase or reduce the Allocable Consideration payable to any other IPP (i.e., the Allocable Consideration less the Oxbow Allocation), nor in any way affect the Short-Term Notes or Additional Cash Payment, as applicable, or the terms of the Amended PPAs or Restated Contracts to be received by any other IPP or the Fixed Price Swap Contracts. In the event that the Company and Oxbow should agree that Oxbow's Existing PPA shall be a Terminating PPA, then the contract quantity and the installed capacity under the Restated Contracts shall be reduced by of the contract quantity and the installed capacity under the Restated Contracts allocated to Oxbow pursuant to the original Allocation, and the aggregate contract adjustment identified on Attachment A-3 to Exhibit A shall be reduced by the portion of the Contract Adjustment allocated to Oxbow pursuant to the original Allocation, if any, and in such event such reduction shall not affect the terms and conditions, including contract price, of any of the Restated Contracts to be entered into by any other IPPs. In the event the Company and Oxbow are unable to conclude negotiations and agree on the substitute consideration, if any, to be received by Oxbow within seventy-five (75) days after the date of this Agreement (which date may be extended with the mutual agreement of the Company and Oxbow), then (i) this Agreement shall terminate with respect to Oxbow, with the effect described in Section 12.4(b) and (ii) the provisions of Section 12.5 shall apply with respect to Oxbow's Existing PPA. Oxbow agrees to provide its Contracts Allocation to the Company within fifteen (15) days after the date of this Agreement.

## 2.7. Negotiations.

(a) All negotiations to be conducted by the Company and any IPP pursuant to this Article 2 shall be commenced not later than immediately following the PSC Approval Date. Notwithstanding the foregoing, any IPP may elect in its sole discretion to commence its own negotiations with the Company prior to the PSC Approval Date. If an IPP so elects, the dates for the negotiation meetings shall be scheduled by the Company and such IPP within seven (7) days after the date of such request. If an IPP makes a request therefor, a representative of DLJ and/or a representative of WP&Co. shall attend and participate in any or all negotiations between the Company and such IPP. If the Company and any IPP shall conclude negotiations and agree on a final form of the respective Termination Agreement, Amended PPA, Restated Contract(s), NorCon Agreement or Oxbow Agreement, as the case may be, then the Company and such IPP shall each initial and exchange counterparts of such final form and give notice thereof to the IPPs' Special Counsel, but no Party shall be bound thereto or obligated thereby except as provided in Section 2.8. In addition, the Company and a

committee of IPPs designated by notice to the Company within fourteen (14) days after the date of this Agreement shall use Reasonable Best Efforts to commence and conclude negotiations and agree on a final form of the Fixed Price Swap Contracts as promptly as possible, and the Company and the chairman of such committee of IPPs shall initial such final form to indicate that such form has been agreed upon by the Company and on behalf of all IPPs and shall give notice thereof to the IPPs' Special Counsel on or before the Conditions Determination Date, but no Party shall be bound thereto or obligated thereby except with respect to the Company as provided in Section 2.8.

(b) If the Company and any IPP shall not have sooner agreed on the final form of their respective Contract(s) (excluding for these purposes the Fixed Price Swap Contracts and, if this Agreement is terminated with respect to NorCon or Oxbow pursuant to Sections 2.5 or 2.6, respectively, the NorCon Agreement and Oxbow Agreement, respectively), the Company shall give all IPPs notice of such fact (including the identity of the IPPs which have not agreed on the final form of their respective Contract(s)) not later than the date which is ten (10) Business Days prior to the Conditions Determination Date (a "Company Notice"). The Company Notice shall include the Company's determination of whether (x) the Company intends to terminate this Agreement pursuant to Section 12.1(d) in the event the Company and all such IPPs identified in such notice are unable to agree on the final form of their respective Contract(s) on or before the Conditions Determination Date, (y) the Company is willing to consummate the transactions contemplated hereby (subject to the other conditions to the Company's obligations contained in this Agreement) without the inclusion of those IPPs which are unable to agree on the final form of their respective Contract(s) on or before the Conditions Determination Date, or (z) the Company elects to extend the Conditions Determination Date and the Expiration Date for a period of thirty (30) days.

(i) If the Company shall notify the IPPs that it will terminate this Agreement pursuant to Section 12.1(d) on the Conditions Determination Date in the event the Company and all such IPPs identified in such notice are unable to agree on the final form of their respective Contract(s) on or before the Conditions Determination Date (a "sub-clause (x) notice") and the Company and all such IPPs identified in such notice are unable to agree on the final form of their respective Contract(s) on or before the Conditions Determination Date, then this Agreement shall terminate in its entirety on the Conditions Determination Date pursuant to Section 12.1(d). If the Company shall notify the IPPs that it is willing to consummate the transactions contemplated hereby (subject to the other conditions to the Company's obligations contained in this Agreement) without the inclusion of those IPPs which have not agreed on the final form of their respective Contract(s) as of the date of such notice (a "sub-clause (y) notice"), then the provisions of clause (ii) below shall be applicable. If the Company elects to extend the Conditions Determination Date and the Expiration Date for a period of thirty (30) days (a "sub-clause (z) notice"), or if the IPPs shall elect to extend the

Conditions Determination Date and the Expiration Date pursuant to clause (ii) below, then not later than ten (10) Business Days prior to the extended Conditions Determination Date the Company shall give all IPPs a further Company Notice pursuant to sub-clause (x), (y) or (z) above, provided that the Company's right to extend the Conditions Determination Date pursuant to a sub-clause (z) notice shall be limited such that the aggregate number of days by which the Conditions Determination Date and the Expiration Date may be extended by the Company pursuant to sub-clause (z) and by the IPPs pursuant to clause (ii) below shall be sixty (60) days (the "maximum extension period"). Notwithstanding the foregoing, if the Company shall give a sub-clause (x) notice and prior to the Conditions Determination Date the Company shall notify the IPPs that it has agreed on the final form of their respective Contract(s) with one or more of the IPPs with which it previously was unable to agree, then the Company shall have the right to convert its sub-clause (x) notice to either a sub-clause (y) notice or a sub-clause (z) notice; in the event the Company gives a sub-clause (y) notice pursuant to this sentence, the Conditions Determination Date automatically shall be extended until the fifth (5<sup>th</sup>) Business Day following the giving of such notice, subject to further extension pursuant to clause (ii) below (and, further, in such event, the 60-day maximum extension period described above shall be increased by any such five (5) Business Day Period).

(ii) If the Company shall at any time give the IPPs a sub-clause (y) notice pursuant to this Section 2.7(b) that it is willing to proceed to consummate the transactions contemplated hereby (subject to the other conditions to the Company's obligations contained in this Agreement) without the inclusion of those IPPs which are unable to agree on the final form of their respective Contract(s) if such IPPs have not agreed on the final form of their respective Contract(s) on or before the Conditions Determination Date, as the same may be extended from time to time pursuant to clause (i) above, then, within five (5) Business Days following the receipt of such notice, all IPPs shall determine whether the IPPs desire to extend for a period of thirty (30) days (subject to the maximum extension period) the Conditions Determination Date and the Expiration Date. If eighty percent (80%) of the IPPs do not so elect to extend the Conditions Determination Date and the Expiration Date pursuant to this Section 2.7(b)(ii) on or before ten (10) Business Days after receipt of the Company's sub-clause (y) notice (or if no such extension may be elected because of the maximum extension period), then this Agreement shall terminate on the Conditions Determination Date with respect to any IPPs identified in such notice which are unable to agree on the final form of their respective Contract(s) on or before the Conditions Determination Date.

2.8. Delivery of Contracts to Escrow Agent. On the Conditions Determination Date, the Company and each IPP shall execute the agreed final form of the respective

Termination Agreement, Amended PPA, Restated Contract(s), NorCon Agreement or Oxbow Agreement, as the case may be, and the Company shall execute the Fixed Price Swap Contracts (all such agreements and contracts, collectively, the "Contracts"), and the parties thereto shall deliver all executed counterparts of the Contracts to the Escrow Agent. Once delivered to the Escrow Agent, the Contracts may not thereafter be amended, except by a written amendment executed by the parties thereto and deposited with the Escrow Agent. The delivery of the Contracts to the Escrow Agent shall be irrevocable, subject only to the satisfaction or waiver of the conditions set forth in Sections 8 and 9 hereof in accordance with the terms thereof, and to the provisions of Section 12.4. Upon the satisfaction or waiver of such conditions, on the Consummation Date, the Escrow Agent shall be authorized and instructed to deliver counterparts of the Contracts to each of the respective parties thereto, whereupon the Contracts (subject to any conditions as may be contained therein) shall be in full force and effect as of the Effective Time. Upon any termination of this Agreement in its entirety in accordance with the terms hereof, or any termination of this Agreement with respect to any individual IPP(s) in accordance with the terms hereof, any Contracts theretofore delivered to the Escrow Agent by any of the Parties, or by the Company and any terminated IPP(s), as the case may be, shall be void ab initio and shall be destroyed by the Escrow Agent. Each of the Parties agrees to execute and deliver, as promptly as possible following the date of this Agreement, such escrow agreement as may be reasonably requested by the Escrow Agent or any other Party hereto setting forth the rights and obligations of the Parties and the Escrow Agent, consistent with the terms and conditions of this Agreement, with respect to the Contracts to be delivered to the Escrow Agent pursuant to this Section 2.8, and the agreements and other documents to be delivered to the Escrow Agent pursuant to Sections 10.3 and 10.4 (the "Escrow Agreement"). The Escrow Agreement shall contain customary provisions, including customary exculpatory and indemnification provisions in favor of the Escrow Agent.

2.9. Contract Adjustment. Not later than thirty (30) days prior to the anticipated Conditions Determination Date, the IPPs shall demonstrate to the Company that the annual aggregate Contract Adjustment set forth on Attachment A-3 to Exhibit A ("Contract Adjustment"), as the same may be adjusted pursuant to Sections 2.5, 2.6, 2.7 or 12.4(b), will be realized by the Company upon the consummation of the transactions contemplated hereby, whether by reduction of the aggregate contract price under the Restated Contracts or Fixed Price Swap Contracts, by reduction of the Allocable Consideration, Short-Term Notes or Additional Cash Payment (as applicable), or any combination thereof, or, if mutually agreed to by the Parties, in any other manner.

**3. ALLOCABLE CONSIDERATION; SHORT-TERM NOTES;  
ALLOCATION**

3.1. Allocable Consideration. The Company shall, on the Consummation Date, pay and/or deliver to the Depositary on behalf of the IPPs or their respective designees, the following (referred to herein as the "Allocable Consideration"):

(a) Three billion five hundred fifty-five million dollars (\$3,555,000,000) in immediately available funds (the "Cash Payment"); and

(b) Forty-six million (46,000,000) newly-issued, fully-paid and nonassessable shares ("Company Shares") of Common Stock of the Company, which number of Company Shares shall be subject to adjustment in accordance with Section 3.5 hereof.

3.2. Short-Term Notes; Additional Cash Payment. The Company, on the Consummation Date, shall also deliver to the Depositary, for the benefit of and at the direction of all of the IPPs or their respective designees, either, at the Company's option, (i) note obligations issued by the Company in the aggregate principal amount of fifty million dollars (\$50,000,000) (the "Short-Term Notes") or (ii) the sum of fifty million dollars (\$50,000,000) in immediately available funds (the "Additional Cash Payment"). The Company shall give the IPPs notice if it elects to deliver the Additional Cash Payment in lieu of the Short-Term Notes, not later than the Conditions Determination Date. The Short-Term Notes, if applicable, shall mature ninety (90) days after the Consummation Date and shall have a yield which is at least equivalent to commercial paper issued by comparable issuers at the time of the Consummation Date and such other terms as may be agreed among the Parties not later than the Conditions Determination Date. The Short-Term Notes shall not be subject to any restrictions on transfer.

3.3. Delivery of Allocable Consideration, Short-Term Notes and Additional Cash Payment to Depositary. The Cash Payment, Company Shares and Short-Term Notes or Additional Cash Payment, as applicable, each shall be irrevocably delivered by the Company on the Consummation Date to the Depositary, which shall hold the Cash Payment and Company Shares for the benefit of and at the direction of the several IPPs who are parties to this Agreement as of the Consummation Date in the respective amounts set forth in the Allocation and shall hold the Short-Term Notes or Additional Cash Payment, as applicable, for the benefit of and at the direction of the IPPs who are parties to this Agreement as of the Consummation Date. The Cash Payment, Company Shares and Short-Term Notes or Additional Cash Payment, as applicable, shall be paid or delivered without any setoff, deduction or claim whatsoever. The Cash Payment and, if applicable, the Additional Cash Payment shall be paid by wire transfer of federal funds to the account of the Depositary, which account shall be set forth in a notice to the Company given not later than five (5) Business Days prior to the Consummation Date. The

Company Shares shall be issued in certificated form (with the restrictive legend described in Section 3.6 and, if applicable, the restrictive legend described in the Shareholder's Agreement) in the names of the IPPs in the respective amounts set forth in the Allocation, or in the names of the respective designees of such IPPs in such amounts or denominations as the respective IPPs may determine, in each case as shall be set forth in a notice to the Company given not less than eight (8) Business Days prior to the Consummation Date; any designee of the IPP which shall receive any Company Shares pursuant to this Agreement shall, simultaneously with the giving of such notice, provide the Company with a representation letter containing substantially the same representations set forth in Section 5.6 of this Agreement. Unless otherwise set forth in a notice to the Company given not later than five (5) Business Days prior to the Consummation Date, the Short-Term Notes (if applicable) shall be registered to and issued in the name of the Depository, as agent for the IPPs, subject to subsequent re-registration and re-issuance to the several IPPs or their respective designees in such denominations as the Depository may request and which the Company shall execute, at the Company's expense, within three (3) Business Days after receipt of any such request. Each of the Parties agrees to execute and deliver, as promptly as possible following the date of this Agreement, such deposit, escrow or similar agreement as may be reasonably requested by the Depository or any other Party hereto setting forth the rights and obligations of the Parties and the Depository, consistent with the terms and conditions of this Agreement, with respect to (a) the Allocable Consideration and Short-Term Notes or Additional Cash Payment, as applicable, to be delivered to the Depository pursuant to this Section 3.3 and (b) the Allocation and the certifications of information contained in the Allocation required to be given by the Depository pursuant to the provisions of this Agreement (the "Deposit Agreement"). The Deposit Agreement shall contain customary provisions, including customary exculpatory and indemnification provisions in favor of the Depository.

#### 3.4. Allocation.

(a) Each of (i) the Allocable Consideration, (ii) the contract quantity and contract price under the Amended PPA, (iii) the aggregate contract quantities of electricity and aggregate capacity for a term of ten Contract Years and weighted average contract prices for the first two Contract Years under the Restated Contracts and (iv) the Contract Adjustment have been allocated by and among the several IPPs in accordance with an allocation separately agreed to by the IPPs and deposited by the IPPs with WP&Co. and in a sealed envelope with the Escrow Agent on or before the date of this Agreement (clauses (i), (ii), (iii) and (iv) are referred to herein as the "Allocation", clauses (ii) and (iii) only are referred to herein as the "Contracts Allocation" and clause (iv) only is referred to herein as the "Contract Adjustment Allocation"). Promptly following the execution of the Deposit Agreement, the Escrow Agent shall deliver the Allocation to the Depository. If the Deposit Agreement is not executed by the Parties and the Depository within thirty (30) days after the date of this Agreement, the Escrow Agent



shall, unless otherwise directed in writing by the Parties to deliver the Allocation to a successor escrow agent, destroy the Allocation. Upon such delivery to the Depository or successor escrow agent or destruction of the Allocation, as the case may be, the Escrow Agent shall have no further obligation with respect to the Allocation, and the Escrow Agent shall have no obligation with respect to the Allocation except as set forth in this Section 3.4(a). Subject to the following sentence, the Company agrees that the Allocation shall not be subject to challenge or modification by the Company, and that the Company shall not initiate, encourage or support any such challenge or attempted modification by any Governmental Authority or other third party. The IPPs may modify the Allocation only with the prior written consent of all IPPs; except that (i) the Company and any IPP may mutually agree to increase or reduce the Allocable Consideration or contract quantity and contract price under the Amended PPA or a Restated Contract to be paid to or received by such IPP and (ii) any IPP may, in its sole discretion, adjust the components of the Allocable Consideration allocated collectively to such IPP and its Affiliate IPPs as among such IPP's and Affiliate IPP's Existing PPAs; provided, however, in any such case such adjustment (x) shall not affect any other non-Affiliate IPP's allocation of the Allocable Consideration or contract quantity and contract price under the Amended PPA or a Restated Contract and (y) shall not reduce the Cash Payment and Company Shares payable with respect to Class A PPAs to less than two billion dollars (\$2,000,000,000) (except to the extent that such amount is reduced as a result of the termination of this Agreement with respect to any IPPs which are parties to Class A PPAs). For purposes of the foregoing determination of whether the Cash Payment and Company Shares payable with respect to Class A PPAs is at least \$2,000,000,000 pursuant to any provision of this Agreement, the Company Shares shall be valued at the Base Share Price. The affected IPP shall notify the Depository and WP&Co. of any such permitted adjustment, whereupon the Allocation shall be amended accordingly. The Depository shall maintain a schedule of all such adjustments to the Allocation.

(b) Neither the Allocation, nor any portion thereof nor any information contained therein shall be furnished or disclosed to the Company or any Governmental Authority, except that:

(i) any individual IPP shall be free to disclose its own portion of the Allocation (x) to the Company, (y) to any Governmental Authority or (z) to any third party; and NorCon and any other individual IPP which elects to commence its own negotiations with the Company prior to the PSC Approval Date shall disclose to the Company its own portion of the Contracts Allocation not later than five (5) Business Days prior to the commencement of such negotiations, provided that the Company is willing to commence negotiations regarding non-economic terms with any IPP prior to receiving the Contracts Allocation.

(ii) the IPPs shall cause WP&Co. to furnish in writing to the Company (and each IPP) immediately following the execution of this Agreement:

(x) a schedule setting forth (A) the number of IPPs (considered on an aggregate basis with any IPPs which are Affiliates of such IPPs) which, pursuant to the Allocation, will acquire pursuant to Section 3.1(b) less than 1,903,906 Company Shares; 1,903,906 or more but less than 3,807,812 Company Shares; 3,807,812 or more but less than 5,711,718 Company Shares; 5,711,718 or more but less than 7,615,624 Company Shares; 7,615,624 or more but less than 9,519,531 Company Shares; and 9,519,531 or more but less than 10,650,000 Company Shares, respectively, as of the date of this Agreement, which together shall constitute all of the IPPs acquiring Company Shares pursuant to Section 3.1(b), and (B) the aggregate amount, if any, of the Allocable Consideration allocated to Class A PPAs and collectively to Class B PPAs and the Class D PPA, respectively, as of the date of this Agreement (it being agreed that the portion of the Cash Payment and Company Shares allocated to Class A PPAs pursuant to the Allocation as of the date of this Agreement shall not be less than two billion dollars (\$2,000,000,000));

(y) a certification that the contract quantity of electricity and capacity for a term of ten Contract Years under the Restated Contracts allocated to each Class B PPA on the Contracts Allocation when added together will equal the aggregate quantity of electricity (rounded to the nearest GWh) and capacity under the Restated Contracts on Attachment A-3 to Exhibit A and that the contract price for a term of ten Contract Years under the Restated Contracts allocated to each Class B PPA on the Contracts Allocation when weight averaged will yield the weighted average price (rounded to the nearest penny per MWh) under the Restated Contracts under the columns "weighted average price" and "example of weighted average price" on Attachment A-3 to Exhibit A; and

(z) a certification that the Contract Adjustment allocated to each Class B PPA on the Contract Adjustment Allocation when added together will equal the amounts under the column "aggregate contract adjustment" (rounded to the nearest \$1,000) set forth on Attachment A-3 to Exhibit A.

(iii) the IPPs shall cause WP&Co. to furnish in writing to the Company within three (3) Business Days after the PSC Approval Date a schedule setting forth the Contracts Allocation; and

(iv) the IPPs shall cause WP&Co. to furnish in writing to the Company, on the Consummation Date, a schedule setting forth the aggregate amount, if any, of the Cash Payment and Company Shares allocated to Class A PPAs, Class B PPAs and Class D PPA, respectively, as of the Consummation Date (it being agreed that the portion of the Cash Payment and Company Shares allocated to Class A PPAs shall not be less than \$2,000,000,000, except to the extent that such amount is reduced as a result of the termination of this Agreement with respect to any IPPs which are parties to Class A PPAs).

The Company may, in coordination with such IPP or WP&Co., confirm with the Depository any information disclosed by any IPP or WP&Co., respectively, to the Company pursuant to this clause (b). Any information disclosed to the Company pursuant to this Section 3.4(b) shall be subject to the confidentiality provisions of Section 14.14.

(c) Subject to Section 6.2, the information contained in the Allocation which is furnished to the Company pursuant to Section 3.4(b) shall be utilized by the Parties for all tax reporting purposes (subject to any adjustments mutually agreed between the Company and any individual IPP in the Amended PPA, any Restated Contract, or otherwise).

3.5. Non-Dilution. It is understood that the number of Company Shares to be issued and delivered by the Company pursuant to Section 3.1(b) represents approximately 24.16% of the Company's fully-diluted Common Stock outstanding as of September 30, 1996, after giving effect to the issuance of the Company Shares pursuant to Section 3.1(b). Accordingly, if at any time between September 30, 1996 and the Consummation Date there shall have occurred any of the following (it being understood that there shall be sequential adjustments for each transaction described below):

(a) any (i) issuance of shares of Common Stock for a consideration per share which is less than \$8.70 (the "Base Share Price"), then the number of Company Shares to be acquired by the IPPs pursuant to Section 3.1(b) shall be increased by the amount equal to the number of shares of Common Stock issued for a consideration less than the Base Share Price, multiplied by the difference between the Base Share Price and the issue price, and then dividing the product by the Base Share Price; or (ii) issuance of options, warrants or rights to purchase shares of Common Stock for a consideration per share of Common Stock which is less than the Base Share Price, or the issuance of other securities of the Company (or any subsidiary of the Company) convertible into Common Stock at a conversion price per share of Common Stock which is less than the Base Share Price, then the number of Company Shares to be acquired by the IPPs pursuant to Section 3.1(b) shall be increased by the amount equal to the number of shares of Common Stock deliverable upon the exercise or conversion of such options, warrants, rights or other

securities, multiplied by the difference between the Base Share Price and the exercise or conversion price, and then dividing the product by the Base Share Price;

(b) any change in the number of shares of Common Stock (or options, warrants or rights, or other securities of the Company exercisable, exchangeable or convertible into Common Stock) as a result of a reclassification, combination, exchange, subdivision, stock split (including a reverse stock split), stock dividend or distribution, recapitalization, merger, issuer tender or exchange offer, or other similar transaction, then the number of Company Shares to be acquired by the IPPs pursuant to Section 3.1(b) shall be appropriately and equitably adjusted; or

(c) any (i) reorganization (other than as provided in subsection (b) above), (ii) merger or consolidation of the Company with or into another corporation in which the Company is not the surviving entity, or a reverse triangular merger in which the Company is the surviving entity but the shares of the Company's capital stock outstanding immediately prior to the merger are converted by virtue of the merger into other property, whether in the form of securities, cash or otherwise or (iii) sale or transfer of the Company's properties and assets as, or substantially as, an entirety to any other person, then, as a part of such reorganization, merger, consolidation, sale or transfer, lawful provision shall be made so that the IPPs shall thereafter be entitled to receive the number of shares of stock or other securities or property of the successor corporation or corporations resulting from such reorganization, merger, consolidation, sale or transfer that the IPPs would have been entitled to receive in such reorganization, consolidation, merger, sale or transfer if the Consummation Date had occurred and the Company Shares had been acquired by the IPPs immediately before such reorganization, merger, consolidation, sale or transfer.

Notwithstanding the foregoing, there shall be no adjustment pursuant to this Section 3.5 for any shares of Common Stock issued with respect to any of the transactions described on Schedule 3.5 hereto. Any additional shares of Common Stock delivered by the Company pursuant to this Section 3.5 shall be received by the IPPs, pro rata, based on the Company Shares allocated to each of the IPPs pursuant to the Allocation.

### 3.6. Private Placement; Registration of Company Shares.

(a) The issuance of the Company Shares to the IPPs hereunder shall be effected as a private placement pursuant to Section 4(2) of the Securities Act. The certificates evidencing the Company Shares shall bear a legend in substantially the following form:

THE SECURITIES EVIDENCED HEREBY HAVE NOT BEEN REGISTERED UNDER THE UNITED STATES SECURITIES ACT OF 1933, AS AMENDED ("SECURITIES ACT"), AND MAY NOT BE

OFFERED, SOLD, PLEDGED OR OTHERWISE TRANSFERRED EXCEPT (1) PURSUANT TO AN EFFECTIVE REGISTRATION UNDER THE SECURITIES ACT, (2) IN ACCORDANCE WITH RULE 144 UNDER THE SECURITIES ACT OR (3) IN ACCORDANCE WITH ANOTHER APPLICABLE EXEMPTION FROM THE REGISTRATION REQUIREMENTS OF THE SECURITIES ACT.

Upon issuance, the Company Shares shall not be subject to any restrictions on transfer other than as may be required by the federal securities laws and, if applicable, as may be set forth in the Shareholder's Agreement. The Company shall use its Reasonable Best Efforts to cause the Company Shares to be registered for sale from time to time by the IPPs (or their assigns) on a shelf registration statement on Form S-3 (the "Shelf Registration Statement"), which Shelf Registration Statement shall (i) be declared effective by the SEC on or prior to the Consummation Date, (ii) remain effective for a period of two (2) years following the Consummation Date and (iii) permit as an intended method of distribution of the Company Shares (among others) an underwritten offering by an underwriter selected by the holders of the Company Shares that is reasonably satisfactory to the Company. The Company covenants and agrees that, as of its effective date and as of the Consummation Date, none of the Shelf Registration Statement, any document incorporated by reference therein, any prospectus included therein or filed with the SEC, or any amendment thereof or supplement thereto, shall contain any untrue statement of a material fact or omit to state a material fact required to be stated therein or necessary to make the statements therein not misleading.

(b) In connection with the preparation and filing of the Shelf Registration Statement under the Securities Act, the Company shall give the IPPs' Special Counsel the opportunity to participate in the preparation of (including, but not limited to, reviewing, commenting on and attending all meetings with underwriters, if any, with respect to) the Shelf Registration Statement, each prospectus included therein or filed with the SEC, each amendment thereof or supplement thereto, and will provide the IPP's Special Counsel the opportunity to comment on the description of the transactions contemplated hereunder to be contained in the current, quarterly or annual report filed by the Company in connection with the consummation of the transactions contemplated hereunder, and will make available for inspection by the IPPs' Special Counsel and any attorney, accountant or other agent retained by any IPP, all documents incorporated by reference therein, all pertinent financial and other records, pertinent corporate documents and properties of the Company, as shall be reasonably necessary to enable each IPP to conduct a reasonable investigation within the meaning of the Securities Act, and shall cause the Company's officers, directors and employees to supply all information which any IPP may reasonably request for purposes of such investigation; provided that any records, information or documents that are designated by the Company in writing as confidential (and which are not generally available to the public, have not become available to such person on a nonconfidential basis from a source which has represented

to such person that such source is entitled to disclose same or which was known to such person on a nonconfidential basis prior to its disclosure by the Company) shall be kept confidential by such person unless disclosure of such records, information or documents is required by court or administrative order or any Governmental Authority having jurisdiction. The Company shall permit the IPPs' Special Counsel to review and comment on the Shelf Registration Statement and each such prospectus, amendment or supplement, as the case may be, a reasonable period of time prior to the filing of same with the SEC, shall not file same in a form to which such counsel reasonably objects within five (5) Business Days of the receipt thereof, and shall provide the IPPs' Special Counsel with copies of all correspondence from or with the SEC incidental to the Shelf Registration Statement or any such prospectus, amendment or supplement. All expenses incident to the registration of the Company Shares including, without limitation, all registration, qualification and filing fees, "blue sky" fees and expenses, printing and related expenses, fees and expenses of listing the Company Shares on the NYSE, fees and expenses of counsel and independent certified public accountants of the Company and fees and expenses of the IPPs' Special Counsel shall be borne by the Company. In addition, on the Consummation Date, the Company and each IPP receiving Company Shares pursuant to the Allocation (or its designee) shall enter into a registration rights agreement in the form annexed as Exhibit 3.6 hereto ("Registration Rights Agreement").

3.7. Shareholder's Agreement. On the Consummation Date, each IPP listed on Schedule 3.7 hereto (unless, as a result of any reallocation of Company Shares prior to the Consummation Date or as a result of any designation of third parties pursuant to Sections 3.3. and 5.6 to receive Company Shares on the Consummation Date, such IPP, together with its Affiliate IPPs, members of its Sponsor Group and its Excluded Affiliates (as said latter two capitalized terms are defined in the Shareholder's Agreement), shall acquire on the Consummation Date Company Shares representing less than two percent (2%) of the outstanding Common Stock of the Company) shall cause the corresponding entity or entities listed on Schedule 3.7 to enter into a shareholder's agreement with the Company in the form annexed as Exhibit 3.7 hereto (each, a "Shareholder's Agreement"). If any IPP not listed on Schedule 3.7, as a result of any reallocation of Company Shares prior to the Consummation Date, shall receive, together with its Affiliates, Company Shares representing two percent (2%) or more of the outstanding Common Stock of the Company, then such IPP shall notify the Company and shall identify such sponsor entities as may be appropriate (consistent with the sponsor entities listed on Schedule 3.7) to enter into, and such IPP and sponsor entities shall enter into, a Shareholder's Agreement with the Company on the Consummation Date. If any designee of one or more IPPs with respect to the Company Shares in accordance with Sections 3.3 and 5.6 shall receive Company Shares representing more than four and nine-tenths percent (4.9%) of the outstanding Common Stock of the Company, then such designee shall enter into a Shareholder's Agreement with the Company on the Consummation Date, unless the Company shall otherwise agree. The IPP shall cause any such designee with respect to Company Shares in accordance with Sections 3.3 and 5.6 (if not an Affiliate of the IPP)

to provide a representation letter to the Company (which shall survive the Consummation Date) representing that, together with its Affiliates, such designee shall not, immediately following the Consummation, be the beneficial owner (within the meaning of Rule 13d-3 under the Exchange Act) of more than nine and nine-tenths percent (9.9%) of the outstanding Common Stock of the Company. If any Excluded Affiliate (as defined in the Shareholder's Agreement) receives Company Shares pursuant to this Agreement on the Consummation Date then, for purposes of the Shareholder's Agreement, such Company Shares shall be treated as if they were transferred to the Excluded Affiliate following the Consummation Date.

3.8. Board of Directors. Promptly after the date of this Agreement, the Company and the IPPs shall jointly select a nationally recognized executive search firm, whose fees and expenses will be paid by the Company, to develop a list of individuals unaffiliated with the Company or any IPP who are qualified to serve as directors of the Company. Both the Company and the IPPs may propose potential directors to the search firm, but the search firm shall decide which individuals will be included on the search firm's list. Once the search firm's list has been prepared and presented simultaneously to the Company and the IPPs, the Company and the IPPs shall mutually agree upon a final list of ten (10) individuals who are mutually acceptable to the Company and the IPPs. The Company shall select two (2) individuals from the final list to serve on the Board of Directors of the Company, effective immediately following the Consummation Date. Each such individual shall stand for reelection for a three (3) year term at the Company's next annual meeting of shareholders. Each such individual shall be proposed and supported by the Company for election to the Board. In the event either such individual shall be unable to serve or continue to serve on the Board, such individual's replacement shall be selected by the Company from the final list. The provisions of this Section 3.8 shall survive the Consummation Date until fully performed.

#### 4. REPRESENTATIONS AND WARRANTIES OF THE COMPANY

The Company hereby represents and warrants to each IPP, as follows:

4.1. Organization; Standing. The Company is a corporation duly organized, validly existing and in good standing under the laws of the State of New York, and has all requisite corporate power and authority to own its properties and assets and to carry on its business in the manner now conducted and, subject to receipt of the NMPC Regulatory Approvals, as proposed to be conducted in accordance with this Agreement and the Contracts. The Company is duly qualified to transact business and is in good standing in each jurisdiction except where the failure so to qualify would not have a Material Adverse Effect on the Company.

4.2. Execution; Authority; Enforceability. Subject in each case to (i) receipt of the NMPC Regulatory Approvals and applicable federal and state securities laws and the rules of the NYSE, (ii) receipt of required consents to the transactions contemplated by this Agreement by the third parties whose names are disclosed in a notice given by the Company to all IPPs within thirty (30) days after the date of this Agreement, which notice shall not include NMPC/Third Party Releases (each, an "NMPC/Third Party Consent"), (iii) receipt of the NMPC/Third Party Releases and (iv) approval of this Agreement and the transactions contemplated hereby by the Company's Board of Directors and, to the extent required, by the Company's shareholders, (a) the Company has all requisite corporate power and authority to execute and deliver this Agreement and all other agreements to be executed by it pursuant hereto, and to carry out the provisions of this Agreement in accordance with the terms hereof, and all other agreements to be executed by it pursuant hereto, including, but not limited to, the power and authority to issue and sell the Company Shares and Short-Term Notes, and to enter into and perform the Contracts; (b) this Agreement has been and all other agreements to be executed by the Company pursuant hereto will be, duly and validly executed and delivered by the Company; and (c) this Agreement constitutes, and all other agreements to be executed by the Company pursuant hereto will constitute, valid and legally binding obligations of the Company, enforceable against the Company in accordance with their respective terms.

4.3. No Conflicts. Subject to (i) receipt of the NMPC Regulatory Approvals, (ii) receipt of the NMPC/Third Party Consents, (iii) receipt of the NMPC/Third Party Releases and (iv) approval of this Agreement and the transactions contemplated hereby by the Company's Board of Directors and, to the extent required, by the Company's shareholders, the execution, delivery, and performance by the Company of this Agreement, any other agreements to be executed by the Company pursuant hereto, and the consummation of the transactions contemplated hereby and thereby, will not result in a violation or default of any provision of its Certificate of Incorporation or By-Laws.

4.4. Litigation. Except as set forth in Schedules 6.10A and 6.10B or in the SEC Reports, as of the date of this Agreement there is no action, suit, arbitration, or other legal or administrative proceeding pending or, to the best knowledge of the Company, any investigation pending or any action, suit, arbitration, or other legal or administrative proceeding or investigation threatened against the Company or any of its subsidiaries which (a) questions the validity of this Agreement, the agreements to be executed by the Company pursuant hereto or the right of the Company to enter into this Agreement or such other agreements, or to consummate the transactions contemplated hereby or thereby or (b) if adversely determined, would be likely to have a Material Adverse Effect on the Company. The Company is not a party to or subject to any order, writ, injunction, decree, judgment or other restriction of any Governmental Authority which has or is reasonably likely to have a material adverse effect on the Company's ability to enter into and perform its obligations under this Agreement or any other agreements to be entered into by the Company pursuant hereto.



4.5. Capitalization. Schedule 4.5 sets forth (i) the authorized capital of the Company, (ii) the number of shares of Common Stock issued and outstanding and (iii) the number of shares of Common Stock issuable upon the exercise of any options, warrants or rights, or upon conversion or exchange of any other securities outstanding, in each case as of (x) September 30, 1996 and (y) June 27, 1997. The Company is not obligated to repurchase, redeem or otherwise acquire any shares of its capital stock, other than as set forth in Schedule 4.8.

4.6. Valid Issuance of Company Shares. The Company Shares to be acquired by the IPPs hereunder, when issued, sold and delivered in accordance with the terms of this Agreement for the consideration expressed herein, will be duly and validly issued, fully paid, and nonassessable, will be free of restrictions on transfer other than restrictions on transfer required by federal securities laws and, if applicable, as may be set forth in the Shareholder's Agreement, and will be duly listed on the NYSE. The Company Shares to be acquired by the IPPs hereunder are not and will not be subject to any preemptive rights or rights of first refusal. Assuming the truth and accuracy of each IPP's representations set forth in Section 5.6 (or, with respect to any designee of an IPP, such designee's representations set forth in a representation letter containing substantially the same representations set forth in Section 5.6), the offer, sale and issuance of the Company Shares pursuant to this Agreement (i) will not require registration under the Securities Act and (ii) will not require registration or qualification under such of the "blue sky" or securities laws of the jurisdictions in the United States (or will be in compliance therewith) as shall be applicable to the offer, sale and issuance of the Company Shares (subject to the last two sentences of Section 5.6 and subject further to the limitation that the Company makes no representation or warranty with respect to any offer by any IPP to any designee of such IPP as contemplated by Sections 3.3 and 5.6), and neither the Company nor any authorized agent acting on its behalf will take any action hereafter that would require such registration.

4.7. SEC Reports and Financial Statements. Since January 1, 1995, the Company has made all filings required to be made by it under the Exchange Act and any other securities laws applicable to the Company and is otherwise eligible to file a registration statement on Form S-3 covering the offering and sale of the Company Shares and the Debt Securities. As of their respective dates or, if amended, as of the date of such amendment, the SEC Reports complied in all material respects with the requirements of the Exchange Act, and the rules and regulations of the SEC thereunder. As of their respective dates or, if amended, as of the date of such amendment, the SEC Reports did not contain any untrue statement of a material fact or omit to state a material fact required to be stated therein or necessary to make the statements therein, in light of the circumstances under which they were made, not misleading. The financial statements of the Company included in the Company's Annual Report on Form 10-K for the fiscal year ended December 31, 1996 and the Company's Quarterly Report on Form 10-Q for the fiscal quarter ended March 31, 1997 comply as to form in all material respects with

applicable accounting requirements and the published rules and regulations of the SEC with respect thereto, have been prepared in accordance with generally accepted accounting principles as stated in such financial statements applied on a consistent basis during the period covered and fairly present, in all material respects, the financial position of the Company as of the date thereof and the results of operations and changes in financial position of the Company for the period then ended subject, in the case of unaudited statements, to notes and normal year-end audit adjustments, none of which shall be material in amount or effect.

4.8. Absence of Certain Changes or Events. Except as set forth in the SEC Reports or in Schedule 4.8, between December 31, 1996 and the date of this Agreement there has not been nor has the Company incurred: (a) any damage, destruction or loss, whether or not covered by insurance, materially and adversely affecting any material portion of its assets; (b) any satisfaction or discharge of any material lien, claim or encumbrance or payment of any material obligation by the Company, except in the ordinary course of business; (c) any material change to, or cancellation of, a material contract, agreement, lease or commitment by which the Company or any of its material assets is bound or subject; (d) other than in the ordinary course of business, any material change or increase in any compensation arrangement or agreement with any officer, director or executive employee of the Company, including any grant of stock appreciation rights; (e) any sale or other disposition of any material portion of the Company's assets; (f) any mortgage, pledge, security interest or lien created by the Company, with respect to any material portion of its assets; (g) any material change in the manner of keeping the Company's books, accounts or records or the accounting practices therein reflected; (h) as of the date of this Agreement, any merger or consolidation of the Company with or into any other entity, or any issuance, sale or other disposition of any shares of the Company's capital stock; or (i) any declaration, setting aside, or payment or other distribution in cash or property in respect of any of the Company's capital stock, or any direct or indirect redemption, purchase, or other acquisition of any of such stock by the Company, other than pursuant to the operation of the DRIP Plan or as required by the terms of the Company's preferred stock.

4.9. NMPC Restructuring. As of the date of this Agreement, the Company has disclosed to the IPPs all material plans and proposals concerning the NMPC Restructuring which have been disclosed to any Governmental Authority or approved by the Board of Directors of the Company and which could reasonably have a material adverse effect on any IPP or the Restructuring, including but not limited to the Contracts or any of the consideration to be received by the IPPs hereunder. As of the date of this Agreement, the Company has not been authorized by its Board of Directors, nor is the Company seeking such authorization, to file a petition under the Bankruptcy Code or otherwise to commence, authorize or acquiesce in the commencement of a proceeding under any bankruptcy or similar law for the protection of creditors, or to make a general assignment or any general arrangement or compromise for the benefit of creditors, nor

has the Company made, commenced, authorized or acquiesced in the commencement of any such proceeding or assignment or had any such petition, proceeding or assignment commenced against it.

## 5. REPRESENTATIONS AND WARRANTIES OF EACH IPP

Each IPP (severally and not jointly) hereby represents and warrants to the Company, as follows:

5.1. Organization; Standing. The IPP is a corporation, partnership or other entity duly organized, validly existing and in good standing under the laws of its state of incorporation or formation, and, subject to receipt of the IPP Regulatory Approvals, has all requisite corporate or partnership power and authority, as the case may be, to own its properties and assets and to carry on its business in the manner now conducted and as proposed to be conducted in accordance with this Agreement and the Contracts.

5.2. Execution; Authority; Enforceability. Subject in each case to receipt of (i) the IPP Regulatory Approvals, (ii) the IPP/Third Party Consents and (iii) the IPP Approvals, (a) the IPP has all requisite corporate or partnership power and authority, as the case may be, to execute and deliver this Agreement and all other agreements to be executed by it pursuant hereto, and to carry out the provisions of this Agreement in accordance with the terms hereof, and all other agreements to be executed by it pursuant hereto, including, but not limited to, the power and authority to enter into and perform the Contracts to which it is a party; (b) this Agreement has been, and all other agreements to be executed by the IPP pursuant hereto will be, duly and validly executed and delivered by the IPP; and (c) this Agreement constitutes, and all other agreements to be executed by the IPP pursuant hereto will constitute, valid and legally binding obligations of the IPP, enforceable against the IPP in accordance with their respective terms.

5.3. No Conflicts. Subject to receipt of (i) the IPP Regulatory Approvals, (ii) the IPP/Third Party Consents and (iii) the IPP Approvals, the execution, delivery, and performance by the IPP of this Agreement, any other agreements to be executed by the IPP pursuant hereto, and the consummation of the transactions contemplated hereby and thereby, will not result in a violation or default of any provision of its Certificate of Incorporation or By-Laws or partnership agreement, as applicable.

5.4. Litigation. Except as set forth in Schedules 5.4, 6.10A and 6.10B, as of the date of this Agreement there is no action, suit, arbitration, or other legal or administrative proceeding pending or, to the best knowledge of the IPP, any investigation pending or any action, suit, arbitration, or other legal or administrative proceeding or investigation threatened against the IPP which (a) questions the validity of this Agreement, the agreements to be executed by the IPP pursuant hereto or the right of the

IPP to enter into this Agreement or such other agreements, or to consummate the transactions contemplated hereby or thereby or (b) if adversely determined, would be likely to have a material and adverse effect on the IPP's ability to enter into and perform its obligations under this Agreement or any other agreements to be executed by the IPP pursuant hereto. The IPP is not a party to or subject to any order, writ, injunction, decree, judgment or other restriction of any Governmental Authority which has or is reasonably likely to have a material and adverse effect on the IPP's ability to enter into and perform its obligations under this Agreement or any other agreements to be executed by the IPP pursuant hereto.

5.5. Certain Transfers: As of the date of this Agreement, the IPP does not have any agreement or understanding with any other IPP to (i) re-allocate or transfer to such other IPP (excluding for these purposes any Affiliate IPP of such IPP), whether before or after the Consummation Date, any portion of the Cash Payment or Company Shares allocated to the IPP pursuant to the Allocation or (ii) assign or transfer a Restated Contract or Amended PPA to any IPP whose Existing PPA is a Class A PPA.

5.6. Acquisition of Company Shares. If the IPP, pursuant to the Allocation, will acquire any Company Shares pursuant to Section 3.1(b): (a) the Company Shares to be acquired by such IPP shall be acquired for its own account and without a view to the resale or distribution thereof or shall be issued (in whole or in part) to designees of such IPP, consisting of partners and shareholders (at any tier), Affiliates, lenders, steam hosts or Gas Mitigation Third Parties (provided any such designee shall provide the Company with a letter containing substantially the same representations set forth in this Section 5.6 and, if applicable, designating a suitable purchaser representative, which letter shall be reasonably satisfactory to the Company and its counsel); provided, however, that the foregoing shall not preclude the IPP from transferring or selling the Company Shares to be acquired by it in the manner described in clauses (c)(i), (ii) or (iii) below; (b) such IPP is either (x) an "accredited investor" as such term is defined in Rule 501(a) of Regulation D under the Securities Act or (y) if not an "accredited investor", either alone or with its purchaser representative, has such knowledge and experience in financial and business matters that it is capable of evaluating the merits and risks of its investment in the Company Shares, within the meaning of Rule 506(b)(2)(ii) of Regulation D under the Securities Act; and (c) such IPP understands that the sale of the Company Shares to such IPP has not been registered under the Securities Act or any applicable state securities laws and, therefore, the Company Shares cannot be transferred, sold, pledged or otherwise disposed of, except (i) pursuant to the Shelf Registration Statement or another effective registration statement under the Securities Act and in compliance with the prospectus-delivery requirement under the Securities Act, (ii) in accordance with Rule 144 under the Securities Act after the applicable time period specified therein or (iii) in accordance with another exemption from the registration requirements of the Securities Act. For purposes hereof, the IPPs' purchaser representative, if any, is WP&Co. or another equivalent investment banker. Not later than ten (10) Business Days prior to the

Consummation Date, the IPP shall give a notice to WP&Co. stating the number of non-accredited investors to which such IPP shall designate that any part of the Company Shares to be acquired by such IPP pursuant to Section 3.1(b) shall be issued on the Consummation Date. The IPP acknowledges that such number of non-accredited investors, together with the number of non-accredited investors to which any other IPP shall designate that any part of its Company Shares to be acquired by any such other IPP pursuant to Section 3.1(b) shall be issued on the Consummation Date, shall not exceed thirty-five (35). Notwithstanding the foregoing, without the Company's consent, no person may be a designee of an IPP with respect to any Company Shares if the acquisition of Company Shares by such person would (i) require the Company to qualify as a foreign corporation or as a dealer in securities in any jurisdiction in which it is not so qualified, (ii) subject the Company to taxation in respect of doing business in any jurisdiction in which it is not so subject or (iii) require the Company to make filings with any state securities commissioners other than notice filings. The IPP agrees to give the Company notice of the identity of any proposed designee as soon as practicable in order to permit the Company to make a determination pursuant to the preceding sentence.

5.7. Form of Allocation, Contracts Allocation. Annexed as Exhibit 5.7 are blank forms of the Allocation, Contracts Allocation and Contract Adjustment Allocation deposited with the Escrow Agent and WP&Co. prior to the date of this Agreement, which forms, as delivered to the Escrow Agent and WP&Co., do not and will not include any formulas, notations, conditions or other qualifications with respect to the determination of the respective amounts, quantities or prices allocated to the IPP (with the exception of the NorCon Allocation, a copy of which has been delivered to the Company simultaneously with the execution of this Agreement).

## 6. CONDUCT AND TRANSACTIONS PRIOR TO THE CONSUMMATION DATE

### 6.1. Debt Securities.

(a) The Company has advised the IPPs of its intention to finance the payment of up to three billion two hundred million (\$3,200,000,000) dollars of the Cash Payment by issuing debt securities of the Company ("Debt Securities") in an underwritten public offering registered with the SEC to be consummated on or prior to the Consummation Date (the "Public Offering"). The Parties agree that the successful consummation of the Public Offering is of material importance to the successful consummation of the Restructuring pursuant to this Agreement and that the terms and conditions of the Debt Securities issued therein are of material importance to the IPPs in their capacities as holders of Company Shares and/or Short-Term Notes, and as parties to the Contracts. The terms and conditions of the Debt Securities shall be developed by the Company in conjunction with the Underwriters. The Company agrees that the material

terms and conditions of the Debt Securities shall be subject to the approval of a majority of a committee consisting equally of representatives of the Company, Sterling Power Partners, Ltd. and East Syracuse Generating Company, L.P. provided that (i) such committee shall not be entitled to demand specific terms and conditions and (ii) the approval of such committee, if unanimously recommended by the Underwriters, shall not be unreasonably withheld. The Company agrees that (x) the aggregate principal amount of the Debt Securities issued in connection with the Public Offering shall not exceed three billion two hundred million (\$3,200,000,000) dollars, (y) the Debt Securities shall be priced to trade initially at par and (z) unless applicable securitization legislation is enacted in the State of New York and the Debt Securities are securitized pursuant thereto, the Debt Securities shall be general unsecured obligations of the Company.

(b) The Company covenants and agrees that, as of its effective date and as of the Consummation Date, none of the registration statement prepared by the Company in connection with the offering of the Debt Securities (the "Debt Registration Statement"), any document incorporated by reference therein, any prospectus included therein or filed with the SEC, or any amendment thereof or supplement thereto, shall contain any untrue statement of a material fact or omit to state a material fact required to be stated therein or necessary to make the statements therein not misleading. The Company shall provide the IPPs' Special Counsel with all drafts of the Debt Registration Statement and any such prospectus, amendment or supplement, as the case may be, which are provided to the Underwriters a reasonable period of time prior to the filing of same with the SEC, and shall provide the IPPs' Special Counsel with copies of all correspondence from or with the SEC incidental to the Debt Registration Statement or any such prospectus, amendment or supplement.

(c) If the Debt Securities are to receive a credit rating of less than investment grade, the Debt Securities shall be underwritten by (i) DLJ, acting as lead manager, (ii) WP&Co., acting as a co-manager, and (iii) by such additional investment banking firms selected by the Company, acting as co-managers (collectively, the "Underwriters"). The Public Offering shall bear the usual and customary fees and expenses, consistent with high-yield financings of similar type, which fees and expenses shall be borne solely by the Company. DLJ and WP&Co. shall have the right to attend all material presentations to rating agencies and investors in connection with the Public Offering.

6.2. Sale/Leaseback; Tax-Free Exchanges. Upon the request of any IPP made within sixty (60) days after the date of this Agreement containing a specific proposal by such IPP with respect thereto, the Company shall conduct good faith negotiations and use its Reasonable Best Efforts to modify the transactions contemplated by this Agreement with respect to such IPP in a mutually acceptable manner in order to effect the Restructuring through (a) sale and leaseback arrangements of the Project facilities of such IPP or (b) a transaction that qualifies as a "reorganization" under Section 368(a) of the

Code (and any corresponding provision of applicable state or local law), provided, however, that the Company will not be obligated to modify the transactions contemplated by this Agreement with respect to such IPP if (i) in the Company's reasonable judgment, such modification would have a material adverse effect on the timing of the Restructuring contemplated by this Agreement, the anticipated tax effect on the Company of the Restructuring, the implementation of the NMPC Restructuring, or the Company's ability to complete the sale of the Debt Securities on terms reasonably satisfactory to it, or would require the Company to incur additional costs or liabilities, including contingent liabilities (net of the value of any asset assumed), other than normal and customary incidental out-of-pocket costs and expenses and attorneys' fees or (ii) as a result thereof, IPPs would receive (in the aggregate), with respect to Class A PPAs, a portion of the Cash Payment and Company Shares of less than \$2,000,000,000 (except to the extent that such amount is reduced as a result of the termination of this Agreement with respect to any IPPs which are parties to Class A PPAs).

6.3. Proxy Statement. In connection with the preparation and filing of the proxy statement to be distributed in connection with the special meeting of the Company's shareholders to be called to consider for approval certain of the transactions contemplated by this Agreement under the Exchange Act (the "Proxy Statement"), the Company shall provide the IPPs' Special Counsel with all drafts of the Proxy Statement and each amendment of the Proxy Statement, in each case which are provided to the Underwriters, a reasonable period of time prior to the filing of same with the SEC, and shall provide the IPPs' Special Counsel with copies of all correspondence from or with the SEC incidental to the Proxy Statement and any such amendment. The Company covenants and agrees that, as of its distribution date, none of the Proxy Statement or any amendment thereof, or any document incorporated by reference therein, shall contain any untrue statement of a material fact or omit to state a material fact required to be stated therein or necessary to make the statements therein not misleading. Subject to applicable fiduciary duties, the Proxy Statement shall contain a statement of the Company's Board of Directors recommending approval of this Agreement and the transactions contemplated hereunder to the Company's shareholders.

6.4. NMPC Restructuring.

(a) The Parties acknowledge the existence of the Company's proposed corporate restructuring and disaggregation in connection with its *PowerChoice* proposal (the "NMPC Restructuring") and agree that the Restructuring contemplated by this Agreement is an integral and substantial part of the NMPC Restructuring. The Company shall disclose to the IPPs all material plans and proposals concerning the NMPC Restructuring which are disclosed to any Governmental Authority (including but not limited to PSC staff) or approved by the Board of Directors of the Company, and which could reasonably have a material adverse effect on any IPP or the Restructuring, including but not limited to the Contracts or any of the consideration to be received by

the IPPs hereunder. Except as expressly set forth in this Agreement, each IPP shall be free to oppose or challenge any aspect of the NMPC Restructuring which such IPP deems to be adverse to the interests of such IPP or its Affiliates.

(b) If at any time, whether before or after the Consummation Date, the Company restructures its corporate structure or assets, including by creating any new entities that hold significant assets, whether in connection with the NMPC Restructuring or otherwise, then in no event shall the IPPs or their assigns, in their respective capacities as holders of Common Stock or Short-Term Notes or as parties to the Contracts, be treated less favorably in any material respect than other similarly-situated holders of Common Stock or Short-Term Notes or parties to comparable agreements (including comparable agreements between the Company and/or its Affiliates) are treated in their capacities as such. In addition, in the event of any such restructuring, each of the Contracts will be assigned to and assumed by the entity or entities owning all or substantially all of the Company's electric transmission and distribution assets or, if separated from the Company's electric transmission assets pursuant to the restructuring, the Company's electric distribution assets, provided that, upon the effective date of the restructuring, (i) the assuming entity's performance under the Contracts shall be unconditionally guaranteed, pursuant to a guarantee in form and substance reasonably satisfactory to the IPP (or its assign) under any such Contract, by each of the other entities arising out of the restructuring, including any entity(ies) spun-off to the Company's shareholders or any Affiliate of the Company holding significant assets held by the Company (or any subsidiary of the Company) prior to the restructuring, unless the assuming entity's long-term unsecured debt credit rating issued by Moody's Investors Service, Standard & Poor's Corporation or another nationally recognized rating agency is at least as favorable as the Company's long-term unsecured debt credit rating immediately prior to the effective date of the restructuring, and (ii) if the assuming entity is not the entity which will collect from customers the Competitive Transition Charge approved by the PSC pursuant to the PSC Approval, the assuming entity's performance under the Contracts shall be unconditionally guaranteed, pursuant to a guarantee in form and substance reasonably satisfactory to the IPP (or its assign) under any such Contract, by the entity(ies) which will collect from customers the Competitive Transition Charge approved by the PSC pursuant to the PSC Approval. In the event of any such restructuring, the IPP (or its assign) under any such Contract(s) shall have the right to replace its Contract(s), as applicable, with power purchase and/or hedging contractual arrangements substantially equivalent to those that are entered into between the entity(ies) holding the transmission and/or distribution assets of the Company or which will collect from customers the Competitive Transition Charge approved by the PSC pursuant to the PSC Approval and the entity(ies) holding the non-nuclear generating assets of the Company, whether or not such assets are spun-off to the Company's shareholders (a "Genco Contract"), provided that the term, price and quantity under such IPP's Contract(s) shall not be altered thereby, unless any of such terms are materially and



expressly conditioned by certain provisions in the Genco Contract, in which case appropriate and equitable adjustments in such terms shall be mutually agreed upon.

6.5. Hart-Scott-Rodino Act Notification. Each IPP or its designee with respect to Company Shares shall make its own determination of whether it (or any of its Affiliates) is required to file the Notification and Report Form for Certain Mergers and Acquisitions pursuant to the Hart-Scott-Rodino Act in connection with the transactions contemplated by this Agreement. Any IPP or designee that determines it (or any of its Affiliates) is so required shall file such Notification and Report Form in a timely manner, and shall give notice thereof to the Company. The Parties shall make all required filings and shall cooperate with each other in connection with such filings and any responses thereto. The Company shall pay all filing fees required to be paid under the Hart-Scott-Rodino Act in connection with the acquisition of the Company Shares hereunder, as and when the applicable filings are made; the Company's obligation to pay any such fee incurred by an IPP prior thereto shall survive the Consummation Date or any termination of this Agreement (either in its entirety or with respect to such IPP).

6.6. Regulatory Approvals.

(a) The Company shall use Reasonable Best Efforts to seek and obtain, on or before the Expiration Date, each Regulatory Approval which is set forth in a notice given to the IPPs' Special Counsel promptly after it determines that such Regulatory Approval is desired or required, specifying the need therefor and the nature thereof in reasonable detail (collectively, the "NMPC Regulatory Approvals"). All NMPC Regulatory Approvals shall be sought in the order and in the manner which the Company, after consultation with the IPP Representatives, believes will be most likely to result in receipt of the NMPC Regulatory Approvals prior to the Expiration Date.

(b) Each IPP shall use Reasonable Best Efforts to seek and obtain, on or before the Expiration Date, each Regulatory Approval applicable to such IPP which is set forth in a notice given to the Company promptly after it determines that such Regulatory Approval is desired or required, specifying the need therefor and the nature thereof in reasonable detail (collectively, the "IPP Regulatory Approvals"). All IPP Regulatory Approvals shall be sought in the order and in the manner which each IPP, after consultation with the IPP Representatives and, with respect to any filings to be made to the PSC or the FERC (excluding any filings pertaining to an IPP's status, rights or obligations as a QF or EWG or any of such IPP's rights or obligations pursuant to PURPA), after consultation with the Company, believes will be most likely to result in receipt of the IPP Regulatory Approvals prior to the Expiration Date.

(c) Notwithstanding anything to the contrary contained in Sections 6.6(a) or 6.6(b), the Company shall use its Reasonable Best Efforts to submit this Agreement, together with all other requisite documents and instruments, to the PSC

within fourteen (14) days following the date of this Agreement, for purposes of obtaining the PSC's approval and order solely with respect to the matters set forth in Schedule 6.6C hereto (such approval and order being referred to herein as the "PSC Approval").

(d) In the event that this Agreement and/or any of the transactions contemplated hereby could reasonably subject any IPP, its partners or Affiliates, individually or collectively, to become subject to any regulation or jurisdiction of any Governmental Authority from which they were previously exempt (including but not limited to SEC or FERC regulation under PUHCA, PSC regulation under NYPSL, and FERC regulation under the Federal Power Act), then (i) such IPP and the Company shall use their Reasonable Best Efforts to seek and obtain appropriate exemptions or waivers prior to the Consummation Date (provided the Company shall not be required to use its Reasonable Best Efforts to assist an IPP in obtaining an exemption from PUHCA with respect to such IPP's and/or such IPP's Affiliates' ownership of 10% or more of the Common Stock of the Company, if applicable), (ii) if such exemptions or waivers cannot be obtained, such IPP and the Company shall use their Reasonable Best Efforts to conform this Agreement and/or the transactions contemplated hereby prior to the Consummation Date in a manner mutually satisfactory to such IPP and the Company and the other Parties hereto as may be necessary in order for such IPP, its partners or Affiliates, to avoid becoming subject to such regulation or jurisdiction and (iii) if such exemptions or waivers cannot be obtained and if this Agreement and/or the transactions contemplated hereby cannot be so conformed, the provisions of Section 12.2(c)(iii) shall be applicable.

6.7. Cooperation with respect to Regulatory Approvals.

(a) From the date of this Agreement until the earlier to occur of (x) the Effective Time, (y) the termination of this Agreement in its entirety or (z) with respect to any individual IPP, the termination of this Agreement with respect to such IPP, the Parties shall cooperate with each other in preparing and filing any and all submissions to the FERC, PSC, SEC and other Governmental Authorities in order to obtain any Regulatory Approvals. The Parties, in conjunction with the IPP Representatives and DLJ, shall form a committee to prepare and make a joint presentation to the PSC and/or the PSC staff (if the PSC so permits) in connection with the submission of this Agreement to the PSC pursuant to Section 6.6(c). The Company shall consult with the IPP Representatives on a regular basis in developing overall regulatory strategies, and shall provide the IPP Representatives with a draft copy of each filing for NMPC Regulatory Approvals to be made by the Company with the PSC, FERC, SEC or any other Governmental Authority in connection with the Restructuring, a reasonable period of time prior to the anticipated filing of same, and shall inform the IPP Representatives of any material changes therein. The Company shall at all times keep the IPP Representatives fully apprised of the status of all applications for NMPC Regulatory Approvals, including with respect to all material discussions with Governmental

Authorities (including PSC staff), and shall provide the IPPs with copies of all correspondence given to or received from any Governmental Authority in connection therewith. Each IPP shall provide the Company with a draft copy of each filing to be made by such IPP concerning NMPC Regulatory Approvals a reasonable period of time prior to the anticipated filing of same, shall inform the Company of any material changes therein, and shall at all times keep the Company fully apprised of all applications made by such IPP concerning NMPC Regulatory Approvals, including with respect to all material discussions with Governmental Authorities (including PSC staff) concerning NMPC Regulatory Approvals. Except as expressly set forth in this Agreement, nothing contained herein shall limit or restrict any IPP from opposing or challenging any application for an NMPC Regulatory Approval which such IPP deems to be adverse to the interests of such IPP or its Affiliates, and nothing contained herein shall limit or restrict the Company from opposing or challenging any application for an IPP Regulatory Approval which the Company deems to be adverse to its interests. Nothing contained in this Agreement shall require any IPP to disclose the Allocation, any portion thereof or any information contained therein to any Governmental Authority except as set forth in Section 3.4.

(b) The Company, upon request and at the expense of any requesting IPP, and each IPP, upon request and at the expense of the Company, shall use Reasonable Best Efforts to assist the other Party to obtain any Regulatory Approval that is required to be obtained, provided, however, that (i) a Party that is exempt from regulation or jurisdiction of any Governmental Authority as of the date of this Agreement shall not be required to take any steps in assistance to another Party that could reasonably subject it, its partners or Affiliates to the regulation or jurisdiction of any Governmental Authority from which it or they were previously exempt, (ii) no Party shall be required pursuant to this Section 6.7 to support any position taken by any other Party except as may otherwise be expressly set forth in this Agreement and (iii) the Company shall not be required to use its Reasonable Best Efforts to assist an IPP in obtaining an exemption from PUHCA with respect to such IPP's and/or such IPP's Affiliates' ownership of 10% or more of the Common Stock of the Company, if applicable.

(c) The Parties shall endeavor to maintain the confidentiality of any information that one or more Parties deem commercially sensitive (which the Parties agree shall include, without limitation, the designation of which Existing PPAs are set forth on Schedules 2.1, 2.2 and 2.3 hereof, respectively), and shall cooperate in seeking trade secret protection or other appropriate confidential treatment for commercially sensitive information that is submitted to any Governmental Authority in the course of obtaining any Regulatory Approval. Any Party seeking to maintain confidentiality of such information shall notify the other Parties of such desire upon delivery of such information.

**6.8. Cooperation with respect to IPP/Third Party Consents and NMPC/Third Party Releases.**

(a) Upon an IPP's request, the Company agrees to use its Reasonable Best Efforts, in a timely manner, to assist the IPP (including, without limitation, by providing relevant consents, representations and warranties) to amend, restructure, assign or terminate its existing third party agreements, including but not limited to fuel supply, transportation, financing, lease, operations and steam supply agreements, relating to or arising out of such IPP's Project or Existing PPA or the termination, amendment or amendment and restatement, as the case may be, of such IPP's Existing PPA, in each case in a manner that (i) will enable such IPP to obtain the IPP/Third Party Consents required or desired to be obtained by such IPP and (ii) will accommodate the terms of this Agreement without reducing its economic value to such IPP and otherwise in a manner reasonably satisfactory to such IPP.

(b) Upon the Company's request, each IPP agrees to use its Reasonable Best Efforts, in a timely manner, to assist the Company (including, without limitation, by providing relevant consents, representations and warranties) in connection with the Company's efforts to obtain a waiver, release, amendment or termination of the Company's obligations under existing third party agreements with lenders, suppliers and other third parties which the Company previously has entered into at the request or on behalf of any IPP and which relate to or arise out of such IPP's Project or Existing PPA (each, an "NMPC/Third Party Agreement") and which waiver, release, amendment or termination is desired by the Company to be obtained in connection with the termination, amendment or amendment and restatement, as the case may be, of such IPP's Existing PPA as contemplated by this Agreement. Each IPP agrees to perform a diligent review of its files and provide to the Company, within thirty (30) days after the date of this Agreement, a schedule of all NMPC/Third Party Agreements disclosed by such review, but the IPP shall have no liability to the Company or any third party in the event such review does not disclose all NMPC/Third Party Agreements with respect to which the Company may desire to obtain a waiver, release, amendment or termination as a result of the transactions contemplated hereby. Any waiver, release, amendment or termination required to be obtained with respect to any NMPC/Third Party Agreement is referred to herein as an "NMPC/Third Party Release."

**6.9. Performance under Existing PPAs.**

(a) From the date of this Agreement until the earlier to occur of (x) the Effective Time, (y) the termination of this Agreement in its entirety or (z) with respect to any individual IPP, the termination of this Agreement with respect to such IPP, the Parties agree and stipulate that the Existing PPAs shall continue with the same force and effect as if this Agreement had not been executed by any Party, and the Parties (respectively) shall continue to perform all obligations, covenants and agreements

required to be performed by them pursuant to the terms of the Existing PPAs, provided that no IPP, regardless of the terms of its Existing PPA, shall be subject to (i) any Curtailment or (ii) any claim that electricity produced and delivered to the Company by such IPP exceeds the estimates of energy in megawatt-hours and capacity in megawatts set forth in its Existing PPA.

(b) From the date of this Agreement until the earlier to occur of (x) the Effective Time, (y) the termination of this Agreement in its entirety or (z) with respect to any individual IPP, the termination of this Agreement with respect to such IPP, the Company (i) shall not initiate or continue any request for regulatory authorization or any regulatory proceeding with respect to, and if authorized to do so (whether before or after the date of this Agreement) will not implement or enforce, any Curtailment, adequate assurances (including firm security) or other regulatory initiative which is reasonably likely to have a material adverse effect on any IPP or the Restructuring, including but not limited to the Contracts or any of the consideration to be received by any IPP hereunder and (ii) shall not implement or continue to implement any QF Monitoring Program as to any IPP.

(c) Notwithstanding the provisions of Section 6.9(a) and (b), in the event that the PSC mandates that the Company implement or enforce any Curtailment with respect to any IPP that is a Party to this Agreement, the Company agrees that it shall jointly seek, with any such affected IPP, a PSC and, if necessary, judicial stay of such Curtailment, on the grounds that the Curtailment would result in substantial injury to the IPP and, to the extent it could affect the consummation of the transactions contemplated by this Agreement, the Parties. In addition, each of the Company and any such affected IPP shall be free to assert any other grounds it deems appropriate in order to oppose the Curtailment. The Company shall oppose any effort of the PSC to mandate Curtailments with respect to any IPP which is a Party to this Agreement. If, notwithstanding the Company's and such IPP's joint efforts, the PSC or a court of competent jurisdiction mandates such Curtailment, then nothing contained in this Agreement shall prohibit the Company from implementing or enforcing such Curtailment to the minimum extent required by such mandate, provided that the foregoing shall not be deemed to waive any rights such IPP may have under this Agreement, pursuant to law or otherwise to restrict, limit or oppose the implementation or enforcement of such Curtailment. Nothing contained in this Section 6.9(c) shall be deemed to authorize the Company to implement or enforce any Curtailment with respect to any Existing PPA to the extent such Existing PPA prohibits or limits the Company from implementing or enforcing such Curtailment.

(d) Notwithstanding the provisions of sub-clause (z) in each of Section 6.9(a) and (b) and in Section 6.10(b), if this Agreement shall terminate with respect to NorCon pursuant to Section 2.5, the provisions of Sections 6.9(a) and (b) shall continue to apply to NorCon (subject to sub-clauses (x) and (y) thereof) until December 1, 1997, and the provisions of Section 6.10(b), insofar as they may pertain to Curtailment, shall

continue to apply to NorCon (subject to sub-clauses (x) and (y) thereof) until December 1, 1997.

**6.10. Stay of Litigation.**

(a) Promptly following the date of this Agreement, each Party shall use Reasonable Best Efforts to stay the pending litigation and regulatory proceedings listed in Schedules 6.10A and 6.10B, if applicable to such Party, with such stays to remain in effect until the earlier to occur of (x) the Effective Time, (y) the termination of this Agreement in its entirety or (z) with respect to any individual IPP, the termination of this Agreement with respect to such IPP. With respect to those proceedings listed in Schedule 6.10B, each Party shall (i) use Reasonable Best Efforts to stay the pending proceedings and (ii) whether or not such stay is granted, if any Party desires to continue its participation in such proceeding as a result of the last sentence of this Section 6.10(a), each Party shall use Reasonable Best Efforts to obtain an order from the court in each such proceeding stating that the disposition of such proceeding will not have any material adverse impact on the Existing PPAs or on the claims asserted by the Company with respect to the Existing PPAs in such proceedings. The Parties, as promptly as practicable after the date of this Agreement, shall determine the appropriate judicial or regulatory bodies to which to apply, and the text of the necessary notices, motions or applications to be filed, in order to effectuate the stays and/or obtain the orders contemplated by the provisions of this Section, and promptly shall file the same with such bodies. Notwithstanding whether any such litigation or proceedings shall be stayed, the rights and obligations of the Parties pursuant to this Agreement shall not be affected by any judgment, ruling, order, decision or other action which may be issued or rendered in any such litigation or proceeding between the date of this Agreement and the Consummation Date except as otherwise provided in Sections 8.5 and 9.5, and no Party shall seek to enforce such judgment, ruling, order, decision or other action against any other Party. The obligations of the Parties pursuant to this Section 6.10(a) shall be subject to the condition that no Party shall be required to take any action or suffer any inaction, that would lead to forfeiture, loss of rights, imposition of sanctions or penalties, or otherwise cause a material adverse impact on its prospects for success with respect to any such litigation or regulatory proceeding with respect to itself or third parties; but any action necessary to avoid any such result shall to the maximum extent possible avoid any material adverse impact (including the incurrence of any cost or expense) upon any other Party.

(b) From the date of this Agreement until the earlier to occur of (x) the Effective Time, (y) the termination of this Agreement in its entirety or (z) with respect to any individual IPP, the termination of this Agreement with respect to such IPP, (i) the Company shall refrain from commencing any new litigation or regulatory proceeding the outcome of which could have a material adverse effect on any IPP or any IPP's rights or obligations under its Existing PPA, including the purchase of power thereunder, (ii) each

IPP shall refrain from commencing any new litigation or regulatory proceeding potentially adversely affecting the Company or the Company's rights or obligations under the Existing PPAs, including the purchase of power thereunder, except that an IPP may commence any such litigation or proceeding, or assert any claim, in response to any action or proceeding, including but not limited to any proceeding with respect to Curtailment, initiated (whether before or after the date of this Agreement) by the Company or any Governmental Authority and except, further, that each Party may commence any litigation or proceeding, or assert any claim, arising out of any breach of this Agreement or of any Existing PPA or other agreement relating to the delivery of power under an Existing PPA, and (iii) each Party accordingly agrees to waive any statute of limitations for such period that would otherwise bar such proceedings unless commenced during such period.

(c) The Parties, within thirty-five (35) days after the date of this Agreement, also shall determine the appropriate judicial and regulatory bodies to which to apply, and the text of the necessary notices, motions or applications to be filed, in order to effectuate the dismissals and withdrawals contemplated by the provisions of Sections 8.8(b) and 9.8(b), which are to be delivered and subsequently filed pursuant to such Sections as of the Consummation Date.

