

Tax Matters

1. "Taxes", as used in this Agreement, means any federal, state, county, local or foreign taxes, charges, fees, levies, or other assessments, including all net income, gross income, gross earnings, gross receipt, sales and use, ad valorem, transfer, gains, profits, excise, franchise, real and personal property, capital stock, production, business and occupation, disability, employment, payroll, license, estimated, stamp, custom duties, severance or withholding taxes or charges imposed by any governmental entity, and includes any interest and penalties (civil or criminal) on or additions to any such taxes. "Tax Return", as used in this Agreement, means a report, return or other information required to be supplied to a governmental entity with respect to Taxes including, where permitted or required, combined or consolidated returns for any group of entities that includes Parent, Company or any of the Company Subsidiaries, or Parent, Company or any of the Company Subsidiaries, as the case may be.

2. Except as set forth on the Tax Matters Disclosure Schedule annexed to this Schedule D:

(a) Filing of Timely Tax Returns. Parent, Company and each of the Company Subsidiaries have filed (or there has been filed on its behalf) and will file all material Tax Returns required to be filed by each of them under applicable law. All such Tax Returns were, are and will be in all material respects true, complete and correct and filed on a timely basis.

(b) Payment of Taxes. Parent, Company and each of the Company Subsidiaries have, within the time and in the manner prescribed by law, paid and will pay all Taxes that are currently due and payable except for those contested in good faith for which adequate reserves have been established.

(c) Tax Reserves. Parent, Company and the Company Subsidiaries have established on their books (i) in accordance with GAAP, reserves, charges and accruals ("Tax Reserves") adequate to pay all Taxes due, or accrued but not yet due, relating to the income, properties or operations of Parent, Company and the Company Subsidiaries and (ii) reserves for deferred income taxes.

(d) Tax Liens. There are no Tax liens upon the assets of Parent, Company or any of the Company Subsidiaries except liens for Taxes not yet due.

(e) Withholding Taxes. Parent, Company and each of the Company Subsidiaries have complied with the provisions of the Internal Revenue Code of 1986, as amended (the "Code") relating to the withholding of Taxes, as well as similar provisions under any other federal, state and local laws, and have, within the time and in the manner prescribed by law, withheld from employee wages and paid over to the proper governmental authorities all amounts so withheld.

(f) Extensions of Time for Filing Tax Returns. Neither Parent, Company nor any of the Company Subsidiaries has requested any extension of time within which to file any Tax Return, which Tax Return has not since been filed.

(g) Waivers of Statute of Limitations. Neither Parent, Company nor any of the Company Subsidiaries has executed any outstanding waivers or comparable consents regarding the application of the statute of limitations with respect to the assessment or collection of any Taxes or Tax Returns, and neither Parent, Company nor any Company Subsidiary has been requested to enter into any such waiver or consent.

(h) Expiration of Statute of Limitations. The statute of limitations for the assessment of all Taxes has expired for all applicable Tax Returns of Parent, Company and each of the Company Subsidiaries or those Tax Returns have been examined by the appropriate taxing authorities for all periods through the date hereof, and no deficiency for any Taxes has been proposed, asserted or assessed against Parent, Company or any of the Company Subsidiaries that has not been resolved and paid in full.

(i) Audit, Administrative and Court Proceedings. No audits or other administrative proceedings or court proceedings are presently pending which could result in material liability for any Taxes to Parent, Company or any of the Company Subsidiaries or any affiliated group filing consolidated returns in which Parent, Company or any Company Subsidiary joined.

(j) Powers of Attorney. No power of attorney currently in force has been granted by Parent, Company or any of the Company Subsidiaries concerning any Tax matter.

(k) Tax Rulings. Neither Parent, Company nor any of the Company Subsidiaries has received a Tax Ruling or entered into a Closing Agreement with any taxing authority and no request for a Tax Ruling or Closing Agreement is pending with any taxing authority that would have a continuing material effect after the Closing Date. "Tax Ruling", as used in this Agreement, shall mean a written ruling of a taxing authority relating to Taxes. "Closing Agreement", as used in this Agreement, shall mean a written and legally binding agreement with a taxing authority relating to Taxes.

