



Aurora R. Valenti
TOMPKINS COUNTY CLERK

320 North Tioga Street
Ithaca, NY 14850

(607) 274-5431
Fax: (607) 274-5445

Instrument Number

594334-006

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cover page)

Receipt No. 594334

Date: 07/16/2012

Time: 12:42 PM

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Parties
To Transaction: AES EASTERN ENERGY TO CAYUGA OPERTI

Town/City: LANSING

Delivered By:
LS ABSTRACT

Return To:
LS ABSTRACT

Deed Information

Taxable Consideration: \$0.00

State Transfer Tax: \$0.00

County Transfer Tax: \$0.00

RETT No.: 01971

State of New York
Tompkins County Clerk

Mortgage Information

Taxable Mortgage Amount:

Basic Mortgage Tax:

Special Mortgage Tax:

Additional Mortgage Tax:

Local Mortgage Tax:

Mortgage Serial No.:

This sheet constitutes the Clerk endorsement required by Section 316-A(5) & Section 319 of the Real Property Law of the State of New York.

Aurora R. Valenti

Tompkins County Clerk

Please do not remove this page.



SPECIAL WARRANTY DEED

THIS INDENTURE, made ^{as of} the 29 day of June, 2012,

BETWEEN:

AES EASTERN ENERGY, L.P., a Delaware limited partnership
130 East Seneca Street, Suite 505
Ithaca, New York 14850

GRANTOR

CAYUGA OPERATING COMPANY LLC, a Delaware limited liability
company

GRANTEE

WITNESSETH, that the Grantor, in consideration of ONE DOLLAR (\$1.00), and other good and valuable consideration, paid by the Grantee, hereby grants and releases unto the Grantee, the successors and assigns of the Grantee forever, all those certain plots, pieces or parcels of land with the fixtures, structures, buildings, improvements and other items constituting real property situate, lying and being in the Town of Lansing, Tompkins County, New York and more particularly described on *Schedule "A"* attached hereto and made a part hereof, together with the appurtenances and all the estate and rights of the Grantor in and to said premises.

SUBJECT ONLY TO easements, covenants and restrictions of record, if any.

TO HAVE AND TO HOLD the premises herein granted unto the Grantee, the successors and/or assigns of the Grantee forever. **AND** the Grantor covenants as follows:

FIRST: The Grantor conveys to the Grantee, the title vested in the Grantor by an order of the United States Bankruptcy Court for the District of Delaware dated April 11, 2012, entitled Order Authorizing Entry of an Order Approving (A) Sale of Assets Free and Clear of all Liens, Claims, Encumbrances, and Other Interests, and (B) Assumption and Assignment of Executory Contracts To Successful Bidder(s) (the "Order"), a copy of which Order is attached as *Schedule "B"* hereto and made a part hereof.

SECOND: The Grantor warrants that the Grantor has not impaired the title to said premises.

THIS Special Warranty Deed is subject to the trust provisions of Section 13 of the Lien Law.

IN WITNESS WHEREOF, the Grantor has executed this Special Warranty Deed the day and year first above written.

In presence of:

AES EASTERN ENERGY, L.P.

By: AES NY, L.L.C., its General Partner

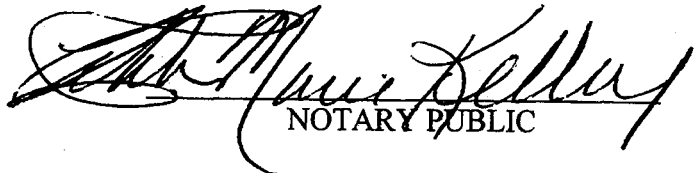
By: 

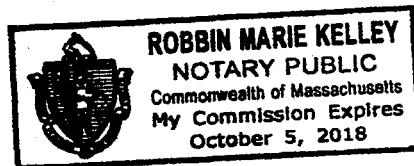
Name: Peter S. Norgeot

Title: President

STATE OF MASSACHUSETTS)
COUNTY OF BARNSTABLE) ss:.

On the 24th day of June, in the year 2012, before me, the undersigned, a notary public in and for said state, personally appeared PETER S. NORGEOT, personally known to me or proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to the within instrument and acknowledged to me that he executed the same in his capacity, and that by his signature on the instrument, the individual or the person upon behalf of which the individual or the person upon behalf of which the individual acted, executed the instrument.


NOTARY PUBLIC



SCHEDULE "A"

CAYUGA PROPERTY:

[SURVEY AND RECORD DESCRIPTION]:

ALL THOSE CERTAIN LOTS, PIECES, OR PARCELS OF LAND SITUATE, LYING AND BEING SOUTHWESTERLY OF LAKE RIDGE ROAD IN THE TOWN OF LANSING, COUNTY OF TOMPKINS, AND STATE OF NEW YORK AS SHOWN ON A MAP ENTITLED "ALTA/ACSM LAND TITLE SURVEY, AES EASTERN ENERGY, L.P., TMN'S 11-1-3.211 & 11-1-3.212, TOWN OF LANSING, TOMPKINS COUNTY, NEW YORK STATE", AS PREPARED BY HULBERT ENGINEERING AND LAND SURVEYING, P.C., BINGHAMTON, NEW YORK DATED MAY 10, 2012. (HELS JOB# 12047.01), BOUNDED AND DESCRIBED AS FOLLOWS:

PARCEL I

(FOR INFORMATION ONLY: FORMERLY TAX PARCEL 12-1-15.4, CURRENTLY PART OF TAX PARCEL 11-1-3.212)

BEGINNING AT A FOUND 5/8 INCH REBAR (CAP DESTROYED) AT THE INTERSECTION OF THE DIVISION LINE BETWEEN THE PROPERTY OWNED BY AES EASTERN ENERGY, L.P. ON THE NORTHEAST AND THE PROPERTY NOW OR FORMERLY OWNED BY ROGER B. AND DORIS M. SOVOCOL ON THE SOUTHWEST WITH THE EXISTING SOUTHEASTERLY ROAD BOUNDARY OF MILLIKEN STATION ROAD;

RUNNING THENCE ALONG SAID ROAD BOUNDARY THE FOLLOWING TEN (10) COURSES AND DISTANCES:

- (1) NORTH 42°33'03" EAST, A DISTANCE OF 6.31 FEET TO A POINT;
 - (2) THENCE NORTH 36°55'09" EAST, A DISTANCE OF 231.35 FEET TO A POINT;
 - (3) THENCE NORTH 36°58'55" EAST, A DISTANCE OF 148.03 FEET TO A POINT;
 - (4) THENCE NORTH 45°59'38" EAST, A DISTANCE OF 279.03 FEET TO A POINT;
 - (5) THENCE NORTH 56°44'31" EAST, A DISTANCE OF 573.26 FEET TO A POINT;
 - (6) THENCE NORTH 57°53'32" EAST, A DISTANCE OF 481.66 FEET TO A POINT;
 - (7) THENCE NORTH 56°55'34" EAST, A DISTANCE OF 191.91 FEET TO A POINT;
 - (8) THENCE NORTH 53°19'29" EAST, A DISTANCE OF 215.01 FEET TO A FOUND 3/4 INCH REBAR;
 - (9) THENCE NORTH 49°59'32" EAST, A DISTANCE OF 164.68 FEET TO A POINT;
 - (10) THENCE NORTH 51°24'49" EAST, A DISTANCE OF 302.11 FEET TO A FOUND 3/4 INCH REBAR AT ITS INTERSECTION WITH THE DIVISION LINE BETWEEN SAID PROPERTY OWNED BY AES EASTERN ENERGY, L.P. ON THE SOUTHWEST AND THE PROPERTY NOW OR FORMERLY OWNED BY HOLCIM (US) INC ON THE NORTHEAST;
- THENCE SOUTH 41°09'02" EAST, ALONG THE LAST MENTIONED DIVISION LINE AND PASSING THROUGH A FOUND 3/4 INCH REBAR, A DISTANCE OF 162.59 FEET TO A POINT AT ITS INTERSECTION WITH THE DIVISION LINE BETWEEN SAID PROPERTY OWNED BY AES EASTERN ENERGY, L.P. ON THE NORTHWEST AND SAID PROPERTY NOW OR FORMERLY OWNED BY HOLCIM (US) INC ON THE SOUTHEAST;
- THENCE SOUTH 50°51'05" WEST ALONG THE LAST MENTIONED DIVISION LINE, A DISTANCE OF 465.80 FEET TO A POINT AT ITS INTERSECTION WITH THE DIVISION LINE BETWEEN SAID PROPERTY OWNED BY AES EASTERN ENERGY, L.P. ON THE WEST AND THE PROPERTY NOW OR FORMERLY OWNED BY ROGER B. SOVOCOL ON THE EAST;
- THENCE ALONG THE LAST MENTIONED DIVISION LINE, THE FOLLOWING NINE (9) COURSES AND DISTANCES:

- (1) SOUTH 12°41'50" WEST, A DISTANCE OF 241.39 FEET TO A POINT;
- (2) THENCE SOUTH 29°29'34" EAST, A DISTANCE OF 101.18 FEET TO A POINT;
- (3) THENCE SOUTH 33°48'57" WEST, A DISTANCE OF 162.71 FEET TO A POINT;
- (4) THENCE SOUTH 56°20'40" WEST, A DISTANCE OF 120.23 FEET TO A POINT;
- (5) THENCE SOUTH 85°26'00" WEST, A DISTANCE OF 169.68 FEET TO A POINT;
- (6) THENCE SOUTH 39°53'52" WEST, A DISTANCE OF 142.33 FEET TO A POINT;
- (7) THENCE SOUTH 44°56'59" WEST, A DISTANCE OF 195.26 FEET TO A POINT;
- (8) THENCE SOUTH 40°07'15" WEST, A DISTANCE OF 137.66 FEET TO A POINT;

(9) THENCE SOUTH 66°08'22" WEST, A DISTANCE OF 157.66 FEET TO A POINT AT ITS INTERSECTION WITH THE DIVISION LINE BETWEEN SAID PROPERTY OWNED BY AES EASTERN ENERGY, L.P. ON THE NORTHWEST AND SAID PROPERTY NOW OR FORMERLY OWNED BY ROGER B. SOVOCOL ON THE SOUTHEAST;
THENCE ALONG THE LAST MENTIONED DIVISION LINE AND ALONG THE DIVISION LINE BETWEEN SAID PROPERTY OWNED BY AES EASTERN ENERGY, L.P. ON THE NORTHWEST AND THE PROPERTY NOW OR FORMERLY OWNED BY GLENN A. COBB AND HEATHER E. MILLER ON THE SOUTHEAST, THE FOLLOWING THREE (3) COURSES AND DISTANCES:
(1) SOUTH 50°57'51" WEST, A DISTANCE OF 382.75 FEET TO A POINT;
(2) THENCE SOUTH 24°26'48" WEST, A DISTANCE OF 170.62 FEET TO A POINT;
(3) THENCE SOUTH 52°08'38" WEST, A DISTANCE OF 362.44 FEET TO A FOUND 5/8 INCH REBAR WITH "HAWK" CAP AT ITS INTERSECTION WITH THE ABOVE FIRST MENTIONED DIVISION LINE;
THENCE NORTH 35°50'06" WEST ALONG SAID FIRST MENTIONED DIVISION LINE, A DISTANCE OF 482.38 FEET TO THE POINT OR PLACE OF BEGINNING.
CONTAINING 1,085,028 SQUARE FEET OR 24.9088 ACRES, MORE OR LESS.

PARCEL II

(FOR INFORMATION ONLY: FORMERLY TAX PARCEL 12-1-15.5; CURRENTLY PART OF TAX PARCEL 11-1-3.212)

BEGINNING AT A POINT ON THE DIVISION LINE BETWEEN THE PROPERTY OWNED BY AES EASTERN ENERGY, L.P. ON THE NORTHEAST AND THE PROPERTY NOW OR FORMERLY OWNED BY PENNSYLVANIA LINES LLC ON THE SOUTHWEST AT ITS INTERSECTION WITH THE EXISTING SOUTHEASTERLY ROAD BOUNDARY OF MILLIKEN STATION ROAD;
RUNNING THENCE ALONG SAID ROAD BOUNDARY THE FOLLOWING TWO (2) COURSES AND DISTANCES:

(1) NORTH 52°23'08" EAST, A DISTANCE OF 126.26 FEET TO A POINT;
(2) THENCE NORTH 44°53'16" EAST, A DISTANCE OF 174.04 FEET TO A FOUND 5/8 INCH REBAR WITH "HAWK" CAP AT ITS INTERSECTION WITH THE DIVISION LINE BETWEEN SAID PROPERTY OWNED BY AES EASTERN ENERGY, L.P. ON THE SOUTHWEST AND THE PROPERTY NOW OR FORMERLY OWNED BY ROGER B. AND DORIS M. SOVOCOL ON THE NORTHEAST;
THENCE SOUTH 35°50'06" EAST, ALONG THE LAST MENTIONED DIVISION LINE, A DISTANCE OF 465.35 FEET TO A FOUND 5/8 INCH REBAR WITH "HAWK" CAP AT ITS INTERSECTION WITH THE DIVISION LINE BETWEEN SAID PROPERTY OWNED BY AES EASTERN ENERGY, L.P. ON THE NORTHWEST AND THE PROPERTY NOW OR FORMERLY OWNED BY PETER F. SOVOCOL ON THE SOUTHEAST;
THENCE SOUTH 52°08'38" WEST ALONG THE LAST MENTIONED DIVISION LINE, A DISTANCE OF 280.00 FEET TO A POINT AT ITS INTERSECTION WITH SAID FIRST MENTIONED DIVISION LINE;
THENCE NORTH 38°10'38" WEST ALONG SAID FIRST MENTIONED DIVISION LINE, A DISTANCE OF 443.62 FEET TO THE POINT OR PLACE OF BEGINNING.
CONTAINING 130,000 SQUARE FEET OR 2.9844 ACRES, MORE OR LESS.

PARCEL III

(FOR INFORMATION ONLY: FORMERLY TAX PARCEL 11-1-32; CURRENTLY TAX PARCEL 11-1-3.211 AND PART OF 11-1-3.212)

BEGINNING AT A FOUND 1 1/4 INCH BOLT ON THE EXISTING SOUTHWESTERLY ROAD BOUNDARY OF LAKE RIDGE ROAD
AT ITS INTERSECTION WITH THE DIVISION LINE BETWEEN THE PROPERTY OWNED BY AES EASTERN ENERGY, L.P. ON THE NORTH AND THE PROPERTY NOW OR FORMERLY OWNED BY HENRY TOLEN ON THE SOUTH;
RUNNING THENCE SOUTH 85°30'32" WEST, ALONG SAID DIVISION LINE, A DISTANCE OF 24.71 FEET TO A FOUND 5/8 INCH REBAR AT ITS INTERSECTION WITH THE DIVISION LINE BETWEEN SAID PROPERTY OWNED BY AES EASTERN ENERGY, L.P. ON THE WEST AND SAID PROPERTY NOW OR FORMERLY OWNED BY HENRY TOLEN ON THE EAST;
THENCE SOUTH 06°42'21" EAST ALONG THE LAST MENTIONED DIVISION LINE, ALONG THE DIVISION LINE BETWEEN SAID PROPERTY OWNED BY AES EASTERN ENERGY, L.P. ON THE WEST AND THE PROPERTY NOW OR FORMERLY OWNED BY STEPHEN JAMES AND DOREEN M. MACK ON THE EAST, AND ALONG THE DIVISION LINE BETWEEN SAID PROPERTY OWNED BY

AES EASTERN ENERGY, L.P. ON THE WEST AND THE PROPERTY NOW OR FORMERLY OWNED BY CHARLES D., SR. AND JOLAN E. BALOG ON THE EAST, A DISTANCE OF 817.60 FEET TO A FOUND 5/8 INCH REBAR IN CONCRETE WITH "MACNEILL" CAP ON THE NORTHEASTERLY ROAD BOUNDARY OF MILLIKEN DRIVE (COUNTY ROAD 156) AT ITS INTERSECTION WITH THE DIVISION LINE BETWEEN SAID PROPERTY OWNED BY AES EASTERN ENERGY, L.P. ON THE NORTH AND THE PROPERTY NOW OR FORMERLY OWNED BY SARAH TRENHOLM AND ROBERT MEZZANOTTE ON THE SOUTH;
THENCE SOUTH 87°59'24" WEST, ALONG THE LAST MENTIONED DIVISION LINE AND ALONG THE DIVISION LINE BETWEEN SAID PROPERTY OWNED BY AES EASTERN ENERGY, L.P. ON THE NORTH AND THE PROPERTY NOW OR FORMERLY OWNED BY RICHARD C. JONES, JR. ON THE SOUTH, A DISTANCE OF 421.89 FEET TO A FOUND 5/8 INCH REBAR AT ITS INTERSECTION WITH THE DIVISION LINE BETWEEN SAID PROPERTY OWNED BY AES EASTERN ENERGY, L.P. ON THE WEST AND SAID PROPERTY NOW OR FORMERLY OWNED BY RICHARD C. JONES, JR. ON THE EAST;
THENCE SOUTH 02°11'01" EAST, ALONG THE LAST MENTIONED DIVISION LINE, A DISTANCE OF 358.43 FEET TO A FOUND 5/8 INCH REBAR AT ITS INTERSECTION WITH SAID NORTHWESTERLY ROAD BOUNDARY OF MILLIKEN DRIVE;
THENCE ALONG THE LAST MENTIONED ROAD BOUNDARY AND ALONG MILLIKEN STATION ROAD (COUNTY ROAD 156), THE FOLLOWING TWENTY-THREE (23) COURSES AND DISTANCES:
(1) SOUTH 73°59'07" WEST, A DISTANCE OF 118.96 FEET TO A POINT;
(2) THENCE SOUTH 68°24'42" WEST, A DISTANCE OF 274.77 FEET TO A POINT;
(3) THENCE SOUTH 61°34'36" WEST, A DISTANCE OF 315.82 FEET TO A POINT;
(4) THENCE SOUTH 58°34'58" WEST, A DISTANCE OF 114.45 FEET TO A POINT;
(5) THENCE SOUTH 56°02'40" WEST, A DISTANCE OF 654.22 FEET TO A FOUND 5/8 INCH REBAR WITH "HAWK" CAP;
(6) THENCE NORTH 84°42'07" WEST, A DISTANCE OF 226.88 FEET TO A FOUND 5/8 INCH REBAR WITH "HAWK" CAP;
(7) THENCE SOUTH 04°20'49" WEST, A DISTANCE OF 171.75 FEET TO A FOUND 5/8 INCH REBAR WITH "HAWK" CAP;
(8) THENCE SOUTH 60°35'39" WEST, A DISTANCE OF 276.49 FEET TO A POINT;
(9) THENCE SOUTH 61°12'56" WEST, A DISTANCE OF 548.78 FEET TO A POINT;
(10) THENCE SOUTH 56°20'26" WEST, A DISTANCE OF 167.16 FEET TO A FOUND 5/8 INCH REBAR;
(11) THENCE SOUTH 51°24'49" WEST, A DISTANCE OF 310.82 FEET TO A POINT;
(12) THENCE SOUTH 49°59'32" WEST, A DISTANCE OF 163.88 FEET TO A POINT;
(13) THENCE SOUTH 53°20'04" WEST, A DISTANCE OF 211.38 FEET TO A POINT;
(14) THENCE SOUTH 56°55'34" WEST, A DISTANCE OF 189.95 FEET TO A POINT;
(15) THENCE SOUTH 57°53'32" WEST, A DISTANCE OF 481.74 FEET TO A POINT;
(16) THENCE SOUTH 56°44'31" WEST, A DISTANCE OF 578.42 FEET TO A POINT;
(17) THENCE SOUTH 45°59'38" WEST, A DISTANCE OF 287.59 FEET TO A POINT;
(18) THENCE SOUTH 36°58'55" WEST, A DISTANCE OF 151.95 FEET TO A POINT;
(19) THENCE SOUTH 36°55'09" WEST, A DISTANCE OF 229.36 FEET TO A POINT;
(20) THENCE SOUTH 42°33'03" WEST, A DISTANCE OF 103.53 FEET TO A POINT;
(21) THENCE SOUTH 44°53'16" WEST, A DISTANCE OF 170.82 FEET TO A POINT;
(22) THENCE SOUTH 52°23'08" WEST, A DISTANCE OF 123.62 FEET TO A POINT;
(23) THENCE SOUTH 38°31'17" EAST, A DISTANCE OF 24.75 FEET TO A POINT AT ITS INTERSECTION WITH THE DIVISION LINE BETWEEN SAID PROPERTY OWNED BY AES EASTERN ENERGY, L.P. ON THE NORTH AND THE PROPERTY NOW OR FORMERLY OWNED BY PENNSYLVANIA LINES LLC ON THE SOUTH;
THENCE SOUTH 51°54'52" WEST, ALONG THE LAST MENTIONED DIVISION LINE, A DISTANCE OF 66.00 FEET TO A POINT AT ITS INTERSECTION WITH THE DIVISION LINE BETWEEN SAID PROPERTY OWNED BY AES EASTERN ENERGY, L.P. ON THE NORTHEAST AND THE PROPERTY NOW OR FORMERLY OWNED BY HERITAGE PARK TOWNHOUSES, INC. ON THE SOUTHWEST;
THENCE ALONG THE LAST MENTIONED DIVISION LINE, ALONG THE DIVISION LINE BETWEEN SAID PROPERTY OWNED BY AES EASTERN ENERGY, L.P. ON THE NORTHEAST AND THE PROPERTY NOW OR FORMERLY OWNED BY FRED J. AND SHIRLEY D. STONE ON THE SOUTHWEST, AND ALONG THE DIVISION LINE BETWEEN SAID PROPERTY OWNED BY AES EASTERN ENERGY, L.P. ON THE NORTHEAST AND THE PROPERTY NOW OR FORMERLY OWNED BY FRED J. STONE AND SHIRLEY DEEB STONE ON THE SOUTHWEST, THE FOLLOWING SIX (6)

COURSES AND DISTANCES:

(1) NORTH 38°31'19" WEST, A DISTANCE OF 56.50 FEET TO A POINT;
(2) THENCE NORTH 51°28'43" EAST, A DISTANCE OF 16.50 FEET TO A POINT;
(3) THENCE NORTH 38°31'17" WEST, A DISTANCE OF 56.00 FEET TO A POINT;
(4) THENCE SOUTH 51°28'43" WEST, A DISTANCE OF 16.50 FEET TO A POINT;
(5) THENCE NORTH 38°31'17" WEST, A DISTANCE OF 136.00 FEET TO A FOUND 5/8 INCH REBAR WITH "HAWK" CAP;
(6) THENCE SOUTH 51°28'43" WEST, A DISTANCE OF 36.00 FEET TO A POINT AT ITS INTERSECTION WITH THE EXISTING EASTERLY SHORELINE OF CAYUGA LAKE;
THENCE GENERALLY NORTHERLY ALONG SAID SHORELINE, A DISTANCE OF 4,711 FEET, MORE OR LESS,

DEFINED BY THE FOLLOWING FOUR (4) CHORDS AND DISTANCES:

(1) NORTH 31°20'00" WEST, A DISTANCE OF 1,030.76 FEET TO A POINT;
(2) THENCE NORTH 12°06'25" WEST, A DISTANCE OF 1,117.23 FEET TO A POINT;
(3) THENCE NORTH 18°16'16" WEST, A DISTANCE OF 1,143.50 FEET TO A POINT;
(4) THENCE NORTH 12°11'02" WEST, A DISTANCE OF 1,241.70 FEET TO A POINT AT ITS INTERSECTION WITH THE DIVISION LINE BETWEEN SAID PROPERTY OWNED BY AES EASTERN ENERGY, L.P. ON THE SOUTH AND THE PROPERTY NOW OR FORMERLY OWNED BY NEW YORK STATE ELECTRIC & GAS CORPORATION ON THE NORTH;

THENCE ALONG THE LAST MENTIONED DIVISION LINE THE FOLLOWING SEVEN (7) COURSES AND DISTANCES:

(1) SOUTH 89°53'55" EAST, A DISTANCE OF 341.37 FEET TO A FOUND 5/8 INCH REBAR WITH "HAWK" CAP;
(2) THENCE SOUTH 82°57'21" EAST, A DISTANCE OF 2,100.00 FEET TO A POINT;
(3) THENCE NORTH 10°27'25" WEST, A DISTANCE OF 24.75 FEET TO A FOUND 5/8 INCH REBAR WITH "HAWK" CAP;
(4) THENCE NORTH 79°32'39" EAST, A DISTANCE OF 1,166.28 FEET TO A FOUND 5/8 INCH REBAR WITH "HAWK" CAP;
(5) THENCE NORTH 85°27'44" EAST, A DISTANCE OF 170.25 FEET TO A POINT;
(6) THENCE NORTH 87°42'52" EAST, A DISTANCE OF 398.52 FEET TO A POINT;
(7) THENCE NORTH 87°57'59" EAST, A DISTANCE OF 1,234.97 FEET TO A FOUND 5/8 INCH REBAR WITH "HAWK" CAP AT ITS INTERSECTION WITH THE DIVISION LINE BETWEEN SAID PROPERTY OWNED BY AES EASTERN ENERGY, L.P. ON THE EAST AND SAID PROPERTY NOW OR FORMERLY OWNED BY NEW YORK STATE ELECTRIC & GAS CORPORATION ON THE WEST;
THENCE NORTH 01°20'08" WEST, ALONG THE LAST MENTIONED DIVISION LINE, A DISTANCE OF 1,467.61 FEET TO A FOUND 5/8 INCH REBAR WITH "HAWK" CAP AT ITS INTERSECTION WITH THE DIVISION LINE BETWEEN SAID PROPERTY OWNED BY AES EASTERN ENERGY, L.P. ON THE SOUTH AND SAID PROPERTY NOW OR FORMERLY OWNED BY NEW YORK STATE ELECTRIC & GAS CORPORATION ON THE NORTH;
THENCE NORTH 88°13'10" EAST, ALONG THE LAST MENTIONED DIVISION LINE, A DISTANCE OF 676.39 FEET TO A FOUND 5/8 INCH REBAR WITH "HAWK" CAP AT ITS INTERSECTION WITH THE ABOVE FIRST MENTIONED ROAD BOUNDARY;

THENCE ALONG SAID FIRST MENTIONED ROAD BOUNDARY, THE FOLLOWING TWO (2) COURSES AND DISTANCES:

(1) SOUTH 22°47'17" EAST, A DISTANCE OF 730.30 FEET TO A POINT;
(2) THENCE SOUTH 23°03'52" EAST, A DISTANCE OF 903.69 FEET TO THE POINT OR PLACE OF BEGINNING.

CONTAINING 17,802,087 SQUARE FEET OR 408.6797 ACRES, MORE OR LESS.

TOGETHER WITH THE BENEFITS OF AND SUBJECT TO THE BURDENS CONTAINED IN THAT CERTAIN AMENDED AND RESTATED RECIPROCAL EASEMENT AGREEMENT (MILLIKEN STATION) DATED AS OF 5/1/1999 MADE BY AND BETWEEN NEW YORK STATE ELECTRIC & GAS CORPORATION AND AES EASTERN ENERGY, L.P., AND RECORDED ON 5/20/1999 IN LIBER 847 CP 46.

EXCEPTING AND RESERVING FROM THE ABOVE DESCRIBED PARCEL III, THE SUBSTATION PARCEL AS FOLLOWS:

COMMENCING AT A POINT IN THE CENTERLINE OF MILLIKEN ROAD, SAID POINT BEING 4,130 FEET SOUTHWESTERLY MEASURED ALONG SAID CENTERLINE FROM A POINT AT ITS INTERSECTION WITH THE CENTERLINE OF RELOCATED MILLIKEN ROAD;

RUNNING THENCE NORTH 08°06'12" WEST, THROUGH THE PROPERTY OWNED BY AES EASTERN ENERGY, L.P., A DISTANCE OF 1,036.40 FEET TO A FOUND 5/8 INCH REBAR WITH "HAWK" CAP AT ITS INTERSECTION WITH THE DIVISION LINE BETWEEN SAID PROPERTY OWNED BY AES EASTERN ENERGY L.P. ON THE WEST AND THE PROPERTY NOW OR FORMERLY OWNED BY NEW YORK STATE ELECTRIC AND GAS CORPORATION ON THE EAST, SAID 5/8 INCH REBAR ALSO BEING THE POINT OR PLACE OF BEGINNING;
THENCE FROM SAID POINT OR PLACE OF BEGINNING, ALONG THE LAST MENTIONED DIVISION LINE, THE FOLLOWING FIFTEEN (15) COURSES AND DISTANCES:
(1) NORTH 18°27'27" WEST, A DISTANCE OF 120.43 FEET TO A FOUND 5/8 INCH REBAR WITH "HAWK" CAP;
(2) THENCE NORTH 71°32'33" EAST, A DISTANCE OF 24.00 FEET TO A FOUND 5/8 INCH REBAR WITH "HAWK" CAP;
(3) THENCE NORTH 19°00'30" EAST, A DISTANCE OF 50.72 FEET TO A FOUND 5/8 INCH REBAR WITH "HAWK" CAP;
(4) THENCE NORTH 71°38'14" EAST, A DISTANCE OF 124.62 FEET TO A FOUND 5/8 INCH REBAR WITH "HAWK" CAP;
(5) THENCE NORTH 34°08'45" EAST, A DISTANCE OF 34.78 FEET TO A FOUND 5/8 INCH REBAR WITH "HAWK" CAP;
(6) THENCE NORTH 18°12'56" WEST, A DISTANCE OF 62.67 FEET TO A FOUND 5/8 INCH REBAR WITH "HAWK" CAP;
(7) THENCE SOUTH 71°56'47" WEST, A DISTANCE OF 38.37 FEET TO A FOUND 5/8 INCH REBAR WITH "HAWK" CAP;
(8) THENCE NORTH 18°10'09" WEST, A DISTANCE OF 121.12 FEET TO A FOUND 5/8 INCH REBAR WITH "HAWK" CAP;
(9) THENCE NORTH 72°11'11" EAST, A DISTANCE OF 48.83 FEET TO A FOUND 5/8 INCH REBAR WITH "HAWK" CAP;
(10) THENCE NORTH 18°30'01" WEST, A DISTANCE OF 60.86 FEET TO A FOUND 5/8 INCH REBAR WITH "HAWK" CAP;
(11) THENCE NORTH 71°56'43" EAST, A DISTANCE OF 251.15 FEET TO A POINT;
(12) THENCE SOUTH 18°09'51" EAST, A DISTANCE OF 357.80 FEET TO A POINT;
(13) THENCE SOUTH 71°49'49" WEST, A DISTANCE OF 244.57 FEET TO A FOUND 5/8 INCH REBAR WITH "HAWK" CAP;
(14) THENCE SOUTH 18°04'07" EAST, A DISTANCE OF 68.93 FEET TO A FOUND 5/8 INCH REBAR WITH "HAWK" CAP;
(15) THENCE SOUTH 71°52'26" WEST, A DISTANCE OF 222.67 FEET TO THE POINT OR PLACE OF BEGINNING.

