

APPENDICES

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APPENDIX 1

DEFINITIONS

1. DEFINITIONS. As used in this Agreement, the following terms shall have the meanings set forth below:

"Acquisition Agreement" means the Agreement of Plan of Exchange and Merger dated as of June 26, 1997 by and among BL Holding Corp., Long Island Lighting Company, Long Island Power Authority and LIPA Acquisition Corp.

"Act" means the Long Island Power Authority Act, N.Y. Pub. Auth. Law § 1020 et seq.

"Affiliate" means any person, corporation or other entity directly or indirectly controlling or controlled by another person, corporation or other entity or under direct or indirect common control with such person, corporation or other entity.

"Agreement" means this Management Services Agreement between the Manager and the Authority, including the Appendices hereto, as the same may be amended or modified from time to time in accordance herewith.

"Agreement in Principle" means the Agreement in Principle, dated as of March 19, 1997 by and among the Authority, Long Island Lighting Company and The Brooklyn Union Gas Company, concerning, among other things, agreements among the parties to transfer certain assets, to purchase power and to provide management services.

"Allocated Common Facilities" means the offices and workspace at the current LILCO headquarters building or other suitable mutually agreed upon site dedicated by the Manager for use by the Authority and its representatives and consultants.

"Annual Settlement Statement" has the meaning specified in subsection 6.8 hereof.

"Annual T&D Budget" has the meaning set forth in Section 6.2 hereof.

"Appendix" means an appendix to this Agreement, as the same may be amended or modified from time to time in accordance with the terms hereof.

"Applicable Law" means any law, rule, regulation, condition or requirement, guideline, ruling, ordinance or order of or any Legal Entitlement issued by, any Governmental Body and applicable from time to time to the performance of the obligations of the parties hereunder.

"Authority" means the Long Island Power Authority and its subsidiaries, and its successors or assigns as permitted hereunder.

"Authority Customer & Operations Data" has the meaning set forth in subsection 4.14(C) hereof.

"Authority Fault" means any breach, failure of compliance, or nonperformance by the Authority with its obligations hereunder or any negligence or willful misconduct by the Authority under this Agreement (whether or not attributable to any officer, trustee, member, agent, employee, representative, contractor, subcontractor of any tier, or independent contractor of the Authority other than the Manager and its Subcontractors) that materially and adversely affects the Manager's performance or the Manager's rights or obligations under this Agreement.

"Authority Indemnified Parties" has the meaning specified in subsection 9.3(A) hereof.

"Base Interest Rate" means the lesser of (1) the maximum rate of interest permitted by Applicable Law and (2) (a) for interest accruing during the first six months or less after the date on which a payment was payable hereunder, 6 month LIBOR, and (b) for interest accruing more than six months after the date on which such payment was payable hereunder, the Prime Rate plus 1.00%, in each case, as 6 month LIBOR or the Prime Rate was reported in the Wall Street Journal for each day.

"Billing Period" means each calendar month in each Contract Year, except that (1) the first Billing Period shall begin on the Closing Date and shall continue to the last day of the month in which the Closing Date occurs and (2) the last Billing Period shall end on the last day of the Term of this Agreement. Any computation made on the basis of a Billing Period shall be adjusted on a pro rata basis to take into account any Billing Period of less than the actual number of days in the month to which such Billing Period relates.

"Billing Statement" has the meaning specified in Section 6.6 hereof.

"Bondholders" means the holders of the Revenue Bonds.

"Bond Resolution" means the bond resolutions to be adopted by the Authority, pursuant to which the Authority shall issue the Revenue Bonds or other indebtedness described therein to finance certain costs of the T&D System and other purposes of the Authority.

"BUGLILCO Agreement" means the Amended and Restated Agreement and Plan of Exchange dated as of June 26, 1997, by and among the Guarantor, LILCO and The Brooklyn Union Gas Company.

"Capital Assets" has the meaning specified in Section 4.18 hereof.