6.11. Conduct of Business. Except as expressly permitted by this Agreement or set forth in Schedule 6.11, from the date of this Agreement until the Consummation Date, the Company (a) shall conduct the business and operations of the Company in accordance with past practice and in the ordinary course of business; (b) shall not enter into any transaction or perform (or fail to perform) any act which would constitute a material breach of the representations, warranties, covenants and agreements of the Company contained herein, whether as of the date of this Agreement or as of the Consummation Date; (c) shall not make any amendment or modification of the Certificate of Incorporation or By-Laws of the Company which would be reasonably likely to have a material and adverse effect on any rights of the IPPs pursuant to this Agreement or any agreement to be entered into pursuant hereto; (d) shall not effect any issuance, sale or other disposition of any shares of the Company's capital stock; (e) shall not make any declaration, setting aside, or payment or other distribution in cash or property in respect of any of the Company's capital stock, or any direct or indirect redemption, purchase, or other acquisition of any of such stock by the Company; and (f) shall not make any material change or increase in any compensation arrangement or agreement (including but not limited to any grant of stock appreciation rights) with any officer, director or executive employee of the Company outside the ordinary course of business. In addition, the Company shall promptly notify the IPPs of any happening or event which has, or which is reasonably likely to result in, a Material Adverse Effect on the Company.

6.12. Public Disclosure. Except as otherwise provided in this Agreement, from the date of this Agreement until the Consummation Date or sooner termination of this

Agreement in its entirety, no Party to this Agreement shall directly or indirectly make or cause to be made any public announcement or issue any public notice in any form with respect to this Agreement or the transactions contemplated hereby, without the consent of the other Parties except if in the opinion of such Party's counsel it is required by the securities laws of the United States or the rules of the NYSE or any other securities exchange or market on which the securities of such Party or its Affiliates are quoted or traded to make such disclosure. The Parties agree, to the extent practicable, to consult with each other regarding any such public announcement in advance thereof.

6.13. Further Assurances. Subject to the terms and conditions herein provided, each of the Parties hereto agrees to use its Reasonable Best Efforts to take promptly, or cause to be taken promptly, all actions and to do promptly, or cause to be done promptly, all things necessary, proper or advisable under applicable laws to consummate and make effective the transactions contemplated by this Agreement, and to satisfy all of the conditions to the consummation of the transactions contemplated by this Agreement to be satisfied by such Party, including using its Reasonable Best Efforts to obtain all necessary consents, approvals, qualifications, orders, authorizations, extensions, waivers, exemptions and other actions or inactions from all applicable Governmental Authorities, third parties, boards of directors, shareholders and partners, and effecting all necessary registrations and filings.

6.14. No Accumulation. Each IPP covenants and agrees that from the date of this Agreement until the earlier to occur of (x) the Effective Time, (y) the termination of this Agreement in its entirety or (z) the termination of this Agreement with respect to such IPP, it shall not, directly or indirectly, alone or in concert with others, except for the acquisition of the Company Shares pursuant to this Agreement, acquire, offer to acquire or agree to acquire, by purchase, gift or otherwise, beneficial ownership (within the meaning of Rule 13d-3 under the Exchange Act) of any of the Company's outstanding Common Stock. Each IPP covenants and agrees that such IPP, together with any Affiliates of such IPP (to the knowledge of such IPP, without any duty of inquiry, with respect to any Affiliates of such IPP), shall not, on the Consummation Date, be the beneficial owner (within the meaning of Rule 13d-3 under the Exchange Act) of more than five percent (5%) of the then outstanding Common Stock of the Company (assuming the number of shares of Common Stock outstanding as of the Consummation Date is not less than 190,390,600 shares) except for a certain group of Affiliate IPPs who shall be the beneficial owners of not more than five and six-tenths percent (5.6%) of the then outstanding Common Stock of the Company.

6.15. Tax Rulings. The Company agrees to permit the IPPs' Special Counsel, and each IPP agrees to permit the Company's tax counsel, to review and comment on all requests for federal, state or local tax rulings to be made in connection with the Restructuring, and to provide to such other Party's counsel copies of all tax ruling requests a reasonable period of time prior to the submission of same. The Company



hereby consents to the IPPs seeking such tax rulings within the meaning of, and agrees to pay the fees and expenses of the IPPs' Special Counsel in connection with any such tax ruling requests pursuant to, the IPPs' Special Counsel Fee Letter.

**7. INTENTIONALLY LEFT BLANK**

**8. CONDITIONS TO EACH IPP'S OBLIGATIONS ON THE CONSUMMATION DATE**

The obligations of each IPP (severally and not jointly) to consummate the Restructuring and make the deliveries specified in Section 10 to be made by it on the Consummation Date are subject to the satisfaction on or before the Consummation Date (or, if otherwise set forth in Section 10.1(c), the Conditions Determination Date) of each of the following conditions, the waiver of which shall not be effective against any IPP unless such IPP gives its consent in writing thereto or such waiver is deemed to be given pursuant to Section 10.1(c):

8.1. Representations and Warranties. The representations and warranties of the Company contained in Section 4 shall be true in all material respects on and as of the Consummation Date with the same effect as though such representations and warranties had been made on and as of the Consummation Date (or on the date when made in the case of any representation or warranty which expressly relates to an earlier date).

8.2. Performance. The Company shall have performed and complied in all material respects with all agreements, obligations, covenants and conditions contained in this Agreement that are required to be performed or complied with by it on or before the Consummation Date.

8.3. Representation Letter; Secretary's Certificate; Opinion of the Company's Counsel. The IPP shall have received on the Consummation Date (a) a representation letter executed by the Company in substantially the form annexed as Exhibit 8.3A, (b) a certificate of the Secretary of the Company certifying (i) the Certificate of Incorporation and By-Laws of the Company, (ii) the resolutions of the Board of Directors and shareholders of the Company authorizing the transactions contemplated by this Agreement and (iii) the incumbency of any officers of the Company executing this Agreement or any agreements to be executed by the Company pursuant hereto, in form and substance reasonably satisfactory to such IPP, and (c) an opinion, from Sullivan & Cromwell and/or Swidler & Berlin, outside counsel for the Company, dated the Consummation Date, in substantially the form annexed as Exhibit 8.3C.

8.4. Regulatory Approvals. The IPP shall have received on or before the Consummation Date each IPP Regulatory Approval and, if the IPP will benefit therefrom

or be affected thereby, any NMPC Regulatory Approval set forth in the NMPC Status Notice, in a form reasonably acceptable to the IPP, and each such Regulatory Approval shall be in full force and effect and either (i) shall be final and non-appealable or (ii) if not final and non-appealable, shall not be subject to the possibility of appeal, review or reconsideration which, in the opinion of the IPP, is reasonably likely to be successful and, if successful, would have a Material Adverse Effect on such IPP.

8.5. No Injunction, Action or Proceeding. (a) No court or Governmental Authority of competent jurisdiction shall have enacted, issued, promulgated, enforced or entered any law, statute, ordinance, rule, regulation, judgment, decree, injunction or other order (whether temporary, preliminary or permanent) that is in effect on the Consummation Date and which restrains, enjoins or otherwise prohibits consummation of the transactions contemplated hereby and (b) no claim, action, suit, investigation or other proceeding brought by a Governmental Authority or third party concerning the transactions contemplated by this Agreement shall be pending which in the opinion of such IPP is reasonably likely to be successful and which, if adversely determined, would grant relief from or against such IPP which is reasonably likely to have a Material Adverse Effect on such IPP.

8.6. No Material Adverse Event. Between September 30, 1996 and the Consummation Date, there shall not have occurred any event or condition (including but not limited to any action or inaction of any Governmental Authority) which has had or may reasonably be expected to have a Material Adverse Effect on the Company (provided, however, that neither (i) the impact of the Existing PPAs nor (ii) the transactions contemplated by this Agreement shall constitute a Material Adverse Effect on the Company).

8.7. Contracts. The Company and the IPP shall have executed and delivered to the Escrow Agent the respective Termination Agreement, Amended PPA, Restated Contract(s), NorCon Agreement or Oxbow Agreement, as applicable, in accordance with Section 2.8, on or before the Conditions Determination Date.

8.8. General Release; Withdrawal of Litigation.

(a) The IPP shall have received from the Company on the Consummation Date a general release, in form and substance reasonably satisfactory to the IPP, of all claims, liabilities or obligations of or against the IPP which the Company had, has or may have with respect to facts, circumstances or occurrences existing on or arising at any time through and including the Effective Time arising out of or in connection with such IPP's Existing PPA, except claims, liabilities or obligations (i) arising out of or in connection with this Agreement, (ii) arising out of or in connection with any litigation, regulatory proceedings or pleadings which are not to be dismissed and withdrawn (or effectively withdrawn) by the Company pursuant to Section 8.8(b) and (iii)

unless dismissed or withdrawn pursuant to Section 8.8(b), arising out of or in connection with any payment due to the Company, whether or not disputed, for any services provided by the Company pursuant to the Existing PPA or any related gas transportation, peak shaving, interconnection or other related agreement between the Company and the IPP, provided that if such payment relates to any period more than sixty (60) days prior to the date of this Agreement the Company's entitlement to such payment shall have been set forth in a writing given to the IPP on or before June 15, 1997. The Parties acknowledge and agree that all claims, liabilities and obligations relating to tracking, adjustment or advance payment account provisions under any Existing PPA shall be extinguished as of the Effective Time (and such extinguishment shall be reflected in the general release).

(b) In addition, the IPP shall have received from the Company (i) an original counterpart of a stipulation or other appropriate document(s), in form and substance reasonably satisfactory to the IPP, sufficient to dismiss or withdraw as to the IPP (except as otherwise provided in the footnotes thereto) the litigation, proceedings and pleadings, as the case may be, listed on Schedule 8.8 with respect to such IPP and (ii) with respect to the proceedings listed on Schedule 6.10B, an original counterpart of a stipulation or other appropriate document(s), in form and substance reasonably satisfactory to the IPP, sufficient to effectively withdraw such proceedings as to the IPP, in each case by the Company, with prejudice and with no costs awarded, as of the Consummation Date. Following the Consummation Date the Company shall take promptly, or cause to be taken promptly, all actions and to do promptly, or cause to be done promptly, all things necessary, proper or advisable as may be requested by the IPP to file all such documents and fully effectuate all such dismissals and withdrawals.

#### 8.9. Intentionally Left Blank.

8.10. Third Party Contracts; IPP Approvals. The IPP (a) (i) shall have obtained a satisfactory amendment, restructuring, assignment or termination of, or consents or approvals with respect to, or releases from, its existing third party agreements, including but not limited to fuel supply, transportation, financing, lease, operations and steam supply agreements, relating to or arising out of such IPP's Existing PPA or the termination, amendment or amendment and restatement, as the case may be, of such IPP's Existing PPA and (ii) with respect to any IPP which is not entering into a Termination Agreement, shall have entered into new third party agreements with fuel suppliers, transporters, lenders, lessors, power and fuel marketers and other third parties, in the case of both (i) and (ii) in a manner that (x) will enable such IPP to restructure its Project on an economic basis reasonably satisfactory to such IPP and (y) will accommodate the terms of this Agreement without reducing the economic value of the transactions contemplated by this Agreement to such IPP and otherwise in a manner reasonably satisfactory to such IPP (each, an "IPP/Third Party Consent") and (b) shall have obtained all other necessary or appropriate approvals, including corporate and partnership

approvals of the IPP and its partners of the transactions contemplated by this Agreement (each, an "IPP Approval").

8.11. Gas Mitigation. The IPP shall be reasonably satisfied that all liabilities and obligations of all Gas IPPs to all Gas Mitigation Third Parties have been released, satisfied or amended or will be released, satisfied or amended as of the Consummation Date, in a manner that (x) will enable such IPP to restructure its Project on an economic basis reasonably satisfactory to such IPP and (y) will accommodate the terms of this Agreement without reducing its economic value to such IPP and otherwise in a manner reasonably satisfactory to such IPP.

8.12. Registration of Company Shares. With respect to the Company Shares, (a) the Shelf Registration Statement (in accordance with the terms set forth in Section 3.6) shall have been declared effective by the SEC, shall be effective as of the Consummation Date, no stop order or similar proceeding relating to the Shelf Registration Statement shall be pending or threatened, and there shall be no happening or event which requires the Company to amend or supplement the Shelf Registration Statement (unless such amendment or supplement has been filed) or which otherwise prevents the sale by the IPP of any Company Shares pursuant to the Shelf Registration Statement as of and after the Consummation Date (and, in furtherance thereof, the Company shall file not later than the next Business Day following the Consummation Date its Current Report on Form 8-K disclosing the consummation of the Restructuring), (b) the Company shall have taken such action as shall be necessary to qualify, or to obtain an exemption for, the sale to the IPPs pursuant to this Agreement of the Company Shares under such of the securities laws of jurisdictions in the United States as shall be applicable to the sale of the Company Shares pursuant to the Shelf Registration Statement and (c) the Company Shares shall have been duly listed on the NYSE.

8.13. Payment of Fees. The fees and expenses of WP&Co., the IPPs' Special Counsel and the IPPs' Local Regulatory Counsel incurred through and including the Consummation Date that the Company has agreed to pay pursuant to the WP&Co. Fee Letter, the IPPs' Special Counsel Fee Letter and the IPPs' Local Regulatory Counsel Fee Letter, respectively, and the fees and expenses of the Depositary incurred through and including the Consummation Date, shall have been paid in full at or prior to the Consummation Date.

## 9. CONDITIONS TO THE COMPANY'S OBLIGATIONS ON THE CONSUMMATION DATE

The obligations of the Company to consummate the Restructuring and make the deliveries specified in Section 10 to be made by it on the Consummation Date with respect to each IPP (severally but not jointly) are subject to the satisfaction on or before

the Consummation Date (or, if otherwise set forth in Section 10.1(b), the Conditions Determination Date) of each of the following conditions, the waiver of which shall not be effective against the Company unless the Company gives its consent in writing thereto or such waiver is deemed to be given pursuant to Section 10.1(b):

9.1. Representations and Warranties. The representations and warranties of such IPP contained in Section 5 shall be true in all material respects on and as of the Consummation Date with the same effect as though such representations and warranties had been made on and as of the date of the Consummation Date (or on the date when made in the case of any representation or warranty which expressly relates to an earlier date).

9.2. Performance. Such IPP shall have performed and complied in all material respects with all agreements, obligations, covenants and conditions contained in this Agreement that are required to be performed or complied with by it on or before the Consummation Date.

9.3. Representation Letter; Secretary's Certificate; Opinion of IPP's Counsel. The Company shall have received on the Consummation Date (a) a representation letter executed by such IPP in substantially the form annexed as Exhibit 9.3A, (b) a certificate of the Secretary of such IPP (or the managing general partner of such IPP) certifying (i) the resolutions of the Board of Directors and shareholders of such IPP (or such managing general partner) or partners of such IPP authorizing the transactions contemplated by this Agreement and (ii) the incumbency of the officers of such IPP executing this Agreement or any agreements to be executed by such IPP pursuant hereto, in form and substance reasonably satisfactory to the Company, and (c) an opinion or opinions from counsel for such IPP (which may be such IPP's in-house counsel), dated the Consummation Date, in substantially the form annexed as Exhibit 9.3C.

9.4. Regulatory Approvals. The Company shall have received on or before the Consummation Date each NMPC Regulatory Approval and, if the Company will benefit therefrom or be affected thereby, any IPP Approval set forth in any IPP Status Notice, in a form reasonably acceptable to the Company, and each such Regulatory Approval shall be in full force and effect and either (i) shall be final and non-appealable or (ii) if not final and non-appealable, shall not be subject to the possibility of appeal, review or reconsideration which, in the opinion of the Company, is reasonably likely to be successful and, if successful, would have a Material Adverse Effect on the Company.

9.5. No Injunction, Action or Proceeding. (a) No court or Governmental Authority of competent jurisdiction shall have enacted, issued, promulgated, enforced or entered any law, statute, ordinance, rule, regulation, judgment, decree, injunction or other order (whether temporary, preliminary or permanent) that is in effect on the Consummation Date and which restrains, enjoins or otherwise prohibits consummation of

the transactions contemplated hereby and (b) no claim, action, suit, investigation or other proceeding brought by a Governmental Authority or a third party concerning the transactions contemplated by this Agreement shall be pending which in the opinion of the Company is reasonably likely to be successful and which, if adversely determined, would grant relief from or against the Company which is reasonably likely to have a Material Adverse Effect on the Company.

9.6. Contracts. The Company and such IPP shall have executed and delivered to the Escrow Agent the respective Termination Agreement, Amended PPA, Restated Contract(s), NorCon Agreement or Oxbow Agreement, as applicable, in accordance with Section 2.8, on or before the Conditions Determination Date.

9.7. NMPC/Third Party Consents and NMPC/Third Party Releases. The Company shall have received (a) the NMPC/Third Party Consents, in form and substance reasonably satisfactory to the Company and (b) the NMPC/Third Party Releases with respect to such IPP, in form and substance reasonably satisfactory to the Company, provided, however, that an NMPC/Third Party Release shall be deemed to have been received by the Company in the event such IPP shall elect, in its sole discretion, to provide the Company with an indemnity, in form and substance reasonably satisfactory to the Company, against any claims of the third party under the NMPC/Third Party Agreement resulting from the termination, amendment or amendment and restatement, as the case may be, of such IPP's Existing PPA.

9.8. General Release; Withdrawal of Litigation.

(a) The Company shall have received from the IPP on the Consummation Date a general release, in form and substance reasonably satisfactory to the Company, of all claims, liabilities or obligations of or against the Company which the IPP had, has or may have with respect to facts, circumstances or occurrences existing on or arising at any time through and including the Effective Time, arising out of or in connection with such IPP's Existing PPA, except claims, liabilities or obligations (i) arising out of or in connection with this Agreement, (ii) arising out of or in connection with any litigation or regulatory proceedings which are not to be dismissed and withdrawn by the IPP pursuant to Section 9.8(b) and (iii) unless dismissed or withdrawn pursuant to Section 9.8(b), arising out of or in connection with any payment due to the IPP, whether or not disputed, for any power or services purchased by the Company pursuant to the Existing PPA or any related gas transportation, peak shaving, interconnection or other related agreement between the Company and the IPP, provided that if such payment relates to any period more than sixty (60) days prior to the date of this Agreement, the IPP's entitlement to such payment shall have been set forth in a writing given to the Company on or before June 15, 1997. The Parties acknowledge and agree that all claims, liabilities and obligations relating to tracking, adjustment or advance

payment account provisions under any Existing PPA shall be extinguished as of the Effective Time (and such extinguishment shall be reflected in the general release).

(b) In addition, the Company shall have received from the IPP an original counterpart of a stipulation or other appropriate document(s), in form and substance reasonably satisfactory to the Company, sufficient to dismiss or withdraw as to the Company by the IPP (except as otherwise provided in the footnotes thereto) the litigation, proceedings and pleadings, if any, as the case may be, listed on Schedule 8.8 with respect to such IPP, with prejudice and with no costs awarded, as of the Consummation Date. Following the Consummation Date the IPP shall take promptly, or cause to be taken promptly, all actions and to do promptly, or cause to be done promptly, all things necessary, proper or advisable as may be requested by the Company to file all such documents and fully effectuate all such dismissals and withdrawals.

9.9. Board and Shareholder Approvals. This Agreement and the transactions contemplated hereby shall have been approved by (a) the Company's Board of Directors and, (b) to the extent required, by the Company's shareholders.

9.10. NMPC Financing. The Company shall have consummated (a) the Public Offering of the Debt Securities and (b) the other financing transactions set forth on Schedule 9.10 hereto, on terms reasonably satisfactory to the Company.

## 10. SATISFACTION OF CONDITIONS; CONSUMMATION

### 10.1. Notice of Satisfaction or Waiver of Conditions.

(a) The Company shall notify the IPPs' Special Counsel, and each IPP shall notify the Company and the IPPs' Special Counsel, (i) not less frequently than monthly, of the satisfaction of any of the conditions to the obligations of such Party pursuant to Sections 8 or 9 of this Agreement and/or (ii) promptly, in the event such Party shall receive notice or information from any Governmental Authority or third party indicating that the conditions to the obligations of such Party pursuant to Sections 8 or 9 of this Agreement cannot be, or are not reasonably likely to be, satisfied on or before the Expiration Date.

(b) On or within three (3) Business Days before the Conditions Determination Date, the Company shall give a notice to each IPP (the "NMPC Status Notice") setting forth:

(i) a description of each NMPC Regulatory Approval which the Company has obtained or is seeking to obtain pursuant to the provisions of Section 6.6(a) or (c), including the name of the Governmental Authority, the

specific findings, approvals and authorizations obtained or sought to be obtained, all notices given or received and all actions taken in connection therewith, and the status thereof, together with a representation and warranty of the Company that to the best knowledge of the Company the NMPC Regulatory Approvals described therein are the only Regulatory Approvals required as of such date with respect to the consummation of the Company's obligations hereunder;

(ii) whether the conditions to the Company's obligations set forth in Sections 9.7 (NMPC/Third Party Consents and NMPC/Third Party Releases) have been satisfied. In the event any condition set forth in Section 9.7 has not been satisfied by the Conditions Determination Date, then the Company, pursuant to the NMPC Status Notice, either (x) shall be deemed to have waived any such condition (except that any such waiver shall not be deemed a waiver of any condition in Section 9.9(b) or Section 9.10) or (y) shall elect to terminate this Agreement pursuant to Section 12.1(e);

(iii) the status of (x) the Shelf Registration Statement with respect to the Company Shares, (y) the Debt Registration Statement with respect to the Public Offering of the Debt Securities and the other financing transactions set forth on Schedule 9.10 and (z) the Proxy Statement and the shareholder approval to be obtained thereby; and

(iv) whether, to the best of the Company's knowledge, there is any reason why any other condition to either the Company's or any IPP's obligations pursuant to Sections 8 or 9 will not be satisfied on or before the Expiration Date (excluding any condition the satisfaction of which is solely within the control of any IPP).

(c) On or within three (3) Business Days before the Conditions Determination Date, each IPP shall give a notice to the Company and the IPPs' Special Counsel (an "IPP Status Notice") setting forth:

(i) a description of each IPP Regulatory Approval which the IPP has obtained or is seeking to obtain pursuant to the provisions of Section 6.6(b), including the name of the Governmental Authority, the specific findings, approvals and authorizations obtained or sought to be obtained, all notices given or received and all actions taken in connection therewith, and the status thereof, together with a representation and warranty by the IPP that to the best knowledge of such IPP the IPP Regulatory Approvals described therein and, at such IPP's option, in the NMPC Status Notice are the only Regulatory Approvals required as of such date with respect to the consummation of the IPP's obligations hereunder;



(ii) whether the conditions to the IPP's obligations set forth in Sections 8.10 (IPP/Third Party Consents; IPP Approvals) and 8.11 (Gas Mitigation) have been satisfied. In the event any condition set forth in Section 8.10 or 8.11 has not been satisfied by the Conditions Determination Date, then the IPP, pursuant to the IPP Status Notice, either (x) shall be deemed to have waived any such condition or (y) shall elect to terminate this Agreement pursuant to Section 12.2(c) as of the Conditions Determination Date;

(iii) whether, to the best of the IPP's knowledge, there is any reason why any other condition to either the Company's or such IPP's obligations pursuant to Sections 8 or 9 will not be satisfied on or before the Expiration Date (excluding any condition the satisfaction of which is solely within the control of the Company or any other IPP).

(d) Within ten (10) days after the Conditions Determination Date, the Company either (x) shall be deemed to have waived the condition set forth in Section 9.9(a) or (y) by notice given on or before such date shall elect to terminate this Agreement pursuant to Section 12.1(e), effective as of the date of such notice.

10.2. Consummation Date. The consummation of the Restructuring and other transactions contemplated by this Agreement (the "Consummation") shall take place at the offices of Akin, Gump, Strauss, Hauer & Feld, L.L.P., 590 Madison Avenue, New York, New York. Within fifteen (15) days after the Conditions Determination Date, the Parties shall mutually agree on a schedule to achieve the Consummation by a date certain (the "Scheduled Date") and thereafter the Parties shall use their Reasonable Best Efforts to achieve the Consummation by the Scheduled Date. The Consummation shall occur on the later to occur of (i) the Scheduled Date and (ii) the third (3<sup>rd</sup>) Business Day following the satisfaction or waiver of all of the Parties' conditions set forth in Sections 8 and 9, or shall take place at such other place or on such other date as the Parties may mutually agree. In no event shall the Consummation occur sooner than December 31, 1997 or later than the Expiration Date. The date on which the Restructuring and other transactions contemplated by this Agreement actually are consummated is referred to herein as the "Consummation Date."

10.3. Deliveries by the Company.

(a) On the Consummation Date, the Company shall deliver to the Depository, on behalf of the IPPs, (i) the Cash Payment, in the manner described in Section 3.3; (ii) the Company Shares, in the manner described in Sections 3.3 and 3.6; and (iii) the Short-Term Notes or Additional Cash Payment, as applicable, in the manner described in Section 3.3.

(b) On the Consummation Date, the Company shall deliver to the Escrow Agent, on behalf of the IPPs, all other agreements, instruments, certificates, resolutions, opinions and other documents (including but not limited to the general releases and the dismissals and withdrawals of litigations, regulatory proceedings and pleadings contemplated by Section 8.8(b)) required to be delivered by the Company on or before the Consummation Date pursuant to this Agreement, either in the respective form annexed as an Exhibit to this Agreement, if applicable, or in form and substance reasonably satisfactory to each IPP and the IPPs' Special Counsel.

10.4. Deliveries by the IPPs. On the Consummation Date, each IPP (as applicable) shall deliver to the Escrow Agent, on behalf of the Company, all other agreements, instruments, certificates, resolutions, opinions and other documents (including but not limited to the general releases and the dismissals and withdrawals of litigations and regulatory proceedings contemplated by Section 9.8(b)) required to be delivered by such IPP on or before the Consummation Date pursuant to this Agreement, either in the respective form annexed as an Exhibit to this Agreement, if applicable, or in form and substance reasonably satisfactory to the Company and its counsel.

10.5. Deliveries by the Depository and the Escrow Agent. On the Consummation Date, the Parties shall execute and deliver to the Depository and the Escrow Agent such authorizations and instructions as may be required to cause the Depository and the Escrow Agent to deliver (i) counterparts of the Contracts, the Shareholder's Agreement, the Registration Rights Agreement and all other agreements, instruments, certificates, resolutions, opinions and other documents delivered by the Parties to the Escrow Agent pursuant to this Agreement (excluding the Allocation) to the Company and the respective IPPs, as applicable, and (ii) the Cash Payment, Company Shares, Short-Term Notes and/or Additional Cash Payment, as applicable, delivered by the Company to the Depository pursuant to this Agreement, to the respective IPPs or their designees.

## 11. REGULATORY AND OTHER MATTERS

### 11.1. Maintenance of QF Status.

(a) Each IPP (whether or not it is to enter into the Amended PPA or Restated Contract) shall have the right, but not the obligation, to obtain and/or maintain its status as a state and/or federal qualifying facility ("QF") under New York law (including compliance with NYPSL §2(2-a)) and/or PURPA, respectively, but the Company's obligations under each Contract shall continue as a matter of contract right regardless of whether the IPP maintains its state or federal QF status. Following the Consummation Date, the Company shall not implement or continue to implement any QF Monitoring Program with respect to any IPP. Notwithstanding the foregoing, failure to

comply with the requirements applicable to state and/or federal QF status under New York law (including compliance with NYPSL §2(2-a)) shall have no adverse effect on the IPP or the Company's continuing performance under any Contract.

(b) In the event an IPP (whether or not it is to enter into the Amended PPA or Restated Contract) wishes to qualify or perform as an Exempt Wholesale Generator ("EWG") under Section 32 of PUHCA and the FERC's regulations promulgated thereunder, as the same may be amended, modified or restated from time to time, whether before or after the Consummation Date, the Company shall cooperate with (including, without limitation, by providing consents and affidavits), and shall not take any action to oppose, impede or subvert, such IPP's efforts to obtain appropriate regulatory exemptions and approvals, including market-based rate approval.

(c) Each IPP shall have the right to have the Company wheel the output of its Project to third parties pursuant to applicable law, or the Company's, or other companies', duly filed transmission and distribution tariffs or schedules.

(d) Except to the extent that the contract price under the Amended PPA or Restated Contract is or may be based thereon, from and after the Consummation Date (i) each IPP shall waive any statutory right it may have under Section 66-c of NYPSL pursuant to which such IPP may demand a 6¢ per KWh minimum power purchase rate from the Company and (ii) each IPP shall waive, for itself and for the successors and assigns of its respective Project, with respect to its Project, any statutory right it may have under PURPA or NYPSL to require the Company to enter into a power purchase contract or otherwise take the output of such IPP's Project, provided, however, that prior to the end of the Proxy-Market Price Period the Company agrees, at the IPP's request, to act as agent for each IPP (or, if necessary to effectuate such sales to the New York Power Pool, by purchase and resale of each IPP's capacity and energy, at no cost to the Company), for the sale on up to a monthly basis, of each such Project's capacity and energy to the New York Power Pool or any third party, in each case on a nondiscriminatory basis with respect to the Company's or any third party's capacity and energy, at no cost to such IPP. The Company agrees to use its Reasonable Best Efforts to effect such sales on the most favorable terms, including price, to the IPP, giving consideration to the quantity, term and market conditions prevailing at the time of sale. For purposes of this Section 11.1(d), the Proxy-Market Price Period shall have the meaning set forth in Exhibit A, except that the Proxy-Market Price Period shall commence as of the Effective Time, the last sentence of the definition contained in Exhibit A shall not be applicable, and this provision shall apply whether or not such IPP is to enter into the Amended PPA or a Restated Contract. Further, nothing herein shall be construed to constitute a waiver by any IPP of any other rights it may have under PURPA, NYPSL or applicable law, including rights with respect to back-up services, interconnection, reactive power or similar rights, whether or not a contract is required or desirable.

11.2. Competitive Transition Charge; Retail Bypass.

(a) Each IPP covenants not to take any action to oppose, impede or subvert the Company's entitlement to recover Competitive Transition Charges from any party other than an IPP and its Affiliates (except in their capacities as retail customers), including the level, design or duration of such charges, and the imposition of such charges on backup power services (including services to self-generators); provided, however, that each IPP reserves the right to challenge any proposal that discriminates against one source of generation relative to another or places any IPP or its Affiliates at a competitive disadvantage as compared to other generators or suppliers. Each IPP agrees not to support in any regulatory or judicial proceeding any effort by a customer of the Company to avoid payment of a Competitive Transition Charge. The provisions of this Section shall not apply to any IPP following (x) the termination of this Agreement in its entirety or (y) the termination of this Agreement with respect to such IPP.

(b) Each IPP agrees that, between the date of this Agreement and the earlier to occur of (x) the Effective Time, (y) the termination of this Agreement in its entirety or (z) the termination of this Agreement with respect to such IPP, it will not (other than to the Company or any Affiliate of the Company) provide electric power directly or indirectly to an existing retail customer of the Company located in the Company's retail service territory or to a person or entity which directly or indirectly provides electric power to any such retail customer, unless pursuant to an agreement approved by the PSC. The provisions of this Section 11.2(b) shall not apply to (i) sales by any IPP permitted as of the date of this Agreement, (ii) the sale of electricity by any IPP to a utility, including the Company, (iii) the provision by any IPP of its internal auxiliary load or (iv) any sales by any power marketing or retail energy services Affiliate of any IPP.

11.3. Consistent Tax Reporting. The Company and each applicable IPP agree that the terms and conditions to be contained in each Restated Contract and Fixed Price Swap Contract are and shall be the result of arms-length negotiations. The Company will not treat the Restated Contracts or Fixed Price Swap Contracts in a manner that is inconsistent with the character of such Restated Contracts or Fixed Price Swap Contracts, as the case may be, for income tax and reporting purposes as bona fide hedging or delivery agreements and will not claim a deduction or loss for income tax purposes in respect of such Restated Contracts or Fixed Price Swap Contracts prior to a taxable year in which (i) payments pursuant to such Restated Contracts or Fixed Price Swap Contracts are paid or accrue pursuant to the terms thereof or (ii) such Restated Contracts or Fixed Price Swap Contracts lapse, terminate or are canceled, unless required to do so pursuant to a "determination" within the meaning of Section 1313(a) of the Code.

## 12. TERMINATION OF AGREEMENT

12.1. Events of Termination of the Agreement in its Entirety. This Agreement may be terminated, and the transactions contemplated hereby may be abandoned, at any time prior to the Consummation Date:

(a) by the mutual written consent of all the Parties, or pursuant to Section 2.7(b);

(b) by the IPPs, acting unanimously, if the Company breaches in any material respect any of its covenants or agreements contained in this Agreement, or any of its representations or warranties contained in this Agreement is inaccurate in any material respect when made, and such breach or misrepresentation is not cured to the reasonable satisfaction of the IPPs, acting unanimously, within ten (10) days after the date notice of such breach or misrepresentation is given to the Company (or, if such breach or misrepresentation is not reasonably capable of cure within such ten (10) day period but is capable of cure, such longer period as may be reasonably necessary to effect such cure, not to exceed thirty (30) days in the aggregate, provided that during the period of such extension the Company uses Reasonable Best Efforts to effect such cure);

(c) by the Company, if all of the IPPs breach in any material respect any of their respective covenants or agreements contained in this Agreement, or any of their respective representations or warranties contained in this Agreement is inaccurate in any material respect when made, and such breach or misrepresentation is not cured to the reasonable satisfaction of the Company for more than ten (10) days after the date notice of such breach or misrepresentation is given to all IPPs (or, if such breach or misrepresentation is not reasonably capable of cure within such ten (10) day period but is capable of cure, such longer period as may be reasonably necessary to effect such cure, not to exceed thirty (30) days in the aggregate, provided that during the period of such extension the IPPs use Reasonable Best Efforts to effect such cure);

(d) by the Company, if the Company determines, in its sole discretion, that, as a result of the termination of this Agreement with respect to one or more but not necessarily all of the IPPs, the benefits anticipated to be received by the Company as a result of the transactions contemplated by this Agreement have been materially and adversely affected (provided that any notice of termination solely as a result of the termination of this Agreement with respect to NorCon and/or Oxbow pursuant to Sections 2.5 or 2.6, respectively, shall be made not later than ten (10) Business Days after receipt of the Depositary's certification pursuant to Section 12.4(b) following the termination of this Agreement with respect to NorCon and/or Oxbow, as the case may be; and provided, further, that the Company may not terminate this Agreement pursuant to this Section 12.1(d) following delivery by the Company of a sub-clause (y) notice pursuant to Section 2.7(b), unless any of the IPPs which are not identified in such sub-

clause (y) notice shall thereafter have been terminated from this Agreement prior to the Consummation Date; or

(e) by the Company, if the Company determines, in the Company's sole discretion, that any of the conditions (which have not previously been waived) to the Company's obligations set forth in Section 9 are not reasonably likely to be satisfied (and the Company is not willing to waive same) on or before the Expiration Date, provided that the Company may not terminate this Agreement pursuant to this Section 12.1(e) prior to the Conditions Determination Date, except that the Company may terminate this Agreement prior to the Conditions Determination Date if the PSC Approval has been denied or if no PSC action has been taken as of a date at which it is no longer possible for the Consummation to occur by the Expiration Date.

**12.2. Events of Termination with respect to One or More of the IPPs.** This Agreement may be terminated by or with respect to any one or more but not necessarily all of the IPPs, and the transactions contemplated hereby may be abandoned by or with respect to any one or more but not necessarily all of the IPPs, at any time prior to the Consummation Date:

(a) by the mutual written consent of the Company and any one or more IPPs or pursuant to Sections 2.5, 2.6 or 2.7(b) hereof; provided, however, that in the case of any termination pursuant to this Section 12.2(a), this Agreement shall be terminated with respect to such terminating or terminated IPP(s) only;

(b) by any one or more IPPs, acting singly, if the Company breaches in any material respect any of its covenants or agreements contained in this Agreement or any of its representations or warranties contained in this Agreement is inaccurate in any material respect when made, and such breach or misrepresentation is not cured to the reasonable satisfaction of such IPP(s) within ten (10) days after the date notice of such breach or misrepresentation is given to the Company (or, if such breach or misrepresentation is not reasonably capable of cure within such ten (10) day period but is capable of cure, such longer period as may be reasonably necessary to effect such cure, not to exceed thirty (30) days in the aggregate, provided that during the period of such extension the Company uses Reasonable Best Efforts to effect such cure); provided, however, that in the case of any termination pursuant to this Section 12.2(b), this Agreement shall terminate with respect to such terminating IPP(s) only;

(c) by any one or more IPPs, acting singly, if any such IPP determines, in such IPP's sole discretion, (i) that any of the conditions (which have not previously been waived) to such IPP's obligations set forth in Sections 8 are not reasonably likely to be satisfied (and such IPP is not willing to waive same) on or before the Expiration Date, (ii) that the NMPC Restructuring, as implemented or proposed to be implemented by the Company at any time, has had or is reasonably likely to have a material adverse effect on

such IPP with respect to the transactions contemplated hereby, (iii) that appropriate exemptions or waivers from the regulation or jurisdiction of any Governmental Authority resulting from this Agreement or any of the transactions contemplated hereby with respect to such IPP, its partners or Affiliates, individually or collectively, from which it or they were previously exempt, including but not limited to SEC or FERC regulation under PUHCA, PSC regulation under the NYPSL, and FERC regulation under the Federal Power Act, are not reasonably likely to be obtained on or before the Expiration Date, and this Agreement is not conformed prior to the Consummation Date in a manner mutually satisfactory to the Parties as may be necessary in order for the IPP, its partners or Affiliates, to avoid becoming subject to such regulation or jurisdiction, (iv) that such IPP is, or is reasonably likely to be, subject to any Curtailment with respect to its Existing PPA (whether authorized to do so before or after the date of this Agreement), or (v) that such IPP is unable to effect the Restructuring in a manner contemplated by Section 6.2; or upon any merger or consolidation of the Company with or into any other entity (except as permitted by Schedule 6.11); provided, however, that in the case of any termination pursuant to this Section 12.2(c), this Agreement shall terminate with respect to such terminating IPP(s) only; or

(d) by the Company, if any IPP breaches in any material respect any of its covenants or agreements contained in this Agreement or any of its representations or warranties contained in this Agreement is inaccurate in any material respect when made, and such breach or misrepresentation is not cured to the reasonable satisfaction of the Company for more than ten (10) days after notice of such breach or misrepresentation is given to all IPPs (or, if such breach or misrepresentation is not reasonably capable of cure within such ten (10) day period but is capable of cure, such longer period as may be reasonably necessary to effect such cure, not to exceed thirty (30) days in the aggregate, provided that during the period of such extension the IPP uses Reasonable Best Efforts to effect such cure); provided, however, that in the case of any uncured breach by less than all of the IPPs, the Company may terminate this Agreement with respect to any such breaching IPP(s) only.

### 12.3. Expiration.

(a) This Agreement shall be terminated, and the transactions contemplated hereby shall be abandoned, without further notice or consent, if for any reason (including but not limited to the non-satisfaction and non-waiver of any of the conditions set forth in Sections 8 and 9 hereof) the Consummation Date has not occurred on or prior to the Expiration Date unless, by mutual written consent of all the Parties, the Parties elect to extend the Expiration Date.

(b) Notwithstanding the provisions of Section 12.3(a), if the Company and less than all the IPPs desire to extend the Expiration Date (other than as provided in Section 2.7(b), which shall govern any extension pursuant to that Section), this

Agreement shall not be terminated and shall instead be extended by the mutual written consent of such Parties; in such event, this Agreement shall be deemed to be terminated (with the effect described in Section 12.4(b)) with respect to any IPP which does not desire to extend the Expiration Date.

#### 12.4. Effect of Termination.

(a) In the event that this Agreement shall terminate in its entirety pursuant to Section 12.1, 12.2 or 12.3(a), then (i) this Agreement shall forthwith terminate and have no further effect, (ii) any Contracts theretofore executed by the Company and any IPPs shall be void ab initio and, if theretofore delivered to the Escrow Agent, shall be destroyed by the Escrow Agent and (iii) no Party shall have any further obligation or liability hereunder (except with respect to any provisions hereof which by their terms expressly survive any termination of this Agreement).

(b) In the event that this Agreement shall terminate with respect to one or more but less than all of the IPPs pursuant to Section 2.5, 2.6, 2.7(b), 12.2 or 12.3(b), then (i) this Agreement shall terminate forthwith and have no further effect with respect to any such IPP (except with respect to any provisions hereof which expressly survive any termination of this Agreement), (ii) the Allocable Consideration and the contract quantity under the Amended PPA shall be reduced by the portion of the Allocable Consideration and the contract quantity under the Amended PPA allocated to such IPP pursuant to the original Allocation, (iii) the Allocable Consideration, the contract quantity of energy and the contract quantity of installed capacity under the Restated Contracts shall be reduced by the portion of the Allocable Consideration, the contract quantity of energy and the contract quantity of installed capacity under the Restated Contracts allocated to such IPP pursuant to the original Allocation, (iv) the aggregate Contract Adjustment shall be reduced by the portion of the Contract Adjustment allocated to such IPP pursuant to the original Allocation, if any, (v) any Contracts theretofore executed by such IPP shall be void ab initio and, if theretofore delivered to the Escrow Agent, shall be destroyed by the Escrow Agent and (vi) the Company shall not have any further obligation or liability to such IPP hereunder and such IPP shall not have any further obligation or liability to the Company or any other IPP hereunder (except with respect to any provisions hereof which expressly survive any termination of this Agreement). In such event, the Depository shall certify to the Company and the other IPPs the portion of the Allocable Consideration, the contract quantity, the installed capacity and the contract adjustment, as applicable, under the Amended PPA or the Restated Contracts which pursuant to the original Allocation (without regard to any amendment thereof, if any) had been allocated to the IPP so terminated. For purposes hereof, any reduction in the Allocable Consideration due to the termination of this Agreement with respect to an individual IPP shall mean a reduction in both the Cash Payment and Company Shares allocated to such individual IPP pursuant to the Allocation. Except as expressly set forth in this Section 12.4(b), the termination of this Agreement with respect to one or more but



less than all of the IPPs shall not increase or reduce the portion of the Allocable Consideration payable to the remaining IPPs, nor in any way affect the Short-Term Notes or Additional Cash Payment, as applicable, or the terms and conditions, including contract price, of the Contracts, nor in any way affect any other terms of this Agreement with respect to any other IPP, all of which terms shall continue in full force and effect.

(c) The termination of this Agreement in its entirety pursuant to Section 12.1, 12.2 or 12.3(a), or the termination of this Agreement pursuant to Section 2.5, 2.6, 2.7(b), 12.2 or 12.3(b) with respect to one or more but less than all of the IPPs, shall not relieve the Company of any liability to any IPP, or any IPP of any liability to the Company, for damages directly resulting from the breach in any material respect of any covenant or obligation of such Party, or any inaccuracy in any material respect of any representation or warranty of such Party, in each case occurring prior to such termination; and any such termination shall not be deemed to be a waiver of any available remedy for any such breach or misrepresentation. Notwithstanding any other provision contained in this Agreement to the contrary, provided such Party uses its Reasonable Best Efforts with respect to the pursuance of any course of action or result stated herein as requiring the use of Reasonable Best Efforts by such Party, such Party shall not have any liability to any other Party for any failure to achieve such course of action or result. In no event shall (i) any IPP have any liability to any other IPP hereunder or (ii) any Party have any liability for consequential, special or other indirect damages resulting from any breach or misrepresentation. The provisions of this Section 12.4(c) shall survive any termination of this Agreement (either in its entirety or with respect to less than all of the IPPs).

12.5. Effect on Existing PPAs. In the event of termination of this Agreement as to any IPP for any reason on or prior to the Consummation Date, notwithstanding any other provision of this Agreement, the Parties agree and stipulate that the Existing PPA of such IPP shall continue with the same force and effect as if this Agreement had not been executed by such IPP, and that nothing contained herein shall in any way reduce, mitigate or modify the amount or types of claims, whether asserted or unasserted on the date of this Agreement, that such IPP may have which arise out of or are related to its Existing PPA, and all rights and obligations of the Parties with respect to such Existing PPA shall in no manner be affected or compromised by the terms of this Agreement. Without limiting the foregoing, the Parties acknowledge and agree that none of (i) the execution and delivery of this Agreement or any agreement executed or to be executed pursuant hereto by the Parties, (ii) the submission of this Agreement or any agreement executed or to be executed pursuant hereto to any Governmental Authority for its review and/or approval or (iii) any of the Parties' discussions, negotiations or actions occurring in anticipation of, or subsequent to, the execution of this Agreement or any agreement executed or to be executed pursuant hereto shall (excepting, with respect to any individual IPP, the actual consummation of the Restructuring and other transactions contemplated by this Agreement pertaining to such IPP's Existing PPA), constitute or be deemed or asserted to constitute an amendment or modification to, or a termination,

cancellation, rejection, invalidation, suspension or waiver of, any provision, term, condition, right, obligation or requirement contained in or applicable to any Existing PPA or any other contract, instrument or document relating thereto.

12.6. Bankruptcy Termination. In the event that the Company, at any time on or before the Consummation Date, makes a general assignment or any general arrangement or compromise for the benefit of creditors, files a petition under the Bankruptcy Code or otherwise commences, authorizes or acquiesces in the commencement of a proceeding under any bankruptcy or similar law for the protection of creditors, or has a petition commenced against it, then (i) this Agreement shall terminate forthwith, with the effect described in Section 12.4(a), and (ii) the provisions of Section 12.5 shall apply with respect to the Existing PPAs. The Parties agree and stipulate that this Agreement is a contract to (i) extend debt financing to or for the benefit of the Company, (ii) extend financial accommodations to or for the benefit of the Company and (iii) issue one or more securities of the Company. As a consequence, the Parties further agree and stipulate that the provisions of Sections 365(c)(2) and (e)(2)(B) of the Bankruptcy Code, among others, would be applicable and binding on the Parties in the event the Company becomes a debtor under the Bankruptcy Code.

### 13. NOTICES

Unless otherwise provided, any notice, consent, approval, authorization, waiver or other communication required or permitted under this Agreement shall be given in writing and shall be deemed effectively given upon personal delivery to the Party to be notified, on the next Business Day after delivery to a nationally recognized overnight courier service, upon confirmation of receipt of a facsimile transmission or five days after deposit with the United States Post Office, by registered or certified mail, postage prepaid, and addressed to the Party to be notified at the address or facsimile number indicated below for such Party, or at such other address as such Party may designate upon written notice to the other Parties (except that notice of change of address shall be deemed given upon receipt). Notices may be given to the Company on behalf of any or all IPPs by the IPPs' Special Counsel.

(a) In the case of the Company:

Niagara Mohawk Power Corporation  
300 Erie Boulevard West  
Syracuse, NY 13202  
Facsimile: (315) 428-3406  
Attn: William F. Edwards

with a copy to:

Donaldson Lufkin & Jenrette Securities Corporation  
277 Park Avenue  
New York, NY 10172  
Facsimile: (212) 892-7272  
Attn: Michael Ranger

and with a copy to:

Sullivan & Cromwell  
1701 Pennsylvania Avenue, N.W.  
Washington, DC 20006  
Facsimile: (202) 293-6330  
Attn: Janet T. Geldzahler

and

Swidler & Berlin  
3000 K Street, N.W., Suite 300  
Washington, DC 20007  
Facsimile: (202) 424-7643  
Attn: Steven J. Agresta

hereto, (b) In the case of the IPPs, at the addresses set forth on Schedule A

with a copy to:

Wasserstein Perella & Co., Inc.  
31 West 52<sup>nd</sup> Street  
New York, NY 10019  
Facsimile: (212) 969-7971  
Attn: Kenneth A. Buckfire

and with a copy to:

Akin, Gump, Strauss, Hauer & Feld, L.L.P.  
590 Madison Avenue  
New York, NY 10022  
Facsimile: (212) 872-1002  
Attn: Steven H. Scheinman

## 14. MISCELLANEOUS

14.1. Entire Agreement. This Agreement, the Exhibits and Schedules annexed hereto, and the documents and agreements referred to herein or to be executed and delivered pursuant hereto, constitute the entire agreement among the Parties with respect to the subject matter hereof, supersede all prior agreements and understandings, written or oral, among the Parties with respect thereto, and no Party shall be liable or bound to any other Party in any manner by any promises, conditions, warranties, representations, or covenants except as specifically set forth herein or therein. Notwithstanding the foregoing, neither this Agreement, the Exhibits and Schedules hereto, nor the documents and agreements referred to herein or to be executed and delivered pursuant hereto shall be deemed to supersede, terminate, amend or modify any existing written agreement between the Company (or any Affiliate of the Company) and any IPP, unless such existing written agreement is expressly superseded, terminated, amended or modified pursuant to the terms of this Agreement. The provisions of this Section 14.1 notwithstanding, the terms of that certain Agreement to Protect Confidential Information and Discussions executed by, among others, the Company, on June 10, 1996 shall survive in accordance with their terms with respect to all information disclosed thereunder prior to the date of this Agreement.

14.2. Amendments and Waivers. Any term of this Agreement may be amended and the observance of any term of this Agreement may be waived (either generally or in a particular instance and either retroactively or prospectively), only by an instrument in writing and signed by the Party against whom such amendment or waiver is sought to be enforced; provided that the provisions of Section 14.14(c) may be amended by the IPPs without the consent of the Company.

14.3. Successors and Assigns. Except as otherwise expressly provided herein, the terms and conditions of this Agreement shall inure to the benefit of and be binding upon the respective successors and permitted assigns of the Parties. Except as otherwise expressly provided herein, the rights and obligations of the Parties pursuant to this Agreement may not be assigned (other than by operation of law). Nothing in this Agreement, express or implied, is intended to confer upon any person or entity other than the Parties hereto or their respective successors and assigns any rights, remedies, obligations, or liabilities under or by reason of this Agreement, except as may be expressly provided in this Agreement.

14.4. Governing Law. This Agreement, including the validity hereof and the rights and obligations of the parties hereunder, and all amendments and supplements hereof and all waivers and consents hereunder, shall be construed in accordance with and governed by the domestic substantive laws of the State of New York without giving

effect to any choice of law or conflicts of law provision or rule that would cause the application of the domestic substantive laws of any other jurisdiction.

14.5. Severability. If any provisions of this Agreement as applied to any part or to any circumstance or to any Party shall be adjudged by a court to be invalid or unenforceable, the same shall in no way affect any other provision of this Agreement, the application of such provision in any other circumstances or to any other Party or the validity or enforceability of this Agreement, and the Parties affected thereby shall use Reasonable Best Efforts to negotiate in good faith to make such equitable adjustments to this Agreement as may be appropriate, so as to effect the original intent of such Parties as closely as possible in a mutually acceptable manner.

14.6. Captions. The table of contents, headings and captions used in this Agreement are used for convenience only and are not to be considered in construing or interpreting this Agreement. Unless otherwise specified, all references herein to "Sections" refer to Sections in this Agreement.

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

14.8. Fees. Except for (i) DLJ, the fees and expenses of which the Company has agreed to pay pursuant to a separate agreement, and (ii) WP&Co., the fees and expenses of which the Company has agreed to pay pursuant to a separate agreement dated May 15, 1996, as amended as of the date hereof (as amended, the "WP&Co. Fee Letter"), each Party represents that it neither is nor will be obligated for any investment banking fee, commission or similar fee in connection with the transactions contemplated by this Agreement. The Company agrees to indemnify and hold harmless each IPP from any liability for any commission or compensation in the nature of an investment banking fee, commission or similar fee, and associated expenses (and the costs and expenses of defending against such liability or asserted liability) which is (x) payable to DLJ, (y) payable to WP&Co. pursuant to the WP&Co. Fee Letter or (z) for which the Company or any of the Company's officers, employees or representatives otherwise is responsible. Each IPP (severally and not jointly) agrees to indemnify and hold harmless the Company from any liability for any commission or compensation in the nature of an investment banking fee, commission or similar fee, and associated expenses (and the costs and expenses of defending against such liability of asserted liability) for which such IPP or any of such IPP's respective officers, employees or representatives is responsible, other than any such fee or expense which is (x) payable to DLJ, (y) payable to WP&Co. pursuant to the WP&Co. Fee Letter or (z) for which the Company or any of the Company's officers, employees or representatives otherwise is responsible. The provisions of this Section 14.8 shall survive the Consummation Date and any termination of this Agreement (either in its entirety or with respect to less than all of the IPPs). By its

execution hereof, each IPP hereby agrees to the terms of the amendment to the WP&Co. Fee Letter dated as of the date hereof.

14.9. Expenses. Irrespective of whether the Consummation Date shall occur or whether any Regulatory Approval is obtained, and except as otherwise expressly provided herein or therein, each Party shall pay all costs and expenses (including, but not limited to, legal and accounting fees and expenses) that it incurs with respect to the negotiation and execution of this Agreement and any other agreements to be executed pursuant hereto, and the performance of any covenants to be performed by such Party and satisfaction of any conditions to be satisfied by such Party which are contained herein or therein. Notwithstanding the foregoing, (i) pursuant to an agreement dated January 31, 1997 (the "IPPs' Special Counsel Fee Letter"), the Company shall pay certain fees and expenses of the IPPs' Special Counsel, (ii) pursuant to an agreement dated June 30, 1997 (the "IPPs' Local Regulatory Counsel Fee Letter"), the Company shall pay certain fees and expenses of the IPPs' Local Regulatory Counsel and (iii) the Company shall pay all fees and expenses of the Depository with respect to the transactions contemplated by this Agreement. The provisions of this Section 14.9 shall survive the Consummation Date and any termination of this Agreement (either in its entirety or with respect to less than all of the IPPs).

14.10. Attorneys' Fees. If any action at law or in equity is necessary to enforce or interpret the terms of this Agreement or any other agreement or document to be executed or delivered pursuant hereto, the prevailing Party shall be entitled to reasonable attorneys' fees, costs and disbursements in addition to any other relief to which such Party may be entitled.

14.11. Remedies. In case any one or more of the covenants and/or agreements set forth in this Agreement shall have been breached by any Party hereto, the Party or Parties entitled to the benefit of such covenants or agreements may, except as may otherwise be expressly provided in this Agreement, proceed to protect and enforce their rights either by suit in equity and/or by action at law, including, but not limited to, an action for damages as a result of any such breach and/or an action for specific performance of any such covenant or agreement contained in this Agreement. Except as otherwise provided herein, the rights, powers and remedies of the Parties under this Agreement are cumulative and not exclusive of any other right, power or remedy which such Parties may have under any other agreement or law. No single or partial assertion or exercise of any right, power or remedy of a Party hereunder shall preclude any other or further assertion or exercise thereof.

14.12. Survival. Except as set forth in the representation letters to be delivered by the Parties pursuant to Sections 8.3(a) and 9.3(a), and except as may be set forth in any of the Contracts, the representations and warranties of the Company contained in Section 4, and the representations and warranties of each IPP contained in Section 5, shall not

survive the Consummation Date, provided that any rights, obligations or liabilities existing pursuant to law (including, without limitation, pursuant to the Securities Act) shall survive until the expiration of any applicable statute of limitations. Without limiting the survival of any other provision of this Agreement which may expressly or by its terms survive the Consummation Date, the provisions of Sections 3.8, 6.4, 6.7(c), 8.8, 9.8, 11 and 14 of this Agreement shall survive the Consummation Date until fully performed.

14.13. Several Obligations. The obligations of the IPPs contained in this Agreement are several and not joint. No IPP shall be responsible for the performance or failure on the part of any other IPP to perform its obligations contained in this Agreement.

14.14. Confidentiality.

(a) Each Party agrees that it will not, at any time before or after the Consummation Date, divulge, disclose, use, publish or in any other manner reveal, directly or indirectly, by any means whatsoever, to any person, firm or corporation (i) any confidential or proprietary information of any other Party obtained by such Party from the other Party, whether orally or in writing, at any time, including prior to the date of this Agreement, during the course of or as a result of the negotiation, execution or performance of this Agreement, any other agreement, document or instrument relating hereto or any of the transactions contemplated hereby or thereby and known by such Party to be confidential or proprietary information or (ii) any of the terms or conditions of this Agreement, any other agreement, document or instrument relating hereto or any of the transactions contemplated hereby or thereby, or the progress, status or schedule of any discussions or negotiations relating hereto or thereto. In the event that any Party is requested or becomes legally compelled (by oral questions, interrogatories, request for information or documents, subpoena, criminal or civil investigative demand or similar process) to disclose any such confidential or proprietary information, such Party will provide the other Party with prompt written notice so that the other Party may seek a protective order or other appropriate remedy and/or waive compliance with the provisions of this Section, and such Party will cooperate with the other Party in any effort the other Party undertakes to obtain a protective order or other remedy. In the event that such protective order or other remedy is not obtained, or that the other Party waives compliance with the provisions of this Section, such Party will furnish only that portion of the information which is legally required and will use Reasonable Best Efforts to obtain reliable assurance that confidential treatment will be accorded the information, provided, however, if such efforts involve any expense the other Party, if it has received prior notice thereof, will reimburse such Party for same. The provisions of this Section shall not preclude any Party from making a disclosure of any information if in the opinion of such Party's counsel such disclosure is required by the securities laws of the United States or the rules of the NYSE or any other securities exchange or market on which the securities of such Party (or its Affiliates) are quoted or traded, provided that such Party

shall disclose only that portion of the information which is required to be disclosed and, to the extent practicable, the disclosing Party shall consult with the Party which provided such information in advance of making any such disclosure.

(b) Notwithstanding the provisions of Section 14.14(a), no Party hereto or representative thereof shall be precluded from, and each Party agrees that it shall not assert any breach or violation of this Agreement with respect to or as a result of, the furnishing of any confidential or proprietary information to (i) any consultant, advisor or other third party retained by any Party to prepare reports, studies, analyses or memoranda or (ii) any fuel supplier, transporter, lender, steam host or other third party, in each case in connection with such Party's efforts to obtain any IPP/Third Party Consent, NMPC/Third Party Consent or NMPC/Third Party Release. Each Party shall, prior to the disclosure of any information to any person pursuant to this Section 14.14(b), execute and cause such person to execute a Third Party Non-Disclosure Agreement substantially in the form annexed hereto as Exhibit 14.14.

(c) Without limiting in any manner the foregoing provisions of this Section 14.14, each IPP agrees with each other IPP that such IPP will only divulge, disclose, use or in any other manner reveal any confidential or proprietary information of any other IPP or Affiliate of any other IPP regarding this Agreement, any other agreement, document or instrument relating hereto, or the transactions contemplated hereby or thereby, which was or is obtained at any time, including prior to the date of this Agreement, during the course of or as a result of the negotiation, execution or performance of this Agreement, any other agreement, document or instrument relating hereto, or any of the transactions contemplated hereby or thereby (collectively, "Confidential IPP Information"), to its Affiliates and to those of its and its Affiliates' respective directors, officers, shareholders and partners (at any tier), and their respective employees, financial advisors, attorneys, accountants and consultants ("IPP Participants"), who need to know the Confidential IPP Information for purposes of participating in the transactions contemplated by this Agreement or any other agreement, document or instrument relating hereto, and who are informed by such IPP of the confidential nature of the Confidential IPP Information and who shall agree to be bound by and to act only in accordance with the terms and conditions of this Section 14.14(c). Notwithstanding the foregoing, in the event that any IPP's IPP Participant is a Conflicted Person (as hereinafter defined), such IPP shall (x) not permit such Conflicted Person to participate in the negotiation or performance of any agreement, document or instrument relating hereto or any of the transactions contemplated hereby or thereby, (y) segregate all files, work papers, reports, analyses, data or other documents based, in whole or in part, on any Confidential IPP Information and shall not allow any Conflicted Person to have access thereto, and (z) not communicate or exchange any Confidential IPP Information to or with any such Conflicted Person, except, with respect to each of (x), (y) and (z) above, to the extent necessary for such IPP to obtain its own IPP/Third Party Consents or IPP Approvals, if any, from such Conflicted Person. A "Conflicted Person" shall mean,



collectively, any IPP Participant that is a financial institution, steam host, fuel supplier or fuel transporter and which is or has a material interest in a person (or Affiliate of such person) from whom any IPP is required to obtain an IPP/Third Party Consent or IPP Approval from such IPP Participant. Each IPP shall be responsible for any failure by such IPP's IPP Participant to comply with the terms of this Section 14.14(c).

(d) The provisions of this Section 14.14 shall be inoperative as to any information which (i) is or becomes generally available to the public other than as a result of any breach of this Section by any person subject hereto or its representatives, (ii) becomes available to a person subject hereto on a nonconfidential basis from a source (other than any other person subject hereto or its representatives) which has represented to such person subject hereto that such source is entitled to disclose it or (iii) was known to such person subject hereto on a nonconfidential basis prior to its disclosure to such person subject hereto by any other person subject hereto or its representatives.

(e) Each Party acknowledges that unauthorized disclosure of information may result in liability for judicial judgments including, but not limited to, monetary damages, and that any Party harmed by such disclosure is entitled to pursue any legal and equitable remedies in the event of an unauthorized disclosure. Each Party hereby waives any objections to the immediate issuance by a court of competent jurisdiction of injunctive or other equitable relief barring the further disclosure or use of any information in the event of an unauthorized disclosure.

(f) The provisions of this Section 14.14 shall survive the Consummation Date and any termination of this Agreement (either in its entirety or with respect to less than all of the IPPs).

14.15. No Prejudice. The Parties agree that this Agreement has been entered into in the context of litigation settlement negotiations. All evidentiary rules, whether federal or state, applicable to the rights and claims of the Parties, including but not limited to Rule 408 of the Federal Rules of Evidence, shall be applicable. The Parties agree and stipulate that this Agreement and any written or oral statement made in connection with this Agreement by a Party or its representatives were made in compromise negotiations, and if asserted to be evidence of (i) furnishing or offering or promising to furnish or (ii) accepting or offering or promising to accept, a valuable consideration in compromising or attempting to compromise a claim which was disputed as to either validity or amount, are not admissible to prove liability for or invalidity of such claims or their amounts.

[SIGNATURES APPEAR ON FOLLOWING SIGNATURE PAGES]



MASTER RESTRUCTURING AGREEMENT  
SIGNATURE PAGES

IN WITNESS WHEREOF, the parties hereto have entered into this Master Restructuring Agreement as of the date first above written.

Niagara Mohawk Power Corporation

By: William E. Davis

Name: William E. Davis

Title: Chairman of the Board and Chief Executive Officer

American Ref-Fuel Company of Niagara, L.P.

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

Name: Richard Oliver

Title: Vice President - Development

Onondaga Cogeneration Limited Partnership

By: Geddes Cogeneration Corporation,  
Its General Partner

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

Name: David C. Brauer

Title: Vice President

**MASTER RESTRUCTURING AGREEMENT  
SIGNATURE PAGES**

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Niagara Mohawk Power Corporation

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

American Ref-Fuel Company of Niagara, L.P.

By: Richard Oliver DS  
Name: Richard Oliver  
Title: Vice President - Development

Onondaga Cogeneration Limited Partnership

By: Geddes Cogeneration Corporation,  
Its General Partner

By: \_\_\_\_\_  
Name: David C. Brauer  
Title: Vice President

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Name: Richard Oliver  
Title: Vice President - Development

Onondaga Cogeneration Limited Partnership

By: Geddes Cogeneration Corporation,  
Its General Partner


By:  \_\_\_\_\_  
Name: David C. Brauer  
Title: Vice President

**MASTER RESTRUCTURING AGREEMENT  
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Project Orange Associates, L.P.

By: NCP Syracuse, Inc.,  
Its General Partner

By: NCP Energy, Inc.,  
Its Attorney-in-Fact

By:   
Name: David C. Brauer  
Title: Vice President

Fulton Cogeneration Associates, a  
New York limited partnership

By: ANR Venture Fulton Company,  
Its Managing General Partner

By: \_\_\_\_\_  
Name: Mark P. Barry  
Title: Vice President

Cogen Energy Technology L.P.

By: Cogen Energy Technology, Inc.,  
Its General Partner

By: \_\_\_\_\_  
Name: John E. Guinness  
Title: President

MASTER RESTRUCTURING AGREEMENT  
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Cogen Energy Technology L.P.

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Its General Partner


By:   
Name: John E. Guinness  
Title: President



MASTER RESTRUCTURING AGREEMENT  
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Lyonsdale Energy Limited Partnership, a  
Delaware Limited Partnership

By: Moose River Energy, Inc.,  
Its Managing General Partner

By: 

Name: Mr. Yojiro Okazaki  
Title: President

Encogen Four Partners, L.P.

By: EDC Four Inc.,  
Its General Partner

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

Name: Melvin E. Wentz  
Title: President

NorCon Power Partners, L.P.

By: Northern Consolidated Power, Inc.,  
Its General Partner

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

Name: J. Douglas Divine  
Title: Vice President - Strategic Planning

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Its General Partner

By: J. Douglas Divine  
Name: J. Douglas Divine  
Title: Vice President - Strategic Planning

MASTER RESTRUCTURING AGREEMENT  
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Indeck-Ilion Limited Partnership

By: Indeck Energy Services of Ilion, Inc.,  
Its General Partner

By: Thomas M. Campone

Name: Thomas M. Campone

Title: President

Indeck-Yerkes Limited Partnership

By: Indeck Energy Services of Yerkes, Inc.,  
Its General Partner

By: Thomas M. Campone

Name: Thomas M. Campone

Title: President

Indeck-Olean Limited Partnership

By: Indeck Energy Services of Olean, Inc.,  
Its General Partner

By: Thomas M. Campone

Name: Thomas M. Campone

Title: President

MASTER RESTRUCTURING AGREEMENT  
SIGNATURE PAGES

Indeck-Oswego Limited Partnership

By: Indeck Energy Services of Oswego, Inc.,  
Its General Partner

By: Thomas M. Campone

Name: Thomas M. Campone

Title: President

Black River Limited Partnership

By: Jones Black River Services, Inc.,  
Its Managing General Partner

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

Name: William A. Garnett

Title: President

LG&E Westmoreland Rensselaer, a  
California general partnership

By: LG&E Power 15 Incorporated,  
A General Partner

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

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

Title: \_\_\_\_\_

MASTER RESTRUCTURING AGREEMENT  
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By: Indeck Energy Services of Oswego, Inc.,  
Its General Partner

By: \_\_\_\_\_  
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Title: President

Black River Limited Partnership

By: Jones Black River Services, Inc.,  
Its Managing General Partner

By: William A. Garnett  
Name: William A. Garnett  
Title: President

LG&E Westmoreland Rensselaer, a  
California general partnership

By: LG&E Power 15 Incorporated,  
A General Partner

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

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Title: President

Black River Limited Partnership

By: Jones Black River Services, Inc.,  
Its Managing General Partner

By: \_\_\_\_\_  
Name: William A. Garnett  
Title: President

LG&E Westmoreland Rensselaer, a  
California general partnership

By: LG&E Power 15 Incorporated,  
A General Partner

By: George Basinger  
Name: PRESIDENT / GEORGE BASINGER  
Title: 7/3/97

MASTER RESTRUCTURING AGREEMENT  
SIGNATURE PAGES

By: Westmoreland-Rensselaer, L.P.,  
A General Partner

By: WEI-Rensselaer, Inc.  
A General Partner

By: Michael Repetto  
Name: Michael Repetto  
Title: President

Oxbow Power of North Tonawanda, New York, Inc.

By: \_\_\_\_\_  
Name: Bernard H. Cherry  
Title: President

Salt City Energy Venture, L.P.

By: Salt City Energy, LLC,  
Its General Partner

By: \_\_\_\_\_  
Name: Edward Barno  
Title: Member



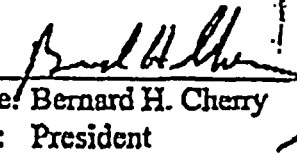
**MASTER RESTRUCTURING AGREEMENT  
SIGNATURE PAGES**

By: Westmoreland-Rensselaer, L.P.,  
A General Partner

By: WEI-Rensselaer, Inc.  
A General Partner

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

Oxbow Power of North Tonawanda, New York, Inc.

By:   
Name: Bernard H. Cherry  
Title: President

Salt City Energy Venture, L.P.

By: Salt City Energy, LLC,  
Its General Partner

By: \_\_\_\_\_  
Name: Edward Barno  
Title: Member

MASTER RESTRUCTURING AGREEMENT  
SIGNATURE PAGES

By: Westmoreland-Rensselaer, L.P.,  
A General Partner

By: WEI-Rensselaer, Inc.  
A General Partner

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

Oxbow Power of North Tonawanda, New York, Inc.

By: \_\_\_\_\_  
Name: Bernard H. Cherry  
Title: President

Salt City Energy Venture, L.P.

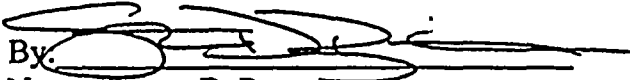
By: Salt City Energy, LLC,  
Its General Partner

By: Edward J. Barno  
Name: Edward Barno  
Title: Member

MASTER RESTRUCTURING AGREEMENT  
SIGNATURE PAGES

AG-Energy, L.P.

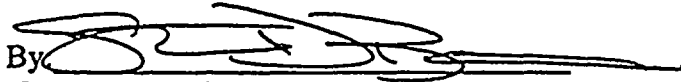
By: AG-Energy, Inc.,  
Its General Partner

By: 

Name: Steven D. Burton  
Title: Secretary\General Counsel

Seneca Power Partners, L.P.


By: Seneca Power Corporation,  
Its General Partner

By: 

Name: Steven D. Burton  
Title: Secretary\General Counsel

Sterling Power Partners, L.P.

By: Sterling Power, Ltd.,  
Its General Partner

By: 

Name: Steven D. Burton  
Title: Secretary\General Counsel

MASTER RESTRUCTURING AGREEMENT  
SIGNATURE PAGES

Power City Partners, L.P.

By: Power City Generating, Inc.,  
Its General Partner

By: 

Name: Steven D. Burton  
Title: Secretary\General Counsel

P&N Partners, L.P.

By: P&N Energy Systems, Inc.,  
Its General Partner

By: 

Name: Steven D. Burton  
Title: Secretary\General Counsel

Selkirk Cogen Partners, L.P.

By: JMC Selkirk, Inc.,  
Managing General Partner

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

Name: George J. Grunbeck  
Title: Vice President

MASTER RESTRUCTURING AGREEMENT  
SIGNATURE PAGES

Power City Partners, L.P.

By: Power City Generating, Inc.,  
Its General Partner

By: \_\_\_\_\_  
Name: Steven D. Burton  
Title: Secretary\General Counsel


P&N Partners, L.P.

By: P&N Energy Systems, Inc.,  
Its General Partner

By: \_\_\_\_\_  
Name: Steven D. Burton  
Title: Secretary\General Counsel

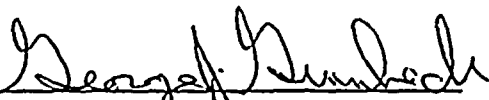
Selkirk Cogen Partners, L.P.

By: JMC Selkirk, Inc.,  
Managing General Partner

By:   
Name: George J. Grunbeck  
Title: Vice President

MASTER RESTRUCTURING AGREEMENT  
SIGNATURE PAGES

East Syracuse Generating Company, L.P.

By:   
Name: George J. Grünbeck  
Title: Vice President

Kamine/Besicorp Carthage L.P.