SCHEDULE "B"

ORIGINAL

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE**

<hr/>		X
<i>In re:</i>	:	Chapter 11
	:	
AES EASTERN ENERGY, L.P., et al.,¹	:	Case No. 11-14138 (KJC)
	:	
Debtors.	:	Jointly Administered
	:	
<hr/>		X
		Re: D.I. 74

**ORDER AUTHORIZING ENTRY OF AN ORDER APPROVING
(A) SALE OF ASSETS FREE AND CLEAR OF ALL LIENS, CLAIMS,
ENCUMBRANCES, AND OTHER INTERESTS, AND (B) ASSUMPTION
AND ASSIGNMENT OF EXECUTORY CONTRACTS TO SUCCESSFUL BIDDER(S)**

Upon the Motion, dated January 11, 2012 (the "*Motion*"), of AES Eastern Energy, L.P. and its above-captioned debtor affiliates, as debtors and debtors in possession (collectively, the "*Debtors*"), for an order pursuant to sections 105, 363(b), (f), (k) and (m), and 365 of title 11 of the United States Code (the "*Bankruptcy Code*") and Rules 2002, 6004 and 6006 of the Federal Rules of Bankruptcy Procedure (the "*Bankruptcy Rules*") Authorizing the Entry of (I) An Order Approving (A) Bidding Procedures, (B) Form And Manner of Notice of Sale, and (C) Procedures for Determining Cure Amounts, and (II) An Order Authorizing (A) Sale of Assets Free and Clear Of All Liens, Claims, Encumbrances, and Other Interests, and (B) Assumption and Assignment of Executory Contracts to Successful Bidder(s); all as more fully described in the Motion; and the Court having jurisdiction to consider the Motion and the relief

¹ The Debtors in these chapter 11 cases and the last four digits of each Debtor's taxpayer identification number are as follows: AES New York Surety, L.L.C. (8629); AES New York Holdings, L.L.C. (N/A); AES NY, L.L.C. (1039); AES NY2, L.L.C. (0091); AES NY3, L.L.C. (N/A); AES Creative Resources, L.P. (0087); AES Jennison, L.L.C. (N/A); AES Hickling, L.L.C. (N/A); AES Eastern Energy, L.P. (0088); AES Somerset, L.L.C. (3850); AES Cayuga, L.L.C. (3841); AEE2, L.L.C.(N/A); AES Greenidge, L.L.C. (3847); and AES Westover, L.L.C. (3851). The Debtors' principal offices are located at 130 East Seneca Street, Suite 505, Ithaca, New York 14850.

requested therein in accordance with 28 U.S.C. §§ 157 and 1334; and consideration of the Motion and the relief requested therein being a core proceeding pursuant to 28 U.S.C. § 157(b); and venue being proper before this Court pursuant to 28 U.S.C. §§ 1408 and 1409; and due and proper notice of the Motion having been provided to (i) the Office of the United States Trustee for the District of Delaware (the "*U.S. Trustee*"), (ii) Kramer, Levin, Naftalis & Frankel LLP (Attn: Gregory A. Horowitz, Esq. and Robert T. Schmidt, Esq.), counsel to the statutory committee of unsecured creditors appointed pursuant to section 1102 of the Bankruptcy Code (the "*Creditors' Committee*"), (iii) Cadwalader, Wickersham & Taft LLP, One World Financial Center, New York, New York 10281 (Attn: George Davis, Esq. and Michael J. Cohen, Esq.), Ropes & Gray LLP, 1211 Avenue of the Americas, New York, New York 10036-8704 (Attn: Keith Wofford, Esq.), and Young Conaway Stargatt & Taylor, LLP, The Brandywine Building, 1000 West Street, 17th Floor, P.O. Box 391 Wilmington, DE 19899 (Attn: Sean M. Beach, Esq.), co-counsel to Deutsche Bank Trust Company Americas, indenture trustee for the lessor notes and pass-through trustee for the pass-through certificates, (iv) Fulbright & Jaworski, L.L.P., 666 Fifth Avenue, New York, New York 10103-3198 (Attn: David A. Gillespie, Esq. and Mark Tibberts, Esq.), counsel to First Chicago Leasing Corporation and Bankers Commercial Corporation, beneficial owners of certain trusts, (v) Hughes Hubbard & Reed LLP, One Battery Park Plaza, New York, New York 10004-1482 (Attn: Richard Stern, Esq.), counsel to The Bank of Nova Scotia, agent to the prepetition lenders of AES New York Surety, L.L.C., (vi) the Internal Revenue Service, and (vii) all parties who have requested notice in these chapter 11 cases pursuant to Bankruptcy Rule 2002; and it appearing that no other or further notice need be provided; and hearings having been held to consider the relief requested in the Motion (the "*Sale Approval Hearings*") on March 28, 2012, April 5, 2012 and April 11, 2012; and the

appearances of all interested parties having been noted in the record of the Sale Approval Hearings, and upon the record of the Sale Approval Hearings; and all of the proceedings had before the Court; and the Court having found and determined that the relief sought in the Motion is in the best interests of the Debtors, their estates and creditors, and all parties in interest and that the legal and factual bases set forth in the Motion establish just cause for the relief granted herein; and after due deliberation and sufficient cause appearing therefor, it is hereby ORDERED that:

THE COURT HEREBY FINDS THAT:

A. The findings and conclusions set forth herein constitute this Court's findings of fact and conclusions of law pursuant to Bankruptcy Rule 7052, made applicable to this proceeding pursuant to Bankruptcy Rule 9014.²

B. To the extent any of the following findings of fact constitute conclusions of law, they are adopted as such. To the extent any of the following conclusions of law constitute findings of fact, they are adopted as such.

Jurisdiction and Venue

C. This Court has jurisdiction over the Motion, the Purchase Agreement, a copy of which is attached hereto as Exhibit A, to be entered into by the Debtors, the Purchaser, the Indenture Trustees, and NewCo in substantially the form attached to the Notice of Filing of Purchase Agreement with Stalking Horse Purchaser on March 15, 2012 (D.I. 291), and the transactions contemplated by the Purchase Agreement pursuant to 28 U.S.C. §§ 157 and 1334.

² All findings of fact and conclusions of law announced by the Court at the Sale Approval Hearings in relation to the Motion are hereby incorporated herein to the extent not inconsistent herewith. All capitalized terms not otherwise defined herein shall have the meanings ascribed to them in the Motion or the Purchase Agreement, as applicable.

This matter is a core proceeding pursuant to 28 U.S.C. § 157(b). Venue of these cases and proceedings is proper in this District and this Court under 28 U.S.C. §§ 1408 and 1409.

Statutory Predicates

D. The statutory predicates for the relief requested in the Motion and the basis for the approvals and authorizations herein are (i) sections 105, 363, and 365 of the Bankruptcy Code, and (ii) Bankruptcy Rules 2002, 6004, 6006, and 9014.

Final Order

E. This Order constitutes a final and appealable order within the meaning of 28 U.S.C. § 158(a). Consistent with Bankruptcy Rules 6004(h) and 6006(d), and to any extent necessary under Bankruptcy Rule 9014 and rule 54(b) of the Federal Rules of Civil Procedure, as made applicable by Bankruptcy Rule 7054, the Court expressly finds that there is no just reason for delay in the implementation of this Order and that waiver of any applicable waiting period is appropriate, and expressly directs entry of judgment as set forth herein.

Compliance with Bidding Procedures Order and Settlement Approval Order

F. On December 30, 2011 (the "*Petition Date*"), the Debtors filed voluntary petitions for relief under chapter 11 of the Bankruptcy Code in this Court. Since the Petition Date, the Debtors have continued in possession and management of their business and properties as debtors in possession pursuant to Bankruptcy Code sections 1107(a) and 1108.

G. On March 5, 2012, this Court entered the "Order Approving (A) Bidding Procedures, (B) Form and Manner of Notice of Sale, and (C) Procedures For Determining Cure Amounts" (D.I. 268) (the "*Bidding Procedures Order*").

H. On March 5, 2012, this Court also entered the "Order Pursuant to Sections 363 and 105(a) of the Bankruptcy Code and Bankruptcy Rule 9019 Approving a Compromise

and Settlement" (D.I. 269) (the "*Settlement Approval Order*"), pursuant to which the Court approved the Settlement Agreement dated March 2, 2012, by and among the Debtors, certain holders of pass-through certificates, the Creditors' Committee, the holders of beneficial interests in certain owner trusts, the agent for the prepetition lenders of AES New York Surety, L.L.C., and certain other major creditor constituencies in these chapter 11 cases (the "*Settlement Agreement*"). The Settlement Agreement is attached as Exhibit 1 to the Settlement Approval Order.

I. As demonstrated by (i) the testimony and other evidence proffered or introduced at the Sale Approval Hearings and (ii) the representations of counsel made on the record at the Sale Approval Hearings, the Debtors have thoroughly and fairly marketed the Purchased Assets and conducted the related sale process in good faith and in compliance in all respects with the Bidding Procedures, the Bidding Procedures Order and the Settlement Approval Order. All interested persons and entities have been afforded a full, fair and reasonable opportunity to (i) conduct due diligence investigations, (ii) submit bids and to submit higher or otherwise better bids to purchase the Purchased Assets, and (iii) object or be heard with respect to the Motion and the relief granted by this Order. The Bidding Procedures were non-collusive, designed and implemented in good faith, substantially and procedurally fair to all parties, and obtained the highest and best value for the Purchased Assets for the Debtors, their creditors and their estates. In accordance with the Bidding Procedures, the Debtors determined that the bid submitted by the Successful Bidder and memorialized by the Purchase Agreement attached hereto is the Successful Bid (as defined in the Bidding Procedures).

Notice

J. The Debtors and their professionals have complied, in good faith, in all respects with the Bidding Procedures Order. As evidenced by the affidavits and certificates of service and publication previously filed with the Court, in light of the exigent circumstances of these bankruptcy cases and based on the representations of counsel at the hearing at which the Court heard the portion of the Motion seeking approval of the Bidding Procedures ("**Bidding Procedures Hearing**") and the Sale Approval Hearings, (i) proper, timely, adequate, and sufficient notice of the Motion, the Bidding Procedures, the Bidding Procedures Hearing, the Transactions (as defined in the Purchase Agreement), the assumption and assignment of the Assumed Contracts, and the Sale Approval Hearings have been provided in accordance with Bankruptcy Rules 2002(a), 6004(a), 6006(c) and 9014, and all applicable provisions of the Bankruptcy Code and the Local Bankruptcy Rules for the District of Delaware and in compliance with the Bidding Procedures Order; (ii) such notice was good, sufficient, reasonable, and appropriate under the particular circumstances of these chapter 11 cases, and reasonably calculated to reach and apprise all holders of liens, claims, encumbrances, and other interests, including rights or claims based on any taxes or successor or transferee liability, about the Motion, the Bidding Procedures, the Bidding Procedures Hearing, the Transactions, the assumption and assignment of the Assumed Contracts, and the Sale Approval Hearings; and (iii) no other or further notice of the Motion, the Bidding Procedures, the Bidding Procedures Hearing, the Transactions, the assumption and assignment of the Assumed Contracts, the Sale Approval Hearings, or any matters in connection therewith is or shall be required. With respect to entities whose identities are not reasonably ascertainable by the Debtors, publication of the

Sale Notice (as defined in the Motion) in the New York Times on March 9, 2012, was sufficient and reasonably calculated under the circumstances to reach such entities.

Corporate Authority

K. Each Debtor (i) has full corporate power and authority to execute and deliver the Purchase Agreement and all other documents contemplated thereby to effectuate the Transactions, (ii) has all of the necessary corporate power and authority to consummate the Transactions, (iii) has taken all corporate action necessary to authorize and approve the Purchase Agreement and the consummation by the Debtors of the transactions contemplated thereby, and (iv) subject to entry of this Order, needs no consents or approvals, other than those expressly set forth in the Purchase Agreement or the Settlement Agreement or otherwise required by applicable non-bankruptcy law, to consummate the transactions contemplated thereby.

Good Faith

L. The Indenture Trustees (acting solely at the direction of the Certificate Holders) and NewCo (collectively, "**Purchaser**") are purchasing the Purchased Assets in good faith and is a good faith purchaser within the meaning of section 363(m) of the Bankruptcy Code, and is therefore entitled to the full protection of that provision and any other applicable or similar bankruptcy and nonbankruptcy law. The Purchaser, the Certificate Holders, the Indenture Trustees, NewCo, and their respective affiliates, present and contemplated members or shareholders, agents, officials, personnel, representatives, attorneys, and advisors (together, the "**Purchaser Entities**") have at all times acted in good faith within the meaning of section 363(m) of the Bankruptcy Code. The Purchase Agreement, the Settlement Agreement, and the Transactions were negotiated, proposed and have or will be entered into by the Sellers, the Purchaser, and the Purchaser Entities without collusion, in good faith and from arm's-length

bargaining positions. Neither the Sellers, the Purchaser, nor the Purchaser Entities engaged in any conduct that would cause or permit the avoidance of the Transactions or the Purchase Agreement, or the imposition of costs, fees, expenses, damages, or injunctive or other relief under section 363(n) of the Bankruptcy Code. Neither the Purchaser nor any of the Purchaser Entities is an "insider" of any of the Debtors, as that term is defined in section 101(31) of the Bankruptcy Code.

Business Justification

M. The Debtors have demonstrated good, sufficient and sound business reasons and compelling circumstances to enter into the Purchase Agreement and to consummate the transactions contemplated thereby, including, without limitation, selling the Purchased Assets, and assuming and assigning the Assumed Contracts under sections 363 and 365 of the Bankruptcy Code, and such actions are appropriate and reasonable exercises of the Debtors' business judgment and in the best interests of the Debtors, their estates and creditors, and other parties in interest. Such business reasons include, but are not limited to, the facts that (i) the Transactions are the only viable alternative to liquidation available to the Debtors, (ii) the Purchase Agreement and the terms thereof constitute the highest and best offer for the Purchased Assets and provide fair and reasonable consideration for the Purchased Assets, (iii) no other entity or group of entities has offered to purchase the Purchased Assets for greater economic value to the Debtors or their estates than the Purchaser, (iv) the Transactions pursuant to the terms of the Purchase Agreement will present the best opportunity to realize the value of the Debtors on a going concern basis and avoid decline and devaluation of the Debtors' businesses, (v) the consideration to be provided by the Purchaser under the Purchase Agreement exceeds the liquidation value of the Purchased Assets, and (vi) unless the Transactions are concluded

expeditiously as provided for in the Motion and pursuant to the Purchase Agreement, the Debtors' ability to avoid administrative insolvency may be significantly impaired and recoveries to creditors may be diminished. The Debtors' determination that the Purchase Agreement constitutes the highest and best offer for the Purchased Assets constitutes a valid and sound exercise of the Debtors' business judgment.

N. The terms and conditions of the Purchase Agreement, including the consideration to be realized by the Debtors pursuant to the Purchase Agreement, are fair and reasonable. Approval of the Motion, the Purchase Agreement, and the consummation of the transactions contemplated thereby, including, without limitation, the Transactions, and assuming and assigning the Assumed Contracts, is in the best interests of the Debtors, their estates and creditors, and other parties in interest.

No Fraudulent Transfer

O. The consideration provided by the Purchaser for the Purchased Assets pursuant to the Purchase Agreement (i) is fair and reasonable, (ii) is the highest and best offer for the Purchased Assets, (iii) will provide a greater recovery for the Debtors' creditors and estates than would be provided by any other practical available alternative, and (iv) constitutes reasonably equivalent value and fair consideration within the meaning of the Bankruptcy Code and any other applicable laws.

P. The Purchaser is not a mere continuation of the Debtors or their estates, there is no continuity or common identity between the Purchaser and any of the Debtors, and there is no continuity of enterprise between the Purchaser and any of the Debtors. The Purchaser is not holding itself out to the public as a continuation of any of the Debtors. The Purchaser is

not a successor to any of the Debtors or their estates and the Transaction does not amount to a consolidation, merger or de facto merger of the Purchaser with or into any of the Debtors.

Q. The sale of the Purchased Assets to the Purchaser is not being undertaken for the purpose of escaping liability for any of the Debtors' debts or hindering, delaying or defrauding creditors under the Bankruptcy Code or under the laws of the United States, or any state, territory, or possession thereof or located therein, or the District of Columbia.

Free and Clear

R. Except as provided for in the Purchase Agreement, the transfer of the Purchased Assets to NewCo will be a legal, valid, and effective transfer of the Purchased Assets and, except for the Assumed Liabilities, will vest NewCo with all right, title, and interest of the Sellers to the Purchased Assets free and clear of liens, claims, encumbrances, and other interests of any kind or nature whatsoever (other than the Assumed Liabilities and the Permitted Exceptions), including, without limitation, rights or claims (for purposes of this Order, the term "claim" shall have the meaning ascribed to such term in section 101(5) of the Bankruptcy Code) based on any taxes or any theory at law, in equity or otherwise of successor or transferee liability, including, but not limited to (i) those that purport to give to any party a right or option to effect any forfeiture, modification, right of first refusal, or termination of the Sellers' or NewCo's interest in the Purchased Assets, or any similar rights and (ii) (a) those arising under all mortgages, deeds of trust, security interests, conditional sale or other title retention agreements, pledges, liens, judgments, demands, encumbrances, rights of first refusal or charges of any kind or nature, if any, including, but not limited to, any restriction on the use, voting, transfer, receipt of income, or other exercise of any attributes of ownership and (b) all claims arising in any way in connection with any agreements, acts, or failures to act, of any of the Sellers or any of the

Sellers' predecessors or affiliates, whether known or unknown, contingent or otherwise, whether arising prior to or subsequent to the commencement of these chapter 11 cases, and whether imposed by agreement, understanding, law, equity or otherwise, including, but not limited to, claims otherwise arising under federal or state tax laws or doctrines of successor or transferee liability.

S. The Sellers may sell the Purchased Assets free and clear of all liens, claims, encumbrances, and other interests of any kind or nature whatsoever (other than the Assumed Liabilities and the Permitted Exceptions), including rights or claims based on any theory of successor or transferee liability at law, in equity, or otherwise, because, in each case, one or more of the standards set forth in section 363(f)(1)-(5) of the Bankruptcy Code has been satisfied. Those (i) holders of liens, claims, encumbrances, and other interests, including rights or claims based on any taxes or any theory of successor or transferee liability at law, in equity, or otherwise, and (ii) non-Debtor parties to the Designated Contracts or Assumed Contracts who did not object, or who withdrew their objections, to the Transactions or the Motion are deemed to have consented pursuant to section 363(f)(2) of the Bankruptcy Code. Those (i) holders of liens, claims, interests, and encumbrances, and (ii) non-Debtor parties to the Designated Contracts or Assumed Contracts who did object, fall within one or more of the other subsections of section 363(f) of the Bankruptcy Code and, to the extent they have valid and enforceable liens or encumbrances, are adequately protected by having such liens or encumbrances, if any, attach to the proceeds of the Transactions ultimately attributable to the property against or in which they assert a lien or encumbrance. To the extent liens or encumbrances secure liabilities that are Assumed Liabilities under this Order and the Purchase Agreement, no such liens or encumbrances shall attach to the proceeds of the Transactions.

T. The Purchaser will not enter into the Purchase Agreement and will not consummate the Transactions (i) if the sale of the Purchased Assets is not free and clear of all liens, claims, encumbrances, and other interests of any kind or nature whatsoever (other than the Assumed Liabilities and the Permitted Exceptions), including without limitation, rights or claims based on any taxes or any theory of successor or transferee liability at law, in equity, or otherwise, or (ii) if the Purchaser would, or in the future could, be liable for any such liens, claims, encumbrances, and other interests, including rights or claims based on any taxes or any theory of successor or transferee liability at law, in equity, or otherwise (collectively, the "**Retained Liabilities**"), other than, in each case, the Assumed Liabilities and the Permitted Exceptions. The Purchaser will not consummate the Transactions unless this Court expressly orders that none of the Purchaser or the Purchaser Entities will have any liability whatsoever with respect to, or be required to satisfy in any manner, whether at law or equity, or by payment, setoff, or otherwise, directly or indirectly, any liens, claims, encumbrances, and other interests, including rights or claims based on any taxes or successor or transferee liability or Retained Liabilities, other than as expressly provided herein or in agreements made by the Debtors and/or the Purchaser on the record at the Sale Approval Hearings or in the Purchase Agreement.

U. Not selling the Purchased Assets free and clear of all liens, claims, encumbrances, and other interests of any kind or nature whatsoever (other than Assumed Liabilities and the Permitted Exceptions), including, without limitation, rights or claims based on any taxes, any theory or doctrine of successor or transferee liability, or Retained Liabilities, would adversely impact the Debtors' efforts to maximize the value of their estates, and the sale of the Purchased Assets other than one free and clear of all liens, claims, encumbrances, and other interests of any kind or nature whatsoever would be of substantially less benefit to the

Debtors' estates. Accordingly, all persons having liens, claims, encumbrances, and other interests of any kind or nature whatsoever (other than the Assumed Liabilities and the Permitted Exceptions) against or in any of the Debtors or the Purchased Assets shall be forever barred, estopped and permanently enjoined from pursuing or asserting such rights or claims against the Purchaser, the Purchaser Entities, or the Purchased Assets.

V. Except as set forth in the Purchase Agreement, none of the Purchaser, the Purchaser Entities, or the Purchased Assets will have any liability or responsibility whatsoever with respect to, or be required to satisfy in any manner, whether at law or equity, or by payment, setoff, or otherwise, directly or indirectly, any obligations, liens, claims, encumbrances, and other interests relating to or arising under any U.S. federal, state and local tax liabilities that the Debtors have incurred or will incur in connection with a sale of the Purchased Assets in the Transaction or any federal or state law with respect to any employee or former employee of the Debtors arising from or with respect to their termination from employment, the form, timing, or adequacy of notice they received with respect to the termination of their employment with any of the Debtors, or the lack thereof, whether under State or Federal WARN Act, or any of the Seller Benefit Plans, including without limitation, for any and all claims under any provision of the Employee Retirement Income Security Act of 1974 ("*ERISA*"), including Title IV of ERISA, or under any other statute, regulation or common law principle, whether such liability or claim arose prior to the Closing Date or arises on or after the Closing Date.

Validity of Transfer

W. The consummation of the transactions contemplated by the Purchase Agreement, including assuming and assigning the Assumed Contracts to NewCo, is legal, valid and properly authorized under all applicable provisions of the Bankruptcy Code, including,

without limitation, sections 105(a), 363(b), 363(f), 363(m), 365(b) and 365(f), and all of the applicable requirements of such sections have been complied with in respect of the transactions contemplated under the Purchase Agreement.

X. Pursuant to the terms of the Settlement Agreement, the Settlement Agreement shall, effective on the closing date of the Sale Transaction, pursuant to an order of the Bankruptcy Court, vest in AEE all right, title, interest and privilege required in order for AEE to convey title to the assets comprising the Facilities to NewCo free and clear of all liens, claims and encumbrances pursuant to the terms of the Asset Purchase Agreement.

Y. Pursuant to the Bidding Procedures Order and the Settlement Approval Order, this Court has previously authorized the Indenture Trustees to credit bid all or a portion of the Secured Claim (as defined in the Settlement Approval Order) and held such bid to be, for all purposes related to the Bidding Procedures, a Qualified Bid (as defined in the Bidding Procedures Order).

Assumed Contracts

Z. The assumption and assignment of the Assumed Contracts to NewCo, free and clear of all liens, claims, encumbrances, and other interests of any kind or nature whatsoever (other than Assumed Liabilities), pursuant to the terms of this Order is integral to the Transactions and is in the best interests of the Debtors, their estates and creditors, and other parties in interest, and represents a reasonable exercise of the Debtors' sound and prudent business judgment.

AA. Pursuant to the terms of the Purchase Agreement, on or before the Closing Date, NewCo shall have, except as otherwise expressly agreed to between NewCo and such counterparty: (i) cured, or provided adequate assurance of cure of, any monetary default existing

as of and including the Closing Date under any of the Assumed Contracts, within the meaning of section 365(b)(1)(A) of the Bankruptcy Code, (ii) provided compensation, or adequate assurance of compensation, to any party for actual pecuniary loss to such party resulting from a monetary default existing as of and including the Closing Date under any of the Assumed Contracts, within the meaning of section 365(b)(1)(B) of the Bankruptcy Code, and (iii) provided adequate assurance of its future performance under the Assumed Contracts within the meaning of sections 365(b)(1)(C), 365(b)(3) (to the extent applicable) and 365(f)(2)(B) of the Bankruptcy Code.

Compelling Circumstances for an Immediate Sale

BB. To maximize the value of the Purchased Assets and preserve the viability of the business to which the Purchased Assets relate, it is essential that the Transactions occur within the time constraints set forth in the Motion, the Bidding Procedures Order, and the Purchase Agreement. Time is of the essence in consummating the Transactions. Accordingly, there is cause to waive the stay contemplated by Bankruptcy Rules 6004 and 6006.

CC. The Debtors have demonstrated compelling circumstances and a good, sufficient, and sound business purpose and justification for the approval and consummation of the Transactions prior to, and outside of, a chapter 11 plan and for the immediate approval of the Purchase Agreement and the Transactions because, among other things, the Debtors' estates will suffer immediate and irreparable harm if the relief requested in the Motion is not granted on an expedited basis. The Transactions pursuant to the Purchase Agreement neither impermissibly restructures the rights of the Debtors' creditors nor impermissibly dictates the terms of a chapter 11 plan for the Debtors and therefore, does not constitute a sub rosa plan.

DD. Given all of the circumstances of these cases and the adequacy and fair value of the Purchase Price under the Purchase Agreement, the consummation of the transactions

contemplated by the Purchase Agreement, including, without limitation, assuming and assigning the Assumed Contracts, constitutes a reasonable and sound exercise of the Debtors' business judgment.

EE. The Purchaser and the Purchaser Entities shall have no obligation with respect to any liabilities of the Debtors other than the Assumed Liabilities and its obligations under the Purchase Agreement. For the avoidance of doubt, the Indenture Trustees shall have no obligation with respect to any liabilities of the Debtors including the Assumed Liabilities.

IT IS THEREFORE ORDERED, ADJUDGED, AND DECREED THAT:

General Provisions

1. The Motion is granted as provided herein, and entry into and performance under, and in respect of, the Purchase Agreement and the consummation of the transactions contemplated thereby, including, without limitation, the Transactions and the assumption and assignment of the Assumed Contracts, is authorized and approved.

2. Any objections and responses to the Motion or the relief requested therein that have not been withdrawn, waived, settled, or resolved, and all reservation of rights included in such objections and responses, are overruled on the merits and denied with prejudice.

3. This Court's findings of fact and conclusions of law set forth in the Bidding Procedures Order and the Settlement Approval Order are incorporated herein by reference.

Approval of the Purchase Agreement

4. The Purchase Agreement, all ancillary documents, all transactions contemplated thereby, including, without limitation, the Transactions, and the assumption and assignment of the Assumed Contracts, the provision of a credit bid of the Secured Claim (as

defined in the Settlement Approval Order) as a form of Purchase Price consideration and the effectuation of such credit bid by the Indenture Trustee (as directed by the Requisite Certificate Holders), and all the terms and conditions thereof, are approved. If there is any conflict between the Purchase Agreement, the Bidding Procedures Order, and the Settlement Approval Order and this Order, this Order shall control.

5. Pursuant to sections 105, 363, and 365 of the Bankruptcy Code, the Debtors are authorized to perform their obligations under, and comply with the terms of, the Purchase Agreement and consummate the transactions contemplated thereby, including, without limitation, the Transactions, and the assumption and assignment of the Assumed Contracts, pursuant to, and in accordance with, the terms and provisions of the Purchase Agreement and this Order.

6. Upon execution of the Purchase Agreement, the Debtors are authorized and directed to execute and deliver, and empowered to perform under, consummate, and implement, the Purchase Agreement, together with all additional instruments and documents that the Sellers or the Purchaser deem necessary or appropriate to implement the Purchase Agreement and effectuate the transactions contemplated thereby, which documents are in a form and manner reasonably acceptable to the Debtors and NewCo, including, without limitation, the Transactions and the assumption and assignment of the Assumed Contracts, and to take all further actions as may reasonably be required by the Purchaser for the purpose of assigning, transferring, granting, conveying, and conferring to NewCo or reducing to possession the Purchased Assets or as may be necessary or appropriate to the performance of any other obligations as contemplated by the Purchase Agreement, and to take all further actions as may reasonably be requested by the Purchaser for the purpose of assigning, transferring, granting, conveying and conferring to

NewCo, or reducing to possession any or all of the Purchased Assets or Assumed Liabilities, as may be necessary or appropriate to the performance of the Debtors' obligations as contemplated by the Purchase Agreement, without any further corporate action or orders of this Court. The Purchaser shall have no obligation to proceed with Closing unless and until all conditions precedent to its obligations to do so set forth in the Purchase Agreement have been met, satisfied or waived, it being understood and agreed among NewCo and the Debtors that this Order and the effectiveness of the Purchase Agreement shall be subject to the schedules to the Purchase Agreement being in form and substance reasonably acceptable to NewCo.

7. The Debtors, the Purchaser, and the Purchaser Entities, are authorized and empowered, subject to the terms and conditions contained in the Purchase Agreement or the Settlement Agreement, as applicable, to (i) carry out all of the provisions of the Purchase Agreement, the Settlement Agreement, and any related agreements, (ii) issue, execute, deliver, file, and record, as appropriate, the documents evidencing and consummating the Purchase Agreement and any related agreement or the Necessary Documents (as defined in the Settlement Agreement); (iii) take any and all actions contemplated by the Purchase Agreement, the Settlement Agreement, any related agreements, or this Sale Order; and (iv) issue, execute, deliver, file, and record, as appropriate, the Necessary Documents or such other contracts, instruments, releases, indentures, mortgages, deeds, bills of sale, assignments, leases, or other agreements or documents and to perform such other acts and execute and deliver such other documents, as are consistent with, and necessary or appropriate to implement, effectuate, and consummate the Purchase Agreement, the Settlement Agreement, any related agreements and this Sale Order, and the transactions contemplated thereby and hereby, all without further application to, or order of, the Court or further action by their respective directors, officers,

employees, members, agents, representatives, and attorneys, and with like effect as if such action had been taken by unanimous action of the respective directors, officers, employees, members, agents, representatives, and attorneys of such entities. In this regard, the Debtors, the Purchaser Entities and other parties to the Lease Documents (as such term is defined in the motion to approve the Settlement Agreement), are hereby authorized and empowered to take such steps as are practical or advisable to transfer title to certain of the Purchased Assets directly from the Owner Trusts to NewCo in furtherance of the Settlement Agreement and with all of the protections of this Order. The appropriate representatives, directors, or employees of the Debtors shall be, and hereby is, authorized to certify or attest to the foregoing actions (but no such certification or attestation shall be required to make any such action valid, binding, and enforceable). The Debtors (or, consistent with the Purchase Agreement, the Purchaser and the Purchaser Entities, or any person or entity having duties or responsibilities under the Settlement Agreement) are further authorized and empowered to cause to be filed with the secretary of state of any state or other applicable officials of any applicable governmental unit any and all certificates, agreements, or amendments necessary or appropriate to effectuate the transactions contemplated by the Purchase Agreement, the Settlement Agreement, any related agreements and this Sale Order, including the Necessary Documents, amended and restated certificates or articles of incorporation and by-laws or articles of amendment, and all such other actions, filings, or recordings as may be required under appropriate provisions of the applicable laws of all applicable governmental units or as any of the officers of the Debtors or Purchaser may determine are necessary or appropriate. The execution of any such document or the taking of any such action shall be, and hereby is, deemed conclusive evidence of the authority of such person to so act. Without the limiting the generality of the foregoing, this Sale Order shall

constitute all approvals and consents, if any, required by the corporation law of the State of Delaware, including the Delaware Limited Partnership Act, Delaware Limited Liability Company Act, and all other applicable business corporation, trust, and other laws of the applicable governmental unit with respect to the implementation and consummation of the Purchase Agreement, the Settlement Agreement, any related agreement and this Sale Order, and the transactions contemplated thereby and hereby.

8. This Order, the Delaware Limited Partnership Act, and the Delaware Limited Liability Company Act shall be binding in all respects upon the Debtors, their affiliates, all known and unknown creditors of, and holders of equity security interests in, any Debtor, including any holders of liens, claims, encumbrances, or other interests of any kind whatsoever, including rights or claims based on any taxes or any theory or doctrine of successor or transferee liability at law, in equity, or otherwise, all non-Debtor parties to the Assumed Contracts, the Purchaser and all Purchaser Entities, each Seller and their affiliates and subsidiaries, the Purchased Assets, all interested parties, their successors and assigns, and any trustees appointed in the Debtors' chapter 11 cases or upon a conversion of any of such cases to cases under chapter 7 of the Bankruptcy Code and shall not be subject to rejection. Nothing contained in any plan confirmed in any of the Debtors' bankruptcy cases, the order confirming any such plan, any order converting any of the Debtors' bankruptcy cases to cases under chapter 7 of the Bankruptcy Code, or any order dismissing any of the Debtors' bankruptcy cases shall conflict with or derogate from the provisions of the Purchase Agreement or this Order.

Transfer of the Purchased Assets Free and Clear

9. Pursuant to sections 105(a), 363(b), 363(f), 365(b) and 365(f) of the Bankruptcy Code, the Purchased Assets shall be transferred to NewCo in accordance with the

Purchase Agreement, and, upon the Closing Date, (i) shall be free and clear of all liens, claims, encumbrances, and other interests of any kind or nature whatsoever (other than Assumed Liabilities and Permitted Exceptions), including, without limitation, rights or claims based on any taxes or any theory or doctrine of successor or transferee liability at law, in equity, or otherwise, and (ii) all such liens, claims, encumbrances, and other interests (other than Assumed Liabilities and Permitted Exceptions), including, without limitation, rights or claims based on any taxes or any theory or doctrine of successor or transferee liability at law, in equity, or otherwise, shall attach to the net proceeds of the Transactions in the order of their priority, with the same validity, force, and effect that they now have as against the Purchased Assets, subject to any claims and defenses any of the Sellers or any other party in interest may possess with respect thereto. Neither the purchase of the Purchased Assets by the Purchaser nor the fact that the Purchaser may have used or contracted with the Sellers regarding any of the Purchased Assets will cause the Purchaser to be deemed a successor in any respect to the Debtors' business or any liability derived therefrom within the meaning of any foreign, federal, state or local revenue, pension, ERISA, tax, labor, employment (including, but not limited to, State or Federal WARN Act), environmental, or other law, rule or regulation (including, without limitation, filing requirements under any such laws, rules or regulations), or under any products liability law or doctrine with respect to the Debtors' liability under such law, rule or regulation or doctrine. Without limiting the foregoing, the Purchaser is not liable as a successor (i) under the Purchase Agreement or (ii) under any other basis for any liabilities or responsibility with respect to any of the Seller Benefit Plans, including without limitation, for any and all claims under any provision of ERISA, including Title IV of ERISA, or under any other statute, regulation or common law

principle, whether such liability or claim arose prior to the Closing Date or arises on or after the Closing Date.