"Change in Law" means any of the following events or conditions having, or which may reasonably be expected to have, a material and adverse effect on the performance by the parties of their respective obligations under this Agreement (except for payment obligations), or on the operation or maintenance of the T&D System:

- (1) the adoption, promulgation, issuance, modification or written change in administrative or judicial interpretation on or after the Closing Date of Applicable Law, unless such

Applicable Law was on or prior to the Closing Date duly adopted, promulgated, issued or otherwise officially modified or changed in interpretation, in each case in final form, to become effective without any further action by any Governmental Body or governmental official having jurisdiction;

(2) the order or judgment of any Governmental Body, on or after the Closing Date, to the extent such order or judgment is not the result of willful misconduct or negligent action or omission or lack of reasonable diligence of the Manager or of the Authority, whichever is asserting the occurrence of a Change in Law; provided, however, that the contesting in good faith or the failure in good faith to contest any such order or judgment shall not constitute or be construed as such a willful misconduct or negligent action or omission or lack of reasonable diligence; or

(3) the denial of an application for, delay in the review, issuance or renewal of, or suspension, termination, interruption, imposition of a new condition in connection with the issuance, renewal or failure of issuance or renewal on or after the Closing Date of any Legal Entitlement to the extent that such denial, delay, suspension, termination, interruption, imposition or failure interferes with the performance of this Agreement, and to the extent that such denial, delay, suspension, termination, interruption, imposition or failure is not the result of willful misconduct or negligent action or omission or a lack of reasonable diligence of the Manager or of the Authority, whichever is asserting the occurrence of a Change in Law; provided, however that the contesting in good faith or the failure in good faith to contest any such denial, delay, suspension, termination, interruption, imposition or failure shall not be construed as such a willful misconduct or negligent action or omission or lack of reasonable diligence.

A "Change in Law" shall not include a change in any tax or similar law regarding taxes or similar charges not chargeable to or reimbursable by the Authority under Article VI hereof.

"Change of Control" means (i) the acquisition of beneficial ownership (within the meaning of Rule 13d-3 promulgated by the Securities and Exchange Commission under the Securities Exchange Act of 1934, as amended (the "1934 Act")) of 35% or more of the outstanding shares of securities the holders of which are generally entitled to vote for the election of directors of the Manager or the Guarantor, as the case may be (including securities convertible into, or exchangeable for, such securities or rights to acquire such securities or securities convertible into, or exchangeable for such securities, "Voting Stock"), on a fully diluted basis, by any Person or group of Persons (within the meaning of Section 13 or 14 of the 1934 Act); (ii) any sale, transfer or other disposition of beneficial ownership of 35% or more of the outstanding shares of Voting Stock, on a fully diluted basis, of the Manager or the Guarantor, as the case may be; (iii) any merger, consolidation, combination or similar transaction of the Manager or the Guarantor, as the case may be, with or into any other Person, whether or not the Manager or the Guarantor, as the case may be, is the surviving entity in any such transaction; (iv) any sale, lease, assignment, transfer or other disposition of the beneficial ownership in 35% or more of the property, business or assets of the Manager or the Guarantor, as the case may be; (v) a Person other than the current shareholders of the Manager or the Guarantor, as the case may be, obtains, directly or indirectly, the power to direct or cause the direction of the management or policies of the Manager or the Guarantor, as the case may be, whether through the ownership of capital stock, by contract or otherwise; (vi) during any period of 12 consecutive calendar months, when individuals who were directors of the Manager or the Guarantor, as the case may be, on the first day of such period cease to constitute a majority of the board of directors of the Manager or the Guarantor, as the case may be; or (vii) any liquidation, dissolution or winding up of the Manager or the Guarantor, as the case may be.

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

"Closing Date" has the meaning ascribed to that term in the Acquisition Agreement.

"Common Facilities" shall have the meaning attributed to that term in the FERC Uniform System of Accounts.

"Construction Work" means the services to be provided and materials to be supplied by Manager relating to the design, procurement, construction, start-up and testing of the Major Capital Improvements and Public Works Improvements. "Construction Work" shall include, without limitation, the employment and furnishing of all labor, materials, equipment, supplies, tools, plant, scaffolding, transportation, insurance, temporary facilities, and other things and services necessary in order for Manager to perform its obligations under this Agreement with respect to the Major Capital Improvements and Public Works Improvements as well as all permitting, design, engineering, construction, shakedown, testing, administrative, accounting, record-keeping, notification and similar services relating to such obligations. A reference to "Construction Work" shall mean "any part and all of the Construction Work" unless the context otherwise requires.