By: Kamine Carthage Cogen Co., Inc.,  
Its General Partner

By: \_\_\_\_\_  
Name: Harold N. Kamine  
Title: President

By: Beta Carthage, Inc.,  
Its General Partner

By: \_\_\_\_\_  
Name: Michael J. Daley  
Title: Vice President\Secretary\Treasurer

Kamine/Besicorp South Glens Falls L.P.

By: Kamine South Glens Falls Cogen Co., Inc.,  
Its General Partner

By: \_\_\_\_\_  
Name: Harold N. Kamine  
Title: President

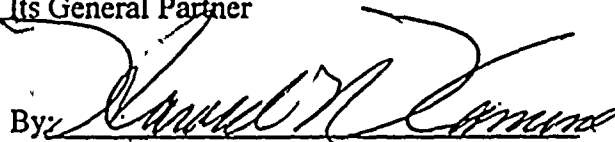
MASTER RESTRUCTURING AGREEMENT  
SIGNATURE PAGES

East Syracuse Generating Company, L.P.


By: \_\_\_\_\_  
Name: George J. Grunbeck  
Title: Vice President

Kamine/Besicorp Carthage L.P.

By: Kamine Carthage Cogen Co., Inc.,  
Its General Partner

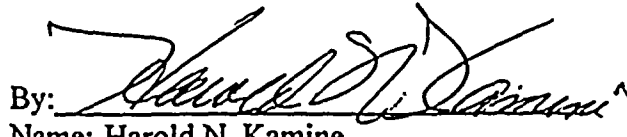
By:   
Name: Harold N. Kamine  
Title: President

By: Beta Carthage, Inc.,  
Its General Partner

By:   
Name: Michael J. Daley  
Title: Vice President\Secretary\Treasurer

Kamine/Besicorp South Glens Falls L.P.

By: Kamine South Glens Falls Cogen Co., Inc.,  
Its General Partner

By:   
Name: Harold N. Kamine  
Title: President

MASTER RESTRUCTURING AGREEMENT  
SIGNATURE PAGES

By: Beta South Glens Falls, Inc.,  
Its General Partner

By: Michael J. Daley, V.P.  
Name: Michael J. Daley  
Title: Vice President\Secretary\Treasurer

Kamine/Besicorp Natural Dam L.P.

By: Kamine Natural Dam Cogen Co., Inc.,  
Its General Partner

By: Harold N. Kamine  
Name: Harold N. Kamine  
Title: President

By: Beta Natural Dam, Inc.,  
Its General Partner

By: Michael J. Daley, V.P.  
Name: Michael J. Daley  
Title: Vice President\Secretary\Treasurer

Kamine/Besicorp Syracuse, L.P.

By: Kamine Syracuse Cogen Co., Inc.,  
Its General Partner

By: Harold N. Kamine  
Name: Harold N. Kamine  
Title: President



MASTER RESTRUCTURING AGREEMENT  
SIGNATURE PAGES

By: Beta Syracuse, Inc.,  
Its General Partner

By: Michael J. Daley, V.P.  
Name: Michael J. Daley  
Title: Vice President\Secretary\Treasurer

Kamine/Besicorp Beaver Falls, L.P.

By: Kamine Beaver Falls Cogen Co., Inc.,  
Its General Partner

By: Harold N. Kamine  
Name: Harold N. Kamine  
Title: President

By: Beta Beaver Falls, Inc.,  
Its General Partner

By: Michael J. Daley, V.P.  
Name: Michael J. Daley  
Title: Vice President\Secretary\Treasurer

United Development Group - Niagara, L.P.

By: United Development Group - Niagara, Inc.,  
Its General Partner

By: \_\_\_\_\_  
Name: W. John Fair  
Title: President

**MASTER RESTRUCTURING AGREEMENT  
SIGNATURE PAGES**

By: Beta Syracuse, Inc.,  
Its General Partner

By: \_\_\_\_\_  
Name: Michael J. Daley  
Title: Vice President\Secretary\Treasurer

Kamine/Besicorp Beaver Falls, L.P.

By: Kamine Beaver Falls Cogen Co., Inc.,  
Its General Partner

By: \_\_\_\_\_  
Name: Harold N. Kamine  
Title: President

By: Beta Beaver Falls, Inc.,  
Its General Partner

By: \_\_\_\_\_  
Name: Michael J. Daley  
Title: Vice President\Secretary\Treasurer

United Development Group - Niagara, L.P.

By: United Development Group - Niagara, Inc.,  
Its General Partner

By:   
Name: W. John Fair  
Title: President

SCHEDULE A  
Names and Notice Addresses of IPPs

IPP

Notice Address

American Ref-Fuel Company of Niagara,  
L.P.

Air Products & Chemicals  
7201 Hamilton Boulevard  
Allentown, PA 18195  
Facsimile: 610-706-6765  
Attn: Jim Butz

and

American Ref-Fuel Company  
777 N. Eldridge  
Houston, TX 77079  
Facsimile: 713-584-8626  
Attn: Tyler Scofield

Onondaga Cogeneration Limited Partnership  
Project Orange Associates, L.P.

c/o GPU International, Inc.  
One Upper Pond Road  
Parsippany, NJ 07054  
Facsimile: 201-263-6977  
Attn: Wendy Greengrove

Fulton Cogeneration Associates

c/o ANR Venture Fulton Company  
Nine Greenway Plaza, 16<sup>th</sup> Floor  
Houston, TX 77046  
Facsimile: 713-297-1556  
Attn: Mark Barry

Cogen Energy Technology L.P.

1902 River Road  
Castleton-on-Hudson, NY 12033  
Facsimile: 518-732-4006  
Attn: Frank Lyman

and

Tower East, Suite 303  
20600 Chagrin Boulevard  
Shaker Heights, OH 44122  
Facsimile: 216-921-2558  
Attn: John Guinness

IPP

Notice Address

Lyonsdale Energy Limited Partnership

c/o Diamond Energy  
633 West 5<sup>th</sup> Street  
Suite 2800  
Los Angeles, CA 90071  
Facsimile: 213-892-1332  
Attn: Bo Buchynsky

Encogen Four Partners, L.P.

c/o Enserch Development Corporation  
1817 Wood Street  
Suite 550 West  
Dallas, TX 75201  
Facsimile: 214-670-2974  
Attn: Timothy O. Curley

NorCon Power Partners, L.P.

c/o CalEnergy Company  
302 S. 36<sup>th</sup> Street  
Omaha, NE 68131  
Facsimile: 402-231-1668  
Attn: Douglas Divine

Indeck-Illion Limited Partnership  
Indeck-Yerkes Limited Partnership  
Indeck-Olean Limited Partnership  
Indeck-Oswego Limited Partnership

Indeck Energy Services, Inc.  
1130 Lake Cook Road  
Facsimile: 847-520-9883  
Buffalo Grove, IL 60089  
Attn: Steven Dowdy

Black River Limited Partnership

c/o Jones Capital Corporation  
J.A. Jones Drive  
Charlotte, NC 28287  
Facsimile: 704-553-3037  
Attn: John Woodcock

LG&E Westmoreland Rensselaer

c/o LG&E Power, Inc.  
12500 Fair Lake Circle, #350  
Fairfax, VA 22033-3804  
Facsimile: 703-968-5458  
Attn: Anne Gleason-Roche

IPP.

Notice Address

Oxbow Power of North Tonawanda, New York, Inc.

1601 Forum Place  
West Palm Beach, FL 33401  
Facsimile: 561-640-8847  
Attn: Bernard H. Cherry

Salt City Energy Venture, L.P.

56 Industrial Drive  
Syracuse, NY 13204  
Facsimile: 315-487-4477  
Attn: Edward Barno

AG-Energy, L.P.  
Seneca Power Partners, L.P.  
Sterling Power Partners, L.P.  
Power City Partners, L.P.  
P&N Partners, L.P.

c/o Sithe Energies, Inc.  
450 Lexington Avenue  
37<sup>th</sup> Floor  
New York, NY 10017  
Facsimile: 212-450-9025  
Attn: Steven Burton

Selkirk Cogen Partners, L.P.  
East Syracuse Generating Company, L.P.

c/o US Generating Co.  
7500 Old Georgetown Road  
Bethesda, MD 20814-6161  
Facsimile: 301-718-6906  
Attn: Jeff McParland  
Steve Herman

and

c/o US Generating Co.  
One Bowdoin Square  
Boston, MA 02114-2910  
Attn: George Grunbeck  
Peter Meier

Kamine/Besicorp Carthage L.P.  
Kamine/Besicorp South Glens Falls L.P.  
Kamine/Besicorp Natural Dam L.P.  
Kamine/Besicorp Syracuse L.P.  
Kamine/Besicorp Beaver Falls L.P.

c/o Kamine Development Corp.  
1545 Rt. 206  
Suite 300  
Bedminster, NJ 07921-2567  
Facsimile: 908-719-8774  
Attn: Mark Slifkin

and

IPP

Notice Address

c/o Besicorp Group, Inc.  
1151 Flatbush Road  
Kingston, NY 12401  
Facsimile: 914-336-7172  
Attn: Michael J. Daley

United Development Group - Niagara, L.P.

1401 Main Street  
Suite 1115  
Columbia, SC 29211  
Facsimile: 803-799-8039  
Attn: W. John Fair

SCHEDULE 2.1  
Existing PPAs to be Terminated  
pursuant to Section 2.1

**CONFIDENTIAL**





SCHEDULE 2.2  
Existing PPA to be Amended  
pursuant to Section 2.2

**CONFIDENTIAL**



SCHEDULE 2.3  
Existing PPAs to be Amended and/or  
Restated pursuant  
to Section 2.3

**CONFIDENTIAL**



**SCHEDULE 3.5**  
**Certain Exclusions from**  
**Anti-Dilution Provisions**

Common Stock may be issued pursuant to:

the Company's Dividend Reinvestment and Stock Purchase Plan

the Amended and Restated Merger Agreement between Syracuse Suburban Gas Company, Inc. and the Company dated March 13, 1992

the Employee Savings Fund Plan for Represented Employees of Niagara Mohawk Power Corporation

the Employee Savings Fund Plan for Non-Represented Employees of Niagara Mohawk Power Corporation

the Company's 1992 Stock Option Plan



SCHEDULE 3.7  
IPP Sponsor Entities to Enter  
Into Shareholder's Agreement

IPP

Indeck-Ilion Limited Partnership  
Indeck-Yerkes Limited Partnership  
Indeck-Olean Limited Partnership  
Indeck-Oswego Limited Partnership

AG-Energy, L.P.  
Seneca Power Partners, L.P.  
Sterling Power Partners, L.P.  
Power City Partners, L.P.  
P&N Partners, L.P. -

East Syracuse Generating Company, L.P.

Kamine/Besicorp Carthage L.P..  
Kamine/Besicorp South Glens Falls L.P.  
Kamine/Besicorp Natural Dam L.P.  
Kamine/Besicorp Syracuse L.P.  
Kamine/Besicorp Beaver Falls L.P.

Sponsor Entity

Indeck Energy Services, Inc.

Siteh Energies, Inc.

U.S. Generating Co.

Kamine Development Corp. and  
Besicorp Group, Inc.





## Niagara Mohawk Power Corporation Capitalization

### 4.5 (i) Authorized capital:

Common Stock, \$1 par value,	185,000,000 shares
Cumulative Preferred Stock, \$100 par value	3,400,000 shares
Cumulative Preferred Stock, \$25 par value	19,600,000 shares
Cumulative Preference Stock, \$25 par value	8,000,000 shares

### 4.5 (ii) Common Stock Issued and Outstanding:

As of September 30, 1996	144,365,214 shares
As of June 27, 1997	144,390,619 shares

### 4.5 (iii) Common Stock Issuable:

Issuable in connection with the acquisition of Syracuse Suburban Gas Corporation - As of September 30, 1996	54,137 shares
As of June 27, 1997	28,732 shares
Issuable under the 1992 Stock Option Plan - As of September 30, 1996	322,875 shares
As of June 27, 1997	322,875 shares



SCHEDULE 4.8 CERTAIN CHANGES OR EVENTS

(d) The Company has:

authorized the funding of a rabbi trust in the event of prospective changes of control

changed period for vesting of lifetime medical benefits from ten years to eight years for senior officers

provided certain senior officers with life insurance providing death benefit two and one-half times annual salary

agreed to purchase one senior officer's house at appraised value

(h) Common Stock has been issued pursuant to:

the Company's Dividend Reinvestment and Stock Purchase Plan

the Amended and Restated Merger Agreement Between Syracuse Suburban Gas Company, Inc. and the Company dated March 13, 1992

the Employee Savings Fund Plan for Represented Employees of Niagara Mohawk Power Corporation

the Employee Savings Fund Plan for Non-Represented Employees of Niagara Mohawk Power Corporation

(i) Common Stock has been purchased by the Company pursuant to:

the Amended and Restated Merger Agreement Between Syracuse Suburban Gas Company, Inc. and the Company dated March 13, 1992

the Employee Savings Fund Plan for Represented Employees of Niagara Mohawk Power Corporation

the Employee Savings Fund Plan for Non-Represented Employees of Niagara Mohawk Power Corporation



SCHEDULE 5.4  
Certain Disclosed Litigation

Westmoreland Coal Company and Westmoreland Energy, Inc., Affiliates of Westmoreland Rensselaer L.P., a general partner of LG&E Westmoreland Rensselaer, a California general partnership and one of the IPPs hereunder, are debtors in possession in a proceeding under Chapter 11 of the Bankruptcy Code (Joint Case No. 96-26092 MSK, et al.) in the United States Bankruptcy Court for the District of Colorado, and as such the approval of the Bankruptcy Court may be required for of LG&E Westmoreland Rensselaer to consummate the transactions contemplated by this Agreement.



SCHEDULE 6.6C  
Matters to be Included in PSC Approval

The PSC Approval shall:

- (i) find the Restructuring and the Agreement and the obligations incurred by NMPC thereunder to be prudent;
- (ii) authorize the issuance of shares of stock, bonds, and any other securities required to be issued pursuant to the Agreement;
- (iii) approve NMPC's full recovery in rates of all costs that NMPC will incur in connection with the Restructuring and as a result of performance of its obligations under the Agreement, including a determination that such costs were prudently incurred;
- (iv) authorize NMPC to establish a regulatory asset for the full amount of the unamortized costs associated with implementation of the Agreement;
- (v) authorize NMPC to establish a non-bypassable Competitive Transition Charge, which, together with costs recovered in base rates, will provide for the full recovery of all costs, including strandable costs, that are incurred over the term of the debt anticipated to be incurred in connection with this Agreement; and
- (vi) authorize NMPC to perform any other act required to be performed pursuant to the Agreement for which PSC approval is required or authorize any other act as to which PSC approval is required.





SCHEDULE 6.10A  
Litigation and Regulatory Proceedings  
to be Stayed by the Parties

Federal Court Cases

1. *Encogen Four Partners L.P. v. Niagara Mohawk Power Corp.*, Docket No. 96-9642 (2d Cir.)<sup>\*</sup>
2. *Indeck-Illion L.P. & Power City Partners v. NYPSC & Niagara Mohawk Power Corp.*, No. 95-CV-0143 (N.D.N.Y.)
3. *Niagara Mohawk Power Corp. v. United States Dep't of Energy*, Case No. 95-CV-952 (D.D.C.; motion for summary judgment granted Feb. 23, 1996), *appeal docketed*, No. 96-5246 (D.C. Cir. Aug. 6, 1996)
4. *Niagara Mohawk Power Corp. v. United States Dep't of Energy v. Sterling Power Partners, et al.*, Case No. 96-5082 (D.C. Cir.) - consolidated with case No. 96-5246 (case #1 above) in the D.C. Circuit
5. *NorCon Power Partners, L.P. v. Niagara Mohawk Power Corp.*, Case No. 96 Civ. 2947 (S.D.N.Y.)
6. *NorCon Power Partners, L.P. v. Niagara Mohawk Power Corp.*, Docket No. 96-7283 (2d Cir.)

New York State Court Cases

7. *Niagara Mohawk Power Corp. v. Sterling Power, Ltd.*, Index No. 95-2981
8. *Ag-Energy, L.P., Power City Partners, L.P., Seneca Power Partners, L.P. & Sterling Power Partners, L.P. v. Niagara Mohawk Power Corp.*, Index No. 111207/95<sup>\*\*</sup>
9. *Black River L.P. v. Niagara Mohawk Power Corp.*, Docket Nos. CA 97-0036 & CA 97-0087 (4th Dep't)
10. *Sterling Power Partners, L.P. v. Niagara Mohawk Power Corp.*, Index No. 94-110354<sup>\*\*\*</sup>

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<sup>\*</sup> This proceeding was withdrawn on April 14, 1997, but is subject to reinstatement after a decision in the *NorCon* proceeding (case #3 above). The parties agree that the *Encogen* case can be reinstated by NMPC solely as to Encogen in the event that Encogen is not a Party to the Agreement on the Consummation Date.

<sup>\*\*</sup> As to this case, the parties thereto agree to use their Reasonable Best Efforts to arrive at a consented settlement before the Consummation Date. In the event a settlement is not reached, the parties thereto agree that the stay is to be lifted as of the Consummation Date and the case will resume. In the event a settlement is reached, the parties thereto shall dismiss and withdraw this case as of the Consummation Date.

<sup>\*\*\*</sup> As to this case, the parties thereto agree to use their Reasonable Best Efforts to arrive at a consented settlement before the Consummation Date. In the event a settlement is not reached, the parties thereto agree that the stay is to



11. *Sterling Power Partners, L.P., Seneca Power Partners, L.P., Power City Partners, L.P. & Ag-Energy, L.P. v. Niagara Mohawk Power Corp.*, Index No. 106895/94 (1st Dep't)

NYPSC Proceedings

12. *Niagara Mohawk Power Corp. – Petition for Approval of Curtailment Procedures*, NYPSC Case No. 92-E-0814 (combined with *Proceeding on Motion of the Commission to Establish Conditions Governing Curtailment Clauses in Contracts for On-Site Generation*, NYPSC Case No. 88-E-081)
13. *Niagara Mohawk Power Corp. – Petition for Clarification of Certain Aspects of the Monitoring and Compliance Requirements of the Commission's 80 MW Output Limitation*, NYPSC Case No. 96-E-1020
14. *Niagara Mohawk Power Corp. – Petition for an Order Requiring Firm Security for Certain Power Supply Contracts, or, Alternatively, Canceling Such Contracts*, NYPSC Case No. 95-E-1162
15. *Niagara Mohawk Power Corp. - Petition for Clarification of the Conditions Set Forth in the Commission's Order dated December 9, 1987 Approving Contract No. 514 with Lyonsdale Power Limited Partnership (20 MW Docket)*, NYPSC Case No. 95-E-1177

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be lifted as of the Consummation Date and the case will resume. In the event a settlement is reached, the parties thereto shall dismiss and withdraw this case as of the Consummation Date.



**SCHEDULE 6.10B**  
**Certain Litigation and Regulatory Proceedings**  
**(Involving 6-cent Issues)**

**Federal Court Cases**

1. *Niagara Mohawk Power Corp. v. FERC*, Case Nos. 95-1222, *et al.* (D.C. Cir.)
2. *Niagara Mohawk Power Corp. v. FERC*, Civil Action No. 95-CV-634 (N.D.N.Y.)



SCHEDULE 6.11 CERTAIN PERMITTED CONDUCT

- (a) The Company may merge or consolidate with any of its affiliates or any other entity.
- (c) The Company may amend its Certificate of Incorporation to authorize additional common stock and make any amendments necessary to restructure or amend the terms of the Company's preferred stock.
- (d) The Company may issue, sell or otherwise distribute its capital stock pursuant to:
- the Company's Dividend Reinvestment and Stock Purchase Plan;
  - the Amended and Restated Merger Agreement Between Syracuse Suburban Gas Company, Inc. and the Company dated March 13, 1992;
  - the Employee Savings Fund Plan for Represented Employees of Niagara Mohawk Power Corporation;
  - the Employee Savings Fund Plan for Non-Represented Employees of Niagara Mohawk Power Corporation;
  - the Company's 1992 Stock Option Plan;
  - any transactions undertaken as part of a plan to restructure, or amend the terms of, the Company's preferred stock; and
  - the Company shall be permitted to issue up to a further 1,000,000 shares of Common Stock in the ordinary course of business.
- (e) The Company may declare, set aside, pay or make any other distribution in cash or property in respect of any of the Company's capital stock, or any direct or indirect redemption, purchase, or other acquisition of any of such stock pursuant to:
- the Company's Dividend Reinvestment and Stock Purchase Plan;
  - the Amended and Restated Merger Agreement Between Syracuse Suburban Gas Company, Inc. and the Company dated March 13, 1992;
  - the Employee Savings Fund Plan for Represented Employees of Niagara Mohawk Power Corporation;
  - the Employee Savings Fund Plan for Non-Represented Employees of Niagara Mohawk Power Corporation;
  - the Company's 1992 Stock Option Plan;





the terms of the Company's Preferred Stock; and

any transactions undertaken as part of a plan to restructure, or amend the terms of, the Company's preferred stock.



SCHEDULE 8.8  
Litigation and Proceedings to be  
Withdrawn by the Parties

Federal Court Cases

1. *Encogen Four Partners L.P. v. Niagara Mohawk Power Corp.*(Encogen), Docket No. 96-9642 (2d Cir.)<sup>\*</sup>
2. *Indeck-Illion L.P. & Power City Partners v. NYPSC & Niagara Mohawk Power Corp.*, No. 95-CV-0143 (N.D.N.Y.)
3. *Niagara Mohawk Power Corp. v. United States Dep't of Energy*, Case No. 95-CV-952 (D.D.C.; motion for summary judgment granted Feb. 23, 1996), *appeal docketed*, No. 96-5246 (D.C. Cir. Aug. 6, 1996)
4. *Niagara Mohawk Power Corp. v. United States Dep't of Energy v. Sterling Power Partners, et al.*, Case No. 96-5082 (D.C. Cir.) - consolidated with case No. 96-5246 (case #1 above) in the D.C. Circuit.
5. *NorCon Power Partners, L.P. v. Niagara Mohawk Power Corp.*, Case No. 96 Civ. 2947 (S.D.N.Y.)
6. *NorCon Power Partners, L.P. v. Niagara Mohawk Power Corp.*, Docket No. 96-7283 (2d Cir.)

New York State Court Cases . . .

7. *Niagara Mohawk Power Corp. v. Sterling Power, Ltd.*, Index No. 95-2981
8. *Ag-Energy, L.P. , Power City Partners, L.P., Seneca Power Partners, L.P. & Sterling Power Partners, L.P. v. Niagara Mohawk Power Corp.*, Index No. 111207/95<sup>\*\*</sup>
9. *Black River L.P. v. Niagara Mohawk Power Corp.*, Docket Nos. CA 97-0036 & CA 97-0087 (4th Dep't)
10. *Sterling Power Partners, L.P. v. Niagara Mohawk Power Corp.*, Index No. 94-110354<sup>\*\*\*</sup>

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<sup>\*</sup> This proceeding was withdrawn on April 14, 1997, but is subject to reinstatement after a decision in the *NorCon* proceeding (case #3 above). The parties thereto agree that the *Encogen* case can be reinstated by NMPC solely as to Encogen in the event that Encogen is not a Party to the Agreement on the Consummation Date.

<sup>\*\*</sup> As to this case, the parties thereto agree to use their Reasonable Best Efforts to arrive at a consented settlement before the Consummation Date. In the event a settlement is not reached, the parties thereto agree that the stay is to be lifted as of the Consummation Date and the case will resume. In the event a settlement is reached, the parties thereto shall dismiss and withdraw this case as of the Consummation Date.

<sup>\*\*\*</sup> As to this case, the parties thereto agree to use their Reasonable Best Efforts to arrive at a consented settlement before the Consummation Date. In the event a settlement is not reached, the parties thereto agree that the stay is to



11. *Sterling Power Partners, L.P., Seneca Power Partners, L.P., Power City Partners, L.P. & Ag-Energy, L.P. v. Niagara Mohawk Power Corp.*, Index No. 106895/94 (1st Dep't)

FERC Proceedings

12. *Niagara Mohawk Power Corp.*, FERC Docket Nos. EL95-45-0000, QF90-154-005

NYPSC Proceedings

13. *Niagara Mohawk Power Corp. – Petition for Approval of Curtailment Procedures*, NYPSC Case No. 92-E-0814 (combined with *Proceeding on Motion of the Commission to Establish Conditions Governing Curtailment Clauses in Contracts for On-Site Generation*, NYPSC Case No. 88-E-081)
14. *Niagara Mohawk Power Corp. – Petition for Clarification of Certain Aspects of the Monitoring and Compliance Requirements of the Commission's 80 MW Output Limitation*, NYPSC Case No. 96-E-1020
15. *Niagara Mohawk Power Corp. – Petition for an Order Requiring Firm Security for Certain Power Supply Contracts, or, Alternatively, Canceling Such Contracts*, NYPSC Case No. 95-E-1162
16. *Niagara Mohawk Power Corp. - Petition for Clarification of the Conditions Set Forth in the Commission's Order dated December 9, 1987 Approving Contract No. 514 with Lyonsdale Power Limited Partnership (20 MW Docket)*, NYPSC Case No. 95-E-1177

Pleadings

17. All pleadings filed by NMPC in *Indeck-Olean L.P. – Olean Cogeneration Facility*, FERC Docket Nos. EL95-11-0000, QF90-154-004

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be lifted as of the Consummation Date and the case will resume. In the event a settlement is reached, the parties thereto shall dismiss and withdraw this case as of the Consummation Date.



## SCHEDULE 9.10 NMPC FINANCING

Financing transactions necessary to the Company's consummation of the transactions contemplated in the Master Restructuring Agreement (the "Company's Consummation") may include:

obtaining amendments, waivers or consents with respect to, or the replacement of:

the \$125,000,000 Revolving Credit Agreement,  
the \$255,000,000 Term Loan Agreement,  
the Amended and Restated Letter of Credit and Reimbursement Agreement with Morgan Guarantee Trust Company of New York,  
the Amended and Restated Letter of Credit and Reimbursement Agreement with Toronto-Dominion Bank,  
the Amended and Restated Letter of Credit and Reimbursement Agreement with Canadian Imperial Bank of Commerce,  
the Master Creditor Agreement; and  
the First Mortgage Bond Indenture, each dated as of March 20, 1996, together with all Interest Rate Cap Agreements, Letters of Credit and other agreements of even date therewith that together constitute the Company's senior bank financing.

the Company's trade receivables financing facility with NM Receivables Corp., Corporate Receivables Corporation, Citibank, N.A. and Citicorp North America, Inc.

obtaining financing for all transaction costs payable by the Company arising from the Company's Consummation or any conditions precedent thereto, including, but not limited to, fees and expenses arising in connection with the Public Offering of the Debt Securities, the issuance of the Common Stock, and the restructuring or amendment of the terms of the preferred stock.

obtaining a restructuring of, or amendment of the terms of, the Company's preferred stock.

obtaining all other financing, including bridge financing (including but not limited to borrowing the amount of any tax refunds due as a result of the Company's Consummation), necessary, in the Company's reasonable judgment, to effect the Company's Consummation or any conditions precedent thereto.





**TERMS OF  
AMENDED POWER PURCHASE AGREEMENTS, RESTATED  
CONTRACTS AND FIXED PRICE SWAP CONTRACTS**

NMPC and the IPPs which are parties to the Existing PPAs listed on Schedule 2.2 to the Mastering Restructuring Agreement have agreed to amend their Existing PPAs and NMPC and the IPPs which are parties to the Existing PPAs listed on Schedule 2.3 to the Master Restructuring Agreement have agreed to conduct good faith negotiations and use their Reasonable Best Efforts to enter into Restated Contracts (as such term is defined below), all in accordance with the material terms and conditions set forth below. NMPC has also agreed to enter into certain fixed price swap contracts (the "Fixed Price Swap Contracts"), which are described below. Capitalized terms used herein, including the Attachments hereto, which are not otherwise defined herein shall have the meanings given to such terms in the Master Restructuring Agreement.

**General**

This Exhibit A includes the following Attachments hereto which set forth specific matters relating to the general description contained herein:

- Attachment A-1 - [Intentionally Omitted]
- Attachment A-2 - Amended PPA with the Solid Fuel IPP (quantities and prices)
- Attachment A-3 - Indexed Swap Contracts with Gas IPPs (quantities and prices)
- Attachment A-4 - Calculation of Payments under Indexed Swap Contracts with Gas IPPs
- Attachment A-5 - Pricing Assumptions for Indexed Swap Contracts with Gas IPPs
- Attachment A-6 - Termsheet for Indexed Swap Contracts with Gas IPPs
- Attachment A-7 - Power Put Contracts with Gas IPPs (quantities and prices)
- Attachment A-8 - Termsheet for Power Put Contracts with Gas IPPs
- Attachment A-9 - Option Provisions for Restated Contracts with Gas IPPs
- Attachment A-10 - Fixed Price Swap Contracts (quantities and prices)
- Attachment A-11 - Termsheet for Fixed Price Swap Contracts
- Attachment A-12 - Additional Terms, Conditions and Provisions for Amended PPA and Restated Contracts

**Solid Fuel IPP**

NMPC and the Solid Fuel IPP party to the Existing PPA listed on Schedule 2.2 to the Master Restructuring Agreement shall amend such Existing PPA effective as of the Effective Time to reflect the quantity of electricity in gigawatt hours ("GWh") which NMPC shall purchase under such Amended PPA and the price which NMPC shall pay therefor in dollars per megawatt hour ("\$/MWh") for each Contract Year (as such term is defined below) of the Amended PPA as is set forth in Attachment A-2 hereto. The Existing PPA shall also be amended to include all of the additional terms, conditions and

provisions set forth in Attachment A-12 hereto, unless the Solid Fuel IPP and NMPC otherwise mutually agree.

For purposes of this Exhibit A, "Contract Year" shall mean the period commencing at 11:59:59 p.m. on the Consummation Date (the "Effective Time"), and ending at 11:59:59 p.m. on the first anniversary of the last day of the month in which the Consummation Date occurs and each successive 12-month period thereafter to the extent applicable.

### Gas IPPs

NMPC and each Gas IPP which is a party to an Existing PPA listed on Schedule 2.3 to the Master Restructuring Agreement shall conduct good faith negotiations and use their Reasonable Best Efforts to enter into a Restated Contract(s) which amends and/or restates each such Gas IPP's Existing PPA. Such Restated Contracts shall be dated as of the date of each such Gas IPP's Existing PPA and the terms of such amendment and/or restatement shall be effective as of the Effective Time and shall be in the form of an indexed swap contract (the "Indexed Swap Contract") and a power put contract (the "Power Put Contract"), or a cash-settled forward or swap contract, an option cash-settled forward or swap contract, a power supply agreement, an energy contract or a tolling contract, or other contract or any combination thereof, which may be simultaneous or sequential and shall contain such terms and conditions as are mutually agreed (collectively, the "Restated Contracts"). Any such Restated Contract (other than the Indexed Swap Contracts (which shall be for a term of ten Contract Years) and the Power Put Contracts (which shall be for the term specified in Attachment A-8)) may be for a term of up to ten Contract Years. Each Restated Contract, regardless of the form of such Restated Contract (other than the Indexed Swap Contracts or the Power Put Contracts) shall include all of the additional terms, conditions and provisions set forth in Attachment A-12 hereto, unless the applicable Gas IPP and NMPC otherwise mutually agree.

Set forth below is a general description of the terms and conditions of the Indexed Swap Contract and the Power Put Contract. The following Attachments are relevant to these agreements:

- Attachment A-3 (quantities and prices for Indexed Swap Contracts);
- Attachment A-4 (formula for payments under Indexed Swap Contracts);
- Attachment A-5 (pricing assumptions for Indexed Swap Contracts);
- Attachment A-6 (termsheet for Indexed Swap Contracts);
- Attachment A-7 (quantities and prices for Power Put Contracts);
- Attachment A-8 (termsheet for Power Put Contracts);
- Attachment A-9 (option provisions for Restated Contracts); and
- Attachment A-12 (additional terms for Restated Contracts).

Indexed Swap Contract. This form of Restated Contract will generally be based on the terms and conditions set forth in Attachment A-6 hereto. Each Indexed Swap Contract shall become effective as of the Effective Time and mature periodically (each, a "Settlement Date") each calendar month (each, a "Settlement Period") throughout a term of ten Contract Years. The Indexed Swap Contract will provide for a series of monthly payments (i.e., actual physical sales or purchases of electricity shall not be required) which shall be calculated by reference to (i) a proxy market price (the "Proxy-Market Price", as such term is defined in Attachment A-6, and which price shall be identical for all Indexed Swap Contracts and Power Put Contracts) during the period (the "Proxy-Market Price Period", as such term is defined in Attachment A-6) prior to the establishment of a competitive market price through the implementation of a New York Independent System Operator and Power Exchange (the "ISO/PE"), and (ii) a market price (the "Market Price", as such term is defined in Attachment A-6) upon the establishment of the ISO/PE. Accordingly, on each Settlement Date (x) if and to the extent the contract price exceeded the Proxy-Market Price or the Market Price plus, if applicable the Market Capacity Price (as such term is defined in Attachment A-6), as the case may be, during any applicable time interval for which the Gas IPP and NMPC were contractually committed (an "Interval", as such term is defined in Attachment A-6), NMPC shall owe the Gas IPP the difference between (A) the contract price multiplied by the contract quantity of electricity in megawatt hours ("MWh") for each Interval occurring during the Settlement Period, and (B) such Proxy-Market Price or Market Price, as the case may be, multiplied by the contract quantity of electricity in MWh for each Interval occurring during the Settlement Period plus commencing upon the establishment of the ISO/PE and only if there then exists a separate market for capacity, the Market Capacity Price in \$/MW for the Settlement Period multiplied by the weight averaged capacity associated with the contract quantity of electricity for each Interval occurring during such Settlement Period, and (y) if and to the extent the Proxy-Market Price or the Market Price, as the case may be, exceeded the contract price during any applicable Interval, the Gas IPP shall owe NMPC the difference between (A) such Proxy-Market Price or Market Price, as the case may be, multiplied by the contract quantity of electricity in MWh for each Interval occurring during the Settlement Period plus commencing upon the establishment of the ISO/PE and only if there then exists a separate market for capacity, the Market Capacity Price in \$/MW for the Settlement Period multiplied by the weight averaged capacity associated with the contract quantity of electricity for each Interval occurring during such Settlement Period, and (B) the contract price multiplied by the contract quantity of electricity in MWh for each Interval occurring during the Settlement Period. On each Settlement Date, the payment obligations due under the Indexed Swap Contract for each Interval occurring during the Settlement Period shall be netted against...

each other, and the party owing the greater amount shall make a net payment to the other party.

- The formula for calculating the amount of payments to be made under the Indexed Swap Contract is set forth on Attachment A-4 hereto.
- The contract prices under the Indexed Swap Contracts shall be fixed during the first two Contract Years of the term of the Indexed Swap Contracts. Thereafter, the contract prices shall be indexed and calculated in accordance with an indexing formula similar to either of those set forth in Appendix 6-3 to Attachment A-6 hereto. During the negotiation of each Indexed Swap Contract, each Gas IPP shall propose a contract price indexing formula. If the Gas IPP demonstrates to WP&Co. and DLJ that such pricing formula, when calculated using the assumptions set forth in Attachment A-5 hereto, results in a contract price for each of the third through the tenth Contract Years which is equal to the annual contract prices set forth in the allocation for such Gas IPP in the Contract Allocation, such pricing formula shall be deemed acceptable to NMPC.
- Subject to adjustment in accordance with Sections 12.4(b), 2.5 and 2.6, as applicable, of the Master Restructuring Agreement, the aggregate quantity of electricity in GWh, the aggregate installed capacity in megawatts ("MW") and the weighted average contract price in \$/MWh for the first two Contract Years of the Indexed Swap Contracts are set forth in Attachment A-3 hereto. Subject to adjustment in accordance with Sections 12.4(b), 2.5 and 2.6, as applicable, of the Master Restructuring Agreement, Attachment A-3 also sets forth the aggregate quantity of electricity, the aggregate installed capacity and an example, based on the assumptions set forth in Attachment A-5 hereto, of the weighted average indexed contract prices for Contract Years three through ten of the Indexed Swap Contracts.
- For purposes of the Indexed Swap Contracts (i) prior to the establishment of the ISO/PE and thereafter at any time when no separate market for capacity exists, the price for the applicable capacity shall equal zero, and (ii) following the Proxy-Market Price Period and only if there then exists a separate market for capacity, the applicable capacity will be adjusted on a basis consistent with the structure of such separate market.

Power Put Contract. This form of Restated Contract will generally be based on the terms and conditions set forth in Attachment A-8. Each Power Put Contract shall become effective as of the Effective Time and shall provide for a series of put options which shall expire periodically on a monthly basis (each, a "Settlement Period") throughout a term equal to the Proxy-Market Price Period (as such term is defined in Attachment A-8). At the option of the Gas IPP, the Gas IPP shall have the right to put (i) energy to NMPC up to the contract quantity of electricity (including energy subject to overgeneration provisions), and (ii) capacity associated with the contract quantity of electricity, in each case, for each applicable time interval for which the Gas IPP and NMPC were contractually committed (an "Interval", as such term is defined in Attachment A-8) during the Settlement Period, and NMPC shall be obligated to take and pay for such energy and capacity from the Gas IPP, at the Proxy-Market Price (as such term is defined in Attachment A-8, and which shall be identical for all Power Put Contracts and Indexed Swap Contracts) prior to the establishment of the ISO/PE and at the Market Price and, if applicable, the Market Capacity Price, upon the establishment of the ISO/PE. If the Gas IPP determines not to exercise its rights to put energy and capacity to NMPC, such Gas IPP may sell its energy or capacity to third parties, provided such Gas IPP has first offered to sell energy and associated capacity up to the contract quantity of electricity to NMPC at the Proxy-Market Price or the Market Price (as such term is defined in Attachment A-8), and, if applicable, the Market Capacity Price (as such term is defined in Attachment A-8), as the case may be, and NMPC has declined the opportunity to purchase such energy and capacity. Energy and associated capacity in excess of the contract quantity of electricity for any Interval shall not be subject to the Power Put Contract and, at the option of the Gas IPP, may be sold to third parties.

Subject to adjustment in accordance with Sections 12.4(b), 2.5 and 2.6, as applicable, of the Master Restructuring Agreement, the maximum aggregate quantity (subject to overgeneration provisions and option provisions (as described below), if any) of electricity in GWh and the maximum aggregate installed capacity, in MW under the Power Put Contracts during the Proxy-Market Price Period for each of ten Contract Years (or such lesser period of time if the Proxy-Market Price Period ends prior thereto) are set forth in Attachment A-7 hereto. Prior to the establishment of the ISO/PE and thereafter at any time when no separate market for capacity exists, the price for the applicable capacity under the Power Put Contracts shall equal zero, except to the extent included in the Proxy-Market Price.

During the negotiation of the Restated Contracts, the Gas IPPs which are parties to the Existing PPAs listed on Schedule 2.3 to the Master Restructuring Agreement shall use their Reasonable Best Efforts to enter into Restated Contracts which will include option provisions with respect to an aggregate of 500 GWh of electricity per

annum over a term of up to six Contract Years for periods within each year that are mutually agreed upon; provided such option provisions include a term, periods, contract quantities, contract prices and such other terms and conditions which are acceptable to the applicable Gas IPP and provided, further, that no Gas IPP will be obligated to include such option provisions in its Restated Contract(s) if such provisions, in such Gas IPP's judgment, are not economically neutral in comparison to the Contract Allocation of such applicable Gas IPP before giving effect to such option provisions. Attachment A-9 hereto sets forth certain information relating to these option provisions.

### **Fixed Price Swap Contracts**

NMPC shall also negotiate, execute and deliver to the Depository a number of Fixed Price Swap Contracts, which shall be substantially similar to the Indexed Swap Contracts, except that the Fixed Price Swap Contracts will be based on fixed prices for electricity and fixed quantities of electricity. The Fixed Price Swap Contracts shall become effective as of the Effective Time, with payments to occur thereunder during the period commencing January 1, 2003 and ending December 31, 2009. Payments under the Fixed Price Swap Contracts shall be calculated based on the difference between the contract price and the Proxy-Market Price (as such term is defined in Attachment A-11) or the Market Price and, if applicable, the Market Capacity Price (as such terms are defined in Attachment A-11), as the case may be, multiplied by the contract quantity of electricity for each Interval. The Fixed Price Swap Contracts will be based on the terms and conditions set forth in Attachment A-11 hereto.

The aggregate quantity of electricity in GWh, the aggregate capacity in MW and the contract price in \$/MWh applicable thereto for each applicable year of the Fixed Price Swap Contracts are set forth in Attachment A-10 hereto. For purposes of the Fixed Price Swap Contracts (i) prior to the establishment of the ISO/PE and thereafter at any time when no separate market for capacity exists, the price for the applicable capacity shall equal zero, and (ii) following the Proxy-Market Price Period and only if there then exists a separate market for capacity, the applicable capacity will be adjusted on a basis consistent with the structure of such separate market.

At the request of the IPPs, NMPC and the IPPs shall conduct good faith negotiations and use their Reasonable Best Efforts to enter into physical delivery contracts based on the annual quantities of electricity in GWh, the aggregate capacity in MW and the annual contract prices in \$/MWh set forth in Attachment A-10 hereto, in lieu of all or a portion of the Fixed Price Swap Contracts, provided that in no event shall an IPP party to an Existing PPA listed on Schedule 2.1 to the Master Restructuring Agreement (a "Terminating PPA"), be a counterparty to any such physical delivery contract.

[Intentionally Omitted]

AMENDED PPA WITH SOLID FUEL IPP<sup>1</sup>

CONTRACT YEAR	QUANTITY (GWh)	PRICE <sup>2</sup> (\$/MWh)
1	353	28.50
2	353	29.40
3	353	30.30
4	353	31.20
5	353	32.10
6	353	33.10
7	353	34.10
8	353	35.10
9	353	36.10
10	353	37.20
11	353	38.30
12	353	39.50
13	353	40.70
14	353	41.90
15	353	43.20
16	353	44.50
17	176	45.84

<sup>1</sup> The Amended PPA will contain provisions with respect to capacity that are consistent with the capacity provisions contained in the Existing PPA between NMPC and the Solid Fuel IPP.

<sup>2</sup> Such prices shall replace and be substituted for the prices reflected in Attachment 1 to the Existing PPA between NMPC and the Solid Fuel IPP.



**SWAP CONTRACTS WITH  
GAS IPPS (DURING CONTRACT YEARS 1 AND 2)**

CONTRACT YEAR	AGGREGATE INSTALLED CAPACITY (MW) <sup>1</sup>	AGGREGATE QUANTITY (GWh)	WEIGHTED AVERAGE PRICE (\$/MWh) <sup>2</sup>	AGGREGATE CONTRACT ADJUSTMENT (\$000s) <sup>3</sup>	WEIGHTED AVERAGE PRICE AFTER ADJUSTMENT (\$/MWh) <sup>5</sup>
1	606.15	4,640	48.55	(9,981)	46.40
2	606.85	4,640	48.83	(9,448)	46.79

**SWAP CONTRACTS  
WITH GAS IPPS (DURING CONTRACT YEARS 3 THROUGH 10)**

CONTRACT YEAR	AGGREGATE INSTALLED CAPACITY (MW) <sup>1</sup>	AGGREGATE QUANTITY (GWh)	EXAMPLE OF WEIGHTED AVERAGE PRICE (\$/MWh) <sup>4</sup>	AGGREGATE CONTRACT ADJUSTMENT (\$000s) <sup>3</sup>	EXAMPLE OF WEIGHTED AVERAGE PRICE AFTER ADJUSTMENT (\$/MWh) <sup>5</sup>
3	611.85	4,690	45.82	(9,199)	43.86
4	616.75	4,730	47.40	(6,975)	45.92
5	616.95	4,736	50.53	(15,665)	47.22
6	619.55	4,755	52.72	(14,903)	49.59
7	620.45	4,765	54.55	(14,474)	51.51
8	621.75	4,778	55.95	(13,992)	53.02
9	623.05	4,786	58.33	(13,574)	55.49
10	624.45	4,798	62.93	(13,050)	60.21

- 1 Such installed capacity is subject to both seasonal variations and degradation and represents the aggregate installed capacity which NMPC is entitled to claim from the Gas IPPs that are parties to Restated Contracts during the Proxy-Market Price Period for purposes of reporting to the New York Power Pool. Prior to the establishment of the ISO/PE and thereafter at any time when no separate market for capacity exists, the price for the applicable capacity shall equal zero. Following the Proxy-Market Price Period and only if there then exists a separate market for capacity, the applicable capacity will be adjusted on a basis consistent with the structure of such separate market.
- 2 Represents a fixed price before giving effect to the aggregate contract adjustment.
- 3 Reflects the aggregate contract adjustment agreed to.
- 4 Represents the contract price after applying an indexing formula and before giving effect to the aggregate contract adjustment.
- 5 Reflects the economic impact of the aggregate contract adjustment on the weighted average price (it being understood that the aggregate contract adjustment may be provided to NMPC as an annual adjustment as an adjustment to the contract prices in individual Gas IPP Restated Contracts or as otherwise mutually agreed).

**CALCULATION OF PAYMENTS UNDER  
INDEXED SWAP CONTRACTS WITH GAS IPPS**

On each Settlement Date, the payments owing with respect to the preceding calendar month shall be based on the difference between (a) the contract price during each Interval multiplied by the contract quantity of electricity for such Interval, and (b)(i) the Proxy-Market Price or Market Price, as applicable, during each Interval multiplied by the contract quantity of electricity for such Interval, plus (ii) upon the establishment of the ISO/PE and only if there then exists a separate market for capacity, the Market Capacity Price in \$/MW for the applicable Settlement Period multiplied by the weight averaged capacity associated with the contract quantity of electricity for each Interval occurring during such Settlement Period. On the Settlement Date, NMPC shall be obligated to pay such difference to the Gas IPP if the amount described in clause (a) above is greater than the amount described in clause (b) above, and the Gas IPP shall be obligated to pay the absolute value of such difference to NMPC if the amount described in clause (b) above is greater than the amount described in clause (a) above. Such payments shall be calculated in accordance with the following formula:

$$\text{Payment} = \Sigma(\text{Pc} * \text{Qi}) - (\Sigma(\text{Psi} * \text{Qi}) + \text{C} * \frac{\Sigma \text{Qi}}{\text{hi}})$$

Where:

- Pc - contract price
- Qi - contract quantity of electricity per Interval for the Settlement Period
- Psi - the Proxy-Market Price or Market Price, as applicable, per Interval
- C - Market Capacity Price in \$/MW for the Settlement Period<sup>1</sup>
- hi - number of hours per Interval multiplied by the number of Intervals in the Settlement Period

<sup>1</sup> C shall be zero prior to the establishment of the ISO/PE and thereafter at any time when no separate market for capacity exists. Following the Proxy-Market Price Period and only if there then exists a separate market for capacity, the capacity portion of this formula will be adjusted on a basis consistent with the structure of such separate market.

**ASSUMPTIONS TO DEMONSTRATE PRICE INDEXING FORMULAE  
FOR INDEXED SWAP CONTRACTS WITH GAS IPPS**

The assumptions which shall be used by each Gas IPP to demonstrate its price indexing formula shall include, but shall not be limited to, the following assumptions:

- (1) A gas price forecast consistent with NMPC's Scenario B gas price forecast set forth below.
- (2) Other reasonable assumptions used by such Gas IPP.

**NMPC'S SCENARIO B GAS PRICE FORECAST**

YEAR	ANNUAL AVERAGE PRICE (CENTS/MMBtu)
1997	270.0
1998	264.7
1999	268.7
2000	272.3
2001	281.4
2002	295.8
2003	309.1
2004	324.1
2005	339.5
2006	354.1
2007	367.7
2008	383.8
2009	399.1
2010	417.6
2011	434.7
2012	452.0
2013	468.6
2014	486.7
2015	506.0

**TERMSHEET FOR  
INDEXED SWAP CONTRACTS WITH GAS IPPS**

Set forth below is a termsheet for a Schedule which will be attached to and be made a part of a Master Agreement for Indexed Swap Contracts. The Master Agreement for the Indexed Swap Contracts will be based on an ISDA standard form of Master Agreement, which is a form that is frequently used for swap contracts. In the case of Restated Contracts that are forward contracts contemplating both physical deliveries and financial cash-settlement payments, the Master Agreement to be used will be based on a standard form which is frequently used for forward contracts in the electric industry or such other form of agreement that is mutually acceptable to the parties. All Master Agreements will set forth general terms and conditions, including representations and warranties and events of default.

**TERMSHEET FOR SCHEDULE**

to the

Master Agreement for Indexed Swap Contracts  
between Niagara Mohawk Power Corporation ("NMPC") and \_\_\_\_\_ ("IPP")

1. (a) **Payment on Settlement Date.**

**THE OBLIGATIONS INCURRED PURSUANT TO THIS SCHEDULE SHALL REQUIRE CASH PAYMENTS AND SHALL IN NO EVENT BE INTERPRETED TO REQUIRE THE PURCHASE OR SALE OF ELECTRICITY.**

(i) Subject to Section 1(a)(ii) of this Schedule, on the Settlement Date, NMPC shall be obligated to pay to IPP the Fixed Payment and IPP shall be obligated to pay to NMPC the Floating Payment. Such payment obligations shall be paid on a net basis pursuant to Section \_\_ of this Agreement on the Payment Date.

(ii) **Payment Dispute Mechanism:** If IPP, in good faith, disputes any part of any Notice of a net payment obligation, IPP shall provide a written explanation of the basis for such dispute and the undisputed portion of the net payment obligations set forth in such Notice shall be paid by the party obligated to pay such amounts no later than the applicable Payment Date. Any adjustment under this Section 1(a)(ii) shall bear interest at the prime rate for U.S. currency as published from time to time under "Money Rates" in *The Wall Street Journal*, from and including the Payment Date any such underpayment or overpayment was originally due to but excluding the date on which such underpayment or overpayment is finally settled by the parties hereto, or in the event the parties hereto are unable to settle such matter, such matter shall be settled by an independent nationally recognized

public accounting firm mutually selected by the parties, whose determination shall be final and binding on the parties hereto and whose fees and expenses shall be borne by the party found to be at substantial fault by such independent public accounting firm. No Notice (or payment obligation thereunder) shall be subject to this Section 1(a)(ii) unless a notice of dispute is given with respect thereto within two years of the Payment Date applicable to such Notice.

(b) Related Definitions and Provisions.

Payment Date: The Payment Date shall be on the later of (i) the 25<sup>th</sup> day of the calendar month, provided such day is a Business Day, and if such day is not a Business Day on the first Business Day following such 25<sup>th</sup> day, or (ii) the 15<sup>th</sup> day after the receipt by IPP of Notice from NMPC, provided such day is a Business Day, and if such is not a Business Day, on the first Business Day following such 15<sup>th</sup> day. Notwithstanding the foregoing, in the event that following the Proxy-Market Price Period ISO/PE procedures require alternate dates for payments, such alternate payment dates shall automatically be deemed to be incorporated in, and shall supersede, the payment dates set forth herein.

ISO/PE: Shall mean a New York Independent System Operator and Power Exchange.

NMPC Payment Obligation: NMPC shall be obligated to pay to IPP an amount equal to the product of the Notional Quantity of electricity during the applicable Interval multiplied by the Contract Price or the Indexed Contract Price, as the case may be, applicable to such Interval (the "NMPC Payment Obligation").

Fixed Payment: The Fixed Payment for the current Interval shall be an amount equal to the sum of (i) the Fixed Payment for the prior Interval (which shall be zero for the Initial Interval), and (ii) the NMPC Payment Obligation for the current Interval.

IPP Payment Obligation: IPP shall be obligated to pay to NMPC an amount equal to the product of the Notional Quantity of electricity during the applicable Interval multiplied by the Proxy-Market Price or the Market Price, as the case may be, applicable to such Interval (the "IPP Payment Obligation").

Floating Payment: The Floating Payment for the current Interval shall be an amount equal to the sum of (i) the Floating Payment for the prior Interval (which shall be zero for the Initial Interval), (ii) the IPP Payment Obligation for the current Interval, and (iii) if applicable, the Market Capacity Price in \$/MW for the period from the Initial Interval to the Settlement Date multiplied by the weight averaged capacity associated with the Notional Quantity of electricity for each Interval from the Initial Interval to the Settlement Date.

Contract Price: Shall mean for the first two Contract Years of the Term of this Agreement \$ \_\_\_\_ / MWh and \$ \_\_\_\_ / MWh, respectively.

Indexed Contract Price. Shall mean beginning on the first day of the third Contract Year of the Term of this Agreement and continuing thereafter, the price calculated in accordance with an indexing formula similar to those set forth in Appendix 6-3 to this Schedule (the "Indexed Contract Price").

Contract Year: Shall mean the period commencing at 11:59:59 p.m. on the Consummation Date and ending at 11:59:59 p.m. on the first anniversary of the last day of the month in which the Consummation Date occurs and each successive 12-month period thereafter to the extent applicable.

Settlement Date: Shall be the last day of the calendar month specified in the Confirmation delivered in accordance with the terms of the Master Agreement.

Interval: Shall be (i) 1 hour; provided that in the event that following the Proxy-Market Price Period ISO/PE procedures require the use of an alternate time period, such alternate time period shall automatically be deemed to be incorporated in, and shall supersede, the 1 hour period set forth herein, or (ii) such time period as NMPC and IPP shall mutually agree upon; provided that such mutually agreed upon time period may only be modified upon the prior written consent of NMPC and IPP.

Initial Interval: Shall be the Interval specified in the Confirmation delivered in accordance with the terms of the Master Agreement.

Notice: After netting the Fixed Payment and the Floating Payment, NMPC shall provide IPP with notice (each, a "Notice") of any net payment obligation resulting therefrom on or before the 10<sup>th</sup> day of the first calendar month following the Settlement Date; provided that in the event that following the Proxy-Market Price Period ISO/PE procedures require an alternate date for payment notices, such alternate notice date shall automatically be deemed to be incorporated in, and shall supersede, the notice date set forth herein. Such Notice shall be substantially in the form of Appendix 6-1 to this Agreement.

Notional Quantity: Shall be the contract quantity of electricity (in KWh) for which IPP and NMPC are contractually committed, as set forth on the table contained in Appendix 6-2 to this Agreement.

Proxy-Market Price: Shall mean (i) prior to the establishment of the ISO/PE, NMPC's short-term avoided energy and capacity costs at the voltage level of the IPP's Project's bus bar, as stated in its tariff approved by the PSC providing for the purchase of power from PURPA qualifying facilities, which tariff is currently designated as S.C.-6, as the same may be in effect from time to time, or any successor tariff thereto or such other price as may be agreed upon by NMPC and IPP during the individual negotiations, and (ii) on the first day of the month following the calendar month in which the ISO/PE is established, the Market Price and, if applicable, the Market Capacity Price; provided, however, that at such time the parties shall conduct good faith negotiations and use their Reasonable Best Efforts to mutually determine whether to continue the pricing referenced in clause (i) above for a mutually agreed upon additional period of time. The Proxy-Market Price shall not be reduced or offset by any costs that NMPC may incur, including,

without limitation, costs for ancillary services, transmission services or transition (or stranded) costs.

Proxy-Market Price Period: Shall mean the period commencing on the date of this Agreement and ending on the first day of the month following the calendar month in which the ISO/PE has been fully established and successfully functioning, provided the following conditions have been satisfied for each of the previous six months: (i) a minimum of 65% (which percentage shall include the aggregate contract quantities of energy during such period under all physical delivery Restated Contracts with Gas IPPs and all physical delivery Contracts between NMPC and any IPP party to the Master Restructuring Agreement entered into in lieu of Fixed Price Swap Contracts, regardless of whether the IPPs parties thereto actually effected such sales and all sales on up to a monthly basis of energy (other than sales through the ISO/PE) by the IPPs parties to the Master Restructuring Agreement which are effectuated by NMPC acting as agent for any such IPP) of the energy sales and purchases within the Upstate Market have been transacted through the ISO/PE in the day ahead market based upon the day ahead pricing mechanism adopted by the FERC for the ISO/PE in the Upstate Market; and (ii) only if a separate market for capacity then exists, a minimum of 50% (which percentage shall include the aggregate capacity associated with the aggregate contract quantities of energy during such period under all physical delivery Restated Contracts with Gas IPPs and all physical delivery Contracts between NMPC and any IPP party to the Master Restructuring Agreement entered into in lieu of Fixed Price Swap Contracts, regardless of whether the IPPs parties thereto actually effected such sales and all sales on up to a monthly basis of capacity (other than sales through the ISO/PE) by the IPPs parties to the Master Restructuring Agreement which are effectuated by NMPC acting as agent for any such IPP) of the capacity sales and purchases within the Upstate Market have been transacted through the ISO/PE capacity auction. Notwithstanding the foregoing, if NMPC and IPP mutually agree, the Proxy-Market Price Period may be extended or terminated even if the conditions set forth in the immediately preceding sentence have not been satisfied.

Upstate Market: Shall mean collectively (i) the service territory retail loads in the regions currently served by NMPC, New York State Electric & Gas Corporation, Rochester Gas & Electric Corporation and Central Hudson Gas & Electric Corporation (collectively, the "Utilities"), and (ii) wholesale sales transactions by any of the Utilities to third parties outside the regions currently served by such Utility, excluding any such sales which are effectuated pursuant to contracts having a term of at least one year existing as of the date of the Master Restructuring Agreement to the extent such contracts are in effect thereafter.

Market Price: Shall mean commencing on the first day of the month following the calendar month in which the ISO/PE is established, the day ahead locational based market price ("LBMP") paid to sellers for energy, at the IPP's Project's bus bar or the region in which the IPP's Project's bus bar is located, specified and published by the ISO/PE; provided, however, that at such time the parties shall conduct good faith negotiations and use their Reasonable Best Efforts to mutually determine whether to

continue the pricing referred to in clause (i) of the definition of Proxy-Market Price for a mutually agreed upon additional period of time.

**Market Capacity Price:** Shall equal zero prior to the establishment of the ISO/PE and thereafter at any time when no separate market for capacity exists. Commencing on the first day of the month following the calendar month in which the ISO/PE is established and only if there then exists a separate market for capacity, the Market Capacity Price shall mean the market price paid to sellers for capacity, at the region in which the IPP's Project's bus bar is located, established by the ISO/PE capacity auction; provided, however, that at such time the parties shall conduct good faith negotiations and use their Reasonable Best Efforts to mutually determine whether to continue the pricing referred to in clause (i) of the definition of Proxy-Market Price for a mutually agreed upon additional period of time. Following the Proxy-Market Price Period and only if there then exists a separate market for capacity, the parties shall conduct good faith negotiations and use their Reasonable Best Efforts to adjust the applicable capacity on a basis consistent with the structure of such separate market.

**Term:** The term of this Agreement shall commence at 11:59:59 p.m. on the Consummation Date and end at 11:59:59 p.m. on the tenth anniversary of the last day of the month in which the Consummation Date occurs.

2. **Assignment by IPP.** Upon notice to NMPC, IPP may assign or transfer this Agreement in whole or in part, without the consent of NMPC (a) as collateral security for purposes of securing indebtedness, or (b) to any approved assignee or transferee (an "Approved Assignee"). An Approved Assignee shall be (i) any person having a long-term unsecured debt credit rating of no less than investment grade issued by Moody's Investors Service or Standard & Poor's Corporation or the equivalent of such rating from another nationally recognized rating agency; (ii) any Affiliate of IPP; provided (x) such Affiliate has a long-term unsecured debt credit rating of no less than investment grade issued by Moody's Investors Service or Standard & Poor's Corporation or the equivalent of such rating from another nationally recognized rating agency, or (y) such Affiliate has a net worth calculated in accordance with generally accepted accounting principles ("Net Worth"), that is equal to or greater than the Net Worth of the entity making such assignment or transfer on the date of such assignment or transfer, or (z) IPP unconditionally guarantees, pursuant to a guarantee in form and substance reasonably satisfactory to NMPC, the obligations of such Affiliate in connection with such assignment or transfer; (iii) any of the other Gas IPPs party to a Restated Contract with NMPC or their respective Affiliates; provided (x) such other Gas IPP or such Affiliate has a long-term unsecured debt credit rating of no less than investment grade issued by Moody's Investors Service or Standard & Poor's Corporation or the equivalent of such rating from another nationally recognized rating agency, or (y) such other Gas IPP or such Affiliate has a Net Worth that is equal to or greater than the Net Worth of the entity making such assignment or transfer on the date of such assignment or transfer, or (z) IPP (in the case of an assignment or transfer to another Gas IPP) or such other Gas IPP (in the case of an assignment or transfer to any of its Affiliates) unconditionally guarantees, pursuant to a guarantee in form and substance reasonably satisfactory to NMPC, the obligations of such other Gas IPP or



such Affiliate, as the case may be, in connection with such assignment or transfer; or (iv) any other person who has a Net Worth that is equal to or greater than the Net Worth of the entity making such assignment or transfer on the date of such assignment or transfer, provided that evidence of such qualifying Net Worth is reasonably demonstrated to NMPC. IPP may split and assign the Notional Quantities of electricity and Intervals to Approved Assignees, each in respect of a lesser Notional Quantity and/or Intervals than the full amounts thereof hereunder, provided that (a) each such assignment is for 50,000 MWh of electricity per year or any integral multiples thereof and to the extent that the remaining unassigned balance of the Notional Quantity of electricity hereunder for any such year is less than 50,000 MWh, then for such remaining balance, (b) each such assignment is for a period of at least one year, and (c) the sum of all assigned and retained Notional Quantities of electricity and Intervals does not exceed the total Notional Quantities of electricity and Intervals hereunder. At the request of the IPP during the individual negotiations and during the term of this Agreement, NMPC and the IPP shall use their Reasonable Best Efforts to mutually agree upon reasonable alternatives to the assignment qualifications contained in the immediately preceding sentence. Except to the extent expressly provided in any applicable guarantee, upon any such assignment or transfer, IPP shall be released and have no further obligations to NMPC hereunder with respect to the assigned or transferred Notional Quantities and/or Intervals.

3. Assignment by NMPC. NMPC shall not assign its rights and obligations hereunder except as expressly authorized under this Section 3.

(a) NMPC Restructuring. In the event that NMPC restructures its corporate structure or assets, including by creating any new entities that hold significant assets, whether in connection with the NMPC Restructuring or otherwise, upon notice to the IPP (or its assignee hereunder) this Agreement will be assigned to and assumed by the entity or entities owning all or substantially all of NMPC's electric transmission and distribution assets or, if separated from NMPC's electric transmission assets pursuant to such a restructuring, NMPC's electric distribution assets, provided that, upon the effective date of the restructuring (i) such assignee's performance under this Agreement is unconditionally guaranteed, pursuant to a guarantee in form and substance reasonably satisfactory to IPP (or its assignee hereunder), by each of the other entities arising out of the restructuring, including any entity spun-off to NMPC's shareholders or any Affiliate of NMPC holding significant assets that were held by NMPC (or any subsidiary of NMPC) prior to the restructuring, unless such assignee has a long-term unsecured debt credit rating issued by Moody's Investors Service, Standard & Poor's Corporation or another nationally recognized rating agency that is at least as favorable as NMPC's long-term unsecured debt credit rating immediately prior to the effective date of the restructuring, and (ii) if such assignee is not the entity which will collect from customers the Competitive Transition Charge approved by the PSC pursuant to the PSC Approval, such assignee's performance under this Agreement is unconditionally guaranteed, pursuant to a guarantee in form and substance reasonably satisfactory to the IPP (or its

assignee hereunder), by each of the entities which will collect from customers the Competitive Transition Charge approved by the PSC pursuant to the PSC Approval.

(b) Third Party Assignment. Upon notice to the IPP (or its assignee hereunder), NMPC may assign its rights and obligations under this Agreement to any third party ("NMPC Assignee") (except those parties referenced in Section 3(a) above) provided that the NMPC Assignee has (i) received a long-term unsecured debt credit rating by Moody's Investors Service or Standard & Poor's Corporation of at least investment grade or the equivalent of such rating from another nationally recognized rating agency, as of the date of consummation of the assignment; or (ii) furnished IPP with such collateral security as may be reasonably acceptable to the IPP in order to limit the IPP's credit risk in connection with such assignment.

4. Further Assurances. Subject to the terms and conditions contained herein, upon the request from time to time of either party hereto, the other party shall promptly execute and deliver or use its Reasonable Best Efforts to cause to be executed and delivered, such consents, approvals and other instruments, including, without limitation, assignments of this Agreement as collateral, estoppel certificates and utility certificates, in form and substance reasonably satisfactory to both parties and their respective counsel to implement any financing or other material business transaction undertaken by the requesting party.

5. Qualifying Facility Monitoring and Status. (a) NMPC shall have no contractual right and shall waive any other right which it might have under state or federal law to demand information from the IPP, or any other person, including but not limited to any Governmental Authority, with respect to such IPP's status as a state and/or federal qualifying facility ("QF Status").

(b) NMPC acknowledges and agrees that the IPP is not required to maintain a generating facility pursuant to the terms hereof for the performance of its obligations hereunder. Notwithstanding the foregoing, the IPP shall have the right, but not the obligation, in its sole discretion to obtain and/or maintain its QF Status under New York law (including compliance with NYPSL § 2(2-a)) and/or PURPA, respectively. NMPC's rights and obligations hereunder shall continue as a matter of contractual right regardless of whether the IPP maintains its QF Status. Any failure by the IPP to comply with the requirements applicable to QF Status under New York law (including compliance with NYPSL § 2(2-a)) shall have no adverse impact on the IPP under this Agreement. In the event the IPP wishes to qualify or perform as an Exempt Wholesale Generator under Section 32 of PUHCA and FERC's regulations promulgated thereunder, as the same may be amended, modified or restated from time to time, NMPC shall cooperate with (including, without limitation, by providing consents and affidavits), and shall not take any action to oppose, impede or subvert, the IPP's efforts to obtain appropriate regulatory exemptions and approvals, including market-based rate approval. Except to the extent that the contract prices under this Agreement are or may be based thereon, during the term of this Agreement the IPP (i) shall waive any statutory right it may have under Section 66-c of NYPSL pursuant to which the IPP may demand a 6¢ per KWh minimum power purchase rate from NMPC, and (ii) shall waive, for itself and for the successors

and assigns of its Project, with respect to such Project, any statutory right it may have under PURPA or NYPSL to require NMPC to enter into a power purchase contract or otherwise take the output of the IPP's Project; provided, however, that until the end of the Proxy-Market Price Period NMPC agrees, at the IPP's request, to act as agent for the IPP (or, if necessary to effectuate such sales to the New York Power Pool, by purchase and resale of the IPP's capacity and energy, at no cost to NMPC), for the sale on up to a monthly basis, of the IPP's Project's capacity and energy to the New York Power Pool or any third party, in each case on a nondiscriminatory basis with respect to NMPC's or any third party's capacity and energy, at no cost to the IPP. NMPC agrees to use its Reasonable Best Efforts to effect such sales on the most favorable terms, including price, to the IPP giving consideration to the quantity, term and market conditions prevailing at the time of sale. Nothing contained herein shall be construed to constitute a waiver by the IPP of any other rights it may have under PURPA, NYPSL or applicable law, including rights with respect to back-up services, interconnection, reactive power or other similar rights, whether or not a contract is required or desirable.

6. Certain Amendments. In the event that NMPC restructures its corporate structure or assets, including by creating any new entities that hold significant assets, whether in connection with the NMPC Restructuring or otherwise, IPP (or its assignee hereunder) shall have the right to replace this Agreement, as applicable, with power purchase and/or hedging contractual arrangements substantially equivalent to those that are entered into between the entity(ies) holding the transmission and/or distribution assets of NMPC or which will collect from customers the Competitive Transition Charge approved by the PSC pursuant to the PSC Approval and the entity(ies) holding the non-nuclear generating assets of NMPC, whether or not such assets are spun-off to NMPC's shareholders (a "Genco Contract"), provided that the term, price and quantity under this Agreement shall not be altered thereby, unless any of such terms are materially and expressly conditioned by certain provisions in the Genco Contract, in which case appropriate and equitable adjustments in such terms shall be mutually agreed upon by NMPC or its assignee, as the case may be, and the IPP.

FORM OF NOTICE

[to be supplied]

APPENDIX 6-2

Contract Year	Contract Quantity						Contract Price (\$MWh)
	Period A (KWh)	Period B (KWh)	Period C (KWh)	Period D (KWh)	.....	Period N (KWh)	
1							
2							
3							
4							
5							
6							
7							
8							
9							
10							

Periods to be divided in Intervals.

INDEXING FORMULAE

The indexing formulae set forth below are indicative of an indexing formula that shall be used on each Settlement Date to adjust the contract price for the preceding month beginning on the first day of the third Contract Year of each Indexed Swap Contract:

"Top-down" Contract Price Formula

$$ICP = CP * [(x\%*(GC/Gco)) + (y\%*(INF/INFo)) + (z\%*(TBD/TBDo))]-\$5/MWh^1$$

Where:

ICP = indexed contract price

CP = the contract price in the reference year

x = weighting factor assigned to price of gas

GC = average price of gas for the applicable period

Gco = reference price of gas

y = weighting factor assigned to inflation

INF = average inflation for the applicable period

INFo = reference inflation factor

z = weighting factor assigned to additional factor

TBD = average of the other factor [to be determined - example could be electricity pool price]

TBDo = reference other factor

The average price of gas (GC) used in the above formula shall, at the option of the Gas IPP, be determined by one of the following gas price indices: (i) the NYMEX Gas Price Index at Henry Hub; (ii) the CNG south pool Appalachian Index published by *Inside FERC* and *Natural Gas Week*; (iii) the Weighted Average Commodity Cost of Gas ("WACCOG") published by Natural Fuel Gas Distribution Corporation; (iv) the

<sup>1</sup> The "\$5/MWh" shall be changed to "\$2.50/MWh" beginning on the first day of the tenth Contract Year of each Indexed Swap Contract.

- Niagara Border Spot Price for natural gas (Delivered to Pipe U.S. \$) published by
- *Natural Gas Week* in its Canadian Price Report; or (v) another regularly published gas price index, provided, in each case, such gas price index meets the following requirements:

- (a) such gas price index shall be a tradable and liquid market index; and
- (b) such gas price index shall present basis differential risks to the Gas IPP which are acceptable to such Gas IPP, if compared with the actual gas purchase prices for such Gas IPP at the local distribution company delivery point or the Gas IPP's plant burner tip, as the case may be.

The reference inflation factor (INFO) and the average inflation for the applicable period (INF) used in the above formula shall, at the option of the Gas IPP, be based on or generally consistent with (i) Producer Price Indices published by the U.S. Department of Labor, Bureau of Statistics, (ii) Consumer Price Indices published by the U.S. Department of Labor, Bureau of Statistics, (iii) inflation forecast indices published by Data Resources Incorporated/McGraw-Hill, or (iv) such other regularly published indices relating to inflation.

#### "Bottom-up" Contract Price Formula

The bottom-up formulation is based on recognizable fixed and variable costs and margins, with which such Gas IPP and NMPC managers are already familiar. This formulation also allows the inclusion of a fixed schedule of cost increases or decreases, for example in connection with a schedule of future fixed payments which anticipate a major overhaul and then decline, or step wise increases, for example, in property taxes, or in accordance with a PILOT agreement or an abatement agreement etc.