10. Except as expressly permitted or otherwise specifically provided by the Purchase Agreement or this Order, all persons and entities, including, but not limited to, all debt security holders, equity security holders, governmental, tax, and regulatory authorities, lenders, trade creditors, dealers, employees, litigation claimants, and other creditors, holding liens, claims, encumbrances, and other interests of any kind or nature whatsoever, including, without limitation, rights or claims based on any taxes or any theory or doctrine of successor or transferee liability at law, in equity, or otherwise, against or in any of the Sellers or the Purchased Assets (whether legal or equitable, secured or unsecured, matured or unmatured, contingent or noncontingent, senior or subordinated), arising under or out of, in connection with, or in any way relating to, the Sellers, the Purchased Assets, the operation of the Purchased Assets prior to the Closing Date, the Transactions, or the negotiation, preparation, execution, delivery of the Purchase Agreement are forever barred, estopped, and permanently enjoined from asserting against the Purchaser, the Purchaser Entities, or the Purchased Assets, such persons' or entities' liens, claims, encumbrances, and other interests, including, without limitation, rights or claims based on any taxes or any theory or doctrine of successor or transferee liability. For the avoidance of doubt, no aspect of the Transactions, including, without limitation, the sale, transfer, conveyance, assignment and delivery of the Purchased Assets and Assumed Liabilities to NewCo does not and will not subject the Indenture Trustees or the Pass Through Trustees (acting solely at the direction of certain Certificate Holders), or any of their affiliates, subsidiaries, officers, directors, principals, agents, employees, financial advisors, attorneys, accountants, consultants, representatives or members (in their respective capacities as such), or

any of their respective successors or assigns, to any liability whatsoever with respect to the operation of NewCo, the Purchased Assets or the Assumed Liabilities and/or any liability of the Debtors arising under or relating to each of the foregoing, in each case, whether prior to or following the Closing Date.

11. This Order (i) shall be effective as a determination that, as of the Closing Date, (a) no liens, claims, encumbrances, or other interests of any kind or nature (other than Assumed Liabilities and the Permitted Exceptions) will be assertable against the Purchaser, the Purchaser Entities, or any of their respective assets (including the Purchased Assets); (b) the Purchased Assets shall have been transferred to the Purchaser (or one or more of its Subsidiaries) free and clear of all liens, claims, encumbrances, and other interests of any kind or nature whatsoever (other than Assumed Liabilities and the Permitted Exceptions); and (c) the conveyances described herein have been effected; and (ii) is and shall be binding upon and govern the acts of all entities, including, without limitation, all filing agents, filing officers, title agents, title companies, recorders of mortgages, recorders of deeds, registrars of deeds, registrars of patents, trademarks, or other intellectual property, administrative agencies, governmental units or departments, secretaries of state, federal and local officials, and all other persons and entities who may be required by operation of law, the duties of their office, or contract, to accept, file, register, or otherwise record or release any documents or instruments, or who may be required to report or insure any title or state of title in or to any lease; and each of the foregoing persons and entities is directed to accept for filing any and all of the documents and instruments necessary and appropriate to consummate the transactions contemplated by the Purchase Agreement.

12. The transfer of the Purchased Assets to NewCo (or one or more of its Subsidiaries) pursuant to the Purchase Agreement constitutes a legal, valid, and effective transfer

of the Purchased Assets and shall vest NewCo (and/or its designated Subsidiaries) with all right, title, and interest in and to the Purchased Assets free and clear of all liens, claims, encumbrances, and other interests of any kind or nature whatsoever, including, without limitation, rights or claims based on any taxes or any theory or doctrine of successor or transferee liability at law, in equity, or otherwise (other than the Assumed Liabilities and the Permitted Exceptions), to the fullest extent permitted by section 363(f) of the Bankruptcy Code.

13. On the Closing Date of the Transactions, each of the Sellers' creditors and any other holder of a lien, claim, encumbrance, or other interest of any kind or nature whatsoever in, on or against the Sellers or the Purchaser Assets (other than Assumed Liabilities and the Permitted Exceptions) is authorized and directed to execute such documents and take all other actions as may be necessary to release its lien, claim, encumbrance, or other interest in, on or against the Sellers or the Purchased Assets, if any, as such lien, claim, encumbrance, or other interest may have been recorded or may otherwise exist. For the avoidance of doubt, nothing in this paragraph 13 shall (i) prejudice (a) the Certificate Holders' rights with respect to the Purchaser or (b) the Residual Claim (as defined in the Settlement Approval Order) held by the Indenture Trustees against any of the Debtors, or (ii) constitute an admission by any Seller that any such lien, claim, encumbrance or other interest is valid and enforceable.

14. If any person or entity that has filed financing statements, mortgages, mechanic's liens, lis pendens, or other documents or agreements evidencing a lien, claim, encumbrance, or other interest (other than Assumed Liabilities and the Permitted Exceptions) shall not have delivered to the Sellers prior to the Closing Date, in proper form for filing and executed by the appropriate parties, termination statements, instruments of satisfaction, releases of all liens, claims, encumbrances, or other interests (other than Assumed Liabilities and the

Permitted Exceptions), which the person or entity has with respect to any of the Sellers or the Purchased Assets or otherwise, then (a) upon execution of the Purchase Agreement the Sellers are authorized and directed to execute and file such statements, instruments, releases, and other documents on behalf of the person or entity with respect to the applicable Sellers or the Purchased Assets, and (b) the Purchaser is authorized to file, register, or otherwise record a certified copy of this Order, which shall constitute conclusive evidence of the release of all liens, claims, encumbrances, and other interests of any kind or nature whatsoever (other than Assumed Liabilities and the Permitted Exceptions).

15. All persons or entities in possession of any of the Purchased Assets are directed to surrender possession of such Purchased Assets to NewCo (or its respective designees) on or after the Closing Date of the Transaction.

16. Following the Closing Date of the Transaction, no holder of any lien, claim, encumbrance, or other interest of any kind or nature whatsoever (other than Assumed Liabilities and the Permitted Exceptions) shall interfere with NewCo's (or its designee's) title to, or use and enjoyment of, the Purchased Assets based on, or related to, any such lien, claim, encumbrance, or other interest, or based on any actions the Debtors may take in their bankruptcy cases.

17. All persons and entities are prohibited and enjoined from taking any action to adversely affect or interfere with the ability of the Debtors to transfer the Purchased Assets to NewCo (or one or more of its Subsidiaries) in accordance with the Purchase Agreement and this Order; provided, however, that (a) the foregoing restriction shall not prevent any person or entity from appealing this Order or opposing any appeal of this Order, and (b) notwithstanding the foregoing or any other provision of this Order, this Order is without prejudice to the rights of any

person or entity to participate in any regulatory proceedings relating to approval of the Transactions.

18. To the extent provided by section 525 of the Bankruptcy Code, no governmental unit may deny, revoke, suspend, or refuse to renew any permit, license, or similar grant relating to the operation of the Purchased Assets sold, transferred, or conveyed to NewCo (or one or more of its Subsidiaries) on account of the filing or pendency of these chapter 11 cases or the consummation of the Transaction contemplated by the Purchase Agreement.

19. Notwithstanding any other provision in the Purchase Agreement or this Order, no disposition of control over the facilities subject to the jurisdiction of the Federal Energy Regulatory Commission ("**FERC**") or the New York Public Service Commission ("**NYPSC**") shall take place prior to the issuance of all regulatory approval(s) required for such disposition by FERC pursuant to the Federal Power Act, as amended, 16 U.S.C. § 824b (2006), and the rules and regulations promulgated thereunder, 18 C.F.R. Pt. 33 (2011), and by NYPSC pursuant to section 70 of the New York State Public Service Law.

Assumption and Assignment of the Assumed Contracts

20. Except as otherwise expressly provided in the Agreement or this Order, upon the Closing Date, pursuant to sections 105(a), 363 and 365 of the Bankruptcy Code, the Debtors are authorized to (a) assume each of the Assumed Contracts and assign the Assumed Contracts to the Purchaser free and clear of all liens, claims, encumbrances, and other interests of any kind or nature whatsoever (other than Assumed Liabilities) and (b) execute and deliver to the Purchaser such documents or other instruments as may be necessary to assign and transfer the Assumed Contracts to the Purchaser (or one or more of its Subsidiaries).

21. The Permitted Exceptions include all easements encumbering or benefiting the Facilities that are of record as of the date hereof and that run with the Seller Properties, including, without limitation, the reciprocal easement(s) with NYSEG. For the avoidance of doubt, the conveyance of the Purchased Assets subject to such easements shall not result in the assumption under Section 365 of the Bankruptcy Code of any agreements referenced in such easements or liabilities under such referenced agreements, including, without limitation, (A) the existing interconnection agreement related to the Facilities between NYSEG and AES NY, L.L.C. dated as of August 3, 1998 (as amended, supplemented or modified from time to time) or (B) the asset purchase agreement dated as of August 3, 1998 between AES NY, L.L.C. and the NYSEG and its affiliate, NGE Generation, Inc. or any obligations outside the scope of the easements under the foregoing agreements set forth in the immediately preceding clauses (A) and (B).

22. The amounts, if any, determined by the Debtors, or in the event of a dispute, as determined by Final Order of this Court, to be necessary to be paid upon assumption of the Assumed Contracts (the "***Cure Amounts***"), to be set forth on in a Final Notice of

Assumption and Assignment of Executory Contracts and Unexpired Leases in Connection with Sale of Assets, to be filed with this Court no later than three business days prior to the Closing Date, are the sole amounts necessary to be paid upon assumption of the Assumed Contracts under sections 365(b)(1)(A) and (B) and 365(f)(2)(A) of the Bankruptcy Code and the payment of the applicable Cure Amounts (if any) by NewCo. Upon the payment of the Cure Amounts, if any, and the cure of all defaults, required to be cured under sections 365(b)(1)(A) and (B) and 365(f)(2)(A), to the extent required by a Final Order of this court if not resolved by the parties, the Assumed Contracts will remain in full force and effect, and no default shall exist under the Assumed Contracts nor shall there exist any event or condition, which, with the passage of time or giving of notice, or both, would constitute such a default. The Cure Amounts shall not be subject to further dispute or audit, including any based on performance prior to the Closing Date, irrespective of whether such Assumed Contract contains an audit clause. After the payment of the Cure Amounts by NewCo and the Debtors, and the cure by NewCo and the Debtors of all defaults, required to be cured under sections 365(b)(1)(A) and (B) and 365(f)(2)(A), as may be required by the Court in a Final Order, neither the Debtors nor NewCo (nor any of its designees) shall have any further liabilities to the counterparties to the Assumed Contracts other than the Purchaser's (or its designee's) obligations under the Assumed Contracts in the ordinary course of business following the Closing Date that accrue and become due and payable on or after the Closing Date.

23. Any provision in any Assumed Contract that prohibits or conditions the assignment of such Assumed Contract or allow the party to such Assumed Contract, upon the assignment of such Assumed Contract, to terminate, recapture, or modify any term or condition

or impose any penalty or condition on renewal or extension of any such term or condition, shall constitute an unenforceable anti-assignment provision that is void and of no force and effect.

24. Each Assumed Contract constitutes an executory contract or unexpired lease under section 365 of the Bankruptcy Code and all requirements and conditions under sections 363 and 365 of the Bankruptcy Code for the assumption by the Debtors and assignment to the Purchaser (or any of its designees) of the Assumed Contracts have been satisfied. Upon the Closing Date, in accordance with sections 363 and 365 of the Bankruptcy Code, (i) NewCo (or any of its designees) shall be fully and irrevocably vested with all right, title and interest of the Debtors under the Assumed Contracts, (ii) NewCo (or any of its designees) shall be deemed to be substituted for the Debtors as a party to the applicable Assumed Contracts, and (iii) the Debtors shall be relieved, pursuant to section 365(k) of the Bankruptcy Code, from any further liability under the Assumed Contracts.

25. The Purchaser has provided, or will have provided prior to Closing, adequate assurance of future performance under the relevant Assumed Contracts within the meaning of sections 365(b)(1)(C), 365(b)(3) (to the extent applicable) and 365(f)(2)(B) of the Bankruptcy Code.

26. There shall be no rent accelerations, assignment fees, increases or any other fees charged to the Purchaser (or any of its designees) or the Debtors as a result of the assumption, assignment and sale of the Assumed Contracts. The validity of the assumption, assignment and sale to NewCo (or any of its designees) shall not be affected by any dispute between any of the Debtors or their affiliates and another party to an Assumed Contract regarding the payment of any amount, including any Cure Amount under the Bankruptcy Code. Upon assignment to NewCo (or any of its designees), the Assumed Contracts shall be valid and

binding, in full force and effect and enforceable by NewCo in accordance with their respective terms.

27. Pursuant to sections 105(a), 363 and 365 of the Bankruptcy Code, all counterparties to the Assumed Contracts are forever barred and permanently enjoined from raising or asserting against the Debtors, the Purchaser, or the Purchaser Entities, any assignment fee, default, breach or claim or pecuniary loss, or condition to assignment, arising under or related to the Assumed Contracts existing as of and including the Closing Date under the Purchase Agreement or arising by reason of the closing of the Transaction. Any party that may have had the right to consent to the assignment of an Assumed Contract is deemed to have consented to such assignment for purposes of section 365(e)(2)(A)(ii) of the Bankruptcy Code and otherwise if such party failed to object to the assumption and assignment of such Assumed Contract.

Regulatory and Environmental Protection

28. Nothing in this Sale Order or the Purchase Agreement releases, nullifies, precludes, or enjoins the enforcement of any liability to a governmental unit under police or regulatory statutes or regulations to which any entity would be subject as the owner or operator of property after the date of this Sale Order. Nothing in this Sale Order or the Purchase Agreement authorizes transfer to the Purchaser of any governmental licenses, permits, or other governmental authorizations and approvals without the Purchaser's compliance with all applicable requirements under applicable non-bankruptcy law governing such transfers.

Related Relief

29. Except for the Assumed Liabilities expressly set forth in the Purchase Agreement, none of the Purchaser or the Purchaser Entities shall have any liability for any claim,

liability, lien, encumbrances, obligations, or other interests of any kind or nature that may be asserted, imposed, or exist against the Debtors or Sellers or any of their predecessors or affiliate or any of the foregoing arising under or related to the Purchased Assets. The Purchaser shall not be deemed, as a result of any action taken in connection with the Purchase Agreement or any of the transactions or documents ancillary thereto or contemplated thereby or in connection with the acquisition of the Purchased Assets, to: (i) be a legal successor, or otherwise be deemed a successor to the Debtors; (ii) have, de facto or otherwise, merged with or into the Debtors; or (iii) be a mere continuation or substantial continuation of the Debtors or the enterprise of the Debtors. Without limiting the foregoing, the Purchaser and the Purchaser Entities shall not have any successor, transferee, derivative, or vicarious liabilities of any kind or character for any claims, including, but not limited to, under any doctrine or theory of successor or transferee liability, de facto merger or continuity, environmental, tax, labor and employment, and products or antitrust liability, whether known or unknown as of the Closing Date, now existing or hereafter arising, asserted, or unasserted, fixed or contingent, liquidated or unliquidated, with respect to the Purchased Assets, the Sellers or any obligations of the Sellers arising prior to the Closing Date.

30. Effective upon the Closing Date and except as may be otherwise provided by stipulation filed with or announced to the Court with respect to a specific matter or an order of the Court, all persons and entities are forever prohibited and enjoined from commencing or continuing in any manner any action or other proceeding, whether in law or equity, in any judicial, administrative, arbitral, or other proceeding against the Purchaser, the Purchaser Entities, or the Purchased Assets, with respect to any (i) claim against the Debtors other than Assumed Liabilities, or (ii) taxes or successor or transferee liability of the Purchaser for any of

the Debtors, including, without limitation, the following actions: (a) commencing or continuing any action or other proceeding pending or threatened against the Debtors as against the Purchaser, the Purchaser Entities, or the Purchased Assets; (b) enforcing, attaching, collecting, or recovering in any manner any judgment, award, decree, or order against the Debtors as against the Purchaser, the Purchaser Entities, or the Purchased Assets; (c) creating, perfecting, or enforcing any lien, claim, interest, or encumbrance against the Debtors as against the Purchaser, the Purchaser Entities, or the Purchased Assets; (d) asserting any setoff, right of subrogation, or recoupment of any kind for any obligation of any of the Debtors as against any obligation due the Purchaser, the Purchaser Entities, or the Purchased Assets; (e) commencing or continuing any action, in any manner or place, that does not comply, or is inconsistent with, the provisions of this Order or other orders of this Court, or the agreements or actions contemplated or taken in respect thereof; or (f) revoking, terminating, or failing or refusing to renew any license, permit, or authorization to operate any of the Purchased Assets or conduct any of the businesses operated with such assets.

31. None of the Purchaser, the Purchaser Entities, or the Purchased Assets, shall have any liability whatsoever with respect to, or be required to satisfy in any manner, whether at law or equity, or by payment, setoff, or otherwise, directly or indirectly, any liens, claims, encumbrances, and other interests relating to any U.S. federal, state and local tax liabilities that the Debtors incur in connection with a sale of the Purchased Assets in the Transactions, except as provided for in the Purchase Agreement or Settlement Approval Order. The Purchased Assets are conveyed to NewCo pursuant to the "federal bankruptcy act" within the meaning of Section 1405(b)(8) of the New York Tax Law.

32. The Purchaser has given fair and substantial consideration under the Purchase Agreement for the benefit of the holders of liens, claims, encumbrances, or other interests of any kind or nature whatsoever. The consideration provided by the Purchaser for the Purchased Assets under the Purchase Agreement is greater than the liquidation value of the Purchased Assets and shall be deemed to constitute reasonably equivalent value and fair consideration as those terms are defined under the Bankruptcy Code and under the laws of the United States, or any state, territory, or possession thereof or located therein, or the District of Columbia.

33. The consideration provided by the Purchaser for the Purchased Assets under the Purchase Agreement is fair and reasonable and was offered and accepted by the Sellers without collusion of any kind, and the Transactions may not be avoided or give rise to damages or the award of other relief under section 363(n) of the Bankruptcy Code.

34. This Order (a) shall be effective as a determination that, except for the Assumed Liabilities, on the Closing Date, all liens, claims, encumbrances, and other interests of any kind or nature whatsoever existing as to the Sellers with respect to the Purchased Assets are deemed unconditionally released and terminated except to the extent they attach to the proceeds of the sale by option of law or this Order, and that the conveyances by the Sellers of the Purchased Assets described in this Order have been effected, and (b) shall be binding upon and govern the acts of all entities, including, without limitation, the Debtors, the Purchaser, the Purchaser Entities, and their respective successors, affiliates, and permitted assigns (including, without limitation, any chapter 11 trustee hereinafter appointed for any of the Debtors' estates or any trustee appointed in a chapter 7 case if any of these cases are converted from chapter 11), all creditors of the Debtors (whether known or unknown), all filing agents, filing officers, title

agents, title companies, recorders of mortgages, recorders of deeds, registrars of deeds, administrative agencies, governmental units and departments, secretaries of state, federal, state, and local officials, and all other persons and entities who may be required by operation of law, the duties of their office, or contract, to accept, file, register, or otherwise record or release any documents or instruments, or who may be required to report or insure any title or state of title in or to any of the Purchased Assets. Nothing contained in any chapter 11 plan confirmed in the Debtors' chapter 11 cases or the order confirming any such chapter 11 plan shall conflict with, negate or be contrary to or inconsistent with the provisions of the Purchase Agreement or this Order. The provisions of this Order are non-severable and mutually dependent.

35. Each and every federal, state, and local governmental agency, unit or department shall accept any and all documents and instruments necessary or appropriate to consummate the transactions contemplated by the Purchase Agreement.

36. The Purchaser has not assumed or is otherwise not obligated for any of the Debtors' liabilities other than the Assumed Liabilities and other amounts expressly set forth in the Purchase Agreement or this Sale Order, and the Purchaser has not purchased any of the Excluded Assets. Consequently, all persons, Governmental Units (as defined in Bankruptcy Code sections 101(27) and 101(41)) and all holders of claims, liens, interests or encumbrances based upon or arising out of liabilities retained by the Debtors are hereby prohibited from taking any action against the Purchaser, the Purchaser Entities, or the Purchased Assets in respect to any such claim, lien, interest or encumbrance or on account of any liabilities of the Debtors other than Assumed Liabilities pursuant to the Purchase Agreement or this Sale Order. All persons holding or asserting any interest in the Excluded Assets are hereby prohibited from asserting or

prosecuting a claim, lien, interest, encumbrance or cause of action against the Purchaser or the Purchased Assets for any liability associated with the Excluded Assets.

37. Any amounts that become payable by any of the Sellers to the Purchaser pursuant to the Purchase Agreement shall (a) constitute administrative expenses of the Debtors' estates under sections 503(b)(1) and 507(a)(1) of the Bankruptcy Code and (b) be paid by the Debtors in the time and manner provided for in the Purchase Agreement without further Court order.

38. The transactions contemplated by the Purchase Agreement are undertaken by the Purchaser without collusion and in good faith, as that term is used in section 363(m) of the Bankruptcy Code, and were negotiated by the parties at arm's length, and, accordingly, the reversal or modification on appeal of the authorization provided in this Order to consummate the Transaction shall not affect the validity of the Transaction (including the assumption and assignment of any of the Assumed Contracts), unless such authorization is duly stayed pending such appeal. The Purchaser is a purchaser in good faith of the Purchased Assets and the Purchaser and its agents, officials, personnel, representatives, and advisors are entitled to all the protections afforded by section 363(m) of the Bankruptcy Code.

39. Subject to further Court order and consistent with the terms of the Purchase Agreement, the Debtors and the Purchaser are authorized to and shall take appropriate measures to maintain and preserve the books, records, and any other documentation, including tapes or other audio or digital recordings and data in, or retrievable from, computers or servers relating to or reflecting the records held by the Debtors or their affiliates relating to the Debtors' business for a period of one (1) year or such longer period as may be required by applicable Law.

40. No law of any state or other jurisdiction relating to bulk sales or similar laws shall apply in any way to the transactions contemplated by the Transactions, the Purchase Agreement, the Motion, and this Order.

41. There are no brokers involved in consummating the Sale and no brokers' commissions are due.

42. NewCo agrees to recognize the International Brotherhood of Electrical Workers, Local 966 and Local 83 as the exclusive collective bargaining representative of all hourly full time and regular part time production, maintenance and clerical employees at the Somerset plant and Cayuga plant, respectively, and NewCo further agrees that prior to Closing it will seek to negotiate amendments to the current collective bargaining agreements in form and substance satisfactory to NewCo, without prejudice to NewCo's rights under Section 10.1(n) of the Purchase Agreement.

43. The terms and provisions of the Purchase Agreement and this Order shall inure to the benefit of the Debtors, their estates, and their creditors, the Purchaser, and their respective agents, officials, personnel, representatives, attorneys and advisors.

44. The failure to specifically include any particular provisions of the Purchase Agreement or any related agreements in this Order shall not diminish or impair the effectiveness of such provision, it being the intent of the Court, the Debtors and the Purchaser that the Purchase Agreement and any related agreements be authorized and approved in their entirety with such amendments thereto as may be made by the parties in accordance with this Sale Order prior to Closing.

45. The Purchase Agreement and any related agreements, documents, or other instruments may be modified, amended, or supplemented by the parties thereto and in

accordance with the terms thereof, without further order of the Court; provided that any such modification, amendment, or supplement does not have a material adverse effect on the Debtors' estates; provided, further, however, that written notice of any such modification, amendment, or supplement shall be provided to counsel to the Creditors' Committee prior to the Closing Date. Any such proposed modification, amendment, or supplement that does have a material adverse effect on the Debtors' estates shall be subject to further order of the Court on appropriate notice.

46. The provisions of this Order are nonseverable and mutually dependent on each other.

47. All time periods set forth in this Order shall be calculated in accordance with Bankruptcy Rule 9006(a).

48. Notwithstanding the possible applicability of Bankruptcy Rules 6004, 6006, 7062, 9014, or otherwise, the terms and conditions of this Order shall be immediately effective and enforceable upon its entry. The Debtors are not subject to any stay in the implementation, enforcement or realization of the relief granted in this Order, and may, in their discretion and without further delay, close the transactions contemplated under the Purchase Agreement and the Settlement Agreement and take any action and perform any act authorized under this Order.

49. Notwithstanding anything to the contrary in either the Purchase Agreement or this Order, NewCo shall pay in cash, at the Closing, the principal amount then outstanding plus all other amounts then owing under the Somerset Railroad Credit Facility, including interest, attorneys' fees and costs, which, as of February 29, 2012, such principal amount and interest is estimated to total approximately \$2,390,000 on April 30, 2012 and such attorneys' fees and costs are estimated to total no greater than \$225,000 on April 30, 2012;

provided, however, in the event that any of the foregoing estimates are materially understated, then in such event all of the rights of Somerset Railroad Corporation to dispute the excess amounts are preserved and Somerset Railroad Corporation agrees to timely exercise any such rights upon the reasonable request of NewCo; provided, further, however, that Somerset Railroad Corporation shall not be released from any of its obligations under the Somerset Railroad Facility prior to payment in full of all amounts owed under such facility. Until all such obligations are fully satisfied, no liens or any other security interest held by BNP Paribas, in its capacity as agent under the Somerset Railroad Credit Facility, shall be released, discharged or otherwise impaired.

50. If, and only if, the New York Independent System Operator Customer & Guest Application, Form of Service Agreement for New York ISO Market Administration and Control Area Services Tariff, entered into by and between the New York Independent System Operator and AES Eastern Energy, L.P. (the "*NYISO Agreement*"), is assumed and assigned to NewCo, the automatic stay pursuant to section 362 of the Bankruptcy Code shall be lifted, subject to the provisions of the Bankruptcy Code, immediately upon the Closing Date. All amounts withheld by the New York Independent System Operator after the Petition Date shall be promptly returned to the Debtors. In the event the NYISO Agreement is not assumed and assigned to NewCo, all rights of the parties are reserved.

51. To the extent that this Order is inconsistent with any prior order or pleading with respect to the Motion or the Transactions, the terms of this Order shall govern. Notwithstanding the foregoing, nothing herein shall effect the consent, consultation and other rights of the Creditors' Committee as set forth in the Settlement Agreement, and all such rights are expressly reserved.

52. This Court retains exclusive jurisdiction to enforce and implement the terms and provisions of this Order, the Purchase Agreement, all ancillary documents, all amendments thereto, any waivers and consents thereunder, and each of the agreements executed in connection therewith, in all respects, including, but not limited to, retaining jurisdiction to (a) compel delivery of the Purchased Assets to NewCo, (b) compel delivery of the Purchase Price or performance of other obligations owed by or to the Debtors, (c) resolve any disputes arising under or related to the Purchase Agreement, except as otherwise provided therein, (d) interpret, implement, and enforce the provisions of this Order, and (e) protect the Purchaser against any of the Assumed Liabilities or the assertion of any lien, claim, encumbrance, or other interest, of any kind or nature whatsoever, against the Purchased Assets.

Dated: April 11, 2012
Wilmington, Delaware


UNITED STATES BANKRUPTCY JUDGE

ASSET PURCHASE AND SALE AGREEMENT

BY AND AMONG

AES EASTERN ENERGY, L.P., AND

THE SELLING DEBTORS PARTY HERETO

AND

**DEUTSCHE BANK TRUST COMPANY AMERICAS, SOLELY IN ITS CAPACITIES
AS PASS THROUGH TRUSTEES AND INDENTURE TRUSTEES**

AND

SOMERSET CAYUGA HOLDING COMPANY, INC.

Dated as of April 11, 2012

Exhibit "A" to Sale Order

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ASSET PURCHASE AND SALE AGREEMENT

This ASSET PURCHASE AND SALE AGREEMENT, dated as of April 11, 2012 (this "Agreement"), is made and entered into by and among AES Eastern Energy, L.P., a Delaware limited partnership ("Lead Seller"), each of the Selling Debtors (as defined below, and together with Lead Seller, "Sellers", and each individually a "Seller"), Somerset Cayuga Holding Company, Inc., a Delaware corporation ("NewCo"), and Deutsche Bank Trust Company Americas, solely in its capacities as Pass Through Trustees and Indenture Trustees (each as defined in the Pass Through Agreements (as defined below)) on behalf of the Certificate Holders (as defined below) ("Trustee"). Sellers, NewCo and Trustee are sometimes herein referred to collectively as the "Parties" and individually as a "Party."

WITNESSETH:

WHEREAS, on December 30, 2011 (the "Petition Date"), the Selling Debtors commenced voluntary cases under chapter 11 of title 11 of the United States Code, 11 U.S.C. § 101 *et seq.* (the "Bankruptcy Code") in the United States Bankruptcy Court for the District of Delaware (the "Bankruptcy Court"), which cases are currently pending before the Honorable Kevin J. Carey and jointly administered under Case No. 11-14138 (KJC) (collectively, the "Chapter 11 Cases");

WHEREAS, Sellers are debtors-in-possession under the Bankruptcy Code and manage their respective properties pursuant to sections 1107(a) and 1108 of the Bankruptcy Code;

WHEREAS, Sellers are currently engaged in the Business (as defined below) and operate the facilities identified on Exhibit A to the Indentures (each, a "Facility" and, collectively, the "Facilities");

WHEREAS, Trustee, on behalf of the Certificate Holders (as defined below), and at the direction of the Requisite Holders (as defined below) and the Indenture Trustees, desires to bid certain Lessor Note Indebtedness (as defined below) held by the Trustee in exchange for certain of Sellers' assets consisting of the Indenture Purchased Assets (as defined below) and, upon acceptance of such bid, but prior to the consummation thereof, shall designate NewCo (or one or more of its subsidiaries) the right to receive such assets on account of such credit bid in accordance with the provisions of the Sale Order (as defined below);

WHEREAS, on the terms and subject to the conditions hereinafter set forth and pursuant to a Sale Order (as defined herein) and sections 105, 363 and 365 of the Bankruptcy Code, the Parties desire to enter into this Agreement;

WHEREAS, pursuant to the terms and subject to the conditions of this Agreement, Sellers shall sell and transfer to NewCo (or one or more of its subsidiaries), and NewCo (or one or more of its subsidiaries) shall purchase and acquire from Sellers, the Non-Indenture Purchased Assets (as defined below), and NewCo (or one or more of its subsidiaries) shall assume from Sellers and thereafter pay, discharge and perform the Assumed Liabilities (as defined herein); and

WHEREAS, the transactions contemplated by this Agreement are subject to the approval by the Bankruptcy Court of this Agreement and the Settlement Agreement (as defined below) and will be consummated only pursuant to the Sale Order entered in the Chapter 11 Cases;

NOW, THEREFORE, in consideration of the premises hereof and of the mutual covenants, representations, warranties and agreements herein contained, and intending to be legally bound hereby, the Parties hereby agree as follows:

ARTICLE I

DEFINITIONS

Section 1.1 Certain Definitions.

For purposes of this Agreement, the following terms shall have the meanings specified in this Section 1.1:

"Action" means any action, suit, arbitration, claim, inquiry, proceeding or investigation by or before any Governmental Body of any nature, civil, criminal, regulatory or otherwise, in law or in equity.

"AES Side Letter" means that side letter regarding Taxes in the form attached hereto as Exhibit F delivered by AES Corp. pursuant to Section 10.1(x).

"Affiliate" (and, with a correlative meaning "affiliated") means, with respect to any Person, any direct or indirect subsidiary of such Person, and any other Person that directly, or indirectly through one or more intermediaries, controls or is controlled by or is under common control with such first Person. As used in this definition, "control" (including with correlative meanings, "controlled by" and "under common control with") means the possession, directly or indirectly, of the power to direct or cause the direction of the management or policies (whether through ownership of securities or partnership or other ownership interests, by Contract or otherwise).

"Auction" means that certain auction if any conducted pursuant to the terms of the Sale Procedures Order.

"Budget" means the cash flow forecast relating to the operation of the Facilities between the date hereof and the Closing Date attached hereto as Exhibit G, as may be amended or modified from time to time with the prior written approval of the Trustee.

"Business" means the ownership of the Purchased Assets (after giving effect to Section 2.2 of the Settlement Agreement) and the operation of the Facilities and the Somerset Railroad as currently conducted by Sellers and Somerset Railroad Corporation.

"Business Day" means a day other than a Saturday, Sunday or other day on which commercial banks in New York City are authorized or required by Law to close. Any event the

scheduled occurrence of which would fall on a day that is not a Business Day shall be deferred until the next succeeding Business Day.

"Capital Expenditures" means the capital expenditures identified and outlined in the Projection Model.

"Cayuga Facility" means the facility and assets described in Exhibit A to the Indentures with the Miliken Facility Trusts.

"Cayuga PILOT Agreement" means all documents executed in connection with the PILOT agreement in respect of the Cayuga Facility, including, the lease agreement, leaseback agreement, PILOT mortgage agreement, and the PILOT agreement.

"Certificate Holders" means beneficial holders of the certificates issued under the Pass Through Agreements.

"Coal Book Value" means the book value of the coal supplies either located at the Facilities or Somerset Railroad or paid for by the Sellers and not yet delivered to such Facilities or Somerset Railroad. For purposes of calculating the Coal Book Value, the book value of coal shall be \$73.80 per ton for coal located at the Somerset Facility and \$75.43 per ton for coal located at the Cayuga Facility, provided, however, that in the event there is a Positive Coal/AR Balance, the book value of coal in excess of the Minimum Coal/AR Balance (applying accounts receivable first and coal second) shall be the lesser of \$73.80 per ton for coal located at the Somerset Facility and \$75.43 per ton for coal located at the Cayuga Facility or the Sellers' actual average per ton cost (including transportation costs) solely for coal delivered or ordered from the date of the Settlement Agreement to the Closing Date.

"Coal Hauling Agreement" means that certain Coal Hauling Agreement among Somerset Railroad Corporation, AES NY3, L.L.C. and AES Eastern Energy, L.P. dated as of May 6, 1999 (as amended, modified or supplemented from time to time).

"COBRA" means Consolidated Omnibus Budget Reconciliation Act of 1985, as amended.