(l) Availability of Tax Returns. Parent or Company has made available to the extent requested by Authority or LIPA Sub complete and accurate copies of (i) all Tax Returns, and any amendments thereto, filed by Parent, Company or any of the Company Subsidiaries, (ii) all audit reports, revenue agent or examination reports, proposed adjustments, and statutory notices of deficiency, agreements and waivers and all related documents received from any taxing authority relating to any Tax Return filed by Parent, Company or any of the Company Subsidiaries and (iii) any Closing Agreements entered into by Parent, Company or any of the Company Subsidiaries with any taxing authority.

(m) Tax Sharing Agreements. Neither Parent, Company nor any Company Subsidiary is a party to any agreement relating to allocating or sharing of income Taxes.

(n) Code Section 280G. Neither Parent, Company nor any of the Company Subsidiaries is a party to any agreement, contract, or arrangement that could result, on account of the transactions contemplated hereunder, separately or in the aggregate, in the payment of any "excess parachute payments" within the meaning of Section 280G of the Code.

(o) Liability for Others. None of Parent, Company or any of the Company Subsidiaries has any liability for Taxes of any person other than Parent, Company and the Company Subsidiaries (i) under Treasury Regulations Section 1.1502-6 (or any similar provision of state, local or foreign law) as a transferee or successor, (ii) by contract, or (iii) otherwise.

(p) Code Section 168(h). Neither the Company nor any Company Subsidiary is (A) required to treat any asset of the Company or any Company Subsidiary as owned by another person pursuant to the "safe harbor" leasing provisions of the Code or as "tax-exempt use property" within the meaning of Code Section 168(h) or (B) required to apply any

of the foregoing rules under any comparable foreign, state or local Tax provision;

(q) Code Section 481(a). Neither the Company nor any Company Subsidiary has agreed, or is required, to make any adjustment under Code Section 481(a) (or any comparable provision of state, local or foreign law) by reason of a change in accounting method or otherwise;

(r) Changes and Elections. Since the most recent Tax period for which Parent has provided Authority with copies of the federal income Tax Returns of the Company and the Company Subsidiaries, neither the Company nor any Company Subsidiary has, nor has the Parent on behalf of any of them, made or changed any election concerning Taxes or Tax Returns, changed an annual accounting period, adopted or changed any accounting method, filed any amended Tax Return, entered into any closing agreement with respect to Taxes, settled any Tax claim or assessment or surrendered any right to claim a refund of Taxes or obtained or entered into any Tax Ruling, agreement, contract, understanding, arrangement or plan;

3. Tax Periods Ending on or Before the Closing Date.

Parent shall be responsible for and shall pay all Taxes with respect to periods that end on or before the Closing Date except to the extent such Taxes are reflected in Tax Reserves on the Closing Date Balance Sheet. Parent shall prepare or cause to be prepared all Tax Returns for the Company for all periods ending on or prior to the Closing Date which are filed after the Closing Date and shall furnish federal income returns to Authority at least 15 business days, and with the respect to all other returns at least 5 business days prior to filing. Authority shall have the right to review such Tax Return prior to the filing thereof. Authority shall notify Parent of any reasonable objections Authority may have to any items set forth in such draft Tax Returns, and Authority and Parent agree to consult and resolve in good faith any such objection and to mutually agree to the form and substance of such Tax Return. Such Tax Returns shall be prepared in a manner consistent with prior practice of the Company with respect to Returns concerning the income, properties or operations of the Company (including elections and accounting methods and conventions) and with this Agreement except where a specific contrary practice is required by law or regulation or otherwise agreed to prior to the filing thereof. Upon the agreement of Authority and Parent as to the form and substance of any such Tax Return, Authority shall cause Company to file such Tax Return. Parent shall pay to Authority at least 5 days prior to the due date of any such Tax Return, all Taxes that are reflected on such Tax Return that have not theretofore been paid to the applicable taxing authority or reflected in Tax Reserves on the Closing Date Balance Sheet.