This formulation is based on a traditional build-up of fixed and variable costs and margins including:

##### Fixed costs:

- Fixed Operations and Maintenance Costs
- Debt Service (if any)
- G&A including insurance and taxes other than income taxes
- Auxiliary boiler costs
- Margin

Variable Costs:

- Variable operations and maintenance
- Start-up and shut-down costs
- Heat rate and fuel cost
- Margin

It is not intended that Gas IPP will be required to provide NMPC with such line items of cost or margin. The intent is that the Gas IPP will provide factors which are composed of such line items or parts of such line items or groupings of the same as may be selected by each Gas IPP.

The factors selected by each Gas IPP shall be indexed using the formulation below:

On each Settlement Date, the contract price shall be adjusted for the preceding month, using the following formula:

$$\text{Price/MWh} = (\text{CPA} \times \frac{\text{I1}}{\text{I0}}) + (\text{CPB} \times \frac{\text{J1}}{\text{J0}}) + (\text{CPC} \times \frac{\text{K1}}{\text{K0}}) + \frac{\text{CPX} \times \text{L1}}{\text{L0}} + \text{C1} + \text{C2} + \text{CN} - \$5/\text{MWh}^1$$

Where CPA, CPB, CPC and CPX, are defined portions of the above fixed and variable costs and margins, as the Gas IPP may elect, and which are base-year costs expressed in \$/MWh.

And I0, J0, K0, L0 are base-year values of the indices selected by such Gas IPP

And I1, J1, K1 and L1 are the applicable inflated values of those indices, used in calculating the adjustments in the contract price.

And C1, C2, CN are a fixed schedule of cost values expressed in \$/MWh, which may increase and/or decrease, which are displayed and fixed at the time of entering into the Indexed Swap Contract.

<sup>1</sup> "The \$5/MWh" shall be changed to "\$2.50/MWh" beginning on the first day of the ten<sup>th</sup> Year of each Indexed Swap Contract.



POWER PUT CONTRACTS WITH GAS IPPS

CONTRACT YEAR	APPROXIMATE AGGREGATE INSTALLED CAPACITY (MW) <sup>1</sup>	APPROXIMATE AGGREGATE QUANTITY (GWh)
1	606.15	4,640
2	606.85	4,640
3	611.85	4,690
4	616.75	4,730
5	616.95	4,736
6	619.55	4,755
7	620.45	4,765
8	621.75	4,778
9	623.05	4,786
10	624.45	4,798

<sup>1</sup> Such installed capacity is subject to both seasonal variations and degradation and represents the aggregate installed capacity which NMPC is entitled to claim from the Gas IPPs that are parties to Restated Contracts during the Proxy-Market Price Period for purposes of reporting to the New York Power Pool. Prior to the establishment of the ISO/PE and thereafter at any time when no separate market for capacity exists, the price for capacity shall equal zero, except to the extent included in the Proxy-Market Price.

**TERMSHEET FOR  
POWER PUT CONTRACTS WITH GAS IPPS**

Set forth below is a termsheet for Schedules which will be attached to and made part of a Master Agreement for Power Put Contracts. The Master Agreement will be based on a standard form of Master Agreement which is frequently used for power put contracts. The Master Agreement will set forth general terms and conditions, including representations and warranties and events of default.

**EFFECTIVE DATE AND TERM**

The Agreement will take effect as of the Effective Time. The effectiveness of the provisions in respect of the put option contained in Schedule 1 below shall expire at the end of the Proxy-Market Price Period, but in no event later than 10 Contract Years from the Consummation Date. The effectiveness of the provisions contained in Schedule 2 below shall expire 10 Contract Years from the Consummation Date, unless otherwise provided in Schedule 2 below.

**SCHEDULE 1 - PUT OPTION**

**DELIVERY AND ACCEPTANCE OF ELECTRICITY**

**Energy and Capacity Subject to Put Options.** The right of the IPP to put energy and capacity to NMPC hereunder shall be limited to energy and associated capacity of the IPP's Project, subject to the IPP's rights to assign this Agreement pursuant to the assignment provisions contained herein. The IPP shall not object to NMPC's inclusion of all capacity associated with the contract quantity of electricity pursuant to the terms hereof as capacity available to NMPC for regulatory purposes.

**Quantity and Pricing.** At the option of the IPP, the IPP shall have the right, on a monthly basis, to put (i) energy to NMPC up to the specified contract quantity of electricity (including energy subject to the Overgeneration Amount (as such term is defined herein)), and (ii) capacity, which capacity is subject to both seasonal variation and degradation, associated with the contract quantity of electricity, in each case, for each Interval (as such term is defined herein) during the immediately succeeding Settlement Period, and NMPC shall be obligated to take and pay for such energy and capacity from the IPP at the Proxy-Market Price or the Market Price and, if applicable, the Market Capacity Price, as the case may be. Energy and associated capacity in excess of the contract quantity of electricity for any Interval shall not be subject to this Agreement and;

at the option of the IPP, may be sold to third parties without an obligation to offer such energy and capacity to NMPC.

Notice of Put Exercise and Length of Exercise Period. To be agreed upon by NMPC and the IPP during the individual negotiations.

Payment Notices and Payment Dates. The IPP shall provide NMPC with notice (each, a "Notice") of any payments due for energy and/or capacity put to NMPC during the preceding calendar month on or before the 10<sup>th</sup> day of the calendar month, unless the IPP and NMPC otherwise agree during the course of the individual negotiations. Payments shall be due (each, a "Payment Date") on the later of (i) the 25<sup>th</sup> day of the calendar month in which such notice is given, or (ii) the 15<sup>th</sup> day after delivery by the IPP to NMPC of such notice. In the event such 25<sup>th</sup> or 15<sup>th</sup> day is a Saturday, Sunday or legal holiday, the corresponding payment shall be due on or before the first business day following such 25<sup>th</sup> or 15<sup>th</sup> day, as the case may be.

Payment Disputes. If NMPC, in good faith, disputes any part of any Notice of a payment obligation, NMPC shall provide a written explanation of the basis for such dispute and the undisputed portion of the net payment obligations set forth in such Notice shall be paid by the party obligated to pay such amounts no later than the applicable Payment Date. Any adjustment under this Section shall bear interest at the prime rate for U.S. currency as published from time to time under "Money Rates" in *The Wall Street Journal*, from and including the Payment Date any such underpayment or overpayment was originally due to but excluding the date on which such underpayment or overpayment is finally settled by the parties hereto, or in the event the parties hereto are unable to settle such matter, such matter shall be settled by an independent nationally recognized public accounting firm mutually selected by the parties, whose determination shall be final and binding on the parties hereto and whose fees and expenses shall be borne by the party found to be at substantial fault by such independent public accounting firm. No Notice (or payment obligation thereunder) shall be subject to this Section unless a notice of dispute is given with respect thereto within two years of the Payment Date applicable to such Notice.

NMPC Right of First Refusal. If the IPP determines not to exercise its rights to put energy and capacity to NMPC, such IPP may sell any energy or capacity associated with the contract quantity of electricity to third parties, provided such IPP has first offered to sell such energy and capacity to NMPC and NMPC has declined the opportunity to purchase such energy and capacity. The notice period for such offers and the length of time which NMPC has to respond thereto shall be agreed upon by the IPP and NMPC during the individual negotiations.

## CERTAIN DEFINED TERMS AND PROVISIONS

**Overgeneration Amount:** Shall mean an amount of energy in excess of the contract quantity of electricity; provided such amount of excess energy shall not exceed 5% of the contract quantity of electricity for the applicable Interval (the "Overgeneration Amount"). The IPP shall have the right to put the Overgeneration Amount to NMPC hereunder at the Proxy-Market Price or the Market Price, as the case may be.

**Interval:** Shall mean 1 hour or such other time period as NMPC and the IPP shall mutually agree upon, provided that such mutually agreed upon time period may only be modified upon the prior written consent of NMPC and the IPP.

**Contract Year:** Shall mean the period commencing at 11:59:59 p.m. on the Consummation Date and ending at 11:59:59 p.m. on the first anniversary of the last day of the month in which the Consummation Date occurs and each successive 12-month period thereafter to the extent applicable.

**Proxy-Market Price:** Shall mean (i) prior to the establishment of the ISO/PE, NMPC's short-term avoided energy and capacity costs at the voltage level of the IPP's Project's bus bar, as stated in its tariff approved by the PSC providing for the purchase of power from PURPA qualifying facilities, which tariff is currently designated as S.C.-6, as the same may be in effect from time to time, or any successor tariff thereto or such other price as may be agreed upon by NMPC and IPP during the individual negotiations, and (ii) on the first day of the month following the calendar month in which the ISO/PE is established, the Market Price and, if applicable, the Market Capacity Price; provided, however, that at such time the parties shall conduct good faith negotiations and use their Reasonable Best Efforts to mutually determine whether to continue the pricing referenced in clause (i) above for a mutually agreed upon additional period of time. The Proxy-Market Price shall not be reduced or offset by any costs that NMPC may incur, including, without limitation, costs for ancillary services, transmission services or transition (or stranded) costs.

**Proxy-Market Price Period:** Shall mean the period commencing on the date of this Agreement and ending on the first day of the month following the calendar month in which the ISO/PE has been fully established and successfully functioning, provided the following conditions have been satisfied for each of the previous six months: (i) a minimum of 65% (which percentage shall include the aggregate contract quantities of energy during such period under all physical delivery Restated Contracts with Gas IPPs and all physical delivery Contracts between NMPC and any IPP party to the Master Restructuring Agreement entered into in lieu of Fixed Price Swap Contracts, regardless of whether the IPPs parties thereto actually effected such sales and all sales on up to a monthly basis of energy (other than sales through the ISO/PE) by the IPPs parties to the Master Restructuring Agreement which are effectuated by NMPC acting as agent for any such IPP) of the energy sales and purchases within the Upstate Market have been transacted through the ISO/PE in the day ahead market based upon the day ahead pricing mechanism adopted by the FERC for the ISO/PE in the Upstate Market; and (ii) if a separate market for capacity then exists, a minimum of 50% (which percentage shall

include the aggregate capacity associated with the aggregate contract quantities of energy during such period under all physical delivery Restated Contracts with Gas IPPs and all physical delivery Contracts between NMPC and any IPP party to the Master Restructuring Agreement entered into in lieu of Fixed Price Swap Contracts, regardless of whether the IPPs parties thereto actually effected such sales and all sales on up to a monthly basis of capacity (other than sales through the ISO/PE) by the IPPs parties to the Master Restructuring Agreement which are effectuated by NMPC acting as agent for any such IPP) of the capacity sales and purchases within the Upstate Market have been transacted through the ISO/PE capacity auction. Notwithstanding the foregoing, if NMPC and IPP mutually agree, the Proxy-Market Price Period may be extended or terminated even if the conditions set forth in the immediately preceding sentence have not been satisfied.

Upstate Market: Shall mean collectively (i) the service territory retail loads in the regions currently served by NMPC, New York State Electric & Gas Corporation, Rochester Gas & Electric Corporation and Central Hudson Gas & Electric Corporation (collectively, the "Utilities"), and (ii) wholesale sales transactions by any of the Utilities to third parties outside the regions currently served by such Utility, excluding any such sales which are effectuated pursuant to contracts having a term of at least one year existing as of the date of the Master Restructuring Agreement to the extent such contracts are in effect thereafter.

Market Price: Shall mean commencing on the first day of the month following the calendar month in which the ISO/PE is established, the day ahead locational based market price ("LBMP") paid to sellers for energy, at the IPP's Project's bus bar or the region in which the IPP's Project's bus bar is located, specified and published by the ISO/PE; provided, however, that at such time the parties shall conduct good faith negotiations and use their Reasonable Best Efforts to mutually determine whether to continue the pricing referred to in clause (i) of the definition of Proxy-Market Price for a mutually agreed upon additional period of time.

Market Capacity Price: Shall equal zero prior the establishment of the ISO/PE and thereafter at any time when no separate market for capacity exists. Commencing on the first day of the month following the calendar month in which the ISO/PE is established and only if there then exists a separate market for capacity, the Market Capacity Price shall mean the market price paid to sellers for capacity, at the region in which the IPP's Project's bus bar is located, established by the ISO/PE capacity auction; provided, however, that at such time the parties shall conduct good faith negotiations and use their Reasonable Best Efforts to mutually determine whether to continue the pricing referred to in clause (i) of the definition of Proxy-Market Price for a mutually agreed upon additional period of time.

## SCHEDULE 2 - ADDITIONAL AGREEMENTS

### REQUIRED PAYMENTS FOR CHANGES IN COSTS

Required Netting Payments for Cost Changes. On each Settlement Date, NMPC shall be obligated to pay to the IPP (to the extent that such number is positive) and the IPP shall be obligated to pay NMPC (to the extent that such number is negative and in such case the absolute value of such number) (x) the difference between (A) any increase as compared to the costs under the IPP's contractual arrangements with NMPC as of January 1, 1997 during the associated Settlement Period in (i) NMPC local distribution system gas transportation and fixed and variable charges and retainages actually incurred by the IPP, and (ii) electrical interconnection costs and costs associated with industry reliability standards actually incurred by the IPP, and (B) any decreases as compared to the costs under the IPP's contractual arrangements with NMPC as of January 1, 1997 during the associated Settlement Period in those costs listed in (i) and (ii) above, and (y) any increase as compared to the costs under the IPP's contractual arrangements with NMPC as of January 1, 1997 during the associated Settlement Period in costs incurred by the IPP caused by changes in federal, state or local laws, rules or regulations; provided that this clause (y) shall only be effective during the Proxy-Market Price Period and any periods thereafter during which like adjustments in costs are also recovered by any entity that owns any of NMPC's non-nuclear generating assets.

Certain Other Cost Additions. On each Settlement Date, NMPC shall be obligated to pay to the IPP any increase as compared to the costs under the IPP's contractual arrangements with NMPC as of January 1, 1997 in electrical transmission costs or access or other charges, which are actually incurred by the IPP during the associated Settlement Period while physically delivering electricity to (x) NMPC during the Proxy-Market Price Period or (y) an ISO/PE following the Proxy-Market Price Period; provided that this clause (y) shall only be effective during the periods when like increases in costs or charges are then also recovered by any entity that owns any of NMPC's non-nuclear generating assets.

Reactive Power, Voltage Support Services and Line-Loss Charges. NMPC and the IPP acknowledge that the contract prices under the Indexed Swap Contract relating to the Agreement do not include charges for reactive power, voltage support services or line losses. In the event NMPC tariffs require the IPP to pay NMPC for reactive power or line-losses during periods when the IPP's generating facilities are generating electricity, the contract prices under the related Indexed Swap Contract on each applicable Settlement Date will be equitably increased in an amount equal to all reactive power charges and/or line-loss charges or costs actually incurred by such IPP during the associated Settlement Period. In addition, in the event (i) under any ISO tariff an IPP is required to provide voltage support services, as defined by such ISO tariff, NMPC shall pay to the IPP on each Settlement Date any and all voltage support service payments made by the ISO to NMPC in the associated Settlement Period which are attributable to the voltage support services provided by the IPP, and (ii) the ISO charges the IPP for any line-losses, the contract prices under the related Indexed Swap Contract will be equitably

increased in an amount equal to all such line-loss charges actually incurred by such IPP during the associated Settlement Period.

Payment Notices and Payment Dates. After netting the amounts owing pursuant to the payment provisions of this Schedule 2, the IPP shall provide NMPC with notice (each, a "Notice") of any net payments obligation resulting therefrom on or before the 10<sup>th</sup> day of the first calendar month following the Settlement Date. Payments in connection with such Notice shall be due (each, a "Payment Date"), on the later of (i) the 25<sup>th</sup> day of the calendar month in which such Notice is given, or (ii) the 15<sup>th</sup> day after delivery by the IPP to NMPC of such Notice. In the event such 25<sup>th</sup> or 15<sup>th</sup> day is a Saturday, Sunday or legal holiday, the corresponding payment shall be due on or before the first business day following such 25<sup>th</sup> or 15<sup>th</sup> day, as the case may be. The party owing any such payment as so indicated in such Notice shall make such payment to the other party, subject to the payment dispute provision set forth below.

Payment Dispute Mechanism: If NMPC, in good faith, disputes any part of any Notice of a net payment obligation, NMPC shall provide a written explanation of the basis for such dispute and the undisputed portion of the net payment obligations set forth in such Notice shall be paid by the party obligated to pay such amounts no later than the applicable Payment Date. Any adjustment under this Section shall bear interest at the prime rate for U.S. currency as published from time to time under "Money Rates" in *The Wall Street Journal*, from and including the Payment Date any such underpayment or overpayment was originally due to but excluding the date on which such underpayment or overpayment is finally settled by the parties hereto, or in the event the parties hereto are unable to settle such matter, such matter shall be settled by an independent nationally recognized public accounting firm mutually selected by the parties, whose determination shall be final and binding on the parties hereto and whose fees and expenses shall be borne by the party found to be at substantial fault by such independent public accounting firm. No Notice (or payment obligation thereunder) shall be subject to this Section unless a notice of dispute is given with respect thereto within two years of the Payment Date applicable to such Notice.

#### OTHER PROVISIONS

Delivery Point. NMPC shall accept electricity at the delivery point at which it accepts electricity pursuant to such IPP's Existing PPA or such IPP's existing interconnection agreement with NMPC or at any other interconnection on NMPC's system.

Allocation of Certain Responsibilities. Allocations of responsibility and other arrangements made under such IPP's Existing PPA and/or existing interconnection agreements for maintaining service and equipment on each side of the delivery point and for responsibility to third parties shall continue in effect.

Technical Requirements. Provisions of Existing PPAs and/or existing interconnection agreements establishing operating parameter limits with respect to such matters as voltage, frequency, phase, relay set-points, etc., shall remain in effect.

Metering. Electricity shall be measured as provided under the Existing PPAs. Existing PPA provisions with respect to such matters as location, access, ownership, cost responsibility, meter maintenance, inspection and testing, financial adjustment for faulty meters, use of duplicate meters, etc., shall continue to apply.

Assignment by IPP. Upon notice to NMPC, IPP may assign or transfer the Agreement in whole or in part, without the consent of NMPC (a) as collateral security for purposes of securing indebtedness, or (b) to any approved assignee or transferee (an "Approved Assignee"). An Approved Assignee shall be (i) any person who (x) (A) acquires the IPP's plant, or (B) has a plant with technical capability that is equal to or greater than the technical capability of the IPP's plant, and (y) has (A) a long-term unsecured debt credit rating of no less than investment grade issued by Moody's Investors Service or Standard & Poor's Corporation or the equivalent of such rating from another nationally recognized rating agency, or (B) a net worth calculated in accordance with generally accepted accounting principles ("Net Worth"), that is equal to or greater than the Net Worth of the entity making such assignment or transfer on the date of such assignment or transfer, provided that evidence of such qualifying Net Worth is reasonably demonstrated to NMPC; or (ii) any Affiliate of the IPP; provided (x) such Affiliate has a long-term unsecured debt credit rating of no less than investment grade issued by Moody's Investors Service or Standard & Poor's Corporation or the equivalent of such rating from another nationally recognized rating agency, or (y) such Affiliate has a Net Worth that is equal to or greater than the Net Worth of the entity making such assignment or transfer on the date of such assignment or transfer, or (z) IPP unconditionally guarantees, pursuant to a guarantee in form and substance reasonably satisfactory to NMPC, the obligations of such Affiliate in connection with such assignment or transfer. IPP may split and assign the quantities of electricity and Intervals to Approved Assignees, each in respect of a lesser quantity and/or Intervals than the full amounts thereof hereunder, provided that (a) each such assignment is for 50,000 MWh of electricity per year or any integral multiples thereof and to the extent that the remaining unassigned balance of the quantity of electricity hereunder for any such year is less than 50,000 MWh, then for such remaining balance, (b) each such assignment is for a period of at least one year, and (c) the sum of all assigned and retained quantities of electricity and Intervals does not exceed the total quantities of electricity and Intervals hereunder. At the request of the IPP during the individual negotiations and during the term of the Agreement, NMPC and the IPP shall use their Reasonable Best Efforts to mutually agree upon reasonable alternatives to the assignment qualifications contained in the immediately preceding sentence. Except to the extent expressly provided in any applicable guarantee, upon any such assignment or transfer, IPP shall be released and have no further obligations to NMPC hereunder with respect to the assigned or transferred quantities and/or Intervals.

Assignment by NMPC. NMPC shall not assign its rights and obligations hereunder except as expressly authorized under this Section \_\_.

(a) NMPC Restructuring. In the event that NMPC restructures its corporate structure or assets, including by creating any new entities that hold significant assets, whether in connection with the NMPC Restructuring or otherwise, upon notice to the IPP...



(or its assignee hereunder) the Agreement will be assigned to and assumed by the entity or entities owning all or substantially all of NMPC's electric transmission and distribution assets or, if separated from NMPC's electric transmission assets pursuant to such a restructuring, NMPC's electric distribution assets, provided that, upon the effective date of the restructuring (i) such assignee's performance under this Agreement is unconditionally guaranteed, pursuant to a guarantee in form and substance reasonably satisfactory to the IPP (or its assignee hereunder), by each of the other entities arising out of the restructuring, including any entity spun-off to NMPC's shareholders or any Affiliate of NMPC holding significant assets that were held by NMPC prior (or any subsidiary of NMPC) to the restructuring, unless such assignee has a long-term unsecured debt credit rating issued by Moody's Investors Service, Standard & Poor's Corporation or another nationally recognized rating agency that is at least as favorable as NMPC's long-term unsecured debt credit rating immediately prior to the effective date of the restructuring, and (ii) if such assignee is not the entity which will collect from customers the Competitive Transition Charge approved by the PSC pursuant to the PSC Approval, such assignee's performance under this Agreement is unconditionally guaranteed, pursuant to a guarantee in form and substance reasonably satisfactory to the IPP (or its assignee hereunder), by each of the entities which will collect from customers the Competitive Transition Charge approved by the PSC pursuant to the PSC Approval.

(b) Third Party Assignment. Upon notice to the IPP (or its assignee hereunder), NMPC may assign its rights and obligations under this Agreement to any third party ("NMPC Assignee") (except those parties referenced in Section ( ) (a) above) provided that the NMPC Assignee has (i) received a long-term unsecured debt credit rating by Moody's Investors Service or Standard & Poor's Corporation of at least investment grade or the equivalent of such rating from another nationally recognized rating agency, as of the date of consummation of the assignment; or (ii) furnished the IPP with such collateral security as may be reasonably acceptable to the IPP in order to limit the IPP's credit risk in connection with such assignment.

Further Assurances. Subject to the terms and conditions contained herein, upon the request from time to time of either party hereto, the other party shall promptly execute and deliver or use its Reasonable Best Efforts to cause to be executed and delivered, such consents, approvals and other instruments, including, without limitation, assignments of the Agreement as collateral, estoppel certificates and utility certificates, in form and substance reasonably satisfactory to both parties and their respective counsel to implement any financing or other material business transaction undertaken by the requesting party.

### Curtailment.

(a) NMPC agrees that its obligation to accept and pay for electricity as provided herein shall in no event be subject to any curtailment of electricity under the provisions of 18 C.F.R. § 292.304(f) (1997), or any subsequent or similar rule or regulation adopted by the PSC or the FERC, or any rule or order of the PSC, the FERC, or any other Governmental Authority interpreting or applying those provisions or authorizing NMPC to reserve any rights under those provisions.

(b) NMPC's acceptance of and obligation to pay for electricity produced by the IPP may from time to time be suspended for any periods of time during which, for reasons of necessary maintenance, repair, system emergency, safety or similar actions, NMPC's transmission system is temporarily physically unable to accept such electricity. NMPC shall give reasonable notice under the circumstances of the need for such disconnection to the IPP, upon receipt of which the IPP shall carry out the required action without delay. During any such period of suspension, NMPC shall use its best efforts to restore NMPC's capability to accept delivery of electricity as promptly as possible. NMPC will use its best efforts to schedule any planned outages upon consultation with the IPP and commensurate with the IPP's schedule for planned maintenance or other outages. NMPC shall bear any costs incurred by it in connection with any such disconnection or reconnection. All deliveries of power which are subject to any such suspension may be rescheduled at the option of the IPP.

Certain Amendments. In the event that NMPC restructures its corporate structure or assets, including by creating any new entities that hold significant assets, whether in connection with the NMPC Restructuring or otherwise, the IPP (or its assignee hereunder) shall have the right to replace the Agreement, as applicable, with power purchase and/or hedging contractual arrangements substantially equivalent to those that are entered into between the entity(ies) holding the transmission and/or distribution assets of NMPC or which will collect from customers the Competitive Transition Charge approved by the PSC pursuant to the PSC Approval and the entity(ies) holding the non-nuclear generating assets of NMPC, whether or not such assets are spun-off to NMPC's shareholders (a "Genco Contract"), provided that the term, price and quantity under the Agreement shall not be altered thereby, unless any of such terms are materially and expressly conditioned by certain provisions in the Genco Contract, in which case appropriate and equitable adjustments in such terms shall be mutually agreed upon by NMPC or its assignee, as the case may be, and the IPP.

### Qualifying Facility Monitoring and Status.

(a) NMPC shall have no contractual right and shall waive any other right which it might have under state or federal law to demand information from the IPP, or any other person, including but not limited to any Governmental Authority, with respect to such IPP's status as a state and/or federal qualifying facility ("QF Status").

(b) The IPP shall have the right, but not the obligation, in its sole discretion to obtain and/or maintain its QF Status under New York law (including compliance with NYPSL § 2(2-a)) and/or PURPA, respectively. NMPC's rights and obligations, including without limitation its obligation to pay for electricity produced by the IPP as set forth hereunder, shall continue as a matter of contractual right regardless of whether the IPP maintains its QF Status. Any failure by the IPP to comply with the requirements applicable to QF Status under New York law (including compliance with NYPSL § 2(2-a)) shall have no adverse impact on the IPP under this Agreement. In the event the IPP wishes to qualify or perform as an Exempt Wholesale Generator under Section 32 of PUHCA and FERC's regulations promulgated thereunder, as the same may be amended, modified or restated from time to time, NMPC shall cooperate with (including, without limitation, by providing consents and affidavits), and shall not take any action to oppose, impede or subvert, the IPP's efforts to obtain appropriate regulatory exemptions and approvals, including market-based rate approval. Except to the extent that the contract prices under this Agreement are or may be based thereon, during the term of the Agreement the IPP (i) shall waive any statutory right it may have under Section 66-c of NYPSL pursuant to which the IPP may demand a 6¢ per KWh minimum power purchase rate from NMPC, and (ii) shall waive, for itself and for the successors and assigns of its Project, with respect to such Project, any statutory right it may have under PURPA or NYPSL to require NMPC to enter into a power purchase contract or otherwise take the output of the IPP's Project; provided, however, that until the end of the Proxy-Market Price Period NMPC agrees, at the IPP's request, to act as agent for the IPP (or, if necessary to effectuate such sales to the New York Power Pool, by purchase and resale of the IPP's capacity and energy, at no cost to NMPC), for the sale on up to a monthly basis, of the IPP's Project's capacity and energy to the New York Power Pool or any third party, in each case on a nondiscriminatory basis with respect to NMPC's or any third party's capacity and energy, at no cost to the IPP. NMPC agrees to use its Reasonable Best Efforts to effect such sales on the most favorable terms, including price, to the IPP giving consideration to the quantity, term and market conditions prevailing at the time of sale. Nothing contained herein shall be construed to constitute a waiver by the IPP of any other rights it may have under PURPA, NYPSL or applicable law, including rights with respect to back-up services, interconnection, reactive power or other similar rights, whether or not a contract is required or desirable.

Relocation of Power Lines. In the event it becomes necessary for NMPC to relocate or rearrange its transmission system to which the IPP is connected, NMPC shall advise the IPP at least one year in advance in writing. If such relocation or rearrangement is ordered or required by a Governmental Authority, NMPC shall give prior written notice to the IPP equal in time to the notice given to NMPC by such Governmental Authority. NMPC shall consult with the IPP on the new facilities that NMPC shall propose to reestablish the connection. Such new facilities shall be reasonably satisfactory to the IPP and, at a minimum, shall provide the IPP with at least as much output capacity as with the prior connection facilities. NMPC shall bear the full cost and expense of reestablishing the connection to the IPP. NMPC shall use its best efforts to minimize the duration of any disruption to the IPP's service during the relocation or rearrangement of NMPC's

transmission facilities. Notwithstanding anything to the contrary contained herein, the provisions of this Section \_\_\_ shall not apply to the abandonment of power lines.

Wheeling. The IPP shall have the right to have NMPC wheel some or all of the output of its Project to third parties pursuant to applicable law, or NMPC's, or other companies', duly filed transmission and distribution tariffs or schedules.

Force Majeure.

(a) In the event either party hereto is rendered unable, wholly or in part, by Force Majeure to carry out its obligations under the Agreement, other than the obligation to make payments of amounts due hereunder, it is agreed that upon notice, with reasonably full particulars of such Force Majeure given by such party to the other party in writing within a reasonable time frame after the occurrence of the cause relied upon, then the obligation or obligations hereunder of the party giving such notice, so far as they are affected by such Force Majeure, shall be suspended during the continuance of an inability so caused. Such cause shall, as far as possible, be remedied with all reasonable dispatch.

(b) The term "Force Majeure" as used herein means acts of God, strikes, lockouts, acts of public enemies, wars, blockades, insurrections, riots, epidemics, landslides, lightning, system emergencies, earthquakes, fires, storms, floods, washouts, arrests, explosions, breakage or accident to machinery, equipment or transmission or distribution lines; provided that the term Force Majeure does not mean or include any cause which by the exercise of reasonable diligence of the party claiming suspension could be overcome.

Persons Bound and Benefited. The Agreement shall bind and benefit assigns and other successors.

Governing Law. The Agreement shall be governed by the substantive law of New York, irrespective of conflicts of law rules.

**OPTION PROVISIONS  
FOR RESTATED CONTRACTS WITH GAS IPPS<sup>1</sup>**

CONTRACT YEAR	AGGREGATE OPTION QUANTITY (GWh)	WEIGHTED AVERAGE AVOIDED OPTION PRICE (\$/MWh) <sup>2</sup>
1	500	24.07
2	500	23.85
3	500	24.71
4	500	26.19
5	500	27.29
6	500	28.51

<sup>1</sup> This table represents the aggregate quantities and weighted average avoided prices for the option provisions which may be achieved.

<sup>2</sup> Represents estimates proposed by NMPC.

FIXED PRICE SWAP CONTRACTS

	YEAR	AGGREGATE CAPACITY (MW) <sup>1</sup>	AGGREGATE QUANTITY (GWh)	PRICE (\$/MWh)
(1)	2003	228.3	2,000	54.58
(2)	2004	342.5	3,000	56.51
(3)	2005	456.6	4,000	58.01
(4)	2006	456.6	4,000	60.48
(5)	2007	456.6	4,000	62.30
(6)	2008	913.2	8,000	61.99
(7)	2009	913.2	8,000	62.06

1 Represents the aggregate capacity during all periods within each relevant year which is subject to the Fixed Price Swap Contracts. Prior to the establishment of the ISO/PE and thereafter at any time when no separate market for capacity exists, the price for the applicable capacity shall equal zero. Following the Proxy-Market Price Period and only if there exists a separate market for capacity, the applicable capacity will be adjusted on a basis consistent with the substitution of such capacity into a separate market.

**TERMSHEET FOR  
FIXED PRICE SWAP CONTRACTS**

Set forth below is a termsheet for a Schedule which will be attached to and be made a part of a Master Agreement for the Fixed Price Swap Contracts. The Master Agreement for the Fixed Price Swap Contracts will be based on an ISDA standard form of Master Agreement, which is a form that is frequently used for swap contracts. The Master Agreement will set forth general terms and conditions, including representations and warranties and events of default.

**TERMSHEET FOR SCHEDULE**

to the

Master Agreement for Fixed Price Swap Contracts between  
Niagara Mohawk Power Corporation ("NMPC") and \_\_\_\_\_ "Counterparty")

**1. (a) Payment on Settlement Date.**

**THE OBLIGATIONS INCURRED PURSUANT TO THIS SCHEDULE SHALL REQUIRE CASH PAYMENTS AND SHALL IN NO EVENT BE INTERPRETED TO REQUIRE THE PURCHASE OR SALE OF ELECTRICITY.**

(i) Subject to Section 1(a)(ii) of this Schedule, on the Settlement Date, NMPC shall be obligated to pay to Counterparty the Fixed Payment and Counterparty shall be obligated to pay to NMPC the Floating Payment. Such payment obligations shall be paid on a net basis pursuant to Section \_\_\_ of this Agreement on the Payment Date.

(ii) Payment Dispute Mechanism: If Counterparty, in good faith, disputes any part of any Notice of a net payment obligation, Counterparty shall provide a written explanation of the basis for such dispute and the undisputed portion of the net payment obligations set forth in such Notice shall be paid by the party obligated to pay such amounts no later than the applicable Payment Date. Any adjustment under this Section 1(a)(ii) shall bear interest at the prime rate for U.S. currency as published from time to time under "Money Rates" in *The Wall Street Journal*, from and including the Payment Date any such underpayment or overpayment was originally due to but excluding the date on which such underpayment or overpayment is finally settled by the parties hereto, or in the event the parties hereto are unable to settle such matter, such matter shall be settled by an independent nationally recognized public accounting firm mutually selected by the parties, whose determination shall be final and binding on the parties hereto and whose fees and expenses shall be borne by the party found to be at substantial fault by such independent public accounting firm. No Notice (or

payment obligation thereunder) shall be subject to this Section 1(a)(ii) unless a notice of dispute is given with respect thereto within two years of the Payment Date applicable to such Notice.

(b) Related Definitions and Provisions.

Payment Date: The Payment Date shall be on the later of (i) the 25<sup>th</sup> day of the calendar month, provided such day is a Business Day, and if such day is not a Business Day on the first Business Day following such 25<sup>th</sup> day, or (ii) the 15<sup>th</sup> day after the receipt by Counterparty of Notice from NMPC, provided such day is a Business Day, and if such is not a Business Day, on the first Business Day following such 15<sup>th</sup> day. Notwithstanding the foregoing, in the event that following the Proxy-Market Price Period ISO/PE procedures require alternate dates for payments, such alternate payment dates shall automatically be deemed to be incorporated in, and shall supersede, the payment dates set forth herein.

ISO/PE: Shall mean a New York Independent System Operator and Power Exchange.

NMPC Payment Obligation: NMPC shall be obligated to pay to Counterparty an amount equal to the product of the Notional Quantity of electricity during the applicable Interval multiplied by the Contract Price applicable to such Interval (the "NMPC Payment Obligation").

Fixed Payment: The Fixed Payment for the current Interval shall be an amount equal to the sum of (i) the Fixed Payment for the prior Interval (which shall be zero for the Initial Interval), and (ii) the NMPC Payment Obligation for the current Interval.

Counterparty Payment Obligation: Counterparty shall be obligated to pay to NMPC an amount equal to the product of the Notional Quantity of electricity during the applicable Interval multiplied by the Proxy-Market Price or the Market Price, as the case may be, applicable to such Interval (the "Counterparty Payment Obligation").

Floating Payment: The Floating Payment for the current Interval shall be an amount equal to the sum of (i) the Floating Payment for the prior Interval (which shall be zero for the Initial Interval), (ii) the Floating Payment for the current Interval, and (iii) if applicable, the Market Capacity Price in \$/MW for the period from the Initial Interval to the Settlement Date multiplied by the weight averaged capacity associated with the Notional Quantity of electricity for each Interval from the Initial Interval to the Settlement Date.

Contract Price: Shall mean for each year of the Term of this Agreement commencing with January 1, 2003, \$\_\_\_\_\_/MWh, \$\_\_\_\_\_/MWh, \$\_\_\_\_\_/MWh, \$\_\_\_\_\_/MWh, \$\_\_\_\_\_/MWh, \$\_\_\_\_\_/MWh and \$\_\_\_\_\_/MWh, respectively.



Settlement Date: Shall be the last day of the calendar month specified in the Confirmation delivered in accordance with the terms of the Master Agreement.

Interval: Shall be (i) 1 hour; provided that in the event that following the Proxy-Market Price Period ISO/PE procedures require the use of an alternate time period, such alternate time period shall automatically be deemed to be incorporated in, and shall supersede, the 1 hour period set forth herein, or (ii) such time period as NMPC and Counterparty shall mutually agree upon; provided that such mutually agreed upon time period may only be modified upon the prior written consent of NMPC and Counterparty.

Initial Interval: Shall be the Interval specified in the Confirmation delivered in accordance with the terms of the Master Agreement.

Notice: After netting the Fixed Payment and the Floating Payment, NMPC shall provide Counterparty with notice (each, a "Notice") of any net payment obligation resulting therefrom on or before the 10<sup>th</sup> day of the first calendar month following the Settlement Date; provided that in the event that following the Proxy-Market Price Period ISO/PE procedures require an alternate date for payment notices, such alternate notice date shall automatically be deemed to be incorporated in, and shall supersede, the notice date set forth herein. Such Notice shall be substantially in the form of Appendix 11-1 to this Agreement.

Notional Quantity: Shall be per year, commencing with January 1, 2003, the following contract quantities of electricity (in GWh) for which Counterparty and NMPC are contractually committed: 2,000, 3,000, 4,000, 4,000, 4,000, 8,000 and 8,000, respectively.

Proxy-Market Price: Shall mean (i) prior to the establishment of the ISO/PE, NMPC's short-term avoided energy and capacity costs at the transmission level, as stated in its tariff approved by the PSC providing for the purchase of power from PURPA qualifying facilities, which tariff is currently designated as S.C.-6, as the same may be in effect from time to time, or any successor tariff thereto or such other price as may be agreed upon by NMPC and IPPs prior to the execution and delivery of the Fixed Price Swap Contracts, and (ii) on the first day of the month following the calendar month in which the ISO/PE is established, the Market Price and, if applicable, the Market Capacity Price; provided, however, that at such time the parties shall conduct good faith negotiations and use their Reasonable Best Efforts to mutually determine whether to continue the pricing referenced in clause (i) above for a mutually agreed upon additional period of time. The Proxy-Market Price shall not be reduced or offset by any costs that NMPC may incur, including, without limitation, costs for ancillary services, transmission services or transition (or stranded) costs.

Proxy-Market Price Period: Shall mean the period commencing on the date of this Agreement and ending on the first day of the month following the calendar month in which the ISO/PE has been fully established and successfully functioning, provided the following conditions have been satisfied for each of the previous six months: (i) a minimum of 65% (which percentage shall include the aggregate contract quantities of

energy during such period under all physical delivery Restated Contracts with Gas IPPs and all physical delivery Contracts between NMPC and any IPP party to the Master Restructuring Agreement entered into in lieu of Fixed Price Swap Contracts, regardless of whether the IPPs parties thereto actually effected such sales and all sales on up to a monthly basis of energy (other than sales through the ISO/PE) by the IPPs parties to the Master Restructuring Agreement which are effectuated by NMPC acting as agent for any such IPP) of the energy sales and purchases within the Upstate Market have been transacted through the ISO/PE in the day ahead market based upon the day ahead pricing mechanism adopted by the FERC for the ISO/PE in the Upstate Market; and (ii) only if a separate market for capacity then exists, a minimum of 50% (which percentage shall include the aggregate capacity associated with the aggregate contract quantities of energy during such period under all physical delivery Restated Contracts with Gas IPPs and all physical delivery Contracts between NMPC and any IPP party to the Master Restructuring Agreement entered into in lieu of Fixed Price Swap Contracts, regardless of whether the IPPs parties thereto actually effected such sales and all sales on up to a monthly basis of capacity (other than sales through the ISO/PE) by the IPPs parties to the Master Restructuring Agreement which are effectuated by NMPC acting as agent for any such IPP) of the capacity sales and purchases within the Upstate Market have been transacted through the ISO/PE capacity auction. Notwithstanding the foregoing, if NMPC and Counterparty mutually agree, the Proxy-Market Price Period may be extended or terminated even if the conditions set forth in the immediately preceding sentence have not been satisfied.

Upstate Market: Shall mean collectively (i) the service territory retail loads in the regions currently served by NMPC, New York State Electric & Gas Corporation, Rochester Gas & Electric Corporation and Central Hudson Gas & Electric Corporation (collectively, the "Utilities"), and (ii) wholesale sales transactions by any of the Utilities to third parties outside the regions currently served by such Utility, excluding any such sales which are effectuated pursuant to contracts having a term of at least one year existing as of the date of the Master Restructuring Agreement to the extent such contracts are in effect thereafter.

Market Price: Shall mean commencing on the first day of the month following the calendar month in which the ISO/PE is established, the day ahead locational based market price ("LBMP") paid to sellers for energy, at the Site/Independence Project's bus bar or the region in which such bus bar is located, specified and published by the ISO/PE; provided, however, that at such time the parties shall conduct good faith negotiations and use their Reasonable Best Efforts to mutually determine whether to continue the pricing referred to in clause (i) of the definition of Proxy-Market Price for a mutually agreed upon additional period of time.

Market Capacity Price: Shall equal zero prior to the establishment of the ISO/PE and thereafter at any time when no separate market for capacity exists. Commencing on the first day of the month following the calendar month in which the ISO/PE is established and only if there then exists a separate market for capacity, the Market Capacity Price shall mean market price paid to sellers for capacity, at the region in which the Site/Independence Project's bus bar is located, established by the ISO/PE capacity

auction; provided, however, that at such time the parties shall conduct good faith negotiations and use their Reasonable Best Efforts to mutually determine whether to continue the pricing referred to in clause (i) of the definition of Proxy-Market Price for a mutually agreed upon additional period of time. Following the Proxy-Market Price Period and only if there then exists a separate market for capacity, the parties shall conduct good faith negotiations and use their Reasonable Best Efforts to adjust the applicable capacity on a basis consistent with the structure of such separate market.

**Term:** The term of this Agreement shall commence as of the Effective Time with payments to occur hereunder during the period commencing January 1, 2003, and ending December 31, 2009.

2. **Assignment by Counterparty.** Upon notice to NMPC, Counterparty may assign or transfer this Agreement in whole or in part, without the consent of NMPC (a) as collateral security for purposes of securing indebtedness, or (b) to any approved assignee or transferee (an "Approved Assignee"). An Approved Assignee shall be (i) any person having a long-term unsecured debt credit rating of no less than investment grade issued by Moody's Investors Service or Standard & Poor's Corporation or the equivalent of such rating from another nationally recognized rating agency; (ii) any Affiliate of Counterparty; provided (x) such Affiliate has a long-term unsecured debt credit rating of no less than investment grade issued by Moody's Investors Service or Standard & Poor's Corporation or the equivalent of such rating from another nationally recognized rating agency, or (y) such Affiliate has a net worth calculated in accordance with generally accepted accounting principles ("Net Worth"), that is equal to or greater than the Net Worth of the entity making such assignment or transfer on the date of such assignment or transfer, or (z) Counterparty unconditionally guarantees, pursuant to a guarantee in form and substance reasonably satisfactory to NMPC, the obligations of such Affiliate in connection with such assignment or transfer; (iii) any of the Gas IPPs party to a Restated Contract with NMPC or their respective Affiliates; provided (x) such Gas IPP or such Affiliate has a long-term unsecured debt credit rating of no less than investment grade issued by Moody's Investors Service or Standard & Poor's Corporation or the equivalent of such rating from another nationally recognized rating agency, or (y) such Gas IPP or such Affiliate has a Net Worth that is equal to or greater than the Net Worth of the entity making such assignment or transfer on the date of such assignment or transfer, or (z) Counterparty (in the case of an assignment or transfer to a Gas IPP) or such Gas IPP (in the case of an assignment or transfer to any of its Affiliates) unconditionally guarantees, pursuant to a guarantee in form and substance reasonably satisfactory to NMPC, the obligations of such Gas IPP or such Affiliate, as the case may be, in connection with such assignment or transfer; or (iv) any other person who has a Net Worth that is equal to or greater than the Net Worth of the entity making such assignment or transfer on the date of such assignment or transfer, provided that evidence of such qualifying Net Worth is reasonably demonstrated to NMPC. Counterparty may split and assign the Notional Quantities of electricity and Intervals to Approved Assignees, each in respect of a lesser Notional Quantity and/or Intervals than the full amounts thereof hereunder, provided that (a) each such assignment is for 50,000 MWh of electricity per year or any integral multiples thereof and to the extent that the remaining unassigned balance of the Notional Quantity of electricity hereunder for any such year is less than 50,000 MWh, then for

such remaining balance, (b) each such assignment is for a period of at least one year, and (c) the sum of all assigned and retained Notional Quantities of electricity and Intervals does not exceed the total Notional Quantities of electricity and Intervals hereunder. At the request of (x) the IPPs prior to the execution and delivery of the Fixed Price Swap Contracts, and (y) at the request of Counterparty during the term of this Agreement, NMPC and the IPPs or Counterparty, as the case may be, shall use their Reasonable Best Efforts to mutually agree upon reasonable alternatives to the assignment qualifications contained in the immediately preceding sentence. Except to the extent expressly provided in any applicable guarantee, upon any such assignment or transfer, Counterparty shall be released and have no further obligations to NMPC hereunder with respect to the assigned or transferred Notional Quantities and/or Intervals.

3. Assignment by NMPC. NMPC shall not assign its rights and obligations hereunder except as expressly authorized under this Section 3.

(a) NMPC Restructuring. In the event that NMPC restructures its corporate structure or assets, including by creating any new entities that hold significant assets, whether in connection with the NMPC Restructuring or otherwise, upon notice to Counterparty (or its assignee hereunder) this Agreement will be assigned to and assumed by the entity or entities owning all or substantially all of NMPC's electric transmission and distribution assets or, if separated from NMPC's electric transmission assets pursuant to such a restructuring, NMPC's electric distribution assets, provided that, upon the effective date of the restructuring (i) such assignee's performance under this Agreement is unconditionally guaranteed, pursuant to a guarantee in form and substance reasonably satisfactory to Counterparty (or its assignee hereunder), by each of the other entities arising out of the restructuring, including any entity spun-off to NMPC's shareholders or any Affiliate of NMPC holding significant assets that were held by NMPC (or any subsidiary of NMPC) prior to the restructuring, unless such assignee has a long-term unsecured debt credit rating issued by Moody's Investors Service, Standard & Poor's Corporation or another nationally recognized rating agency that is at least as favorable as NMPC's long-term unsecured debt credit rating immediately prior to the effective date of the restructuring, and (ii) if such assignee is not the entity which will collect from customers the Competitive Transition Charge approved by the PSC pursuant to the PSC Approval, such assignee's performance under this Agreement is unconditionally guaranteed, pursuant to a guarantee in form and substance reasonably satisfactory to the Counterparty (or its assignee hereunder), by each of the entities which will collect from customers the Competitive Transition Charge approved by the PSC pursuant to the PSC Approval.

(b) Third Party Assignment. Upon notice to Counterparty (or its assignee hereunder), NMPC may assign its rights and obligations under this Agreement to any third party ("NMPC Assignee") (except those parties referenced in Section 3(a) above) provided that the NMPC Assignee has (i) received a long-term unsecured debt credit rating by Moody's Investors Service or Standard & Poor's Corporation of at least investment grade or the equivalent of such rating from another nationally recognized rating agency, as of the date of consummation of the assignment; or (ii) furnished Counterparty with such collateral security as may be reasonably acceptable to the

Counterparty in order to limit the Counterparty's credit risk in connection with such assignment.

4. Further Assurances. Subject to the terms and conditions contained herein, upon the request from time to time of either party hereto, the other party shall promptly execute and deliver or use its Reasonable Best Efforts to cause to be executed and delivered, such consents, approvals and other instruments, including, without limitation, assignments of this Agreement as collateral, estoppel certificates and utility certificates, in form and substance reasonably satisfactory to both parties and their respective counsel to implement any financing or other material business transaction undertaken by the requesting party.

5. Certain Amendments. In the event that NMPC restructures its corporate structure or assets, including by creating any new entities that hold significant assets, whether in connection with the NMPC Restructuring or otherwise, Counterparty (or its assignee hereunder) shall have the right to replace this Agreement, as applicable, with power purchase and/or hedging contractual arrangements substantially equivalent to those that are entered into between the entity(ies) holding the transmission and/or distribution assets of NMPC or which will collect from customers the Competitive Transition Charge approved by the PSC pursuant to the PSC Approval and the entity(ies) holding the non-nuclear generating assets of NMPC, whether or not such assets are spun-off to NMPC's shareholders (a "Genco Contract"), provided that the term, price and quantity under this Agreement shall not be altered thereby, unless any of such terms are materially and expressly conditioned by certain provisions in the Genco Contract, in which case appropriate and equitable adjustments in such terms shall be mutually agreed upon by NMPC or its assignee, as the case may be, and Counterparty.

FORM OF NOTICE

[to be supplied]

**ADDITIONAL TERMS, CONDITIONS AND PROVISIONS  
FOR THE AMENDED PPA AND RESTATED CONTRACTS**

Unless the applicable IPP and NMPC mutually agree otherwise, (i) the Amended PPA shall also be amended to include all of the following provisions, which shall supersede and replace in their entirety the provisions, if any, with respect to the subject matter thereof contained in the Existing PPA, and (ii) each Restated Contract (other than Indexed Swap Contracts and Power Put Contracts) shall include all of the following provisions:

[The following provision is to be included in the Amended PPA and in Restated Contracts that provide for physical deliveries of electricity.]

( ) Assignment by IPP. Upon notice to NMPC, IPP may assign or transfer this Agreement in whole or in part, without the consent of NMPC (a) as collateral security for purposes of securing indebtedness, or (b) to any approved assignee or transferee (an "Approved Assignee"). An Approved Assignee shall be (i) any person who (x) (A) acquires the IPP's plant, or (B) has a plant with technical capability that is equal to or greater than the technical capability of the IPP's plant, and (y) has (A) a long-term unsecured debt credit rating of no less than investment grade issued by Moody's Investors Service or Standard & Poor's Corporation or the equivalent of such rating from another nationally recognized rating agency, or (B) a net worth calculated in accordance with generally accepted accounting principles ("Net Worth"), that is equal to or greater than the Net Worth of the entity making such assignment or transfer on the date of such assignment or transfer, provided that evidence of such qualifying Net Worth is reasonably demonstrated to NMPC; or (ii) any Affiliate of the IPP; provided (x) such Affiliate has a long-term unsecured debt credit rating of no less than investment grade issued by Moody's Investors Service or Standard & Poor's Corporation or the equivalent of such rating from another nationally recognized rating agency, or (y) such Affiliate has a Net Worth that is equal to or greater than the Net Worth of the entity making such assignment or transfer on the date of such assignment or transfer, or (z) IPP unconditionally guarantees, pursuant to a guarantee in form and substance reasonably satisfactory to NMPC, the obligations of such Affiliate in connection with such assignment or transfer. IPP may split and assign the quantities of electricity and Intervals to Approved Assignees, each in respect of a lesser quantity and/or Intervals than the full amounts thereof hereunder, provided that (a) each such assignment is for 50,000 MWh of electricity per year or any integral multiples thereof and to the extent that the remaining unassigned balance of the quantity of electricity hereunder for any such year is less than 50,000 MWh, then for such remaining balance, (b) each such assignment is for a period of at least one year, and (c) the sum of all assigned and retained quantities of electricity and Intervals does not exceed the total quantities of electricity and Intervals hereunder. At the request of the IPP during the individual negotiations and during the term of this Agreement, NMPC and the IPP shall use their Reasonable Best Efforts to mutually agree upon reasonable alternatives to the assignment qualifications contained in the

immediately preceding sentence. Except to the extent expressly provided in any applicable guarantee, upon any such assignment or transfer, IPP shall be released and have no further obligations to NMPC hereunder with respect to the assigned or transferred quantities and/or Intervals.

[The following provision is to be included in Restated Contracts that do not provide for physical deliveries of electricity.]

( ) Assignment by IPP. Upon notice to NMPC, IPP may assign or transfer this Agreement in whole or in part, without the consent of NMPC (a) as collateral security for purposes of securing indebtedness, or (b) to any approved assignee or transferee (an "Approved Assignee"). An Approved Assignee shall be (i) any person having a long-term unsecured debt credit rating of no less than investment grade issued by Moody's Investors Service or Standard & Poor's Corporation or the equivalent of such rating from another nationally recognized rating agency; (ii) any Affiliate of IPP; provided (x) such Affiliate has a long-term unsecured debt credit rating of no less than investment grade issued by Moody's Investors Service or Standard & Poor's Corporation or the equivalent of such rating from another nationally recognized rating agency, or (y) such Affiliate has a net worth calculated in accordance with generally accepted accounting principles ("Net Worth"), that is equal to or greater than the Net Worth of the entity making such assignment or transfer on the date of such assignment or transfer, or (z) IPP unconditionally guarantees, pursuant to a guarantee in form and substance reasonably satisfactory to NMPC, the obligations of such Affiliate in connection with such assignment or transfer; (iii) any of the other Gas IPPs party to a Restated Contract with NMPC or their respective Affiliates; provided (x) such other Gas IPP or such Affiliate has a long-term unsecured debt credit rating of no less than investment grade issued by Moody's Investors Service or Standard & Poor's Corporation or the equivalent of such rating from another nationally recognized rating agency, or (y) such other Gas IPP or such Affiliate has a Net Worth that is equal to or greater than the Net Worth of the entity making such assignment or transfer on the date of such assignment or transfer, or (z) IPP (in the case of an assignment or transfer to another Gas IPP) or such other Gas IPP (in the case of an assignment or transfer to any of its Affiliates) unconditionally guarantees, pursuant to a guarantee in form and substance reasonably satisfactory to NMPC, the obligations of such other Gas IPP or such Affiliate, as the case may be, in connection with such assignment or transfer; or (iv) any other person who has a Net Worth that is equal to or greater than the Net Worth of the entity making such assignment or transfer on the date of such assignment or transfer, provided that evidence of such qualifying Net Worth is reasonably demonstrated to NMPC. IPP may split and assign the contract quantities of electricity and Intervals to Approved Assignees, each in respect of a lesser contract quantity and/or Intervals than the full amounts thereof hereunder, provided that (a) each such assignment is for 50,000 MWh of electricity per year or any integral multiples thereof and to the extent that the remaining unassigned balance of the quantity of electricity hereunder for any such year is less than 50,000 MWh, then for such remaining balance, (b) each such assignment is for a period of at least one year, and (c) the sum of all assigned and retained contract quantities of electricity and Intervals does not exceed the total contract quantities of electricity and Intervals hereunder. At the request of the IPP during the individual negotiations and during the term of this



Agreement, NMPC and the IPP shall use their Reasonable Best Efforts to mutually agree upon reasonable alternatives to the assignment qualifications contained in the immediately preceding sentence. Except to the extent expressly provided in any applicable guarantee, upon any such assignment or transfer, IPP shall be released and have no further obligations to NMPC hereunder with respect to the assigned or transferred contract quantities and/or Intervals.

( ) Assignment by NMPC. NMPC shall not assign its rights and obligations hereunder except as expressly authorized under this Section \_\_\_.

(a) NMPC Restructuring. In the event that NMPC restructures its corporate structure or assets, including by creating any new entities that hold significant assets, whether in connection with the NMPC Restructuring or otherwise, upon notice to the IPP (or its assignee hereunder) this Agreement will be assigned to and assumed by the entity or entities owning all or substantially all of NMPC's electric transmission and distribution assets or, if separated from NMPC's electric transmission assets pursuant to such a restructuring, NMPC's electric distribution assets, provided that, upon the effective date of the restructuring (i) such assignee's performance under this Agreement is unconditionally guaranteed, pursuant to a guarantee in form and substance reasonably satisfactory to the IPP (or its assignee hereunder), by each of the other entities arising out of the restructuring, including any entity spun-off to NMPC's shareholders or any Affiliate of NMPC holding significant assets that were held by NMPC prior (or any subsidiary of NMPC) to the restructuring, unless such assignee has a long-term unsecured debt credit rating issued by Moody's Investors Service, Standard & Poor's Corporation or another nationally recognized rating agency that is at least as favorable as NMPC's long-term unsecured debt credit rating immediately prior to the effective date of the restructuring, and (ii) if such assignee is not the entity which will collect from customers the Competitive Transition Charge approved by the PSC pursuant to the PSC Approval, such assignee's performance under this Agreement is unconditionally guaranteed, pursuant to a guarantee in form and substance reasonably satisfactory to the IPP (or its assignee hereunder), by each of the entities which will collect from customers the Competitive Transition Charge approved by the PSC pursuant to the PSC Approval.

(b) Third Party Assignment. Upon notice to the IPP (or its assignee hereunder), NMPC may assign its rights and obligations under this Agreement to any third party ("NMPC Assignee") (except those parties referenced in Section ( ) (a) above) provided that the NMPC Assignee has (i) received a long-term unsecured debt credit rating by Moody's Investors Service or Standard & Poor's Corporation of at least investment grade or the equivalent of such rating from another nationally recognized rating agency, as of the date of consummation of the assignment; or (ii) furnished the IPP with such collateral security as may be reasonably acceptable to the IPP in order to limit the IPP's credit risk in connection with such assignment.

( ) Further Assurances. Subject to the terms and conditions contained herein, upon the request from time to time of either party hereto, the other party shall promptly execute and deliver or use its Reasonable Best Efforts to cause to be executed and delivered, such consents, approvals and other instruments, including, without limitation, assignments of

this Agreement as collateral, estoppel certificates and utility certificates, in form and substance reasonably satisfactory to both parties and their respective counsel to implement any financing or other material business transaction undertaken by the requesting party.

Curtailment.

(a) NMPC agrees that its obligation to accept and pay for electricity as provided herein shall in no event be subject to any curtailment of electricity under the provisions of 18 C.F.R. § 292.304(f) (1997), or any subsequent or similar rule or regulation adopted by the PSC or the FERC, or any rule or order of the PSC, the FERC, or any other Governmental Authority interpreting or applying those provisions or authorizing NMPC to reserve any rights under those provisions.

(b) NMPC's acceptance of and obligation to pay for electricity produced by the IPP may from time to time be suspended for any periods of time during which, for reasons of necessary maintenance, repair, system emergency, safety or similar actions, NMPC's transmission system is temporarily physically unable to accept such electricity. NMPC shall give reasonable notice under the circumstances of the need for such disconnection to the IPP, upon receipt of which the IPP shall carry out the required action without delay. During any such period of suspension, NMPC shall use its best efforts to restore NMPC's capability to accept delivery of electricity as promptly as possible. NMPC will use its best efforts to schedule any planned outages upon consultation with the IPP and commensurate with the IPP's schedule for planned maintenance or other outages. NMPC shall bear any costs incurred by it in connection with any such disconnection or reconnection. All deliveries of power which are subject to any such suspension may be rescheduled at the option of the IPP.

Certain Amendments. In the event that NMPC restructures its corporate structure or assets, including by creating any new entities that hold significant assets, whether in connection with the NMPC Restructuring or otherwise, the IPP (or its assignee hereunder) shall have the right to replace this Agreement, as applicable, with power purchase and/or hedging contractual arrangements substantially equivalent to those that are entered into between the entity(ies) holding the transmission and/or distribution assets of NMPC or which will collect from customers the Competitive Transition Charge approved by the PSC pursuant to the PSC Approval and the entity(ies) holding the non-nuclear generating assets of NMPC, whether or not such assets are spun-off to NMPC's shareholders (a "Genco Contract"), provided that the term, price and quantity under this Agreement shall not be altered thereby, unless any of such terms are materially and expressly conditioned by certain provisions in the Genco Contract, in which case appropriate and equitable adjustments in such terms shall be mutually agreed upon by NMPC or its assignee, as the case may be, and the IPP.

[The following provision is to be included in the Amended PPA and in Restated Contracts that provide for physical deliveries of electricity.]

( ) Overgeneration. NMPC acknowledges that the quantity of electricity actually produced by the IPP may vary based on factors external to the IPP. NMPC shall be required to purchase from the IPP, at the same price which NMPC is then required to pay pursuant to the terms of this Agreement for contract quantities of electricity, an amount of energy in excess of the contract quantity of electricity; provided such amount of excess energy does not exceed 5% of the contract quantity of electricity for the applicable Interval.

( ) Qualifying Facility Monitoring and Status.

(a) NMPC shall have no contractual right and shall waive any other right which it might have under state or federal law to demand information from the IPP, or any other person, including but not limited to any Governmental Authority, with respect to such IPP's status as a state and/or federal qualifying facility ("QF Status").

(b) The IPP shall have the right, but not the obligation, in its sole discretion to obtain and/or maintain its QF Status under New York law (including compliance with NYPSL § 2(2-a)) and/or PURPA, respectively. NMPC's rights and obligations, including without limitation its obligation to pay for electricity produced by the IPP as set forth hereunder, shall continue as a matter of contractual right regardless of whether the IPP maintains its QF Status. Any failure by the IPP to comply with the requirements applicable to QF Status under New York law (including compliance with NYPSL § 2(2-a)) shall have no adverse impact on the IPP under this Agreement. In the event the IPP wishes to qualify or perform as an Exempt Wholesale Generator under Section 32 of PUHCA and FERC's regulations promulgated thereunder, as the same may be amended, modified or restated from time to time, NMPC shall cooperate with (including, without limitation, by providing consents and affidavits), and shall not take any action to oppose, impede or subvert, the IPP's efforts to obtain appropriate regulatory exemptions and approvals, including market-based rate approval. Except to the extent that the contract prices under this Agreement are or may be based thereon, during the term of this Agreement the IPP (i) shall waive any statutory right it may have under Section 66-c of NYPSL pursuant to which the IPP may demand a 6¢ per KWh minimum power purchase rate from NMPC, and (ii) shall waive, for itself and for the successors and assigns of its Project, with respect to such Project, any statutory right it may have under PURPA or NYPSL to require NMPC to enter into a power purchase contract or otherwise take the output of the IPP's Project; provided, however, that until the end of the Proxy-Market Price Period NMPC agrees, at the IPP's request, to act as agent for the IPP (or, if necessary to effectuate such sales to the New York Power Pool, by purchase and resale of the IPP's capacity and energy, at no cost to NMPC), for the sale on up to a monthly basis, of the IPP's Project's capacity and energy to the New York Power Pool or any third party, in each case on a nondiscriminatory basis with respect to NMPC's or any third party's capacity and energy, at no cost to the IPP. NMPC agrees to use its Reasonable Best Efforts to effect such sales on the most favorable terms, including price, to the IPP giving consideration to the quantity, term and market conditions prevailing at the time of sale. Nothing contained herein shall be construed to constitute a waiver by the IPP of any other rights it may have under PURPA, NYPSL or applicable law, including rights with

respect to back-up services, interconnection, reactive power or other similar rights, whether or not a contract is required or desirable.

Relocation of Power Lines. In the event it becomes necessary for NMPC to relocate or rearrange its transmission system to which the IPP is connected, NMPC shall advise the IPP at least one year in advance in writing. If such relocation or rearrangement is ordered or required by a Governmental Authority, NMPC shall give prior written notice to the IPP equal in time to the notice given to NMPC by such Governmental Authority. NMPC shall consult with the IPP on the new facilities that NMPC shall propose to reestablish the connection. Such new facilities shall be reasonably satisfactory to the IPP and, at a minimum, shall provide the IPP with at least as much output capacity as with the prior connection facilities. NMPC shall bear the full cost and expense of reestablishing the connection to the IPP. NMPC shall use its best efforts to minimize the duration of any disruption to the IPP's service during the relocation or rearrangement of NMPC's transmission facilities. Notwithstanding anything to the contrary contained herein, the provisions of this Section \_\_ shall not apply to the abandonment of power lines.

Wheeling. The IPP shall have the right to have NMPC wheel some or all of the output of its Project to third parties pursuant to applicable law, or NMPC's, or other companies', duly filed transmission and distribution tariffs or schedules.

Force Majeure.

(a) In the event either party hereto is rendered unable, wholly or in part, by Force Majeure to carry out its obligations under this Agreement, other than the obligation to make payments of amounts due hereunder, it is agreed that upon notice, with reasonably full particulars of such Force Majeure given by such party to the other party in writing within a reasonable time frame after the occurrence of the cause relied upon, then the obligation or obligations hereunder of the party giving such notice, so far as they are affected by such Force Majeure, shall be suspended during the continuance of an inability so caused. Such cause shall, as far as possible, be remedied with all reasonable dispatch.

(b) The term "Force Majeure" as used herein means acts of God, strikes, lockouts, acts of public enemies, wars, blockades, insurrections, riots, epidemics, landslides, lightning, system emergencies, earthquakes, fires, storms, floods, washouts, arrests, explosions, breakage or accident to machinery, equipment or transmission or distribution lines; provided that the term Force Majeure does not mean or include any cause which by the exercise of reasonable diligence of the party claiming suspension could be overcome.

EXHIBIT 2.1  
Form of Termination Agreement



**TERMINATION AGREEMENT**

THIS TERMINATION AGREEMENT (the "Termination Agreement") entered into on \_\_\_\_\_, 199\_, by and between NIAGARA MOHAWK POWER CORPORATION, a New York corporation ("NMPC" or the "Company"), and \_\_\_\_\_, a \_\_\_\_\_ (the "IPP") (NMPC and the IPP each are referred to herein as a "Party" and collectively as the "Parties"). Capitalized terms used herein and not otherwise defined herein shall have the meanings ascribed to such terms in the Master Restructuring Agreement (as hereinafter defined).

**RECITALS**

(A) The Company and the IPP are parties to, among other agreements, a certain power purchase agreement described on Schedule 1 hereto (referred to herein as "Existing PPA") pursuant to which the Company purchases power produced by the IPP's co-generation facility located in \_\_\_\_\_, New York (the "Project"); and

(B) The Company and the IPP, among others, have entered into a certain Master Restructuring Agreement, dated as of July 9, 1997 (the "Master Restructuring Agreement" or "MRA"), pursuant to which, among other things, the Company and the IPP have agreed to terminate the Existing PPA and certain other related agreements between the Company (or its Affiliates) and the IPP.

NOW, THEREFORE, in consideration of the foregoing premises and for other good and valuable consideration, the receipt and adequacy of which is hereby acknowledged, the Parties hereby agree as follows:

1. Termination of the PPA Documents. Each of the Parties hereby agrees that effective as of the Effective Time, without any further notice or action on the part of the Company or the IPP, and except as set forth in Section 2 hereof, (a) the Existing PPA and each [gas transportation and peak shaving agreement and, at IPP's option, interconnection agreement and interconnection arrangements] listed on Schedule 2 hereto (the Existing PPA and such other documents, collectively, the "PPA Documents") shall be irrevocably terminated and rescinded; (b) all rights and privileges granted, accruing or inuring to each Party pursuant to the PPA Documents shall be irrevocably relinquished and surrendered; (c) all obligations and duties owed or required by the PPA Documents to be performed for or on behalf of one Party by any other Party thereto shall be irrevocably waived and released; and (d) each Party to the PPA Documents and its respective predecessors and successors in interest, agents, directors, officers, partners, trustees, employees and affiliates, shall be irrevocably released and forever discharged from all manner of actions, causes of action, suits, debts, sums of money, accounts, reckonings,

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\* To be dated as of Consummation Date.

bonds, bills, covenants, contracts, controversies, agreements, judgments, claims and demands whatsoever in law or in equity, known or unknown, which any other Party ever had, now has or hereafter can, shall or may have, based upon or by reason of any matter, cause or thing related to or arising out of the PPA Documents. Each of the Parties hereby agrees that (i) any requirement for notice (whether written or oral) with respect to the termination of any of the PPA Documents is hereby irrevocably waived by the respective Parties to the PPA Documents and (ii) any other requirement or condition precedent to the termination of any of the PPA Documents which is contained in any of the PPA Documents is hereby irrevocably waived or shall be deemed to have been satisfied, as the case may be.

2. Continuing Rights and Obligations. Notwithstanding the foregoing, the following rights and obligations shall survive the termination of the PPA Documents:

(a) The IPP shall have the right, but not the obligation, to obtain and/or maintain its status as a state and/or federal qualifying facility ("QF") under New York law (including compliance with NYPSL §2(2-a)) and/or-PURPA, respectively.

(b) The Company shall not implement any QF Monitoring Program with respect to the IPP.

(c) In the event the IPP wishes to qualify or perform as an Exempt Wholesale Generator under Section 32 of PUHCA and the FERC's regulations promulgated thereunder, as the same may be amended, modified or restated from time to time, the Company, upon request and at the expense of the IPP, shall cooperate with (including, without limitation, by providing consents and affidavits), and shall not take any action to oppose, impede or subvert, the IPP's efforts to obtain appropriate regulatory exemptions and approvals, including market-based rate approval.

(d) The IPP shall have the right to have the Company wheel the output of its Project to third parties pursuant to applicable law, or the Company's, or other companies', duly filed transmission and distribution tariffs or schedules.

(e) The IPP shall waive any statutory right it may have under Section 66-c of NYPSL pursuant to which the IPP may demand a 6¢ per KWh minimum power purchase rate from the Company and the IPP shall waive, for itself and its successors and assigns of the Project, with respect to the Project, any statutory right it may have under PURPA or NYPSL to require the Company to enter into a power purchase contract or otherwise take the output of the Project, provided, however, that prior to the end of the Proxy-Market Price Period (as such term is defined in Exhibit A to the MRA) the Company agrees, at the IPP's request, to act as agent for the IPP (or, if necessary to effectuate such sales to the New York Power Pool, by purchase and resale of the IPP's capacity and energy, at no cost to the Company), for the sale on up to a monthly basis, of the Project's capacity and energy to the New York Power Pool or any



third party, in each case on a nondiscriminatory basis with respect to the Company's or any third party's capacity and energy, at no cost to the IPP. The Company agrees to use its Reasonable Best Efforts to effect such sales on the most favorable terms, including price, to the IPP, giving consideration to the quantity, term and market conditions prevailing at the time of sale. Further, nothing herein shall be construed to constitute a waiver by the IPP of any other rights it may have under PURPA, NYPSL or applicable law, including rights with respect to back-up services, interconnection, reactive power or other similar rights, whether or not a contract is required or desirable.

(f) Except as expressly provided herein, the IPP shall have all rights and obligations pursuant to applicable law.

(g) Nothing contained herein shall constitute a waiver or release of any claims, liabilities or obligations (i) arising out of or in connection with this Termination Agreement, (ii) arising out of or in connection with any litigation or regulatory proceedings which are not to be dismissed and withdrawn (or effectively withdrawn) by the Company or the IPP pursuant to Sections 8.8(b) and 9.8(b) of the MRA and (iii) unless dismissed or withdrawn pursuant to the Section 8.8(b) or 9.8(b) of the MRA, arising out of or in connection with any payment due to the IPP whether or not disputed, for any power or services purchased by the Company, or any payment due to the Company whether or not disputed, for any services provided by the Company, pursuant to the Existing PPA or any related gas transportation, peak shaving, interconnection or other related agreement between the Company and the IPP, provided that if such payment relates to any period more than sixty (60) days prior to the date of the MRA the IPP's or the Company's, as the case may be, entitlement to such payment shall have been set forth in a writing given to the Company or the IPP, as the case may be, on or before June 15, 1997. The Company and the IPP acknowledge and agree that in accordance with Section 1 hereof all claims, liabilities and obligations relating to tracking, adjustment or advance payment account provisions under any Existing PPA shall be extinguished as of the Effective Time

3. Entire Agreement. This Termination Agreement, together with the Master Restructuring Agreement, constitutes the entire agreement between the Parties with respect to the subject matter hereof, and supersedes all prior agreements and understandings, written or oral, between the Parties with respect thereto.