"Consulting Engineer" means a nationally recognized consulting engineer or firm of consulting engineers, having experience with respect to the design, construction, testing, operation and maintenance of electricity transmission and distribution systems, which is designated as the Consulting Engineer for the purposes of this Agreement from time to time in writing by the Authority.

"Contract Date" means the date of delivery of this Agreement as executed by the parties hereto.

"Contract Standards" means the terms, conditions, requirements, methods, techniques, standards and practices of (1) Applicable Law, (2) the System Policies and Procedures, (3) the substantive requirements and standards and guidelines established by the NYSPSC that apply as of the Closing Date to the operation and maintenance of the T&D System, except to the extent otherwise directed by the Authority, (4) Prudent Utility Practice, (5) the Performance Guarantees, (6) the Operation and Maintenance Manual, (7) applicable equipment manufacturer's specifications and reasonable recommendations, (8) applicable Insurance Requirements, and (9) any other term, condition or requirement specifically provided in this Agreement to be observed by the Manager.

"Contract Year" except as the Authority shall otherwise propose subject to the approval of the Manager, which approval shall not be unreasonably withheld, means the calendar year commencing on January 1 in any year and ending on December 31 of that year; provided, however, that the first Contract Year shall commence on the Closing Date and shall end on December 31 of that year, and the last Contract Year shall commence on January 1 prior to the date this Agreement expires or is terminated, whichever is appropriate, and shall end on the last day of the Term of this Agreement or the effective date of any termination, whichever is appropriate. Any computation made on the basis of a Contract Year shall be adjusted on a pro rata basis to take into account any Contract Year of less than 365/366 days.

"Cost Incentive Fee" has the meaning set forth in Section 6.1 hereof.

"Cost Substantiation" or "Cost Substantiated" means, with respect to any cost reasonably incurred or to be incurred by the Manager which is directly or indirectly chargeable in whole or in part to the Authority as an Other Cost, a Major Capital Improvement Cost or a Public Works Improvement Cost hereunder, the delivery to the Authority of a certificate reasonably acceptable to the Authority signed by an authorized engineering officer and an authorized financial officer of the Manager, certifying that it is true, complete and correct and setting forth the amount of such cost and the provisions of this Agreement under which such cost is properly chargeable to the Authority, stating that such cost is a fair and reasonable price for the service or materials supplied or to be supplied and that such services and materials are reasonably required pursuant to this Agreement, and accompanied by copies of such documentation as shall be necessary to reasonably demonstrate that the cost as to which Cost Substantiation is required has been or will be paid or incurred. Such documentation, to the extent applicable, shall include reasonably detailed information concerning (1) all applicable Subcontracts, (2) the amount and character of materials furnished, the persons from whom purchased, the amounts payable therefor and related delivery and transportation costs and any sales or personal property taxes, (3) a statement of the equipment used and any rental payable therefor, (4) Manager and Subcontractor worker hours, duties, wages, salaries, benefits, assessments, taxes and premiums, (5) Manager administration, bonds, insurance, and other expenses, and (6) in the case of costs incurred by Affiliates of the Manager, such additional information as may be reasonably requested by the Authority to demonstrate that such costs do not reflect any inter-company profit and reflect a fair and reasonable price for the work or services. Any Cost Substantiation required with respect to costs reasonably incurred by the Authority which are directly or indirectly chargeable in whole or in part to the Manager hereunder shall include similarly detailed information, and shall be certified by an authorized administrative and financial official of the Authority.

"Direct Cost Budget" has the meaning set forth in Section 6.2 hereof.

"Direct Cost Budget Indices" has the meaning specified in Appendix 6 hereto.

"Direct Costs" has the meaning set forth in Section 6.2 hereof.

"Disposal Facility" means either a sanitary Hazardous Waste landfill or other Hazardous Waste disposal or management facility, selected by the Manager which (1) is operated in accordance with prudent industry practices (as applicable to Hazardous Waste disposal facilities) and the applicable Contract Standards and (2) is being operated at the time of disposal or delivery in accordance with Applicable Law as evidenced by the absence of any regulatory sanctions, notices of violations or other significant enforcement actions with respect to material environmental matters.