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

"Consent" means any consent, waiver, approval, order or authorization of, or registration, declaration or filing with or notice to, any Governmental Body or other Person.

"Contract" means (whether written or oral) any contract, indenture, note, bond, loan, instrument, lease, license, commitment or other agreement.

"Credit Bid" means a credit bid pursuant to Section 363(k) of the Bankruptcy Code in an amount equal to two hundred forty million dollars (\$240,000,000), plus any additional amount the Trustee elects to credit bid at auction, with additional bids beyond the initial bid to be communicated to the Trustee by RPA Advisors, LLC, acting in consultation with Requisite Holders, all as provided in the Requisite Trustee Direction.

"Cure Costs" means any and all costs, expenses or actions that the Sellers are required to pay or perform to assume any of the Assumed Contracts pursuant to section 365(f) of the Bankruptcy Code.

"Data Site" means the electronic data room hosted by Intralinks containing information regarding Sellers and the Purchased Assets to which Trustee and NewCo have had access prior to the date hereof.

"Depositary Agreement" means the "Depositary Agreement" as defined in the Pass Through Agreements.

"Determined Cure Costs" means, in the aggregate, all Cure Costs payable in respect of the Assumed Contracts as determined pursuant to a Final Order, which Order may be the Sale Order.

"Deutsche Bank Depositary Accounts" means the "Accounts" as defined in the Depositary Agreement; provided, that the Deutsche Bank Depositary Accounts do not include the Rent Reserve Account, the Rent Reserve Payment Undertaking Agreement or any accounts established thereunder, or any rights, claims or interests therein.

"Documents" means all files, documents, instruments, papers, books, reports, records, tapes, microfilms, photographs, letters, budgets, forecasts, ledgers, journals, title policies, customer lists, regulatory filings, equipment logs, operating data and plans, technical documentation (design specifications, functional requirements, operating instructions, logic manuals, flow charts, etc.), maintenance records, user documentation (installation guides, user manuals, training materials, release notes, working papers, etc.), marketing documentation (sales brochures, flyers pamphlets, Web pages, etc.), cost or pricing information, business plans, quality control records and procedures, blue prints, accounting and Tax files and other financial information, customer files and other customer related documents (including credit information), personnel files for Transferred Employees (except any such files that are not permitted to be transferred by applicable Law), supplier lists, records, literature and correspondence, including materials relating to Inventories, services, marketing, advertising, promotional materials, documents related to Intellectual Property, and other similar materials, in each case to the extent used in or held for use in, or that relate primarily to, the Business or the Purchased Assets, whether or not in electronic form and whether or not physically located at any Facility, but excluding any such materials that relate primarily to Excluded Assets.

"Employee" means any employee of any Seller or any of its Affiliates who performs work primarily related to the operation of the Business.

"Employee Bonuses" means bonuses in amounts not exceeding \$910,000 in the aggregate on account of services provided to Sellers and their Affiliates in connection with the Business during the 2011 fiscal year, payable to certain Employees mutually agreed in writing by Lead Seller and Trustee prior to the earlier of the date of payment of such Employee Bonuses and the Closing Date; provided, however, that if the Closing does not occur prior to payment of the Employee Bonuses in the ordinary course by the Sellers, then NewCo shall reimburse the Sellers in full for the agreed amounts at Closing.

"Environmental Law" means any Law relating to pollution or protection of the environment or natural resources, including for illustration and without limitation the Comprehensive Environmental Response, Compensation and Liability Act (42 U.S.C. § 9601 et seq.), the Solid Waste Disposal Act and Resource Conservation and Recovery Act (42 U.S.C. § 6901 et seq.), the Clean Water Act (33 U.S.C. § 1251 et seq.), and the Clean Air Act (42 U.S.C. § 7401 et seq.), as each has been amended and the regulations promulgated thereto, and all analogous, related, or supplemental state or local laws.

"Environmental Permit" means any Permit required by Environmental Laws for the ownership or operation of the Facilities or Purchased Assets or the operation of the Business.

"ERISA" means the Employee Retirement Income Security Act of 1974, as amended.

"Excluded Contracts" means the Contracts that are not Assumed Contracts and any other Contracts designated as Excluded Contracts pursuant to the terms of this Agreement.

"Excluded Matter" means any one or more of the following: (i) the effect of any change in the United States or foreign economies or securities or financial markets in general, except to the extent such changes have a disproportionate effect on the Sellers relative to other participants in the industry in which the Sellers operate; (ii) the effect of any change that generally affects any industry in which Sellers operate, except to the extent such changes have a disproportionate effect on the Sellers relative to other participants in the industry in which the Sellers operate; (iii) the effect of any change arising in connection with earthquakes, hostilities, acts of war, sabotage or terrorism or military actions or any escalation or material worsening of any such hostilities, acts of war, sabotage or terrorism or military actions existing or underway as of the date hereof, except to the extent such changes have a disproportionate effect on the Sellers relative to other participants in the industry in which the Sellers operate; (iv) the effect of any action taken by NewCo or its Affiliates with respect to the Transactions or with respect to Sellers, including their respective employees; (v) the effect of any changes in applicable Laws or accounting rules; (vi) any effect resulting from the public announcement of this Agreement; or (vii) any effect resulting from the filing of the Bankruptcy Case.

"Excluded Permit" means those permits listed on Schedule 2.2(d).

"Facility Employees" means Employees who are employed on a full time basis at the Somerset Facility or the Cayuga Facility as of the date hereof.

"Final Order" means an Order, judgment or other decree of the Bankruptcy Court or any other Governmental Body of competent jurisdiction that has not been reversed, vacated, modified or amended, is not stayed and remains in full force and effect; provided that such Order shall be considered a Final Order only after the time period for third parties seeking appeal has expired without the filing of any appeal or motion for reconsideration.

"Fixed Costs" means the fixed costs identified and outlined in the Projection Model.

"Furniture and Equipment" shall mean all equipment, machinery, fixtures, spare parts, furniture and other tangible property owned by any Seller or Somerset Railroad Corporation (after giving effect to Section 2.2 of the Settlement Agreement) and located at any Facility or used in the operation of the Business, including all attachments, appliances, fittings, gas and oil burners, lighting fixtures, signs, doors, cabinets, partitions, mantels, motors, pumps, screens, plumbing, heating, air conditioning, refrigerators, freezers, refrigerating and cooling systems, racks, ovens, stoves, carpets, floor coverings, wall coverings, office equipment, kitchen appliances, Hardware, registers, safes, trash containers, meters and scales, combinations, codes and keys, and any other furniture, fixtures, equipment and Improvements, irrespective of where title is held as of the date of this Agreement.

"GAAP" means generally accepted accounting principles in the United States as of the date hereof.

"Governmental Body" means any entity exercising executive, legislative, judicial, regulatory or administrative functions of or pertaining to any United States or foreign federal, state or local government, any governmental authority, agency, department, board, commission or instrumentality or any political subdivision thereof, and any tribunal or court or arbitrator(s) of competent jurisdiction, and shall include the Bankruptcy Court.

"Hardware" means any and all computer and computer-related hardware, including, but not limited to, computers, file servers, facsimile servers, scanners, color printers, laser printers and networks.

"Hazardous Material" means any substance, material or waste that is regulated pursuant to any Environmental Law, or that can be the subject of enforcement, investigation, or liability pursuant to any Environmental Law, whether or not recycled or beneficially used, including, without limitation coal combustion products, residues, or emissions, fly ash, bottom ash, flue gas desulfurization material, petroleum and its by-products, asbestos, polychlorinated biphenyls, radon, mold or other fungi, and urea formaldehyde insulation.

"Improvements" shall mean buildings, structures, systems, fixtures and facilities located on, and easements, rights-of-way, privileges, improvements, licenses, hereditaments, appurtenances, roads, sidewalks, parking lots, infrastructure improvements and all other rights and benefits belonging, or in any way related, to the Seller Property.

"Indebtedness" means, with respect to any Person, without duplication, (i) all amounts owing, including principal and premium (if any), interest, overdraft fees, costs, expenses, penalties, indemnities and breakage costs in respect of (A) indebtedness of such Person for money borrowed and (B) indebtedness evidenced by notes, debentures, bonds, drafts, extensions of credit or other similar instruments for the payment of which such Person is responsible or liable; (ii) all obligations of such Person issued or assumed as the deferred purchase price of property, all conditional sale obligations of such Person and all obligations of such Person under any title retention agreement (but excluding trade accounts payable and other accrued current liabilities arising in the Ordinary Course of Business); (iii) all obligations of such Person under leases required to be capitalized in accordance with GAAP; (iv) all obligations of such Person for the reimbursement of any obligor on any letter of credit, banker's acceptance or

similar credit transaction; (v) all obligations of the type referred to in clauses (i) through (iv) of any Persons for the payment of which such Person is responsible or liable, directly or indirectly, as obligor, guarantor, surety or otherwise, including guarantees of such obligations, "keep well" agreements, agreements to maintain or contribute cash or capital to any Person or other similar agreements or arrangements; and (vi) all obligations of the type referred to in clauses (i) through (v) of other Persons secured by any Lien on any property or asset of such Person (whether or not such obligation is assumed by such Person).

"Indentures" means, collectively, (i) the Indenture of Trust and Security Agreement dated May 1, 1999, by and among Milliken Facility Trust A-1 and Bankers Trust Company, as Indenture Trustee, (ii) the Indenture of Trust and Security Agreement dated May 1, 1999, by and among Milliken Facility Trust A-2 and Bankers Trust Company, as Indenture Trustee, (iii) the Indenture of Trust and Security Agreement dated May 1, 1999, by and among Milliken Facility Trust B-1 and Bankers Trust Company, as Indenture Trustee, (iv) the Indenture of Trust and Security Agreement dated May 1, 1999, by and among Milliken Facility Trust B-2 and Bankers Trust Company, as Indenture Trustee, (v) the Indenture of Trust and Security Agreement dated May 1, 1999, by and among Milliken Facility Trust C-1 and Bankers Trust Company, as Indenture Trustee, (vi) the Indenture of Trust and Security Agreement dated May 1, 1999, by and among Milliken Facility Trust C-2 and Bankers Trust Company, as Indenture Trustee, (vii) the Indenture of Trust and Security Agreement dated May 1, 1999, by and among Kintigh Facility Trust A-1 and Bankers Trust Company, as Indenture Trustee, (viii) the Indenture of Trust and Security Agreement dated May 1, 1999, by and among Kintigh Facility Trust A-2 and Bankers Trust Company, as Indenture Trustee, (ix) the Indenture of Trust and Security Agreement dated May 1, 1999, by and among Kintigh Facility Trust B-1 and Bankers Trust Company, as Indenture Trustee, (x) the Indenture of Trust and Security Agreement dated May 1, 1999, by and among Kintigh Facility Trust B-2 and Bankers Trust Company, as Indenture Trustee, (xi) the Indenture of Trust and Security Agreement dated May 1, 1999, by and among Kintigh Facility Trust C-1 and Bankers Trust Company, as Indenture Trustee, and (xii) the Indenture of Trust and Security Agreement dated May 1, 1999, by and among Kintigh Facility Trust C-2 and Bankers Trust Company, as Indenture Trustee.

"Intellectual Property" means all worldwide intellectual property and rights wholly or jointly owned, assigned or registered to any Seller or any of its Subsidiaries, including Somerset Railroad Corporation, arising from or in respect of the following: all (i) inventions, discoveries, industrial designs, business methods, patents and patent applications (including provisional and Patent Cooperation Treaty applications), including continuations, divisionals, continuations-in-part, reexaminations and reissues, extensions, renewals and any patents that may be issued with respect to the foregoing; (ii) trademarks, service marks, certification marks, collective marks, trade names, business names, assumed names, d/b/a's, fictitious names, brand names, trade dress, logos, symbols, Internet domain names and corporate names, and general intangibles of a like nature, whether registered, unregistered or arising by Law, and all applications, registrations, and renewals for any of the foregoing, together with the goodwill associated with and symbolized by each of the foregoing; (iii) published and unpublished works of authorship in any medium, whether copyrightable or not (including databases and other compilations of information, computer software, source code, object code, algorithms, and other similar materials and Internet website content), copyrights and moral rights therein and thereto, and registrations and applications therefor, and all issuances, renewals, extensions, restorations

and reversions thereof; and (iv) confidential and proprietary information, trade secrets, and know-how, including methods, processes, business plans, schematics, concepts, software and databases (including source code, object code and algorithms), formulae, drawings, prototypes, models, designs, devices, technology, research and development and customer information and lists (collectively, "Trade Secrets").

"Intellectual Property Licenses" means (i) any Contract that contains any grant by any Seller to any third Person of any right to manufacture, use, offer to sell, sell, publish, perform or exploit any Intellectual Property owned by any Seller, and/or (ii) any Contract that contains any grant by any third Person to any Seller of a right to manufacture, use, offer to sell, sell, publish, perform or exploit a third Person's intellectual property rights.

"Intercompany Loan" means, with respect to any Seller, any intercompany Indebtedness related to the Business between such Seller and any Affiliate of such Seller (other than another Seller), whether or not evidenced by promissory notes and/or recorded in the books and records of such Seller.

"IRS" means the United States Internal Revenue Service.

"Law" means any federal, state, local or foreign law (including common law), statute, code, ordinance, rule, or regulation or other requirement enacted, promulgated, issued or entered by a Governmental Body.

"Legal Proceeding" means any judicial, administrative or arbitral actions, suits, proceedings (public or private) or claims or any proceedings by or before a Governmental Body.

"Lessor Note Indebtedness" means the obligations under the Indentures and the Lessor Notes (as defined in the Indentures) issued thereunder.

"Liability" means any and all debts, losses, liabilities, claims (including "Claims" as defined in section 101(5) of the Bankruptcy Code), damages, expenses, Taxes, fines or other penalties, costs, royalties, proceedings, deficiencies or obligations (including those arising out of any action, such as any settlement or compromise thereof or judgment or award therein), of any nature, whether known or unknown, absolute, contingent, accrued or unaccrued, liquidated or unliquidated, or otherwise and whether due or to become due, and whether in contract, tort, strict liability or otherwise, and whether or not resulting from third party claims.

"Lien" means any lien, encumbrance, pledge, mortgage, deed of trust, security interest, claim, lease, charge, option, right of first refusal, right of first offer, easement, servitude, proxy, voting trust or agreement, transfer restriction under any shareholder or similar agreement or encumbrance or any other restriction or limitation whatsoever.

"Material Adverse Change" means any change, circumstance, occurrence, fact or event occurring or first existing after the date hereof, or occurring or existing prior to the date hereof but not disclosed by Sellers to NewCo prior to the date hereof, that (a) has increased, or would reasonably be expected to increase, the amount of the Assumed Liabilities (other than Liabilities pursuant to Sections 2.3(a)(ii), 2.3(a)(iv), 2.3(b)(ii) and 2.3(b)(iv)), by more than one million six hundred thousand dollars (\$1,600,000) over the aggregate amount of such Assumed

Liabilities set forth on Schedule 2.3, provided, that if the amount of the Assumed Liabilities (other than Liabilities pursuant to Sections 2.3(a)(ii), 2.3(a)(iv), 2.3(b)(ii) and 2.3(b)(iv)) has increased by more than one million six hundred thousand dollars (\$1,600,000) over the amount of such Assumed Liabilities set forth on Schedule 2.3, Sellers shall have the ability in their sole discretion to assume any amounts in excess of one million six hundred thousand dollars (\$1,600,000) in which case Parties hereby agree that the requirements of this clause (a) would not be met for the purposes of Section 10.1(r), (b) has increased, or would reasonably be expected to increase, the aggregate amount of fixed costs and capital expenditures of the Business during the period from January 1, 2012 through December 31, 2016 over the amount of Fixed Costs and Capital Expenditures for such period set forth in the Projection Model by fifty million dollars (\$50,000,000) or more, other than as a result of changes or proposed changes to Environmental Law, (c) has resulted in, or would reasonably be expected to result in, damage to or destruction of the Purchased Assets where the cost to repair or restore such Purchased Assets to their condition immediately prior to the occurrence of such damage or destruction would reasonably be expected to exceed fifty million dollars (\$50,000,000) (net of any insurance proceeds paid to NewCo pursuant to Section 8.9(b) hereof), or (d) has created, or would reasonably be expected to create, a Lien any of the Purchased Assets that will not be released as of the Closing Date and that does not constitute a Permitted Exception.

"Material Adverse Effect" means (i) a material adverse effect on the Business or the business, assets, Liabilities or properties of the Sellers and Somerset Railroad Corporation (taken as a whole) or (ii) a material adverse effect on the ability of Sellers to consummate the Transactions or perform their obligations under this Agreement, in each case other than an effect resulting from an Excluded Matter.

"Minimum Coal/AR Balance" means \$12,500,000, inclusive of the Minimum Somerset Tonnage.

"Minimum Somerset Tonnage" means a minimum of 72,400 tons of coal located, or allocated for use in connection with generation operations, at the Somerset Facility.

"Negative Coal/AR Balance" means the amount, if any, by which (i) the Minimum Coal/AR Balance exceeds (ii) the sum of (x) the Coal Book Value as of the Closing and (y) the accounts receivable related to the operations of the Sellers as of the Closing. For purposes of determining whether there is a Negative Coal/AR Balance, accounts receivable shall be applied first and coal second.

"NRC" means the Nuclear Regulatory Commission.

"Operating Losses" means fixed operating expenditures and capital expenditures in the Ordinary Course of Business incurred or accrued for the applicable months related to the Purchased Assets, provided that such expenditures will be offset by positive gross margin to the extent that it relates to energy, capacity or ancillary services sold during the month, and provided, further, that for the purposes of determining energy margins (energy revenue less associated variable costs) coal related to the Somerset Facility shall be priced at \$73.80 per ton and coal related to the Cayuga Facility shall be priced at \$75.43 per ton. For the avoidance of

doubt, no amounts that constitute Assumed Liabilities shall be included in the calculation of Operating Losses.

"Order" means any order, injunction, judgment, decree, ruling, writ, assessment or arbitration award of a Governmental Body.

"Ordinary Course of Business" means the ordinary and usual course of normal day-to-day operations of the Business consistent with past practice.

"Organizational Documents" means, with respect to any Person (other than an individual), (a) the certificate or articles of incorporation or organization and any joint venture, limited liability company, operating or partnership agreement and other similar documents adopted or filed in connection with the creation, formation or organization of such Person and (b) all bylaws and similar documents, instruments or agreements relating to the organization or governance of such Person, in each case, as amended or supplemented.

"Participation Agreements" means those certain twelve Participation Agreements dated May 1, 1999 by and among one of twelve owner trusts and related owner participant signatory thereto, an owner participant, and Deutsche Bank Trust Company Americas, as successor Indenture Trustees and Pass Through Trustees.

"Pass Through Agreement A" means that certain Pass Through Trust Agreement A, dated as of May 1, 1999.

"Pass Through Agreement B" means that certain Pass Through Trust Agreement B, dated as of May 1, 1999.

"Pass Through Agreements" means, collectively, Pass Through Agreement A and Pass Through Agreement B.

"Pass Through Certificates" shall have the meaning set forth in the Participation Agreements.

"Permits" means any approvals, authorizations, consents, licenses, permits, certificates of, or granted by, a Governmental Body.

"Permitted Exceptions" means (i) all title exceptions, restrictions, easements, restrictive covenants, rights-of-way, servitudes, permits, surface leases and other rights with respect to surface operations, to the extent the same are disclosed in policies of title insurance which have been made available by Sellers to NewCo with respect to the Seller Properties as of the date hereof, (ii) all rights reserved to or vested in any Governmental Body to control or regulate the Purchased Assets and all obligations and duties under all applicable Laws or under any permit issued by any Governmental Body, (iii) statutory Liens for current real and personal property Taxes, assessments or governmental charges not yet due or delinquent, (iv) mechanics', carriers', workers', repairers' and similar Liens arising or incurred in the Ordinary Course of Business, (v) Liens securing debt as disclosed in the Financial Statements, which Liens will be released at or prior to Closing, (vi) title of a lessor under the capital and operating leases set forth on Schedule 1.1, and (vii), any other easements, leases, rights-of-way, restrictions, covenants,

licenses or other Liens, whether or not of record, or any encroachments or other survey defects which would be disclosed by a current accurate survey or physical inspection of the respective property, to the extent not otherwise included in clauses (i) through (vi), but which, individually and in the aggregate (but without including any other Liens otherwise included as Permitted Exceptions pursuant to any other clauses of this definition), do not interfere materially with the current use of such property (assuming its continued use in the manner in which it is currently used) or, with respect to unimproved or vacant real property, interfere materially with the intended use of such property.

"Person" means and includes natural persons, corporations, limited partnerships, limited liability companies, general partnerships, joint stock companies, joint ventures, associations, companies, trusts, banks, trust companies, land trusts, business trusts or other organizations, whether or not legal entities, and all Governmental Bodies.

"Positive Coal/AR Balance" means the amount, if any, by which (i) the sum of (x) the Coal Book Value as of the Closing and (y) the accounts receivable related to the operations of the Sellers as of the Closing, exceeds (ii) the Minimum Coal/AR Balance. For purposes of determining whether there is a Positive Coal/AR Balance, accounts receivable shall be applied first and coal second.

"Post-Closing Escrow Account" means an escrow account, subject to an escrow agreement reasonably acceptable to the Sellers and NewCo for the payment of severance obligations post-Closing, which account shall be funded by the Sellers with \$1,250,000 at Closing as set forth in Section 3.2.

"Post-Closing Tax Period" means any Tax period (or portion thereof) beginning after the Closing Date.

"Pre-Closing Tax Period" means any Tax period (or portion thereof) ending on or before the Closing Date.

"Projection Model" means the January 2012 Somerset and Cayuga Projection Model posted to the Data Site (and identified as 2012_01 long term projection model vF dated 1/25/12) prior to the date hereof.

"Purchase Price" means the Indenture Assets Purchase Price, the Non Indenture Assets Purchase Price and the Somerset Railroad Purchase Price.

"Purchased Assets" means the Indenture Purchased Assets and the Non-Indenture Purchased Assets.

"Purchased Intellectual Property" means all Owned Intellectual Property, Licensed Intellectual Property and all other Intellectual Property rights (whether or not registered) that relate to the Business or which are manufactured, used, offered for sale, sold, published, performed or exploited in the operation of the Business, other than Intellectual Property associated exclusively with the Excluded Assets.

"Release" means any actual or threatened release, spill, emission, leaking, pumping, injection, deposit, disposal, treatment, storage, discharge, dispersal, or leaching into the indoor or outdoor environment, or into, on, within, under, or out of any property.

"Released Liens" means (i) any Lien that, pursuant to section 363(f) of the Bankruptcy Code, will be released from the Purchased Assets upon entry of the Sale Order; and (ii) other Liens that will be released on or prior to Closing at no cost or expense to NewCo.

"Remedial Action" means all actions to (i) investigate, respond to, clean up, remove, remediate, or otherwise mitigate or address any Hazardous Material including post-remedial monitoring and care; (ii) prevent the Release of any Hazardous Material; or (iii) correct a condition of noncompliance with Environmental Laws.

"Rent Reserve Payment Undertaking Agreement" means, collectively, the Rent Reserve Account Payment Undertaking Agreement, dated as of May 1, 1999, among AES Eastern Energy, L.P., Kintigh Facility Trust A-1, Milliken Facility Trust A-1, Kintigh Facility Trust A-2, Milliken Facility Trust A-2, Kintigh Facility Trust B-1, Milliken Facility Trust B-1, Kintigh Facility Trust B-2, Milliken Facility Trust B-2, Kintigh Facility Trust C-1, Milliken Facility Trust C-1, Kintigh Facility Trust C-2, Milliken Facility Trust C-2 and Morgan Guaranty Trust Company of New York, or any other Payment Undertaking Agreement in effect from time to time in respect of the Rent Reserve Account.

"Rent Reserve Account" means **"Rent Reserve Account"** as defined in Section 2.2 of the Depositary Agreement.

"Representatives" means, with respect to any Person, its officers, directors, managers, employees, attorneys, investment bankers, accountants and other agents and representatives.

"Requisite Holders" means Certificate Holders holding not less than a majority in interest of the Fractional Undivided Interests evidenced by all outstanding Certificates (as such terms are defined in Pass Through Agreement A) and Certificate Holders holding not less than a majority in interest of the Fractional Undivided Interests evidenced by all outstanding Certificates (as such terms are of Noteholders as defined in Pass Through Agreement B).

"RGGI" means the Regional Greenhouse Gas Initiative.

"Sale Motion" means the motion of Sellers seeking approval and entry of the Sale Procedures Order and the Sale Order, filed January 11, 2012 in the Chapter 11 Cases under docket number 74.

"Sale Order" means an order or orders of the Bankruptcy Court issued pursuant to sections 105, 363 and 365 of the Bankruptcy Code in form and substance acceptable to Trustee, NewCo and Sellers approving this Agreement, each in their sole discretion, and all of the terms and conditions hereof, and approving and authorizing Sellers to consummate the transactions contemplated hereby.

"Sale Procedures Order" means an order of the Bankruptcy Court, in form and substance reasonably acceptable to Trustee and Sellers, which, among other things establishes a date by which Competing Bids must be submitted, as requested under the Sale Motion, and sets forth the agreements on allocation as set forth in section 2.10 of the Settlement Agreement.

"SCR" means the selective catalytic reduction system located at the Somerset Facility.

"Seller Transfer Taxes and Title Fees" shall mean Seller's responsibility, pursuant to Sections 9.3 and 12.2, to pay half of all Transfer Taxes and Title Fees subject to the limitations set forth in such sections.

"Sellers' Knowledge" means the actual knowledge of those officers and directors of Sellers identified on Schedule 1.1(b).

"Selling Debtors" means AES Eastern Energy, L.P., AES Somerset, LLC, AES Cayuga, LLC and AES NY3, LLC.

"Settlement Agreement" means that certain settlement agreement executed by certain of the Selling Debtors and certain Certificateholders (as defined in the Pass Through Agreements), settling a series of disputes and potential disputes relating to the rights and obligations of the Parties under the Indentures and related documents.

"Somerset Facility" means the facility and assets described in Exhibit A to the Indentures with the Kintigh Facility Trusts.

"Somerset PILOT Agreement" means all documents executed in connection with the PILOT agreement in respect of the Somerset Facility, including, the lease agreement, leaseback agreement, PILOT mortgage agreement, and the PILOT agreement, as any of the same may be amended prior to the Closing Date.

"Somerset Railroad" means the railroad operated by Somerset Railroad Corporation.

"Somerset Railroad Corporation" means Somerset Railroad Corporation, a wholly owned subsidiary of AES NY3.

"Somerset Railroad Credit Facility" means that certain credit facility in the outstanding principal amount of approximately \$2.3 million extended under that certain Secured Credit Agreement, dated as of May 6, 1999, among Somerset Railroad Corporation, the financial institutions listed as a party thereto, and CIBC, Inc., as agent, as amended and restated as of August 14, 2000, among Somerset Railroad Corporation, the financial institutions listed as a party thereto, and BNP Paribas, successor to Fortis Capital Corporation, as agent for and representative of the lending parties thereto.

"Straddle Period" means any Tax period beginning on or before, and ending after, the Closing Date.

"Subsidiary" or "subsidiary" means, with respect to any Person, any corporation, limited liability company, joint venture or partnership of which such Person (a) beneficially owns, either directly or indirectly, more than fifty percent (50%) of (i) the total combined voting power of all classes of voting securities of such entity entitled, under ordinary circumstances, to vote in the election of directors or other governing body of such Person, (ii) the total combined equity interests, or (iii) the capital or profit interests, in the case of a partnership; or (b) otherwise has the power to vote or to direct the voting of sufficient securities to elect a majority of the board of directors or similar governing body of such Person.

"Tax" means all federal, state, provincial, territorial, municipal, local or foreign income, profits, franchise, gross receipts, environmental (including taxes under Section 59A of the Code), alternative or add on minimum, customs, duties, net worth, sales, use, goods and services, withholding, value added, ad valorem, employment, social security, escheat, disability, occupation, pension, real property, personal property (tangible and intangible), stamp, transfer, conveyance, severance, production, excise and other taxes (including payments in lieu of taxes), withholdings, duties, levies, imposts, fees and other similar charges and assessments (including any and all interest, fines, penalties and additions attributable to, or otherwise imposed on or with respect to, any such taxes, withholdings, duties, levies, imposts, fees and other similar charges and assessments) imposed by or on behalf of any Governmental Body or Tax Authority, including any obligation to indemnify or otherwise to assume or succeed to the Tax liability of any other Person.

"Tax Authority" means any federal, state, local or foreign government, or agency, instrumentality or employee thereof, charged with the determination, assessment, regulation, collection or administration of any Tax or of Law relating to Taxes.

"Tax Return" means all returns, declarations, reports, estimates, information returns and statements filed or required to be filed in respect of any Taxes, including all attachments and schedules thereto and amendments thereof.

"Transaction Documents" means this Agreement, the Purchased Assets Bill of Sale, the Facilities Bill of Sale, the Assignment and Assumption Agreement, the Transition Services Agreement (if entered into pursuant to Section 8.9), and all other Contracts necessary to effectuate the Transactions.

"Transactions" means the transactions contemplated by this Agreement and the other Transaction Documents.

"Trust Escrow Account" means the escrow account designated by and subject to an escrow agreement, which account shall be funded as set forth herein and utilized to fund a trust to be established for the benefit of the general unsecured creditors of Lead Seller.

"Unions" means IBEW Local Union No. 83 and IBEW Local Union No. 966.

"WARN Act" means the federal Worker Adjustment and Retraining Notification Act, 29 U.S.C. § 2101 et seq. (1988) and any similar state or local "mass layoff" or "plant closing" laws.

Section 1.2 Terms Defined Elsewhere in this Agreement.

For purposes of this Agreement, the following terms have meanings set forth in the sections indicated:

<u>Term</u>	<u>Section</u>
AES Corp.	<u>Section 7.3(e)</u>
AES Marks	<u>Section 8.12</u>
Agreement	<u>Preamble</u>
Alternative Proposal	<u>Section 7.1(a)</u>
Assignment and Assumption Agreement	<u>Section 4.2(a)(iii)</u>
Assumed Liabilities	<u>Section 2.3</u>
Assumption Notice	<u>Section 7.3(a)</u>
Balance Sheet	<u>Section 5.4</u>
Balance Sheet Date	<u>Section 5.4</u>
Bankruptcy Code	<u>Recitals</u>
Bankruptcy Court	<u>Recitals</u>
Business Employee List	<u>Section 9.1(a)</u>
Cash Consideration	<u>Section 3.1(b)(i)</u>
Chapter 11 Cases	<u>Recitals</u>
Closing	<u>Section 4.1</u>
Closing Date	<u>Section 4.1</u>
Coal	<u>Section 2.1(c)(v)</u>
Competing Bid	<u>Section 7.1</u>
Contract Retention Period	<u>Section 2.7(c)</u>
Credit Bid Indebtedness	<u>Section 3.1(a)</u>
Cure Schedule	<u>Section 2.5</u>
Designated Contract	<u>Section 7.3(b)</u>
Designation Deadline	<u>Section 7.3(b)</u>
Designation Right Contract	<u>Section 2.7(c)</u>
Destruction	<u>Section 8.9(a)</u>
Employee Benefit Plans	<u>Section 5.13(a)</u>
ERISA Affiliate	<u>Section 5.13(a)</u>
Estimated Operating Losses	<u>Section 3.3</u>
Excluded Assets	<u>Section 2.2</u>
Excluded Liabilities	<u>Section 2.4</u>
Excluded Permits	<u>Section 7.3(a)</u>
Facilities Bill of Sale	<u>Section 10.1(p)</u>
Facility	<u>Recitals</u>
Financial Statements	<u>Section 5.4</u>
Income Taxes	<u>Section 5.8</u>
Indenture Assets Purchase Price	<u>Section 3.1(a)</u>
Indenture Purchased Assets	<u>Section 2.1(a)</u>
Insurance Contract	<u>Section 5.20</u>
Labor Agreement	<u>Section 5.14(a)</u>

<u>Term</u>	<u>Section</u>
Lead Seller	Preamble
Licensed Intellectual Property	Section 5.11(a)
Material Contract	Section 5.12(a)
NewCo Documents	Section 6.2
Non-Income Tax Returns	Section 9.3(c)
Non-Indenture Assets Purchase Price	Section 3.1(b)
Non-Indenture Purchased Assets	Section 2.1(b)
NYISO	Section 2.1(c)(xxii)
NYSEG	Section 2.1(c)(xxiii)
Owned Intellectual Property	Section 5.11(a)
Owned Properties	Section 5.9(a)
Party	Preamble
Personal Property Leases	Section 5.10
Petition Date	Recitals
Post-Closing Assumption Notice	Section 2.7(c)
Purchase Price	Section 3.1(c)
Purchased Assets Bill of Sale	Section 4.2(a)(i)
Real Property Lease	Section 5.9(a)
Related Party	Section 5.21(a)
Required Consents	Section 2.7(a)
Requisite Trustee Direction	Section 10.4(a)
Seller	Preamble
Seller Benefit Plan	Section 5.13(a)
Seller Documents	Section 5.2
Seller Closing Obligations	Section 3.1(b)(i)
Seller Property	Section 5.9(a)
Somerset Railroad Purchase Price	Section 3.1(c)
Surety Administrative Agent	Section 3.2(b)(i)
Surety LC Agreement	Section 3.2(b)(i)
Surety Lender	Section 3.2(b)(i)
Termination Date	Section 4.4(a)
Title IV Plans	Section 5.13(a)
Trade Secrets	Section 1.1
Transfer	Section 2.7(a)
Transferred Employees	Section 9.1(b)
Transfer Taxes	Section 9.3(a)
Transition Services Agreement	Section 8.8(a)
Trustee	Preamble

Section 1.3 Other Definitional and Interpretive Matters.