4. Amendments and Waivers. Any term of this Termination Agreement may be amended and the observance of any term of this Termination Agreement may be waived (either generally or in a particular instance and either retroactively or prospectively), only by an instrument in writing and signed by the Party against whom such amendment or waiver is sought to be enforced.

5. Successors and Assigns. Except as otherwise expressly provided herein, the terms and conditions of this Termination Agreement shall inure to the benefit of and be binding upon the respective successors and assigns of the Parties. Nothing in this Termination Agreement, express or implied, is intended to confer upon any person or entity other than the Parties hereto or their respective successors and assigns any rights, remedies, obligations, or liabilities under or by reason of this Termination Agreement, except as may be expressly provided in this Termination Agreement.

6. Governing Law. This Termination Agreement, including the validity hereof and the rights and obligations of the Parties hereunder, and all amendments and supplements hereof and all waivers and consents hereunder, shall be construed in accordance with and governed by the domestic substantive laws of the State of New York without giving effect to any choice of law or conflicts of law provision or rule that would cause the application of the domestic substantive laws of any other jurisdiction.

7. Severability. If any provisions of this Termination Agreement as applied to any part or to any circumstance shall be adjudged by a court to be invalid or unenforceable, the same shall in no way affect any other provision of this Termination Agreement, the application of such provision in any other circumstances or the validity or enforceability of this Termination Agreement.

8. Captions. The headings and captions used in this Termination Agreement are used for convenience only and are not to be considered in construing or interpreting this Termination Agreement.

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

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

Niagara Mohawk Power Corporation

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

Its: \_\_\_\_\_

[IPP]

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

Its: \_\_\_\_\_

EXHIBIT 3.6  
Form of Registration Rights Agreement



REGISTRATION RIGHTS AGREEMENT

THIS REGISTRATION RIGHTS AGREEMENT entered into on \_\_\_\_\_, 199\_ (the "Agreement") by and between NIAGARA MOHAWK POWER CORPORATION, a New York corporation ("NMPC" or the "Company") and the several independent power producers identified as such on the signature pages and on Schedule A hereto (the "IPPs") and \_\_\_\_\_ ("the IPP Designees") (NMPC, the IPPs and the IPP Designees are each referred to herein as a "Party" and collectively as the "Parties").

RECITALS

(A) Pursuant to a Master Restructuring Agreement, dated as of July 9, 1997 (the "Master Restructuring Agreement"), the Company has issued [forty-six million (46,000,000)\*\*] shares (the "Company Shares") of common stock, \$1.00 par value per share, of the Company ("Common Stock"), to the IPPs or the IPP Designees on the date hereof;

(B) The Company has filed with the SEC a Shelf Registration Statement on Form S-3 (as amended through the date hereof, the "Registration Statement") covering the resale by the Holders (as hereinafter defined), from time to time, of the Registrable Securities (as hereinafter defined), which Registration Statement has been declared effective by the SEC on or before the date hereof and is currently in effect;

(C) The IPPs desire the Company to maintain the effectiveness of the Registration Statement and cooperate with the IPPs in connection with any sale or offering, including any underwritten public offering, of the Company Shares, and the Company has agreed to same, in accordance with the terms and conditions hereof; and

(D) It is a condition to the consummation of the transactions contemplated by the Master Restructuring Agreement that the Company and the IPPs shall have entered into this Agreement.

NOW, THEREFORE, in consideration of the foregoing premises and for other good and valuable consideration, the receipt and adequacy of which is hereby acknowledged, the Parties hereby agree as follows:

\* To be dated as of Consummation Date.

\*\* Add designees of IPPs of Company Shares pursuant to MRA.

\*\*\* Subject to adjustment pursuant to Section 3.5 and 12.4(b) of the MRA.

## 1. DEFINITIONS

1.1 For purposes of this Agreement, the terms set forth below shall have the following meanings:

"Affiliate" shall mean, with respect to any Party, any other person or entity which controls, is controlled by, or is under common control with, such Party, wherein the term "control" shall mean the power to direct the management and policies by or of such Party through ownership of voting securities, by contract or otherwise, and any other person which is a partner (general or limited) or shareholder of any Party or partner (general or limited) or shareholder of such partner or shareholder.

"Blackout Period" shall have the meaning set forth in Section 2.1(a).

"Effectiveness Period" shall have the meaning set forth in Section 2.1(a).

"Electing Holders" shall have the meaning set forth in Section 2.2(a).

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

"Holder" shall mean any IPP or IPP Designee which receives any of the Company Shares pursuant to the Master Restructuring Agreement and any Affiliate or Institutional Pledgee of any such IPP or IPP Designee which is a subsequent holder of Registrable Securities whose Registrable Securities have not been sold to the public pursuant to an effective registration statement or Rule 144 of the Securities Act after the date hereof.

"Initiating Holders" shall have the meaning set forth in Section 2.2(a).

"Institutional Pledgee" shall mean any lending institution to which any of the Registrable Securities may be pledged.

"Register", "registered" and "registration" shall refer to a registration effected by preparing and filing a registration statement or statements or similar documents in compliance with the Securities Act and pursuant to Rule 415 under the Securities Act or any successor rule providing for offering securities on a continuous basis ("Rule 415") and the declaration or ordering of effectiveness of such registration statement or document by the SEC.

"Registrable Securities" shall mean (i) the Company Shares issued by the Company to any IPP or designee of an IPP pursuant to the Master Restructuring Agreement and (ii) any other shares of Common Stock or any other security convertible or exchangeable into or exercisable to shares of Common Stock issued in respect of the Company Shares upon or as a result of any stock split, stock dividend, combination or

reclassification, or through merger, consolidation, reorganization or recapitalization, or by any other means; provided, however, that Registrable Securities shall not include any Company Shares which previously have been sold to the public pursuant to an effective registration statement or Rule 144 of the Securities Act after the date hereof.

"SEC" shall mean the Securities and Exchange Commission.

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

1.2 Capitalized terms used herein and not otherwise defined herein shall have the meanings ascribed to such terms in the Master Restructuring Agreement.

## 2. OBLIGATIONS OF THE COMPANY

2.1 Registration Statement. In connection with the registration of the Registrable Securities, or any sale of the Registrable Securities, pursuant to the Registration Statement, the Company shall:

(a) keep the Registration Statement effective pursuant to Rule 415 at all times until the earlier of (i) such time as all of the Registrable Securities have been disposed of in accordance with the intended methods of disposition set forth in the Registration Statement and (ii) such date as is two (2) years after the date hereof (the period ending on such time or date, the "Effectiveness Period"); provided, however, that if, at any time after sixty (60) days following the date of this Agreement, the Company and its counsel determine in good faith that maintaining the effectiveness of the Registration Statement would require disclosure of non-public material information not in the best interests of the Company to disclose, then the Company, one time only during any twelve (12) month period, and upon notice to the Holders, may require the Holders not to make any sale of Registrable Securities pursuant to the Registration Statement until such date as such non-public material information is disclosed (the period commencing on the date of such notice and ending on the date of such disclosure, the "Blackout Period"), provided that in no event shall any Blackout Period exceed sixty (60) days in any twelve (12) month period. If the Company provides the IPPs' Special Counsel with a proposed schedule for disclosure of its announcements of its quarterly and year end results at least thirty (30) days prior to any such announcement, any Holder desiring to sell Registrable Securities pursuant to the Registration Statement during the fourteen (14) day period prior to the date of any such scheduled announcement occurring during the Effectiveness Period shall give the Company two (2) Business Days' prior notice of such proposed sale. The Company represents and warrants to each Holder that, other than during any Blackout Period, (x) the Registration Statement (including any amendments or supplements thereto and any prospectuses or preliminary prospectuses contained therein), at the time it was first filed with the SEC, at the time it was declared effective by the SEC, as of the date hereof, and at all times during which it is required to be effective hereunder (and each such amendment and supplement at the time it is filed with the SEC and at all times during which it is available for use in connection with the offer and sale

of the Registrable Securities) does not and shall not contain any untrue statement of a material fact or omit to state a material fact required to be stated therein or necessary to make the statements therein not misleading and (y) the prospectus or preliminary prospectus used in connection with the Registration Statement and any amendment or supplement thereto does not and shall not contain any untrue statement of a material fact or omit to state a material fact required to be stated therein or necessary to make the statements therein, in light of the circumstances in which they were made, not misleading;

(b) promptly prepare and file with the SEC such amendments (including post-effective amendments) and supplements to the Registration Statement and the prospectus used in connection with the Registration Statement as may be necessary to keep the Registration Statement effective and the prospectus current, including any amendment or supplement with respect to an underwritten offering of Registrable Securities and including any amendment or supplement to reflect any transfer of Registrable Securities to any Affiliate or Institutional Pledgee of a Holder which will have the right to be named as a selling shareholder in the Registration Statement, at all times during the Effectiveness Period, and, during such period, comply with the provisions of the Securities Act applicable to the Company in order to permit the disposition by the Holders of all Registrable Securities;

(c) furnish promptly to the IPPs' Special Counsel and lead underwriter(s), if any, (i) one copy of the Registration Statement and any amendment thereto, each prospectus and each amendment or supplement thereto including all financial statements and schedules, and, to the extent so requested, all documents incorporated by reference therein, and all exhibits thereto (including those incorporated by reference therein), (ii) each letter written by or on behalf of the Company to the SEC or the staff of the SEC and each item of correspondence received from the SEC or the staff of the SEC relating to such Registration Statement and (iii) such number of copies of a prospectus and all amendments and supplements thereto and such other documents, as the IPPs' Special Counsel or any Holder may reasonably request in order to facilitate the disposition of the Registrable Securities owned by such Holder;

(d) use its best efforts to (i) register and qualify the Registrable Securities under the securities or "blue sky" laws of such jurisdictions as each Holder may reasonably request, (ii) prepare and file in those jurisdictions such amendments (including post-effective amendments) and supplements to such registrations and qualifications as may be necessary to maintain the effectiveness thereof at all times during the Effectiveness Period, (iii) take such other actions as may be necessary to maintain such registrations and qualifications as may be necessary to maintain the effectiveness thereof at all times during the Effectiveness Period, and (iv) take all other actions reasonably necessary or advisable to qualify the Registrable Securities for sale by the Holders in such jurisdictions (provided that the Company shall not be required in connection therewith or as a condition thereto to qualify generally to do business or file a



general consent to service of process in any jurisdiction where it would not otherwise be required to qualify but for this Section 2.1(d);

(e) promptly notify each Holder of the happening of any event, (i) as a result of which the prospectus included in the Registration Statement, as then in effect, includes an untrue statement of a material fact or omits to state a material fact required to be stated therein or necessary to make the statements therein not misleading in light of the circumstances then existing or (ii) which requires the Company to amend or supplement the Registration Statement due to the receipt by the Company of new or additional information about a Holder or its intended plan of distribution of its Registrable Securities; and, in such event, the Company, subject to Section 2.1(a), shall promptly supplement or amend the Registration Statement to correct such untrue statement or omission or to reflect such new or additional information, so that, as thereafter delivered by any Holder to any purchaser of such securities, such prospectus, as supplemented or amended, shall not include an untrue statement of a material fact or omit to state a material fact required to be stated therein or necessary to make the statements therein not misleading in the light of the circumstances under which they were made; and promptly furnish to each Holder and lead underwriter(s), if any, a number of copies of such supplement to or an amendment of such prospectus as any Holder or such lead underwriter(s) may reasonably request;

(f) promptly notify each Holder and the lead underwriter(s), if any, of the issuance by the SEC of any stop order or other suspension of effectiveness of the Registration Statement or the initiation of any proceedings for that purpose. The Company will use its best efforts to prevent the issuance of any stop order and, if any stop order is issued, to obtain the lifting thereof at the earliest possible time;

(g) permit the IPPs' Special Counsel to participate, to the extent applicable to the period following the date of this Agreement, in the preparation of (including, but not limited to, reviewing, commenting on and attending all meetings with underwriters, if any, with respect to) the Registration Statement, each prospectus included therein or filed with the SEC, and each amendment thereof or supplement thereto, and shall permit the IPPs' Special Counsel to review and comment on such Registration Statement, prospectus, amendment or supplement, as the case may be, a reasonable period of time prior to the filing of same with the SEC, and shall not, during the Effectiveness Period, file any such document in a form to which the IPPs' Special Counsel reasonably objects within three (3) Business Days of the receipt thereof;

(h) make generally available to its security holders as soon as practicable, but not later than ninety (90) days after the close of the period covered thereby, an earning statement (in form complying with the provisions of Rule 158 under the Securities Act) covering a twelve (12) month period beginning not later than the first day of the Company's fiscal quarter next following the effective date of the Registration Statement;

(i) make available (at reasonable times and places) for inspection by any underwriter participating in any disposition of the Registrable Securities, and any attorney, accountant or other agent retained by any Holder or any such underwriter, including but not limited to the IPPs' Special Counsel, all documents incorporated by reference in the Registration Statement, each prospectus included therein, and each amendment thereof or supplement thereto, all pertinent financial and other records, pertinent corporate documents and properties of the Company, as shall be reasonably necessary to enable each Holder or underwriter to conduct a reasonable investigation within the meaning of the Securities Act, and cause the Company's officers, directors and employees to supply all information which any such Holder, underwriter, attorney, accountant or other agent may reasonably request for purposes of such investigation, provided that any records, information or documents that are designated by the Company in writing as confidential (and which are not generally available to the public, have not become available to such person on a nonconfidential basis from a source which has represented to such person that such source is entitled to disclose same or which was known to such person on a nonconfidential basis prior to its disclosure by the Company) shall be kept confidential by such person unless disclosure of such records, information or documents is required by court or administrative order or any Governmental Authority having jurisdiction;

(j) use its best efforts to maintain the listing of the Registrable Securities on the New York Stock Exchange (the "NYSE") and on any other securities exchange on which similar securities issued by the Company are then listed;

(k) cooperate with each Holder and the lead underwriter(s), if any, to facilitate the timely preparation and delivery of certificates (not bearing any restrictive legends) representing Registrable Securities and enable such certificates to be in such denominations or amounts as any Holder and the lead underwriter(s), if any, may reasonably request and registered in such names as such Holder and the lead underwriter(s), if any, may reasonably request. The Company shall give appropriate instructions to the Company's transfer agent to cause the transfer agent to deliver certificates representing the Registrable Securities without any restrictive legends upon receipt of the Holder's certification that such Registrable Securities have been sold pursuant to the Registration Statement and shall cause the Company's legal counsel to deliver to the transfer agent an opinion in customary form as required to remove such restrictive legends provided that if such sales have occurred other than pursuant to an underwritten offering such counsel may reasonably require such certifications and opinion of counsel from Holders;

(l) cause legal counsel selected by the Company to deliver to the Holders and the underwriters, such opinions as may be customary in connection with any underwritten sale of Registrable Securities pursuant to the Registration Statement, in form and substance reasonably acceptable to the Holders and the underwriters, if any;

(m) during the Effectiveness Period, the Company shall not bid for or purchase any Common Stock or any right to purchase Common Stock or attempt to induce any person to purchase any such security or right if such bid, purchase or attempt would in any way limit the right of the Holders to sell Registrable Securities by reason of the limitations of Regulation M under the Exchange Act;

(n) take all other reasonable actions (including entering into customary agreements) necessary to expedite and facilitate disposition by the Holders of Registrable Securities pursuant to the Registration Statement; and

(o) use its best efforts to comply with all applicable rules and regulations of the SEC in connection with any offer or sale of Registrable Securities under the Registration Statement.

## 2.2 Underwritten Offering.

(a) The Company acknowledges that the intended plan of distribution set forth in the Registration Statement permits the sale of Registrable Securities in the form of an underwritten offering. The Company and the IPPs agree that any such underwritten offering shall be effectuated at any time upon the request of a Holder or Holders designating at least 5,000,000 shares of Registrable Securities to be included in such underwritten offering (the "Initiating Holders"). Notice of any such request (together with a copy thereof) simultaneously shall be given by the Initiating Holder(s) to all other Holders. In such event, any other Holder or Holders shall have the right to join in such request by designating in a notice given by the Initiating Holder(s) to the Company and the Initiating Holders within twenty (20) days after such notice from the Initiating Holder is given, the number of Registrable Securities held by such Holder which such Holder desires to include in such underwritten offering (the Initial Holders and such additional Holders, collectively, the "Electing Holders"). A majority in interest (based on the number of shares of Registrable Securities held by such Electing Holders) of the Electing Holders shall select and obtain an underwriter or underwriters to administer the offering, provided the lead underwriter(s) are reasonably satisfactory to the Company. In connection with any underwritten offering, (i) the Company will effect a roadshow with such Company personnel and covering such locations and amount of time as is reasonably requested by the lead underwriter(s) for the offering; provided that the Company shall not be obligated to effect a roadshow for more than three separate underwritten offerings; (ii) the Company and the Electing Holders will enter into an underwriting agreement with the lead underwriter(s) to effect the offer and sale of Registrable Securities, containing customary provisions including without limitation those relating to indemnification and contribution on the part of the Company of the underwriters and the Electing Holders; and (iii) the Company will use its best efforts to obtain a comfort letter and updates thereof from the Company's independent public accountants addressed to the Electing Holders and the underwriters and covering such matters of the type customarily covered by comfort letters with respect to underwritten

public offerings and in form and substance reasonably satisfactory to the lead underwriter(s) and the IPPs' Special Counsel.

(b) If the lead underwriter(s) advise the Electing Holders in writing that marketing factors require a limitation on the number of shares of Registrable Securities to be underwritten in any underwritten offering, the number of shares of Registrable Securities to be included in the underwriting shall be allocated among the Electing Holders pro rata on the basis of the number of shares of Registrable Securities held by such Holders. If a Holder who has elected to be included in such underwriting as provided above does not agree to the terms of any such underwriting, such Holder shall be excluded therefrom by written notice from the lead underwriter(s) or a majority in interest of the remaining Electing Holders. If shares are so withdrawn from the underwriting and if the number of shares to be included in such underwriting was previously reduced as a result of marketing factors pursuant to this Section 2.2(b), then the Electing Holders who were unable to include the maximum number of shares of Registrable Securities requested by such Holders to be included in the underwriting shall have the right to include additional Registrable Securities in the underwriting in an aggregate amount equal to the number of shares so withdrawn, with such shares to be allocated pro rata on the basis of the number of shares of Registrable Shares held by such Holders. In addition to the foregoing, so that any such allocation shall not operate to reduce the aggregate number of Registrable Securities to be included in such underwritten offering, if any Electing Holder does not request inclusion of the maximum number of shares of Registrable Securities which may be requested by it pursuant to the above-described procedure, the remaining portion of its allocation shall be reallocated among those Electing Holders whose allocations did not satisfy their requests pro rata on the basis of the number of shares of Registrable Securities held by such Holders, and this procedure shall be repeated until all of the shares of Registrable Securities which may be included in the underwritten offering by the Electing Holders have been so allocated.

2.3 Rule 144 Reporting. With a view to making available the benefits of certain rules and regulations of the SEC that may permit the sale of the Registrable Securities to the public without registration, the Company agrees to use its best efforts to:

(a) make and keep public information regarding the Company available as those terms are understood and defined in Rule 144 under the Securities Act;

(b) file with the SEC in a timely manner all reports and other documents required of the Company under the Securities Act and the Exchange Act; and

(c) furnish to any Holder forthwith upon written request a written statement by the Company as to its compliance with the reporting provisions contained in Rule 144(c) under the Securities Act, a copy of the most recent annual or quarterly report of the Company, and such other reports and documents so filed as any Holder may reasonably request in availing itself of any rule or regulation of the SEC allowing a Holder to sell any of the Registrable Securities without registration.

The Company shall give appropriate instructions to the Company's transfer agent to cause the transfer agent to deliver certificates representing the Registrable Securities without any restrictive legends upon receipt of the Holder's certification that such Registrable Securities have been sold pursuant to Rule 144 under the Securities Act. Each Holder shall cause its legal counsel to deliver to the transfer agent for the Registrable Securities an opinion in customary form as may be required to remove such restrictive legends following a sale pursuant to Rule 144.

### 3. OBLIGATIONS OF THE HOLDERS

#### 3.1 Each Holder shall:

(a) upon the Company's written request, furnish to the Company such information regarding the intended plan of distribution of its Registrable Securities that pursuant to applicable law is required to be included in the Registration Statement or any amendment thereto;

(b) upon receipt of any notice from the Company of the happening of any event of the kind described in Sections 2.1(a) or 2.1(e) hereof, forthwith discontinue disposition of Registrable Securities pursuant to the Registration Statement until such Holder's receipt of the copies of the supplemented or amended prospectus contemplated by Sections 2.1(a) or 2.1(e) hereof, and, if so directed by the Company, such Holder will deliver to the Company (at the Company's expense) all copies, other than permanent file copies then in such Holder's possession, of the prospectus covering such Registrable Securities current at the time of receipt of such notice. In the event the Company shall give any such notice, and prior to the expiration of the Effectiveness Period Initiating Holders have given the Company a notice pursuant to Section 2.2 of an underwritten offering which is then pending, the Company shall extend the Effectiveness Period by the number of days during the period from and including the date of the giving of such notice pursuant to Sections 2.1(a) or 2.1(e) hereof to and including the date when each Holder shall have received the copies of the supplemented or amended prospectus contemplated by Sections 2.1(a) or 2.1(e) hereof;

(c) not transfer, sell, pledge or otherwise dispose of any Registrable Securities except (i) pursuant to the Registration Statement or another effective registration statement under the Securities Act and in compliance with the prospectus-delivery requirement under the Securities Act; (ii) in accordance with Rule 144 under the Securities Act after the applicable time period specified therein; or (iii) in accordance with another exemption from the registration requirements of the Securities Act; provided that in the case of subsection (iii) above, such Holder will notify the Company or its agent and cooperate with any reasonable request to cause certificates evidencing such Registrable Securities to bear a legend in substantially the following form:

THE SECURITIES EVIDENCED HEREBY HAVE NOT BEEN REGISTERED UNDER THE UNITED STATES SECURITIES ACT OF 1933, AS AMENDED ("SECURITIES ACT"), AND MAY NOT BE OFFERED, SOLD, PLEDGED OR OTHERWISE TRANSFERRED EXCEPT (1) PURSUANT TO AN EFFECTIVE REGISTRATION UNDER THE SECURITIES ACT, (2) IN ACCORDANCE WITH RULE 144 UNDER THE SECURITIES ACT OR (3) IN ACCORDANCE WITH ANOTHER APPLICABLE EXEMPTION FROM THE REGISTRATION REQUIREMENTS OF THE SECURITIES ACT.

(d) notify the Company promptly after the event of the completion of the sale by such Holder of all Registrable Securities to be sold by such Holder pursuant to the Registration Statement.

#### 4. EXPENSES

All expenses incident to the Company's performance of or compliance with this Agreement, including, without limitation, all registration, qualification and filing fees, fees and expenses of underwriters if such offering is underwritten (other than underwriting discounts and commissions relating to the sale of Registrable Securities for the account of Holders), fees and expenses of compliance with securities or "blue sky" laws (including fees and disbursements of counsel in connection with "blue sky" qualifications of the Registrable Securities), printing expenses, messenger and delivery expenses, internal expenses (including, without limitation, all salaries and expenses of the Company's officers and employees performing legal or accounting duties), travel, presentation forum and entertainment expenses incidental to a roadshow, fees and expenses incurred in connection with the listing of the Registrable Securities on the NYSE or any other securities exchange on which similar securities issued by the Company are then listed, fees and disbursements of counsel for the Company and its independent certified public accountants (including the expenses of any special audit or "comfort" letters required by or incident to such performance), fees and expenses of the IPPs' Special Counsel, securities acts liability insurance (if the Company elects to obtain such insurance), and fees and expenses of any special experts retained by the Company in connection with such registration and fees and expenses of other persons retained by the Company will be borne by the Company.

#### 5. INDEMNIFICATION

5.1 Indemnification by the Company. The Company agrees to indemnify and hold harmless, to the full extent permitted by law, each Holder, its officers, directors, partners, members, legal counsel, accountants and agents and each person who controls such Holder (within the meaning of the Securities Act) against all losses, claims, damages, liabilities and expenses, joint and several (including reasonable counsel fees) (collectively, "Losses") suffered or incurred by any third party purchaser of Registrable Securities which arise out of or are based upon by any untrue or alleged untrue statement of

material fact contained in any Registration Statement, prospectus or preliminary prospectus or any omission or alleged omission to state therein a material fact required to be stated therein or necessary to make the statements therein (in case of a prospectus or a preliminary prospectus, in light of the circumstances under which they were made) not misleading, except insofar as the same are caused by, contained in, or with respect to any material omission, omitted from any information with respect to such Holder furnished in writing to the Company by such Holder expressly for use therein or by such Holder's failure to deliver a copy of the Registration Statement or prospectus or any amendments or supplements thereto after the Company has furnished such Holder with a sufficient number of copies of the same. The Company will also indemnify any underwriters and each person who controls such underwriter (within the meaning of the Securities Act) to the same extent as provided above with respect to the indemnification of the Holders.

5.2 Indemnification by the Holders. In connection with the Registration Statement, each Holder (severally and not jointly) agrees to indemnify and hold harmless, to the same extent and in the same manner set forth in Section 5.1, the Company and each other Holder, their respective officers, directors, partners, members, legal counsel, accountants and agents and each person who controls the Company (within the meaning of the Securities Act) against any Losses suffered or incurred by any third party purchaser of Registrable Securities which arise out of or are based upon any untrue or alleged untrue statement of a material fact or any omission or alleged omission of a material fact required to be stated in the Registration Statement, prospectus or preliminary prospectus or any amendment thereof or supplement thereto or necessary to make the statements therein (in case of a prospectus or preliminary prospectus, in light of the circumstances under which they were made) not misleading, to the extent, but only to the extent, that such untrue statement or omission is contained in, or with respect to any material omission, omitted from any information with respect to such Holder so furnished in writing by such Holder expressly for use therein. In no event shall the liability of any Holder hereunder be greater in amount than the dollar amount of the proceeds received by such Holder upon the sale of such Holder's Registrable Securities in connection with any Registration Statement giving rise to such indemnification obligation.

5.3 Conduct of Indemnification Proceedings. Any persons entitled to indemnification hereunder (each, an "Indemnified Party") agrees to give prompt written notice to the indemnifying party (each, an "Indemnifying Party") after the receipt by such person of any written notice of the commencement of any action, suit, proceeding or investigation or threat thereof for which such person will claim indemnification or contribution pursuant to this Agreement (but the failure to give such notice will not affect the right to indemnification or contribution hereunder unless the Indemnifying Party is materially prejudiced by such failure) and the Indemnifying Party shall assume the defense thereof, including the employment of counsel reasonably satisfactory to such Indemnified Party and payment of all reasonable fees and expenses (regardless of whether it is ultimately determined that an Indemnified Party is entitled to indemnification hereunder). Such Indemnified Party shall have the right to employ separate counsel in any such action and participate in the defense thereof, but the fees and expenses of such counsel shall be

at the expense of such Indemnified Party unless (i) the employment of such counsel shall have been specifically authorized in writing by the Indemnifying Party, (ii) the Indemnifying Party shall have failed to assume the defense and employ counsel reasonably satisfactory to the Indemnified Party or (iii) the named parties to any such action (including any impleaded parties) include both such Indemnified Party and the Indemnifying Party and such Indemnified Party shall have been advised by such counsel that there may be one or more legal defenses available to it which are different from or additional to those available to the Indemnifying Party (in which case, the Indemnifying Party shall not have the right to assume the defense of such action on behalf of such Indemnified Party, it being understood, however, that the Indemnifying Party shall not, in connection with any one such action or separate but substantially similar or related actions in the same jurisdiction arising out of the same general allegations or circumstances, be liable for the fees and expenses of more than one separate firm of attorneys (in addition to any local counsel) for all such Indemnified Parties, which firm shall be designated in writing by the Indemnified Parties and that all such reasonable fees and expenses shall be reimbursed as they are incurred). An Indemnifying Party shall not settle, compromise or consent to the entry of any judgment in any proceeding without the Indemnified Party's prior written consent, unless the terms of such settlement, compromise or consent include an unconditional release of each Indemnified Party from all liability or loss arising out of such proceeding.

5.4 Contribution. If for any reason the indemnity provided for in this Section 5 is unavailable to, or is insufficient to hold harmless, an Indemnified Party, then the Indemnifying Party shall contribute to the amount paid or payable by the Indemnified Party as a result of such Losses in such proportion as is appropriate to reflect the relative fault of the Indemnifying Party on the one hand and the Indemnified Party on the other. The relative fault of such Indemnifying Party and Indemnified Party shall be determined by reference to, among other things, whether any action in question, including any untrue or alleged untrue statement of a material fact or omission or alleged omission to state a material fact, has been made by, or relates to information supplied by, such Indemnifying Party or Indemnified Party, and the parties' relative intent, knowledge, access to information and opportunity to correct or prevent such action. The amount paid or payable by a party as a result of the Losses referred to above shall be deemed to include, subject to the limitations set forth in Section 5.3, any legal or other fees or expenses reasonably incurred by such party in connection with any investigation or proceeding.

The parties hereto agree that it would not be just and equitable if contribution pursuant to this Section 5.4 were determined by pro rata allocation or by any other method of allocation which does not take account of the equitable considerations referred to in the immediately preceding paragraph. No person guilty of fraudulent misrepresentation (within the meaning of 11(f) of the Securities Act) shall be entitled to contribution from any person who was not guilty of such fraudulent misrepresentation.

If indemnification is available under this Section 5, the Indemnifying Parties shall indemnify each indemnified party to the full extent provided in Sections 5.1 and 5.2



without regard to the relative fault of said Indemnifying Party or Indemnified Party or any other equitable consideration provided for in this Section 5.4.

## 6. REMEDIES

The Company recognizes and agrees that the Holders of Registrable Securities shall not have an adequate remedy if the Company fails to comply with the provisions of this Agreement, and that damages will not be readily ascertainable, and the Company expressly agrees that in the event of such failure any Holder of Registrable Securities shall be entitled to seek specific performance of the Company's obligations hereunder and that the Company will not oppose an application seeking such specific performance.

## 7. NOTICES

Unless otherwise provided, any notice, consent, approval, authorization, waiver or other communication required or permitted under this Agreement shall be given in writing and shall be deemed effectively given upon personal delivery to the Party to be notified, on the next business day after delivery to a nationally recognized overnight courier service, upon confirmation of receipt of a facsimile transmission or five days after deposit with the United States Post Office, by registered or certified mail, postage prepaid, and addressed to the Party to be notified at the address or facsimile number indicated below for such Party, or at such other address as such Party may designate upon written notice to the other Parties (except that notice of change of address shall be deemed given upon receipt).

(a) In the case of the Company:

Niagara Mohawk Power Corporation  
300 Erie Boulevard West  
Syracuse, NY 13202  
Facsimile: (315) 428-3406  
Attn: William F. Edwards

with a copy to:

Donaldson Lufkin & Jenrette Securities Corporation  
277 Park Avenue  
New York, NY 10172  
Facsimile: (212) 892-7272  
Attn: Michael Ranger

and with a copy to:

Sullivan & Cromwell  
1701 Pennsylvania Avenue, N.W.  
Washington, DC 20006  
Facsimile: (202) 293-6330  
Attn: Janet T. Geldzahler

(b) In the case of the IPPs, at the addresses set forth on Schedule A  
hereto,

with a copy to:

Wasserstein Perella & Co., Inc.  
31 West 52<sup>nd</sup> Street  
New York, NY 10019  
Facsimile: (212) 969-7971  
Attn: Kenneth A. Buckfire

and with a copy to:

Akin, Gump, Strauss, Hauer & Feld, L.L.P.  
590 Madison Avenue  
New York, NY 10022  
Facsimile: (212) 872-1002  
Attn: Steven H. Scheinman

## 8. MISCELLANEOUS

8.1 Entire Agreement. This Agreement, together with the Master Restructuring Agreement, constitutes the entire agreement between the Parties hereto with respect to the subject matter hereof, and supersedes all prior agreements and understandings, written or oral, between the parties with respect thereto.

8.2 Amendments and Waivers. Any term of this Agreement may be amended and the observance of any term of this Agreement may be waived (either generally or in a particular instance and either retroactively or prospectively), only by an instrument in writing and signed by the Party against whom such amendment or waiver is sought to be enforced.

8.3 Successors and Assigns. Except as otherwise expressly provided herein, the terms and conditions of this Agreement shall inure to the benefit of and be binding upon the respective successors and assigns of the Parties. Each Holder may assign all or any portion of its rights herein to any transferee of Registrable Securities

which is eligible to be a "Holder" as that term is used herein. Nothing in this Agreement, express or implied, is intended to confer upon any person or entity other than the Parties hereto or their respective successors and assigns any rights, remedies, obligations, or liabilities under or by reason of this Agreement, except as may be expressly provided in this Agreement.

8.4 Governing Law. This Agreement, including the validity hereof and the rights and obligations of the parties hereunder, and all amendments and supplements hereof and all waivers and consents hereunder, shall be construed in accordance with and governed by the domestic substantive laws of the State of New York without giving effect to any choice of law or conflicts of law provision or rule that would cause the application of the domestic substantive laws of any other jurisdiction.

8.5 Severability. If any provisions of this Agreement as applied to any part or to any circumstance or any Party shall be adjudged by a court to be invalid or unenforceable, the same shall in no way affect any other provision of this Agreement, the application of such provision in any other circumstances or to any other Party, or the validity or enforceability of this Agreement.

8.6 Captions. The headings and captions used in this Agreement are used for convenience only and are not to be considered in construing or interpreting this Agreement.

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

8.8 Several Obligations. The obligations of the Holders herein are several and not joint. No Holder shall be responsible for the performance or failure on the part of any other Holder to perform its obligations.

IN WITNESS WHEREOF, the Parties hereto have entered into this  
Registration Rights Agreement as of the date first above written.

Niagara Mohawk Power Corporation

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

[IPPs/IPP Designees]

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

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

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

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

EXHIBIT 3.7  
Form of Shareholder's Agreement



**SHAREHOLDER'S AGREEMENT**

SHAREHOLDER'S AGREEMENT, dated as of \_\_\_\_\_, by and between \_\_\_\_\_ (the "Shareholder"), and Niagara Mohawk Power Corporation (the "Company").

WHEREAS, simultaneously with the execution hereof the Shareholder or a member(s) of the Sponsor Group (as hereinafter defined) is acquiring \_\_\_\_\_ shares of the Company's Common Stock, par value \$1.00 per share (the "Common Stock"), pursuant to a Master Restructuring Agreement, dated as of July 9, 1997 (the "MRA");

WHEREAS, [insert names of other sponsor entities listed on Schedule 3.7 of the MRA] (collectively with their respective Subsidiaries, the "Other Sponsor Groups") are simultaneously entering into Shareholder's Agreements;

NOW, THEREFORE, in consideration of the premises and agreements herein set forth, the parties do hereby agree as follows:

**SECTION 1. Covenants of the Shareholder.**

1.1 As of the date hereof, following the acquisition of Common Stock pursuant to the MRA, the Shareholder and its Subsidiaries (collectively, the "Sponsor Group") do not own, in the aggregate, in excess of 4.9% [9.9% for designees] of the outstanding Common Stock of the Company (assuming for these purposes that the outstanding Common Stock of the Company is not less than 190,390,600 shares as of the date hereof). As used in this Agreement, the term "Subsidiary" means, with respect to any person, any other person, whether incorporated or unincorporated, of which at least a majority of the securities or ownership interests having by their terms ordinary voting power to elect a majority of the board of directors or other persons performing similar functions is directly or indirectly owned or controlled by such person. To the Knowledge of Shareholder, \_\_\_\_\_ [parent entity or entities — see attached schedule] and its or their affiliates (as that term is defined in Rule 12b-2 under the Securities Exchange Act of 1934, as amended (the "Exchange Act")) who are not members of the Sponsor Group (collectively, "Excluded Affiliates") do not own any shares of Common Stock as of the date hereof. [modify as appropriate, subject to Section 6.14 of MRA] As used in this Agreement, the term "Knowledge" shall be the knowledge of the senior corporate officers, or comparable executive personnel, of a person, and shall not imply any duty of inquiry. Following the acquisition of shares of Common Stock pursuant to the MRA, the Shareholder agrees the Sponsor Group will not, directly or indirectly, alone or in concert with others, acquire, offer to acquire or agree to acquire, by purchase, gift or otherwise, beneficial ownership (as hereinafter defined) of any additional shares of the Company's then outstanding Common Stock or beneficial ownership of any other Voting Securities

(as hereinafter defined) of the Company. Notwithstanding the foregoing, the Sponsor Group may acquire up to an additional 5% [% lowered to a maximum of 9.9%, including any Common Stock acquired pursuant to the MRA for IPP designee with greater than 4.9% at closing] of the then outstanding Voting Securities provided that such percentage shall be reduced by the percentage of shares of Voting Securities held, to the Knowledge of Shareholder, by the Excluded Affiliates at the time of any proposed acquisition. Participation in a rights offering, receipt of stock dividends, and similar corporate events not initiated by any member of the Sponsor Group shall be excluded from the foregoing restrictions.

1.2 No violation of Section 1.1. shall be deemed to occur as a result of the acquisition by the Sponsor Group of beneficial ownership of Voting Securities as the result of any acquisition of voting securities of another person (a) whose voting securities are registered under the Exchange Act or (b) with respect to whom the Voting Securities held is an immaterial asset of such person, in either case by a member of the Sponsor Group which results in such member of the Sponsor Group indirectly becoming the beneficial owner of additional Voting Securities of the Company, provided, that if such member of the Sponsor Group acquires control of such other person or is otherwise able to direct the voting or disposition of the additional Voting Securities, such member of the Sponsor Group shall vote such Voting Securities in the manner set forth in Section 1.4.

1.3 The Shareholder agrees the Sponsor Group will not, directly or indirectly, alone or in concert with others (including the Excluded Affiliates), (a) make, or in any way participate in, any "solicitation" of "proxies" (as such terms are defined in Rule 14a-1 of Regulation 14A promulgated by the Securities and Exchange Commission pursuant to Section 14 of the Exchange Act, disregarding clause (iv) of Rule 14a-1((1)2) and including any exempt solicitation pursuant to Rule 14a-2(b)(1)) relating to the Voting Securities (except as to any proxies that may be given pursuant to Section 1.4); call, or in any way participate in a call for, any special meeting of shareholders of the Company; request, or take any action to obtain or retain any list of holders of any securities of the Company; initiate or propose any shareholder proposal or participate in the making of, or solicit shareholders for the approval of, one or more shareholder proposals relating to the Company; (b) deposit any Voting Securities in a voting trust or subject them to any voting agreement or arrangements, except as provided herein and except as among the members of the Sponsor Group; (c) form, join or in any way participate in a group with respect to any Voting Securities (or any securities the ownership of which would make the owner thereof a beneficial owner of Voting Securities) (except as among the members of the Sponsor Group); (d) otherwise act to control the Company or the management, board of directors, policies or affairs of the Company including, without limitation, (i) making any offer or proposal to acquire any securities or assets of the Company or any of its affiliates or soliciting or proposing to effect or negotiate any form of merger, consolidation or share exchange (a "business combination"), restructuring, recapitalization or other extraordinary transaction involving, or any change in control of, the Company, its affiliates or any of



their respective securities or assets (except for a proposal for the acquisition of any of the non-nuclear generating assets of the Company or its affiliates ("Generating Assets") which would not require the Company or any of its affiliates to make any public disclosure thereof) or (ii) except as expressly provided in the MRA, seeking board representation or the removal of any directors or management or a change in the composition or size of the board of directors of the Company, or (iii) making any request to amend or waive any provision of this Agreement that would require the Company to make public disclosure thereof; (e) disclose any intent, purpose, plan or proposal with respect to this Agreement or the Company, its affiliates or the board of directors, management, policies or affairs or securities or assets of the Company or its affiliates that is conditioned on, or would require, waiver, amendment, nullification or invalidation of any provision of this Agreement, or take any action that could require the Company or any of its affiliates to make any public disclosure relating to any such intent, purpose, plan, proposal or condition; or (f) assist, advise or encourage any person with respect to, or seek to do, any of the foregoing. Notwithstanding the foregoing, (i) if any person, alone or in concert with others (other than the Excluded Affiliates), (A) makes an unsolicited bona fide tender or exchange offer to acquire Voting Securities that would result in beneficial ownership by such person, alone or in concert with others, of at least 20% of the Company's outstanding Voting Securities, (B) makes an unsolicited bona fide proposal to acquire at least a majority of the Voting Securities or substantially all of the assets of the Company, in either case either directly or through a business combination, and in conjunction therewith, mails a proxy statement to shareholders of the Company seeking a change in the composition of the board of directors of the Company or (C) at a time when the Company and its affiliates own substantially all of the Generating Assets, enters into an agreement with the Company for the sale of substantially all assets of the Company or a business combination in which (x) the shareholders of the Company prior to the consummation of such business combination (excluding the person making the Offer and its affiliates) will, immediately following such consummation, own less than a majority of the Voting Securities of the resulting entity or (y) the directors of the Company prior to such consummation will, immediately following such consummation, constitute less than a majority of the board of directors of the resulting entity (any of (A), (B) or (C), an "Offer"), the restrictions contained in Sections 1.1, 1.2 and 1.3 of this Agreement shall not apply to the extent necessary to allow any member of the Sponsor Group or any Excluded Affiliate thereof, if applicable, to make a proposal to the board of directors to acquire the Company on the terms set forth below or to acquire all or substantially all of the assets of the Company, and to disclose such proposal, and/or to make, and consummate, a tender or exchange offer to acquire the Company, as the case may be, if such proposal or offer (x) is (if applicable) for at least the same percentage of Voting Securities as the Offer (including any second step transaction proposed in the Offer) and (y) is, in the written opinion of a nationally recognized investment banking firm, taking into account any second step transactions in the respective offers, the equal or more favorable, from a financial point of view, to the holders of Common Stock than the Offer, (ii) nothing contained herein shall prohibit the sale of Voting Securities, without any actions to solicit,

induce or encourage an attempted change of control of the Company, by the Sponsor Group or prohibit the purchase of Common Stock as contemplated by Section 1.1 and (iii) nothing contained herein shall prevent any member of the Sponsor Group from bidding on and acquiring any Generating Assets of the Company (including the stock of any affiliates) which the Company puts up for sale in a competitive process if such bids are made in accordance with the terms of such process. Nothing in the foregoing subsections (d), (e) or (f) is intended to restrict the actions of the Sponsor Group in a capacity other than as holder or potential acquiror of Common Stock in a matter which is unrelated to a potential change of control of the Company.

1.4 The Shareholder agrees the Sponsor Group shall take such action as may be required so that all Voting Securities beneficially owned directly or indirectly by the Sponsor Group shall be present for quorum purposes, in person or represented by proxy at every meeting of holders of Common Stock, and the Sponsor Group (a) shall vote its Voting Securities for the election of all nominees for directors at each shareholder meeting of the Company in the same proportion as all other Voting Securities are voted (other than the Voting Securities held by the Sponsor Group and the Other Sponsor Groups which remain a party to a Shareholder Agreement, as well as any Voting Securities transferred by the Sponsor Group or such Other Sponsor Groups to any of their respective Excluded Affiliates) (the "Disinterested Shares") present, in person or by proxy, at such meeting and voting with respect to the election of directors, except that if such election for directors shall occur while there is pending an Offer made by any person (other than an Excluded Affiliate), the Sponsor Group may vote in its discretion, and (b) may vote on all other matters in its discretion, provided, that with respect to any matters other than sales of securities or assets, business combinations, restructurings, recapitalizations and other extraordinary transactions, the percentage of Voting Securities voted on all matters by the Sponsor Group in accordance with the recommendation of the Company's board shall be no less than the percentage of Disinterested Shares so voted. Notwithstanding the foregoing, if a member of the Sponsor Group makes a proposal or offer in response to an Offer described under (i)(C) of the second sentence of Section 1.3, all Voting Securities held by the Sponsor Group shall be voted, both with respect to the Offer and the proposal or offer made by the member of the Sponsor Group, in the same proportion as the Disinterested Shares.

## SECTION 2. Transfer or Disposition.

2.1 So long as the shares of Common Stock held by the Other Sponsor Group or its respective Excluded Affiliates remain subject to the provisions of their respective Shareholder's Agreement (or would be subject by virtue of such transfer), the Shareholder agrees the Sponsor Group will not, directly or indirectly, alone or in concert with others, sell or otherwise transfer in any manner any Voting Securities to any member of an Other Sponsor Group, or to a person which is, to the Knowledge of the selling shareholder, an Excluded Affiliate of any member of an Other Sponsor Group. In any

private sale of Voting Securities which is subject to the preceding sentence, the selling member of the Sponsor Group shall obtain the representation of the buyer that it is not an Excluded Affiliate of any member of an Other Sponsor Group. Subject to the limitations of Section 1.1, the Shareholder, if it holds any Voting Securities, may sell or otherwise transfer Voting Securities to members of the Sponsor Group, provided that such members agree in writing to be bound by the provisions hereof.

2.2 Following any transfer of Voting Securities by the Sponsor Group to any Excluded Affiliate of the Sponsor Group, the restrictions contained in Sections 1.1, 1.2, 1.3 and 1.4 shall no longer be applicable to such transferred Voting Securities, except that the restrictions contained in Section 1.4 shall continue to apply to such transferred Voting Securities while held by an Excluded Affiliate with respect to any action initiated by any member of the Sponsor Group or any of its Excluded Affiliates and except that if Voting Securities are transferred to an Excluded Affiliate during the pendency of a proxy solicitation with respect to Voting Securities by any person other than the Company's board of directors (including an announcement by such person that it intends to engage in a proxy solicitation), all restrictions contained in Section 1.4 shall be applicable to such Voting Securities during the pendency of such proxy solicitation.

2.3 Except as set forth in Sections 2.1 and 2.2, nothing contained in this Agreement shall in any way limit or restrict any sale or transfer of Voting Securities by any member of the Sponsor Group and, except as set forth in Sections 2.1 and 2.2, nothing contained in this Agreement shall impose any restrictions on any Voting Securities sold or transferred outside of the Sponsor Group.

### SECTION 3. Representations.

3.1 Each of the parties hereto represents and warrants with respect to itself that such party is duly authorized to execute, deliver and perform this Agreement, that this Agreement has been duly executed by such party and that this Agreement is a valid and binding agreement of such party.

### SECTION 4. Miscellaneous.

4.1 This Agreement shall terminate five years from the date hereof or on such earlier date (the "Reduced Ownership Date") as the aggregate beneficial ownership of the Company's outstanding Voting Securities by the Sponsor Group, in addition to any Voting Securities transferred by the Sponsor Group to its Excluded Affiliates (up to the number of such Voting Securities still held by all Excluded Affiliates), is less than 2%, so long as such persons do not reacquire aggregate beneficial ownership of 2% or more of the Company's outstanding Voting Securities within one year of the Reduced Ownership Date. If the aggregate beneficial ownership of such persons shall exceed 2% within one year of the Reduced Ownership Date, this Agreement shall at the time such ownership

exceeds such limit again be in full force and effect for the balance of the original term. If the Shareholder seeks to terminate this Agreement as a result of such reduced ownership, it shall promptly upon request by the Company confirm in writing the beneficial ownership of the Company's Voting Securities by the Sponsor Group, as well as any Voting Securities transferred by the Sponsor Group to an Excluded Affiliate. Following any such termination as a result of reduced ownership the Shareholder shall, if requested by the Company in writing, confirm such beneficial ownership, until one year following the Reduced Ownership Date. Notwithstanding anything to the contrary contained in this Agreement (a) this Agreement shall terminate at such time as any person, alone or in concert with others (other than the Sponsor Group, its Excluded Affiliates, or any Other Sponsor Group or its respective Excluded Affiliates), beneficially owns 25% or more of the Voting Securities and (b) this Agreement shall terminate in the event the Company makes a general assignment or any general arrangement or compromise for the benefit of creditors, files a petition under the Bankruptcy Code (Title 11 of the United States Code) or otherwise commences, authorizes or acquiesces in the commencement of a proceeding under any bankruptcy or similar law for the protection of creditors, or has a petition commenced against it.

4.2 For purposes of this Agreement, (i) a "person" shall mean any individual, firm, partnership, association, corporation or other entity or group of such persons; (ii) a person shall have "beneficial ownership" of any securities as to which such person may be deemed the beneficial owner pursuant to Rule 13d-3 under the Exchange Act and shall include, without limitation, any securities such person has the right to become the beneficial owner of (whether or not such right is immediately exercisable) pursuant to any agreement, arrangement or understanding or upon the exercise of any exchange right, conversion right, option, warrant or other right; and (iii) "Voting Securities" shall mean securities that are generally entitled to vote in the election of directors of the Company (or, where reference is made to the voting securities of another entity such term shall mean securities that are generally entitled to vote in the election of directors, or comparable persons, of such other entity).

4.3 The Shareholder acknowledges and agrees that irreparable damage to the Company would occur in the event any of the provisions of this Agreement were not performed in accordance with their specific terms or were otherwise breached and that such damage would not be compensable in money damages. It is accordingly agreed that the Company shall be entitled to, and the Shareholder agrees the Sponsor Group will not take action, directly or indirectly, in opposition to the Company's seeking, specific enforcement of, and injunctive relief to prevent any violation of, the terms hereof, in addition to any other remedy or relief available at law or in equity.

4.4 The Common Stock issued to any member of the Sponsor Group pursuant to the MRA will contain a legend in substantially the following form:

"The shares of capital stock represented by this certificate are subject to a Shareholder's Agreement which, among other things, (a) restricts the sale or transfer of such shares to [any member of an Other Sponsor Group or, if known to the selling shareholder, any Excluded Affiliate of an Other Sponsor Group—to be completed upon execution], or certain of their affiliates, and (b) restricts the voting of such shares except in accordance therewith."

Upon the termination of this Agreement, or upon any transfer of Voting Securities to any person (other than a member of the Sponsor Group or any Excluded Affiliate or as prohibited by the first sentence of Section 2.1), the Company agrees, if so requested, to cause the Company's transfer agent to remove the legend. Upon any transfer of Voting Securities to any Excluded Affiliate prior to termination of this Agreement, the Company agrees, if so requested, to replace the legend to reflect solely the voting restrictions set forth in Section 2.2.

4.5 The Shareholder will cause each member of the Sponsor Group to observe the provisions of this Agreement.

4.6 All notices, requests and other communications to any person named hereunder shall be in writing (including wire, telecopy or similar writing) and shall be given to such person at its address or telecopy number set forth below or such address or telecopy number as such person may hereafter specify for the purpose by notice to the other person:

If to the Company:

Telecopy:

With a copy to:

Telecopy:

If to the Shareholder:

Telecopy:

With a copy to:

Telecopy:

Each such notice, request or other communication shall be effective (a) if given by telecopy, when such telecopy is transmitted to the telecopy number specified in this subsection and the appropriate confirmation is received or (b) if given by any other means, when actually received at the address specified in this subsection, provided a notice given other than during normal business hours or on a day other than a business day at the place of receipt shall not be effective until the opening of business on the next business day.

4.7 This Agreement shall be construed in accordance with and governed by the laws of the State of New York (without regard to the principles of conflict of laws thereof).

4.8 This Agreement may be amended, modified or supplemented only by written agreement of the parties hereto.

4.9 Any failure of any party to comply with any obligation, covenant, agreement or condition herein may be waived by the party entitled to the benefit of such obligation, covenant, agreement or condition only by a written instrument signed by such party, but such waiver or failure to insist upon strict compliance with such obligation, covenant, agreement or condition shall not operate as a waiver of, or estoppel with respect to, any subsequent or other failure. Whenever this Agreement requires or permits consent by or on behalf of any party hereto, such consent shall be effective only if given in writing in a manner consistent with the requirements for a waiver of compliance as set forth in this Section.

4.10 This Agreement and all of the provisions hereof shall be binding upon and inure to the benefit of the parties hereto and their respective successors by merger or otherwise by operation of law. In the event of an NMPC Restructuring (as defined in the MRA), the terms of this Agreement shall be applicable to any Voting Securities received by the Sponsor Group in the NMPC Restructuring, other than Voting Securities of any entity which holds all or substantially all of the Generating Assets.

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

4.12 This Agreement embodies the entire agreement and understanding of the parties hereto in respect of the subject matter contained herein. There are no other restrictions, promises, representations, warranties, covenants or undertakings with respect to the subject matter hereof, other than those expressly set forth or referred to herein. This Agreement supersedes all prior agreements and understandings between the parties with respect to such subject matter.

4.13 If any provision of this Agreement shall be deemed or declared to be unenforceable, invalid or void, the same shall not impair any of the other provisions of this Agreement.

4.14 The parties hereto hereby irrevocably submit to the jurisdiction of the United States District Court, Southern District of New York (or, if there is no subject matter jurisdiction before such court, the Supreme Court of the State of New York, New York County) over any legal action or proceeding arising out of or relating to this Agreement and hereby irrevocably agree that all claims in respect of any such action may be heard and determined in such court. The parties hereby irrevocably waive, to the fullest extent permitted by applicable law, any objection which they may now or hereafter have to the laying of venue of any such suit, action or proceeding brought in such court or any defense of inconvenient forum for the maintenance of such action. Each of the parties hereto agrees that a judgment in any such action or proceeding may be enforced in other jurisdictions by suit on the judgment or in any other manner provided by law.

4.15 If any Excluded Affiliate received Common Stock as a designee upon the consummation of the MRA, for the purposes of this Agreement, such Common Stock shall be treated as if it was transferred to the Excluded Affiliate following the execution hereof.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be duly executed as of the day and year first above written.

[Shareholder]

[Company]

The undersigned agree to be bound hereby as members of the Sponsor Group [if they are to receive shares of Common Stock pursuant to the MRA]:

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Signatories

Certain Excluded Affiliates Specified in § 1.1



**EXHIBIT 5.7**  
**Blank Forms of Allocation, Contracts Allocation**  
**and Contract Adjustment Allocation**

(attached)



**ALLOCATION OF ALLOCABLE CONSIDERATION**

**Highly Confidential**

«Developer»: «Project» (\$'000s)<sup>(1)</sup>

**Governor's Roundtable Discussions**

Allocation	
Cash	Company Shares (\$/# of shares)
«D»	«E» <sup>(2)</sup> /«F»

«Company»

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

\_\_\_\_\_  
Kenneth A. Buckfire  
Director, Wasserstein Perella & Co.

«Close»

<sup>(1)</sup> The purpose of this page is to enable WP&Co. to represent that all the IPPs agree to their individual allocations of upfront payment, and to allow WP&Co. to state that the value allocated to each project in aggregate equals to the total upfront consideration payable by Niagara Mohawk Power Corporation pursuant to the Terms of the Master Restructuring Agreement. The Depository will make final distributions to the project on the Consummation Date equal to the amounts shown above. The allocations will not be binding until the Master Restructuring Agreement has been signed by all parties.

<sup>(2)</sup> Pro rata share of 46 million shares assuming an aggregate value of \$400 million.

**INDEPENDENT POWER PRODUCERS / CONTRACTS ALLOCATION**

**HIGHLY CONFIDENTIAL**

*Amended PPA / Restated Contract*

**Governor's Roundtable Discussions**

<<IPP>>  
<<Project>>

Contract Year	1	2	3	4	5	6	7	8	9	10
Contract MWh	-	-	-	-	-	-	-	-	-	-
Contract Price (\$/MWh)	-	-	-	-	-	-	-	-	-	-
Contract Value (\$'000s)	-	-	-	-	-	-	-	-	-	-

Net Average Annual Capacity (MW)

\_\_\_\_\_  
<<IPP>>

\_\_\_\_\_  
Kenneth A. Buckfire  
Director, Wasserstein Perella & Co.

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

Title: \_\_\_\_\_

**INDEPENDENT POWER PRODUCERS / CONTRACTS ALLOCATION**

**HIGHLY CONFIDENTIAL**

*Amerised PPA / Restated Contract (Contract Adjustment) <sup>1</sup>*

**Governor's Roundtable Discussions**

<<IPP>>

<<Project>>

	1997	1998	1999	2000	2001	2002	2003	2004	2005	2006	2007
<b>Original Contract Schedule</b>											
Contract Year	1	2	3	4	5	6	7	8	9	10	
Contract MWh	-	-	-	-	-	-	-	-	-	-	-
Contract Price (\$/MWh)	-	-	-	-	-	-	-	-	-	-	-
Contract Value (\$'000s)	-	-	-	-	-	-	-	-	-	-	-

**Adjusted Contract Schedule**

Contract Year		1	2	3	4	5	6	7	8	9	10
Contract MWh		-	-	-	-	-	-	-	-	-	-
Contract Price (\$/MWh)		-	-	-	-	-	-	-	-	-	-
Contract Value (\$'000s)		-	-	-	-	-	-	-	-	-	-

Contract Adjustment

\_\_\_\_\_  
<<IPP>>

\_\_\_\_\_  
Kenneth A. Buckfire  
Director, Wasserstein Perella & Co.

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

Title: \_\_\_\_\_

(1) The Contract Adjustment is calculated before giving effect to the \$5/MWh reduction in years 3 through 9 and the \$2.5/MWh reduction in year 10 for both the Original and the Adjusted Contract Schedules.





EXHIBIT 8.3A  
Form of NMPC Representation Letter



[LETTERHEAD OF NMPC]

[Consummation Date]

Independent Power Producers  
listed on Schedule A hereto

Re: Master Restructuring Agreement dated July 9, 1997

Ladies and Gentlemen:

In connection with the consummation on this date of the transactions contemplated by the Master Restructuring Agreement dated July 9, 1997 (the "Agreement") between Niagara Mohawk Power Corporation (the "Company") and the IPPs listed on Schedule A hereto (the "IPPs"), the Company hereby represents and warrants to each IPP, as of the Consummation Date, that the following statements are true in all material respects (all capitalized terms used and not otherwise defined herein shall have the meanings ascribed to them in the Agreement):

1. The Company is a corporation duly organized, validly existing and in good standing under the laws of the State of New York, and has all requisite corporate power and authority to own its properties and assets and to carry on its business in the manner now conducted and as proposed to be conducted in accordance with the Agreement and the Contracts. The Company is duly qualified to transact business and is in good standing in each jurisdiction except where the failure so to qualify would have not have a Material Adverse Effect on the Company.
2. The Company has all requisite corporate power and authority to execute and deliver the Agreement and all other agreements executed or to be executed by it pursuant thereto, and to carry out the provisions of the Agreement in accordance with the terms thereof, and all other agreements executed or to be executed by it pursuant thereto, including, but not limited to, the power and authority to issue and sell the Company Shares and Short-Term Notes, and to enter into and perform the Contracts; all corporate action on the part of the Company, its officers, directors and shareholders necessary for the authorization, execution and delivery of the Agreement in accordance with the terms thereof, and all other agreements executed or to be executed by the Company pursuant thereto, the performance of all obligations of the Company thereunder, and the authorization, issuance, sale and delivery by the Company of the Company Shares and Short-Term Notes (if applicable) pursuant thereto, has been taken; the Agreement and all other agreements executed by the Company pursuant thereto have been duly and validly executed and delivered by the Company; and the Agreement and all other agreements executed or to be executed by the Company pursuant thereto constitute or will constitute valid and legally

binding obligations of the Company, enforceable against the Company in accordance with their respective terms.

3. Except for (i) those Regulatory Approvals which have been obtained, made or given on or before the date hereof and (ii) any filings made by the Company under the Hart-Scott-Rodino Act, no consent, approval, qualification, order, or authorization or other action of, or filing or registration with, any Governmental Authority is required on the part of the Company in connection with the Company's valid execution, delivery or performance of the Agreement, or any of the other agreements executed or to be executed by the Company pursuant thereto, or the authorization, issuance, sale and delivery by the Company of the Company Shares and Short-Term Notes (if applicable), which, if not obtained, made or given, could reasonably be expected to have a Material Adverse Effect on the Company.

4. The execution, delivery and performance by the Company of the Agreement, any other agreements executed or to be executed by the Company pursuant thereto, and the consummation of the transactions contemplated thereby (a) is not in violation or default of any provision of its Certificate of Incorporation or By-Laws, and (b) is not in conflict with and does not constitute, with or without the passage of time or giving of notice, a material violation or default, or give rise to any material obligation, under (i) any material mortgage, indenture, agreement, instrument or contract to which the Company is a party or by which it or any of its material assets is bound or (ii) any local, state or federal judgment, order, writ, decree, statute, rule or regulation applicable to the Company or any of its material assets.

5. Schedule B hereto sets forth (i) the authorized capital of the Company, (ii) the number of shares of Common Stock issued and outstanding and (iii) the number of shares of Common Stock issuable upon the exercise of any options, warrants or rights, or upon conversion or exchange of any other securities outstanding, as of [not earlier than ten Business Days prior to the date hereof].

6. The Company Shares acquired by the IPP pursuant to the Agreement, if any, have been duly and validly issued, fully paid, and are nonassessable, are free of restrictions on transfer other than restrictions on transfer required by federal securities laws, and, if applicable, the Shareholder's Agreement and are duly listed on the New York Stock Exchange. The Company Shares are not subject to any preemptive rights or rights of first refusal. Assuming the truth and accuracy of each IPP's representations set forth in Section 5.6 of the Agreement (or, with respect to any designee of an IPP, such designee's representations set forth in a representation letter containing substantially the same representations set forth in Section 5.6 of the Agreement), the offer, sale and issuance of the Company Shares pursuant to this Agreement (i) will not require registration under the Securities Act and (ii) will not require registration or qualification under such of the "blue sky" or securities laws of the jurisdictions in the United States (or will be in compliance therewith) as shall be applicable to the offer, sale and issuance of the Company Shares (subject to the limitation that the Company makes no representation or warranty with respect to any offer by any IPP to any designee of such IPP as contemplated by

Sections 3.3 and 5.6 of the MRA), and neither the Company nor any authorized agent acting on its behalf will take any action hereafter that would require such registration.

7. Since January 1, 1995, the Company has made all filings required to be made by it under the Exchange Act and any other securities laws applicable to the Company and is otherwise eligible to file a registration statement on Form S-3 covering the offering and sale of the Company Shares and the Debt Securities. As of their respective dates, or, if amended, as of the date of such amendment, the SEC Reports complied in all material respects with the requirements of the Exchange Act, and the rules and regulations of the SEC thereunder. As of their respective dates, or, if amended, as of the date of such amendment, the SEC Reports did not contain any untrue statement of a material fact or omit to state a material fact required to be stated therein or necessary to make the statements therein, in light of the circumstances under which they were made, not misleading. The financial statements of the Company included in the Company's Annual Report on Form 10-K for the fiscal year ended December 31, 1996, the Company's Quarterly Report on Form 10-Q for the fiscal quarter ended March 31, 1997, and in any subsequent SEC Reports comply as to form in all material respects with applicable accounting requirements and the published rules and regulations of the SEC with respect thereto, have been prepared in accordance with generally accepted accounting principles as stated in such financial statements applied on a consistent basis during the period covered and fairly present, in all material respects, the financial position of the Company as of the date thereof and the results of operations and changes in financial position of the Company for the period then ended subject, in the case of unaudited statements, to notes and normal year-end audit adjustments, none of which shall be material in amount or effect.

8. The Company has disclosed to the IPPs all material plans and proposals concerning the NMPC Restructuring which have been disclosed to any Governmental Authority or approved by the Board of Directors of the Company and which could reasonably have a material adverse effect on any IPP or the Restructuring, including but not limited to the Contracts or any of the consideration to be received by the IPPs hereunder. The Company has not been authorized by its Board of Directors, nor is the Company seeking such authorization, to file a petition under the Bankruptcy Code or otherwise to commence, authorize or acquiesce in the commencement of a proceeding under any bankruptcy or similar law for the protection of creditors, or to make a general assignment or any general arrangement or compromise for the benefit of creditors, nor has the Company made, commenced, authorized or acquiesced in the commencement of any such proceeding or assignment or had any such petition, proceeding or assignment commenced against it.

9. The Company hereby certifies that the conditions specified in Section 8.2 of the Agreement have been satisfied (unless waived by the IPP in writing).

10. The foregoing representations and warranties assume that no person taking Common Stock pursuant to the Agreement will own, together with its Affiliates, 10% or more of

the outstanding Common Stock following Consummation, and the Company shall have no liability hereunder in the event such assumption is untrue.

11. The representations and warranties of the Company contained herein shall survive the Consummation Date for a period of two (2) years.

Niagara Mohawk Power Corporation

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: " \_\_\_\_\_

EXHIBIT 8.3C  
Form of Opinion of NMPC's Counsel





[LETTERHEAD OF NMPC'S COUNSEL]

[Consummation Date]

To the Independent Power Producers  
listed on Schedule A hereto

Dear Sirs:

We have acted as corporate counsel to Niagara Mohawk Power Corporation, a New York corporation ("NMPC"), in connection with the execution and delivery of the Master Restructuring Agreement, dated as of July 9, 1997 (the "Agreement"), by and among NMPC and the independent power producers listed on Schedule A hereto, the Shareholder's Agreements, the Registration Rights Agreement, the Short-Term Notes, the Amended PPA, the Restated Contracts and the Fixed Price Swap Contracts (collectively, the "Specified Restructuring Documents"). This opinion is delivered to you pursuant to Section 8.3(c) of the Agreement. Capitalized terms used herein but not otherwise defined herein shall have the respective meanings ascribed to such terms in the Agreement.

In connection therewith, we have examined such corporate records, certificates and other documents, and such questions of law, as we have considered necessary or appropriate for the purposes of this opinion. Upon the basis of such examination, it our opinion that:

1. NMPC has been duly incorporated and is an existing corporation in good standing under the laws of the State of New York, and has all requisite corporate power and authority to own its properties and assets and to carry on its business in the manner now conducted.

2. NMPC has all requisite corporate power and authority to execute and deliver the Specified Restructuring Documents and perform the obligations of NMPC thereunder, all corporate action on the part of NMPC, its officers, directors

and shareholders necessary for the authorization, execution and delivery of the Specified Restructuring Documents and the performance of the obligations of NMPC thereunder has been taken; the Specified Restructuring Documents have been duly executed and delivered by NMPC; and the Specified Restructuring Documents constitute valid and legally binding obligations of NMPC enforceable against NMPC in accordance with their respective terms, subject to bankruptcy, insolvency, fraudulent transfer, reorganization, moratorium and similar laws of general applicability relating to or affecting creditors' rights, to general equity principles and to limitations on rights to indemnification and contribution thereunder which may be imposed by applicable law.

3. The Company Shares have been duly authorized and validly issued and are fully paid and nonassessable. The certificates representing the Company Shares are in due and proper form and have been validly executed.

4. No registration of the Company Shares under the Securities Act is required in connection with the issuance of the Common Shares pursuant to the Agreement and such issuance will not result in a violation of the registration requirements of the blue sky or state securities laws of the State of New York.

The foregoing opinions are limited to the laws of the State of New York and, in the case of the opinion expressed in (4) above, the Federal laws of the United States, and we are expressing no opinion as to the effect of the laws of any other jurisdiction.

In rendering the opinion expressed in (4) above, we have, with your approval, assumed the accuracy of the representations and warranties and compliance with the covenants of the Company, the IPPs and other initial acquirors of the Company Shares contained in the Agreement and the [insert reference to letters which will be delivered by the initial acquirors, as required by the Agreement]. We note, with respect to such opinion, that we are expressing no opinion as to when and under what circumstances the Company Shares may be reoffered and resold by the initial acquirors thereof.

In rendering the foregoing opinions, we have also, with your approval, relied as to certain matters on information obtained from the public officials, officers of NMPC and other sources believed by us to be responsible, and we have assumed that (a) the parties to each of the Specified Restructuring Agreements, each of the other agreements referred to therein and each other agreement required to be executed pursuant to any of the foregoing agreements (collectively, the "Restructuring Agreements") have received all Regulatory Approvals, IPP/Third Party Consents, NMPC/Third Party Consents and NMPC/Third Party Releases required to be obtained by them in connection with the execution, delivery and performance of the Restructuring Agreements, (b) the execution, delivery and performance of the Restructuring Agreements will not contravene

any law, rule or regulation applicable as a result of the status of any party to the Restructuring Agreements as a utility, an owner or operator of nuclear power generating facilities or any other form or regulated entity, (c) the Specified Restructuring Agreements have been duly authorized, executed and delivered by the parties thereto other than NMPC, (d) the certificates for the Company Shares conform to the specimen thereof examined by us and have been duly countersigned and registered by the transfer agent and registrar for the Common Stock and (e) the signatures on all documents examined by us are genuine, assumptions which we have not independently verified.

The opinions expressed herein are solely for the benefit of the IPPs and, without our express written consent, neither our opinion nor this opinion letter may be circulated or furnished to or relied upon by any other person or entity.

Very truly yours,

[This form will be subject to modification to reflect customary and reasonable assumptions, qualifications and limitations required by the individual opining counsel.]



EXHIBIT 9.3A  
Form of IPP Representation Letter



[LETTERHEAD OF IPP]

[Consummation Date]

Niagara Mohawk Power Corporation  
300 Erie Boulevard West  
Syracuse, NY 13202

Re: Master Restructuring Agreement dated July 9, 1997

Ladies and Gentlemen:

In connection with the consummation on this date of the transactions contemplated by the Master Restructuring Agreement dated July 9, 1997 (the "Agreement") between Niagara Mohawk Power Corporation (the "Company"), the undersigned IPP (the "IPP") and the other IPPs who are parties thereto, the IPP hereby represents and warrants to the Company, as of the Consummation Date, that the following statements are true in all material respects (all capitalized terms used and not otherwise defined herein shall have the meanings ascribed to them in the Agreement):

1. The IPP is a [corporation] [partnership] duly organized, validly existing and in good standing under the laws of its state of incorporation or formation, and has all requisite power and authority, corporate or other, to own its properties and assets and to carry on its business in the manner now conducted and as proposed to be conducted in accordance with this Agreement and the Contracts.

2. The IPP has all requisite [corporate] [partnership] power and authority to execute and deliver the Agreement and all other agreements executed or to be executed by it pursuant thereto, and to carry out the provisions of the Agreement in accordance with the terms thereof, and all other agreements executed or to be executed by it pursuant thereto, including, but not limited to, the power and authority to enter into and perform the Contracts to which it is a party; all [corporate] [partnership] action on the part of the IPP, its officers, directors, stockholders and partners, as applicable, necessary for the authorization, execution and delivery of the Agreement, all other agreements executed or to be executed by the IPP pursuant thereto, and the performance of all obligations of the IPP thereunder, has been taken; the Agreement and all other agreements executed by the IPP pursuant thereto have been duly and validly executed and delivered by the IPP; and the Agreement and all other agreements executed or to be executed by the IPP pursuant thereto constitute or will constitute valid and legally binding obligations of the IPP, enforceable against the IPP in accordance with their respective terms.

3. Except for (i) those Regulatory Approvals which have been obtained, made or given on or before the date hereof and (ii) any filings made by the IPP under the Hart-Scott-Rodino Act, no consent, approval, qualification, order, or authorization or other action of, or filing or registration with, any Governmental Authority is required on the part of the IPP in connection with the IPP's valid execution, delivery or performance of the Agreement, or any of the other agreements executed or to be executed by the IPP pursuant thereto, which, if not obtained, made or given, could reasonably be expected to have a material adverse effect on the IPP's ability to enter into and perform its obligations under this Agreement or any other agreements to be executed by the IPP pursuant hereto. Any applicable waiting period with respect to any filing by the IPP under the Hart-Scott-Rodino Act has expired on or before the date hereof.