"Encumbrances" means any lien, lease, mortgage, security interest, charge, judgment, judicial award or encumbrance with respect to the T&D System (other than those associated with any retainage holdback on construction materials, supplies and equipment).

"Energy Management Agreement" means the Energy Management Agreement dated as of June 26, 1997 by and between Long Island Lighting Company and the Authority, as the same may be amended from time to time in accordance therewith.

"Event of Default" has the meaning specified in Sections 7.2 and 7.3 hereof.

"Exit Test" has the meaning set forth in Section 8.3 hereof.

"Existing Power Supply Agreements" means the power supply agreements which exist between LILCO and other parties for the purchase of capacity and/or energy which are in effect as of the Contract Date and which were, either in existence as of March 19, 1997 or which were entered into in accordance with the provisions of Section 6.1(p) of the Acquisition Agreement on or prior to the Closing Date.

"Fees-And-Costs" means reasonable fees and expenses of employees, attorneys, architects, engineers, accountants, expert witnesses, contractors, consultants and other persons, and costs of transcripts, printing of briefs and records on appeal, copying and other reimbursed expenses, and expenses of any Legal Proceeding.

"Final Determination" means a judgment, order, or other determination in any Legal Proceeding which has become final after all appeals or after the expiration of all time for appeal.

"Five-Year Planning Budget" has the meaning set forth in Section 6.2 hereof.

"Fixed Direct Fee" has the meaning set forth in Section 6.1 hereof.

"GENCO" means the owner of the Generating Facilities, as defined in the Power Supply Agreement.

"Governmental Body" means any federal, State or local legislative, executive, judicial or other governmental board, agency, authority, commission, administration, court or other body other than the Authority, or any official thereof having jurisdiction with respect to any matter which is a subject of this Agreement.

"Guarantor" means BL Holding Corp. and its successors and assigns permitted under the Guaranty Agreement.

"Guaranty Agreement" or "Guaranty" means the Guaranty Agreement to be entered into prior to the Closing Date from the Guarantor to the Authority substantially in the form provided as an Exhibit to the Acquisition Agreement, as the same may be amended from time to time in accordance therewith.

"Hazardous Waste" means any waste which by reason of its composition or characteristics is defined or regulated as a hazardous waste, toxic substance, hazardous chemical substance or mixture, or asbestos under Applicable Law, as amended from time to time, including, but not limited to, "Hazardous Substances" as defined in CERCLA and the regulations promulgated thereunder.

"Incremental Internal Costs" has the meaning set forth in Section 6.3 hereof.

"Independent Engineer" means a nationally recognized engineer or firm of engineers having experience with respect to the planning, design, construction, testing, operation and maintenance of

electricity transmission and distribution systems, and with respect to electricity rate design which is selected by the parties for mediation purposes pursuant to Section 7.8 hereof.

"Insurance Requirement" means any rule, regulation, code, or requirement issued by any fire insurance rating bureau or any body having similar functions or by any insurance company which has issued a policy of Required Construction Work Insurance or Required Operation Period Insurance under this Agreement, as in effect during the term hereof.

"ISO" means the party or governing board responsible for the operation of transmission facilities and the dispatch of power generation facilities contemplated to succeed the New York Power Pool as part of the restructuring of the electric utility industry within the State of New York.

"Legal Entitlement" means any permit, license, approval, authorization, consent and entitlement of whatever kind and however described which is required under Applicable Law to be obtained or maintained by any person with respect to the performance of any obligation under this Agreement.

"Legal Proceeding" means every action, suit, litigation, arbitration, administrative proceeding, and other legal or equitable proceeding having a bearing upon this Agreement.

"Lien" means any and every lien against the T&D System, the T&D System Site, the Construction Work, the Operation and Maintenance Services or against any monies due or to become due from the Authority to the Manager under this Agreement, for or on account of the Construction Work or the Operation and Maintenance Services.

"LILCO" , as of the date hereof, means Long Island Lighting Company.

"Loss-and-Expense" means any and all losses, liabilities, obligations, damages, delays, fines, penalties, judgments, deposits, costs, claims, demands, charges, assessments, taxes, or expenses, including all Fees-And-Costs.

"Major Capital Improvement" means any repair, replacement, improvement, alteration or addition to the T&D System or any part thereof (other than any repair, replacement, improvement, alteration or addition constituting routine maintenance of the T&D System) contained in the Major Capital Plan and Budget and that has a useful life at least equal to three years.