(a) Unless otherwise expressly provided, for purposes of this Agreement, the following rules of interpretation shall apply:

(i) Calculation of Time Period. When calculating the period of time before which, within which or following which any act is to be done or step taken pursuant to this Agreement, the date that is the referenced end date shall be excluded in calculating such period. If the last day of such period is a non-Business Day, the period in question shall end on the next succeeding Business Day.

(ii) Dollars. Any reference in this Agreement to \$ shall mean U.S. dollars.

(iii) Exhibits/Schedules. The Exhibits and Schedules to this Agreement are hereby incorporated and made a part hereof and are an integral part of this Agreement. All Exhibits and Schedules annexed hereto or referred to herein are hereby incorporated in and made a part of this Agreement as if set forth in full herein. Any matter or item disclosed on one schedule shall be deemed to have been disclosed on each other schedule to the extent that the relevance of any such information to such other schedule is readily apparent from the text of such disclosure and without independent examination of documents referred to therein. Any capitalized terms used in any Schedule or Exhibit but not otherwise defined therein shall be defined as set forth in this Agreement.

(iv) Gender and Number. Any reference to a gender shall include all genders, and words imparting the singular number only shall include the plural and vice versa.

(v) Headings. The provision of a Table of Contents, the division of this Agreement into Articles, Sections and other subdivisions and the insertion of headings are for convenience of reference only and shall not affect or be utilized in construing or interpreting this Agreement. All references in this Agreement to any "Section" are to the corresponding Section of this Agreement unless otherwise specified.

(vi) Herein. The words such as "herein," "hereinafter," "hereof" and "hereunder" refer to this Agreement as a whole and not merely to a subdivision in which such words appear unless the context otherwise requires.

(vii) Including. The word "including" or any variation thereof means "including, without limitation" and shall not be construed to limit any general statement that it follows to the specific or similar items or matters immediately following it.

(viii) Amendments and Successors. Any agreement, instrument or statute defined or referred to herein or in any agreement or instrument that is referred to herein means such agreement, instrument or statute as from time to time amended, modified or supplemented including (in the case of

agreements or instruments) by waiver or consent and (in the case of statutes) by succession of comparable successor statutes and references to all attachments thereto and instruments incorporated therein. References to a Person are also to the Person's successors and permitted assigns, as applicable.

(ix) Jointly Drafted. This Agreement is the product of negotiations among the Parties, each of which is represented by legal counsel, and no presumption or burden of proof shall arise favoring or disfavoring any party by virtue of the authorship of any provision of this Agreement. Rules of construction relating to interpretation against the drafter of an agreement shall not apply to this Agreement and are expressly waived by each Party.

ARTICLE II

PURCHASE AND SALE OF ASSETS; ASSUMPTION OF LIABILITIES

Section 2.1 Purchase and Sale of Indenture and Non-Indenture Assets.

(a) On the terms and subject to the conditions set forth in this Agreement, and subject to Section 7.3, at the Closing, each Seller shall transfer, assign and deliver to NewCo (as the Trustee's designee to receive the Indenture Purchased Assets, as defined below, pursuant to the Trustee's credit bid), or to one or more subsidiaries of NewCo at NewCo's direction, and NewCo (or one or more subsidiaries of NewCo at NewCo's direction) shall accept from such Seller, free and clear of any and all Liens (other than Liens created by NewCo and Permitted Exceptions), all of such Seller's right, title and interest in, to and under, the Indenture Purchased Assets (as defined below). The term "Indenture Purchased Assets" shall mean any and all of the assets, properties, rights and claims of any Seller of any kind or nature whatsoever (after giving effect to Section 2.1 of the Settlement Agreement), whether tangible or intangible, personal or mixed, wherever located and whether or not carried or reflected on the books and records of such Seller and whether now existing or hereinafter acquired, which relate to the Business or which are used or useful in, or held for use in, the operation of the Business and which constitute part of the Facilities, including, without limitation, the assets set forth on Schedule 2.1 and excluding only the Excluded Assets expressly identified in Section 2.2.

(b) On the terms and subject to the conditions set forth in this Agreement, and subject to Section 7.3, at the Closing, each Seller shall sell, transfer, assign, convey and deliver to NewCo (or to one or more subsidiaries of NewCo at NewCo's direction), and NewCo (or one or more of such subsidiaries at NewCo's direction) shall purchase, acquire and accept from such Seller, free and clear of any and all Liens (other than Liens created by NewCo and Permitted Exceptions), all of such Seller's right, title and interest in, to and under, the Non-Indenture Purchased Assets (as defined below). The term "Non-Indenture Purchased Assets" shall mean any and all of the assets, properties, rights and claims of any Seller of any kind or nature whatsoever (after giving effect to Section 2.1 of the Settlement Agreement), whether tangible or intangible, real, personal or mixed, wherever located and whether or not carried or reflected on the books and records of such Seller and whether now existing or hereinafter acquired, which

relate to the Business or which are used or useful in, or held for use in, the operation of the Business and which do not constitute part of the Facilities, including, without limitation, the assets set forth on Schedule 2.1 and excluding only the Excluded Assets expressly identified in Section 2.2.

(c) For the avoidance of doubt, the Indenture Purchased Assets and the Non-Indenture Purchased Assets shall collectively include, without limitation, the following assets of Sellers:

- (i) the Facilities;
- (ii) accounts receivable, notes and other rights to payment of Sellers from third parties, including customers, arising from the conduct of the Business before the Closing, whether or not in the Ordinary Course of Business, together with any unpaid financing charges accrued thereon, other than any accounts and notes receivable or other rights to payment arising out of or relating to any Excluded Asset;
- (iii) the SCR;
- (iv) all of the outstanding capital stock of Somerset Railroad Corporation;
- (v) all inventory of coal, limestone and other raw materials located at the Facilities (or the sites surrounding such Facilities) or owned by the Somerset Railroad, which shall include the Minimum Somerset Tonnage, or which has been paid for by any Seller or Somerset Railroad but has not yet been delivered to any Facility as of the Closing (the "Coal");
- (vi) all deposits (including security deposits for rent, electricity, telephone or otherwise) and prepaid or deferred charges and expenses of Sellers relating to any Assumed Contract or Permit that constitutes a Purchased Asset or any other Purchased Asset, including all prepaid rentals and unbilled charges, fees or deposits, other than deposits or prepaid charges and expenses paid in connection with or relating to any Excluded Asset;
- (vii) all rights, title and interest of Sellers in each parcel of Owned Property listed on Schedule 2.1 and under each Real Property Lease that constitutes an Assumed Contract, together with all Improvements, fixtures and other appurtenances thereto and rights in respect thereof;
- (viii) all rights, title and interest of Sellers in and to any property subject to a personal property lease that is related to, useful in or held for use in, the operation of the Business, to the extent any such personal property lease is an Assumed Contract;
- (ix) all Furniture and Equipment;

(x) the Purchased Intellectual Property and all goodwill associated therewith;

(xi) to the extent transferable after giving effect to the Sale Order, all of the rights and benefits accruing under any of the Assumed Contracts, including each Real Property Lease, personal property lease or Intellectual Property License that is an Assumed Contract;

(xii) all Documents;

(xiii) to the extent assignable to NewCo under applicable Law, all of the rights and benefits accruing under any Permits held, used or intended to be used by any Seller in connection with the Business (including any pending applications therefor) and all deposits and prepaid expenses held by third parties and/or Governmental Bodies in connection therewith, except any such Permit that constitutes an Excluded Permit;

(xiv) all rights of Sellers under non-disclosure or confidentiality, non-compete, or non-solicitation agreements with employees and agents of any Seller or any Affiliate thereof or with third parties, in each case, to the extent relating to the Business or the Purchased Assets (or any portion thereof);

(xv) any rights, demands, claims, causes of action, rights of recovery, credits, allowances, rebates, or rights of setoff or subrogation arising out of or relating to any of the Purchased Assets or Assumed Liabilities, including any rights against third parties under Assumed Contracts, other than (a) any avoidance actions or other causes of action under Chapter 5 of the Bankruptcy Code or (b) causes of action under other applicable Laws that are not directly related to the Business, the Purchased Assets or the Assumed Liabilities;

(xvi) all rights of Sellers under or pursuant to all warranties, representations and guarantees made by suppliers, manufacturers and contractors to the extent relating to the Business or any of the Purchased Assets, or any services provided to Sellers in connection with the Business or the Purchased Assets, or to the extent otherwise affecting any Purchased Assets, other than any warranties, representations and guarantees pertaining exclusively to any Excluded Assets;

(xvii) all third party property and casualty insurance proceeds and all rights to third party property and casualty insurance proceeds, in each case to the extent received or receivable in respect of the Business or the Purchased Assets (or to any portion thereof), except to the extent such proceeds relate exclusively to an Excluded Liability;

(xviii) all goodwill and other intangible assets associated with the Purchased Assets or the Business, including customer and supplier lists and

the goodwill associated with the Purchased Intellectual Property;

(xix) all other assets or properties related to the Business and the Facilities not referenced above that are reflected on the Financial Statements or were acquired by Sellers in the Ordinary Course of Business after the date of the Financial Statements, other than Excluded Assets;

(xx) any radiation detectors located on the Seller Properties or at any Facility, and any Permits issued by NRC, any NRC interests or any NRC licensed radioactive material;

(xxi) all environmental-related deposits related to the Facilities as of the Petition Date, provided, however, that (i) NewCo shall reimburse the Sellers for any additional cash deposited in respect of such environmental matters after the Petition Date; and (ii) Seller's provisions of any such postpetition environmental-related deposits shall require the prior written consent of NewCo;

(xxii) except to the extent provided in Section 2.2(l), the Selling Debtors' allocated portion of the New York Independent System Operator ("NYISO") Working Capital Fund in the event NewCo assumes the related agreements with NYISO;

(xxiii) recorded easements encumbering or benefiting the Facilities that run with the Seller Properties, including, without limitation, the reciprocal easement(s) with New York State Electric & Gas Corporation ("NYSEG"), to the extent the same are disclosed in policies of title insurance which have been made available by Sellers to NewCo on or prior to the date hereof and that are designated and approved by NewCo prior to Closing (for the avoidance of doubt, the transfer of such easements shall not result in the assumption under Section 365 of the Bankruptcy Code of any other agreements or liabilities thereunder, including, without limitation, (A) the existing interconnection agreement related to the Facilities between NYSEG and AES NY, L.L.C. dated as of August 3, 1998 (as amended, supplemented or modified from time to time) or (B) the asset purchase agreement dated as of August 3, 1998 between AES NY, L.L.C. and the NYSEG and its affiliate, NGE Generation, Inc. or any obligations outside the scope of the easements under the foregoing agreements set forth in the immediately preceding clauses (A) and (B));

(xxiv) all right, title and interest of any Seller in and to the vehicles, rolling stock and equipment used or held for use in the Business, and all right, title and interest of any Seller in, to and under all vehicle and equipment leases which constitute Assumed Contracts;

(xxv) unapplied air emission allowances or credits and other environmental allowances and credits other than RGGI carbon dioxide

emissions allowances; and

(xxvi) all claims, rights and interests in any refund, rebate, abatement or other recovery for Taxes relating to the Purchased Assets or the Business other than any claims, rights and interests in any refund, rebate, abatement or other recovery under or with respect to the Somerset PILOT Agreement or the Cayuga PILOT Agreement; it being understood that nothing herein shall require AES Corp. to pay any amounts relating to any of the foregoing, and no Seller shall be required to assign any intercompany claim it may have in respect of any Affiliate other than intercompany claims relating to Somerset Railroad Corporation.

Section 2.2 Excluded Assets.

Nothing herein contained shall be deemed to sell, transfer, assign or convey the Excluded Assets to Trustee or NewCo, and Sellers shall retain all right, title and interest to, in and under the Excluded Assets. "Excluded Assets" shall mean the following assets:

(a) all equity interests in any Seller; provided, that, in the case of any Seller that is a limited liability company, NewCo may elect, in its sole discretion, to purchase all of the equity interests of such Seller in lieu of its assets; and, provided further, for the avoidance of doubt, that all equity interests in Somerset Railroad Corporation shall constitute a Purchased Asset;

(b) all of Sellers' deposits or prepaid charges and expenses paid in connection with or relating to any Excluded Assets or contracts not assumed and assigned to NewCo;

(c) the Excluded Contracts, including any accounts receivable arising out of or in connection with any Excluded Contract;

(d) the Excluded Permits, including all deposits and prepaid expenses held by third parties and/or Governmental Bodies in connection therewith;

(e) all Contracts that have terminated or expired according to the terms of such Contracts prior to the Closing Date in the ordinary course of business or as permitted hereunder;

(f) any (i) (A) personnel and medical records pertaining to the Transferred Employees not permitted to be transferred to NewCo under applicable Law and (B) all personnel and medical records pertaining to current or former directors, consultants and Employees of Sellers who are not Transferred Employees; (ii) books and records that Sellers are required by Law to retain or that relate exclusively to the Excluded Assets or the Excluded Liabilities, including Tax Returns, stock ledgers and minute books (other than Tax Returns, stock ledgers and minute books of Somerset Railroad Corporation), financial statements, and corporate or other entity filings (other than filings of Somerset Railroad Corporation); provided that NewCo shall have the right to make copies of any portions of such retained books and records that relate in any way to the Business or any of the Purchased Assets or Assumed Liabilities; and (iii) corporate charters, qualifications to do business, taxpayer and other identification numbers,

corporate seals, minute books, stock ledgers, stock certificates and any other documentation related to governance, organization, maintenance or existence of Sellers; provided that NewCo shall have the right to make copies of any portions of such documents and records;

(g) other than Excluded Contracts and Excluded Permits (which are addressed in Section 7.3), any assets identified by NewCo or the Trustee, each in their sole discretion, at any time prior to the Closing Date;

(h) any Permit which is not assignable or which is not permitted to be transferred to NewCo, in each case under applicable Law;

(i) all rights and claims of Sellers under the Transaction Documents;

(j) all RGGI carbon dioxide emissions allowances;

(k) all adequate assurance deposits authorized by the Bankruptcy Court in the Chapter 11 Cases and funded pursuant to section 366 of the Bankruptcy Code that are held by or for the benefit of utilities in connection with the Business;

(l) any deposits, holdbacks, or other amounts held by NYISO, which were withheld or otherwise paid by or charged to the Selling Debtors after the Petition Date;

(m) any claims, rights and interests in any refund, rebate, abatement or other recovery under or with respect to the Somerset PILOT Agreement or the Cayuga PILOT Agreement; and

(n) any avoidance actions or other causes of action under Chapter 5 of the Bankruptcy Code or causes of action under other applicable Laws that are not directly related to the Business, the Purchased Assets or the Assumed Liabilities.

Section 2.3 Assumption of Liabilities.

On the terms and subject to the conditions set forth in this Agreement, at the Closing, NewCo shall assume the Assumed Liabilities (as defined below) and shall agree to pay, discharge, perform and otherwise satisfy such Assumed Liabilities in accordance with their respective terms, subject to any defenses or claimed offsets asserted in good faith against the obligee to whom such Assumed Liabilities are owed. The term "Assumed Liabilities" shall mean only those Liabilities specifically and expressly set forth in subsections 2.3(a) and 2.3(b) below:

(a)

(i) Liabilities pursuant to the Somerset Railroad Credit Facility, which shall be repaid in full on or before the Closing Date, or satisfied by such other consideration as NewCo and the lender parties to the Somerset Railroad Credit Facility may agree;

(ii) (x) all obligations of any Seller or the Somerset Railroad

Corporation under the Assumed Contracts, in each case to the extent arising and relating solely to the period from and after the Closing and not to the extent arising out of any breach or default thereof or other activities prior to the Closing, and (y) with respect to the foregoing Assumed Contracts, subject to Section 2.5, all of the Determined Cure Costs with respect to such Assumed Contracts;

(iii) Liabilities of Sellers with respect to (A) accrued but unpaid salary and wages for the Facility Employees for up to (I) one pay period in the case of salaried Facility Employees (where the paydates are on the 15th and the last day of each month) and (II) two pay periods in the case of hourly Facility Employees (where the pay periods are each one week) to the extent not previously discharged through the payment of the Operating Losses pursuant to Section 3.1(b)(v) or Section 3.4, and (B) accrued and unused vacation, sick days and personal days for the Transferred Employees;

(iv) all Liabilities pursuant to Environmental Law (other than fines or other penalties asserted against Debtors, or arising from Debtors' conduct or status as owner or operator prior to or as of the closing date of the Sale Transaction) for Remedial Actions, cleanup, closure or otherwise maintaining environmental regulatory compliance at the Facilities and at the other Purchased Assets comprised of real property in which NewCo takes an interest as owner or operator, and excluding all Liabilities of any kind at any real property in which NewCo does not receive an interest as owner or operator pursuant to this Agreement, except for any asset retirement obligations which are governed by Section 2.3(b)(iv);

(v) employment and employee benefit Liabilities allocated to NewCo pursuant to Section 9.1 or Section 9.2 of this Agreement;

(vi) all WARN Act Liabilities incurred by Sellers on or after the Closing Date to the extent that such Liabilities result from NewCo's failure to offer employment to a sufficient number of Facility Employees to avoid incurring such Liabilities; and

(vii) air emissions allowance liabilities arising from air emissions occurring on and after January 1, 2012.

(b)

(i) all Liabilities relating exclusively to NewCo's ownership or operation of the Purchased Assets, to the extent arising from events, facts or circumstances that occur after the Closing, but excluding any Liabilities arising from ownership or operation of the Business or the Purchased Assets prior to the Closing or relating to any services that were sold or provided prior to the Closing other than liabilities explicitly assumed hereunder;

(ii) (y) all Liabilities for Taxes relating to the Purchased Assets or

the Business for any Post-Closing Tax Period, including any Taxes for a Straddle Period allocated to NewCo pursuant to the AES Side Letter (but excluding (i) all income, franchise, or any other Taxes based on or measured by gross or net income or receipts of any Seller or any Affiliate of any Seller (or any member of any consolidated, combined or affiliated group of which any such Seller or Affiliate thereof is a member, or of such consolidated, combined or affiliated group) and (ii) any Taxes imposed on or with respect to any of the Owner Trusts, the Owner Participants or any of their Affiliates (or any member of any consolidated, combined or affiliated group of which any such Owner Participant or any Affiliate thereof is a member, or of such consolidated, combined or affiliated group) for any Tax period) and (z) all Liabilities for Transfer Taxes other than Transfer Taxes required to be paid by Sellers pursuant to Section 9.3 hereof;

(iii) all Liabilities under the PILOT Agreements and related Industrial Development Agency Agreements with respect to Niagara and Tompkins County; and

(iv) asset retirement obligations related to the Facilities set forth on Schedule 2.3.

Section 2.4 Excluded Liabilities.

Notwithstanding anything to the contrary in this Agreement or any other Transaction Document, the Parties expressly acknowledge and agree that neither Trustee nor NewCo shall assume or in any manner whatsoever be liable or responsible for any Liabilities of any Seller or any predecessor or Affiliate of any Seller, of any nature whatsoever, whether presently in existence or arising hereafter, known or unknown, disputed or undisputed, contingent or non-contingent, liquidated or unliquidated or otherwise, existing before or on the Closing Date or arising thereafter, other than the Assumed Liabilities. All of the Liabilities of any Seller or of any predecessor or Affiliate of any Seller not specifically and expressly assumed by NewCo pursuant to Section 2.3 shall be referred to herein collectively as the "Excluded Liabilities." For the avoidance of doubt, and without limiting the foregoing, neither Trustee nor NewCo shall be obligated to assume, and they do not assume, and hereby disclaim all of the following Liabilities of each Seller or of any predecessor or Affiliate of any Seller (and any such Liabilities shall be considered Excluded Liabilities for all purposes of this Agreement):

(a) all Liabilities for accrued expenses and accounts payable incurred prior to the Closing Date, except to the extent that the same expressly constitute Assumed Liabilities pursuant to Section 2.3(b);

(b) all Liabilities of any Seller or any Affiliate of any Seller relating to legal services, accounting services, financial advisory services, investment banking services or any other professional services performed in connection with this Agreement, the Transactions or the Chapter 11 Cases;

(c) all Liabilities arising out of Excluded Assets, including any Contracts that do not constitute Assumed Contracts;

(d) all Liabilities relating to any claims for infringement, dilution, misappropriation or any other violation of intellectual property rights arising from Sellers' operation of the Business by the practice of the Purchased Intellectual Property or any third party's intellectual property prior to the Closing Date;

(e) except as specifically provided in Article IX, all Liabilities under, relating to, or with respect to any Seller Benefit Plan (including any Liabilities related to any Seller Benefit Plan which is an "employee pension benefit plan" (as defined in Section 3(2) of ERISA)) or that is subject to Section 302 of Title IV of ERISA or Section 412 of the Code) and any trusts, 501(c)(9) organizations, insurance (including fiduciary insurance), administrative or other service contracts relating thereto;

(f) except as specifically provided in Article IX, all Liabilities or claims arising out of, relating to or with respect to the employment or performance of services for, or termination of employment or services for, or potential employment or engagement for the performance of services for, Sellers, or any Affiliate of any Seller, or any predecessor thereof of any individual Person (including the Transferred Employees) or any Person acting as a professional employer organization, employee leasing company or providing similar services on or prior to the Closing (including as a result of the transactions contemplated by this Agreement), including Liabilities for workers' compensation, severance (including statutory severance), separation, termination, or notice pay or benefits (including under COBRA), discrimination, harassment, torts, occupational illness or injury, labor agreements, employment contracts, wrongful discharge, employment or compensation policies or practices, demotions, transfers, failure to hire, failure to promote, contributions to or modifications or terminations of benefit plans, claims under the WARN Act, or any other form of accrued or contingent compensation (including wages, remuneration, compensation, benefits, severance, vacation or other paid time off and leave entitlements) and all other employment related obligations, irrespective of whether such Liabilities or claims are paid or made, as applicable, on, before or after Closing;

(g) all Liabilities for (i) Taxes relating to the Purchased Assets or the Business for any Pre-Closing Tax Period, including any Taxes for a Straddle Period allocated to Sellers or AES Corp. or any Affiliate thereof pursuant to the AES Side Letter, (ii) income, franchise, or any other Taxes based on or measured by gross or net income or receipts of any Seller or any Affiliate of any Seller (or any member of any consolidated, combined or affiliated group of which any such Seller or Affiliate thereof is a member, or of such consolidated, combined or affiliated group), (iii) for any Pre-Closing Tax Period, including any such Taxes for a Straddle Period allocated to Sellers or any Affiliate pursuant to the AES Side Letter, (x) any income, franchise or other Taxes based on or measured by gross or net income or receipts of Somerset Railroad Corporation or any of its Affiliates (or any member of any consolidated, combined or affiliated group of which Somerset Railroad Corporation is a member, or of such consolidated, combined or affiliated group) and (y) any other Taxes of Somerset Railroad Corporation or any of its Affiliates, (iv) any Taxes imposed on or with respect to any of the Owner Trusts, the Owner Participants or any of their Affiliates (or any member of any consolidated, combined or affiliated group of which any such Owner Participant or any Affiliate thereof is a member, or of such

consolidated, combined or affiliated group) for any Tax Period and (v) Seller Transfer Taxes and Title Fees;

(h) any Liability of any Seller or any of its Affiliates arising out of or in connection with a violation of any Law prior to Closing, including any violations of Law relating to occupational safety and health or discrimination on the basis of age, race, creed, color or disability;

(i) any Liability of any Seller or any of its Affiliates resulting from, caused by or arising out of, or which relate to, directly or indirectly, the ownership, lease or license of any properties or assets prior to the Closing (including any amounts due or which may become due or owing under the Designated Contracts) or other actions or omissions of any Seller or any of its Affiliates occurring prior to the Closing (other than the Determined Cure Costs relating to the Designated Contracts and any Liabilities expressly and specifically set forth on Schedule 2.3), including actions or omissions that constituted, may constitute or are alleged to constitute a tort, breach of contract or violation of any rule, regulation, treaty or other similar authority or that relate to any Legal Proceeding commenced against any Seller, whether past, present, future, known or unknown, liquidated or unliquidated, accrued or unaccrued, pending or threatened;

(j) any Liabilities arising under Intercompany Loans and all promissory notes related thereto;

(k) any Liabilities with respect to outstanding checks or other instruments issued by any Seller;

(l) all Liabilities arising as a result of any Action initiated at any time, to the extent related to the Business or the Purchased Assets on or prior to the Closing Date, including any shareholder Actions, Actions for breach of contract, or any tort Actions;

(m) any Liabilities arising from the operation of any successor or transferee liability Laws, including, without limitation, "bulk sales" statutes, to the extent that non-compliance therewith or the failure to obtain necessary clearances would subject Trustee or NewCo or the Purchased Assets to the claims of any creditors of any Seller, or would subject any of the Purchased Assets to any Liens or other restrictions (except for Permitted Exceptions);

(n) all Liabilities pursuant to Environmental Law arising from operation of the Business or the Facilities or the ownership of the Purchased Assets, Somerset Railroad Corporation or any other assets prior to the Closing Date, other than the Liabilities expressly assumed in Section 2.3(a)(iv) of this Agreement, and including, without limitation, all Liabilities related to actions or circumstances at, on or from any real property or facility not conveyed to NewCo pursuant to this Agreement;

(o) all Liabilities relating to amounts required to be paid by Sellers hereunder or any other Liability of any Seller under this Agreement, any Transaction Document or any other document executed in connection herewith;

(p) any Liability related to, resulting from or arising out of acts or omissions of any Seller or any of its Affiliates or Representatives occurring after the Closing;

(q) any Liability related to any Claim (as defined in the Bankruptcy Code) arising prior to the Petition Date and not expressly assumed pursuant to this Agreement;

(r) all Liabilities of Sellers related to the right to or issuance of any capital stock of, or other equity interest in, any Seller, including any stock options or warrants;

(s) any Liability to any shareholder or other equity holder of any Seller; and

(t) any Liability of any Seller or any Affiliate of Seller not expressly and specifically included among the Assumed Liabilities.

Section 2.5 Determined Cure Costs.

Prior to the date hereof, Sellers have provided to NewCo a schedule listing each assignable Contract to which any Seller or Somerset Railroad Corporation is a party and setting forth a good faith estimate of all Cure Costs for each such Contract in accordance with the Sale Procedures Order ("Cure Schedule"). Pursuant to Section 7.3(b), NewCo shall be entitled, in its sole discretion, by written notice to Sellers up to three (3) Business Days prior to the Closing Date, to elect not to purchase or assume one or more of such assignable Contracts, in which case such Contract shall be considered an Excluded Contract (and not included in the Purchased Assets) for all purposes of this Agreement and neither Trustee nor NewCo shall have any obligation to satisfy or pay any Cure Costs or other Liabilities with respect to such Excluded Contract. Each assignable Contract listed by Seller on the Cure Schedule that NewCo does not elect to identify as an Excluded Contract pursuant to the preceding sentence shall be an "Assumed Contract". NewCo agrees to promptly satisfy all Determined Cure Costs in respect of each Assumed Contract as and when such Determined Cure Costs become due under the Sale Order and pursuant to Section 7.3 hereof.

Section 2.6 Further Conveyances and Assumptions.

(a) From time to time following the Closing, and except as prohibited by Law, Sellers shall, or shall cause their respective controlled Affiliates to, make available to NewCo such non-confidential data in personnel records of Transferred Employees as is reasonably necessary for NewCo to transition such employees into NewCo's (or such assignee's) records.

(b) From time to time following the Closing, Sellers and NewCo shall, and shall cause their respective controlled Affiliates to, execute, acknowledge and deliver all such further conveyances, notices, assumptions, releases and acquaintances and such other instruments, and shall take such further actions, as may be reasonably necessary or appropriate to assure fully to NewCo and its successors or assigns, all of the properties, rights, title, interests, estates, remedies, powers and privileges intended to be conveyed to NewCo under this Agreement and the Transactions Documents and to otherwise make effective the Transactions.

(c) To the extent not obtained at or prior to Closing, Sellers shall use their respective reasonable best efforts to obtain termination statements, lien releases, discharges, financing change statements or other documents, notices or other instruments as NewCo may reasonably deem necessary to release Liens (other than Permitted Exceptions) on the Purchased Assets, each in form and substance reasonably satisfactory to NewCo.

(d) Nothing in this Agreement nor the consummation of the Transactions shall be construed as an attempt or agreement to transfer or assign any Purchased Asset, including any Contract, Permit or other right, which (i) is not capable of being assigned pursuant to section 365 of the Bankruptcy Code or transferred pursuant to section 363 of the Bankruptcy Code to NewCo at the Closing, or (ii) the transfer or assignment of which would result in a violation of any applicable Law.

Section 2.7 Assignment of Contracts and Rights; Designation Right Contracts.

(a) To the extent that any Contract or Permit or other asset to be sold, transferred, conveyed or assigned (any sale, transfer, conveyance or assignment, a "Transfer") to NewCo pursuant to the terms of Section 2.1 is not capable of being Transferred to NewCo (after giving effect to the Sale Order) without the Consent of a third Person, or if such Transfer or attempted Transfer would, or if the subsequent Transfer or attempted Transfer of the equity interests of NewCo would, constitute a breach thereof or a violation of any Law, nothing in this Agreement or in any document, agreement or instrument delivered pursuant to this Agreement will constitute a Transfer or an attempted Transfer thereof prior to the time at which all Consents necessary for such Transfer (such Consents, "Required Consents") have been obtained unless an Order of the Bankruptcy Court effects such Transfer without any such Required Consents.

(b) Subject to Section 10.1(d), to the extent that any Required Consent with respect to any Designated Contract is not obtained by the Closing, Sellers will use their reasonable best efforts, and NewCo shall use its commercially reasonable efforts to cooperate with Sellers, to obtain such Required Consent, and each Seller will, from and after the Closing and until the date on which such Required Consent is obtained, use commercially reasonable efforts during the term of such Contract to (i) provide to NewCo the benefits under such Contract, (ii) cooperate in any reasonable and lawful arrangement (including holding such Contract in trust for NewCo pending receipt of the Required Consent) designed to provide such benefits to NewCo, and (iii) enforce for the account of NewCo any rights of such Seller under such Contract (including the right to elect to terminate such Contract in accordance with the terms thereof upon the direction of NewCo); provided, however, that no Party shall be obligated to provide any financial accommodation or other consideration of any nature to any Person to facilitate obtaining any Required Consent. NewCo will cooperate with the applicable Sellers in order to enable Sellers to provide to NewCo hereunder the benefits contemplated by this Section 2.7(b) and, provided that such benefits are conferred upon NewCo, NewCo will reimburse Sellers for any amount NewCo would have been required to pay under any such Contract had the Contract been assigned (after obtaining all Required Consents) to NewCo at the Closing.

Section 2.8 Bulk Sales Laws.

NewCo hereby waives compliance by Sellers with the requirements and provisions of any "bulk-transfer" Laws of any jurisdiction that may otherwise be applicable with respect to the transactions contemplated hereby.

Section 2.9 Receivables.

(a) If, prior to the Closing, NewCo shall receive payment in respect of accounts receivable that are included in the Purchased Assets, then NewCo shall hold such amounts in trust for Sellers and shall promptly forward such payment to Sellers.

(b) If, following the Closing, any Seller shall receive payment in respect of accounts receivable that are included in the Purchased Assets, then such Seller shall hold such amounts in trust for NewCo and shall promptly forward such payment to NewCo.

Section 2.10 Relinquishment of Control.

At the Closing, Sellers shall turn over actual possession and control of all of the Purchased Assets to NewCo by taking such action that may be required or reasonably requested by NewCo to effect such transfer of possession and control.

ARTICLE III

CONSIDERATION

Section 3.1 Consideration.

(a) The aggregate consideration (the "Indenture Assets Purchase Price") for the sale, transfer, assignment, conveyance and delivery by Sellers of the Indenture Purchased Assets (other than the stock of Somerset Railroad Corporation the consideration for which is set forth in Section 3.1(c) below) shall consist of certain Lessor Note Indebtedness in the aggregate principal amount of the Credit Bid (the "Credit Bid Indebtedness") to be surrendered by the Trustee pursuant to the Sale Order in connection with a credit bid under Section 363 of the Bankruptcy Code.