4. The execution, delivery and performance by the IPP of the Agreement, any other agreements executed or to be executed by the IPP pursuant thereto, and the consummation of the transactions contemplated thereby (a) is not in violation or default of any provision of its Certificate of Incorporation or By-Laws or partnership agreement, as applicable, and (b) is not in conflict with and does not constitute, with or without the passage of time or giving of notice, a material violation or default, or give rise to any material obligation, under (i) any material mortgage, indenture, agreement, instrument or contract to which the IPP is a party or by which it or any of its material assets is bound or (ii) any local, state or federal judgment, order, writ, decree, statute, rule or regulation applicable to the IPP or any of its material assets.

5. If the IPP has acquired any Company Shares pursuant to the Agreement: (a) the Company Shares acquired by the IPP have been acquired for its own account without a view to the resale or distribution thereof, provided, however, that the foregoing shall not preclude the IPP from selling the Company Shares acquired by it in the manner described in clauses (c)(i), (ii), or (iii) below; (b) the IPP is either (x) an "accredited investor" as such term is defined in Rule 501(a) of Regulation D under the Securities Act or (y) if not an "accredited investor", either alone or with its purchaser representative, has such knowledge and experience in financial and business matters that it is capable of evaluating the merits and risks of its investment in the Company Shares, within the meaning of Rule 506(b)(2)(ii) of Regulation D under the Securities Act; and (c) the IPP understands that the sale of the Company Shares to the IPP has not been registered under the Securities Act or any applicable state securities laws and, therefore, the Company Shares cannot be transferred, sold, pledged or otherwise disposed of, except (i) pursuant to the Shelf Registration Statement or another effective registration statement under the Securities Act and in compliance with the prospectus-delivery requirement under the Securities Act, (ii) in accordance with Rule 144 under the Securities Act after the applicable time period specified therein or (iii) in accordance with another exemption from the registration requirements of the Securities Act.

6. The IPP hereby certifies that the conditions specified in Section 9.2 of the Agreement have been satisfied (unless waived by the Company in writing).



7. The representations and warranties of the IPP contained herein shall survive the Consummation Date for a period of two (2) years.

[IPP]

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

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

Title: \_\_\_\_\_



EXHIBIT 9.3C  
Form of Opinion of IPP's Counsel



[LETTERHEAD OF IPP'S COUNSEL]

[Consummation Date]

Niagara Mohawk Power Corporation  
300 Erie Boulevard West  
Syracuse, NY 13202

Re: Master Restructuring Agreement dated July 9, 1997

Ladies and Gentlemen:

We have acted as counsel to \_\_\_\_\_, a \_\_\_\_\_ (the "IPP"), in connection with the execution and delivery of the Master Restructuring Agreement, dated as of July 9, 1997 (the "Agreement"), by and among Niagara Mohawk Power Corporation Power Corporation, a New York corporation ("NMPC"), the IPP and the other independent power producers listed on Schedule A thereto, the Shareholder's Agreements, the Registration Rights Agreement, the Amended PPA, the Restated Contracts and the Fixed Price Swap Contracts (collectively, the "Specified Restructuring Documents"). This opinion is delivered to you pursuant to Section 9.3(c) of the Agreement. Capitalized terms used herein but not otherwise defined herein shall have the respective meanings ascribed to such terms in the Agreement.

In connection with the opinions expressed below, we have examined and are familiar with originals or copies, certified or otherwise identified to our satisfaction, of the Specified Restructuring Documents and such other agreements, certificates of public officials, certificates of officers or representatives of the IPP [and its general partner] and others, and such other documents, certificates and corporate or other records as we have deemed necessary or appropriate as a basis for the opinions set forth herein.

Based on the foregoing and subject to the qualifications set forth herein, it is our opinion that:

1. The IPP is a [corporation] [partnership] duly organized, validly existing and in good standing under the laws of its state of incorporation or formation, and has all requisite [corporate] [partnership] power and authority to own its properties and

assets and to carry on its business in the manner now conducted and as proposed to be conducted in accordance with the Specified Restructuring Documents.

2. The IPP has all requisite [corporate] [partnership] power and authority to execute and deliver the Specified Restructuring Documents, and perform the obligations of the IPP thereunder; all [corporate] [partnership] action on the part of the IPP, its officers, directors, stockholders and partners, as applicable, necessary for the authorization, execution and delivery of the Specified Restructuring Documents and the performance of the obligations of the IPP thereunder has been taken; the Specified Restructuring Documents have been duly and validly executed and delivered by the IPP; and the Specified Restructuring Documents constitute valid and legally binding obligations of the IPP, enforceable against the IPP in accordance with their respective terms, subject to applicable bankruptcy, insolvency, fraudulent conveyance, reorganization, moratorium and similar laws affecting creditors' rights and remedies generally, and subject to general principles of equity, including principles of commercial reasonableness, good faith and fair dealing (regardless of whether enforcement is sought in a proceeding at law or in equity) and except that rights to indemnification and contribution thereunder may be limited by public policy relating thereto.

The foregoing opinion relates only to the laws of the State of New York [and, if otherwise, the state of incorporation or formation of the IPP]. We express no opinion of the law of any other jurisdiction.

In rendering the foregoing opinions, we have also, with your approval, relied as to certain matters on information obtained from public officials, officers of the IPP and other sources believed by us to be responsible, and we have assumed that (a) the parties to each of the Specified Restructuring Documents, each of the other agreements referred to therein and each other agreement required to be executed pursuant to any of the Specified Restructuring Documents have received all Regulatory Approvals, IPP/Third Party Consents, NMPC/Third Party Consents and NMPC/Third Party Releases required to be obtained by them in connection with the execution, delivery and performance of the Specified Restructuring Documents, (b) all parties (other than the IPP) to the Specified Restructuring Documents have the legal right and power to enter into the Specified Restructuring Documents and perform their obligations thereunder, all such parties have been duly authorized to enter into the Specified Restructuring Documents and perform their obligations thereunder, and that all such parties have duly executed and delivered the Specified Restructuring Documents, and (c) the signatures on all documents examined by us are genuine, assumptions which we have not independently verified.

Niagara Mohawk Power Corporation  
Page 3

This opinion is limited to the matters stated herein, and no opinion is implied or may be inferred beyond the matters expressly stated. We assume herein no obligation, and hereby disclaim any obligation, to make any inquiry after the date hereof or to advise you of any future changes in the foregoing or of any facts or circumstances that may hereafter come to our attention.

The opinions expressed herein are solely for the benefit of NMPC and, without our express written consent, neither our opinion nor this opinion letter may be circulated or furnished to or relied upon by any other person or entity.

Very truly yours,

**[This form will be subject to modification to reflect customary and reasonable assumptions, qualifications and limitations required by the individual opining counsel.]**





EXHIBIT 14.14  
Form of Third Party Non-Disclosure Agreement



THIRD PARTY NON-DISCLOSURE AGREEMENT

The Parties to the Master Restructuring Agreement dated July 9, 1997 (the "MRA") between Niagara Mohawk Power Corporation ("NMPC") and certain independent power producers which are signatories thereto (the "IPPs") have agreed that the undersigned recipient ("Third Party Recipient") shall be allowed access to certain confidential and proprietary information of the Parties or pertaining to the transactions contemplated by the MRA for the limited purpose of assisting the undersigned Disclosing Party to obtain a consent, approval, release or other action contemplated by the MRA, subject, however, to the terms and conditions set forth herein. As a condition of, and in consideration for, the granting and receipt of such access the undersigned agree as follows:

1. The undersigned Party under the MRA (the "Disclosing Party") represents that the Third Party Recipient (which, for purposes hereof, shall mean such person or entity, its affiliates, and their respective officers, directors, partners, shareholder and employees) is a person or entity from whom a consent, approval, release or other action is or may be required to be obtained in connection with the MRA, or is a financial advisor, attorney, accountant or other consultant (collectively, "Representatives") of such person or entity retained for purposes of assisting such person or entity with respect thereto, and that disclosure to the Third Party Recipient is necessary or desirable to advance the purposes of the MRA. All information, whether written or oral (including any information furnished prior to the execution of the MRA), and including, without limitation, any information concerning the terms or conditions of the MRA, any other agreement, document or instrument relating thereto or any of the transactions contemplated thereby, or the progress, status or schedule of any discussions or negotiations relating thereto, furnished to the Third Party Recipient by the Disclosing Party or any of the Disclosing Party's directors, officers, partners, employees, agents or representatives, including, without limitation, financial advisors, attorneys, accountants, experts and consultants, and all reports, analyses, compilations, forecasts, data, studies or other documents prepared by the Third Party Recipient containing or based, in whole or in part, on any such furnished information, are collectively referred to herein as the "Information".

2. The undersigned Third Party Recipient covenants and agrees that all Information will be kept strictly confidential and shall not, without the prior written consent of the Disclosing Party, be disclosed or revealed, in any manner whatsoever, directly or indirectly, in whole or in part, and shall not be used by the Third Party Recipient, directly or indirectly, in any way other than for purposes of evaluating whether to provide the consent, approval, release or other third party action requested by the Disclosing Party. The Third Party Recipient agrees to transmit the Information only to those of its Representatives who need to know the Information for such purposes, who are informed by the Third Party Recipient of the confidential nature of the Information and who shall execute a counterpart of this Agreement to indicate their agreement to be bound by, and to act only in accordance with the terms and conditions of this

Agreement. The Third Party Recipient shall be responsible for any failure to comply with the terms of this Agreement by any such Representatives.

3. Without limiting in any manner the foregoing provisions of this Agreement, if (i) the Third Party Recipient is, with respect to any IPP which is a Party to the MRA, an affiliate of such IPP or one of such IPP's or its affiliates' respective directors, officers, shareholders or partners (at any tier), or one of their respective employees, financial advisors, attorneys, accountants or consultants ("IPP Participants") and (ii) such IPP Participant is a financial institution, steam host, fuel supplier or fuel transporter which is or has a material interest in a person or entity (or affiliate of such person or entity) from whom any IPP is required to obtain a consent, approval, release or other action contemplated by the MRA, then such Third Party Recipient acknowledges and agrees that (x) it shall not be permitted to participate in the negotiation or performance of any agreement, document or instrument relating to the MRA or any of the transactions contemplated by the MRA, (y) all files, work papers, reports, analyses, data or other documents based, in whole or in part, on any confidential or proprietary information of any other IPP or affiliate of any other IPP regarding the MRA, any other agreement, document or instrument relating thereto, or the transactions contemplated thereby, which was or is obtained at any time, including prior to the date of the MRA, during the course of or as a result of the negotiation, execution or performance of the MRA, any other agreement, document or instrument relating thereto, or any of the transactions contemplated thereby (collectively, "Confidential IPP Information") shall be segregated and the Third Party Recipient shall not be allowed to have access thereto, and (z) that the IPP shall not communicate or exchange any Confidential IPP Information to or with the Third Party Recipient, except, with respect to each of (x), (y) and (z) above, to the extent necessary for such IPP to obtain its own consent, approval, release or other action contemplated by the MRA from the Third Party Recipient.

4. The provisions of this Agreement shall be inoperative as to any Information which (i) is or becomes generally available to the public other than as a result of any breach of these provisions by the Third Party Recipient or any of its Representatives, (ii) becomes available to the Third Party Recipient on a nonconfidential basis and not in contravention of applicable law from a source (other than its Representatives) which has represented to the Third Party Recipient that such source is not bound by a confidentiality or other similar agreement or confidential relationship and is entitled to disclose it or (iii) was known to the Third Party Recipient on a nonconfidential basis and not in contravention of applicable law prior to its disclosure to the Third Party Recipient by the disclosing party.

5. In the event that the Third Party Recipient or any person to whom the Third Party Recipient furnishes any Information is requested or becomes legally compelled (by oral questions, interrogatories, request for information or documents, subpoena, criminal or civil investigative demand or similar process) to disclose any Information, the Third Party Recipient will provide the Disclosing Party with prompt written notice so that the Disclosing Party may seek a protective order or other appropriate remedy and/or waive compliance with the provisions hereof, and the Third Party Recipient will cooperate with the Disclosing Party in any effort the

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\* Delete paragraph 3 if not applicable.

Disclosing Party undertakes to obtain a protective order or other remedy. In the event that such protective order or remedy is not obtained, or that the Disclosing Party, in its sole discretion, waives compliance with the provisions hereof, the Third Party Recipient will furnish only that portion of the Information which is legally required and will use reasonable best efforts to obtain reliable assurance that confidential treatment will be accorded the Information, provided, however, if such efforts involve any expense the Disclosing Party, if it has received prior notice thereof, will reimburse the Third Party Recipient for same.

6. The Third Party Recipient acknowledges that unauthorized disclosure of Information may result in liability for judicial judgments including, but not limited to, monetary damages, and that the Disclosing Party shall be entitled to pursue any legal and equitable remedies in the event of an unauthorized disclosure. The Third Party Recipient hereby waives any objections to the immediate issuance by a court of competent jurisdiction of injunctive or other equitable relief barring the further disclosure or use of any Information in the event of an unauthorized disclosure.

7. This Agreement shall survive the consummation of the transactions contemplated by the MRA and/or any termination of the MRA with respect to the Disclosing Party.

Disclosing Party:

\_\_\_\_\_

By:

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

Title:

Date: \_\_\_\_\_

Third Party Recipient:

\_\_\_\_\_

By:

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

Title:

Date: \_\_\_\_\_



**APPENDIX B**

**RECOVERY OF COSTS ASSOCIATED WITH TERMINATION OF  
GAS TRANSPORTATION AND PEAK SHAVING AGREEMENTS**





## APPENDIX B

### RECOVERY OF COSTS ASSOCIATED WITH TERMINATION OF GAS TRANSPORTATION AND PEAK SHAVING AGREEMENTS

Each of the gas fired projects will terminate its existing gas peak shaving agreement with Niagara Mohawk. In addition, each of the gas fired projects which will not have a restructured electric contract will terminate its gas transportation agreement with Niagara Mohawk. If desired by the IPP, these projects may negotiate a new transportation agreement that reflects the planned use of the specific project. For gas fired projects which will have restructured electric contracts, the parties to the Master Restructuring Agreement have agreed to work in good faith to re-negotiate new peak shaving and, if requested by the IPP, transportation agreements as appropriate to align the operating characteristics of the IPP projects with the interests of the Company's gas delivery system. To the extent that the Company loses gas transportation revenues or incurs additional costs to replicate the existing peak shaving agreements, the Company will recover the lost revenues or additional costs in accordance with the terms and conditions specified in the Stipulation and Agreement between the parties in Niagara Mohawk's Gas Rate Case Nos. 95-G-1095 and 95-G-0091.

The Stipulation and Agreement defines the cost recovery mechanisms for lost gas transportation revenues in Section I. REVENUE REQUIREMENT and for additional peak shaving costs in Section VI. RECOVERY OF COSTS RELATED TO UNREGULATED GENERATION.

Section I. REVENUE REQUIREMENT stipulates that ratepayers and shareholders will share any annual revenue shortfall below that projected on an 80%/20% basis. Therefore for those projects which retain a transportation contract, Niagara Mohawk will recover annually through its Commodity Cost Adjustment (CCAC) 80% of the difference between the projected revenue and the actual revenue. For those projects that terminate their transportation contract, Niagara Mohawk will recover annually through the CCAC, 80% of the projected revenue. If the CCAC is not extended at the end of the Gas Rate Case Settlement term, or otherwise terminated, these costs will be collected through a mechanism such as a re-instituted Gas Adjustment Clause (GAC) or through base rates.

Section VI. RECOVERY OF COSTS RELATED TO UNREGULATED GENERATION states that peak shaving replacement costs incurred will be deferred to the



Contingency Reserve Account up to the actual costs or the cost of 75,000 dt, whichever is less. Any of these costs not offset by non-base rate reductions at the end of the settlement will be collected from ratepayers beginning on November 1, 1999.

Confidential Settlement Document



**APPENDIX C**

**NIAGARA MOHAWK POWER CORPORATION  
FIVE-YEAR FINANCIAL FORECAST**



**Niagara Mohawk Power Corporation  
October 10, 1997 PowerChoice Filing  
Financial Forecast**

	<u>Schedule Number</u>
Summary financial statements	1
Electric sales & revenues	2
Electric fuel expense & purchased power	3
Gas sales, revenues & purchases	4
Departmental expenses	5
Non-departmental expenses	6
Operating taxes	7
Income taxes	8





**NIAGARA MOHAWK POWER CORPORATION**  
**FINANCIAL STATEMENTS**  
**POWERCHOICE FILING**

INCOME STATEMENT	1998	1999	2000	2001	2002
Electric Revenues	\$3,267,372	\$3,256,451	\$3,270,632	\$3,411,476	\$3,549,419
Gas Revenues	645,345	619,731	633,099	647,254	662,438
<b>Total Revenues</b>	<b>3,912,717</b>	<b>3,876,182</b>	<b>3,903,731</b>	<b>4,058,730</b>	<b>4,211,857</b>
Fuel and Purchased Power	838,237	870,358	890,118	923,580	964,130
Gas Purchases	299,298	308,085	311,290	314,533	320,135
Departmental Expenses	800,953	821,372	822,002	855,137	858,690
Non-departmental Expenses	43,513	40,389	37,052	38,842	38,672
Taxes Other Than Income Taxes	476,277	482,468	479,706	488,842	498,952
Nuclear Decommissioning	28,003	28,003	28,003	28,003	28,003
<b>Total Operating Expenses</b>	<b>2,486,281</b>	<b>2,550,675</b>	<b>2,568,171</b>	<b>2,646,937</b>	<b>2,706,582</b>
<b>Total EBITDA</b>	<b>1,426,436</b>	<b>1,325,507</b>	<b>1,335,560</b>	<b>1,411,793</b>	<b>1,505,275</b>
Depreciation and Amortization	337,967	348,324	351,714	359,526	369,121
Deferred Gas Cost	26,725	(3,320)	(1,411)	378	(110)
Nuclear Fuel Amortization	32,378	29,497	28,782	28,769	28,889
Amortization of Regulatory Asset	411,300	411,300	411,300	411,300	411,300
Regulatory Deferrals and Amortizations	(3,026)	(8,787)	(4,916)	16,540	23,687
AFUDC	(10,032)	(9,604)	(7,242)	(8,178)	(10,947)
Deferred Carrying Charge	(305)	(282)	(3)		
Other (Income)/Deductions	3,860	(21,250)	(13,027)	(15,930)	(24,844)
Amortization of Debt Expense	22,033	16,971	12,662	11,864	11,145
<b>Operating Income</b>	<b>605,536</b>	<b>564,658</b>	<b>557,701</b>	<b>607,524</b>	<b>697,034</b>
Interest Expense	526,727	528,293	467,792	426,352	385,275
<b>Pre-tax Income</b>	<b>78,809</b>	<b>36,365</b>	<b>89,909</b>	<b>181,172</b>	<b>311,759</b>
Current Income taxes		10,430	11,690	13,490	16,384
ITC Amortization	(8,016)	(8,016)	(8,016)	(8,016)	(8,016)
Deferred Income taxes	42,136	15,933	38,257	66,607	108,265
<b>Net Income Before Preferred Stock Dividend</b>	<b>44,689</b>	<b>18,018</b>	<b>47,978</b>	<b>109,091</b>	<b>195,128</b>
Preferred Stock dividend	50,039	50,039	50,039	50,039	50,039
<b>Net Income</b>	<b>(\$5,350)</b>	<b>(\$32,021)</b>	<b>(\$2,061)</b>	<b>\$59,052</b>	<b>\$145,087</b>
<b>Return on Average Equity</b>	<b>-0.2%</b>	<b>-1.0%</b>	<b>-0.1%</b>	<b>1.9%</b>	<b>4.6%</b>
<b>BALANCE SHEET</b>	<b>1998</b>	<b>1999</b>	<b>2000</b>	<b>2001</b>	<b>2002</b>
Cash	\$333,832	\$220,012	\$201,350	\$343,790	\$553,548
Other Current Assets	367,145	374,551	383,505	389,629	399,192
Existing Deferred Debits	1,838,449	1,693,280	1,605,085	1,525,777	1,442,073
Regulatory Asset from IPP Buyout	3,715,700	3,304,400	2,893,100	2,481,800	2,070,500
Net Utility Plant	7,503,732	7,455,793	7,423,119	7,345,908	7,335,705
<b>Total Assets</b>	<b>\$13,758,858</b>	<b>\$13,048,036</b>	<b>\$12,506,159</b>	<b>\$12,086,904</b>	<b>\$11,801,018</b>
Current Liabilities	\$711,907	\$718,036	\$720,613	\$724,747	\$732,659
Existing Deferred Liabilities	2,737,998	2,747,120	2,698,461	2,709,399	2,763,472
FMBs	3,493,279	3,499,224	3,505,487	3,512,105	3,519,144
Senior Sub. Notes	3,200,000	2,500,000	2,000,000	1,500,000	1,000,000
Preferred Stock	526,804	526,804	526,804	526,804	526,804
Common Stock	2,310,728	2,310,728	2,310,728	2,310,728	2,310,728
Retained Earnings	778,142	746,124	744,066	803,121	948,211
<b>Total Liabilities and Capital</b>	<b>\$13,758,858</b>	<b>\$13,048,036</b>	<b>\$12,506,159</b>	<b>\$12,086,904</b>	<b>\$11,801,018</b>
<b>CASH FLOW</b>					
<b>Operating Activities:</b>					
Net Income	\$44,689	\$18,018	\$47,978	\$109,091	\$195,128
Depreciation	365,970	374,327	379,717	387,529	397,124
Amortizations	22,033	16,971	12,662	11,864	11,145
Nuclear Fuel	32,378	29,497	28,782	28,769	28,889
Deferred Gas Cost	26,725	(3,320)	(1,411)	378	(110)
AFUDC	(10,032)	(9,604)	(7,242)	(8,178)	(10,947)
Deferred Income Taxes	42,136	15,933	38,257	66,607	108,265
ITC Amortization	(8,016)	(8,016)	(8,016)	(8,016)	(8,016)
Deferred Carrying Charges	(305)	(282)	(3)		
Decr in accts pay, due to lower IPP purchases	(48,200)				
Income Tax Refund		138,116			
Amortization of Regulatory Asset	411,300	411,300	411,300	411,300	411,300
Regulatory Amortizations	(3,026)	(8,787)	(4,916)	16,540	23,687
Payment of cash to IPPs	(3,665,000)				
Financing Costs	(100,000)				
Other	(33,378)	(14,101)	(20,303)	(16,357)	(16,437)
<b>Subtotal Cashflow from Operations</b>	<b>(2,922,726)</b>	<b>960,052</b>	<b>876,805</b>	<b>999,527</b>	<b>1,140,026</b>
<b>Investing Activities:</b>					
Construction	(298,804)	(269,413)	(264,158)	(273,957)	(301,151)
Nuclear Fuel	(28,992)	(28,420)	(53,270)	(5,091)	(51,078)
Nuclear Decommissioning	(28,003)	(28,003)	(28,003)	(28,003)	(28,003)
<b>Subtotal Cash Used for Investing</b>	<b>(355,799)</b>	<b>(325,836)</b>	<b>(345,431)</b>	<b>(307,051)</b>	<b>(380,232)</b>
<b>Financing Activities:</b>					
Preferred Dividends	(50,036)	(50,036)	(50,036)	(50,036)	(50,036)
Issuance of Sr Subordinated Debt	3,200,000				
Retirement of Sr. Subordinated Debt		(700,000)	(500,000)	(500,000)	(500,000)
<b>Subtotal Cash from Financing</b>	<b>3,149,964</b>	<b>(750,036)</b>	<b>(550,036)</b>	<b>(550,036)</b>	<b>(550,036)</b>
<b>Change in Cash and TCFs</b>	<b>(128,561)</b>	<b>(113,820)</b>	<b>(18,662)</b>	<b>142,440</b>	<b>209,758</b>
Beginning Cash and TCFs	462,393	333,832	220,012	201,350	343,790
<b>Ending Cash and TCFs</b>	<b>\$333,832</b>	<b>\$220,012</b>	<b>\$201,350</b>	<b>\$343,790</b>	<b>\$553,548</b>



## Niagara Mohawk Power Corporation Electric Sales & Revenues

Electric Sales (Mwhrs)	1998	1999	2000	2001	2002
SC1	10,067,816	10,117,607	10,167,398	10,241,090	10,316,772
SC2	4,484,825	4,558,132	4,599,776	4,631,933	4,657,148
SC3	6,519,069	6,636,790	6,696,925	6,737,777	6,773,377
SC3A/4/5/7/11	7386689	7548603	7615651	7646559	7684217
Industrial Special	4,385,188	4,385,188	4,385,188	4,385,188	4,385,188
Economic Devel Power (EDP)	293,027	293,027	293,027	293,027	293,027
Special Lighting (PAL)	29,706	30,157	30,436	30,656	30,824
Municipal Revenues	207,655	207,655	207,655	207,655	207,655
Unreg Generators	24,009	24,402	24,624	24,798	24,798
<b>Total Retail Sales</b>	<b>33,397,984</b>	<b>33,801,561</b>	<b>34,020,680</b>	<b>34,198,683</b>	<b>34,373,006</b>

Electric Revenues (\$000)	1998	1999	2000	2001	2002
SC1	\$1,254,716	\$1,260,921	\$1,267,127	\$1,276,310	\$1,285,742
SC2	563,346	572,558	577,787	581,827	584,996
SC3	687,560	699,949	706,291	710,620	714,375
SC3A/4/5/7/11	582,870	595,621	600,915	603,373	606,338
Industrial Special	60,029	60,029	60,029	60,029	60,029
Economic Devel Power (EDP)	14,394	14,394	14,394	14,394	14,394
Special Lighting (PAL)	5,065	5,139	5,187	5,223	5,253
Municipal Revenues	50,670	50,670	50,670	50,670	50,670
Unreg Generators	3,253	3,307	3,340	3,364	3,364
Subtotal (98-07 PwrChoice Frz)	3,221,903	3,262,588	3,285,740	3,305,810	3,325,161
Discounts	(118,664)	(122,068)	(123,269)	(125,621)	(125,621)
Pricing Goals (incl. Parity Move)	(49,625)	(81,546)	(101,416)	(101,341)	(101,266)
DSM Rebate Recovery	200	200			
Settlement Adjustments	(6,000)	(16,000)	(26,000)	5,000	4,000
Regco Price Increase				24,241	45,167
Price Change for Genco				15,100	46,300
Sub-Total Retail Revenue	3,047,814	3,043,174	3,035,055	3,123,189	3,193,741
Borderline	1,903	1,903	1,903	1,903	1,903
Distribution Misc Revenues	30,055	30,674	31,345	32,054	32,790
Transmission Revenues	88,500	88,500	88,529	88,530	88,485
Total Regco Electric Revenues	3,168,272	3,164,251	3,156,832	3,245,676	3,316,919
Wholesale sales	99,100	92,200	113,800	165,800	232,500
<b>Total Electric Revenues</b>	<b>3,267,372</b>	<b>3,256,451</b>	<b>3,270,632</b>	<b>3,411,476</b>	<b>3,549,419</b>



**Niagara Mohawk Power Corporation  
Electric Fuel & Purchased Power**

	1998	1999	2000	2001	2002
<b>GWHRs</b>					
Fossil	8,190.7	7,886.4	7,808.2	7,747.7	8,445.6
Nine Mile 1	4,564.4	4,027.2	4,576.9	4,027.2	4,564.4
Nine Mile 2	3,078.7	3,489.4	3,088.8	3,489.4	3,078.7
Total Nuclear	7,643.1	7,516.6	7,665.7	7,516.6	7,643.1
Hydro	2,949.1	2,949.1	2,949.1	2,949.1	2,949.1
Total NMPC	18,782.9	18,352.1	18,423.0	18,213.4	19,037.8
IPP Purchases	13,162.6	13,534.1	14,429.9	16,013.5	16,256.5
Niagara	6,047.9	6,047.9	6,047.9	6,047.9	6,047.9
St Lawrence	666.6	666.6	666.6	666.6	666.6
Fitzpatrick	224.3	229.5	230.2	229.5	229.5
Gilboa	0.0	0.0	0.0	0.0	0.0
Total NYPA Purchases	6,938.8	6,944.0	6,944.7	6,944.0	6,944.0
NYPP Purchases	1,257.5	1,325.4	1,080.3	808.8	345.0
OH Purchases	1,193.9	1,192.1	930.0	927.4	1,329.5
All Other Purchases	562.7	547.2	519.0	388.8	387.3
Total Other Purchases	3,014.1	3,064.7	2,529.3	2,125.0	2,061.8
Total Purchases	23,115.5	23,542.8	23,903.9	25,082.5	25,262.3
Total Fuel & Purchases	41,898.4	41,894.9	42,326.9	43,295.9	44,300.1
<b>\$ Thousands</b>					
Fossil	\$130,407	\$126,815	\$133,918	\$138,286	\$157,493
Nine Mile 1	24,924	19,248	21,554	19,016	21,343
Nine Mile 2	14,317	17,008	14,111	16,512	14,409
Total Nuclear	39,241	36,256	35,665	35,528	35,752
Hydro	0	0	0	0	0
Total NMPC	169,648	163,071	169,583	173,814	193,245
IPP Purchases	561,148	584,042	603,045	641,652	659,866
Niagara	57,092	58,431	59,963	61,472	63,189
St Lawrence	5,105	5,225	5,359	5,497	5,650
Fitzpatrick	9,348	9,567	9,842	10,081	10,373
Gilboa	7,887	8,072	8,295	8,492	8,729
Total NYPA Purchases	79,432	81,295	83,459	85,542	87,941
NYPP Purchases	27,921	33,975	28,035	21,587	10,558
OH Purchases	20,271	22,592	19,392	21,148	32,447
All Other Purchases	12,196	14,881	15,387	8,606	8,962
Total Other Purchases	60,388	71,448	62,814	51,341	51,967
Total Purchases	700,967	736,784	749,317	778,535	799,774
Total Fuel & Purchases	870,615	899,855	918,900	952,349	993,019
Less: Nuc fuel amort (Note 1)	(32,378)	(29,497)	(28,782)	(28,769)	(28,889)
Regco Fuel & Purchased Power	\$838,237	\$870,358	\$890,118	\$923,580	\$964,130

Note 1: Nuclear fuel amortization is shown on Regco's income statement below EBITDA.  
The remaining cash nuclear fuel is spent fuel expense.



## Niagara Mohawk Power Corporation Gas Sales, Revenues and Purchases

<u>Gas Sales (DT)</u>	<u>1998</u>	<u>1999</u>	<u>2000</u>	<u>2001</u>	<u>2002</u>
SC1	54,904,780	55,098,549	55,237,729	55,355,734	55,449,591
SC2	22,176,382	22,395,921	22,612,911	22,827,207	23,039,440
SC3	886,891	886,891	886,891	886,891	886,891
Transportation	32,706,555	32,719,897	32,719,897	32,520,599	32,252,385
Special Contracts	108,473,600	108,473,600	108,473,600	112,619,770	112,619,770
<b>Total</b>	<b>219,148,208</b>	<b>219,574,858</b>	<b>219,931,028</b>	<b>224,210,201</b>	<b>224,248,077</b>

### Gas Revenues (\$000)

SC1	\$420,727	\$400,465	\$403,141	\$407,762	\$414,411
SC2	148,049	140,170	141,668	144,018	147,284
SC3	4,572	4,199	4,206	4,247	4,318
Transportation	31,081	31,311	31,448	31,314	30,950
Special Contracts	25,067	25,028	22,664	22,351	22,351
Other	4,901	4,790	3,033	3,072	3,121
SSG	10,948	10,498	10,498	10,498	10,498
Total revs before rate relief	645,345	616,461	616,658	623,262	632,933
Cumulative Rate Relief		3,270	16,441	23,992	29,505
<b>Total Gas Revenues</b>	<b>645,345</b>	<b>619,731</b>	<b>633,099</b>	<b>647,254</b>	<b>662,438</b>

<b>Gas Purchases</b>	<b>326,023</b>	<b>304,765</b>	<b>309,879</b>	<b>314,911</b>	<b>320,025</b>
<b>GRT</b>	<b>30,228</b>	<b>28,870</b>	<b>29,493</b>	<b>29,804</b>	<b>30,798</b>
<b>Margin</b>	<b>\$289,094</b>	<b>\$286,096</b>	<b>\$293,727</b>	<b>\$302,539</b>	<b>\$311,615</b>

<b>Assumptions</b>	<b>Settlement</b>	<b>Settlement</b>	<b>Solve for 12% ROE</b>	<b>Index Margin @ 3%</b>	<b>Index Margin @ 3%</b>
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**NIAGARA MOHAWK POWER CORPORATION  
DEPARTMENTAL EXPENSES**

	1998	1999	2000	2001	2002
Fossil	\$72,433	\$74,739	\$74,465	\$77,141	\$79,384
Hydro	23,549	24,175	24,888	25,580	26,398
Disco	355,451	361,967	368,922	375,317	382,520
Transco	97,389	99,172	101,075	102,808	104,757
Nine Mile 1	86,164	101,769	79,012	107,783	84,129
Nine Mile 2	55,265	45,770	57,861	48,904	61,779
Gas	110,702	113,780	115,779	117,604	119,723
Total	<u>\$800,953</u>	<u>\$821,372</u>	<u>\$822,002</u>	<u>\$855,137</u>	<u>\$858,690</u>



**NIAGARA MOHAWK POWER CORPORATION  
NON-DEPARTMENTAL EXPENSES  
CASH**

	1998	1999	2000	2001	2002
BANK FACILITY AGREEMENT ELECTRIC	\$ 5,222	\$ 2,610			
BANK FACILITY AGREEMENT GAS	647	324			
NM2 A&G COTENANT CREDIT	(5,985)	(6,167)	(6,364)	(6,567)	(6,731)
OSWEGO 6 COTENANT CREDIT	(201)	(208)	(214)	(221)	(227)
SIR COSTS ELECTRIC	12,750	12,750	12,750	12,750	12,750
SIR COSTS GAS	2,250	2,250	2,250	2,250	2,250
SBC PROGRAMS	15,000	15,000	15,000	15,000	15,000
DEMAND SIDE MANAGEMENT	200	200			
COSTS OF ACC REC SALE ELECTRIC	11,300	11,300	11,300	11,300	11,300
COSTS OF ACC REC SALE GAS	2,330	2,330	2,330	2,330	2,330
	<u>\$ 43,513</u>	<u>\$ 40,389</u>	<u>\$ 37,052</u>	<u>\$ 36,842</u>	<u>\$ 36,672</u>

**NIAGARA MOHAWK POWER CORPORATION  
REGULATORY DEFERRALS AND AMORTIZATIONS  
NON-CASH**

	1998	1999	2000	2001	2002
OPEB REGULATORY ASSET ELECTRIC	\$ 2,837	\$ 2,837	\$ 2,837	\$ 2,837	\$ 2,837
OPEB REGULATORY ASSET GAS	580	580	580	580	580
FAS 112 GAS	238	238	-	-	-
VERP COSTS GAS	2,296	2,296	496	-	-
SIR INSURANCE PROCEEDS - ELECTRIC	(2,550)	(2,550)	(2,550)	(2,550)	(2,550)
SIR INSURANCE PROCEEDS - GAS	(480)	(480)	(480)	(480)	(480)
NUCLEAR OUTAGE COST DEFERRALS	4,500	(4,500)	4,500	(4,500)	4,500
REPLACEMENT POWER LEVELIZATION	3,037	1,015	-	-	-
NM SUBURBAN GAS	38	38	-	-	-
PENSION TRUE UP - GAS	422	422	-	-	-
PENSION GAIN AMORTIZATION ELECTRIC	(7,365)	-	-	-	-
PENSION GAIN AMORTIZATION GAS	(1,242)	(1,345)	(952)	-	-
53RD LABOR WEEK ELECTRIC	676	676	676	676	-
53RD LABOR WEEK GAS	187	186	177	177	-
ADDITIONAL IPP BUYOUT COST AMORTIZATION	2,800	2,800	2,800	2,800	2,800
SETTLEMENT DEFERRAL/AMORTIZATION	(9,000)	(11,000)	(13,000)	17,000	16,000
	<u>\$ (3,026)</u>	<u>\$ (8,787)</u>	<u>\$ (4,916)</u>	<u>\$ 16,540</u>	<u>\$ 23,687</u>



**NIAGARA MOHAWK POWER CORPORATION  
TAXES OTHER THAN INCOME TAXES**

	1998	1999	2000	2001	2002
Revenue Taxes					
Electric	\$148,442	\$149,920	\$151,140	\$152,375	\$153,809
Gas	30,228	28,870	29,493	29,804	30,798
Total Revenue Taxes	<u>178,670</u>	<u>178,790</u>	<u>180,633</u>	<u>182,179</u>	<u>184,607</u>
Real estate taxes	258,410	263,188	257,249	263,456	269,818
Payroll taxes	31,233	32,264	33,327	34,428	35,481
Sales Tax	<u>7,964</u>	<u>8,226</u>	<u>8,497</u>	<u>8,779</u>	<u>9,046</u>
	<u>\$476,277</u>	<u>\$482,468</u>	<u>\$479,706</u>	<u>\$488,842</u>	<u>\$498,952</u>



**NIAGARA MOHAWK POWER CORPORATION  
FEDERAL INCOME TAX CALCULATION**

	1998	1999	2000	2001	2002
<b>Regular Tax</b>					
Net income before tax	\$ 78,809	\$ 36,365	\$ 89,909	\$ 181,172	\$ 311,759
Regulatory Asset Amortization	414,100	414,100	414,100	414,100	414,100
Schedule M additions	697,817	697,182	708,929	711,932	738,084
Total Schedule M additions	1,111,917	1,111,282	1,123,029	1,126,032	1,149,955
IPP Buyout	4,127,000				
Schedule M deductions	652,551	646,394	643,252	642,836	651,695
Total Schedule M deductions	4,779,551	646,394	643,252	642,836	651,695
Taxable income	(3,588,825)	501,253	569,686	664,368	810,019
Net operating loss carryforward	-	501,253	569,686	664,368	810,019
Net taxable income					
Regular tax rate					
Regular Tax					
<b>Alternative Minimum Tax</b>					
Taxable Income before NOL	\$ (3,588,825)	\$ 501,253	\$ 569,686	\$ 664,368	\$ 810,019
AMT Depreciation Adjustment	60,124	66,842	68,634	72,229	75,756
AMTI before ACE Adjustment	(3,528,701)	568,095	638,320	736,597	885,775
ACE Adjustment @ 75%	(35,243)	(46,600)	(53,810)	(62,118)	(66,576)
AMTI before AMT NOL	(3,563,944)	521,495	584,510	674,479	819,199
AMT NOL	(3,207,550)	469,346	526,059	607,031	737,279
AMTI	(356,394)	52,149	58,451	67,448	81,920
AMT Rate 20%	20%	20%	20%	20%	20%
Alternative Minimum Tax		10,430	11,690	13,490	16,384
Regular Tax		-	-	-	-
Additional Minimum Tax		\$ 10,430	\$ 11,690	\$ 13,490	\$ 16,384
<b>Deferred Taxes</b>					
Deferred Tax on NOL	\$ (1,256,089)	\$ 175,439	\$ 199,390	\$ 232,529	\$ 283,507
Deferred Tax on Amt	-	(10,430)	(11,690)	(13,490)	(16,384)
Deferred Tax on Regulatory Asset	1,444,450				
Deferred Tax on Regulatory Asset Reversal	(144,935)	(144,935)	(144,935)	(144,935)	(144,935)
All other	(1,290)	(4,141)	(4,508)	(7,497)	(13,923)
Total Deferred Taxes	\$ 42,136	\$ 15,933	\$ 38,257	\$ 66,607	\$ 108,265





**APPENDIX D**  
**ELECTRIC PRICES**



## SC1 RATE DESIGNS FOR THE 3 YEAR PERIOD ENDING DECEMBER 31,2000

### RATE DESIGN(1998)

	CURRENT RATES	UNITS	REVENUE	1998 RATES	1998 REVENUE
CUSTOMER PER KWH	9.67	16,945,453	\$163,862,531	11.96	\$202,667,618
0-600	0.10314	6,896,107,853	\$711,264,564	0.09741	\$671,749,866
OVER	0.10314	2,222,626,689	\$229,241,717	0.09741	\$216,506,066
<b>TOTAL</b>			<b>\$1,104,368,812</b>		<b>\$1,090,923,550</b>

### RATE DESIGN(1999)

	CURRENT RATES	UNITS	REVENUE	1999 RATES	1999 REVENUE
CUSTOMER PER KWH	11.96	17,029,259	\$203,669,938	14.8	\$252,033,033
0-600	0.09741	6,930,213,690	\$675,072,116	0.09122	\$632,174,093
OVER	0.09741	2,233,618,453	\$217,576,774	0.09122	\$203,750,675
<b>TOTAL</b>			<b>\$1,096,318,828</b>		<b>\$1,087,957,801</b>

### RATE DESIGN(2000)

	CURRENT RATES	UNITS	REVENUE	2000 RATES	2000 REVENUE
CUSTOMER PER KWH	14.8	17,088,507	\$252,909,904	17.44	\$298,023,562
0-600	0.09122	6,959,066,521	\$634,806,048	0.08544	\$594,582,644
OVER	0.09122	2,249,863,206	\$205,232,522	0.08544	\$192,228,312
<b>TOTAL</b>			<b>\$1,092,948,474</b>		<b>\$1,084,834,518</b>



## SC1-RESIDENTIAL

<u>BLOCK</u>	1997 REVENUE	1998 REVENUE	DIFFERENCE	PERCENT INCREASE
0	\$10.16	\$12.56	\$2.40	23.62%
100	\$20.99	\$22.85	\$1.86	8.86%
200	\$31.84	\$33.14	\$1.30	4.08%
300	\$42.67	\$43.43	\$0.76	1.78%
400	\$53.51	\$53.73	\$0.22	0.41%
500	\$64.35	\$64.03	(\$0.32)	-0.50%
600	\$75.18	\$74.32	(\$0.86)	-1.14%
700	\$86.03	\$84.61	(\$1.42)	-1.65%
800	\$96.86	\$94.90	(\$1.96)	-2.02%
900	\$107.70	\$105.19	(\$2.51)	-2.33%
1000	\$118.54	\$115.48	(\$3.06)	-2.58%
1100	\$129.37	\$125.78	(\$3.59)	-2.77%
1200	\$140.21	\$136.07	(\$4.14)	-2.95%
1300	\$151.05	\$146.36	(\$4.69)	-3.10%
1400	\$161.89	\$156.65	(\$5.24)	-3.24%
1500	\$172.72	\$166.95	(\$5.77)	-3.34%
1600	\$183.56	\$177.24	(\$6.32)	-3.44%
1700	\$194.40	\$187.53	(\$6.87)	-3.53%
1800	\$205.23	\$197.83	(\$7.40)	-3.61%
1900	\$216.08	\$208.12	(\$7.96)	-3.68%
2000	\$226.91	\$218.41	(\$8.50)	-3.75%
2200	\$248.59	\$238.99	(\$9.60)	-3.86%
2400	\$270.26	\$259.57	(\$10.69)	-3.96%
2600	\$291.93	\$280.17	(\$11.76)	-4.03%
2800	\$313.61	\$300.75	(\$12.86)	-4.10%
3000	\$335.28	\$321.33	(\$13.95)	-4.16%
3200	\$356.96	\$341.90	(\$15.06)	-4.22%
3400	\$378.64	\$362.49	(\$16.15)	-4.27%
3600	\$400.30	\$383.08	(\$17.22)	-4.30%
3800	\$421.98	\$403.66	(\$18.32)	-4.34%
4000	\$443.66	\$424.25	(\$19.41)	-4.37%



## SC1-RESIDENTIAL

<u>BLOCK</u>	1998 REVENUE	1999 REVENUE	DIFFERENCE	PERCENT INCREASE
0	\$12.56	\$15.51	\$2.95	23.49%
100	\$22.85	\$25.13	\$2.28	9.98%
200	\$33.14	\$34.75	\$1.61	4.86%
300	\$43.43	\$44.38	\$0.95	2.19%
400	\$53.73	\$54.01	\$0.28	0.52%
500	\$64.03	\$63.63	(\$0.40)	-0.62%
600	\$74.32	\$73.26	(\$1.06)	-1.43%
700	\$84.61	\$82.88	(\$1.73)	-2.04%
800	\$94.90	\$92.51	(\$2.39)	-2.52%
900	\$105.19	\$102.13	(\$3.06)	-2.91%
1000	\$115.48	\$111.75	(\$3.73)	-3.23%
1100	\$125.78	\$121.38	(\$4.40)	-3.50%
1200	\$136.07	\$131.00	(\$5.07)	-3.73%
1300	\$146.36	\$140.63	(\$5.73)	-3.92%
1400	\$156.65	\$150.25	(\$6.40)	-4.09%
1500	\$166.95	\$159.87	(\$7.08)	-4.24%
1600	\$177.24	\$169.49	(\$7.75)	-4.37%
1700	\$187.53	\$179.11	(\$8.42)	-4.49%
1800	\$197.83	\$188.75	(\$9.08)	-4.59%
1900	\$208.12	\$198.38	(\$9.74)	-4.68%
2000	\$218.41	\$208.00	(\$10.41)	-4.77%
2200	\$238.99	\$227.24	(\$11.75)	-4.92%
2400	\$259.57	\$246.49	(\$13.08)	-5.04%
2600	\$280.17	\$265.74	(\$14.43)	-5.15%
2800	\$300.75	\$284.99	(\$15.76)	-5.24%
3000	\$321.33	\$304.23	(\$17.10)	-5.32%
3200	\$341.90	\$323.48	(\$18.42)	-5.39%
3400	\$362.49	\$342.74	(\$19.75)	-5.45%
3600	\$383.08	\$361.98	(\$21.10)	-5.51%
3800	\$403.66	\$381.23	(\$22.43)	-5.56%
4000	\$424.25	\$400.48	(\$23.77)	-5.60%





## SC1-RESIDENTIAL

<u>BLOCK</u>	1999 REVENUE	2000 REVENUE	DIFFERENCE	PERCENT INCREASE
0	\$15.51	\$18.13	\$2.62	16.89%
100	\$25.13	\$27.08	\$1.95	7.76%
200	\$34.75	\$36.03	\$1.28	3.68%
300	\$44.38	\$44.97	\$0.59	1.33%
400	\$54.01	\$53.94	(\$0.07)	-0.13%
500	\$63.63	\$62.88	(\$0.75)	-1.18%
600	\$73.26	\$71.82	(\$1.44)	-1.97%
700	\$82.88	\$80.77	(\$2.11)	-2.55%
800	\$92.51	\$89.72	(\$2.79)	-3.02%
900	\$102.13	\$98.67	(\$3.46)	-3.39%
1000	\$111.75	\$107.61	(\$4.14)	-3.70%
1100	\$121.38	\$116.56	(\$4.82)	-3.97%
1200	\$131.00	\$125.52	(\$5.48)	-4.18%
1300	\$140.63	\$134.46	(\$6.17)	-4.39%
1400	\$150.25	\$143.41	(\$6.84)	-4.55%
1500	\$159.87	\$152.36	(\$7.51)	-4.70%
1600	\$169.49	\$161.30	(\$8.19)	-4.83%
1700	\$179.11	\$170.25	(\$8.86)	-4.95%
1800	\$188.75	\$179.20	(\$9.55)	-5.06%
1900	\$198.38	\$188.16	(\$10.22)	-5.15%
2000	\$208.00	\$197.10	(\$10.90)	-5.24%
2200	\$227.24	\$214.99	(\$12.25)	-5.39%
2400	\$246.49	\$232.89	(\$13.60)	-5.52%
2600	\$265.74	\$250.79	(\$14.95)	-5.63%
2800	\$284.99	\$268.68	(\$16.31)	-5.72%
3000	\$304.23	\$286.58	(\$17.65)	-5.80%
3200	\$323.48	\$304.47	(\$19.01)	-5.88%
3400	\$342.74	\$322.38	(\$20.36)	-5.94%
3600	\$361.98	\$340.26	(\$21.72)	-6.00%
3800	\$381.23	\$358.16	(\$23.07)	-6.05%
4000	\$400.48	\$376.06	(\$24.42)	-6.10%



## SC2ND RATE DESIGNS FOR THE 3 YEAR PERIOD ENDING DECEMBER 31,2000

### RATE DESIGN(1998)

	CURRENT RATES	UNITS	REVENUE	1998 RATES	1998 REVENUE
CUSTOMER PER KWH	14.65	1,189,283	\$17,422,996	17.75	\$21,109,773
0-500	0.1278	346,900,627	\$44,333,900	0.12	\$41,628,075
OVER	0.1278	253,192,664	\$32,358,022	0.12	\$30,383,120
TOTAL			\$94,114,918		\$93,120,968

### RATE DESIGN(1999)

	CURRENT RATES	UNITS	REVENUE	1999 RATES	1999 REVENUE
CUSTOMER PER KWH	17.75	1,208,452	\$21,450,023	35.5	\$42,900,046
0-500	0.12	352,498,021	\$42,299,763	0.11276	\$39,747,677
OVER	0.12	257,298,398	\$30,875,808	0.11276	\$29,012,967
TOTAL			\$94,625,594		\$111,660,690

### RATE DESIGN(2000)

	CURRENT RATES	UNITS	REVENUE	2000 RATES	2000 REVENUE
CUSTOMER PER KWH	35.5	1,219,491	\$43,291,931	53.25	\$64,937,896
0-500	0.11276	355,719,042	\$40,110,879	0.10535	\$37,475,001
OVER	0.11276	259,651,088	\$29,278,257	0.10535	\$27,354,242
TOTAL			\$112,681,067		\$129,767,139



## SC2-NON-DEMAND METERED

<u>BLOCK</u>	1997 REVENUE	1998 REVENUE	DIFFERENCE	PERCENT INCREASE
0	\$15.39	\$18.64	\$3.25	21.12%
100	\$28.82	\$31.30	\$2.48	8.61%
200	\$42.25	\$43.96	\$1.71	4.05%
300	\$55.68	\$56.63	\$0.95	1.71%
400	\$69.11	\$69.30	\$0.19	0.27%
500	\$82.54	\$81.96	(\$0.58)	-0.70%
600	\$95.97	\$94.62	(\$1.35)	-1.41%
700	\$109.39	\$107.29	(\$2.10)	-1.92%
800	\$122.82	\$119.95	(\$2.87)	-2.34%
900	\$136.25	\$132.61	(\$3.64)	-2.67%
1000	\$149.68	\$145.28	(\$4.40)	-2.94%
1100	\$163.11	\$157.95	(\$5.16)	-3.16%
1200	\$176.54	\$170.61	(\$5.93)	-3.36%
1300	\$189.97	\$183.27	(\$6.70)	-3.53%
1400	\$203.39	\$195.94	(\$7.45)	-3.66%
1500	\$216.82	\$208.60	(\$8.22)	-3.79%
1600	\$230.25	\$221.26	(\$8.99)	-3.90%
1700	\$243.68	\$233.92	(\$9.76)	-4.01%
1800	\$257.11	\$246.60	(\$10.51)	-4.09%
1900	\$270.54	\$259.26	(\$11.28)	-4.17%
2000	\$283.97	\$271.92	(\$12.05)	-4.24%
2200	\$310.82	\$297.25	(\$13.57)	-4.37%
2400	\$337.68	\$322.57	(\$15.11)	-4.47%
2600	\$364.54	\$347.91	(\$16.63)	-4.56%
2800	\$391.39	\$373.24	(\$18.15)	-4.64%
3000	\$418.25	\$398.56	(\$19.69)	-4.71%
3200	\$445.11	\$423.89	(\$21.22)	-4.77%
3400	\$471.97	\$449.22	(\$22.75)	-4.82%
3600	\$498.82	\$474.55	(\$24.27)	-4.87%
3800	\$525.68	\$499.87	(\$25.81)	-4.91%
4000	\$552.54	\$525.21	(\$27.33)	-4.95%



## SC2-NON-DEMAND METERED

<u>BLOCK</u>	1998 REVENUE	1999 REVENUE	DIFFERENCE	PERCENT INCREASE
0	\$18.64	\$21.85	\$3.21	17.22%
100	\$31.30	\$33.74	\$2.44	7.80%
200	\$43.96	\$45.61	\$1.65	3.75%
300	\$56.63	\$57.49	\$0.86	1.52%
400	\$69.30	\$69.38	\$0.08	0.12%
500	\$81.96	\$81.26	(\$0.70)	-0.85%
600	\$94.62	\$93.15	(\$1.47)	-1.55%
700	\$107.29	\$105.02	(\$2.27)	-2.12%
800	\$119.95	\$116.90	(\$3.05)	-2.54%
900	\$132.61	\$128.78	(\$3.83)	-2.89%
1000	\$145.28	\$140.66	(\$4.62)	-3.18%
1100	\$157.95	\$152.56	(\$5.39)	-3.41%
1200	\$170.61	\$164.43	(\$6.18)	-3.62%
1300	\$183.27	\$176.32	(\$6.95)	-3.79%
1400	\$195.94	\$188.19	(\$7.75)	-3.96%
1500	\$208.60	\$200.07	(\$8.53)	-4.09%
1600	\$221.26	\$211.96	(\$9.30)	-4.20%
1700	\$233.92	\$223.83	(\$10.09)	-4.31%
1800	\$246.60	\$235.73	(\$10.87)	-4.41%
1900	\$259.26	\$247.60	(\$11.66)	-4.50%
2000	\$271.92	\$259.48	(\$12.44)	-4.57%
2200	\$297.25	\$283.24	(\$14.01)	-4.71%
2400	\$322.57	\$307.00	(\$15.57)	-4.83%
2600	\$347.91	\$330.78	(\$17.13)	-4.92%
2800	\$373.24	\$354.54	(\$18.70)	-5.01%
3000	\$398.56	\$378.30	(\$20.26)	-5.08%
3200	\$423.89	\$402.05	(\$21.84)	-5.15%
3400	\$449.22	\$425.82	(\$23.40)	-5.21%
3600	\$474.55	\$449.59	(\$24.96)	-5.26%
3800	\$499.87	\$473.35	(\$26.52)	-5.31%
4000	\$525.21	\$497.12	(\$28.09)	-5.35%





## SC2-NON-DEMAND METERED

<u>BLOCK</u>	1999 REVENUE	2000 REVENUE	DIFFERENCE	PERCENT INCREASE
0	\$21.85	\$24.90	\$3.05	13.96%
100	\$33.74	\$35.93	\$2.19	6.49%
200	\$45.61	\$46.94	\$1.33	2.92%
300	\$57.49	\$57.96	\$0.47	0.82%
400	\$69.38	\$68.98	(\$0.40)	-0.58%
500	\$81.26	\$80.00	(\$1.26)	-1.55%
600	\$93.15	\$91.02	(\$2.13)	-2.29%
700	\$105.02	\$102.04	(\$2.98)	-2.84%
800	\$116.90	\$113.05	(\$3.85)	-3.29%
900	\$128.78	\$124.07	(\$4.71)	-3.66%
1000	\$140.66	\$135.08	(\$5.58)	-3.97%
1100	\$152.56	\$146.12	(\$6.44)	-4.22%
1200	\$164.43	\$157.13	(\$7.30)	-4.44%
1300	\$176.32	\$168.15	(\$8.17)	-4.63%
1400	\$188.19	\$179.16	(\$9.03)	-4.80%
1500	\$200.07	\$190.18	(\$9.89)	-4.94%
1600	\$211.96	\$201.20	(\$10.76)	-5.08%
1700	\$223.83	\$212.22	(\$11.61)	-5.19%
1800	\$235.73	\$223.24	(\$12.49)	-5.30%
1900	\$247.60	\$234.26	(\$13.34)	-5.39%
2000	\$259.48	\$245.27	(\$14.21)	-5.48%
2200	\$283.24	\$267.31	(\$15.93)	-5.62%
2400	\$307.00	\$289.34	(\$17.66)	-5.75%
2600	\$330.78	\$311.39	(\$19.39)	-5.86%
2800	\$354.54	\$333.42	(\$21.12)	-5.96%
3000	\$378.30	\$355.45	(\$22.85)	-6.04%
3200	\$402.05	\$377.49	(\$24.56)	-6.11%
3400	\$425.82	\$399.53	(\$26.29)	-6.17%
3600	\$449.59	\$421.57	(\$28.02)	-6.23%
3800	\$473.35	\$443.60	(\$29.75)	-6.28%
4000	\$497.12	\$465.64	(\$31.48)	-6.33%



## SC2D RATE DESIGNS FOR THE 3 YEAR PERIOD ENDING DECEMBER 31,2000

1998		PRESENT	PRESENT	PROPOSED	PROPOSED
	UNITS	RATES	REVENUE	RATES	REVENUE
BILLS	558,910	27.22	15,213,530	39.31	21,970,752
KW	14,812,322.7	8.49	125,756,620	8.49	125,756,620
KWH	3,828,804,544	0.07691	294,473,357	0.0738	282,565,775
TRANSFORME	266,062.3	-0.9	(239,456)	-0.9	(239,456)
SUBTOTAL			435,204,051		430,053,691
1999		PRESENT	PRESENT	PROPOSED	PROPOSED
	UNITS	RATES	REVENUE	RATES	REVENUE
BILLS	568,006	39.31	22,328,316	51.4	29,195,508
KW	15,055,772.6	8.49	127,823,509	8.49	127,823,509
KWH	3,891,494,041	0.0738	287,192,260	0.07125	277,268,950
TRANSFORME	270,719.6	-0.9	(243,648)	-0.9	(243,648)
SUBTOTAL			437,100,437		434,044,319
2000		PRESENT	PRESENT	PROPOSED	PROPOSED
	UNITS	RATES	REVENUE	RATES	REVENUE
BILLS	573,201	51.4	29,462,531	63.49	36,392,531
KW	15,193,257.1	8.49	128,990,753	8.49	128,990,753
KWH	3,927,043,647	0.07125	279,801,860	0.06856	269,238,112
TRANSFORME	273,179.6	-0.9	(245,862)	-0.9	(245,862)
SUBTOTAL			438,009,282		434,375,534



SC-2 Demand

Kwh Usage  
30 Days

	KW	1997 Bill	1998 Bill	Increase	PCT
1,008	7	\$172.51	\$182.43	\$9.92	5.75%
1,512	7	\$213.24	\$221.82	\$8.58	4.02%
2,016	7	\$253.97	\$261.19	\$7.22	2.84%
2,520	7	\$294.69	\$300.58	\$5.89	2.00%
2,160	15	\$336.98	\$343.76	\$6.78	2.01%
3,240	15	\$424.25	\$428.14	\$3.89	0.92%
4,320	15	\$511.53	\$512.53	\$1.00	0.20%
5,400	15	\$598.80	\$596.91	(\$1.89)	-0.32%
3,600	25	\$542.56	\$545.41	\$2.85	0.53%
5,400	25	\$688.01	\$686.06	(\$1.95)	-0.28%
7,200	25	\$833.48	\$826.69	(\$6.79)	-0.81%
9,000	25	\$978.94	\$967.34	(\$11.60)	-1.18%
5,760	40	\$850.92	\$847.90	(\$3.02)	-0.35%
8,640	40	\$1,083.66	\$1,072.91	(\$10.75)	-0.99%
11,520	40	\$1,316.40	\$1,297.94	(\$18.46)	-1.40%
14,400	40	\$1,549.14	\$1,522.96	(\$26.18)	-1.69%
8,640	60	\$1,262.08	\$1,251.20	(\$10.88)	-0.86%
12,960	60	\$1,611.19	\$1,588.74	(\$22.45)	-1.39%
17,280	60	\$1,960.30	\$1,926.27	(\$34.03)	-1.74%
21,600	60	\$2,309.43	\$2,263.81	(\$45.62)	-1.98%
11,520	80	\$1,673.24	\$1,654.51	(\$18.73)	-1.12%
17,280	80	\$2,138.72	\$2,104.56	(\$34.16)	-1.60%
23,040	80	\$2,604.21	\$2,554.61	(\$49.60)	-1.90%
28,800	80	\$3,069.70	\$3,004.65	(\$65.05)	-2.12%
14,400	100	\$2,084.40	\$2,057.82	(\$26.58)	-1.28%
21,600	100	\$2,666.26	\$2,620.38	(\$45.88)	-1.72%
28,800	100	\$3,248.11	\$3,182.94	(\$65.17)	-2.01%
36,000	100	\$3,829.97	\$3,745.50	(\$84.47)	-2.21%



SC-2 Demand  
Kwh Usage  
30 Days

	KW	1998 Bill	1999 Bill	Increase	PCT
1,008	7	\$182.43	\$192.07	\$9.64	5.28%
1,512	7	\$221.82	\$230.03	\$8.21	3.70%
2,016	7	\$261.19	\$267.98	\$6.79	2.60%
2,520	7	\$300.58	\$305.94	\$5.36	1.78%
2,160	15	\$343.76	\$350.01	\$6.25	1.82%
3,240	15	\$428.14	\$431.35	\$3.21	0.75%
4,320	15	\$512.53	\$512.68	\$0.15	0.03%
5,400	15	\$596.91	\$594.03	(\$2.88)	-0.48%
3,600	25	\$545.41	\$547.43	\$2.02	0.37%
5,400	25	\$686.06	\$683.00	(\$3.06)	-0.45%
7,200	25	\$826.69	\$818.56	(\$8.13)	-0.98%
9,000	25	\$967.34	\$954.13	(\$13.21)	-1.37%
5,760	40	\$847.90	\$843.58	(\$4.32)	-0.51%
8,640	40	\$1,072.91	\$1,060.47	(\$12.44)	-1.16%
11,520	40	\$1,297.94	\$1,277.37	(\$20.57)	-1.58%
14,400	40	\$1,522.96	\$1,494.28	(\$28.68)	-1.88%
8,640	60	\$1,251.20	\$1,238.42	(\$12.78)	-1.02%
12,960	60	\$1,588.74	\$1,563.78	(\$24.96)	-1.57%
17,280	60	\$1,926.27	\$1,889.13	(\$37.14)	-1.93%
21,600	60	\$2,263.81	\$2,214.48	(\$49.33)	-2.18%
11,520	80	\$1,654.51	\$1,633.27	(\$21.24)	-1.28%
17,280	80	\$2,104.56	\$2,067.08	(\$37.48)	-1.78%
23,040	80	\$2,554.61	\$2,500.89	(\$53.72)	-2.10%
28,800	80	\$3,004.65	\$2,934.69	(\$69.96)	-2.33%
14,400	100	\$2,057.82	\$2,028.13	(\$29.69)	-1.44%
21,600	100	\$2,620.38	\$2,570.38	(\$50.00)	-1.91%
28,800	100	\$3,182.94	\$3,112.64	(\$70.30)	-2.21%
36,000	100	\$3,745.50	\$3,654.89	(\$90.61)	-2.42%





SC-2 Demand

Kwh Usage 30 Days	KW	1999 Bill	2000 Bill	Increase	PCT
1,008	7	\$192.07	\$200.32	\$8.25	4.30%
1,512	7	\$230.03	\$236.57	\$6.54	2.84%
2,016	7	\$267.98	\$272.83	\$4.85	1.81%
2,520	7	\$305.94	\$309.08	\$3.14	1.03%
2,160	15	\$350.01	\$353.81	\$3.80	1.09%
3,240	15	\$431.35	\$431.49	\$0.14	0.03%
4,320	15	\$512.68	\$509.17	(\$3.51)	-0.68%
5,400	15	\$594.03	\$586.86	(\$7.17)	-1.21%
3,600	25	\$547.43	\$545.67	(\$1.76)	-0.32%
5,400	25	\$683.00	\$675.14	(\$7.86)	-1.15%
7,200	25	\$818.56	\$804.61	(\$13.95)	-1.70%
9,000	25	\$954.13	\$934.09	(\$20.04)	-2.10%
5,760	40	\$843.58	\$833.46	(\$10.12)	-1.20%
8,640	40	\$1,060.47	\$1,040.61	(\$19.86)	-1.87%
11,520	40	\$1,277.37	\$1,247.76	(\$29.61)	-2.32%
14,400	40	\$1,494.28	\$1,454.91	(\$39.37)	-2.63%
8,640	60	\$1,238.42	\$1,217.17	(\$21.25)	-1.72%
12,960	60	\$1,563.78	\$1,527.91	(\$35.87)	-2.29%
17,280	60	\$1,889.13	\$1,838.64	(\$50.49)	-2.67%
21,600	60	\$2,214.48	\$2,149.37	(\$65.11)	-2.94%
11,520	80	\$1,633.27	\$1,600.88	(\$32.39)	-1.98%
17,280	80	\$2,067.08	\$2,015.20	(\$51.88)	-2.51%
23,040	80	\$2,500.89	\$2,429.51	(\$71.38)	-2.85%
28,800	80	\$2,934.69	\$2,843.82	(\$90.87)	-3.10%
14,400	100	\$2,028.13	\$1,984.60	(\$43.53)	-2.15%
21,600	100	\$2,570.38	\$2,502.50	(\$67.88)	-2.64%
28,800	100	\$3,112.64	\$3,020.38	(\$92.26)	-2.96%
36,000	100	\$3,654.89	\$3,538.27	(\$116.62)	-3.19%



Final Rates Designs  
Prepared For PowerChoice  
Settlement Agreement

**SC-3A & SC-4 (> 2Mw) Bundled Rates (1)**  
**For the First Three Years of PowerChoice Settlement Agreement**

		Bundled Charges (Customer / Delivery / Commodity and Competitive Transition Charges)							
		Energy Charges Block 1 (3)		Energy Charges Block 2 (3)		Energy Charges Block 3 (3)			
1998	Customer	Per Kw (2)	First 250 Hours of Use		Next 150 Hours of Use		All Remaining Hours of Use		
			On-Pk	Off-Pk	On-Pk	Off-Pk	On-Pk	Off-Pk	
	Secondary Delivery	\$902.00	\$11.11	\$0.06202	\$0.05215	\$0.04988	\$0.04025	\$0.04988	\$0.04025
	Primary Delivery	\$902.00	\$9.57	\$0.06149	\$0.05208	\$0.04963	\$0.04024	\$0.04963	\$0.04024
	Subtransmission Del.	\$1,400.00	\$6.90	\$0.05941	\$0.04968	\$0.04867	\$0.03967	\$0.04867	\$0.03967
	Transmission Delivery	\$3,172.00	\$6.19	\$0.05678	\$0.04679	\$0.04746	\$0.03899	\$0.04746	\$0.03899
<b>1999</b>									
	Secondary Delivery	\$902.00	\$10.75	\$0.06202	\$0.05215	\$0.04988	\$0.04025	\$0.03962	\$0.03272
	Primary Delivery	\$902.00	\$9.21	\$0.06149	\$0.05208	\$0.04963	\$0.04024	\$0.03747	\$0.03043
	Subtransmission Del.	\$1,400.00	\$6.54	\$0.05941	\$0.04968	\$0.04867	\$0.03967	\$0.03696	\$0.03006
	Transmission Delivery	\$3,172.00	\$5.83	\$0.05678	\$0.04679	\$0.04746	\$0.03899	\$0.03550	\$0.02878
<b>2000</b>									
	Secondary Delivery	\$902.00	\$10.40	\$0.06202	\$0.05215	\$0.04988	\$0.04025	\$0.03962	\$0.03272
	Primary Delivery	\$902.00	\$8.86	\$0.06149	\$0.05208	\$0.04963	\$0.04024	\$0.03747	\$0.03043
	Subtransmission Del.	\$1,400.00	\$6.19	\$0.05941	\$0.04968	\$0.04867	\$0.03967	\$0.03696	\$0.03006
	Transmission Delivery	\$3,172.00	\$5.48	\$0.05678	\$0.04679	\$0.04746	\$0.03899	\$0.03550	\$0.02878

- Notes:
- (1) Options For Service will exist Per Settlement Agreement
    - Option 1 -- Variable Commodity Charges and Fixed CTC Charges
    - Option 2 -- Fixed Commodity and Fixed CTC Charges
 Bundled Rates Vary By Year not by Location
  - (2) The Per Kw Charge Includes Distribution Charges & Competitive Transition Charges  
 The Unbundled Distribution Charges will be assessed to the maximum demand occurring in the billing period.  
 The Competitive Transition Charge will be assessed to the maximum On-Peak demand occurring in the billing period.
  - (3) The Per Kwh Charge Includes Commodity Charges and Competitive Transition Charges



**1998 Unbundled Prices (Option 1)  
SC-3A & SC-4 (> 2Mw)**

Western Division	Customer	Per Kw (1)	Variable Commodity Charges Per MC / LBMP	Per Kwh Fixed Competitive Transition Charges						
				Block 1 First 250 Hours of Use		Block 2 Next 150 Hours Of Use		Block 3 All Remaining Hours Of Use		
				On-Pk	Off-Pk	On-Pk	Off-Pk	On-Pk	Off-Pk	
Secondary Delivery	\$902.00	\$11.11	Per Market	\$0.03477	\$0.02897	\$0.02263	\$0.01707	\$0.02263	\$0.01707	
Primary Delivery	\$902.00	\$9.57	Per Market	\$0.03607	\$0.03062	\$0.02421	\$0.01878	\$0.02421	\$0.01878	
Subtransmission Delivery	\$1,400.00	\$6.90	Per Market	\$0.03416	\$0.02834	\$0.02342	\$0.01833	\$0.02342	\$0.01833	
Transmission Delivery	\$3,172.00	\$6.19	Per Market	\$0.03259	\$0.02639	\$0.02327	\$0.01859	\$0.02327	\$0.01859	
<b>Central Division</b>										
Secondary Delivery	\$902.00	\$11.11	Per Market	\$0.03406	\$0.02871	\$0.02192	\$0.01681	\$0.02192	\$0.01681	
Primary Delivery	\$902.00	\$9.57	Per Market	\$0.03532	\$0.03036	\$0.02346	\$0.01852	\$0.02346	\$0.01852	
Subtransmission Delivery	\$1,400.00	\$6.90	Per Market	\$0.03344	\$0.02808	\$0.02270	\$0.01807	\$0.02270	\$0.01807	
Transmission Delivery	\$3,172.00	\$6.19	Per Market	\$0.03190	\$0.02614	\$0.02258	\$0.01834	\$0.02258	\$0.01834	
<b>Eastern Division</b>										
Secondary Delivery	\$902.00	\$11.11	Per Market	\$0.02910	\$0.02496	\$0.01696	\$0.01306	\$0.01696	\$0.01306	
Primary Delivery	\$902.00	\$9.57	Per Market	\$0.03035	\$0.02679	\$0.01849	\$0.01495	\$0.01849	\$0.01495	
Subtransmission Delivery	\$1,400.00	\$6.90	Per Market	\$0.02869	\$0.02470	\$0.01795	\$0.01469	\$0.01795	\$0.01469	
Transmission Delivery	\$3,172.00	\$6.19	Per Market	\$0.02728	\$0.02287	\$0.01796	\$0.01507	\$0.01796	\$0.01507	

Notes: (1) The Per Kw Charge Includes Distribution Charges & Competitive Transition Charges  
The Unbundled Distribution Charges will be assessed to the maximum demand occurring in the billing period.  
The Competitive Transition Charge will be assessed to the maximum On-Peak demand occurring in the billing period.