"Major Capital Improvement Cost" means the cost of any Major Capital Improvement which the Manager reasonably incurs hereunder and proves by Cost Substantiation including, without limitation, expenditures for material, equipment, incremental labor, and services supplied by architects, engineers and Subcontractors, and expenses related to managing and administering the Major Capital Improvement. "Major Capital Improvement Cost" shall not include amounts for an allowance for overhead, profit, or contingency.

"Major Capital Plan and Budget" has the meaning set forth in Section 5.2 hereof.

"Management Fee" has the meaning set forth in Section 6.2 hereof.

"Manager" means the Long Island Lighting Company and its successors or assigns expressly permitted pursuant to Section 9.7.

"Manager Fault" means any breach, failure of compliance, or nonperformance by the Manager with its obligations hereunder or any negligence or willful misconduct by the Manager under this Agreement (whether or not attributable to any officer, member, agent, employee, representative, contractor, Subcontractor of any tier, or independent contractor of the Manager or any Affiliate of the Manager) that materially and adversely affects the Manager's performance or the Manager's rights or obligations under this Agreement.

"Manager Indemnified Parties" has the meaning specified in subsection 9.3(B) hereof.

"Minimum Reliability Standard" has the meaning set forth in Appendix 7 hereto.

"Minimum Worker Safety Standard" has the meaning set forth in Appendix 7 hereto.

"Minimum Customer Service Standard" has the meaning set forth in Appendix 7 hereto.

"New York Power Pool" means the member system currently comprising of Consolidated Edison Company of New York, Inc., Central Hudson Gas and Electric Company, Long Island Lighting Company, Orange and Rockland Utilities, Rochester Gas and Electric Company, New York State Electric and Gas Corporation, Niagara Mohawk Power Corporation, and the Power Authority of the State of New York, as such organization or membership may change from time to time.

"Nine Mile Point 2" means the Authority's 18 percent ownership interest in Unit No. 2 of the Nine Mile Point Nuclear Power Generating Station located in Scriba, New York and operated pursuant to a joint operating agreement by Niagara Mohawk Power Corporation.

"Non-Electric Utilities" means any and all utility services and installations whatsoever other than electricity (including gas, water, telephone, other telecommunications of every kind and sewer), and all piping, wiring, conduit, and other fixtures of every kind whatsoever related thereto or used in connection therewith.

"NYSDEC" or "DEC" means the Department of Environmental Conservation of the State of New York.

"NYSPSC" or "PSC" means the Public Service Commission of the State of New York.

"Operating Assets" means the T&D System and all of the assets of the Manager used in the operation and maintenance of the T&D System and the performance of the Manager's obligations under this Agreement.

"Operation and Maintenance Manual" has the meaning set forth in Section 4.2(D) hereof.

"Operation Period" means the period commencing on the Closing Date and ending on the date this Agreement expires in accordance with its terms, or if earlier, on the Termination Date.

"Operation and Maintenance Services" means the services to be provided and materials to be supplied by the Manager pursuant to this Agreement during the Operation Period, except Construction Work. Operation and Maintenance Services shall include, without limitation, the employment and furnishing of all labor, materials, equipment, supplies, tools, storage, transfer, transportation, insurance, delivery and other items and services necessary in order for Manager to perform its routine operation and maintenance obligations under this Agreement, as well as all related administrative, accounting, record-keeping, notification and similar services relating to such obligations. A reference to "Operation and Maintenance Services" shall mean "any part and all of the Operation and Maintenance Services" unless the context otherwise requires.

"Other Costs" shall have the meaning set forth in Section 6.3 hereof.

"Parent" has the meaning ascribed to such term in the Acquisition Agreement.

"Performance Guarantees" means the Minimum Reliability Standard, the Minimum Worker Safety Standard and the Minimum Customer Service Standard.

"Plans" has the meaning given in the Acquisition Agreement.

"Power and Energy" means the electrical energy and capacity available from the System Power Supply.

"Power Supply Agreement" means the Power Supply Agreement dated as of June 26, 1997, between Authority and Long Island Lighting Company for the purchase of electric capacity and energy as the same may be amended from time to time in accordance therewith.