(b) The aggregate consideration (the "Non-Indenture Assets Purchase Price") for the sale, transfer, assignment, conveyance and delivery by Sellers to NewCo of the Non-Indenture Purchased Assets shall consist of:

(i) cash in an amount equal to five million dollars (\$5,000,000), subject to (A) upward adjustment by the amount of any Positive Coal/AR Balance, and (B) downward adjustment by the amount of any Negative Coal/AR Balance (such amount as so adjusted, the "Cash Consideration") to be paid at Closing; provided, however, to the extent the Negative Coal/AR Balance exceeds \$3,750,000, the Sellers shall pay in cash the amount of such excess to the Trustee at Closing (such excess, the "Seller Closing Obligation"); *plus*

(ii) the assumption at the Closing by NewCo of the Assumed Liabilities from Sellers, including the assumption of the obligation to pay to the applicable counterparties of the Assumed Contracts an amount equal to the Determined Cure Costs payable by NewCo under Section 7.3(c); *plus*

(iii) the balance of cash in the Depositary Accounts as of the Petition Date (approximately \$8,500,000), which the Parties agree has been made available for the Sellers' use as of the Settlement Approval Date (as such term is defined in the Settlement Agreement); *plus*

(iv) the payment by NewCo of the Employee Bonuses; provided, however, that if the Employee Bonuses are paid by the Sellers before the Closing, then NewCo shall reimburse the Sellers in full for the Employee Bonuses at Closing; *plus*

(v) (x) if the Closing occurs on or prior to April 30, 2012, additional cash consideration to be paid at Closing equal to 50% of the Operating Losses, if any, of Sellers for the period from April 1, 2012 through and including the earlier of the Closing and April 30, 2012; and (y) if the Closing does not occur on or prior to April 30, 2012, additional cash consideration to be paid at Closing equal to (i) 50% of the Operating Losses, if any, of Sellers for the period from April 1, 2012 through and including April 30, 2012 and (ii) 100% of the Operating Losses, if any, of Sellers for the period from May 1, 2012 to the Closing Date, in each case in accordance with a budget of expenditures delivered by the Sellers to the Trustee on or before the seventh (7th) calendar day prior to the first (1st) calendar day of the next applicable calendar month in form and substance reasonably acceptable to the Trustee and the Sellers, which budget shall include capital expenditures agreed upon by the Trustee and NewCo and Sellers' overhead at a market rate to be agreed upon by the Sellers, NewCo and the Trustee, but not restructuring costs for such period, and be supported by reasonably sufficient detail, which detail may be reasonably requested by the Trustee or NewCo; provided, however, that NewCo shall not be obligated to pay any such additional cash consideration if the Closing does not occur; *plus*

(vi) NewCo shall reimburse the Sellers for the pro-rata portion of any insurance premiums that Sellers paid to the insurers prior to Closing under those new insurance policies listed on Schedule 3.1(b)(vi) (as such Schedule may be updated prior to Closing upon the written consent of the Parties) that are reasonably acceptable to NewCo and attributable to the post-Closing period (provided, that the Parties may agree to adjust such reimbursement amounts to achieve a reasonably satisfactory assumption); *plus*

(vii) NewCo shall reimburse Sellers for all payments of principal made by Sellers or Somerset Railroad Corporation after the Petition Date and prior to the Closing under the Somerset Railroad Credit Facility up to a maximum amount of \$464,285.71.

(c) The aggregate consideration for the sale, transfer, assignment, conveyance and delivery by Sellers to NewCo of all of the outstanding capital stock of Somerset Railroad

Corporation (the "Somerset Railroad Purchase Price") shall consist of cash in an amount equal to \$2,100,000 to be paid at Closing in accordance with Section 3.2(b).

Section 3.2 Payment of Purchase Price; Closing Actions.

(a) At the Closing, the Purchase Price shall be delivered to Sellers as follows:

(i) NewCo shall pay to Lead Seller (on behalf of all Sellers), by wire transfer of immediately available funds, the Cash Consideration, which shall be disbursed by Lead Seller in the manner set forth in the Sale Order, or, if applicable, Sellers shall pay to NewCo the Seller Closing Obligation;

(ii) Trustee shall surrender and release the Credit Bid Indebtedness in exchange for the right to receive the Indenture Purchased Assets, and concurrently, such right to receive the Indenture Purchased Assets shall be assigned and transferred to NewCo (or one or more of NewCo's subsidiaries as directed by NewCo), prior to the Sellers' transfer of title to and possession of the same to the Trustee, and effective as of Closing, Sellers shall transfer directly to NewCo (or one or more of NewCo's subsidiaries as directed by NewCo) as transferee of record, and without the Trustee taking title to or possession of the same, all of Sellers' right, title and interest in and to the Indenture Purchased Assets, and each of the Sellers and NewCo shall waive and release the Trustee from any claims, obligations and liabilities with respect to such Indenture Purchased Assets;

(iii) to the extent the Employee Bonuses have been paid by Sellers prior to the Closing Date, NewCo shall reimburse Sellers, by wire transfer of immediately available funds, the amounts of such Employee Bonuses;

(iv) NewCo shall pay to Lead Seller (on behalf of all Sellers), by wire transfer of immediately available funds, an amount equal to the Estimated Operating Losses;

(v) Notwithstanding any provision of this Agreement to the contrary, NewCo shall be entitled to deduct or withhold from the consideration otherwise payable to Sellers under this Agreement such amounts as NewCo is required to deduct or withhold under Law. If NewCo so deducts or withholds any such amount, such amount shall be treated for all purposes of this Agreement as having been paid to the applicable Seller in respect of which NewCo made the deduction or withholding.

(b) At the Closing, the Selling Debtors shall:

(i) Segregate the Somerset Railroad Purchase Price on account of the secured claims of The Bank of Nova Scotia, as the administrative agent (the "Surety Administrative Agent"), for the benefit of the lenders (the "Surety Lenders") under that certain Letter of Credit and

Reimbursement Agreement dated as of August 4, 2006 (the "Surety LC Agreement"), which amount shall be paid over to the Surety Administrative Agent, in cash, in full and final satisfaction of any and all secured claims of each of the Surety Lenders and the Surety Administrative Agent under the Surety LC Agreement under section 506(a) of the Bankruptcy Code (and only to the extent such claims are held in their capacity as Surety Lender); provided, however, that the Selling Debtors shall not make the foregoing payment to the Surety Administrative Agent unless and until NewCo has satisfied the Somerset Railroad Credit Facility as provided in Section 2.3(a) of this Agreement. For the avoidance of doubt, the Surety Agent on behalf of the Surety Lenders shall also have an allowed general unsecured claim of \$10,000,000 against the Lead Seller in accordance with Section 2.5 of the Settlement Agreement;

(ii) Deposit \$1,250,000 in cash in the Post-Closing Escrow Account. If, as of nine (9) months from the Closing Date, NewCo has incurred certain post-closing severance costs as specified in the agreement governing the Post-Closing Escrow Account, one-half of such costs shall be paid from the Post-Closing Escrow Fund. Any unapplied funds remaining in the Post-Closing Escrow Account after such nine (9) month period shall be returned to the Selling Debtors; and

(iii) Deposit \$1,500,000 into the Trust Escrow Account.

(c) At the Closing, the Sellers shall pay to CWT and RPA all accrued and unpaid Professional Expenses in accordance with the Settlement Agreement.

Section 3.3 Purchase Price Allocation.

If and to the extent that any of the Sellers files any Tax Returns, Sellers agree to (a) file such Tax Returns in accordance with the allocation of Purchase Price and Tax Allocation Schedule agreed to by NewCo and AES Corp. in the AES Side Letter and (b) take no position contrary thereto unless (and only to the extent) otherwise required by applicable Law.

Section 3.4 Adjustment to Purchase Price.

At least two (2) business days prior to the Closing, Sellers shall provide to NewCo a written statement showing a good faith estimate of Operating Losses payable pursuant to Section 3.1(b)(v) (the "Estimated Operating Losses"), which Estimated Operating Losses shall be paid by NewCo on Closing less the amount of any Operating Losses which NewCo has paid in advance in accordance with Section 3.1(b)(v)(y)(ii). Within thirty (30) days after the Closing, if (i) the Transition Services Agreement shall have been entered into, NewCo shall provide to Sellers, or (ii) the Transition Services Agreement shall not have been entered into, Sellers shall provide, a final calculation of Operating Losses to be paid pursuant to Section 3.1(b)(iv) (the "Statement of Operating Losses") together with reasonable supporting documentation with respect thereto. Within fifteen (15) days of the non-preparing party's receipt of the Statement of Operating Losses, the non-preparing party may dispute, in good faith, the preparing party's

calculation of Operating Losses by notifying the preparing party in writing of the disputed amount(s) and setting forth, in reasonable detail in the Statement of Dispute, the basis for such dispute (the "Statement of Dispute"). The Parties shall work in good faith to resolve any such dispute. If the Parties are not able to resolve such dispute within five (5) days, the Statement of Operating Losses and the Statement of Dispute shall be submitted to an independent accounting firm mutually agreed upon by Lead Seller and NewCo within ten (10) days. The independent accounting firm will, within thirty (30) days after such submission, determine and report to NewCo and Lead Seller its written findings with respect to the amount of Operating Losses, and such independent accounting firm's determination will constitute the final non-appealable, binding and conclusive resolution of the dispute over the Statement of Operating Losses. The non-prevailing party, as determined by the independent accounting firm, shall pay the fees and expenses of the independent accounting firm. If the non-preparing party does not deliver a Statement of Dispute to NewCo within fifteen (15) days from their receipt of the Statement of Operating Losses, such Statement of Operating Losses delivered by the preparing party shall be deemed final. Within two (2) Business Days of the final determination of the Operating Losses (either through the non-preparing party's approval of the preparing party's calculation, the Parties agreement as to the final Operating Losses following a dispute, the independent auditor's finding or the expiration of the 15 day period referred to in the preceding sentence) if (A) the Operating Losses were greater than the Estimated Operating Losses, NewCo shall pay to Sellers the amount of such difference, or (B) the Operating Losses were less than the Estimated Operating Losses, Sellers shall pay to NewCo the amount of such difference.

ARTICLE IV

CLOSING AND TERMINATION

Section 4.1 Closing Date.

Subject to the satisfaction of the conditions set forth in Section 10.1, Section 10.2 and Section 10.3 (or the waiver thereof by the applicable Parties entitled to waive that condition), the closing of the purchase and sale of the Purchased Assets and the assumption of the Assumed Liabilities provided for in Article II hereof (the "Closing") shall take place at the offices of Weil, Gotshal & Manges LLP located at 767 Fifth Avenue, New York, NY 10153 (or at such other place as the Parties may designate in writing) at 12:00 p.m. (Eastern Time) on the date that is the first Business Day following the satisfaction or waiver of the conditions set forth in Article X (other than conditions that by their nature are to be satisfied at the Closing, but subject to the satisfaction or waiver of such conditions), unless another time or date, or both, are agreed to in writing by the Parties. The date on which the Closing shall be held is referred to in this Agreement as the "Closing Date." Unless otherwise agreed by the Parties in writing, the Closing shall be deemed effective and all right, title and interest of Sellers in the Purchased Assets to be acquired by NewCo hereunder shall be considered to have passed to NewCo as of 12:01 a.m. (Eastern Time) on the Closing Date.

Section 4.2 Deliveries by Sellers.

(a) At the Closing, Sellers shall deliver to NewCo:

(i) a duly executed bill of sale in the form attached hereto as Exhibit A (the "Purchased Assets Bill of Sale") in favor of NewCo with respect to the Indenture Purchased Assets;

(ii) a duly executed bill of sale in the form attached hereto as Exhibit B in favor of NewCo with respect to the Non-Indenture Purchased Assets;

(iii) (A) duly executed assignment and assumption agreement by and among Sellers and NewCo in the form attached hereto as Exhibit C; (B) duly executed assignments of the U.S. patents, patent applications, trademark registrations, trademark applications, copyright registrations, and copyright applications included in the Purchased Intellectual Property, in a form suitable for recording in the U.S. Patent and Trademark Office and/or the U.S. Copyright Office, as applicable; and (C) assignments of the Intellectual Property Licenses that are Designated Contracts (collectively, the "Assignment and Assumption Agreement");

(iv) the officer's certificate required to be delivered pursuant to Section 10.1(a) and Section 10.1(b);

(v) Intentionally Omitted.

(vi) copies of resolutions of the board of directors (or equivalent governing body) of each Seller authorizing and approving the execution and delivery of this Agreement and the other Transaction Documents to which it is a party and the performance by such Seller of its obligations hereunder and thereunder, certified by a duly authorized officer of such Seller;

(vii) an incumbency certificate dated the Closing Date for each Seller executed by the Secretary of such Seller which shall identify the names and titles and bear the signatures of the officers of such Seller individually authorized to execute and deliver this Agreement and the other Transaction Documents to which such Seller is a party;

(viii) termination statements, lien releases, discharges, financing change statements or other documents, notices or other instruments as NewCo may reasonably deem necessary to release Liens (other than Permitted Exceptions) on the Indenture Purchased Assets and the Non-Indenture Purchased Assets (including the equity or assets of Somerset Railroad Corporation), each in form and substance reasonably satisfactory to NewCo and duly executed by any holders of such Liens;

(ix) evidence of the payment by Sellers of any Employee Bonuses

prior to the Closing;

- (x) a certified copy of the Sale Order;
- (xi) payment of the Seller Closing Obligations, if applicable;
- (xii) payment of the Professional Expenses in accordance with the Settlement Agreement;
- (xiii) evidence of the deposit by Sellers of (a) \$1,250,000 in cash in the Post-Closing Escrow Account, and (b) \$1,500,000 in cash in the Trust Escrow Account;
- (xiv) special warranty or similar deeds in proper statutory form for recording and in form and substance reasonably satisfactory to NewCo conveying good and marketable title to the Owned Properties;
- (xv) the releases of the Sellers contemplated by Section 11.2 and 11.3 of the Settlement Agreement;
- (xvi) stock certificates representing all of the issued and outstanding shares of Somerset Railroad Corporation, duly endorsed in blank or accompanied by stock transfer powers ; and
- (xvii) all other agreements, certificates and instruments of conveyance and transfer, in form and substance reasonably acceptable to NewCo (including estoppel certificates, subordination and non-disturbance agreements, and customary affidavits and indemnity agreements reasonably requested by a title company providing title insurance with respect to the Seller Properties in favor of NewCo or its designee), as may be necessary to convey the Indenture Purchased Assets and the Non-Indenture Purchased Assets to NewCo or reasonably requested by NewCo.

Section 4.3 Deliveries by NewCo and Trustee.

(a) At the Closing, Trustee shall deliver, or cause to be delivered, to Sellers, instruments and agreements in a form reasonably satisfactory to Sellers (i) releasing and surrendering the Credit Bid Indebtedness and (ii) evidencing the release by the Trustee of all right, title and interest to any cash remaining in the Deutsche Bank Depository Accounts.

(b) At the Closing, NewCo shall deliver, or cause to be delivered, to Sellers:

- (i) the Cash Consideration and other amounts required to be paid by NewCo pursuant to Sections 3.1(b)(i), 3.1(b)(iv), 3.1(b)(v), 3.1(b)(vi) and 3.1(c), if any;
- (ii) the Assignment and Assumption Agreement duly executed by NewCo;

(iii) If, prior to Closing, Sellers enter into new insurance policies reasonably acceptable to NewCo covering the Purchased Assets, and if such insurance policies provide that they are assignable to NewCo, NewCo shall reimburse the Sellers for the pro-rata portion of any insurance premiums for such insurance policies that Sellers paid to the insurers under such policies prior to Closing and that are attributable to the post-Closing period;

(iv) the officer's certificate required to be delivered pursuant to Section 10.2(a) and Section 10.2(b); and

(v) the releases contemplated by Section 11.1 of the Settlement Agreement.

Section 4.4 Termination of Agreement.

This Agreement may (or, as applicable, shall) be terminated at any time prior to the Closing:

(a) by Trustee, NewCo, or Sellers, if the Closing shall not have occurred by the close of business on September 30, 2012 (the "Termination Date"); provided, however, that if the Closing shall not have occurred on or before the Termination Date due to a material breach of any representations, warranties, covenants or agreements contained in this Agreement by Trustee or NewCo, on the one hand, or Sellers, on the other hand, then the breaching party may not terminate this Agreement pursuant to this Section 4.4(a);

(b) at any time on or after May 1, 2012 by Sellers if the Closing Date has not occurred, unless NewCo agrees, in writing, prior to April 30, 2012, to make advance monthly payments to cover Operating Losses from May 1, 2012 until the occurrence of the Closing Date and shall have funded such amounts;

(c) by mutual written consent of Sellers, NewCo, and Trustee;

(d) by Trustee or NewCo, if any of the conditions to the obligations of Trustee or NewCo set forth in Section 10.1 and Section 10.3 shall have become incapable of fulfillment other than as a result of a breach by either Trustee or NewCo of any covenant or agreement contained in this Agreement, and such condition is not waived by both Trustee and NewCo;

(e) by Sellers, if any condition to the obligations of Sellers set forth in Section 10.2 and Section 10.3 shall have become incapable of fulfillment other than as a result of a breach by any Seller of any covenant or agreement contained in this Agreement, and such condition is not waived by Sellers;

(f) by Trustee or NewCo, if there shall be a material breach by Sellers of any representation or warranty, or any covenant or agreement contained in this Agreement which would result in a failure of a condition set forth in Section 10.1 or Section 10.3 and which breach cannot be cured or has not been cured by the earlier of (i) twenty (20) Business Days after the giving of written notice by Trustee or NewCo to Sellers of such breach and (ii) the Termination Date;

(g) by Trustee or NewCo, if the Sale Order with respect to the Transactions has been entered and all other conditions to Closing have been satisfied or waived by the applicable Party and (i) Trustee and NewCo have provided Sellers with written notice that they are prepared to consummate the Transactions and (ii) the Closing Date does not occur within two (2) Business Days of Trustee and NewCo providing Sellers with such notice;

(h) by Sellers, if there shall be a material breach by Trustee or NewCo of any representation or warranty, or any covenant or agreement contained in this Agreement which would result in a failure of a condition set forth in Section 10.2 or Section 10.3 and which breach cannot be cured or has not been cured by the earlier of (i) twenty (20) Business Days after the giving of written notice by Sellers to Trustee and NewCo of such breach and (ii) the Termination Date;

(i) by Sellers, Trustee or NewCo, if there shall be in effect a final non-appealable Order of a Governmental Body of competent jurisdiction restraining, enjoining or otherwise prohibiting the consummation of the Transactions; it being agreed that the Parties shall promptly appeal any adverse determination which is not non-appealable (and shall pursue such appeal with reasonable diligence); or

(j) by Trustee or NewCo, if the Sale Order has not been entered by the Bankruptcy Court on or before April 15, 2012;

(k) by Trustee or NewCo, if for any reason Trustee is unable to credit bid the Credit Bid Indebtedness in payment of the Indenture Assets Purchase Price as set forth in Section 3.1(a);

(l) by Trustee or NewCo, if any of the Chapter 11 Cases are dismissed or converted to a case under chapter 7 of the Bankruptcy Code for any reason;

(m) by Trustee or NewCo, if the Sale Procedures Order or the Sale Order is modified in any manner that is materially adverse to Trustee or NewCo without the consent of Trustee and NewCo (which consent may be withheld or waived in the Trustee's or NewCo's sole discretion);

(n) by Sellers, if the Sale Procedures Order or the Sale Order is modified in any manner that is materially adverse to the Sellers without the consent of the Sellers (which consent may be withheld or waived in the Sellers' sole discretion); and

(o) by Trustee, NewCo or Sellers, if the Bankruptcy Court shall enter an order approving a Competing Bid or any sale or other disposition of any material portion of Sellers' assets and properties relating to the Business to a Person other than Trustee and/or NewCo, or Sellers publicly announce the selection of a Person other than Trustee and/or NewCo as the Successful Bidder (as defined in the Sale Procedures Order) in the Auction,

provided, however, in each case the right to terminate this Agreement under this Section 4.4 will not be available to any Party to this Agreement whose material breach of any of its obligations under this Agreement has been a principal cause of, or resulted in, the failure of a condition to the Closing pursuant to Article X.

Section 4.5 Procedure Upon Termination.

In the event of termination and abandonment of this Agreement by Trustee, NewCo or Sellers, pursuant to Section 4.4 and except as set forth herein, written notice thereof shall forthwith be given to the other Parties, and this Agreement shall terminate, and the purchase of the Purchased Assets hereunder shall be abandoned, without further action by Trustee, NewCo or Sellers. If this Agreement is terminated as provided herein each Party shall redeliver all documents, work papers and other material of any other Party relating to the transactions contemplated hereby, whether so obtained before or after the execution hereof, to the Party furnishing the same.

Section 4.6 Effect of Termination.

In the event that this Agreement is validly terminated as provided herein, this Agreement shall become wholly void and of no further force and effect and such termination shall be without liability to Trustee, NewCo or Sellers, or any of their respective Affiliates or Representatives, and each shall be fully released and discharged from any Liability arising under this Agreement after the date of such termination; provided, however, that the provisions of Article I, Section 4.5, this Section 4.6, Section 8.5, Section 8.7, Section 9.3, Article XI and Article XII of this Agreement shall survive any such termination and shall be enforceable hereunder.

ARTICLE V

REPRESENTATIONS AND WARRANTIES OF SELLERS

Except as set forth in the corresponding sections or subsections of Sellers' Disclosure Schedule, Sellers jointly and severally hereby represent and warrant to Trustee and NewCo as of the date hereof and as of the Closing Date (except for representations and warranties that are made as of a specific date, which are made only as of such date) as follows:

Section 5.1 Organization and Good Standing.

(a) Each Seller is a corporation, limited partnership or limited liability company, as the case may be, duly organized, validly existing and, except as a result of the commencement of the Chapter 11 Cases, in good standing under the Laws of the jurisdiction of its incorporation, formation or organization, and, subject to obtaining the approval of the Bankruptcy Court, has all necessary power and authority to enter into this Agreement and each of the other Transaction Documents, to carry out its obligations hereunder and thereunder, and to consummate the Transactions. Each Seller has all necessary power and authority to own, lease, operate and conduct its respective businesses, properties and assets as now being conducted. Each Seller is duly licensed or qualified to do business and is in good standing in each jurisdiction in which the properties owned or leased by it or the operation of its respective business makes such licensing or qualification necessary, except to the extent that the failure to be so licensed, qualified or in good standing has resulted from the commencement or continuance of the Chapter 11 Cases.

- (b) No Seller has any Subsidiaries, except as set forth on Schedule 5.1(b).

Section 5.2 Authorization of Agreement

Subject to the entry of the Sale Order from the Bankruptcy Court, and except as otherwise disclosed in Schedule 5.2, the execution and delivery of this Agreement and each of the other Transaction Documents to be executed by each Seller (the "Seller Documents"), the performance by each Seller of its obligations under this Agreement and each Seller Document, and the consummation by each Seller of the Transactions have been duly authorized by all requisite action on the part of such Seller and no other action or proceeding on the part of any Seller is necessary to authorize the execution and delivery of this Agreement and each of the other Seller Documents by each Seller, or the consummation of the Transactions. This Agreement has been, and upon their execution, the other Seller Documents will be at or prior to Closing, duly executed and delivered by each Seller, and (assuming due authorization, execution and delivery by Trustee and NewCo), subject to the approval of the Bankruptcy Court, this Agreement constitutes, and, upon their execution, the other Seller Documents shall constitute, legal, valid and binding obligations of such Seller, enforceable against such Seller in accordance with their respective terms, subject to applicable bankruptcy, insolvency, 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).

Section 5.3 Conflicts; Consents of Third Parties

(a) Except as set forth on Schedule 5.3(a), none of the execution and delivery by Sellers of this Agreement or any of the other Seller Documents, the consummation of the transactions contemplated hereby or thereby, or compliance by any Seller with any of the provisions hereof or thereof will materially conflict with, or result in any material violation of or material default (with or without notice or lapse of time, or both) under, or give rise to a right of termination or cancellation under any provision of (i) the Organizational Documents of any Seller; (ii) subject to entry of the Sale Order, any Contract or Permit to which any Seller is a party or by which any of the properties or assets of any Seller are bound; (iii) subject to entry of the Sale Order, any Order of any Governmental Body applicable to any Seller or any of the properties or assets of any Seller as of the date hereof; or (iv) subject to entry of the Sale Order, any applicable Law.

(b) Except as set forth on Schedule 5.3(b), no material consent, waiver, approval, Order, Permit or authorization of, or declaration or filing with, or notification to, any Person is required on the part of any Seller in connection with the execution and delivery of this Agreement or the other Seller Documents, the compliance by any Seller with any of the provisions hereof or thereof, the consummation of the Transactions or the taking by any Seller of any other action contemplated pursuant to the Transaction Documents, except for (i) the entry of the Sale Order and (ii) the entry of the Sale Procedures Order.

Section 5.4 Financial Statements.

Sellers have delivered to Trustee and NewCo true and correct copies in all material respects of (i) the audited consolidated balance sheets of the Lead Seller as at December 31, 2010, December 31, 2009 and December 31, 2008, and the related audited consolidated statements of income and of cash flows of Lead Seller for the years then ended and (ii) the unaudited consolidated balance sheet of Lead Seller as at September 30, 2011 and the related consolidated statement of income and cash flows of Lead Seller for the nine month period then ended (such audited and unaudited statements, including the related notes and schedules thereto, are referred to herein as the "Financial Statements"). Each of the Financial Statements has been prepared in accordance with GAAP consistently applied without modification of the accounting principles used in the preparation thereof throughout the periods presented and presents fairly in all material respects the consolidated financial position, results of operations and cash flows of Lead Seller as of the dates and for the periods indicated therein, subject to normal year-end adjustments and the absence of complete notes in the case of the unaudited statements. For the purposes hereof, the audited consolidated balance sheet of Lead Seller as at December 31, 2010 is referred to as the "Balance Sheet" and December 31, 2010 is referred to as the "Balance Sheet Date."

Section 5.5 No Undisclosed Liabilities.

No Seller has any Indebtedness, or Liabilities of any kind that would have been required to be reflected in, reserved against or otherwise described in the Balance Sheet or the notes thereto in accordance with GAAP other than Liabilities incurred in the Ordinary Course of Business since the Balance Sheet Date, Liabilities under this Agreement and Excluded Liabilities.

Section 5.6 Title to Purchased Assets.

(a) Except as set forth in Schedule 5.6, and other than the real property subject to the Real Property Leases, intellectual property licensed to Sellers and the personal property subject to the Personal Property Leases, and after giving effect to Section 2.2 of the Settlement Agreement, Sellers own each of the Purchased Assets, and, subject to the entry of the Sale Order and the order approving the Settlement Agreement, NewCo will be vested to the fullest extent permissible under Section 363(f) of the Bankruptcy Code with good title to the Purchased Assets free and clear of all Liens other than Permitted Exceptions.

(b) The Purchased Assets, together with all of the Sellers' agreements hereunder and under the Seller Documents, constitute all of the assets, rights and services used by Sellers to operate the Business as it is currently operated, other than Excluded Assets.

Section 5.7 Absence of Certain Developments.

Except as expressly contemplated by this Agreement or as set forth on Schedule 5.7, since the Balance Sheet Date, (a) Sellers have conducted the Business only in the Ordinary Course of Business and (b) there has not been any (i) Material Adverse Effect or (ii) sale, assignment, transfer, lease or license (other than a Permitted Exception) of or on any of the

tangible assets related to, in or held for use in the Business, except in the Ordinary Course of Business.

Section 5.8 Taxes.

The following representations and warranties relate to all Taxes other than U.S. federal, state and local income and franchise Taxes ("Income Taxes"):

(a) Except as set forth in Schedule 5.8 hereto, Sellers and Somerset Railroad Corporation have (i) timely filed, or have caused to be timely filed, with the appropriate Tax Authorities all material Tax Returns required to be filed by or with respect to Somerset Railroad Corporation, the Purchased Assets or the Business (taking into account any validly obtained extensions of time to file), and (ii) timely paid all amounts of material Taxes owing, regardless of whether shown on a filed Tax Return. During the preceding five (5) years, no claim has been made by a Governmental Body in a jurisdiction where the Sellers or the Somerset Railroad Corporation do not file Tax Returns that any Seller, with respect to the Purchased Assets or the Business, or the Somerset Railroad Corporation is or may be subject to taxation by such jurisdiction. No issues were raised by a Tax Authority in any audit, investigation or administrative or judicial proceeding of any Seller, with respect to the Purchased Assets or the Business, or the Somerset Railroad Corporation, or to the knowledge of any Seller or Somerset Railroad Corporation, any Owner Participant, relating to Taxes that would reasonably be expected to recur in a future Tax period.

(b) Except for Taxes that are not yet due or payable (which are identified on Schedule 5.8 hereto), there are no liens for Taxes with respect to the Purchased Assets or the Business or on, or with respect to, any assets, or the stock, of Somerset Railroad Corporation.

(c) No Tax allocation, Tax sharing or Tax indemnity or similar agreement or arrangement is in effect, in each case, with respect to the Purchased Assets or the Business, or Somerset Railroad Corporation that would, in any manner, bind, obligate or otherwise restrict NewCo or Somerset Railroad Corporation.

(d) Somerset Railroad Corporation has not waived any statute of limitations in respect of any Taxes or agreed to any extension of time with respect to a Tax assessment or deficiency. Somerset Railroad Corporation has withheld and paid all Taxes required to be withheld and paid in connection with any amount paid or owing to any employee, independent contractor, creditor, stockholder or third party. No Tax audit or Tax proceeding is pending or being conducted with respect to Somerset Railroad Corporation.

Section 5.9 Real Property.

(a) Schedule 5.9 sets forth a true, correct and complete list and legal description (to the extent applicable) of (i) all real property and interests in real property owned in fee by Sellers (after giving effect to Section 2.2 of the Settlement Agreement and including any and all Improvements located on any such real property) (individually, an "Owned Property" and collectively, the "Owned Properties"), and (ii) all real property and interests in real property leased, subleased, licensed or otherwise used or occupied by one or more Sellers (after giving effect to Section 2.2 of the Settlement Agreement) (individually, a "Real Property Lease" and

collectively, the "Real Property Leases" and, together with the Owned Properties, being referred to herein individually as a "Seller Property" and collectively as the "Seller Properties") as lessee, sublessee, licensee, lessor, sublessor or licensor, together with the parties to, and date of, each Real Property Lease and the full street address of each parcel subject to a Real Property Lease. After giving effect to Section 2.2 of the Settlement Agreement, Sellers will have good and marketable fee title to all Owned Property, free and clear of all Liens of any nature whatsoever except for (i) Liens set forth on Schedule 5.9 and (ii) the Permitted Exceptions. Sellers have made available to Trustee and NewCo true and complete copies of each Real Property Lease and any and all amendments, modifications, supplements, exhibits, restatements, guarantees and other agreements (whether written or oral), in each case related thereto. Sellers have good and marketable leasehold interests in the real property conveyed by the Real Property Leases. Each Real Property Lease is in full force and effect, and is valid, binding and enforceable in accordance with its terms. To Sellers' Knowledge, no Seller has received any written notice of any default or event that with notice or lapse of time, or both, would constitute a default by any Seller under any of the Real Property Leases. To Sellers' Knowledge, no Seller has received any written notice of any condemnation, zoning or other similar proceeding affecting any Seller Property. Neither the whole nor any material portion of any Seller Property has been damaged or destroyed by fire or other casualty.

(b) The Seller Properties constitute all of the real property related to, used in held for use in, the conduct of the Business, including all real property underlying, or related to, the assets of AES NY3 and SRC.

Section 5.10 Tangible Personal Property.

Schedule 5.10 sets forth all leases of personal property ("Personal Property Leases") involving annual payments in excess of ten thousand dollars (\$10,000) relating to personal property used by any Seller in the Business or to which any Seller is a party or by which the properties or assets of any Seller are bound. No Seller has received any written notice of any default or event that with notice or lapse of time or both would constitute a default by any Seller under any of the Personal Property Leases.

Section 5.11 Intellectual Property.

(a) Schedule 5.11(a) sets forth a true and complete list of (i) all registered Intellectual Property exclusively used, held for use or useful in connection with the Business that is owned by any Seller (the "Owned Intellectual Property"); and (ii) all intellectual property exclusively used in connection with the Business that any Seller is licensed or otherwise permitted to use by other Persons (other than an Affiliate of such Seller) (the "Licensed Intellectual Property").

(b) Schedule 5.11(b) sets forth a true and complete list of (i) all material written Intellectual Property Licenses.

(c) Except as set forth on Schedule 5.11(c):

(i) A Seller owns all Owned Intellectual Property listed on Schedule 5.11(a) and has valid rights in and to, including rights to

manufacture, use, offer to sell, sell, publish, perform or exploit, as applicable, all other Purchased Intellectual Property as such Intellectual Property is used in the Ordinary Course of Business, in each case, free and clear of all Liens (other than Permitted Exceptions and Released Liens).

(ii) No Owned Intellectual Property is the subject of any ownership, validity, use or enforceability challenge and is maintained up to the Closing Date, and is not subject to any outstanding order, judgment or decree restricting its use or adversely affecting any Seller's rights thereto.

(iii) To Sellers' Knowledge, no Seller is violating or has, in the past three (3) years, violated any third person's intellectual property rights and there are no Actions or Legal Proceedings, pending or threatened, concerning any claim that any Seller has infringed, diluted, misappropriated, or otherwise violated any intellectual property rights of any other Person.

(iv) No Seller has received any written notice of any default or any event that with notice or lapse of time, or both, would constitute a default under any Contract providing for Licensed Intellectual Property and to which any Seller is a party or by which it is bound. To Sellers' Knowledge, no Person is infringing, diluting, misappropriating or otherwise violating any Purchased Intellectual Property.

(v) No Person other than a Seller has any ownership interest in, or a right to receive a royalty or similar payment with respect to, any of the Owned Intellectual Property.

(vi) No Seller has entered into any agreement to indemnify any other Person against any charge of infringement of any third party intellectual property, including Licensed Intellectual Property, except for customary infringement indemnities agreed to in the Ordinary Course of Business and included as part of any contracts for the license or sale of intellectual property, products or services. No Seller has entered into any agreement granting any third party the right to bring infringement actions or otherwise to enforce rights with respect to the Owned Intellectual Property or pursuant to which any Seller has agreed not to sue or otherwise enforce any legal rights with respect to Owned Intellectual Property.