**1998 Unbundled Prices (Option 2)  
SC-3A & SC-4 (> 2Mw)**

Western Division	Customer	Per Kw (1)	Fixed		Per Kwh Fixed Competitive Transition Charges					
			Comm. Charges (2)		Block 1		Block 2		Block 3	
			On Peak	Off Peak	First 250 Hours of Use		Next 150 Hours Of Use		All Remaining Hours Of Use	
				On-Pk	Off-Pk	On-Pk	Off-Pk	On-Pk	Off-Pk	
Secondary Delivery	\$902.00	\$11.11	\$0.02725	\$0.02318	\$0.03477	\$0.02897	\$0.02263	\$0.01707	\$0.02263	\$0.01707
Primary Delivery	\$902.00	\$9.57	\$0.02542	\$0.02146	\$0.03607	\$0.03062	\$0.02421	\$0.01878	\$0.02421	\$0.01878
Subtransmission Delivery	\$1,400.00	\$6.90	\$0.02525	\$0.02134	\$0.03416	\$0.02834	\$0.02342	\$0.01833	\$0.02342	\$0.01833
Transmission Delivery	\$3,172.00	\$6.19	\$0.02419	\$0.02040	\$0.03259	\$0.02639	\$0.02327	\$0.01859	\$0.02327	\$0.01859
<b>Central Division</b>										
Secondary Delivery	\$902.00	\$11.11	\$0.02796	\$0.02344	\$0.03406	\$0.02871	\$0.02192	\$0.01681	\$0.02192	\$0.01681
Primary Delivery	\$902.00	\$9.57	\$0.02617	\$0.02172	\$0.03532	\$0.03036	\$0.02346	\$0.01852	\$0.02346	\$0.01852
Subtransmission Delivery	\$1,400.00	\$6.90	\$0.02597	\$0.02160	\$0.03344	\$0.02808	\$0.02270	\$0.01807	\$0.02270	\$0.01807
Transmission Delivery	\$3,172.00	\$6.19	\$0.02488	\$0.02065	\$0.03190	\$0.02614	\$0.02258	\$0.01834	\$0.02258	\$0.01834
<b>Eastern Division</b>										
Secondary Delivery	\$902.00	\$11.11	\$0.03292	\$0.02719	\$0.02910	\$0.02496	\$0.01696	\$0.01306	\$0.01696	\$0.01306
Primary Delivery	\$902.00	\$9.57	\$0.03114	\$0.02529	\$0.03035	\$0.02679	\$0.01849	\$0.01495	\$0.01849	\$0.01495
Subtransmission Delivery	\$1,400.00	\$6.90	\$0.03072	\$0.02498	\$0.02869	\$0.02470	\$0.01795	\$0.01469	\$0.01795	\$0.01469
Transmission Delivery	\$3,172.00	\$6.19	\$0.02950	\$0.02392	\$0.02728	\$0.02287	\$0.01796	\$0.01507	\$0.01796	\$0.01507

**Notes:**

- (1) The Per Kw Charge Includes Distribution Charges & Competitive Transition Charges  
The Unbundled Distribution Charges will be assessed to the maximum demand occurring in the billing period.  
The Competitive Transition Charge will be assessed to the maximum On-Peak demand occurring in the billing period.
- (2) The Commodity Charges shown above are class average prices.  
Each Customer will have a different fixed commodity charge based on their individual load shape.





**1999 Unbundled Prices (Option 1)  
SC-3A & SC-4 (> 2Mw)**

Western Division	Customer	Per Kw (1)	Variable Commodity Charges Per MC / LBMP	Per Kwh Fixed Competitive Transition Charges					
				Block 1 First 250 Hours of Use		Block 2 Next 150 Hours Of Use		Block 3 All Remaining Hours Of Use	
				On-Pk	Off-Pk	On-Pk	Off-Pk	On-Pk	Off-Pk
Secondary Delivery	\$902.00	\$10.75	Per Market	\$0.03188	\$0.02651	\$0.01974	\$0.01461	\$0.00948	\$0.00708
Primary Delivery	\$902.00	\$9.21	Per Market	\$0.03337	\$0.02835	\$0.02151	\$0.01651	\$0.00936	\$0.00670
Subtransmission Delivery	\$1,400.00	\$6.54	Per Market	\$0.03148	\$0.02607	\$0.02074	\$0.01606	\$0.00904	\$0.00645
Transmission Delivery	\$3,172.00	\$5.83	Per Market	\$0.03003	\$0.02423	\$0.02071	\$0.01643	\$0.00875	\$0.00622
<b>Central Division</b>									
Secondary Delivery	\$902.00	\$10.75	Per Market	\$0.03110	\$0.02622	\$0.01896	\$0.01432	\$0.00869	\$0.00679
Primary Delivery	\$902.00	\$9.21	Per Market	\$0.03255	\$0.02806	\$0.02069	\$0.01622	\$0.00853	\$0.00641
Subtransmission Delivery	\$1,400.00	\$6.54	Per Market	\$0.03068	\$0.02579	\$0.01994	\$0.01578	\$0.00823	\$0.00617
Transmission Delivery	\$3,172.00	\$5.83	Per Market	\$0.02926	\$0.02395	\$0.01994	\$0.01615	\$0.00798	\$0.00594
<b>Eastern Division</b>									
Secondary Delivery	\$902.00	\$10.75	Per Market	\$0.02561	\$0.02208	\$0.01347	\$0.01018	\$0.00320	\$0.00265
Primary Delivery	\$902.00	\$9.21	Per Market	\$0.02705	\$0.02411	\$0.01519	\$0.01227	\$0.00303	\$0.00246
Subtransmission Delivery	\$1,400.00	\$6.54	Per Market	\$0.02544	\$0.02205	\$0.01470	\$0.01204	\$0.00299	\$0.00243
Transmission Delivery	\$3,172.00	\$5.83	Per Market	\$0.02415	\$0.02034	\$0.01483	\$0.01254	\$0.00287	\$0.00233

Notes:

- (1) The Per Kw Charge Includes Distribution Charges & Competitive Transition Charges  
The Unbundled Distribution Charges will be assessed to the maximum demand occurring in the billing period.  
The Competitive Transition Charge will be assessed to the maximum On-Peak demand occurring in the billing period.



**1999 Unbundled Prices (Option 2)  
SC-3A & SC-4 (> 2Mw)**

Western Division	Customer	Per Kw (1)	Fixed		Per Kwh Fixed Competitive Transition Charges					
			Comm. Charges (2)		Block 1		Block 2		Block 3	
			On Peak	Off Peak	First 250 Hours of Use		Next 150 Hours Of Use		All Remaining Hours Of Use	
				On-Pk	Off-Pk	On-Pk	Off-Pk	On-Pk	Off-Pk	
Secondary Delivery	\$902.00	\$10.75	\$0.02793	\$0.02376	\$0.03409	\$0.02839	\$0.02195	\$0.01649	\$0.01168	\$0.00896
Primary Delivery	\$902.00	\$9.21	\$0.02606	\$0.02199	\$0.03543	\$0.03009	\$0.02357	\$0.01825	\$0.01141	\$0.00844
Subtransmission Delivery	\$1,400.00	\$6.54	\$0.02588	\$0.02188	\$0.03353	\$0.02780	\$0.02279	\$0.01779	\$0.01108	\$0.00818
Transmission Delivery	\$3,172.00	\$5.83	\$0.02479	\$0.02091	\$0.03199	\$0.02588	\$0.02267	\$0.01808	\$0.01071	\$0.00787
<b>Central Division</b>										
Secondary Delivery	\$902.00	\$10.75	\$0.02866	\$0.02403	\$0.03336	\$0.02812	\$0.02122	\$0.01622	\$0.01096	\$0.00869
Primary Delivery	\$902.00	\$9.21	\$0.02682	\$0.02226	\$0.03467	\$0.02982	\$0.02281	\$0.01798	\$0.01065	\$0.00816
Subtransmission Delivery	\$1,400.00	\$6.54	\$0.02662	\$0.02214	\$0.03279	\$0.02754	\$0.02205	\$0.01753	\$0.01034	\$0.00792
Transmission Delivery	\$3,172.00	\$5.83	\$0.02551	\$0.02117	\$0.03127	\$0.02562	\$0.02195	\$0.01782	\$0.00999	\$0.00761
<b>Eastern Division</b>										
Secondary Delivery	\$902.00	\$10.75	\$0.03375	\$0.02787	\$0.02827	\$0.02428	\$0.01613	\$0.01238	\$0.00587	\$0.00485
Primary Delivery	\$902.00	\$9.21	\$0.03192	\$0.02592	\$0.02957	\$0.02616	\$0.01771	\$0.01432	\$0.00555	\$0.00451
Subtransmission Delivery	\$1,400.00	\$6.54	\$0.03149	\$0.02561	\$0.02792	\$0.02407	\$0.01718	\$0.01406	\$0.00548	\$0.00445
Transmission Delivery	\$3,172.00	\$5.83	\$0.03024	\$0.02452	\$0.02654	\$0.02227	\$0.01722	\$0.01447	\$0.00526	\$0.00426

**Notes:**

- (1) The Per Kw Charge Includes Distribution Charges & Competitive Transition Charges  
The Unbundled Distribution Charges will be assessed to the maximum demand occurring in the billing period.  
The Competitive Transition Charge will be assessed to the maximum On-Peak demand occurring in the billing period.
- (2) The Commodity Charges shown above are class average prices.  
Each Customer will have a different fixed commodity charge based on their individual load shape.



**2000 Unbundled Prices (Option 1)  
SC-3A & SC-4 (> 2Mw)**

Western Division	Customer	Per Kw (1)	Variable Commodity Charges Per MC / LBMP	Per Kwh Fixed Competitive Transition Charges					
				Block 1 First 250 Hours of Use		Block 2 Next 150 Hours Of Use		Block 3 All Remaining Hours Of Use	
				On-Pk	Off-Pk	On-Pk	Off-Pk	On-Pk	Off-Pk
Secondary Delivery	\$902.00	\$10.40	Per Market	\$0.02923	\$0.02426	\$0.01709	\$0.01236	\$0.00683	\$0.00483
Primary Delivery	\$902.00	\$8.86	Per Market	\$0.03090	\$0.02626	\$0.01904	\$0.01442	\$0.00688	\$0.00461
Subtransmission Delivery	\$1,400.00	\$6.19	Per Market	\$0.02903	\$0.02400	\$0.01829	\$0.01399	\$0.00658	\$0.00438
Transmission Delivery	\$3,172.00	\$5.48	Per Market	\$0.02768	\$0.02224	\$0.01836	\$0.01444	\$0.00640	\$0.00423
<b>Central Division</b>									
Secondary Delivery	\$902.00	\$10.40	Per Market	\$0.02838	\$0.02394	\$0.01624	\$0.01204	\$0.00597	\$0.00451
Primary Delivery	\$902.00	\$8.86	Per Market	\$0.03001	\$0.02594	\$0.01815	\$0.01410	\$0.00599	\$0.00429
Subtransmission Delivery	\$1,400.00	\$6.19	Per Market	\$0.02816	\$0.02369	\$0.01742	\$0.01368	\$0.00571	\$0.00407
Transmission Delivery	\$3,172.00	\$5.48	Per Market	\$0.02684	\$0.02194	\$0.01752	\$0.01414	\$0.00556	\$0.00393
<b>Eastern Division</b>									
Secondary Delivery	\$902.00	\$10.40	Per Market	\$0.02240	\$0.01943	\$0.01026	\$0.00753	\$0.00000	\$0.00000
Primary Delivery	\$902.00	\$8.86	Per Market	\$0.02402	\$0.02165	\$0.01216	\$0.00981	\$0.00000	\$0.00000
Subtransmission Delivery	\$1,400.00	\$6.19	Per Market	\$0.02245	\$0.01962	\$0.01171	\$0.00961	\$0.00000	\$0.00000
Transmission Delivery	\$3,172.00	\$5.48	Per Market	\$0.02128	\$0.01801	\$0.01196	\$0.01021	\$0.00000	\$0.00000

**Notes:**

- (1) The Per Kw Charge Includes Distribution Charges & Competitive Transition Charges  
The Unbundled Distribution Charges will be assessed to the maximum demand occurring in the billing period.  
The Competitive Transition Charge will be assessed to the maximum On-Peak demand occurring in the billing period.



**2000 Unbundled Prices (Option 2)  
SC-3A & SC-4 (> 2Mw)**

Western Division	Customer	Per Kw (1)	Fixed		Per Kwh Fixed Competitive Transition Charges					
			Comm. Charges (2)		Block 1		Block 2		Block 3	
			On Peak	Off Peak	First 250 Hours of Use		Next 150 Hours Of Use		All Remaining Hours Of Use	
				On-Pk	Off-Pk	On-Pk	Off-Pk	On-Pk	Off-Pk	
Secondary Delivery	\$902.00	\$10.40	\$0.02863	\$0.02436	\$0.03339	\$0.02779	\$0.02125	\$0.01589	\$0.01099	\$0.00836
Primary Delivery	\$902.00	\$8.86	\$0.02671	\$0.02254	\$0.03478	\$0.02954	\$0.02292	\$0.01770	\$0.01076	\$0.00789
Subtransmission Delivery	\$1,400.00	\$6.19	\$0.02653	\$0.02242	\$0.03288	\$0.02726	\$0.02214	\$0.01725	\$0.01043	\$0.00763
Transmission Delivery	\$3,172.00	\$5.48	\$0.02541	\$0.02143	\$0.03137	\$0.02536	\$0.02205	\$0.01756	\$0.01009	\$0.00735
<b>Central Division</b>										
Secondary Delivery	\$902.00	\$10.40	\$0.02937	\$0.02463	\$0.03265	\$0.02752	\$0.02051	\$0.01562	\$0.01024	\$0.00809
Primary Delivery	\$902.00	\$8.86	\$0.02749	\$0.02282	\$0.03400	\$0.02926	\$0.02214	\$0.01742	\$0.00998	\$0.00761
Subtransmission Delivery	\$1,400.00	\$6.19	\$0.02729	\$0.02269	\$0.03212	\$0.02699	\$0.02138	\$0.01698	\$0.00967	\$0.00736
Transmission Delivery	\$3,172.00	\$5.48	\$0.02614	\$0.02170	\$0.03064	\$0.02509	\$0.02132	\$0.01729	\$0.00936	\$0.00708
<b>Eastern Division</b>										
Secondary Delivery	\$902.00	\$10.40	\$0.03459	\$0.02857	\$0.02743	\$0.02358	\$0.01529	\$0.01168	\$0.00502	\$0.00415
Primary Delivery	\$902.00	\$8.86	\$0.03272	\$0.02657	\$0.02877	\$0.02551	\$0.01691	\$0.01367	\$0.00475	\$0.00386
Subtransmission Delivery	\$1,400.00	\$6.19	\$0.03227	\$0.02625	\$0.02714	\$0.02343	\$0.01640	\$0.01342	\$0.00469	\$0.00381
Transmission Delivery	\$3,172.00	\$5.48	\$0.03100	\$0.02513	\$0.02578	\$0.02166	\$0.01646	\$0.01386	\$0.00450	\$0.00365

**Notes:**

- (1) The Per Kw Charge Includes Distribution Charges & Competitive Transition Charges  
The Unbundled Distribution Charges will be assessed to the maximum demand occurring in the billing period.  
The Competitive Transition will be assessed to the maximum On-Peak demand occurring in the billing period.
- (2) The Commodity Charges shown above are class average prices.  
Each Customer will have a different fixed commodity charge based on their individual load shape.





**1998 - 2000 Bundled Prices  
For SC-3 and Qualifying SC-4 Customers ( 100 < NM Kw < 2,000)**

Western Division	Customer	Per Kw	Kwh Charges BASED ON	
			Use <= 450 Hours	Use > 450 Hours
Sec	\$258.00	\$14.78	\$0.06224	\$0.04477
Pri	\$432.41	\$12.53	\$0.06086	\$0.04421
Sub	\$546.97	\$8.51	\$0.05842	\$0.04314
Trans	\$567.61	\$8.15	\$0.05782	\$0.04294
<b>Central Division</b>				
Sec	\$258.00	\$14.78	\$0.06224	\$0.04477
Pri	\$432.41	\$12.53	\$0.06086	\$0.04421
Sub	\$546.97	\$8.51	\$0.05842	\$0.04314
Trans	\$567.61	\$8.15	\$0.05782	\$0.04294
<b>Eastern Division</b>				
Sec	\$258.00	\$14.78	\$0.06224	\$0.04477
Pri	\$432.41	\$12.53	\$0.06086	\$0.04421
Sub	\$546.97	\$8.51	\$0.05842	\$0.04314
Trans	\$567.61	\$8.15	\$0.05782	\$0.04294

Notes: The above schedule reflects bundled Retail Prices For SC-3 and Qualifying SC-4s  
Retail Prices will not be unbundled for classes without Direct Access



**NAGARA MOHAWK POWER CORPORATION**  
**DEVELOPMENT OF PSC 207 SC6 BUYBACK RATES**  
**ENERGY and CAPACITY**  
**Area 1 - PRE MRA**

**Running Costs**

	Generation	Transmission	Subtrans.	On-peak	Off-Peak	Average
Jan-98	\$ 4.23	\$ 0.36	\$ 0.64	\$ 15.89	\$ 17.72	\$ 16.96
Feb-98	\$ 4.23	\$ 0.36	\$ 0.64	\$ 14.49	\$ 15.66	\$ 15.17
Mar-98	\$ 4.23	\$ 0.36	\$ 0.64	\$ 15.50	\$ 14.46	\$ 14.89
Apr-98	\$ 4.23	\$ 0.36	\$ 0.64	\$ 16.79	\$ 17.33	\$ 17.11
May-98	\$ 4.23	\$ 0.36	\$ 0.64	\$ 23.72	\$ 19.43	\$ 21.22
Jun-98	\$ 4.23	\$ 0.36	\$ 0.64	\$ 17.44	\$ 16.04	\$ 16.62
Jul-98	\$ 4.23	\$ 0.36	\$ 0.64	\$ 18.42	\$ 15.87	\$ 16.93
Aug-98	\$ 4.23	\$ 0.36	\$ 0.64	\$ 18.36	\$ 16.68	\$ 17.38
Sep-98	\$ 4.23	\$ 0.36	\$ 0.64	\$ 22.48	\$ 17.82	\$ 19.76
Oct-98	\$ 4.23	\$ 0.36	\$ 0.64	\$ 22.34	\$ 20.09	\$ 21.03
Nov-98	\$ 4.23	\$ 0.36	\$ 0.64	\$ 18.58	\$ 15.48	\$ 16.77
Dec-98	\$ 4.23	\$ 0.36	\$ 0.64	\$ 17.18	\$ 14.85	\$ 15.82
Annual	\$ 4.23	\$ 0.36	\$ 0.64	\$ 18.43	\$ 16.79	\$ 17.47

	Generation	Transmission	Subtrans.
Jan-98	\$ 4.28	\$ -	\$ -
Feb-98	\$ 4.28	\$ -	\$ -
Mar-98	\$ 4.28	\$ -	\$ -
Apr-98	\$ 4.28	\$ -	\$ -
May-98	\$ 4.28	\$ -	\$ -
Jun-98	\$ 4.28	\$ -	\$ -
Jul-98	\$ 4.28	\$ -	\$ -
Aug-98	\$ 4.28	\$ -	\$ -
Sep-98	\$ 4.28	\$ -	\$ -
Oct-98	\$ 4.28	\$ -	\$ -
Nov-98	\$ 4.28	\$ -	\$ -
Dec-98	\$ 4.28	\$ -	\$ -
Annual	\$ 4.28	\$ -	\$ -

	Generation	Transmission	Subtrans.
Jan-98	\$ 4.41	\$ 0.38	\$ -
Feb-98	\$ 4.41	\$ 0.38	\$ -
Mar-98	\$ 4.41	\$ 0.38	\$ -
Apr-98	\$ 4.41	\$ 0.38	\$ -
May-98	\$ 4.41	\$ 0.38	\$ -
Jun-98	\$ 4.41	\$ 0.38	\$ -
Jul-98	\$ 4.41	\$ 0.38	\$ -
Aug-98	\$ 4.41	\$ 0.38	\$ -
Sep-98	\$ 4.41	\$ 0.38	\$ -
Oct-98	\$ 4.41	\$ 0.38	\$ -
Nov-98	\$ 4.41	\$ 0.38	\$ -
Dec-98	\$ 4.41	\$ 0.38	\$ -
Annual	\$ 4.41	\$ 0.38	\$ -

	Generation	Transmission	Subtrans.
Jan-98	\$ 4.47	\$ 0.38	\$ 0.68
Feb-98	\$ 4.47	\$ 0.38	\$ 0.68
Mar-98	\$ 4.47	\$ 0.38	\$ 0.68
Apr-98	\$ 4.47	\$ 0.38	\$ 0.68
May-98	\$ 4.47	\$ 0.38	\$ 0.68
Jun-98	\$ 4.47	\$ 0.38	\$ 0.68
Jul-98	\$ 4.47	\$ 0.38	\$ 0.68
Aug-98	\$ 4.47	\$ 0.38	\$ 0.68
Sep-98	\$ 4.47	\$ 0.38	\$ 0.68
Oct-98	\$ 4.47	\$ 0.38	\$ 0.68
Nov-98	\$ 4.47	\$ 0.38	\$ 0.68
Dec-98	\$ 4.47	\$ 0.38	\$ 0.68
Annual	\$ 4.47	\$ 0.38	\$ 0.68

	Generation	Transmission	Subtrans.
Jan-98	\$ 4.56	\$ 0.39	\$ 0.69
Feb-98	\$ 4.56	\$ 0.39	\$ 0.69
Mar-98	\$ 4.56	\$ 0.39	\$ 0.69
Apr-98	\$ 4.56	\$ 0.39	\$ 0.69
May-98	\$ 4.56	\$ 0.39	\$ 0.69
Jun-98	\$ 4.56	\$ 0.39	\$ 0.69
Jul-98	\$ 4.56	\$ 0.39	\$ 0.69
Aug-98	\$ 4.56	\$ 0.39	\$ 0.69
Sep-98	\$ 4.56	\$ 0.39	\$ 0.69
Oct-98	\$ 4.56	\$ 0.39	\$ 0.69
Nov-98	\$ 4.56	\$ 0.39	\$ 0.69
Dec-98	\$ 4.56	\$ 0.39	\$ 0.69
Annual	\$ 4.56	\$ 0.39	\$ 0.69

<b>Energy Only - Transmission</b>			<b>Energy &amp; Capacity - Transmission</b>		
On-peak	Off-Peak	Average	On-peak	Off-Peak	Average
\$ 16.39	\$ 18.27	\$ 17.49	\$ 20.66	\$ 18.27	\$ 19.27
\$ 14.94	\$ 16.15	\$ 15.65	\$ 19.22	\$ 16.15	\$ 17.43
\$ 15.98	\$ 14.91	\$ 15.36	\$ 20.26	\$ 14.91	\$ 17.14
\$ 17.31	\$ 17.87	\$ 17.64	\$ 21.59	\$ 17.87	\$ 19.42
\$ 24.46	\$ 20.04	\$ 21.88	\$ 28.74	\$ 20.04	\$ 23.66
\$ 17.98	\$ 16.54	\$ 17.14	\$ 22.26	\$ 16.54	\$ 18.92
\$ 19.00	\$ 16.37	\$ 17.46	\$ 23.27	\$ 16.37	\$ 19.24
\$ 18.93	\$ 17.20	\$ 17.92	\$ 23.21	\$ 17.20	\$ 19.70
\$ 23.18	\$ 18.38	\$ 20.38	\$ 27.46	\$ 18.38	\$ 22.16
\$ 23.04	\$ 20.72	\$ 21.68	\$ 27.31	\$ 20.72	\$ 23.47
\$ 19.16	\$ 15.96	\$ 17.30	\$ 23.44	\$ 15.96	\$ 19.08
\$ 17.72	\$ 15.31	\$ 16.31	\$ 21.99	\$ 15.31	\$ 18.10
\$ 19.01	\$ 17.31	\$ 18.02	\$ 23.28	\$ 17.31	\$ 19.80

<b>Energy Only - Subtransmission</b>			<b>Energy &amp; Capacity - Subtransmission</b>		
On-peak	Off-Peak	Average	On-peak	Off-Peak	Average
\$ 16.90	\$ 18.85	\$ 18.04	\$ 21.69	\$ 18.85	\$ 20.04
\$ 15.42	\$ 16.66	\$ 16.14	\$ 20.20	\$ 16.66	\$ 18.14
\$ 18.49	\$ 15.38	\$ 15.84	\$ 21.28	\$ 15.38	\$ 17.84
\$ 17.86	\$ 18.44	\$ 18.20	\$ 22.65	\$ 18.44	\$ 20.19
\$ 25.23	\$ 20.67	\$ 22.57	\$ 30.02	\$ 20.67	\$ 24.57
\$ 18.55	\$ 17.06	\$ 17.68	\$ 23.34	\$ 17.06	\$ 19.68
\$ 19.60	\$ 16.88	\$ 18.01	\$ 24.38	\$ 16.88	\$ 20.01
\$ 19.53	\$ 17.75	\$ 18.49	\$ 24.32	\$ 17.75	\$ 20.48
\$ 23.92	\$ 18.96	\$ 21.02	\$ 28.70	\$ 18.96	\$ 23.02
\$ 23.77	\$ 21.37	\$ 22.37	\$ 28.55	\$ 21.37	\$ 24.36
\$ 19.77	\$ 16.47	\$ 17.84	\$ 24.55	\$ 16.47	\$ 19.84
\$ 18.28	\$ 15.80	\$ 16.83	\$ 23.06	\$ 15.80	\$ 18.83
\$ 19.61	\$ 17.86	\$ 18.59	\$ 24.39	\$ 17.86	\$ 20.56

<b>Energy Only - Primary</b>			<b>Energy &amp; Capacity - Primary</b>		
On-peak	Off-Peak	Average	On-peak	Off-Peak	Average
\$ 17.12	\$ 19.09	\$ 18.27	\$ 22.64	\$ 19.09	\$ 20.57
\$ 15.61	\$ 18.87	\$ 16.34	\$ 21.13	\$ 18.87	\$ 18.64
\$ 16.70	\$ 15.58	\$ 16.04	\$ 22.22	\$ 15.58	\$ 18.34
\$ 18.08	\$ 18.67	\$ 18.42	\$ 23.61	\$ 18.67	\$ 20.73
\$ 25.55	\$ 20.93	\$ 22.85	\$ 31.07	\$ 20.93	\$ 25.15
\$ 18.78	\$ 17.28	\$ 17.91	\$ 24.31	\$ 17.28	\$ 20.21
\$ 19.84	\$ 17.09	\$ 18.24	\$ 25.36	\$ 17.09	\$ 20.54
\$ 19.78	\$ 17.97	\$ 18.72	\$ 25.30	\$ 17.97	\$ 21.02
\$ 24.21	\$ 19.19	\$ 21.29	\$ 29.74	\$ 19.19	\$ 23.59
\$ 24.06	\$ 21.64	\$ 22.65	\$ 29.59	\$ 21.64	\$ 24.95
\$ 20.01	\$ 16.67	\$ 18.07	\$ 25.54	\$ 16.67	\$ 20.37
\$ 18.50	\$ 16.00	\$ 17.04	\$ 24.03	\$ 16.00	\$ 19.34
\$ 19.85	\$ 18.08	\$ 18.82	\$ 25.37	\$ 18.08	\$ 21.12

<b>Energy Only - Secondary</b>			<b>Energy &amp; Capacity - Secondary</b>		
On-peak	Off-Peak	Average	On-peak	Off-Peak	Average
\$ 17.47	\$ 19.48	\$ 18.65	\$ 23.11	\$ 19.48	\$ 20.99
\$ 15.93	\$ 17.22	\$ 16.68	\$ 21.57	\$ 17.22	\$ 19.03
\$ 17.04	\$ 15.90	\$ 16.38	\$ 22.68	\$ 15.90	\$ 18.73
\$ 18.46	\$ 19.06	\$ 18.81	\$ 24.10	\$ 19.06	\$ 21.16
\$ 26.08	\$ 21.36	\$ 23.33	\$ 31.72	\$ 21.36	\$ 25.68
\$ 19.18	\$ 17.64	\$ 18.28	\$ 24.81	\$ 17.64	\$ 20.63
\$ 20.25	\$ 17.45	\$ 18.62	\$ 25.89	\$ 17.45	\$ 20.97
\$ 20.19	\$ 18.34	\$ 19.11	\$ 25.83	\$ 18.34	\$ 21.46
\$ 24.72	\$ 19.59	\$ 21.73	\$ 30.36	\$ 19.59	\$ 24.08
\$ 24.56	\$ 22.09	\$ 23.12	\$ 30.20	\$ 22.09	\$ 25.47
\$ 20.43	\$ 17.02	\$ 18.44	\$ 26.07	\$ 17.02	\$ 20.79
\$ 18.89	\$ 16.33	\$ 17.40	\$ 24.53	\$ 16.33	\$ 19.74
\$ 20.26	\$ 18.46	\$ 19.21	\$ 25.90	\$ 18.46	\$ 21.56



NIAGARA MOHAWK POWER CORPORATION  
DEVELOPMENT OF PSC 207 SC6 BUYBACK RATES  
ENERGY and CAPACITY  
Area 2 - PRE MRA

Running Costs

	Generation	Transmission	Subtrans.	On-peak	Off-Peak	Average
Jan-98	\$ 4.23	\$ 0.36	\$ 0.64	\$ 16.25	\$ 18.12	\$ 17.34
Feb-98	\$ 4.23	\$ 0.36	\$ 0.64	\$ 14.79	\$ 15.98	\$ 15.49
Mar-98	\$ 4.23	\$ 0.36	\$ 0.64	\$ 15.80	\$ 14.74	\$ 15.19
Apr-98	\$ 4.23	\$ 0.36	\$ 0.64	\$ 17.11	\$ 17.67	\$ 17.44
May-98	\$ 4.23	\$ 0.36	\$ 0.64	\$ 25.37	\$ 20.78	\$ 22.69
Jun-98	\$ 4.23	\$ 0.36	\$ 0.64	\$ 17.82	\$ 16.39	\$ 16.99
Jul-98	\$ 4.23	\$ 0.36	\$ 0.64	\$ 18.78	\$ 16.18	\$ 17.26
Aug-98	\$ 4.23	\$ 0.36	\$ 0.64	\$ 18.71	\$ 16.99	\$ 17.71
Sep-98	\$ 4.23	\$ 0.36	\$ 0.64	\$ 22.91	\$ 18.16	\$ 20.14
Oct-98	\$ 4.23	\$ 0.36	\$ 0.64	\$ 23.75	\$ 21.36	\$ 22.35
Nov-98	\$ 4.23	\$ 0.36	\$ 0.64	\$ 24.76	\$ 20.63	\$ 22.35
Dec-98	\$ 4.23	\$ 0.36	\$ 0.64	\$ 17.51	\$ 15.14	\$ 16.13
Annual	\$ 4.23	\$ 0.36	\$ 0.64	\$ 19.50	\$ 17.77	\$ 18.49

	Generation	Transmission	Subtrans.
Jan-98	\$ 4.28	\$ -	\$ -
Feb-98	\$ 4.28	\$ -	\$ -
Mar-98	\$ 4.28	\$ -	\$ -
Apr-98	\$ 4.28	\$ -	\$ -
May-98	\$ 4.28	\$ -	\$ -
Jun-98	\$ 4.28	\$ -	\$ -
Jul-98	\$ 4.28	\$ -	\$ -
Aug-98	\$ 4.28	\$ -	\$ -
Sep-98	\$ 4.28	\$ -	\$ -
Oct-98	\$ 4.28	\$ -	\$ -
Nov-98	\$ 4.28	\$ -	\$ -
Dec-98	\$ 4.28	\$ -	\$ -
Annual	\$ 4.28	\$ -	\$ -

	Generation	Transmission	Subtrans.
Jan-98	\$ 4.41	\$ 0.38	\$ -
Feb-98	\$ 4.41	\$ 0.38	\$ -
Mar-98	\$ 4.41	\$ 0.38	\$ -
Apr-98	\$ 4.41	\$ 0.38	\$ -
May-98	\$ 4.41	\$ 0.38	\$ -
Jun-98	\$ 4.41	\$ 0.38	\$ -
Jul-98	\$ 4.41	\$ 0.38	\$ -
Aug-98	\$ 4.41	\$ 0.38	\$ -
Sep-98	\$ 4.41	\$ 0.38	\$ -
Oct-98	\$ 4.41	\$ 0.38	\$ -
Nov-98	\$ 4.41	\$ 0.38	\$ -
Dec-98	\$ 4.41	\$ 0.38	\$ -
Annual	\$ 4.41	\$ 0.38	\$ -

	Generation	Transmission	Subtrans.
Jan-98	\$ 4.47	\$ 0.38	\$ 0.68
Feb-98	\$ 4.47	\$ 0.38	\$ 0.68
Mar-98	\$ 4.47	\$ 0.38	\$ 0.68
Apr-98	\$ 4.47	\$ 0.38	\$ 0.68
May-98	\$ 4.47	\$ 0.38	\$ 0.68
Jun-98	\$ 4.47	\$ 0.38	\$ 0.68
Jul-98	\$ 4.47	\$ 0.38	\$ 0.68
Aug-98	\$ 4.47	\$ 0.38	\$ 0.68
Sep-98	\$ 4.47	\$ 0.38	\$ 0.68
Oct-98	\$ 4.47	\$ 0.38	\$ 0.68
Nov-98	\$ 4.47	\$ 0.38	\$ 0.68
Dec-98	\$ 4.47	\$ 0.38	\$ 0.68
Annual	\$ 4.47	\$ 0.38	\$ 0.68

	Generation	Transmission	Subtrans.
Jan-98	\$ 4.56	\$ 0.39	\$ 0.69
Feb-98	\$ 4.56	\$ 0.39	\$ 0.69
Mar-98	\$ 4.56	\$ 0.39	\$ 0.69
Apr-98	\$ 4.56	\$ 0.39	\$ 0.69
May-98	\$ 4.56	\$ 0.39	\$ 0.69
Jun-98	\$ 4.56	\$ 0.39	\$ 0.69
Jul-98	\$ 4.56	\$ 0.39	\$ 0.69
Aug-98	\$ 4.56	\$ 0.39	\$ 0.69
Sep-98	\$ 4.56	\$ 0.39	\$ 0.69
Oct-98	\$ 4.56	\$ 0.39	\$ 0.69
Nov-98	\$ 4.56	\$ 0.39	\$ 0.69
Dec-98	\$ 4.56	\$ 0.39	\$ 0.69
Annual	\$ 4.56	\$ 0.39	\$ 0.69

Energy Only - Transmission			Energy & Capacity - Transmission		
On-peak	Off-Peak	Average	On-peak	Off-Peak	Average
\$ 16.75	\$ 18.68	\$ 17.88	\$ 21.03	\$ 18.63	\$ 19.66
\$ 15.25	\$ 16.48	\$ 15.97	\$ 19.53	\$ 16.48	\$ 17.75
\$ 16.30	\$ 15.20	\$ 15.66	\$ 20.57	\$ 15.20	\$ 17.44
\$ 17.65	\$ 18.22	\$ 17.93	\$ 21.93	\$ 18.22	\$ 19.76
\$ 26.16	\$ 21.43	\$ 23.40	\$ 30.44	\$ 21.43	\$ 25.18
\$ 18.38	\$ 16.91	\$ 17.52	\$ 22.66	\$ 16.91	\$ 19.30
\$ 19.36	\$ 16.68	\$ 17.80	\$ 23.64	\$ 16.68	\$ 19.58
\$ 19.29	\$ 17.52	\$ 18.26	\$ 23.57	\$ 17.52	\$ 20.04
\$ 23.63	\$ 18.73	\$ 20.77	\$ 27.90	\$ 18.73	\$ 22.55
\$ 24.49	\$ 22.02	\$ 23.05	\$ 28.76	\$ 22.02	\$ 24.83
\$ 25.54	\$ 21.27	\$ 23.05	\$ 29.81	\$ 21.27	\$ 24.83
\$ 18.06	\$ 15.61	\$ 16.63	\$ 22.33	\$ 15.61	\$ 18.41
\$ 20.11	\$ 18.32	\$ 19.07	\$ 24.39	\$ 18.32	\$ 20.85

Energy Only - Subtransmission			Energy & Capacity - Subtransmission		
On-peak	Off-Peak	Average	On-peak	Off-Peak	Average
\$ 17.28	\$ 19.28	\$ 18.45	\$ 22.07	\$ 19.28	\$ 20.44
\$ 15.73	\$ 17.00	\$ 16.48	\$ 20.52	\$ 17.00	\$ 18.47
\$ 16.81	\$ 15.69	\$ 16.16	\$ 21.60	\$ 15.69	\$ 18.15
\$ 18.21	\$ 18.79	\$ 18.55	\$ 22.99	\$ 18.79	\$ 20.54
\$ 26.99	\$ 22.11	\$ 24.14	\$ 31.77	\$ 22.11	\$ 26.14
\$ 18.96	\$ 17.44	\$ 18.07	\$ 23.75	\$ 17.44	\$ 20.07
\$ 19.98	\$ 17.21	\$ 18.36	\$ 24.76	\$ 17.21	\$ 20.36
\$ 19.90	\$ 18.08	\$ 18.84	\$ 24.69	\$ 18.08	\$ 20.83
\$ 24.37	\$ 19.32	\$ 21.43	\$ 29.16	\$ 19.32	\$ 23.42
\$ 25.26	\$ 22.72	\$ 23.78	\$ 30.05	\$ 22.72	\$ 25.77
\$ 26.34	\$ 21.95	\$ 23.78	\$ 31.13	\$ 21.95	\$ 25.77
\$ 18.63	\$ 16.10	\$ 17.16	\$ 23.42	\$ 16.10	\$ 19.15
\$ 20.75	\$ 18.90	\$ 19.67	\$ 25.54	\$ 18.90	\$ 21.67

Energy Only - Primary			Energy & Capacity - Primary		
On-peak	Off-Peak	Average	On-peak	Off-Peak	Average
\$ 17.50	\$ 19.52	\$ 18.68	\$ 23.02	\$ 19.52	\$ 20.98
\$ 15.93	\$ 17.22	\$ 16.68	\$ 21.45	\$ 17.22	\$ 18.98
\$ 17.02	\$ 15.88	\$ 16.36	\$ 22.55	\$ 15.88	\$ 18.66
\$ 18.43	\$ 19.03	\$ 18.78	\$ 23.96	\$ 19.03	\$ 21.08
\$ 27.32	\$ 22.38	\$ 24.44	\$ 32.85	\$ 22.38	\$ 26.74
\$ 19.20	\$ 17.66	\$ 18.30	\$ 24.72	\$ 17.66	\$ 20.60
\$ 20.23	\$ 17.43	\$ 18.59	\$ 25.75	\$ 17.43	\$ 20.89
\$ 20.15	\$ 18.30	\$ 19.07	\$ 25.67	\$ 18.30	\$ 21.37
\$ 24.68	\$ 19.56	\$ 21.69	\$ 30.20	\$ 19.56	\$ 24.00
\$ 25.58	\$ 23.00	\$ 24.08	\$ 31.10	\$ 23.00	\$ 26.38
\$ 26.67	\$ 22.22	\$ 24.08	\$ 32.19	\$ 22.22	\$ 26.38
\$ 18.86	\$ 16.30	\$ 17.37	\$ 24.39	\$ 16.30	\$ 19.67
\$ 21.01	\$ 19.14	\$ 19.92	\$ 26.53	\$ 19.14	\$ 22.22

Energy Only - Secondary			Energy & Capacity - Secondary		
On-peak	Off-Peak	Average	On-peak	Off-Peak	Average
\$ 17.86	\$ 19.92	\$ 19.06	\$ 23.50	\$ 19.92	\$ 21.41
\$ 16.26	\$ 17.58	\$ 17.03	\$ 21.90	\$ 17.58	\$ 19.38
\$ 17.38	\$ 16.21	\$ 16.70	\$ 23.02	\$ 16.21	\$ 19.05
\$ 18.82	\$ 19.42	\$ 19.17	\$ 24.46	\$ 19.42	\$ 21.52
\$ 27.89	\$ 22.85	\$ 24.95	\$ 33.53	\$ 22.85	\$ 27.30
\$ 19.60	\$ 18.03	\$ 18.68	\$ 25.24	\$ 18.03	\$ 21.03
\$ 20.65	\$ 17.79	\$ 18.98	\$ 26.28	\$ 17.79	\$ 21.33
\$ 20.57	\$ 18.69	\$ 19.47	\$ 26.21	\$ 18.69	\$ 21.82
\$ 25.19	\$ 19.97	\$ 22.15	\$ 30.83	\$ 19.97	\$ 24.50
\$ 26.11	\$ 23.48	\$ 24.58	\$ 31.75	\$ 23.48	\$ 26.93
\$ 27.23	\$ 22.68	\$ 24.58	\$ 32.87	\$ 22.68	\$ 26.93
\$ 19.26	\$ 16.64	\$ 17.73	\$ 24.89	\$ 16.64	\$ 20.08
\$ 21.44	\$ 19.54	\$ 20.33	\$ 27.08	\$ 19.54	\$ 22.68



**NAGARA MOHAWK POWER CORPORATION**  
**DEVELOPMENT OF PSC 207 SC6 BUYBACK RATES**  
**ENERGY and CAPACITY**  
Area 4 - PRE MRA

Running Costs

	Generation	Transmission	Subtrans.	On-peak	Off-Peak	Average
Jan-98	\$ 4.23	\$ 0.36	\$ 0.64	\$ 31.25	\$ 26.32	\$ 28.37
Feb-98	\$ 4.23	\$ 0.36	\$ 0.64	\$ 30.70	\$ 24.96	\$ 27.35
Mar-98	\$ 4.23	\$ 0.36	\$ 0.64	\$ 29.10	\$ 22.62	\$ 25.32
Apr-98	\$ 4.23	\$ 0.36	\$ 0.64	\$ 24.31	\$ 18.01	\$ 20.64
May-98	\$ 4.23	\$ 0.36	\$ 0.64	\$ 25.36	\$ 20.07	\$ 22.27
Jun-98	\$ 4.23	\$ 0.36	\$ 0.64	\$ 22.90	\$ 20.54	\$ 21.52
Jul-98	\$ 4.23	\$ 0.36	\$ 0.64	\$ 24.85	\$ 20.88	\$ 22.53
Aug-98	\$ 4.23	\$ 0.36	\$ 0.64	\$ 24.36	\$ 21.34	\$ 22.60
Sep-98	\$ 4.23	\$ 0.36	\$ 0.64	\$ 23.59	\$ 18.67	\$ 20.72
Oct-98	\$ 4.23	\$ 0.36	\$ 0.64	\$ 25.14	\$ 20.47	\$ 22.42
Nov-98	\$ 4.23	\$ 0.36	\$ 0.64	\$ 28.61	\$ 20.36	\$ 23.80
Dec-98	\$ 4.23	\$ 0.36	\$ 0.64	\$ 30.99	\$ 23.89	\$ 26.85
Annual	\$ 4.23	\$ 0.36	\$ 0.64	\$ 26.76	\$ 21.51	\$ 23.70

	Generation	Transmission	Subtrans.
Jan-98	\$ 4.28	\$ -	\$ -
Feb-98	\$ 4.28	\$ -	\$ -
Mar-98	\$ 4.28	\$ -	\$ -
Apr-98	\$ 4.28	\$ -	\$ -
May-98	\$ 4.28	\$ -	\$ -
Jun-98	\$ 4.28	\$ -	\$ -
Jul-98	\$ 4.28	\$ -	\$ -
Aug-98	\$ 4.28	\$ -	\$ -
Sep-98	\$ 4.28	\$ -	\$ -
Oct-98	\$ 4.28	\$ -	\$ -
Nov-98	\$ 4.28	\$ -	\$ -
Dec-98	\$ 4.28	\$ -	\$ -
Annual	\$ 4.28	\$ -	\$ -

	Generation	Transmission	Subtrans.
Jan-98	\$ 4.41	\$ 0.38	\$ -
Feb-98	\$ 4.41	\$ 0.38	\$ -
Mar-98	\$ 4.41	\$ 0.38	\$ -
Apr-98	\$ 4.41	\$ 0.38	\$ -
May-98	\$ 4.41	\$ 0.38	\$ -
Jun-98	\$ 4.41	\$ 0.38	\$ -
Jul-98	\$ 4.41	\$ 0.38	\$ -
Aug-98	\$ 4.41	\$ 0.38	\$ -
Sep-98	\$ 4.41	\$ 0.38	\$ -
Oct-98	\$ 4.41	\$ 0.38	\$ -
Nov-98	\$ 4.41	\$ 0.38	\$ -
Dec-98	\$ 4.41	\$ 0.38	\$ -
Annual	\$ 4.41	\$ 0.38	\$ -

	Generation	Transmission	Subtrans.
Jan-98	\$ 4.47	\$ 0.38	\$ 0.68
Feb-98	\$ 4.47	\$ 0.38	\$ 0.68
Mar-98	\$ 4.47	\$ 0.38	\$ 0.68
Apr-98	\$ 4.47	\$ 0.38	\$ 0.68
May-98	\$ 4.47	\$ 0.38	\$ 0.68
Jun-98	\$ 4.47	\$ 0.38	\$ 0.68
Jul-98	\$ 4.47	\$ 0.38	\$ 0.68
Aug-98	\$ 4.47	\$ 0.38	\$ 0.68
Sep-98	\$ 4.47	\$ 0.38	\$ 0.68
Oct-98	\$ 4.47	\$ 0.38	\$ 0.68
Nov-98	\$ 4.47	\$ 0.38	\$ 0.68
Dec-98	\$ 4.47	\$ 0.38	\$ 0.68
Annual	\$ 4.47	\$ 0.38	\$ 0.68

	Generation	Transmission	Subtrans.
Jan-98	\$ 4.56	\$ 0.39	\$ 0.69
Feb-98	\$ 4.56	\$ 0.39	\$ 0.69
Mar-98	\$ 4.56	\$ 0.39	\$ 0.69
Apr-98	\$ 4.56	\$ 0.39	\$ 0.69
May-98	\$ 4.56	\$ 0.39	\$ 0.69
Jun-98	\$ 4.56	\$ 0.39	\$ 0.69
Jul-98	\$ 4.56	\$ 0.39	\$ 0.69
Aug-98	\$ 4.56	\$ 0.39	\$ 0.69
Sep-98	\$ 4.56	\$ 0.39	\$ 0.69
Oct-98	\$ 4.56	\$ 0.39	\$ 0.69
Nov-98	\$ 4.56	\$ 0.39	\$ 0.69
Dec-98	\$ 4.56	\$ 0.39	\$ 0.69
Annual	\$ 4.56	\$ 0.39	\$ 0.69

Energy Only - Transmission			Energy & Capacity - Transmission		
On-peak	Off-Peak	Average	On-peak	Off-Peak	Average
\$ 32.23	\$ 27.14	\$ 29.26	\$ 36.50	\$ 27.14	\$ 31.04
\$ 31.66	\$ 25.74	\$ 28.21	\$ 35.93	\$ 25.74	\$ 29.99
\$ 30.01	\$ 23.33	\$ 26.11	\$ 34.28	\$ 23.33	\$ 27.89
\$ 25.07	\$ 18.57	\$ 21.28	\$ 29.35	\$ 18.57	\$ 23.06
\$ 26.15	\$ 20.70	\$ 22.97	\$ 30.43	\$ 20.70	\$ 24.75
\$ 23.61	\$ 21.18	\$ 22.20	\$ 27.89	\$ 21.18	\$ 23.98
\$ 25.63	\$ 21.53	\$ 23.24	\$ 29.90	\$ 21.53	\$ 25.02
\$ 25.12	\$ 22.01	\$ 23.30	\$ 29.40	\$ 22.01	\$ 25.09
\$ 24.33	\$ 19.25	\$ 21.37	\$ 28.60	\$ 19.25	\$ 23.15
\$ 25.92	\$ 21.11	\$ 23.12	\$ 30.20	\$ 21.11	\$ 24.90
\$ 29.50	\$ 21.00	\$ 24.54	\$ 33.78	\$ 21.00	\$ 26.32
\$ 31.96	\$ 24.64	\$ 27.69	\$ 36.23	\$ 24.64	\$ 29.47
\$ 27.60	\$ 22.18	\$ 24.44	\$ 31.87	\$ 22.18	\$ 26.22

Energy Only - Subtransmission			Energy & Capacity - Subtransmission		
On-peak	Off-Peak	Average	On-peak	Off-Peak	Average
\$ 33.25	\$ 28.00	\$ 30.19	\$ 38.03	\$ 28.00	\$ 32.18
\$ 32.66	\$ 26.55	\$ 29.10	\$ 37.45	\$ 26.55	\$ 31.09
\$ 30.96	\$ 24.06	\$ 26.94	\$ 35.75	\$ 24.06	\$ 28.93
\$ 25.86	\$ 19.16	\$ 21.95	\$ 30.65	\$ 19.16	\$ 23.95
\$ 26.98	\$ 21.35	\$ 23.70	\$ 31.77	\$ 21.35	\$ 25.69
\$ 24.36	\$ 21.85	\$ 22.90	\$ 29.15	\$ 21.85	\$ 24.89
\$ 26.44	\$ 22.21	\$ 23.97	\$ 31.22	\$ 22.21	\$ 25.97
\$ 25.92	\$ 22.70	\$ 24.04	\$ 30.70	\$ 22.70	\$ 26.04
\$ 25.10	\$ 19.86	\$ 22.04	\$ 29.88	\$ 19.86	\$ 24.04
\$ 28.75	\$ 21.78	\$ 23.85	\$ 31.53	\$ 21.78	\$ 25.84
\$ 30.44	\$ 21.66	\$ 25.32	\$ 35.22	\$ 21.66	\$ 27.31
\$ 32.97	\$ 25.42	\$ 28.56	\$ 37.76	\$ 25.42	\$ 30.56
\$ 28.47	\$ 22.88	\$ 25.21	\$ 33.26	\$ 22.88	\$ 27.21

Energy Only - Primary			Energy & Capacity - Primary		
On-peak	Off-Peak	Average	On-peak	Off-Peak	Average
\$ 33.66	\$ 28.35	\$ 30.56	\$ 39.18	\$ 28.35	\$ 32.86
\$ 33.07	\$ 26.88	\$ 29.46	\$ 38.59	\$ 26.88	\$ 31.76
\$ 31.34	\$ 24.36	\$ 27.27	\$ 36.87	\$ 24.36	\$ 29.57
\$ 26.18	\$ 19.40	\$ 22.23	\$ 31.71	\$ 19.40	\$ 24.53
\$ 27.32	\$ 21.62	\$ 23.99	\$ 32.84	\$ 21.62	\$ 26.29
\$ 24.67	\$ 22.12	\$ 23.18	\$ 30.19	\$ 22.12	\$ 25.48
\$ 26.77	\$ 22.49	\$ 24.27	\$ 32.29	\$ 22.49	\$ 26.57
\$ 26.24	\$ 22.99	\$ 24.34	\$ 31.76	\$ 22.99	\$ 26.64
\$ 25.41	\$ 20.11	\$ 22.32	\$ 30.93	\$ 20.11	\$ 24.62
\$ 27.08	\$ 22.05	\$ 24.14	\$ 32.60	\$ 22.05	\$ 26.45
\$ 30.82	\$ 21.93	\$ 25.63	\$ 36.34	\$ 21.93	\$ 27.93
\$ 33.38	\$ 25.73	\$ 28.92	\$ 38.90	\$ 25.73	\$ 31.22
\$ 28.82	\$ 23.17	\$ 25.53	\$ 34.35	\$ 23.17	\$ 27.83

Energy Only - Secondary			Energy & Capacity - Secondary		
On-peak	Off-Peak	Average	On-peak	Off-Peak	Average
\$ 34.36	\$ 28.94	\$ 31.20	\$ 40.00	\$ 28.94	\$ 33.55
\$ 33.76	\$ 27.45	\$ 30.07	\$ 39.39	\$ 27.45	\$ 32.42
\$ 32.00	\$ 24.87	\$ 27.84	\$ 37.63	\$ 24.87	\$ 30.19
\$ 26.73	\$ 19.80	\$ 22.69	\$ 32.37	\$ 19.80	\$ 25.04
\$ 27.88	\$ 22.07	\$ 24.49	\$ 33.52	\$ 22.07	\$ 26.84
\$ 25.18	\$ 22.58	\$ 23.67	\$ 30.82	\$ 22.58	\$ 26.02
\$ 27.32	\$ 22.96	\$ 24.78	\$ 32.96	\$ 22.96	\$ 27.13
\$ 26.79	\$ 23.46	\$ 24.85	\$ 32.42	\$ 23.46	\$ 27.20
\$ 25.94	\$ 20.53	\$ 22.78	\$ 31.58	\$ 20.53	\$ 25.13
\$ 27.64	\$ 22.51	\$ 24.65	\$ 33.28	\$ 22.51	\$ 27.00
\$ 31.46	\$ 22.39	\$ 26.17	\$ 37.10	\$ 22.39	\$ 28.52
\$ 34.08	\$ 26.27	\$ 29.52	\$ 39.71	\$ 26.27	\$ 31.87
\$ 29.42	\$ 23.65	\$ 26.06	\$ 35.06	\$ 23.65	\$ 28.41





NIAGARA MOHAWK POWER CORPORATION  
DEVELOPMENT OF PSC 207 SC8 BUYBACK RATES  
ENERGY and CAPACITY  
Area 1 - POST MRA

Running Costs

	Generation	Transmission	Subtrans.	On-peak	Off-Peak	Average
Jan-98	\$ 4.23	\$ 0.36	\$ 0.64	\$ 25.10	\$ 19.15	\$ 21.63
Feb-98	\$ 4.23	\$ 0.36	\$ 0.64	\$ 23.50	\$ 17.75	\$ 20.15
Mar-98	\$ 4.23	\$ 0.36	\$ 0.64	\$ 22.88	\$ 18.43	\$ 20.29
Apr-98	\$ 4.23	\$ 0.36	\$ 0.64	\$ 21.62	\$ 20.18	\$ 20.78
May-98	\$ 4.23	\$ 0.36	\$ 0.64	\$ 25.19	\$ 20.50	\$ 22.45
Jun-98	\$ 4.23	\$ 0.36	\$ 0.64	\$ 22.72	\$ 18.87	\$ 20.47
Jul-98	\$ 4.23	\$ 0.36	\$ 0.64	\$ 24.10	\$ 19.45	\$ 21.39
Aug-98	\$ 4.23	\$ 0.36	\$ 0.64	\$ 23.34	\$ 19.53	\$ 21.12
Sep-98	\$ 4.23	\$ 0.36	\$ 0.64	\$ 23.14	\$ 19.37	\$ 20.94
Oct-98	\$ 4.23	\$ 0.36	\$ 0.64	\$ 24.64	\$ 21.22	\$ 22.65
Nov-98	\$ 4.23	\$ 0.36	\$ 0.64	\$ 23.82	\$ 18.51	\$ 20.72
Dec-98	\$ 4.23	\$ 0.36	\$ 0.64	\$ 28.26	\$ 19.52	\$ 23.16
Annual	\$ 4.23	\$ 0.36	\$ 0.64	\$ 24.04	\$ 19.39	\$ 21.33

	Generation	Transmission	Subtrans.
Jan-98	\$ 4.28	\$ -	\$ -
Feb-98	\$ 4.28	\$ -	\$ -
Mar-98	\$ 4.28	\$ -	\$ -
Apr-98	\$ 4.28	\$ -	\$ -
May-98	\$ 4.28	\$ -	\$ -
Jun-98	\$ 4.28	\$ -	\$ -
Jul-98	\$ 4.28	\$ -	\$ -
Aug-98	\$ 4.28	\$ -	\$ -
Sep-98	\$ 4.28	\$ -	\$ -
Oct-98	\$ 4.28	\$ -	\$ -
Nov-98	\$ 4.28	\$ -	\$ -
Dec-98	\$ 4.28	\$ -	\$ -
Annual	\$ 4.28	\$ -	\$ -

	Generation	Transmission	Subtrans.
Jan-98	\$ 4.41	\$ 0.38	\$ -
Feb-98	\$ 4.41	\$ 0.38	\$ -
Mar-98	\$ 4.41	\$ 0.38	\$ -
Apr-98	\$ 4.41	\$ 0.38	\$ -
May-98	\$ 4.41	\$ 0.38	\$ -
Jun-98	\$ 4.41	\$ 0.38	\$ -
Jul-98	\$ 4.41	\$ 0.38	\$ -
Aug-98	\$ 4.41	\$ 0.38	\$ -
Sep-98	\$ 4.41	\$ 0.38	\$ -
Oct-98	\$ 4.41	\$ 0.38	\$ -
Nov-98	\$ 4.41	\$ 0.38	\$ -
Dec-98	\$ 4.41	\$ 0.38	\$ -
Annual	\$ 4.41	\$ 0.38	\$ -

	Generation	Transmission	Subtrans.
Jan-98	\$ 4.47	\$ 0.38	\$ 0.68
Feb-98	\$ 4.47	\$ 0.38	\$ 0.68
Mar-98	\$ 4.47	\$ 0.38	\$ 0.68
Apr-98	\$ 4.47	\$ 0.38	\$ 0.68
May-98	\$ 4.47	\$ 0.38	\$ 0.68
Jun-98	\$ 4.47	\$ 0.38	\$ 0.68
Jul-98	\$ 4.47	\$ 0.38	\$ 0.68
Aug-98	\$ 4.47	\$ 0.38	\$ 0.68
Sep-98	\$ 4.47	\$ 0.38	\$ 0.68
Oct-98	\$ 4.47	\$ 0.38	\$ 0.68
Nov-98	\$ 4.47	\$ 0.38	\$ 0.68
Dec-98	\$ 4.47	\$ 0.38	\$ 0.68
Annual	\$ 4.47	\$ 0.38	\$ 0.68

	Generation	Transmission	Subtrans.
Jan-98	\$ 4.56	\$ 0.39	\$ 0.69
Feb-98	\$ 4.56	\$ 0.39	\$ 0.69
Mar-98	\$ 4.56	\$ 0.39	\$ 0.69
Apr-98	\$ 4.56	\$ 0.39	\$ 0.69
May-98	\$ 4.56	\$ 0.39	\$ 0.69
Jun-98	\$ 4.56	\$ 0.39	\$ 0.69
Jul-98	\$ 4.56	\$ 0.39	\$ 0.69
Aug-98	\$ 4.56	\$ 0.39	\$ 0.69
Sep-98	\$ 4.56	\$ 0.39	\$ 0.69
Oct-98	\$ 4.56	\$ 0.39	\$ 0.69
Nov-98	\$ 4.56	\$ 0.39	\$ 0.69
Dec-98	\$ 4.56	\$ 0.39	\$ 0.69
Annual	\$ 4.56	\$ 0.39	\$ 0.69

<u>Energy Only - Transmission</u>			<u>Energy &amp; Capacity - Transmission</u>		
On-peak	Off-Peak	Average	On-peak	Off-Peak	Average
\$ 25.89	\$ 19.75	\$ 22.31	\$ 30.16	\$ 19.75	\$ 24.09
\$ 24.23	\$ 18.30	\$ 20.78	\$ 28.51	\$ 18.30	\$ 22.56
\$ 23.60	\$ 19.01	\$ 20.92	\$ 27.87	\$ 19.01	\$ 22.70
\$ 22.29	\$ 20.81	\$ 21.43	\$ 26.57	\$ 20.81	\$ 23.21
\$ 25.98	\$ 21.14	\$ 23.16	\$ 30.25	\$ 21.14	\$ 24.94
\$ 23.43	\$ 19.46	\$ 21.11	\$ 27.71	\$ 19.46	\$ 22.90
\$ 24.85	\$ 20.06	\$ 22.06	\$ 29.13	\$ 20.06	\$ 23.84
\$ 24.07	\$ 20.14	\$ 21.78	\$ 28.34	\$ 20.14	\$ 23.56
\$ 23.86	\$ 19.97	\$ 21.59	\$ 28.14	\$ 19.97	\$ 23.38
\$ 25.41	\$ 21.88	\$ 23.35	\$ 29.69	\$ 21.88	\$ 25.13
\$ 24.56	\$ 19.09	\$ 21.37	\$ 28.84	\$ 19.09	\$ 23.15
\$ 29.14	\$ 20.13	\$ 23.88	\$ 33.42	\$ 20.13	\$ 25.67
\$ 24.79	\$ 19.99	\$ 21.99	\$ 29.07	\$ 19.99	\$ 23.78

<u>Energy Only - Subtransmission</u>			<u>Energy &amp; Capacity - Subtransmission</u>		
On-peak	Off-Peak	Average	On-peak	Off-Peak	Average
\$ 26.71	\$ 20.37	\$ 23.01	\$ 31.49	\$ 20.37	\$ 25.01
\$ 25.00	\$ 18.88	\$ 21.44	\$ 29.79	\$ 18.88	\$ 23.43
\$ 24.34	\$ 19.61	\$ 21.58	\$ 29.13	\$ 19.61	\$ 23.58
\$ 23.00	\$ 21.47	\$ 22.11	\$ 27.79	\$ 21.47	\$ 24.10
\$ 26.80	\$ 21.81	\$ 23.89	\$ 31.59	\$ 21.81	\$ 25.83
\$ 24.17	\$ 20.08	\$ 21.78	\$ 28.96	\$ 20.08	\$ 23.78
\$ 25.64	\$ 20.69	\$ 22.75	\$ 30.43	\$ 20.69	\$ 24.75
\$ 24.83	\$ 20.78	\$ 22.47	\$ 29.62	\$ 20.78	\$ 24.46
\$ 24.62	\$ 20.61	\$ 22.28	\$ 29.40	\$ 20.61	\$ 24.27
\$ 26.21	\$ 22.58	\$ 24.09	\$ 31.00	\$ 22.58	\$ 26.09
\$ 25.34	\$ 19.69	\$ 22.05	\$ 30.13	\$ 19.69	\$ 24.04
\$ 30.06	\$ 20.77	\$ 24.64	\$ 34.85	\$ 20.77	\$ 26.64
\$ 25.58	\$ 20.63	\$ 22.69	\$ 30.37	\$ 20.63	\$ 24.68

<u>Energy Only - Primary</u>			<u>Energy &amp; Capacity - Primary</u>		
On-peak	Off-Peak	Average	On-peak	Off-Peak	Average
\$ 27.04	\$ 20.63	\$ 23.30	\$ 32.56	\$ 20.63	\$ 25.60
\$ 25.31	\$ 19.12	\$ 21.70	\$ 30.83	\$ 19.12	\$ 24.00
\$ 24.65	\$ 19.85	\$ 21.85	\$ 30.17	\$ 19.85	\$ 24.15
\$ 23.29	\$ 21.74	\$ 22.38	\$ 28.81	\$ 21.74	\$ 24.68
\$ 27.13	\$ 22.08	\$ 24.19	\$ 32.66	\$ 22.08	\$ 26.49
\$ 24.47	\$ 20.33	\$ 22.05	\$ 29.99	\$ 20.33	\$ 24.35
\$ 25.96	\$ 20.95	\$ 23.04	\$ 31.48	\$ 20.95	\$ 25.34
\$ 25.14	\$ 21.04	\$ 22.75	\$ 30.66	\$ 21.04	\$ 25.05
\$ 24.92	\$ 20.86	\$ 22.56	\$ 30.45	\$ 20.86	\$ 24.86
\$ 26.54	\$ 22.86	\$ 24.39	\$ 32.06	\$ 22.86	\$ 26.69
\$ 25.66	\$ 19.94	\$ 22.32	\$ 31.18	\$ 19.94	\$ 24.62
\$ 30.44	\$ 21.03	\$ 24.95	\$ 35.96	\$ 21.03	\$ 27.25
\$ 25.90	\$ 20.88	\$ 22.97	\$ 31.42	\$ 20.88	\$ 25.27

<u>Energy Only - Secondary</u>			<u>Energy &amp; Capacity - Secondary</u>		
On-peak	Off-Peak	Average	On-peak	Off-Peak	Average
\$ 27.60	\$ 21.06	\$ 23.78	\$ 33.24	\$ 21.06	\$ 26.13
\$ 25.84	\$ 19.52	\$ 22.16	\$ 31.48	\$ 19.52	\$ 24.50
\$ 25.16	\$ 20.27	\$ 22.30	\$ 30.80	\$ 20.27	\$ 24.65
\$ 23.77	\$ 22.19	\$ 22.85	\$ 29.41	\$ 22.19	\$ 25.20
\$ 27.70	\$ 22.54	\$ 24.69	\$ 33.34	\$ 22.54	\$ 27.04
\$ 24.98	\$ 20.75	\$ 22.51	\$ 30.62	\$ 20.75	\$ 24.86
\$ 26.50	\$ 21.39	\$ 23.52	\$ 32.14	\$ 21.39	\$ 25.87
\$ 25.66	\$ 21.47	\$ 23.22	\$ 31.30	\$ 21.47	\$ 25.57
\$ 25.44	\$ 21.30	\$ 23.03	\$ 31.08	\$ 21.30	\$ 25.37
\$ 27.09	\$ 23.33	\$ 24.90	\$ 32.73	\$ 23.33	\$ 27.25
\$ 26.19	\$ 20.35	\$ 22.79	\$ 31.83	\$ 20.35	\$ 25.13
\$ 31.07	\$ 21.46	\$ 25.47	\$ 36.71	\$ 21.46	\$ 27.82
\$ 26.44	\$ 21.32	\$ 23.45	\$ 32.07	\$ 21.32	\$ 25.80



NIAGARA MOHAWK POWER CORPORATION  
DEVELOPMENT OF PSC 207 SC6 BUYBACK RATES  
ENERGY and CAPACITY  
Area 2 - POST MRA

Running Costs

	Generation	Transmission	Subtrans.	On-peak	Off-Peak	Average
Jan-98	\$ 4.23	\$ 0.36	\$ 0.64	\$ 25.26	\$ 19.26	\$ 21.76
Feb-98	\$ 4.23	\$ 0.36	\$ 0.64	\$ 23.43	\$ 17.70	\$ 20.09
Mar-98	\$ 4.23	\$ 0.36	\$ 0.64	\$ 22.83	\$ 18.39	\$ 20.24
Apr-98	\$ 4.23	\$ 0.36	\$ 0.64	\$ 21.85	\$ 20.40	\$ 21.00
May-98	\$ 4.23	\$ 0.36	\$ 0.64	\$ 25.66	\$ 20.88	\$ 22.88
Jun-98	\$ 4.23	\$ 0.36	\$ 0.64	\$ 23.03	\$ 19.13	\$ 20.75
Jul-98	\$ 4.23	\$ 0.36	\$ 0.64	\$ 24.74	\$ 19.97	\$ 21.95
Aug-98	\$ 4.23	\$ 0.36	\$ 0.64	\$ 23.86	\$ 19.96	\$ 21.59
Sep-98	\$ 4.23	\$ 0.36	\$ 0.64	\$ 23.67	\$ 19.81	\$ 21.42
Oct-98	\$ 4.23	\$ 0.36	\$ 0.64	\$ 26.37	\$ 22.71	\$ 24.23
Nov-98	\$ 4.23	\$ 0.36	\$ 0.64	\$ 28.95	\$ 22.49	\$ 25.18
Dec-98	\$ 4.23	\$ 0.36	\$ 0.64	\$ 28.67	\$ 19.80	\$ 23.50
Annual	\$ 4.23	\$ 0.36	\$ 0.64	\$ 24.94	\$ 20.11	\$ 22.12

	Generation	Transmission	Subtrans.
Jan-98	\$ 4.28	\$ -	\$ -
Feb-98	\$ 4.28	\$ -	\$ -
Mar-98	\$ 4.28	\$ -	\$ -
Apr-98	\$ 4.28	\$ -	\$ -
May-98	\$ 4.28	\$ -	\$ -
Jun-98	\$ 4.28	\$ -	\$ -
Jul-98	\$ 4.28	\$ -	\$ -
Aug-98	\$ 4.28	\$ -	\$ -
Sep-98	\$ 4.28	\$ -	\$ -
Oct-98	\$ 4.28	\$ -	\$ -
Nov-98	\$ 4.28	\$ -	\$ -
Dec-98	\$ 4.28	\$ -	\$ -
Annual	\$ 4.28	\$ -	\$ -

	Generation	Transmission	Subtrans.
Jan-98	\$ 4.41	\$ 0.38	\$ -
Feb-98	\$ 4.41	\$ 0.38	\$ -
Mar-98	\$ 4.41	\$ 0.38	\$ -
Apr-98	\$ 4.41	\$ 0.38	\$ -
May-98	\$ 4.41	\$ 0.38	\$ -
Jun-98	\$ 4.41	\$ 0.38	\$ -
Jul-98	\$ 4.41	\$ 0.38	\$ -
Aug-98	\$ 4.41	\$ 0.38	\$ -
Sep-98	\$ 4.41	\$ 0.38	\$ -
Oct-98	\$ 4.41	\$ 0.38	\$ -
Nov-98	\$ 4.41	\$ 0.38	\$ -
Dec-98	\$ 4.41	\$ 0.38	\$ -
Annual	\$ 4.41	\$ 0.38	\$ -

	Generation	Transmission	Subtrans.
Jan-98	\$ 4.47	\$ 0.38	\$ 0.68
Feb-98	\$ 4.47	\$ 0.38	\$ 0.68
Mar-98	\$ 4.47	\$ 0.38	\$ 0.68
Apr-98	\$ 4.47	\$ 0.38	\$ 0.68
May-98	\$ 4.47	\$ 0.38	\$ 0.68
Jun-98	\$ 4.47	\$ 0.38	\$ 0.68
Jul-98	\$ 4.47	\$ 0.38	\$ 0.68
Aug-98	\$ 4.47	\$ 0.38	\$ 0.68
Sep-98	\$ 4.47	\$ 0.38	\$ 0.68
Oct-98	\$ 4.47	\$ 0.38	\$ 0.68
Nov-98	\$ 4.47	\$ 0.38	\$ 0.68
Dec-98	\$ 4.47	\$ 0.38	\$ 0.68
Annual	\$ 4.47	\$ 0.38	\$ 0.68

	Generation	Transmission	Subtrans.
Jan-98	\$ 4.56	\$ 0.39	\$ 0.69
Feb-98	\$ 4.56	\$ 0.39	\$ 0.69
Mar-98	\$ 4.56	\$ 0.39	\$ 0.69
Apr-98	\$ 4.56	\$ 0.39	\$ 0.69
May-98	\$ 4.56	\$ 0.39	\$ 0.69
Jun-98	\$ 4.56	\$ 0.39	\$ 0.69
Jul-98	\$ 4.56	\$ 0.39	\$ 0.69
Aug-98	\$ 4.56	\$ 0.39	\$ 0.69
Sep-98	\$ 4.56	\$ 0.39	\$ 0.69
Oct-98	\$ 4.56	\$ 0.39	\$ 0.69
Nov-98	\$ 4.56	\$ 0.39	\$ 0.69
Dec-98	\$ 4.56	\$ 0.39	\$ 0.69
Annual	\$ 4.56	\$ 0.39	\$ 0.69

<u>Energy Only - Transmission</u>			<u>Energy &amp; Capacity - Transmission</u>		
On-peak	Off-Peak	Average	On-peak	Off-Peak	Average
\$ 26.04	\$ 19.87	\$ 22.44	\$ 30.32	\$ 19.87	\$ 24.22
\$ 24.16	\$ 18.25	\$ 20.72	\$ 28.44	\$ 18.25	\$ 22.50
\$ 23.54	\$ 18.96	\$ 20.87	\$ 27.82	\$ 18.96	\$ 22.65
\$ 22.54	\$ 21.03	\$ 21.66	\$ 26.81	\$ 21.03	\$ 23.44
\$ 26.46	\$ 21.54	\$ 23.59	\$ 30.74	\$ 21.54	\$ 25.37
\$ 23.75	\$ 19.72	\$ 21.40	\$ 28.02	\$ 19.72	\$ 23.18
\$ 25.51	\$ 20.59	\$ 22.64	\$ 29.79	\$ 20.59	\$ 24.42
\$ 24.60	\$ 20.59	\$ 22.26	\$ 28.88	\$ 20.59	\$ 24.04
\$ 24.41	\$ 20.43	\$ 22.09	\$ 28.69	\$ 20.43	\$ 23.87
\$ 27.19	\$ 23.42	\$ 24.99	\$ 31.47	\$ 23.42	\$ 26.77
\$ 29.85	\$ 23.20	\$ 25.97	\$ 34.13	\$ 23.20	\$ 27.75
\$ 29.56	\$ 20.42	\$ 24.23	\$ 33.84	\$ 20.42	\$ 26.01
\$ 25.72	\$ 20.74	\$ 22.81	\$ 29.99	\$ 20.74	\$ 24.59