"Pre-Closing Period" means the period, from and including the Contract Date up to and including the day preceding the Closing Date.

"Prime Rate" means the rate announced by Citibank, N.A. from time to time at its principal office as its prime lending rate for domestic commercial loans, the Prime Rate to change when and as such prime lending rate changes.

"Prudent Utility Practice" at a particular time means any of the practices, methods, and acts (including but not limited to the practices, methods and acts engaged in or approved by a significant portion of the electrical utility industry prior thereto), which, in the exercise of reasonable judgment in light of the facts and the characteristics of the T&D System and System Power Supply known at the time the decision was made, would have been expected to accomplish the desired result at the lowest reasonable cost consistent with reliability, safety and expedition and good customer relations. Prudent Utility Practice is not intended to be limited to the optimum practice, method or act, to the exclusion of all others, but rather to be a spectrum of possible practices, methods or acts.

"Public Works Improvements" means Major Capital Improvements performed as a result of requirements or requests of a Governmental Body.

"Public Works Improvement Costs" means the cost of any Public Works Improvement which the Manager reasonably incurs hereunder and proves by Cost Substantiation including, without limitation, expenditures for material, equipments, incremental labor and services supplied by architects, engineers and Subcontractors, and expenses related to managing and administering the Public Works Improvements. "Public Works Improvement Costs" shall not include amounts for an allowance for overhead, profit or contingency.

"Rating Services" means Moody's Investors Service, Inc., Standard and Poor's Rating Services, Fitch Investors Services, and Duff & Phelps or any of their successors.

"Required Construction Work Insurance" has the meaning specified in Appendix 5 hereto.

"Required Operating Period Insurance" has the meaning specified in Appendix 5 hereto.

"Resource Conservation and Recovery Act" or "RCRA" means the Resource Conservation and Recovery Act, 42 U.S.C.A. § 6901 et seq., as amended or superseded.

"Revenue Bonds" means any bonds, notes or other obligations issued or secured under the Bond Resolution.

"Schedule of Rates" has the meaning set forth in subsection 4.9(B) hereof.

"Senior Executives" has the meaning set forth in subsection 4.2(C) hereof.

"Service Area" means the counties of Suffolk and Nassau and that portion of the County of Queens constituting LILCO's franchise area as of the effective date of the Act. "Service Area" does not include the Villages of Freeport, Greenport and Rockville Centre.

"Service Fee" has the meaning specified in Section 6.1 hereof.

"State" means the State of New York.

"Subcontract" means an agreement between the Manager and a Subcontractor, or between two Subcontractors, as applicable.

"Subcontractor" means every person (other than employees of the Manager) employed or engaged by the Manager or any person directly or indirectly in privity with the Manager (including every sub-subcontractor of whatever tier) for any portion of the Construction Work or Operation and Maintenance Services, whether for the furnishing of labor, materials, supplies, equipment, services, or otherwise.

"System Policies and Procedures" means the policies and procedures adopted from time to time by the Authority with respect to the T&D System and the System Power Supply in accordance with Applicable Law and Prudent Utility Practices.

"System Power Supply" means electric capacity and energy from all power supply sources owned by or under contract to the Authority, including, but not limited to, the Existing Power Supply

Agreements, the Power Supply Agreement, the Authority's rights and interests with respect to the Nine Mile Point 2, and the Authority's interest in any future generating facilities, spot market capacity and energy purchases made on behalf of the Authority, and any load control programs or measures adopted by the Authority.

"System Revenue Requirements" means the sum of the annual Service Fee, plus an estimate of other costs plus debt service requirements on the Authority's Revenue Bonds plus the Authority's costs as reported to the Manager pursuant to Section 6.2(B)(2) hereof.

"T&D System" means the electricity transmission and distribution system owned by the Authority, as described in Appendix 2 hereto, and all other assets, facilities, equipment or contractual arrangements of the Authority used to provide the transmission and distribution of Power and Energy to the Service Territory. "T&D System" also shall include all capital improvements made to the T&D System after the Contract Date, less retirements.

"T&D System Supervisor" has the meaning specified in subsection 4.2(C) hereof.

"T&D System Site" means the real property and interests therein upon which the components of the T&D System are and will be located, including, without limitation, those described in Appendix 2 hereto

"Term" has the meaning set forth in Section 8.1 hereof.