4. Tax Periods Beginning Before and Ending After the Closing Date.

Parent shall prepare or cause to be prepared any Tax Returns of the Company for Tax periods which begin before the Closing Date and end after the Closing Date. Parent shall provide a preliminary draft of any federal income Tax Return at least 60 days prior to the scheduled due date for such Tax Return (with regard to any extensions in effect on such date), and Parent shall provide a substantially final draft of any Tax Return relating to any other Taxes at least 5 business days prior to their due date (including any extensions). Authority shall notify Parent of any reasonable objections Authority may have to any items set forth in any such draft Tax Returns, and Authority and Parent agree to consult and resolve in good faith any such objection and to mutually agree to the form and substance of such Tax Return.

Except as otherwise provided in this Agreement, such Tax Returns shall be prepared or completed in a manner consistent with prior practice of the Company with respect to Returns concerning the income, properties or operations of the Company (including elections and accounting methods and conventions) and with this Agreement except where a specific contrary practice is required by law or regulation or otherwise agreed to by Authority prior to the filing thereof. Upon the agreement of Authority and Parent as to the form

and substance of any such Tax Return, Authority shall cause Company to file such Tax Return. Parent shall pay to Authority at least 5 days prior to the due dates of such returns the portion of such Taxes which relate to the portion of such Tax period ending on the Closing Date determined as provided in this Schedule D, to the extent such Taxes have not theretofore been paid by Parent, Company or any Company Subsidiary prior to the Closing Date to the applicable taxing authorities or are not reflected in Tax Reserves on the Closing Date Balance Sheet provided, however, any liability which is discovered after the Closing Date which under the rules of the PSC (at the date hereof) is an electric ratepayer expense which has not previously been charged or credited to ratepayers shall be considered a liability or asset of the Authority. For purposes of this Schedule, in the case of any Tax that is imposed on a periodic basis and is payable for a Tax period that includes (but does not end on) the Closing Date, the portion of such Tax which relates to the portion of such Tax period ending on the Closing Date shall (x) in the case of any Taxes other than Taxes based upon or related to net or gross income or receipts, be deemed to be the amount of such Taxes for the entire Tax period multiplied by a fraction the numerator of which is the number of days in the Tax period ending on the Closing Date and the denominator of which is the number of days in the entire Tax period, and (y) in the case of any Tax based upon or related to net or gross income or receipts be deemed equal to the amount which would be payable if the relevant Tax Period ended on the Closing Date. Parent shall be responsible for the portion of such Taxes which relate to the portion of the Taxable period ending on the Closing Date including without limitation Taxes reflected in Tax Reserves on the Closing Date Balance Sheet (as adjusted pursuant to the proviso in the second preceeding sentence) and shall pay the amount of such Taxes to Authority except to the extent such Taxes have theretofore been paid by Parent, Company or any Company subsidiary to the appropriate tax authority or are reflected in such Tax Reserves on the Closing Date Balance Sheet (taking into account such adjustments). All determinations necessary to give effect to the foregoing allocations shall be made in a manner consistent with prior practice of the Company. Notwithstanding the foregoing and except as provided in Schedule E, if requested to do so by Parent, and provided Parent has supplied the necessary funds therefore, Company shall make a payment or payments at such time as directed by Parent prior to the last day of the Tax Period that includes the Closing Date with respect to any expense or liability of the Company which accrues prior to the Closing Date and the tax benefit attributable to such payment shall be deemed attributable to the Tax Period ending on or before the Closing Date. Authority shall reimburse Parents for such funds to the extent and at such times as such reimbursement may be appropriate.

5. Certain Taxes. Notwithstanding any provision of this Agreement to the contrary, all Taxes incurred by Company with respect to the transfer to Parent or the Transferee Subsidiaries of the Transferred Assets the distribution of the Parent Shares, and the sale of the New Parent Preferred Shares shall be deemed to relate to the portion of the relevant taxable period ending on the Closing Date for purposes of the preceding Section 4, and in no event shall Parent or its Subsidiaries be responsible for the payment or reimbursement to Authority or Company of Taxes to the extent the right to recover such Taxes from ratepayers would have been recordable as an asset on the Closing Date Balance Sheet and were not so recorded, other than federal income taxes arising out of the transactions contemplated by the Acquisition Agreement.