<u>Energy Only - Subtransmission</u>			<u>Energy &amp; Capacity - Subtransmission</u>		
On-peak	Off-Peak	Average	On-peak	Off-Peak	Average
\$ 26.87	\$ 20.49	\$ 23.15	\$ 31.65	\$ 20.49	\$ 25.14
\$ 24.93	\$ 18.83	\$ 21.38	\$ 29.72	\$ 18.83	\$ 23.37
\$ 24.29	\$ 19.56	\$ 21.53	\$ 29.07	\$ 19.56	\$ 23.53
\$ 23.25	\$ 21.70	\$ 22.35	\$ 28.04	\$ 21.70	\$ 24.34
\$ 27.30	\$ 22.22	\$ 24.34	\$ 32.09	\$ 22.22	\$ 26.33
\$ 24.50	\$ 20.35	\$ 22.08	\$ 29.29	\$ 20.35	\$ 24.07
\$ 26.32	\$ 21.24	\$ 23.36	\$ 31.11	\$ 21.24	\$ 25.35
\$ 25.38	\$ 21.24	\$ 22.96	\$ 30.17	\$ 21.24	\$ 24.96
\$ 25.18	\$ 21.08	\$ 22.79	\$ 29.97	\$ 21.08	\$ 24.78
\$ 28.05	\$ 24.16	\$ 25.78	\$ 32.84	\$ 24.16	\$ 27.78
\$ 30.80	\$ 23.93	\$ 26.79	\$ 35.58	\$ 23.93	\$ 28.79
\$ 30.50	\$ 21.07	\$ 25.00	\$ 35.29	\$ 21.07	\$ 26.99
\$ 26.53	\$ 21.39	\$ 23.53	\$ 31.32	\$ 21.39	\$ 25.53

<u>Energy Only - Primary</u>			<u>Energy &amp; Capacity - Primary</u>		
On-peak	Off-Peak	Average	On-peak	Off-Peak	Average
\$ 27.20	\$ 20.75	\$ 23.44	\$ 32.73	\$ 20.75	\$ 25.74
\$ 25.24	\$ 19.06	\$ 21.64	\$ 30.76	\$ 19.06	\$ 23.94
\$ 24.59	\$ 19.81	\$ 21.80	\$ 30.11	\$ 19.81	\$ 24.10
\$ 23.54	\$ 21.97	\$ 22.62	\$ 29.06	\$ 21.97	\$ 24.93
\$ 27.64	\$ 22.50	\$ 24.64	\$ 33.16	\$ 22.50	\$ 26.94
\$ 24.80	\$ 20.60	\$ 22.35	\$ 30.33	\$ 20.60	\$ 24.65
\$ 26.65	\$ 21.51	\$ 23.65	\$ 32.17	\$ 21.51	\$ 25.95
\$ 25.70	\$ 21.50	\$ 23.25	\$ 31.22	\$ 21.50	\$ 25.55
\$ 25.50	\$ 21.34	\$ 23.07	\$ 31.02	\$ 21.34	\$ 25.37
\$ 28.40	\$ 24.46	\$ 26.10	\$ 33.92	\$ 24.46	\$ 28.40
\$ 31.18	\$ 24.23	\$ 27.13	\$ 36.70	\$ 24.23	\$ 29.43
\$ 30.88	\$ 21.33	\$ 25.31	\$ 36.40	\$ 21.33	\$ 27.61
\$ 26.86	\$ 21.66	\$ 23.83	\$ 32.38	\$ 21.66	\$ 26.13

<u>Energy Only - Secondary</u>			<u>Energy &amp; Capacity - Secondary</u>		
On-peak	Off-Peak	Average	On-peak	Off-Peak	Average
\$ 27.77	\$ 21.18	\$ 23.93	\$ 33.41	\$ 21.18	\$ 26.28
\$ 25.76	\$ 19.46	\$ 22.09	\$ 31.40	\$ 19.46	\$ 24.44
\$ 25.10	\$ 20.22	\$ 22.25	\$ 30.74	\$ 20.22	\$ 24.60
\$ 24.03	\$ 22.43	\$ 23.10	\$ 29.67	\$ 22.43	\$ 25.44
\$ 28.22	\$ 22.96	\$ 25.15	\$ 33.86	\$ 22.96	\$ 27.50
\$ 25.32	\$ 21.03	\$ 22.82	\$ 30.96	\$ 21.03	\$ 25.17
\$ 27.20	\$ 21.95	\$ 24.14	\$ 32.84	\$ 21.95	\$ 26.49
\$ 26.23	\$ 21.95	\$ 23.74	\$ 31.87	\$ 21.95	\$ 26.08
\$ 26.03	\$ 21.79	\$ 23.55	\$ 31.67	\$ 21.79	\$ 25.90
\$ 28.99	\$ 24.97	\$ 26.65	\$ 34.63	\$ 24.97	\$ 29.00
\$ 31.83	\$ 24.73	\$ 27.69	\$ 37.47	\$ 24.73	\$ 30.04
\$ 31.52	\$ 21.77	\$ 25.84	\$ 37.16	\$ 21.77	\$ 28.18
\$ 27.42	\$ 22.11	\$ 24.32	\$ 33.06	\$ 22.11	\$ 26.67



NIAGARA MOHAWK POWER CORPORATION  
DEVELOPMENT OF PSC 207 SC6 BUYBACK RATES  
ENERGY and CAPACITY  
Area 4 - POST MRA

Running Costs

	Generation	Transmission	Subtrans.	On-peak	Off-Peak	Average
Jan-98	\$ 4.23	\$ 0.36	\$ 0.64	\$ 31.57	\$ 26.64	\$ 28.69
Feb-98	\$ 4.23	\$ 0.36	\$ 0.64	\$ 30.19	\$ 25.47	\$ 27.44
Mar-98	\$ 4.23	\$ 0.36	\$ 0.64	\$ 28.75	\$ 23.67	\$ 25.79
Apr-98	\$ 4.23	\$ 0.36	\$ 0.64	\$ 24.53	\$ 20.20	\$ 22.00
May-98	\$ 4.23	\$ 0.36	\$ 0.64	\$ 25.06	\$ 20.89	\$ 22.63
Jun-98	\$ 4.23	\$ 0.36	\$ 0.64	\$ 22.96	\$ 20.58	\$ 21.57
Jul-98	\$ 4.23	\$ 0.36	\$ 0.64	\$ 24.86	\$ 21.43	\$ 22.86
Aug-98	\$ 4.23	\$ 0.36	\$ 0.64	\$ 23.61	\$ 21.06	\$ 22.12
Sep-98	\$ 4.23	\$ 0.36	\$ 0.64	\$ 23.24	\$ 19.68	\$ 21.16
Oct-98	\$ 4.23	\$ 0.36	\$ 0.64	\$ 25.75	\$ 22.67	\$ 23.95
Nov-98	\$ 4.23	\$ 0.36	\$ 0.64	\$ 28.69	\$ 22.22	\$ 24.92
Dec-98	\$ 4.23	\$ 0.36	\$ 0.64	\$ 30.70	\$ 23.96	\$ 26.77
Annual	\$ 4.23	\$ 0.36	\$ 0.64	\$ 26.66	\$ 22.37	\$ 24.16

	Generation	Transmission	Subtrans.
Jan-98	\$ 4.28	\$ -	\$ -
Feb-98	\$ 4.28	\$ -	\$ -
Mar-98	\$ 4.28	\$ -	\$ -
Apr-98	\$ 4.28	\$ -	\$ -
May-98	\$ 4.28	\$ -	\$ -
Jun-98	\$ 4.28	\$ -	\$ -
Jul-98	\$ 4.28	\$ -	\$ -
Aug-98	\$ 4.28	\$ -	\$ -
Sep-98	\$ 4.28	\$ -	\$ -
Oct-98	\$ 4.28	\$ -	\$ -
Nov-98	\$ 4.28	\$ -	\$ -
Dec-98	\$ 4.28	\$ -	\$ -
Annual	\$ 4.28	\$ -	\$ -

	Generation	Transmission	Subtrans.
Jan-98	\$ 4.41	\$ 0.38	\$ -
Feb-98	\$ 4.41	\$ 0.38	\$ -
Mar-98	\$ 4.41	\$ 0.38	\$ -
Apr-98	\$ 4.41	\$ 0.38	\$ -
May-98	\$ 4.41	\$ 0.38	\$ -
Jun-98	\$ 4.41	\$ 0.38	\$ -
Jul-98	\$ 4.41	\$ 0.38	\$ -
Aug-98	\$ 4.41	\$ 0.38	\$ -
Sep-98	\$ 4.41	\$ 0.38	\$ -
Oct-98	\$ 4.41	\$ 0.38	\$ -
Nov-98	\$ 4.41	\$ 0.38	\$ -
Dec-98	\$ 4.41	\$ 0.38	\$ -
Annual	\$ 4.41	\$ 0.38	\$ -

	Generation	Transmission	Subtrans.
Jan-98	\$ 4.47	\$ 0.38	\$ 0.68
Feb-98	\$ 4.47	\$ 0.38	\$ 0.68
Mar-98	\$ 4.47	\$ 0.38	\$ 0.68
Apr-98	\$ 4.47	\$ 0.38	\$ 0.68
May-98	\$ 4.47	\$ 0.38	\$ 0.68
Jun-98	\$ 4.47	\$ 0.38	\$ 0.68
Jul-98	\$ 4.47	\$ 0.38	\$ 0.68
Aug-98	\$ 4.47	\$ 0.38	\$ 0.68
Sep-98	\$ 4.47	\$ 0.38	\$ 0.68
Oct-98	\$ 4.47	\$ 0.38	\$ 0.68
Nov-98	\$ 4.47	\$ 0.38	\$ 0.68
Dec-98	\$ 4.47	\$ 0.38	\$ 0.68
Annual	\$ 4.47	\$ 0.38	\$ 0.68

	Generation	Transmission	Subtrans.
Jan-98	\$ 4.56	\$ 0.39	\$ 0.69
Feb-98	\$ 4.56	\$ 0.39	\$ 0.69
Mar-98	\$ 4.56	\$ 0.39	\$ 0.69
Apr-98	\$ 4.56	\$ 0.39	\$ 0.69
May-98	\$ 4.56	\$ 0.39	\$ 0.69
Jun-98	\$ 4.56	\$ 0.39	\$ 0.69
Jul-98	\$ 4.56	\$ 0.39	\$ 0.69
Aug-98	\$ 4.56	\$ 0.39	\$ 0.69
Sep-98	\$ 4.56	\$ 0.39	\$ 0.69
Oct-98	\$ 4.56	\$ 0.39	\$ 0.69
Nov-98	\$ 4.56	\$ 0.39	\$ 0.69
Dec-98	\$ 4.56	\$ 0.39	\$ 0.69
Annual	\$ 4.56	\$ 0.39	\$ 0.69

Energy Only - Transmission			Energy & Capacity - Transmission		
On-peak	Off-Peak	Average	On-peak	Off-Peak	Average
\$ 32.56	\$ 27.47	\$ 29.59	\$ 36.83	\$ 27.47	\$ 31.37
\$ 31.13	\$ 26.27	\$ 28.29	\$ 35.41	\$ 26.27	\$ 30.07
\$ 29.65	\$ 24.41	\$ 26.59	\$ 33.92	\$ 24.41	\$ 28.37
\$ 25.30	\$ 20.83	\$ 22.69	\$ 29.57	\$ 20.83	\$ 24.47
\$ 25.84	\$ 21.54	\$ 23.33	\$ 30.12	\$ 21.54	\$ 25.12
\$ 23.68	\$ 21.22	\$ 22.25	\$ 27.95	\$ 21.22	\$ 24.03
\$ 25.64	\$ 22.10	\$ 23.57	\$ 29.91	\$ 22.10	\$ 25.35
\$ 24.35	\$ 21.72	\$ 22.81	\$ 28.62	\$ 21.72	\$ 24.59
\$ 23.97	\$ 20.29	\$ 21.82	\$ 28.24	\$ 20.29	\$ 23.61
\$ 26.55	\$ 23.38	\$ 24.70	\$ 30.83	\$ 23.38	\$ 26.48
\$ 29.59	\$ 22.91	\$ 25.69	\$ 33.86	\$ 22.91	\$ 27.48
\$ 31.66	\$ 24.71	\$ 27.60	\$ 35.93	\$ 24.71	\$ 29.39
\$ 27.49	\$ 23.07	\$ 24.91	\$ 31.77	\$ 23.07	\$ 26.69

Energy Only - Subtransmission			Energy & Capacity - Subtransmission		
On-peak	Off-Peak	Average	On-peak	Off-Peak	Average
\$ 33.59	\$ 28.34	\$ 30.53	\$ 38.37	\$ 28.34	\$ 32.52
\$ 32.12	\$ 27.10	\$ 29.19	\$ 36.90	\$ 27.10	\$ 31.18
\$ 30.59	\$ 25.18	\$ 27.43	\$ 35.37	\$ 25.18	\$ 29.43
\$ 26.10	\$ 21.49	\$ 23.41	\$ 30.88	\$ 21.49	\$ 25.40
\$ 26.66	\$ 22.22	\$ 24.07	\$ 31.45	\$ 22.22	\$ 26.07
\$ 24.43	\$ 21.89	\$ 22.95	\$ 29.21	\$ 21.89	\$ 24.94
\$ 26.45	\$ 22.80	\$ 24.32	\$ 31.23	\$ 22.80	\$ 26.31
\$ 25.12	\$ 22.40	\$ 23.54	\$ 29.90	\$ 22.40	\$ 25.53
\$ 24.72	\$ 20.94	\$ 22.51	\$ 29.51	\$ 20.94	\$ 24.51
\$ 27.39	\$ 24.12	\$ 25.48	\$ 32.18	\$ 24.12	\$ 27.48
\$ 30.52	\$ 23.64	\$ 26.51	\$ 35.31	\$ 23.64	\$ 28.50
\$ 32.66	\$ 25.49	\$ 28.48	\$ 37.45	\$ 25.49	\$ 30.47
\$ 28.36	\$ 23.80	\$ 25.70	\$ 33.15	\$ 23.80	\$ 27.69

Energy Only - Primary			Energy & Capacity - Primary		
On-peak	Off-Peak	Average	On-peak	Off-Peak	Average
\$ 34.00	\$ 28.69	\$ 30.91	\$ 39.53	\$ 28.69	\$ 33.21
\$ 32.52	\$ 27.43	\$ 29.55	\$ 38.04	\$ 27.43	\$ 31.85
\$ 30.97	\$ 25.50	\$ 27.78	\$ 36.49	\$ 25.50	\$ 30.08
\$ 26.42	\$ 21.76	\$ 23.70	\$ 31.94	\$ 21.76	\$ 26.00
\$ 26.99	\$ 22.50	\$ 24.37	\$ 32.52	\$ 22.50	\$ 26.67
\$ 24.73	\$ 22.17	\$ 23.24	\$ 30.25	\$ 22.17	\$ 25.54
\$ 26.78	\$ 23.08	\$ 24.62	\$ 32.30	\$ 23.08	\$ 26.92
\$ 25.43	\$ 22.68	\$ 23.83	\$ 30.95	\$ 22.68	\$ 26.13
\$ 25.03	\$ 21.20	\$ 22.80	\$ 30.55	\$ 21.20	\$ 25.10
\$ 27.74	\$ 24.42	\$ 25.80	\$ 33.26	\$ 24.42	\$ 28.10
\$ 30.90	\$ 23.93	\$ 26.84	\$ 36.43	\$ 23.93	\$ 29.14
\$ 33.07	\$ 25.81	\$ 28.83	\$ 38.59	\$ 25.81	\$ 31.13
\$ 28.72	\$ 24.10	\$ 26.02	\$ 34.24	\$ 24.10	\$ 28.32

Energy Only - Secondary			Energy & Capacity - Secondary		
On-peak	Off-Peak	Average	On-peak	Off-Peak	Average
\$ 34.71	\$ 29.29	\$ 31.55	\$ 40.35	\$ 29.29	\$ 33.90
\$ 33.20	\$ 28.01	\$ 30.17	\$ 38.83	\$ 28.01	\$ 32.52
\$ 31.61	\$ 26.03	\$ 28.35	\$ 37.25	\$ 26.03	\$ 30.70
\$ 26.97	\$ 22.21	\$ 24.19	\$ 32.61	\$ 22.21	\$ 26.54
\$ 27.55	\$ 22.97	\$ 24.88	\$ 33.19	\$ 22.97	\$ 27.23
\$ 25.25	\$ 22.63	\$ 23.72	\$ 30.88	\$ 22.63	\$ 26.07
\$ 27.34	\$ 23.56	\$ 25.14	\$ 32.97	\$ 23.56	\$ 27.48
\$ 25.96	\$ 23.16	\$ 24.33	\$ 31.60	\$ 23.16	\$ 26.67
\$ 25.55	\$ 21.64	\$ 23.27	\$ 31.19	\$ 21.64	\$ 25.62
\$ 28.31	\$ 24.93	\$ 26.34	\$ 33.95	\$ 24.93	\$ 28.69
\$ 31.55	\$ 24.43	\$ 27.40	\$ 37.18	\$ 24.43	\$ 29.75
\$ 33.76	\$ 26.35	\$ 29.43	\$ 39.39	\$ 26.35	\$ 31.78
\$ 29.31	\$ 24.60	\$ 26.56	\$ 34.95	\$ 24.60	\$ 28.91



ORIGINAL APPENDIX D  
SCHEDULE 7, SHEET 35  
FROM 7/23/97 PROPOSAL

Unbundled Price Data					
			1998	1999	2000
<b>Forecast Market Price of Electricity</b>					
<b>Western Region</b>					
SC1		All hours	\$0.02556	\$0.02620	\$0.02686
SC2ND		with	\$0.02501	\$0.02564	\$0.02628
SC2D		losses	\$0.02527	\$0.02591	\$0.02655
SC3 Secondary		applied	\$0.02449	\$0.02510	\$0.02573
SC3 Primary			\$0.02361	\$0.02420	\$0.02480
SC3 Subtransmission			\$0.02324	\$0.02382	\$0.02441
SC3 Transmission			\$0.02218	\$0.02273	\$0.02330
SC3A Secondary -On		On/Off	\$0.02725	\$0.02793	\$0.02863
SC3A Secondary -Off		peak	\$0.02318	\$0.02376	\$0.02435
SC3A Primary -On		with	\$0.02543	\$0.02606	\$0.02671
SC3A Primary -Off		losses	\$0.02145	\$0.02199	\$0.02254
SC3A Subtransmission -On		applied	\$0.02525	\$0.02588	\$0.02653
SC3A Subtransmission -Off			\$0.02134	\$0.02188	\$0.02242
SC3A Transmission -On			\$0.02419	\$0.02479	\$0.02541
SC3A Transmission -Off			\$0.02040	\$0.02091	\$0.02143
<b>Central Region</b>					
SC1		All hours	\$0.02606	\$0.02671	\$0.02738
SC2ND		with	\$0.02550	\$0.02614	\$0.02679
SC2D		losses	\$0.02578	\$0.02642	\$0.02708
SC3 Secondary		applied	\$0.02498	\$0.02560	\$0.02624
SC3 Primary			\$0.02407	\$0.02467	\$0.02529
SC3 Subtransmission			\$0.02370	\$0.02430	\$0.02490
SC3 Transmission			\$0.02261	\$0.02317	\$0.02375
SC3A Secondary -On		On/Off	\$0.02796	\$0.02866	\$0.02937
SC3A Secondary -Off		peak	\$0.02344	\$0.02403	\$0.02463
SC3A Primary -On		with	\$0.02617	\$0.02682	\$0.02749
SC3A Primary -Off		losses	\$0.02172	\$0.02226	\$0.02282
SC3A Subtransmission -On		applied	\$0.02598	\$0.02663	\$0.02729
SC3A Subtransmission -Off			\$0.02160	\$0.02214	\$0.02269
SC3A Transmission -On			\$0.02488	\$0.02550	\$0.02614
SC3A Transmission -Off			\$0.02065	\$0.02117	\$0.02170
<b>Eastern Region</b>					
SC1		All hours	\$0.03058	\$0.03134	\$0.03213
SC2ND		with	\$0.03000	\$0.03075	\$0.03152
SC2D		losses	\$0.03021	\$0.03097	\$0.03174
SC3 Secondary		applied	\$0.02924	\$0.02997	\$0.03072
SC3 Primary			\$0.02818	\$0.02888	\$0.02961
SC3 Subtransmission			\$0.02770	\$0.02840	\$0.02911
SC3 Transmission			\$0.02657	\$0.02724	\$0.02792
SC3A Secondary -On		On/Off	\$0.03293	\$0.03375	\$0.03459
SC3A Secondary -Off		peak	\$0.02719	\$0.02787	\$0.02857
SC3A Primary -On		with	\$0.03115	\$0.03192	\$0.03272
SC3A Primary -Off		losses	\$0.02529	\$0.02592	\$0.02657
SC3A Subtransmission -On		applied	\$0.03072	\$0.03149	\$0.03228
SC3A Subtransmission -Off			\$0.02498	\$0.02560	\$0.02624
SC3A Transmission -On			\$0.02950	\$0.03024	\$0.03099
SC3A Transmission -Off			\$0.02392	\$0.02452	\$0.02513





REVISED APPENDIX D  
SCHEDULE 7, SHEET 35  
FROM 7/23/97 PROPOSAL  
WITH REVISED BACKOUT RATES

Unbundled Price Data						
			1998	1999	2000	
<b>Forecast Market Price of Electricity</b>						
<b>Western Region</b>						
SC1		All hours	\$0.02556	\$0.02827	\$0.03076	
SC2ND		with	\$0.02501	\$0.02766	\$0.03009	
SC2D		losses	\$0.02527	\$0.02795	\$0.03041	
SC3 Secondary		applied	\$0.02449	\$0.02708	\$0.02947	
SC3 Primary			\$0.02361	\$0.02611	\$0.02840	
SC3 Subtransmission			\$0.02324	\$0.02570	\$0.02796	
SC3 Transmission			\$0.02218	\$0.02453	\$0.02668	
SC3A Secondary -On		On/Off	\$0.02725	\$0.03014	\$0.03279	
SC3A Secondary -Off		peak	\$0.02318	\$0.02564	\$0.02789	
SC3A Primary -On		with	\$0.02543	\$0.02812	\$0.03059	
SC3A Primary -Off		losses	\$0.02145	\$0.02373	\$0.02581	
SC3A Subtransmission -On		applied	\$0.02525	\$0.02793	\$0.03038	
SC3A Subtransmission -Off			\$0.02134	\$0.02360	\$0.02568	
SC3A Transmission -On			\$0.02419	\$0.02675	\$0.02910	
SC3A Transmission -Off			\$0.02040	\$0.02256	\$0.02455	
<b>Central Region</b>						
SC1		All hours	\$0.02606	\$0.02882	\$0.03136	
SC2ND		with	\$0.02550	\$0.02820	\$0.03069	
SC2D		losses	\$0.02578	\$0.02851	\$0.03102	
SC3 Secondary		applied	\$0.02498	\$0.02762	\$0.03005	
SC3 Primary			\$0.02407	\$0.02662	\$0.02897	
SC3 Subtransmission			\$0.02370	\$0.02621	\$0.02852	
SC3 Transmission			\$0.02261	\$0.02500	\$0.02720	
SC3A Secondary -On		On/Off	\$0.02796	\$0.03092	\$0.03364	
SC3A Secondary -Off		peak	\$0.02344	\$0.02593	\$0.02821	
SC3A Primary -On		with	\$0.02617	\$0.02894	\$0.03149	
SC3A Primary -Off		losses	\$0.02172	\$0.02402	\$0.02613	
SC3A Subtransmission -On		applied	\$0.02598	\$0.02873	\$0.03126	
SC3A Subtransmission -Off			\$0.02160	\$0.02389	\$0.02599	
SC3A Transmission -On			\$0.02488	\$0.02752	\$0.02994	
SC3A Transmission -Off			\$0.02065	\$0.02284	\$0.02485	
<b>Eastern Region</b>						
SC1		All hours	\$0.03058	\$0.03382	\$0.03679	
SC2ND		with	\$0.03000	\$0.03318	\$0.03610	
SC2D		losses	\$0.03021	\$0.03341	\$0.03635	
SC3 Secondary		applied	\$0.02924	\$0.03233	\$0.03518	
SC3 Primary			\$0.02818	\$0.03117	\$0.03391	
SC3 Subtransmission			\$0.02770	\$0.03064	\$0.03333	
SC3 Transmission			\$0.02657	\$0.02939	\$0.03197	
SC3A Secondary -On		On/Off	\$0.03293	\$0.03641	\$0.03962	
SC3A Secondary -Off		peak	\$0.02719	\$0.03007	\$0.03272	
SC3A Primary -On		with	\$0.03115	\$0.03445	\$0.03748	
SC3A Primary -Off		losses	\$0.02529	\$0.02797	\$0.03043	
SC3A Subtransmission -On		applied	\$0.03072	\$0.03398	\$0.03696	
SC3A Subtransmission -Off			\$0.02498	\$0.02763	\$0.03006	
SC3A Transmission -On			\$0.02950	\$0.03263	\$0.03550	
SC3A Transmission -Off			\$0.02392	\$0.02645	\$0.02878	



NIAGARA MOHAWK POWER CORPORATION

PowerChoice Revenue Components

Private Area Lighting  
S.C. No.1-Full Service

Present Structure <sup>1</sup>		PowerChoice Structure		
<u>Component</u>	<u>Revenue</u>	<u>Component</u>	<u>Revenue</u>	
Facility	\$2,680,288	Facility Services	\$1,605,598	
Energy	\$2,017,413	Energy Services	\$3,092,103	\$0.105787
Total	\$4,697,701	Total	\$4,697,701	

1998 Sales Forecast: 29,229,395 kWh

<sup>1</sup>1996 Freeze Rates



NIAGARA MOHAWK POWER CORPORATION

P.S.C. No. 213, S.C. No.1  
Private Area Lighting  
Comparison of Monthly Facility Prices  
Freeze and PowerChoice

LAMPS & LUMINAIRES

<u>Description</u>		<u>Freeze</u> <u>Charge</u>	<u>Proposed</u> <u>Charge</u>	<u>Adjustment</u>	
				<u>Amount</u>	<u>Percent</u>
<u>Standard</u>					
Mercury Vapor	175w	\$8.75	\$4.34	(\$4.42)	-50.5%
	400w	\$10.76	\$4.87	(\$5.89)	-54.8%
	1000w	\$14.72	\$9.64	(\$5.08)	-34.5%
High Pressure Sodium	70w	\$6.44	\$4.24	(\$2.20)	-34.2%
	100w	\$6.43	\$4.23	(\$2.20)	-34.2%
	150w	\$9.78	\$4.30	(\$5.48)	-56.1%
	250w	\$6.95	\$4.82	(\$2.13)	-30.6%
	400w	\$11.25	\$5.06	(\$6.19)	-55.0%
	1000w	\$19.78	\$9.87	(\$9.91)	-50.1%
<u>Flood</u>					
Mercury Vapor	400w	\$11.25	\$5.54	(\$5.71)	-50.8%
	1000w	\$14.89	\$6.74	(\$8.15)	-54.7%
High Pressure Sodium	250w	\$5.86	\$5.41	(\$0.45)	-7.7%
	400w	\$13.03	\$5.65	(\$7.38)	-56.7%
	1000w	\$16.16	\$7.03	(\$9.13)	-56.5%
Metal Halide	400w	\$7.07	\$6.35	(\$0.72)	-10.2%
<u>Shoebox</u>					
High Pressure Sodium	100w	\$9.08	\$7.18	(\$1.91)	-21.0%
	150w	\$8.94	\$6.52	(\$2.42)	-27.1%
	250w	\$8.95	\$7.12	(\$1.84)	-20.5%
	400w	\$9.03	\$7.06	(\$1.97)	-21.8%
Metal Halide	400w	\$9.22	\$7.21	(\$2.01)	-21.8%
<u>Post Top</u>					
<u>Colonial</u>					
High Pressure Sodium	70w	\$6.24	\$4.61	(\$1.63)	-26.2%
	100w	\$6.23	\$4.62	(\$1.61)	-25.8%
	150w	\$6.19	\$4.72	(\$1.47)	-23.7%
<u>Traditional</u>					
High Pressure Sodium	70w	\$10.64	\$8.51	(\$2.13)	-20.0%
	100w	\$10.78	\$8.92	(\$1.86)	-17.2%
	150w	\$10.64	\$8.73	(\$1.92)	-18.0%
<u>Acorn</u>					
High Pressure Sodium	70w	\$10.39	\$8.31	(\$2.08)	-20.0%
	100w	\$10.38	\$8.31	(\$2.07)	-19.9%
	150w	\$10.19	\$8.31	(\$1.88)	-18.4%
Energy Price per Kwh		\$0.06902	\$0.10579	\$0.03677	53.3%



NIAGARA MOHAWK POWER CORPORATION

P.S.C. No. 213, S.C. No.1  
Private Area Lighting  
Comparison of Monthly Facility Prices  
Freeze and PowerChoice

POLES, FOUNDATIONS, CIRCUITS

<u>Description</u>	<u>Freeze</u>	<u>Proposed</u>	<u>Adjustment</u>	
	<u>Charge</u>	<u>Charge</u>	<u>Amount</u>	<u>Percent</u>
<b>POLES</b>				
<u>Overhead Service</u>				
Wood	\$5.50	\$5.45	(\$0.05)	-0.8%
<u>Underground Service-Standard</u>				
<u>Fiberglass</u>				
16' or less	\$6.50	\$5.09	(\$1.41)	-21.7%
16' or less, embedded	\$9.10	\$6.99	(\$2.11)	-23.2%
over 16'-25'-pendant	\$12.20	\$11.39	(\$0.81)	-6.7%
<u>Aluminum</u>				
16' or less, square	\$24.25	\$22.52	(\$1.73)	-7.1%
over 16'-25'-davit	\$15.10	\$16.41	\$1.31	8.7%
over 16'-30', square	\$40.32	\$36.87	(\$3.45)	-8.6%
<b>FOUNDATIONS</b>				
<u>Poured Concrete</u>				
for poles:				
16' or less	\$20.95	\$14.20	(\$6.75)	-32.2%
over 16'	\$24.25	\$16.55	(\$7.70)	-31.7%
<u>Screw-Type</u>				
all applications	\$11.25	\$8.13	(\$3.12)	-27.7%
<u>Parking Lot</u>				
all applications	\$14.75	\$11.19	(\$3.57)	-24.2%
<b>CIRCUITS</b>				
<u>Overhead Service</u>				
(based on 150 ft.)				
cable only	\$2.05	\$2.52	\$0.47	22.7%
<u>Underground Service</u>				
(based on per ft.)				
cable and conduit	\$0.18	\$0.13	(\$0.06)	-30.6%
cable only	\$0.04	\$0.03	(\$0.01)	-27.0%
direct buried cable	\$0.15	\$0.10	(\$0.05)	-33.3%





NIAGARA MOHAWK POWER CORPORATION

PowerChoice Revenue Components

Street and Highway Lighting  
S.C. No. 2-Full Service  
Contract-Customer Contributory

Present Structure <sup>1</sup>		PowerChoice Structure		
<u>Component</u>	<u>Revenue</u>	<u>Component</u>	<u>Revenue</u>	<u>\$/kWh</u>
Facility		Facility Services		
SC2	\$33,615,147	SC2	\$27,578,724	
Contract	<u>\$43,790</u>	Contract	<u>\$33,326</u>	
Total	\$33,658,937	Total	\$27,612,050	
<hr/>				
Energy		Energy Services		
SC2	\$12,030,023	SC2	\$18,066,446	
Contract	<u>\$1,538</u>	Contract	<u>\$12,002</u>	
Total	\$12,031,561	Total	\$18,078,448	\$0.103784
<hr/>				
Total		Total		
SC2	\$45,645,170	SC2	\$45,645,170	
Contract	<u>\$45,328</u>	Contract	<u>\$45,328</u>	
Total	\$45,690,498	Total	\$45,690,498	

1998 Sales Forecast:

SC2	174,171,474 kWh
Contract	<u>22,262</u> kWh
	174,193,736 kWh

<sup>1</sup>1996 Freeze Rates.



NIAGARA MOHAWK POWER CORPORATION

P.S.C. No. 213 Electricity, S.C. No. 2  
Street and Highway Lighting-Full Service  
Comparison of Annual Facility Prices  
Freeze Prices and PowerChoice  
STANDARD EQUIPMENT

LAMPS, LUMINAIRES

<u>Facility Size &amp; Type</u>		<u>Freeze Charge</u>	<u>Proposed Charge</u>	<u>Adjustment</u>		
				<u>Amount</u>	<u>Percent</u>	
<b>LAMPS</b>						
Mercury Vapor	100w	\$30.62	\$5.29	(\$25.33)	-82.7%	
	175w	\$26.40	\$5.17	(\$21.23)	-80.4%	
High Pressure Sodium	400w	\$30.93	\$5.96	(\$24.97)	-80.7%	
	1000w	\$38.83	\$8.89	(\$29.94)	-77.1%	
	70w	\$33.43	\$6.30	(\$27.13)	-81.2%	
	100w	\$39.96	\$6.33	(\$27.13)	-81.2%	
	150w	\$43.35	\$6.55	(\$33.63)	-84.2%	
	250w	\$44.84	\$6.61	(\$36.80)	-84.9%	
	400w	\$45.49	\$6.62	(\$38.23)	-85.3%	
	1000w	\$85.11	\$12.90	(\$38.87)	-85.4%	
<b>LUMINAIRES</b>						
Standard	70w	\$57.16	\$44.68	(\$12.48)	-21.8%	
	100w	\$55.17	\$44.58	(\$10.59)	-19.2%	
	150w/175w	\$58.81	\$45.62	(\$13.19)	-22.4%	
	400w	\$78.05	\$52.70	(\$25.35)	-32.5%	
	1000w	\$126.54	\$107.27	(\$19.27)	-15.2%	
Architectural	100w	\$85.11	\$72.32	(\$12.79)	-15.0%	
	150w/175w	\$85.11	\$58.74	(\$26.37)	-31.0%	
	250w	\$141.85	\$78.91	(\$62.94)	-44.4%	
	400w	\$136.32	\$78.47	(\$57.85)	-42.4%	
Underpass	70w/100w	\$80.85	\$80.35	(\$0.50)	-0.6%	
	150w/175w	\$66.16	\$81.16	\$15.00	22.7%	
Parkway	150w/175w	\$95.55	\$94.21	(\$1.34)	-1.4%	
	1000w	\$192.65	\$189.96	(\$2.69)	-1.4%	
Decorative	armory square	100w	\$123.17	\$122.93	(\$0.24)	-0.2%
	edgewater	100w	\$126.34	\$120.95	(\$5.39)	-4.3%
	central park	100w	\$133.07	\$116.16	(\$16.91)	-12.7%
	mariner	100w	\$237.00	\$296.00	\$59.00	24.9%
	edgewater	150w/175w	\$126.43	\$126.34	(\$0.09)	-0.1%
	central park	150w/175w	\$113.26	\$107.62	(\$5.64)	-5.0%
Flood	250w	\$60.37	\$52.89	(\$7.48)	-12.4%	
	400w	\$61.54	\$55.73	(\$5.81)	-9.4%	
Energy Rate per KWH		\$0.06907	\$0.10378	\$0.03471	50.3%	



NIAGARA MOHAWK POWER CORPORATION

P.S.C. No. 213 Electricity, S.C. No. 2  
Street and Highway Lighting-Full Service  
Comparison of Annual Facility Prices  
Freeze Prices and PowerChoice  
STANDARD EQUIPMENT

POLES, FOUNDATIONS

POLES	Facility Size & Type	Freeze	Proposed	Adjustment	
		Charge	Charge	Amount	Percent
	<u>Overhead Service</u>				
	Wood	\$57.75	\$95.65	\$37.90	65.6%
	Steel	\$79.10	\$163.62	\$84.52	106.9%
	Aluminum	\$100.00	\$167.25	\$67.25	67.3%
	<u>Underground Service-Standard</u>				
	<u>Steel</u>				
	16' & under	\$40.05	\$102.79	\$62.74	156.7%
	16' & under, embedded	\$79.95	\$120.67	\$40.72	50.9%
	over 16'	\$102.90	\$237.73	\$134.83	131.0%
	over 16', heavy duty	\$127.35	\$326.37	\$199.02	156.3%
	<u>Aluminum</u>				
	16' & under	\$39.70	\$121.92	\$82.22	207.1%
	over 16'	\$102.90	\$231.48	\$128.58	125.0%
	over 16', heavy duty	\$204.35	\$273.95	\$69.60	34.1%
	over 16', square	\$316.05	\$470.02	\$153.97	48.7%
	<u>Fiberglass</u>				
	16' & under	\$32.95	\$61.10	\$28.15	85.4%
	16' & under, embedded	\$64.25	\$83.87	\$19.62	30.5%
	over 16'	\$96.20	\$156.02	\$59.82	62.2%
	<u>Underground Service-Decorative</u>				
	<u>Aluminum</u>				
	16' & under:				
	armory square	\$271.90	\$310.61	\$38.71	14.2%
	<u>Cast Iron</u>				
	16' & under:				
	armory square	\$271.90	\$345.66	\$73.76	27.1%
	<u>Fiberglass</u>				
	16' & under:				
	presidential	\$126.08	\$162.08	\$36.00	28.6%
	presidential, embedded	\$185.42	\$214.07	\$28.65	15.5%
FOUNDATIONS					
	<u>Concrete</u>				
	for poles: 16' & under	\$100.15	\$170.40	\$70.25	70.1%
	over 16'	\$140.75	\$198.62	\$57.87	41.1%
	over 16', heavy duty	\$182.85	\$217.68	\$34.83	19.0%
	<u>Screw-type</u>				
	all applications	\$62.50	\$97.60	\$35.10	56.2%



NIAGARA MOHAWK POWER CORPORATION

P.S.C. No. 213 Electricity, S.C. No. 2  
Street and Highway Lighting-Full Service  
Comparison of Annual Facility Prices  
Freeze Prices and PowerChoice  
STANDARD EQUIPMENT

CIRCUITS, OTHER CHARGES

<u>Facility Size &amp; Type</u>	<u>Freeze Charge</u>	<u>Proposed Charge</u>	<u>Adjustment</u>	
			<u>Amount</u>	<u>Percent</u>
<b>CIRCUITS</b>				
<u>Standard Underground</u>				
cable and conduit	\$102.80	\$75.14	(\$27.66)	-26.9%
cable only	\$19.75	\$17.66	(\$2.09)	-10.6%
direct buried cable	\$56.35	\$60.29	\$3.94	7.0%
<u>Residential Underground</u>				
direct buried cable	\$11.25	\$12.06	\$0.81	7.2%
<u>Excess Footage-per foot</u>				
cable and conduit	\$2.05	\$1.50	(\$0.55)	-26.8%
cable only	\$0.34	\$0.35	\$0.01	2.9%
direct buried cable	\$1.10	\$1.20	\$0.10	9.1%
<b>OTHER CHARGES</b>				
<u>24 Hour Service-Additional Charge</u>				
Mercury Vapor				
100w	\$9.75	\$5.29	(\$4.46)	-45.7%
175w	\$9.55	\$5.17	(\$4.38)	-45.9%
High Pressure Sodium				
70w	\$10.90	\$6.30	(\$4.60)	-42.2%
100w	\$10.65	\$6.33	(\$4.32)	-40.6%
150w	\$9.55	\$6.55	(\$3.00)	-31.4%
<u>Convenience Outlets</u>				
on new metal pole	\$16.90	\$42.12	\$25.22	149.2%
on existing metal pole	\$34.30	\$58.00	\$23.70	69.1%
on wood pole	\$48.01	\$52.85	\$4.84	10.1%
Energy Rate per KWH	\$0.06907	\$0.10378	\$0.03471	50.3%





NIAGARA MOHAWK POWER CORPORATION

P.S.C. No. 213 Electricity, S.C. No. 2  
Street and Highway Lighting-Full Service  
Comparison of Annual Facility Prices  
Freeze Prices and PowerChoice  
DISCONTINUED EQUIPMENT

LAMP & LUMINAIRE, CONVENIENCE OUTLET

<u>Facility Size &amp; Type</u>	<u>Freeze Charge</u>	<u>Proposed Charge</u>	<u>Adjustment</u>	
			<u>Amount</u>	<u>Percent</u>
<b>LAMP &amp; LUMINAIRE</b>				
<u>Mercury Vapor</u>				
100 watt-open	\$74.94	\$74.94	\$0.00	0.0%
700 watt-enclosed	\$176.12	\$176.12	\$0.00	0.0%
<u>Incandescent</u>				
2500 lumen-open	\$64.14	\$64.14	\$0.00	0.0%
2500 lumen-enclosed	\$83.07	\$83.07	\$0.00	0.0%
4000 lumen-open	\$79.65	\$79.65	\$0.00	0.0%
4000 lumen-enclosed	\$85.71	\$85.71	\$0.00	0.0%
6000 lumen-enclosed	\$92.32	\$92.32	\$0.00	0.0%
10000 lumen-enclosed	\$140.07	\$140.07	\$0.00	0.0%
<u>Fluorescent</u>				
underpass-1 lamp	\$144.91	\$144.91	\$0.00	0.0%
underpass-1 lamp, 24 hr	\$181.95	\$181.95	\$0.00	0.0%
underpass-2 lamp	\$190.81	\$190.81	\$0.00	0.0%
<b>CONVENIENCE OUTLET</b>				
old	\$4.75	\$4.75	\$0.00	0.0%
Energy Rate per KWH	\$0.06907	\$0.10378	\$0.03471	50.3%



NIAGARA MOHAWK POWER CORPORATION

Contract Lighting-Customer Contributory  
Comparison of Annual Facility Prices  
Freeze Prices and PowerChoice

LAMPS	Facility Size & Type	Freeze	Proposed	Adjustment	
		Charge	Charge	Amount	Percent
	<u>Mercury Vapor</u>				
	100W	\$30.62	\$5.29	(\$25.33)	-82.7%
	175W	\$26.40	\$5.17	(\$21.23)	-80.4%
	400W	\$30.93	\$5.96	(\$24.97)	-80.7%
	1000W	\$38.83	\$8.89	(\$29.94)	-77.1%
	<u>High Pressure Sodium</u>				
	70W	\$33.43	\$6.30	(\$27.13)	-81.2%
	100W	\$39.96	\$6.33	(\$33.63)	-84.2%
	150W	\$43.35	\$6.55	(\$36.80)	-84.9%
	250W	\$44.84	\$6.61	(\$38.23)	-85.3%
	400W	\$45.49	\$6.62	(\$38.87)	-85.4%
	1000W	\$85.11	\$12.90	(\$72.21)	-84.8%
LUMINAIRES					
	<u>Standard</u>				
	70W	\$15.03	\$15.03	\$0.00	0.0%
	100W	\$15.21	\$15.21	\$0.00	0.0%
	150W/175W	\$15.36	\$15.36	\$0.00	0.0%
	250/400W	\$17.46	\$17.46	\$0.00	0.0%
	1000W	\$46.13	\$46.13	\$0.00	0.0%
	<u>Underpass</u>				
	70W/100W	\$23.55	\$23.55	\$0.00	0.0%
	150W/175W	\$20.76	\$20.76	\$0.00	0.0%
	<u>Architectural</u>				
	100W	\$19.89	\$19.89	\$0.00	0.0%
	150W/175W	\$18.49	\$18.49	\$0.00	0.0%
	400W	\$22.62	\$22.62	\$0.00	0.0%
	<u>Decorative</u>				
	armory square 100W	\$38.43	\$38.43	\$0.00	0.0%
	edgewater 100W	\$34.33	\$34.33	\$0.00	0.0%
	edgewater 150W	\$34.21	\$34.21	\$0.00	0.0%
	central park 100W	\$32.65	\$32.65	\$0.00	0.0%
	central park 175W	\$29.61	\$29.61	\$0.00	0.0%
	mariner 100W	\$73.99	\$73.99	\$0.00	0.0%
	<u>Flood</u>				
	250W	\$18.10	\$18.10	\$0.00	0.0%
	400W	\$18.45	\$18.45	\$0.00	0.0%
Energy Rate per KWH		\$0.06907	\$0.10378	\$0.03471	50.3%



NIAGARA MOHAWK POWER CORPORATION

Contract Lighting-Customer Contributory  
Comparison of Annual Facility Prices  
Freeze Prices and PowerChoice

<u>Facility Size &amp; Type</u>	<u>Freeze Charge</u>	<u>Proposed Charge</u>	<u>Adjustment Amount</u>	<u>Adjustment Percent</u>
<b>POLES</b>				
<u>Underground Service-Standard</u>				
<u>Steel</u>				
16' and under	\$26.02	\$26.02	\$0.00	0.0%
16' and under, embedded	\$34.97	\$34.97	\$0.00	0.0%
over 16'	\$53.50	\$53.50	\$0.00	0.0%
<u>Aluminum</u>				
over 16'	\$54.82	\$54.82	\$0.00	0.0%
over 16', heavy duty	\$55.68	\$55.68	\$0.00	0.0%
over 16', square	\$124.72	\$124.72	\$0.00	0.0%
<u>Fiberglass</u>				
16' and under	\$16.53	\$16.53	\$0.00	0.0%
16' and under, embedded	\$25.59	\$25.59	\$0.00	0.0%
over 16'	\$41.54	\$41.54	\$0.00	0.0%
<u>Underground Service-Decorative</u>				
<u>Aluminum</u>				
16' and under				
armory square	\$103.59	\$103.59	\$0.00	0.0%
<u>Cast Iron</u>				
16' and under				
armory square	\$103.59	\$103.59	\$0.00	0.0%
<u>Fiberglass</u>				
16' and under				
presidential	\$39.22	\$39.22	\$0.00	0.0%
presidential, embedded	\$45.68	\$45.68	\$0.00	0.0%
<b>FOUNDATIONS</b>				
<u>Concrete</u>				
for poles: 16' and under	\$58.41	\$58.41	\$0.00	0.0%
over 16'	\$66.91	\$66.91	\$0.00	0.0%
over 16' heavy duty	\$73.44	\$73.44	\$0.00	0.0%
<u>Screw-type</u>				
all applications	\$32.51	\$32.51	\$0.00	0.0%



NIAGARA MOHAWK POWER CORPORATION

Contract Lighting-Customer Contributory  
Comparison of Annual Facility Prices  
Freeze Prices and PowerChoice

Facility Size & Type	Freeze	Proposed	Adjustment	
	Charge	Charge	Amount	Percent
<b>CIRCUITS</b>				
<u>Standard Underground Service</u>				
cable and conduit	\$25.21	\$25.21	\$0.00	0.0%
cable only	\$5.64	\$5.64	\$0.00	0.0%
direct buried cable	\$20.43	\$20.43	\$0.00	0.0%
<u>Residential Underground Service</u>				
direct buried cable	\$4.08	\$4.08	\$0.00	0.0%
<u>Excess Footage, Both Categories</u>				
cable and conduit	\$0.51	\$0.51	\$0.00	0.0%
cable only	\$0.11	\$0.11	\$0.00	0.0%
direct buried cable	\$0.41	\$0.41	\$0.00	0.0%
<b>MISCELLANEOUS</b>				
<u>24 Hour Service-Additional Charge</u>				
<u>    Mercury Vapor</u>				
100W	\$9.27	\$9.27	\$0.00	0.0%
175W	\$9.08	\$9.08	\$0.00	0.0%
<u>    High Pressure Sodium</u>				
70W	\$10.63	\$10.63	\$0.00	0.0%
100W	\$10.57	\$10.57	\$0.00	0.0%
150W	\$10.62	\$10.62	\$0.00	0.0%
<u>    Credit for Lamps Unlit</u>				
<u>        Mercury Vapor</u>				
100W	(\$30.62)	(\$5.29)	\$25.33	-82.7%
175W	(\$26.40)	(\$5.17)	\$21.23	-80.4%
400W	(\$30.93)	(\$5.96)	\$24.97	-80.7%
1000W	(\$38.83)	(\$8.89)	\$29.94	-77.1%
<u>        High Pressure Sodium</u>				
70W	(\$33.43)	(\$6.30)	\$27.13	-81.2%
100W	(\$39.96)	(\$6.33)	\$33.63	-84.2%
150W	(\$43.35)	(\$6.55)	\$36.80	-84.9%
250W	(\$44.84)	(\$6.61)	\$38.23	-85.3%
400W	(\$45.49)	(\$6.62)	\$38.87	-85.4%
1000W	(\$85.11)	(\$12.90)	\$72.21	-84.8%
<u>    Convenience Outlets</u>				
new metal pole	\$11.52	\$11.52	\$0.00	0.0%
existing metal pole	\$18.29	\$18.29	\$0.00	0.0%
Energy Rate per KWH	\$0.06907	\$0.10378	\$0.03471	50.3%





NIAGARA MOHAWK POWER CORPORATION

PowerChoice Revenue Components

Street and Highway Lighting  
S.C. No. 3-Energy Only

Present Structure <sup>1</sup>		PowerChoice Structure		
<u>Component</u>	<u>Revenue</u>	<u>Component</u>	<u>Revenue</u>	<u>\$/kWh</u>
Energy	\$438,773	Energy Services	\$438,773	\$0.069070
Total <u>\$438,773</u>		Total <u>\$438,773</u>		

1998 Sales Forecast: 6,352,605 kWh

<sup>1</sup>1996 Freeze Rates.



NIAGARA MOHAWK POWER CORPORATION

PowerChoice Revenue Components

Street and Highway Lighting  
S.C. No. 6-Company Maint./Customer Equipment

Present Structure <sup>1</sup>		PowerChoice Structure		
<u>Component</u>	<u>Revenue</u>	<u>Component</u>	<u>Revenue</u>	<u>\$/kWh</u>
Facility	\$13,100	Facility Services	\$8,913	
Energy	\$50,691	Energy Services	\$54,878	\$0.074777
<b>Total</b>	<b>\$63,791</b>	<b>Total</b>	<b>\$63,791</b>	

1998 Sales Forecast: 733,885 kWh

<sup>1</sup>1996 Freeze Rates.



NIAGARA MOHAWK POWER CORPORATION

P.S.C. No. 213 Electricity, S.C No. 6  
Street and Highway Lighting-Co. Maint., Cust. Equip.  
Comparison of Annual Facility Prices  
Freeze Prices and PowerChoice

<u>Facility Size &amp; Type</u>	<u>Freeze Charge</u>	<u>Proposed Charge</u>	<u>Adjustment</u>		
			<u>Amount</u>	<u>Percent</u>	
<b>LAMP MAINTENANCE</b>					
<u>Mercury Vapor</u>	100W	\$11.27	\$6.81	(\$4.46)	-39.6%
	175W	\$11.01	\$6.42	(\$4.59)	-41.7%
	250W	\$11.63	\$7.02	(\$4.61)	-39.6%
	400W	\$11.63	\$7.02	(\$4.61)	-39.6%
	1000W	\$17.53	\$9.27	(\$8.26)	-47.1%
<u>High Pressure Sodium</u>	70W	\$13.11	\$7.31	(\$5.80)	-44.2%
	100W	\$13.09	\$7.35	(\$5.74)	-43.9%
	150W	\$13.10	\$7.51	(\$5.59)	-42.7%
	250W	\$13.48	\$7.59	(\$5.89)	-43.7%
	400W	\$13.64	\$7.59	(\$6.05)	-44.4%
	1000W	\$23.67	\$12.73	(\$10.94)	-46.2%
<b>CONTINUOUS ILLUMINATION- ADDITIONAL LAMP MAINTENANCE CHARGE</b>					
<u>Mercury Vapor</u>	100W	\$10.36	\$5.82	(\$4.54)	-43.8%
	175W	\$10.17	\$5.48	(\$4.69)	-46.1%
<u>High Pressure Sodium</u>	70W	\$11.72	\$6.02	(\$5.70)	-48.6%
	100W	\$11.66	\$6.05	(\$5.61)	-48.1%
	150W	\$11.71	\$6.21	(\$5.50)	-47.0%
<b>CREDIT FOR LAMPS UNLIT</b>					
<u>Mercury Vapor</u>	100W	(\$11.27)	(\$6.81)	\$4.46	-39.6%
	175W	(\$11.01)	(\$6.42)	\$4.59	-41.7%
	250W	(\$11.63)	(\$7.02)	\$4.61	-39.6%
	400W	(\$11.63)	(\$7.02)	\$4.61	-39.6%
	1000W	(\$17.53)	(\$9.27)	\$8.26	-47.1%
<u>High Pressure Sodium</u>	70W	(\$13.11)	(\$7.31)	\$5.80	-44.2%
	100W	(\$13.09)	(\$7.35)	\$5.74	-43.9%
	150W	(\$13.10)	(\$7.51)	\$5.59	-42.7%
	250W	(\$13.48)	(\$7.59)	\$5.89	-43.7%
	400W	(\$13.64)	(\$7.59)	\$6.05	-44.4%
	1000W	(\$23.67)	(\$12.73)	\$10.94	-46.2%
Energy Rate per KWH		\$0.06907	\$0.07478	\$0.00571	8.3%



**NIAGARA MOHAWK POWER CORPORATION**

**PowerChoice Revenue Components**

Traffic Signals  
S.C. No.4

<b>Present Structure<sup>1</sup></b>		<b>PowerChoice Structure</b>		
<u>Component</u>	<u>Revenue</u>	<u>Component</u>	<u>Revenue</u>	<u>\$/Signal Face</u>
Signal Face/Energy	\$1,926,478	Signal Face/Energy Services	\$1,926,478	\$3.76
<b>Total</b>	<b>\$1,926,478</b>	<b>Total</b>	<b>\$1,926,478</b>	

1998 Sales Forecast:      25,618,077 kWh  
    512,362 Signal Faces

<sup>1</sup>1996 Freeze Rates





**APPENDIX E**

**BALANCES OF DEFERRED DEBITS AND CREDITS NOT YET  
REFLECTED IN RATES**



NIAGARA MOHAWK POWER CORPORATION  
Regulatory Assets and Regulatory Liabilities  
Forecasted to December 31, 1997 for Netting Purposes

Revised 09-Oct-97

	Deferred for Regulatory Purposes @12/96	Balance Allocated to Electric	1997 Change	Est. Electric Balance @ 12/97 To be Recovered
<b>Deferred Debits Not in Rates</b>				
141.10 049 NM2 AFUDC Deferred for CWIP	239,880,022	239,880,022		239,880,022
141.10 151 NUG Action Plan Implementation Costs	44,981,724	44,981,724	6,220,000	51,201,724
246.00 063 Pension Expense Deferred - Electric	11,101,282	11,101,282	1,800,000	12,901,282
141.10 184 Storm Restoration Costs Deferred	8,726,000	8,726,000		8,726,000
141.10 187 BFA Line of Credit Fees - Electric	3,199,133	3,199,133	(1,299,000)	1,900,133
141.10 191 NYS Sales Tax Audit Assessment('88-'92)	7,566,520	7,433,785	(2,649,400)	4,784,385
141.10 179 Dunkirk Property Taxes Deferred	1,237,698	1,237,698		1,237,698
246.00 006 Purchase of Emission Credits	48,750	48,750		48,750
141.10 165 Waste Disposal Fees Deferred-NM2	48,252	48,252		48,252
141.10 115 Human Resource Plan Separation Allowance	37,482	32,564		32,564
141.10 117 Interest on IRS Audit Assessment - 1986	(292,470)	(255,180)		(255,180)
	<u>316,534,393</u>	<u>316,434,030</u>	<u>4,071,600</u>	<u>A 320,505,630</u>
<b>Less: Amounts Previously Expensed/Written-off</b>				
246.00 063 Pension Expense Deferred - Electric				1,161,195
141.10 184 Storm Restoration Costs Deferred				8,726,000
141.10 191 NYS Sales Tax Audit Assessment('88-'92)				5,382,075
141.10 187 BFA Line of Credit Fees - Electric				602,397
141.10 179 Dunkirk Property Taxes Deferred				1,237,698
246.00 006 Purchase of Emission Credits				48,750
141.10 115 Human Resource Plan Separation Allowance				3,405
141.10 117 Interest on IRS Audit Assessment - 1986				(48,053)
				<u>B 17,113,467</u>
<b>Deferred Credits</b>		<b>Net deferred debits</b>		<b>A-B <u>303,392,163</u></b>
246.00 025 NM2 AFUDC Deferred for CWIP	239,880,022	239,880,022		239,880,022
145.35 SIR Overcollection	6,033,455	6,033,455	16,914,000	22,947,455
246.00 036 Accrued Unbilled Revenue - Electric	11,129,074	11,129,074		11,129,074
246.00 103 MERIT Overcollection	12,144,882	10,592,712		10,592,712
246.00 104 IBM Customer Service Settlement Agreement	7,500,000	6,375,000		6,375,000
246.00 099 Electric Customer Service Penalty	4,222,000	4,222,000		4,222,000
242.05 111 NYS GRT Audit Refund(1987-1990)	6,435,434	5,616,434	(3,648,631)	1,967,803
246.00 042 Pension Settlement Gain Deferred *	19,268,578	16,443,804	(5,896,000)	10,547,804
246.00 071 IRS Audit Refund (1983-84)	973,733	827,673		827,673
246.00 048 NM2 Contractor Litigation	18,090	18,090		18,090
246.00 059 NM2 Construction Spare Parts Deferred	1,687	1,687		1,687
				<u>C 308,509,320</u>
			<b>Net deferred credits over debits</b>	<b>A-B-C <u>(5,117,157)</u></b>

\* The Company recognizes there is a tax benefit associated with the amortization of this item, which is not reflected on this schedule.



**APPENDIX F**

**GENERAL STRUCTURE OF FINANCIAL SWAPS AND SWAPTION**



## APPENDIX F

### GENERAL STRUCTURE OF FINANCIAL SWAPS AND SWAPTIONS

#### F.1 GENERAL STRUCTURE OF FINANCIAL SWAPS

Financial Swaps are contracts that require RegCo to pay generators the difference between the contract price and the applicable locational based marginal price (LBMP). More specifically, for each month of each year of the contract term, RegCo will pay generator n:

$$\text{Net Payment} = S_i \{(P_c - P_{si}) * Q_i\} + FP - GS \quad (\text{Equation 1.0})$$

where:

- $P_c$  = volumetric component of contract price
- $P_{si}$  = spot market price (LBMP) for power in hour I at each generator bus
- $Q_i$  = contract quantity for each hour I
- I = hours per month
- FP = fixed charge paid by RegCo to reflect non-volumetric portion of the Contract price
- GS = market price of payments made by ISO/Power Exchange or RegCo for other generation services

The volumetric contract price is the negotiated price between RegCo and each generator and may include environmentally effluent cost changes. The spot price is the hourly wholesale market locational spot price (LBMP) for each of the generators. A proxy market price will be used until the ISO is formed and an LBMP is available. The contract quantity is the hourly amount of energy (kWh) on which the contract is based. For each financial swap an hourly profile (kWh) will be forecast for the contract term. The fixed cost charge is a monthly fixed payment to the generator(s) designed to cover the fixed and unavoidable costs.

The market price of payments made by the RegCo for non-energy generation services include payments for capacity, ancillary services, and other generator services that are reflected in customer prices (all of the non-energy generation services will be referred to as "other generation services" in the remainder of this document).<sup>1</sup> This adjustment for other generation services reflects the possible existence of separate supply markets for capacity and ancillary services and

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<sup>1</sup> The other generation services include: installed capacity, operating reserves, frequency control, blackstart capability, and voltage support.





separate payments to generators for these other services. These other generation services may be included as uplift in the spot prices charged to customers in the wholesale market. The other generation services are currently provided as part of the generation costs included in retail prices. In general, generators with financial contracts will have the ISO's cost of these other generation services subtracted from their contract payments with quantities not to exceed contracted amounts and prices determined by the market.

## **F.2 GENERAL STRUCTURE OF FINANCIAL SWAPTIONS**

The swaption contract concept will equal the financial swap described above if RegCo exercises its call option in each hour for exactly the forecasted contract quantity. However, the swaption structure allows RegCo additional flexibility not to call the option in periods of the year where the market price is lower than the variable contract price, resulting in lower prices for customers. The option provides RegCo the flexibility to shift some contract quantity between hours to adjust to shifts in the hourly demand for electricity.

Swaption quantities for individual generators shall not exceed pre-determined annual limits based on aggregate generator output for RegCo's retail load. Additionally, these aggregate quantities along with RegCo's other physical and financial power supply hedges may not exceed RegCo's net energy for load requirements in any hour. RegCo must provide swaption quantity notification to generators at the same time as the generators must submit day-ahead forward bids to the ISO.



**APPENDIX G**  
**CREDIT WORTHINESS EVALUATION**



## APPENDIX G CREDIT WORTHINESS EVALUATION

Establishment of Credit Limit. Niagara Mohawk establishes credit limits for Gas Suppliers (marketers) who act as supply aggregators and customers to whom the Company makes sale of gas for resale by applying on a consistent non-discriminatory basis the same financial evaluation standard. The Company will establish credit limits for ESCOs by applying the same consistent financial evaluation standard in determining credit worthiness. Credit limits are reviewed continually. If an entity is assigned a credit limit that is not sufficient to meet the requirements, these requirements may be met by providing security in a form that is acceptable to Niagara Mohawk.

A summary of the criteria and action steps initiated in applying the financial evaluation are as follows:

1. **Customer Credit Profile.** General credit information is developed based on information from a Commercial Credit Reporting/Rating Organization, Securities and Exchange Commission, customer's audited financial statements and other recognized companies that provide financial information and forecasts. The profile focuses on the following areas:
  - The nature of the business and product.
  - What is the business enterprise and who owns the company?
  - What is the company's history based on trade reports?
  - How many years has the customer been in business?
  - What do you know about the management's integrity?
  - Are bank loans secured unsecured, or secured by current assets?
  - What is the firms' payment history with Niagara Mohawk?
  - Does the company own their own facilities?
  - Ask the Niagara Mohawk salesperson assigned to the account about the company.
  
2. **Banking References.** Banking references provided and authorized by the customer. When references are further checked the following questions are asked of the bank officer handing the account.
  - How long has the bank had the account?
  - Does the company have outstanding loans?
  - What is the highest accommodation the bank would allow?
  - Do you consider the customer a good risk?
  - Does the customer keep loan terms?
  - Are bank loans secured, unsecured, or secured by current assets?



3. **Financial Information**. Financial data is used to analyze a firm's past performance and assess its current financial standing. Financial ratios are used to summarize the data and compare the firm's performance with standard practices. These financial ratios and other indicators are:

- Liquidity Ratios
  - Current Ratio (measure cash reservoir—current assets/current liabilities).
  - Quick Ratio (company's current liabilities are covered by its most current liquid asset; cash, equivalents and trade receivables/current liabilities).
  
- Working Capital
  - Positive (check average of past three years).
  - Negative (if negative, check to see if company has strong internal cash-generating capabilities and/or access to ready financing).
  
- Debt Ratio
  - Debt Equity (a way to express leverage in terms of the company's debt-equity ratio; long-term debt/equity).
  
- Profitability Ratio
  - Sales to total assets (shows how hard the firm's assets are being used; sales/average total assets).
  - Percent of return on net worth compared to industry standards.
  
- Net Worth
  - Check for intangibles (goodwill).
  - Review the increases/decreases in retained earnings for the past three years.

4. **Bill Payment Performance**

- Review the number of experiences and the terms kept.
- Highest credit granted and the payment performance over the past 12 months.
- Check with major trade vendors, if necessary.
- Number of returned checks.





5. **Public Filings.** Public records are reviewed for liens, attachments, and other actions that could impact the firm's financial health.

- Require customer to provide copy of Court Order of Dismissal if claims satisfied.
- Check for any indication of bankruptcy filings by parent/subsidiary.
- Investigate announced takeovers, buyout mergers, and acquisitions.

6. **Determine Credit Limit.** If no other major negative credit indicators are present, the credit line is derived by taking the smaller of:

- 4% to 6% of net worth (review retained earnings performance)
- 10% to 12% of working capital (based on most current audited report). When checking working capital look at nature of the business. The company may have capacity to generate funds to pay bills promptly.

7. **Decrease or Shut Off the Credit Limit.** The following indicators may result in a customer's credit limit shutoff or downgraded:

- Company's credit rating is downgraded by credit reporting agency.
- Significant decrease in reported earnings and equity position is weakened.
- Authenticated reports that the company is experiencing serious cash flow and other financial problems.
- Reports of liens, attachments or other legal actions that may impair the company's financial health.
- Bill payment problems with Niagara Mohawk.

8. **Increase or Return Security.** The following indicators may result in an increase in the unsecured credit limit and/or return of financial security:

- The company has been profitable for the last two years and has reinvested profits in the business.
- Strong improvements in the earning performance.
- Long-term debt is steadily being reduced.
- Improved financing arrangements that allows for financial flexibility.
- Improved credit rating by commercial rating agencies.

In reaching a credit decision regarding granting unsecured credit, the firm's past financial performance and its current financial standing weighs more heavily than other information and credit indicators. If this information is not available and other information is insufficient to determine the credit worthiness of a firm, security is required to collateralize the credit limit.



**APPENDIX H**

**LIST OF FACILITIES THAT ARE POTENTIAL CANDIDATES  
FOR SALE, LEASE OR SALE LEASEBACK TRANSACTIONS**



LOCATION CODE LOCATION NAMENET BOOK VALUE

7000	Common charges to be distributed	28,696,488
7001	DEWEY/KENSINGTON COMMON	-
7002	DEWEY AVE. BLDG. 1	-
7003	"DEWEY AVE BLDGS. 2,3,6,7"	-
7004	"DEWEY AVE. BLDGS. 4,5"	-
7005	KENSINGTON COMPLEX	-
7101	BUFFALO ELECTRIC BLDG.	13,332,604
7102	AMHERST C.F.	353,945
7103	SENECA C.F.	539,098
7104	TONAWANDA C.F.	257,117
7105	NIAGARA FALLS S.C.	2,422,366
7106	JAMES ST. RIGGERS BLDG CF	2,068,279
7108	NEWFANE C.F.	33,593
7109	N. AMHERST S.C.	-
	ERIE COUNTY FAIR BLDG	-
7401	ALBION C.F.	931,935
7402	E. AVON C.F.	2,809,329
7403	BATAVIA S.C.	5,057,151
7404	MEDINA C.F.	760,254
7405	LEROY C.F.	-
7702	ANGOLA C.F.	1,161,631
7704	ELLCOTTVILLE C.F.	29,006
7705	FRANKLINVILLE C.F.	138,373
7706	FREDONIA C.F.	3,715,623
7708	OLEAN C.F.	2,898,650
7709	STOW C.F.	904,141
7710	SHERMAN STOREHOUSE	3,563
8000	Common charges to be distributed	50,008,377
8001	SOC COMMON GRDS.	-
8002	SOC BLDG. A	-
8003	SOC BLDG. B	-
8004	SOC BLDG. C	-
8005	SOC BLDG. D	-
8007	SOC BLDG. F	-
8008	SOC GUARD STATION	-
8050	Common charges to be distributed	11,181,060
8051	HCB METER & TEST BLDG.	-
8052	HCB BLDG 2 STORES & CF	-
8053	HCB FACILITY MAINT. BLDG	-
8054	HCB BLDG. 4 TSD FACILITY	-
8055	HCB TSD OFFICE TRAILERS	-

7 1 1 0



8056	HCB METER & TEST TRAILER	-
8058	HCB COMMON GROUNDS	-
8076	EMERSON AVE. C.F.	2,816,424
8103	INVESTMENT RECOVERY	6,221,729
8105	BREWERTON C.F.	464,071
8106	CAZENOVIA C.F.	219,951
8107	CORTLAND C.F.	812,535
8109	FULTON C.F.	449,762
8110	FULTON ST.	1,305,389
8112	HLAWATHA BLVD. C.F.	28,081
8113	HINSDALE C.F.	755,190
8114	OSWEGO FIRE SCHOOL	2,195,392
8115	OSWEGO C.F.	751,906
8116	PULASKI C.F.	1,991,173
8117	RADISSON C.F.	934,467
8120	TOWPATH I C.F.	1,976,681
8121	TOWPATH II C.F.	-
8122	TOWPATH III C.F.	-
8123	TULLY C.F.	621,595
8124	VOLNEY C.F.	1,647,101
8125	JAMES A. O'NEILL	10,146,571
8401	CAMDEN C.F.	-
8402	CAMPION RD. S.C.	8,317,820
8404	HERKIMER S.C.	328,771
8405	ILLION C.F.	22,958
8406	OLD FORGE C.F.	307,039
8408	ONEIDA C.F.	462,592
8410	TRENTON FALLS C.F.	169,274
8411	W. ROME S.C.	2,889,301
8412	HARBOR POINT C.F.	273,868
8413	HARBOR PT REMEDIATION FAC	-
8415	S. WASHINGTON ST HERKIMER	-
8416	KINGSLEY AVE. S.C.	-
8701	CLAYTON C.F.	2,142,371
8704	W. CARTHAGE C.F.	831,384
8705	LOWVILLE S.C.	331,482
8706	WATERTOWN MAIN AVE. C.F.	4,029,565
8707	MALONE S.C.	624,459
8708	MILL STREET C.F.	-
8710	OGDENSBURG S.C.	399,061
8711	POTSDAM C.F.	3,871,959
8712	SARANAC LAKE S.C.	694,171
8713	S. WATERTOWN S.C.	5,651,048





8716	MAINT. BLDG. @ WTOWN C.F.* incl in 8706	-
8717	ENGINE ST. STORAGE AREA	-
9000	Common charges to be distributed	19,714,544
9001	N. ALBANY COMMON AREA	-
9002	N. ALBANY BLDG. 2	-
9005	N. ALBANY VERSAIRE #1	-
9006	N. ALBANY TRI-AIRD 2-1	-
9007	N. ALBANY BLDG. 5	-
9009	N. ALBANY BLDG. 2-3	-
9010	N. ALBANY BLDG. 2-4	-
9103	GLENMONT C.F.	873,878
9104	HUDSON S.C.	1,724,666
9105	OAKWOOD AVE. TROY C.F.	2,771,851
9106	SMITH AVE. C.F.	1,574,788
9107	RENSSELAER THIRD AVE C.F.	-
9109	SCHENECTADY BROADWAY C.F.	1,837,749
9111	CLIFTON PARK	6,325,438
9113	SENECA STREET C.F.	662,759
9115	EASTERN REG. CTRL. CTR.	-
9402	AMSTERDAM C.F.	791,955
9410	GLENS FALLS MOHICAN ST CF	2,721,336
9411	GLOVERSVILLE C.F.	2,029,812
9413	SARATOGA EXCELSIOR AVE CF	1,021,174
9420	NORTH CREEK C.F.	-



ATTACHMENT 1