"Termination Date" has the meaning set forth in subsection 7.4(A) hereof.

"Termination Notice Period" has the meaning set forth in subsection 7.4(B) hereof.

"Third Party Cost Budget" has the meaning set forth in Section 6.2 hereof.

"Third Party Costs" has the meaning set forth in Section 6.2 hereof.

"Total Cost" has the meaning set forth in Section 6.1 hereof.

"Transaction Agreement" means any agreement entered into by any person in connection with the transactions contemplated by this Agreement including, without limitation, the Bond Resolution, the Power Supply Agreement, the Energy Management Agreement and the Acquisition Agreement.

"Trustee" means the trustee acting under the Bond Resolution for the benefit of the Bondholders.

"Uncontrollable Circumstance" means any act, event or condition, whether affecting the T&D System, the System Power Supply, the Authority, the Manager, or any of the Authority's subcontractors or the Manager's Subcontractors to the extent that it materially and adversely affects the ability of either party to perform any obligation under the Agreement (except for payment obligations), if such act, event or condition is beyond the reasonable control and is not also the result of the misconduct or negligent action or omission or failure to exercise reasonable diligence on the part of the party relying

thereon as justification for not performing an obligation or complying with any condition required of such party under the Agreement; provided, however, that the contesting in good faith or the failure in good faith to contest such action or inaction shall not be construed as willful or negligent action or a lack of reasonable diligence of either party.

(1) Inclusions. Subject to the foregoing, such acts or events may but not necessarily shall include, and shall not be limited to, the following:

(a) an act of God (but not including reasonably anticipated weather conditions for the geographic area of the T&D System, other than major storms and extreme weather events) landslide, lightning, earthquake, fire, explosion, flood, sabotage or similar occurrence, acts of a public enemy, extortion, war, blockade or insurrection, riot or civil disturbance;

(b) a Change in Law;

(c) the failure of any appropriate Governmental Body or private utility having operational jurisdiction in the area in which the T&D System is located, to provide and maintain Non-Electric Utilities to any facility comprising part of the T&D System which are required for the performance of this Agreement and which failure directly results in a delay or curtailment of the performance of the Operation and Maintenance Services or any Construction Work;

(d) any failure of title to any portion of the T&D System Site or any enforcement of any Encumbrance on the T&D System Site or on any improvements thereon not consented to in writing by, or arising out of any action or agreement entered into by, the party adversely affected thereby;

(e) the preemption of materials or services by a Governmental Body in connection with a public emergency or any condemnation or other taking by eminent domain of any portion of the T&D System.

(f) the presence of archeological finds, endangered species, Hazardous Waste or Hazardous Substances at the T&D System Site, except to the extent the Manager or the Guarantor knew or should have known of such presence or to the extent identified in the documents referenced in Appendix 2 hereto.

(2) Exclusions. It is specifically understood that none of the following acts or conditions shall constitute Uncontrollable Circumstances:

(a) general economic conditions, interest or inflation rates, or currency fluctuations or exchange rates,

(b) the financial condition of the Authority, the Manager, the Guarantor, any of their Affiliates or any Subcontractor,

(c) the consequences of error, neglect or omissions by the Manager, the Guarantor, any Subcontractor, any of their Affiliates or any other person in the performance of any work hereunder;

(d) any increase for any reason in premiums charged by the Manager's insurers or the insurance markets generally for the Required Construction Work Insurance or the Required Operating Period Insurance;

(e) the failure of the Manager to secure patents or licenses in connection with the technology necessary to perform its obligations hereunder;

(f) equipment malfunction or failure;

(g) union work rules, requirements or demands which have the effect of increasing the number of employees employed at the T&D System, reducing the operating flexibility of the Manager or otherwise increase the cost to the Manager of operating and maintaining the T&D System,

(h) any impact of prevailing wage laws on the Manager's operation and maintenance costs with respect to wages and benefits,

(i) the failure of any Subcontractor or supplier to furnish labor, materials, services or equipment for any reason;

(j) strikes, work stoppages or other labor disputes or disturbances, or

(k) any act, event or circumstance occurring outside of the United States.

"Variable Payment" has the meaning set forth in Section 6.1 hereof.