6. Refunds and Tax Benefits. Except to the extent that any amount would be returnable to electric ratepayers under PSC rules (at the date hereof), any refunds of taxes based on gross or net income that are received by Authority or its Subsidiaries subsequent to the Closing Date, and any amounts credited against any such Taxes to which Authority and its Subsidiaries become entitled, that relate to Tax periods or portions thereof ending on or before the Closing Date shall be for the account of Parent, and Authority shall pay over to Parent any such refund or credit within 15 days after receipt thereof, unless any such refund or amount results in a liability

for such Taxes being imposed on Company relating to Tax periods or portions thereof ending after the Closing Date, in which case the amount paid to Parent shall be reduced by the amount of such liability.

7. Cooperation on Tax Matters.

(a) Parent shall have the right to represent the interests of Company in any Tax audit or administrative or court proceeding relating to Tax Returns described in Paragraphs 3 and 4 with respect to which Parent may be liable for Taxes pursuant to this Agreement (including any such proceedings relating to Company or any Company Subsidiary) and shall control such audit or proceeding with respect to Taxes for which it is responsible under paragraphs 3 & 4 of this Schedule D consistent with the Liabilities Undertaking and Indemnification Agreement (Exhibit F); provided, however, that Authority shall have the right to participate in any such audit or proceeding to the extent that any such audit or proceeding may affect the Tax liability of Authority, any of its affiliates or Company for any period ending after the Closing Date and to employ counsel of its choice at its own expense for purposes of such participation and shall control such audit or proceeding with respect to Taxes for which it is responsible under paragraph 4 of this Schedule D consistent with the Liabilities Undertaking and Indemnification Agreement (Exhibit G). Notwithstanding anything to the contrary contained or implied in this Agreement, without the prior written approval of Authority, neither Parent nor any affiliate of Parent shall agree or consent to compromise or settle, either administratively or after the commencement of litigation, any issue or claim arising in any such audit or proceeding, or otherwise agree or consent to any Tax liability, to the extent that any such compromise, settlement, consent or agreement may affect the Tax liability of Authority or Company for any Tax Period ending after the Closing Date. Except to the extent required by law, neither Authority nor any of its Subsidiaries shall take any position with respect to Taxes that is inconsistent with any position taken by the Company prior to the Closing Date and shall file no amended Tax Returns with respect to any Tax Period that ends before or includes the Closing Date. Neither Parent nor any affiliate of Parent shall, without the prior written consent of Authority, file, or cause to be filed, any amended Tax return or claim for Tax refund, with respect to Company to the extent that any such filing may affect the Tax liability of Authority, any of its affiliates, or Company for any Tax Period ending after the Closing Date.

(b) Parent, Authority, and their Subsidiaries shall cooperate fully, as and to the extent reasonably requested by the other party, in connection with the filing of Tax Returns pursuant to this Schedule and any audit, litigation, refund claim, or other proceeding with respect to Taxes. Such cooperation shall include the retention and (upon the other party's request) the provision of records and information which are reasonably relevant to any such audit, litigation, refund claim, or other proceeding, making employees available on a mutually convenient basis to provide additional information and explanation of any material provided hereunder, and executing powers of attorney to allow Parent and its representatives to exercise the rights herein enumerated. Parent, Authority, and their Subsidiaries agree (A) to retain all books and records with respect to Tax matters pertinent to the Company relating to any taxable period beginning before the Closing Date until the expiration of the statute of limitations (and, to the extent notified by the other party, any extensions thereof) of the respective taxable periods, and to abide by all record retention agreements entered into with any taxing authority, and (B) to give the other party reasonable written notice prior to transferring, destroying or discarding any such books and records and, if the other party so requests, Authority or Company, or Parent or its Subsidiaries, as the case may be, shall allow the other party to take possession and control of such books and records.

(c) Authority and Parent further agree, upon request, to use their best efforts to obtain any certificate or other document from any governmental authority or any other Person as may be necessary to mitigate,

reduce or eliminate any Tax that could be imposed (including, but not limited to, with respect to the transaction contemplated in this Agreement).

8. Any liability arising after the Closing by reason of failure to meet the requirements of Section 337(d) and the regulations thereunder because of the action of a regulatory agency, or any misstatements made to such regulatory agency, shall be allocated to Authority if the agency is an agency of New York State and to Parent if the agency is an agency of the Federal government.