(vii) Sellers have used commercially reasonable efforts to protect the confidentiality of any material Trade Secrets and other material confidential and proprietary information included in the Purchased Intellectual Property.

Section 5.12 Material Contracts.

(a) Schedule 5.12 sets forth all of the following Contracts to which a Seller or any of its controlled affiliates or the Somerset Railroad Corporation is a party or by which it is

bound and that are related to the Business or by which NewCo or the Purchased Assets may be bound or affected (collectively, the "Material Contracts"):

(i) Contracts with any Affiliate or current or former officer or director of any Seller or the Somerset Railroad Corporation (other than Contracts made in the Ordinary Course of Business on terms generally available to similarly situated non-affiliated parties);

(ii) Contracts with any labor union or association representing any Employees, including each Labor Agreement;

(iii) Contracts for the sale of any of the assets of any Seller or the Somerset Railroad Corporation, other than in the Ordinary Course of Business, for consideration in excess of ten thousand dollars (\$10,000);

(iv) Contracts relating to the acquisition by any Seller or the Somerset Railroad Corporation of any operating business or the capital stock of any other Person, in each case for consideration in excess of ten thousand dollars (\$10,000) or relating to a joint venture involving the Business or any of the Purchased Assets;

(v) Contracts relating to incurrence of Indebtedness, guarantees or loans, in each case involving amounts in excess of ten thousand dollars (\$10,000);

(vi) Contracts with Employees providing for severance, retention, change in control or similar payments;

(vii) Contracts that, by their specific terms, require that transferees of the Facilities or the Purchased Assets be made a party thereto;

(viii) Contracts for the employment of any individual on a full-time, part-time or consulting or other basis providing annual compensation in excess of ten thousand dollars (\$10,000);

(ix) Contracts that restrain, restrict, limit or impede the ability of NewCo to compete with or conduct any business or line of business in any geographic area; or

(x) Contracts which involve the expenditure of more than ten thousand dollars (\$10,000) in the aggregate or require performance by any party more than one year from the date hereof that, in either case, are not terminable by a Seller or the Somerset Railroad Corporation without penalty on less than 180 days' notice.

(b) Except as set forth on Schedule 5.12(b), no Seller has received any written notice of any default or event that with notice or lapse of time or both would constitute a default by any Seller or the Somerset Railroad Corporation under any Material Contract.

(c) Each of the Material Contracts is in full force and effect and is the legal, valid and binding obligation of one or more Sellers or the Somerset Railroad Corporation, enforceable against (i) such Seller(s) or Somerset Railroad Corporation in accordance with its terms, subject to the terms of the Sale Order and applicable bankruptcy, insolvency, reorganization, moratorium and similar laws affecting creditors' rights and remedies generally and subject, as to enforceability, to general principles of equity (regardless of whether enforcement is sought in a proceeding at law or in equity), and (ii) to Sellers' Knowledge, each other party thereto. Sellers have delivered or otherwise made available to Trustee and NewCo true, correct and complete copies of all of the Contracts listed on Schedule 5.12, together with all amendments, modifications, supplements, exhibits and restatements thereto, other than with respect to purchase orders, provided that Sellers have delivered to NewCo prior to the date hereof a list of all purchase orders and copies of those purchase orders requested by NewCo. Subject only to the satisfaction of the Determined Cure Costs applicable to such Contracts and the entry of the Sale Order, each Designated Contract may be assumed and assigned to NewCo pursuant to section 365 of the Bankruptcy Code.

Section 5.13 Employee Benefits.

(a) Schedule 5.13(a) lists: (i) all "employee benefit plans", as defined in Section 3(3) of ERISA, and all other material employee benefit arrangements or payroll practices, including, without limitation, bonus plans, consulting or other compensation agreements, incentive, equity or equity-based compensation, or deferred compensation arrangements, stock purchase, severance pay, sick leave, vacation pay, salary continuation, disability, hospitalization, medical insurance, life insurance, scholarship programs maintained by any Seller or to which any Seller contributed or is obligated to contribute thereunder for current or former Employees (the "Employee Benefit Plans"), and (ii) all "employee pension plans", as defined in Section 3(2) of ERISA, subject to Title IV of ERISA or Section 412 of the Code, maintained by any Seller and any trade or business (whether or not incorporated) which are or have ever been under common control, or which are or have ever been treated as a single employer, with any Seller under Section 414(b), (c), (m) or (o) of the Code ("ERISA Affiliate") or to which any Seller or any ERISA Affiliate thereof, including, for the avoidance of doubt, the Somerset Railroad Corporation, contributed or has been obligated to contribute thereunder in the last six (6) years (the "Title IV Plans" and together with the Employee Benefit Plans, the "Seller Benefit Plans").

(b) Except as set forth on Schedule 5.13(b), no Seller nor any ERISA Affiliate thereof, including, for the avoidance of doubt, the Somerset Railroad Corporation, participates currently in, or has in the past six (6) years participated in, or is required currently, or in the past six (6) years has been required to, contribute to or otherwise participate in any Title IV Plan which is a multiemployer plan as defined in Section 3(37) of ERISA, or has been subject to Sections 4063 or 4064 of ERISA.

(c) Sellers and Somerset Railroad Corporation have paid all salary and wages with respect to Employees in the Ordinary Course of Business.

Section 5.14 Labor.

(a) Schedule 5.14(a) identifies each labor or collective bargaining agreement or other similar agreement or arrangement with any union, works council, trade union or other employee organization with respect to any Employee (the "Labor Agreements"). Sellers have delivered to Trustee and NewCo a current, accurate and complete copy of each Labor Agreement, including any amendments or supplements thereto or related agreements (including any side letter, supplemental agreement or memorandum of understanding that would materially alter a Labor Agreement). Sellers have informed Trustee and NewCo of all material communications and current written proposals of Sellers, the Somerset Railroad Corporation or their Affiliates, or any union in all ongoing negotiations with representatives of any unions representing any organized employee groups and all material matters on which any tentative agreements have been reached in the course of such negotiations.

(b) Except as set forth on Schedule 5.14(b), there are no (i) strikes, work stoppages, work slowdowns or lockouts pending or, to Sellers' Knowledge, threatened against or involving any Seller, the Somerset Railroad Corporation or any Employees, or (ii) unfair labor practice charges, grievances or complaints pending or, to Sellers' Knowledge, threatened by or on behalf of any Employee or group of Employees.

(c) Except as set forth in Schedule 5.14(c), there are no material grievances outstanding under any such agreement or contract; and to Sellers' Knowledge, there is no union organizing activity, petition or application pending before the National Labor Relations Board or other labor relations boards or tribunals seeking certification or any change in certification of a labor union with respect to any Employees.

(d) Except as set forth on Schedule 5.14(d), in the three years prior to the date hereof, no Seller or the Somerset Railroad Corporation has effectuated: (i) a "plant closing" (as defined in the WARN Act) affecting any site of employment or one or more facilities or operating units within any site of employment or facility; or (ii) a "mass layoff" (as defined in the WARN Act) affecting the Facilities or the Somerset Railroad.

Section 5.15 Litigation.

Except (i) as set forth on Schedule 5.15, (ii) for matters before the Bankruptcy Court involving Sellers or any of their Affiliates, and (iii) any matters that will otherwise be resolved by the Sale Order without any Liability or restriction applicable to Trustee, NewCo or the Purchased Assets, there are no Legal Proceedings or Actions pending or, to Sellers' Knowledge, threatened that relate to, or could otherwise affect, the Business or any of the Purchased Assets or Assumed Liabilities, before any Governmental Body.

Section 5.16 Compliance with Laws.

Each Seller and the Somerset Railroad Corporation are, and have, during the past three years, been in material compliance with all Laws applicable to its respective operations or assets or the Business, except with respect to Environmental Laws which are addressed in Section 5.17. No Seller or the Somerset Railroad Corporation has received any written notice of or been charged with the violation of any Laws.

Section 5.17 Environmental Matters.

(a) Except as set forth on Schedule 5.17, with sufficient specificity to be distinguished from non-responsive portions of any reference documents, and except as could not reasonably be expected to result in Seller or the Somerset Railroad Corporation incurring material Liabilities: (a) the operations of Sellers with respect to the Purchased Assets and the Somerset Railroad Corporation and the Facilities are in compliance with all applicable Environmental Laws, which compliance includes obtaining, maintaining and complying with all required Environmental Permits; (b) none of the Seller Properties or Facilities currently contains or releases Hazardous Materials that could reasonably be expected to give rise to undisclosed Liabilities under applicable Environmental Laws; (c) no Seller or the Somerset Railroad Corporation or any Affiliate of any of the foregoing is subject to any outstanding Order or Contract with any Governmental Body relating to any (i) Environmental Laws, (ii) Remedial Action or (iii) Release of a Hazardous Material, in each case in connection with the Business, the Purchased Assets or the Assumed Liabilities; and (d) to Sellers' Knowledge, there are no investigations of the Business, any Facility or the Somerset Railroad Corporation pending or threatened, which would reasonably be expected to result in the imposition of any liability pursuant to any Environmental Law.

(b) No liens exist pursuant to Environmental Law related to Sellers or the Somerset Railroad Corporation, the Business, the Facilities, or the Purchased Assets; and

(c) Sellers have delivered or made available to Trustee and NewCo copies of all material environmental site assessments, environmental compliance audits, and other material reports or analyses of pending or reasonably foreseeable requirements or costs to maintain or achieve compliance with Environmental Laws or Environmental Permits relating to the Business that are in Sellers' or the Somerset Railroad Corporation's possession, including without limitation all material reports or analyses concerning air emissions allowances.

(d) The representations and warranties contained in this Section 5.17 are the sole and exclusive representations and warranties of the Sellers with respect to matters arising out of or relating to Environmental Laws or Hazardous Materials.

Section 5.18 Permits.

Schedule 5.18 lists all material Permits used by Sellers and the Somerset Railroad Corporation in the Business. Sellers and the Somerset Railroad Corporation hold all of such Permits and each such Permit is in full force and effect and has not expired. There are no proceedings are pending or, to Sellers' Knowledge, threatened, the object of which is to revoke, limit or otherwise affect any such Permit.

Section 5.19 Financial Advisors.

Except as set forth on Schedule 5.19, no Person has acted, directly or indirectly, as a broker, finder or financial advisor for any Seller, or the Somerset Railroad Corporation or any of their Affiliates in connection with the Transactions and no Person is entitled to any fee or commission or like payment from Trustee or NewCo or any of their respective Affiliates in respect thereof.

Section 5.20 Insurance.

Set forth on Schedule 5.20 is an accurate and complete list of all material policies of insurance (by policy number, insurer, expiration date and type and amount of coverage) by which the Purchased Assets are covered as of the date hereof, including self insurance (each an "Insurance Contract"). Sellers are in material compliance with the terms and provisions of such policies and all premiums due and payable with respect thereto have been paid. Sellers have not received a written notice of cancellation or termination of any such policy. Except as set forth on Schedule 5.20, all such policies are in full force and effect and there are no material claims pending as of the date hereof under any of such policies where underwriters have reserved their rights or disclaimed coverage under such policy.

Section 5.21 Transactions with Related Parties.

Except as set forth in Schedule 5.21:

(a) No agreement or transaction between any Seller or the Somerset Railroad Corporation and (i) any director, officer, stockholder or Affiliate of any of the foregoing, or (ii) any relative or spouse (or relative of such spouse) of any such director, officer, stockholder or Affiliate (such persons in (i) and (ii) being referred to herein as a "Related Party" or collectively as the "Related Parties") has been entered into.

(b) No Related Party is a director or officer of, or has any direct or indirect interest in (other than the ownership of not more than 5% of the publicly traded shares of), any Person or entity which is a supplier, vendor, or competitor of any Seller or the Somerset Railroad Corporation.

(c) No Related Party owns or has any interest in, directly or indirectly, in whole or in part, any tangible or intangible property used in the conduct of the Business or any Purchased Asset.

(d) No Seller or the Somerset Railroad Corporation has, directly or indirectly, guaranteed or assumed any Indebtedness for borrowed money or otherwise for the benefit of any Related Party.

Section 5.22 Capitalization and Ownership of Shares of Somerset Railroad Corporation.

(a) Schedule 5.22(a) sets forth the authorized capital stock, par value, and number of shares or other equity interests outstanding and the owner of such shares or other equity interests of Somerset Railroad Corporation, all of which are validly issued, fully paid and nonassessable and were not issued in violation of any preemptive rights. The shares of capital stock set forth on Schedule 5.22(a) constitute all the issued and outstanding capital stock of Somerset Railroad Corporation and are owned of record by AES NY3 free and clear of all security interests, pledges or other encumbrances except for the security interest in such stock held by BNP Paribas, in its capacity as agent for and representative of the lending parties to the Somerset Railroad Credit Facility. Such security interest shall only be released upon payment in full of all amounts owed under the Somerset Credit Facility.

(b) Except as set forth in Schedule 5.22(b), there are no options, warrants, convertible securities or other rights, agreements, arrangements or commitments relating to the capital stock of Somerset Railroad Corporation or obligating either any Seller or Somerset Railroad Corporation to issue or sell any shares of capital stock of Somerset Railroad Corporation, or any other interest in, Somerset Railroad Corporation.

Section 5.23 Somerset Railroad Corporation Liabilities

Except as set forth on Schedule 5.23, the Somerset Railroad does not have any Liabilities other than the Somerset Railroad Credit Facility.

Section 5.24 No Other Representations or Warranties.

Except for the representations and warranties contained in this Article V (as modified by the Schedules hereto), no Seller nor any other Person makes any other express or implied representation or warranty with respect to Sellers, the Business, the Purchased Assets, the Assumed Liabilities or the Transactions, and Sellers disclaim any other representations or warranties, whether made by any Seller, any Affiliate of Sellers or any of their respective officers, directors, employees, agents or Representatives. Except for the representations and warranties contained in Article V hereof (as modified by the Schedules hereto), Sellers (i) expressly disclaim and negate any representation or warranty, expressed or implied, at common law, by statute, or otherwise, relating to the condition of the Purchased Assets (including any implied or expressed warranty of merchantability or fitness for a particular purpose, or of conformity to models or samples of materials) and (ii) disclaim all liability and responsibility for any representation, warranty, projection, forecast, statement, or information made, communicated, or furnished (orally or in writing) to NewCo or its Affiliates or representatives (including any opinion, information, projection, or advice that may have been or may be provided to NewCo by any director, officer, employee, agent, consultant, or Representative of Seller or any of its Affiliates). Sellers make no representations or warranties to NewCo regarding the probable success or profitability of the Business. The disclosure of any matter or item in any schedule hereto shall not be deemed to constitute an acknowledgment that any such matter is required to be disclosed or is material or that such matter would reasonably be expected to result in a Material Adverse Effect.

ARTICLE VI

REPRESENTATIONS AND WARRANTIES OF NEWCO

Except as set forth in the corresponding sections or subsections of NewCo's Disclosure Schedule, NewCo hereby represents and warrants to Sellers as of the date hereof and as of the Closing Date (except for representations and warranties that are made as of a specific date, which are made only as of such date) as follows:

Section 6.1 Organization and Good Standing.

NewCo is a corporation duly organized, validly existing and in good standing under the laws of the State of Delaware and has all requisite corporate power and authority to own, lease and operate its properties and to carry on its business as now conducted.

Section 6.2 Authorization of Agreement.

NewCo has all requisite power, authority and legal capacity to execute and deliver this Agreement, the other Transaction Documents and each other agreement, document, instrument or certificate contemplated by this Agreement or to be executed by it in connection with the consummation of the Transactions (the "NewCo Documents"), and to consummate the Transactions. The execution, delivery and performance by NewCo of this Agreement and the NewCo Documents have been duly authorized by all necessary corporate action on behalf of NewCo. This Agreement has been, and, upon their execution, each NewCo Document will be at or prior to the Closing, duly executed and delivered by NewCo and (assuming the due authorization, execution and delivery by the other parties hereto and thereto) this Agreement constitutes, and, upon their execution, the NewCo Documents will, when so executed and delivered, constitute, the legal, valid and binding obligation of NewCo, enforceable against NewCo in accordance with its terms, subject to applicable bankruptcy, insolvency, reorganization, moratorium and similar laws affecting creditors' rights and remedies generally, and subject, as to enforceability, 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).

Section 6.3 Conflicts; Consents of Third Parties.

(a) None of the execution and delivery by NewCo of this Agreement or the NewCo Documents, the consummation of the Transactions, or the compliance by NewCo with any of the provisions hereof or thereof, will materially conflict with, or result in any material violation of or material default (with or without notice or lapse of time, or both) under, or give rise to a right of payment, termination, modification, acceleration or cancellation under any provision of (i) the Organizational Documents of NewCo, (ii) any Contract or Permit to which NewCo is a party or by which NewCo or its properties or assets are bound or (iii) any Order of any Governmental Body applicable to NewCo or by which any of the properties or assets of NewCo are bound, (iv) any applicable Law or (v) such conflicts, violations, defaults, terminations or cancellations that would not reasonably be expected to have a NewCo Material Adverse Effect.

(b) Except as set forth in Schedule 6.3(b), no consent, waiver, approval, Order, Permit or authorization of, or declaration or filing with, or notification to, any Person or Governmental Body is required on the part of NewCo in connection with the execution and delivery of this Agreement or the NewCo Documents, the compliance by NewCo with any of the provisions hereof or thereof, the consummation of the Transactions or the taking by NewCo of any other action contemplated hereby or thereby, or for NewCo to conduct the Business, except for (i) the entry of the Sale Order, and (ii) the entry of the Sales Procedure Order.

Section 6.4 Litigation.

There are no Legal Proceedings pending or, to the knowledge of NewCo, threatened by or against NewCo, or to which NewCo is otherwise a party before any Governmental Body, which, if adversely determined, would reasonably be expected to have a material adverse effect on the ability of NewCo to perform its obligations under this Agreement or to consummate the Transactions. NewCo is not subject to any Order of any Governmental Body except to the extent the same would not reasonably be expected to have a material adverse effect on the ability of NewCo to perform its obligations under this Agreement or to consummate the Transactions.

Section 6.5 Financial Advisors.

Except as set forth on Schedule 6.5, no Person has acted, directly or indirectly, as a broker, finder or financial advisor for NewCo in connection with the Transactions and no Person is entitled to any fee or commission or like payment in respect thereof which would be payable by Sellers.

Section 6.6 Financial Capability.

NewCo has commitments for sufficient funds to pay the cash Purchase Price contemplated by this Agreement to be paid at Closing and to perform NewCo's other obligations contemplated by this Agreement to be performed at Closing.

Section 6.7 Condition of the Business.

Notwithstanding anything contained in this Agreement to the contrary, NewCo acknowledges and agrees that Sellers and each of their directors, officers, employees, agents, shareholders, Affiliates, consultants, counsel, accountants and other representatives are not making any representation or warranty whatsoever, express or implied, beyond those expressly given by Sellers in Article V hereof (as modified by the Schedules hereto), and NewCo acknowledges and agrees that, except for the representations and warranties contained therein, the Purchased Assets and the Business are being transferred on a "WHERE IS" and, as to condition, "AS IS" basis.

ARTICLE VII

BANKRUPTCY COURT MATTERS

Section 7.1 Competing Transaction.

(a) This Agreement is subject to approval by the Bankruptcy Court and the consideration by Sellers of higher or better competing bids in accordance with the terms of the Sale Procedures Order.

Section 7.2 Bankruptcy Court Filings.

Trustee and NewCo agree that they will promptly take such actions as are reasonably requested by Sellers to assist in obtaining the entry of the Sale Order, including furnishing affidavits or other documents or information for filing with the Bankruptcy Court for the purposes, among others, of providing necessary assurances of performance by Trustee and NewCo under this Agreement and demonstrating that NewCo is a "good faith" purchaser under section 363(m) of the Bankruptcy Code. Sellers shall use their respective commercially reasonable efforts to pursue the entry by the Bankruptcy Court of the Sale Order, which Sale Order shall provide for the transfer of the Indenture Purchased Assets, the Non-Indenture Purchased Assets and the Assumed Liabilities to NewCo free from all successor or transferee liability to the extent permitted by Section 363 of the Bankruptcy Code. Sellers shall use their respective commercially reasonable efforts to comply (or obtain an Order from the Bankruptcy Court waiving compliance) with all requirements under the applicable provisions of the Bankruptcy Code, the Federal Rules of Bankruptcy Procedure, and the Local Bankruptcy Rules for the District of Delaware in obtaining the entry by the Bankruptcy Court of Sale Order. Sellers shall use their respective commercially reasonable efforts to obtain entry by the Bankruptcy Court of the Sale Order by April 15, 2012. Sellers further covenant and agree that, after entry by the Bankruptcy Court of the Sale Order, and the terms of any other proposed order submitted by Sellers to the Bankruptcy Court shall not conflict with, supersede, abrogate, nullify or restrict the terms of this Agreement, or in any way prevent or interfere with the consummation or performance of the transactions contemplated by this Agreement. In the event that the Sale Order shall be appealed, subject to the Parties' respective rights to terminate this Agreement pursuant to Section 4.4, Sellers, Trustee and NewCo shall use their respective reasonable efforts to defend such appeal.

Section 7.3 Assumption of Assigned Contracts.

(a) On or before the date not less than 21 days following the date hereof, the Selling Debtors shall file a notice of assumption (the "Assumption Notice") with the Bankruptcy Court and serve such notice via first class mail on each counterparty to a Contract listed thereon. The Assumption Notice shall identify all Contracts and Permits of the Selling Debtors related to the Purchased Assets that the Selling Debtors and NewCo believe may be assumed and assigned in connection with the sale of the Purchased Assets and set forth a good faith estimate of the amount of cure costs applicable to each such Contract (and if no cure cost is estimated to be applicable with respect to any particular Contract, the amount of such cure cost designated for such Contract shall be "\$0.00"). In accordance with the Sale Procedures Order, the Selling Debtors reserve the right to supplement such list of Contracts and to provide additional notice of assumption up to three (3) Business Days prior to the Closing Date and to remove a Contract from the list of Contracts and Permits at any time prior to the Closing Date.

(b) On or before the date that is three (3) Business Days before the Closing Date (the "Designation Deadline"), NewCo shall provide to the Selling Debtors a list of those Contracts and Permits that it elects to have assumed and assigned to NewCo on the Closing Date (the "Designated Contracts"). NewCo shall be entitled to remove certain contracts from the list of Designated Contracts at any time prior to the Designation Deadline. In the event that NewCo removes any of such contracts from such list, the Selling Debtors will provide the relevant

counterparty written notice that the applicable Contract is no longer identified as a Designated Contract. For the avoidance of doubt, only those executory contracts that remain identified as Designated Contracts as of the Closing Date will constitute Assumed Contracts and will be assumed by the applicable Selling Debtor and assigned to NewCo pursuant to the Sale Order. There shall be no adjustment to the Purchase Price as a result of NewCo's election to exclude any one or more of such Contracts or Permits from list of Designated Contracts pursuant to this Section 7.3(b) except that NewCo shall not be required to make any payments for Determined Cure Costs or any other amounts for any such Excluded Contracts or Permits.

(c) Subject to the terms of Section 2.5 and Section 7.3(a) and (b), NewCo shall make provision for the payment of the Determined Cure Costs in accordance with the Sale Order. Sellers shall use their respective commercially reasonable efforts, including the filing and prosecution of any and all appropriate proceedings in the Bankruptcy Court, to establish the Determined Cure Costs, if any, for each Designated Contract, in accordance with Section 7.3(a).

(d) On or prior to the date hereof, Sellers shall have delivered to NewCo true and complete copies of all Permits listed on Schedule 5.18, or otherwise provide NewCo with access to such true and complete copies of such Permits.

(e) Notwithstanding any provision in this Agreement to the contrary, NewCo shall have no obligation to purchase, acquire or assume any Contract or Permit (or any Liabilities thereunder) if a true and complete copy of such Contract or Permit has not been made available by Sellers to NewCo in accordance with Sections 2.5, Section 7.3(a), Section 7.3(c) and Section 7.3(d) above. Notwithstanding any provision in this Agreement to the contrary, from and after the date hereof through the Closing Date, Sellers will not reject or take any action (or fail to take any action that would result in rejection by operation of Law) to reject, repudiate or disclaim any Contract without the prior written consent of NewCo. Notwithstanding any provision in this Agreement to the contrary, Sellers shall have no obligation to assume or assign any insurance contracts or any contracts for services provided by The AES Corporation ("AES Corp.") and its Affiliates (other than the Sellers), except for the Coal Hauling Agreement.

ARTICLE VIII

COVENANTS

Section 8.1 Access to Information.

Sellers agree that, prior to the Closing Date, Trustee and NewCo shall be entitled, through their officers, employees and Representatives, to make such investigation of the Purchased Assets (including non-invasive environmental site assessments), the Assumed Liabilities and the Business, and make such examination (and copies) of the books and records of Sellers, the Somerset Railroad Corporation and their respective controlled affiliates related thereto as Trustee, NewCo or their respective Representatives reasonably request. Any such investigation and examination shall be conducted during regular business hours upon reasonable advance notice and under reasonable circumstances and shall be subject to restrictions under applicable Law. Sellers and the Somerset Railroad Corporation shall cause their respective Representatives to cooperate with Trustee, NewCo and their respective Representatives and

Trustee, NewCo, and their respective Representatives shall cooperate with Sellers and the Somerset Railroad Corporation and their Representatives and shall use their reasonable efforts to minimize any disruption to the Business. Notwithstanding anything herein to the contrary, no such investigation or examination shall be permitted to the extent that it would require Sellers, Somerset Railroad Corporation or any of their respective Subsidiaries to disclose information where such disclosure would jeopardize the protection of attorney-client privilege or conflict with any confidentiality obligations by which Sellers, Somerset Railroad Corporation or any of their respective Subsidiaries are bound; provided, however, that Sellers, Somerset Railroad Corporation and any of their respective Subsidiaries shall use commercially reasonable efforts to obtain a waiver of any such confidentiality provisions and to otherwise cause such information to be provided in a manner that would not result in such jeopardy or conflict. No investigation by Trustee, NewCo or their respective Representatives prior to or after the date of this Agreement shall diminish or obviate any of the representations, warranties, covenants or agreements of Sellers contained in this Agreement or any of the other Transaction Documents.

Section 8.2 Conduct of the Business Pending the Closing.

(a) Prior to the Closing, except (1) as set forth on Schedule 8.2(a), (2) as required by applicable Law, (3) as otherwise expressly contemplated by this Agreement or (4) with the prior written consent of both Trustee and NewCo, Sellers and the Somerset Railroad Corporation shall:

(i) operate the Purchased Assets in the Ordinary Course of Business, in a manner consistent with past practices, and in accordance with a budget acceptable to the Indenture Trustee and NewCo and any subsequent Orders of the Bankruptcy Court, subject to available liquidity, management of working capital and the Sellers' fiduciary obligations;

(ii) use their commercially reasonable efforts to (A) preserve the present business operations, organization and goodwill of the Business, and (B) preserve the present relationships with Persons having business dealings with Sellers (including customers and suppliers of the Business);

(iii) use their commercially reasonable efforts to (A) maintain the books, accounts and records of Sellers and the Somerset Railroad Corporation in the Ordinary Course of Business, (B) continue to operate billing procedures and collect accounts receivable utilizing normal procedures and without discounting or accelerating payment of such accounts and (C) pay accounts payable and comply with all contractual and other obligations applicable to the operation of the Business;

(iv) use their commercially reasonable efforts to maintain the Purchased Assets in their current condition, ordinary wear and tear excepted;

(v) maintain in full force and effect until the Closing insurance upon all of the Purchased Assets in such amounts and of such kinds comparable to that in effect on the date of this Agreement;

(vi) use their commercially reasonable efforts to maintain in full force and effect the Permits and operate the Facilities in compliance therewith; and

(vii) comply with applicable Laws, including Environmental Laws, other than any failure to comply as would not reasonably be expected to have, individually or in the aggregate with other failures, a Material Adverse Effect.

(b) Except (1) as set forth on Schedule 8.2(b), (2) as required by applicable Law, or (3) as otherwise expressly contemplated by this Agreement, Sellers shall not, and shall cause their respective controlled Affiliates not to, solely as it relates to any of the Purchased Assets or the Business, without the prior written consent of the Trustee and NewCo:

(i) other than in the Ordinary Course of Business, (A) materially increase, or permit any of their controlled Affiliates to materially increase, the annual level of compensation of any director or executive officer of Sellers or any of their respective Subsidiaries, (B) grant, or permit any of their controlled Affiliates to grant, any unusual or extraordinary bonus, benefit or other direct or indirect compensation to any director or executive officer, (C) increase, or permit any of their controlled Affiliates to increase, the coverage or benefits available under any (or create any new) Employee Benefit Plan or (D) enter into, or permit any of their controlled Affiliates to enter into, any employment, deferred compensation, severance, consulting, non-competition or similar agreement or arrangement (or amend any such agreement or arrangement) with any Employee, except, in each case, as required by applicable Law from time to time in effect;

(ii) with respect to the Somerset Railroad Corporation, (A) make, change or rescind any material election relating to Taxes, (B) settle or compromise any material claim, action, suit, litigation, proceeding, arbitration, investigation, audit or controversy or enter into any closing agreement or agree to any assessment relating to Taxes, (C) except as required by applicable Law, make any change to any of its methods of accounting for Tax purposes, (D) file any Tax Return, other than any such Tax Return that is prepared on a basis consistent with past practice and filed as required under applicable Law or (E) consent to any extension or waiver of the limitations period applicable to any claim with respect of Taxes;

(iii) subject any of the Purchased Assets to any Lien, except for Permitted Exceptions;

(iv) acquire any material properties or assets that would be Purchased Assets or sell, assign, license, transfer, convey, lease or otherwise dispose of any assets, properties, rights or interests related to, used or held for use in the Business (except pursuant to an existing Contract for fair consideration in the Ordinary Course of Business or for the purpose of

disposing of obsolete or worthless assets);

(v) cancel or compromise any material debt or claim or waive or release any material right of any Seller relating to the Business or any assets, properties, rights or interests related to, used or held for use in the Business, except in the Ordinary Course of Business;

(vi) enter into any commitment for capital expenditures in excess of ten thousand dollars (\$10,000) for any individual commitment and twenty five thousand dollars (\$25,000) for all commitments in the aggregate;

(vii) enter into any Contract that could restrain, restrict, limit or impede the ability of NewCo to compete with or conduct any business or line of business in any geographic area;

(viii) other than in the Ordinary Course of Business, enter into, modify or terminate any labor or collective bargaining agreement or, through negotiation or otherwise, make any commitment or incur any liability to any labor organization;

(ix) terminate, amend, restate, supplement or waive any rights under any Material Contracts (other than Excluded Contracts) or Permits (other than Excluded Permits);

(x) amend its Organizational Documents or take any other action which would reasonably be expected to have an adverse effect on the ability of such Seller to consummate the Transactions or would otherwise adversely affect the Business or the value, utility or transferability of any of the Purchased Assets, other than in accordance with the Sales Procedure Order;

(xi) other than with respect to customary advances for expenses to Employees in the Ordinary Course of Business, make any loan or advance to any Person in excess of ten thousand dollars (\$10,000) for any individual loan or advance and twenty five thousand dollars (\$25,000) for all loans and advances;

(xii) other than as contemplated by Schedule 5.21, engage in any transaction with respect to the Business with any officer or director or Affiliate of any Seller, other than in the Ordinary Course of Business;

(xiii) except for current liabilities within the meaning of GAAP incurred in the Ordinary Course of Business, incur or assume any Indebtedness;

(xiv) declare, set aside, make or pay any dividend or other distribution in respect of the capital stock or other equity securities of any Seller or repurchase, redeem or otherwise acquire any outstanding shares of the capital stock or other securities of, or interests in, any Seller, in each case

other than is consistent with past practice;

(xv) introduce any material change with respect to the operation of the Business (except as otherwise provided in the Budget), including any material change in the types, nature, composition or quality of products or services;

(xvi) enter into any settlement regarding, the Business or any Purchased Asset, that individually exceeds ten thousand dollars, or in the aggregate exceed twenty five thousand dollars (\$25,000);

(xvii) fail to use commercially reasonable efforts to maintain all Permits relating to any of the Purchased Assets or the Business or take or fail to take any action which may result in the denial of any pending applications, the issuance of any cease and desist order or the imposition of any fines, forfeitures or other administrative actions by any Governmental Body with respect to any Facility or its operations;

(xviii) with respect to Somerset Railroad Corporation, except as (a) required by applicable Law or (b) as otherwise expressly contemplated by the Agreement, the Sellers shall not, and shall not permit Somerset Railroad Corporation to, without the prior written consent of the Trustee and NewCo, which shall not be unreasonably withheld, (A) make, change or rescind any material election relating to non-Income Taxes, (B) settle or compromise any material claim, action, suit, litigation, proceeding, arbitration, investigation, audit or controversy or enter into any closing agreement or agree to any assessment relating to non-Income Taxes, (C) except as required by applicable Law, make any change to any of its methods of accounting for non-Income Tax purposes, (D) file any Non-Income Tax Return, other than any such Non-Income Tax Return that is prepared on a basis consistent with past practice and filed as required under applicable Law or (E) consent to any extension or waiver of the limitations period applicable to any claim with respect of such non-Income Taxes; and

(xix) agree to do anything prohibited by this Section 8.2; provided, that, notwithstanding the foregoing, or anything to the contrary herein, the Selling Debtors shall not be precluded from pursuing any claims, demands, causes of action, and rights of any kind, in law or in equity, known or unknown, fixed or contingent, liquidated or unliquidated, against the AES Parent Parties (as such term is defined in the Settlement Agreement).

Section 8.3 Consents.

Each Seller shall use its commercially reasonable efforts, and NewCo shall use its commercially reasonable efforts to cooperate with Sellers, to obtain at the earliest practicable date all Required Consents, including, without limitation, the Consents referred to in Section 5.3(b), and any other Consents required to consummate the Transactions; provided, however,

that no Party shall be obligated to (a) pay any consideration therefor to any third party from whom a Consent is requested (other than filing fees with any Governmental Body), (b) agree to any restrictions on their ability to operate the Business or the Purchased Assets or hold or exercise ownership over the Purchased Assets, or (c) initiate any litigation or Legal Proceedings to obtain any such Consent.

Section 8.4 Regulatory Approvals.

(a) Sellers and NewCo shall cooperate with each other and use (and shall cause their respective controlled Affiliates to use) commercially reasonable efforts: (i) to take, or to cause to be taken, all actions, and to do, or to cause to be done, all things reasonably necessary, proper or advisable on their part under this Agreement, applicable Law or otherwise to consummate and make effective the Transactions, (ii) to obtain promptly from any Governmental Body any Consents, Orders or Permits required to be obtained by Sellers or NewCo or any of their respective controlled Affiliates in connection with the authorization, execution, delivery and performance of this Agreement and the consummation of the Transactions, (iii) to promptly make all necessary filings and thereafter make any other required submissions with respect to this Agreement and the consummation of the Transactions required under applicable Laws, (iv) to defend any and all Legal Proceedings by or before any Governmental Body challenging this Agreement or the consummation of the Transactions, (v) to cause to be lifted or rescinded any injunction, decree, ruling, order or other action of any Governmental Body adversely affecting the ability of any of the Parties to consummate the Transactions, and (vi) to provide prompt notification to the other Parties of any actions pursuant to clauses (i) – (v) of this Section 8.4(a); provided, however, that neither NewCo nor Sellers shall be obligated to pay any consideration or incur any costs (other than the expenses of their respective Representatives or filing fees with any Governmental Body) to obtain any Consents from third parties, whether or not they may be necessary, proper or advisable to consummate the Transactions.

(b) In connection with seeking the foregoing approvals, neither NewCo nor Sellers nor Deutsche Bank Trust Company Americas, nor any of their respective Affiliates shall be required to consent to, or offer or agree to, or otherwise take any action with respect to, any requirement, condition, limitation, understanding, agreement or order to (i) sell, license, assign, transfer, divest, hold separate or otherwise dispose of any of their assets, their business or portion of their business in any manner, (ii) conduct, restrict, operate, invest or otherwise change any of their assets, their business or portion of their business in any manner, or (iii) impose any restriction, requirement or limitation on the operation of their business or portion of their business in any manner.

Section 8.5 Confidentiality.

(a) For the period from the date hereof until Closing, neither Trustee nor NewCo shall directly or indirectly disclose to the public or to any third party any material non-public information concerning or relating to Sellers, other than with the express prior written consent of Sellers, except as may be required by applicable Law or the Bankruptcy Court, in which event the Party seeking to make such disclosure shall provide prior written notice to Sellers of the content, form, timing and manner of any proposed disclosure; provided, however,

that notwithstanding anything to the contrary contained in this Agreement, Trustee or NewCo, as the case may be, may disclose such information (a) to any of its stockholders, members, Affiliates, agents, Representatives and existing and potential financing sources who need to know such information for the sole purpose of evaluating, negotiating or implementing the Transactions or (b) where such disclosure is required under any applicable Law; provided, further, that notwithstanding anything to the contrary contained in this Agreement, the Trustee may disclose such information on a confidential basis to the Certificate Holders in any solicitations through The Depository Trust Company regarding the Transactions. For the avoidance of doubt, as of the Closing, material non-public information with respect to the Purchased Assets and the Assumed Liabilities shall be deemed the confidential information of NewCo, and Sellers shall maintain the confidentiality thereof in accordance with the terms of this Section 8.5 from and after the Closing Date.

(b) For the period from the date hereof until Closing, no Seller or the Somerset Railroad Corporation shall directly or indirectly disclose to the public or to any third party any material non-public information concerning or relating to NewCo or Trustee, other than with the express prior written consent of NewCo and Trustee, except as may be required by applicable Law or the Bankruptcy Court, in which event the Party seeking to make such disclosure shall to the extent practical and permissible by Law, provide prior written notice to NewCo and Trustee of the content, form, timing and manner of any proposed disclosure; provided, however, that notwithstanding anything to the contrary contained in this Agreement, Sellers and the Somerset Railroad Corporation, as the case may be, may disclose such information (a) to any of its stockholders, members, Affiliates, agents, Representatives and existing and potential financing sources who need to know such information for the sole purpose of evaluating, negotiating or implementing the Transactions or (b) where such disclosure is required under any applicable Law or is required pursuant to the Sales Procedure Order.

Section 8.6 Preservation of Records.

Seller, the Somerset Railroad Corporation and NewCo shall (and shall cause their respective controlled Affiliates to) preserve and keep in their possession all records held by them on and after the date hereof relating to the Purchased Assets or the Assumed Liabilities for a period of one (1) year or such longer period as may be required by applicable Law. Sellers, the Somerset Railroad Corporation and NewCo shall (and shall cause their respective controlled Affiliates to) make such records and personnel available to the other Parties as may reasonably be requested by any such Party, including in connection with any insurance claims or Legal Proceedings involving the Purchased Assets or the Assumed Liabilities, or any governmental investigations of any Seller, the Somerset Railroad Corporation or NewCo or any of their respective controlled Affiliates related to the Purchased Assets or the Assumed Liabilities or in order to enable Sellers, the Somerset Railroad Corporation or NewCo to comply with their respective obligations hereunder. NewCo further acknowledges that Sellers (i) shall have full and unfettered access to all books and records being transferred in order to fulfill their obligations as Selling Debtors under the Bankruptcy Code and (ii) shall be entitled to copy any such records, at Sellers' sole cost and expense, and to retain copies of such records. After the expiration of any applicable retention period, before NewCo shall dispose of any of such records, at least ninety (90) days' prior written notice to such effect shall be given by NewCo to Sellers or their successors (or a Person designated by Sellers) and Sellers or their successors (or a Person

designated by Sellers) shall have the opportunity (but not the obligation), at their sole cost and expense, to remove and retain all or any part of such records as they may in their sole discretion select. In the event Sellers wish to destroy any records after the expiration of any applicable retention period, before Sellers shall dispose of any of such records, at least ninety (90) days' prior written notice to such effect shall be given by Sellers to NewCo or its successors (or a Person designated by NewCo) and NewCo or its successors (or such designated Person) shall have the opportunity (but not the obligation), at its sole cost and expense, to remove and retain all or any part of such records as it may in its sole discretion select.

Section 8.7 Publicity.

Prior to the Closing and without limiting or restricting any Party from making any filing with the Bankruptcy Court with respect to this Agreement or the Transactions, no Party shall issue any press release or public announcement concerning this Agreement or the Transactions without obtaining the prior written approval of the other Parties, which approval will not be unreasonably withheld or delayed, unless, in the reasonable judgment of any Party, disclosure is otherwise required by applicable Law or by the Bankruptcy Court with respect to filings to be made with the Bankruptcy Court in connection with this Agreement or by the applicable rules of the Securities Exchange Commission or any stock exchange on which the securities of such Party are listed, provided that the Party intending to make such release shall use its best efforts consistent with such applicable Law or Bankruptcy Court requirement to consult with the other Parties with respect to the text thereof prior to making such release. After the Closing, the Parties may issue public announcements regarding the Transactions so long as such announcements do not disclose the specific terms or conditions of this Agreement or any other Transaction Document except where such terms and conditions have already been disclosed as required by Law, applicable stock exchange regulation or in filings that any Seller is required to make in the Bankruptcy Court or office of the United States Trustee; provided, however, that the issuing party shall use its commercially reasonable efforts to consult with the other Parties with respect to the text thereof prior to such disclosure.

Section 8.8 Transition Services Agreement; Further Assurances.

(a) If requested by NewCo, Sellers shall negotiate in good faith to execute an agreement at Closing pursuant to which Sellers and their Affiliates will continue to provide to NewCo, on terms to be mutually agreed upon, certain general and administrative services then being provided by Sellers and their Affiliates with respect to the Business or any of the Purchased Assets (the "Transition Services Agreement").

(b) If requested by Sellers, NewCo shall negotiate in good faith to execute an agreement at Closing pursuant to which employees of NewCo will provide services to Sellers to assist in the wind down of Sellers' business, on terms to be mutually agreed upon, including payment by Sellers to NewCo for an appropriate allocation of employee compensation expense for the applicable personnel.

(c) NewCo shall cooperate with, provide consultation to, and otherwise support the Debtors in connection with the all negotiations with counterparties under the Cayuga PILOT Agreement and any motion filed by the Sellers seeking Bankruptcy Court approval of

any amendments, modifications or restatements of the Cayuga PILOT Agreement. If requested by NewCo, Sellers shall cooperate with and provide consultation to NewCo in connection with all negotiations with counterparties under the Somerset PILOT Agreement.

Section 8.9 Damage or Destruction.

(a) Until the Closing, the Purchased Assets shall remain at the risk of Sellers. In the event of any material damage to or destruction of the Facilities (other than normal wear and tear) after the date hereof and prior to the Closing (in any such case, a "Destruction"), Sellers shall give prompt notice thereof to Trustee and NewCo.

(b) If any Destruction occurring prior to the Closing is covered by policies of insurance, all right and claim of Sellers or their controlled Affiliates to any proceeds of insurance for such Destruction shall be assigned and (if previously received by Sellers or their controlled Affiliates and not used prior to the Closing Date to repair any damage or destruction) paid to NewCo at Closing.

Section 8.10 Waiver of Certain Claims.

Effective as of the Closing, the Sellers waive all rights under section 506(c) of the Bankruptcy Code against the Trustee, the Certificate Holders, the Purchased Assets, or any amounts paid or required to be paid to the Trustee in the event of a Third Party Sale.

Section 8.11 Notification of Certain Matters.

Prior to Closing, Sellers shall give prompt notice to NewCo, on the one hand, and NewCo shall give prompt notice to Sellers, on the other hand, of (i) the occurrence or non-occurrence of any event which would cause any of the representations or warranties in this Agreement of Sellers or NewCo, respectively, to be untrue or inaccurate in any material respect at or prior to the Closing Date and (ii) any material failure of Sellers or NewCo, respectively, to comply with or satisfy any covenant, condition or agreement to be complied with or satisfied by it under this Agreement; provided, however, the delivery of any notice pursuant to this Section 8.11 shall not limit or otherwise affect the remedies available to the Party receiving such notice under this Agreement.

Section 8.12 Removal of Marks.

NewCo shall, as soon as reasonably practicable following the Closing, remove all trademarks, trade names and service marks utilizing the initials "AES" (the "AES Marks") from (i) all sales literature, marketing materials, letterheads and stationery (and in any event NewCo shall remove the AES Marks from such materials within one hundred twenty (120) days of the Closing); and (ii) all buildings, signage and vehicles, including the Facilities (and in any event NewCo shall remove the AES Marks from such buildings, signage and vehicles within sixty (60) days of the Closing).

Section 8.13 Coal Inventory.

From the date of the Settlement Agreement to the Closing Date, the Sellers and the Somerset Railroad Corporation shall only order coal with the quality and specifications that is at a level reasonably consistent with the coal inventory at the Facilities existing as of the date of the Settlement Agreement.

ARTICLE IX

EMPLOYEES AND EMPLOYEE BENEFITS; TAX MATTERS

Section 9.1 Employment.

(a) Business Employee List. Schedule 9.1(a) (the "Business Employee List") sets forth the following information with respect to each Employee: (i) each such person's title or job/position; (ii) each such person's job designation (i.e., salaried or hourly); (iii) each such person's location of employment; (iv) each such person's annual base rate of compensation and target annual bonus amount in effect immediately prior to the Petition Date; (v) which Labor Agreement, if any, such Employee is subject to and (vi) each such person's status (i.e., active or approved leave of absence) and expected return date. Not later than ten (10) Business Days prior to the Closing Date, Sellers shall provide NewCo with an updated Business Employee List.

(b) Transferred Employees. At least five (5) Business Days prior to the Closing, NewCo shall deliver, in writing individually or generally, an offer of employment commencing on the Closing Date and contingent upon the Closing, on an at-will basis (except to the extent otherwise expressly agreed in a writing signed by NewCo and such Employee) and on such other terms and conditions as NewCo may determine, in its sole discretion, to each of the Employees designated by NewCo, in its sole discretion, who remain employed by Sellers or their Affiliates and are providing services relating to the Business or the Purchased Assets immediately prior to the Closing. Such individuals who accept such offer are hereinafter referred to as the "Transferred Employees."

(c) Standard Procedure. Pursuant to the "Standard Procedure" provided in Section 4 of Revenue Procedure 2004-53, 2004-2 C.B. 20, (i) NewCo and Sellers shall report on a predecessor/successor basis as set forth therein, (ii) Sellers will not be relieved from filing a Form W-2 with respect to any Transferred Employees, and (iii) NewCo will undertake to file (or cause to be filed) a Form W-2 for each such Transferred Employee with respect to the portion of the year during which such Employee is employed by NewCo that includes the Closing Date, excluding the portion of such year that such Employee was employed by any Seller or any Affiliate of any Seller.

(d) Cooperation and Communications. Sellers and NewCo agree to cooperate reasonably during the period prior to the Closing Date to ensure the continuity of the workforce of the Business. Trustee and NewCo acknowledge that Sellers do not control the employees of AES Corp. who assist with certain aspects of the Business.

Section 9.2 Employee Benefits.

(a) Accrued Vacation. Except as required by applicable Law, NewCo shall be responsible for all Liabilities with respect to Transferred Employees attributable to their accrued and unused vacation, sick days and personal days through the Closing Date.

(b) Employee Bonuses. In the event that the Employees Bonuses are not paid by Sellers prior to the Closing Date, NewCo shall pay the Employee Bonuses directly to the applicable Employees within forty-five (45) days of Closing.

(c) Severance. NewCo shall be responsible for (i) all severance Liabilities listed on the severance schedule delivered by Sellers to NewCo and agreed to by NewCo prior to the date hereof, not to exceed an aggregate amount of \$108,000, that are owed to former Employees whose employment ended prior to the Petition Date, other than any such obligations that are authorized for payment under the Selling Debtors' Motion Pursuant to Sections 105(a), 363(b), 503(c)(1) and 507 of the Bankruptcy Code for an Interim and Final Order to (I) Authorize, but Not Direct, the Debtors to Pay Wages, Salaries, Benefits, and Other Obligations; and (II) Directing the Debtor's Financial Institutions to Process and Honor Checks and Transfers Related to Such Obligations, filed on December 30, 2011 (filed under Docket No. 8, on the docket of the Chapter 11 Cases), subject to execution of customary releases of the Sellers and NewCo by the affected Employees, in form and substance reasonably acceptable to Sellers and NewCo, and (ii) except for the Seller's deposit of \$1,250,000 to the Post-Closing Escrow Account, to be disbursed on account of severance obligations in accordance with a separate agreement governing the Post-Closing Escrow Account, NewCo shall be solely responsible for any severance Liabilities with respect to Facility Employees from and after the Closing Date; provided, however, that NewCo shall not be responsible for any severance Liabilities with respect to any Employees whose employment is terminated prior to the Closing Date without the prior written consent of NewCo.

(d) WARN Act.

(i) NewCo hereby covenants and agrees to offer employment to a sufficient number of Facility Employees to avoid Sellers incurring any WARN Act Liabilities.

(ii) To the extent Sellers have not previously provided such notice, within five (5) Business Days after the date hereof, Sellers shall provide notice to such Employees that they determine, in their sole discretion, could be entitled to such notice in accordance with the WARN Act and any similar state Laws.

(e) VEBA. Subject to amendments to the Labor Agreements, in form and substance satisfactory to NewCo having been executed by the Unions prior to the Closing Date, NewCo shall be responsible for Sellers' and Somerset Railroad Corporation's obligations with respect to retiree medical plans funded through four separate Voluntary Employees' Beneficiary Association trusts established under section 501 (c)(9) of the Code.

(f) No Rights to Employment or Benefits. Nothing expressed or implied in this Agreement is intended to confer upon any Employee or his or her legal representatives any rights or remedies, including, any rights of employment for any specified period, of any nature or kind whatsoever under or by reason of this Agreement. Nothing contained in this Section 9.2 or elsewhere in this Agreement shall be construed to prevent the termination of employment of any Transferred Employee or any change in the employee benefits available to any Transferred Employee.

Section 9.3 Tax Matters.

(a) NewCo and Sellers shall each be responsible for 50% of the aggregate sales, use, stamp, documentary stamp, filing, recording, transfer (including any real property transfer taxes), goods and services, value added, or similar Taxes payable in connection with the Transactions ("Transfer Taxes"), regardless of whether such Transfer Taxes are levied on Sellers, NewCo or the Purchased Assets; provided, however, that in no event shall Sellers be required to pay more than \$350,000 in the aggregate pursuant to this Section 9.3(a) or Section 12.2 hereof. To the extent that Transfer Taxes are required to be paid by Sellers or NewCo in excess of the amount set forth in the prior sentence (or such Transfer Taxes are assessed against Sellers or NewCo in excess of the amount set forth in the prior sentence), NewCo shall promptly reimburse Sellers, or Sellers shall promptly reimburse NewCo, as applicable, for such excess Transfer Taxes. Sellers and NewCo shall cooperate and consult with each other prior to filing any Tax Returns in respect of Transfer Taxes; provided, that, except as otherwise required by applicable Law, NewCo shall prepare and file all Tax Returns with respect to Transfer Taxes and shall provide a copy of such proposed filings to Lead Sellers for Lead Seller's review and comment and shall reflect thereon any reasonable comments submitted by Sellers at least five (5) days before the due date for filing such Tax Return, and shall file such Tax Return and provide a copy of such filing to Sellers. The Parties shall cooperate and otherwise use commercially reasonable efforts to obtain any exemptions, exclusions or available refunds with respect to Transfer Taxes.

(b) No real or personal property Taxes or similar ad valorem obligations (including any payments under the Somerset PILOT Agreement or the Cayuga PILOT Agreement) levied with respect to the Purchased Assets or the Business or Somerset Railroad Corporation or its assets for any Straddle Period shall be prorated between Sellers and NewCo and NewCo shall have no obligation to reimburse Sellers or AES Corp. for any amount of such Taxes paid by or on behalf of Sellers, Somerset Railroad Corporation or AES Corp on or prior to the Closing Date.

(c) The Sellers shall prepare and file, or cause to be prepared and filed, in accordance with past practice and on a timely basis all Tax Returns (other than with respect to Income Taxes) ("Non-Income Tax Returns") relating to the Purchased Assets and Business (including Somerset Railroad Corporation) for Pre-Closing Tax Periods (other than Straddle Periods), and the Sellers shall timely pay all Taxes required to be paid on such Non-Income Tax Returns. The Sellers shall deliver to NewCo a copy of any such Non-Income Tax Return relating to the Purchased Assets, the Business or Somerset Railroad Corporation at least five (5) days prior to the due date for such return and shall consider in good faith any comments submitted by NewCo within three (3) days of the due date for such Tax Return. After the

Closing Date, NewCo shall prepare and file (or cause to be prepared and filed) all Non-Income Tax Returns with respect to the Purchased Assets or the Business (including Somerset Railroad Corporation) for any Straddle Period and for Post-Closing Tax Periods. The Sellers shall promptly provide NewCo on demand reimbursement for all Taxes which are the Sellers' responsibility under this Agreement. NewCo shall promptly provide the Sellers on demand reimbursement for all Taxes which are NewCo's responsibility under this Agreement. To the extent that any portion of such Taxes or PILOT Agreement obligations are Excluded Liabilities, the Sellers shall promptly reimburse NewCo therefor. NewCo shall deliver to the Sellers a copy of any Non-Income Tax Return relating to any Straddle Period prepared by, or on behalf of, NewCo at least five (5) days prior to the due date for such return and shall consider in good faith any comments submitted by the Sellers within three (3) days of the due date for such Non-Income Tax Return. With respect to any such Taxes for a Straddle Period, the Sellers shall pay their allocable share of such Taxes (including any additional Taxes assessed by a Tax Authority with respect to a Straddle Period) to NewCo within five (5) days of NewCo's written demand therefor. Any Non-Income Tax Return relating to the Purchased Assets or the Business for a Tax period that includes the Closing Date shall, to the extent permitted by applicable Law, be filed on the basis that the relevant Tax period ended as of the close of business on the Closing Date.

(d) NewCo and the Sellers will provide each other with such assistance, cooperation and information as either of them reasonably may request of the other in preparing and filing any Non-Income Tax Return, amended Tax Return or claim for refund, determining a liability for Taxes or a right to a refund, rebate, abatement or recovery of such Taxes, or participating in or conducting any audit or other proceeding in respect of such Taxes. Such assistance, cooperation and information shall include retaining and providing copies of relevant Non-Income Tax Returns or portions thereof, together with accompanying schedules, related work papers and documents relating to rulings and other determinations by Taxing Authorities and all records and information which may be relevant with respect to any such Tax matter. Any information obtained under this paragraph shall be kept confidential except as may be otherwise necessary in connection with the filing of Non-Income Tax Returns or claims for refund or in conducting any audit or other proceeding.

(e) The obligations of the Parties under this Section 9.3 shall survive the Closing.

ARTICLE X

CONDITIONS TO CLOSING

Section 10.1 Conditions Precedent to Obligations of NewCo and Trustee.

The respective obligations of NewCo and Trustee to consummate the Transactions or to take the other actions required to be taken by NewCo or Trustee at the Closing, and the effectiveness of surrender and cancellation of the Credit Bid Indebtedness in exchange for the right to receive the Indenture Purchased Assets, is subject to the fulfillment, on or prior to the Closing Date, of each of the following conditions (any or all of which may be waived in whole or in part, only if both NewCo and Trustee consent to such waiver in writing):

(a) the representations and warranties of Sellers set forth in this Agreement shall be true and correct at and as of the Closing, except to the extent such representations and warranties expressly relate to an earlier date (in which case such representations and warranties shall be true and correct on and as of such earlier date); provided, however, that in the event of a breach of a representation or warranty, the condition in this Section 10.1(a) shall be deemed satisfied unless the effect of all such breaches of representations and warranties taken together result in a Material Adverse Effect, and Trustee and NewCo shall have received a certificate signed by an authorized officer of each Seller (in form and substance reasonably satisfactory to both Trustee and NewCo), dated the Closing Date, to such effect;

(b) Sellers shall have performed and complied in all material respects with all obligations and agreements required in this Agreement to be performed or complied with by them prior to the Closing Date, and both Trustee and NewCo shall have received a certificate signed by an authorized officer of each Seller, dated the Closing Date, to the foregoing effect;

(c) Sellers and Somerset Railroad Corporation shall have executed, delivered and/or filed or authorized NewCo to file such termination statements, lien releases, discharges, financing change statements or other documents, notices or other instruments as NewCo may reasonably deem necessary to release any Liens (other than Permitted Exceptions) on the Purchased Assets (including the assets or equity of Somerset Railroad Corporation), to the extent Sellers are authorized to do so absent the consent of the holder of the Lien;

(d) Each Consent set forth on Schedule 10.1(d) shall have been obtained without any material adverse change in the terms or conditions of any Permit or Contract to which such Consent relates from those in effect on the date hereof, it being agreed and understood that it shall be a material adverse change in the terms or conditions of the applicable Permits should Liabilities related to RGGI fail to be resolved with binding finality to the reasonable satisfaction of NewCo prior the Closing Date;

(e) Each lessor or licensor under the Real Property Leases (where any Seller or the Somerset Railroad Corporation is the lessee, sublessor or licensor) shall have executed and delivered to NewCo estoppels in commercially reasonable form, confirming the basic terms of such Real Property Leases, including the term, rent, security deposits or letters of credit (if any), whether any options exist, and providing that no default currently exists under such Real Property Leases;

(f) There shall have not been commenced any proceeding or investigation by a Governmental Body of competent jurisdiction for the purpose of restraining, enjoining, delaying or otherwise materially restricting the consummation of the Transactions or materially limiting or materially restricting the conduct of Trustee or NewCo or any of their Affiliates or the operation of the Business following consummation of the Transactions or requiring Trustee or NewCo or any of their Affiliates to divest or hold separate any assets or businesses;

(g) NewCo shall have received an American Land Title Association 2006 Form extended policy of title insurance (or such other form as acceptable to NewCo) or a binding marked commitment to issue such policy on forms of and issued by one or more title companies reasonably satisfactory to NewCo insuring NewCo's title to the Seller Properties

listed in Schedule 5.9 in an amount acceptable to NewCo, subject only to such exceptions as are satisfactory to NewCo;

(h) If any material Permits required to own the Purchased Assets, to generate and sell power from both of the Facilities or to conduct the Business do not constitute Purchased Assets or if any Required Consent with respect to any such Permit shall not have been obtained as of the Closing Date, NewCo shall have obtained a replacement Permit for such Permit in its own name;

(i) NewCo shall have received the necessary authorizations under Section 205 of the Federal Power Act and from the New York Independent System Operator to make wholesale sales of energy, capacity and ancillary services from the Facilities;

(j) NewCo shall have secured Exempt Wholesale Generator status for each of the Facilities as defined in Section 1262(6) of the Public Utility Holding Company Act of 2005;

(k) NewCo shall have received agreement from NYSEG, in form and substance reasonably acceptable to NewCo, to provide for the continued interconnection of the Facilities;

(l) [Intentionally Deleted];

(m) Sellers shall have delivered, or caused to be delivered, to NewCo all of the items set forth in Section 4.2;

(n) Amendments to the Labor Agreements, in form and substance satisfactory to NewCo, shall have been executed by the Unions;

(o) Sellers shall have delivered to NewCo a duly executed and acknowledged certificate of the general partner of Lead Seller certifying that at Closing the quality and specifications of the Coal are at a level reasonably consistent with the coal inventory at the Facilities existing as of the date of this Agreement;

(p) NewCo and Trustee shall have received a duly executed bill of sale in the form attached hereto as Exhibit D (the "Facilities Bill of Sale"), in form and substance reasonably satisfactory to NewCo and Trustee, by the Owner Trusts in favor of Lead Seller transferring and conveying ownership of the Facilities to Lead Seller;

(q) NewCo shall have received a certificate signed by an authorized officer of Seller in the form attached hereto as Exhibit E certifying that the Minimum Somerset Tonnage exists as of the Closing Date;

(r) There shall not have been any Material Adverse Change;

(s) NewCo shall have received (i) from NYSEG in favor of NewCo (and/or its designee) an executed estoppel certificate with respect to the reciprocal easement(s) described in Section 2.1(c)(xxiii) related to the Facilities, and (ii) from each other Party in favor of NewCo (and/or its designee) under any recorded easement or encumbrance document constituting a

Permitted Encumbrance (to the extent the same is provided to be delivered under such documentation), in each case, in form and substance NewCo may reasonably request;

(t) The Somerset PILOT Agreement shall have been duly amended in form and substance reasonably satisfactory to NewCo;

(u) Except as set forth on Schedule 5.23, the Somerset Railroad Corporation shall not have any Liabilities; provided, that if the Liabilities of Somerset Railroad Corporation exceed the aggregate amount set forth on Schedule 5.23, Sellers shall have the ability in their sole discretion to assume and pay any such excess amounts (or enter into an escrow arrangement reasonably satisfactory to NewCo with respect thereto), and if Sellers assume and pay (or escrow) such excess amounts, the Parties hereby agree that the threshold set forth in this Section 10.1(w) shall be deemed not to be exceeded and the condition to Closing set forth in this Section 10.1(w) shall be deemed satisfied for all purposes;

(v) (A) in the case of Liabilities not previously disclosed to NewCo or the Trustee in Schedule 5.17, Phase I environmental reports or other documents or reports made available to NewCo or the Trustee prior to the date hereof, the amount of Liabilities that NewCo would be required to assume pursuant to Sections 2.3(a)(iv) and 2.3(b)(iv) (excluding, for the avoidance of doubt, any Liabilities that NewCo would be required to assume pursuant to Section 2.3(a)(vii)) shall not be greater than ten million dollars (\$10,000,000), or (B) in the case of Liabilities previously disclosed to NewCo or the Trustee in Schedule 5.17, Phase I environmental reports or other documents or reports made available to NewCo or the Trustee prior to the date hereof, the amount of Liabilities that NewCo would be required to assume pursuant to Sections 2.3(a)(iv) (excluding, for the avoidance of doubt, any Liabilities that NewCo would be required to assume pursuant to Section 2.3(a)(vii) or Section 2.3(b)(iv) and any capital expenditures relating to compliance) would exceed ten million dollars (\$10,000,000);

(w) the amount of the Transfer Taxes and Title Fees payable by NewCo hereunder shall not exceed one million dollars (\$1,000,000); provided, that if the Transfer Taxes and Title Fees payable by NewCo hereunder exceed one million dollars (\$1,000,000), Sellers shall have the ability in their sole discretion to assume and pay any amounts in excess of one million dollars (\$1,000,000) (or enter into an escrow arrangement reasonably satisfactory to NewCo with respect thereto) and if Sellers assume and pay (or escrow) such excess amounts, the Parties hereby agree that the threshold set forth in this Section 10.1(w) shall be deemed not to be exceeded and the condition to Closing set forth in this Section 10.1(w) shall be deemed satisfied for all purposes;

(x) AES Corp. shall have delivered to NewCo the AES Side Letter, and all representations and warranties of AES Corp in the AES Side Letter shall be true and correct in all material respects as of the Closing and AES Corp shall have performed and complied in all material respects with all covenants of AES Corp set forth in the AES Side Letter that are required to be performed or complied with on or prior to the Closing Date and NewCo shall have received a certificate signed by an authorized officer of AES Corp. (in form and substance reasonably satisfactory to NewCo), dated the Closing Date, to such effect;

(y) AES Corp. shall have delivered to NewCo a certificate of non-foreign

status pursuant to Section 1445 of the Code and Treasury Regulation Section 1.1445-2(b) in form and substance reasonably satisfactory to NewCo; and

(z) If requested by NewCo, AES Corp. shall have entered into a transition services agreement reasonably satisfactory to NewCo effective as of the Closing Date.

Section 10.2 Conditions Precedent to Obligations of Sellers.

The obligations of Sellers to consummate the Transactions are subject to the fulfillment, prior to or on the Closing Date, of each of the following conditions (any or all of which may be waived by Sellers in whole or in part to the extent permitted by applicable Law):

(a) the representations and warranties of NewCo set forth in this Agreement shall be true and correct at and as of the Closing, except to the extent such representations and warranties expressly relate to an earlier date (in which case such representations and warranties shall be true and correct on and as of such earlier date); provided, however, that in the event of a breach of a representation or warranty, the condition in this Section 10.2(a) shall be deemed satisfied unless the effect of all such breaches of representations and warranties taken together result in a material adverse effect on the ability of NewCo to perform its obligations under this Agreement or to consummate the Transactions, and Sellers shall have received a certificate signed by an authorized officer of NewCo (in form and substance reasonably satisfactory to Sellers), dated the Closing Date, to such effect;

(b) NewCo shall have performed and complied in all material respects with all obligations and agreements required by this Agreement to be performed or complied with by them on or prior to the Closing Date, and Sellers shall have received a certificate signed by an authorized officer of NewCo, dated the Closing Date, to the foregoing effect;

(c) NewCo shall have delivered, or caused to be delivered, to Lead Seller all of the items set forth in Section 4.3; and

(d) The Coal Hauling Agreement shall have been terminated and the Sellers, Somerset Railroad Corporation, NewCo and the Trustee shall have delivered a mutual release with respect to same.

Section 10.3 Conditions Precedent to Obligations of Trustee, NewCo and Sellers.

The respective obligations of Trustee, NewCo and Sellers to consummate the Transactions are subject to the fulfillment, on or prior to the Closing Date, of each of the following conditions (any or all of which may be waived by agreement of all of Trustee, NewCo and Sellers in whole or in part to the extent permitted by applicable Law):

(a) there shall not be in effect any Order by a Governmental Body of competent jurisdiction restraining, enjoining, delaying or otherwise materially restricting the consummation of the Transactions;

(b) the Bankruptcy Court shall have entered the Sale Procedures Order, and such Order shall be a Final Order;

(c) the Bankruptcy Court shall have entered the order approving the Settlement Agreement and such order shall be a Final Order; and

(d) the Bankruptcy Court shall have entered the Sale Order on or before April 15, 2012.

Section 10.4 Conditions Precedent to Obligations of Trustee.

The obligations of Trustee to consummate the Transactions or to take the other actions required to be taken by it at the Closing, and the effectiveness of surrender and cancellation of the Credit Bid Indebtedness in exchange for the right to receive the Indenture Purchased Assets is subject to the fulfillment, on or prior to the Closing Date, of each of the following conditions (any or all of which may be waived in whole or in part, only if Trustee consents to such waiver in writing):

(a) All conditions precedent in the written direction from the Requisite Holders in form and substance satisfactory to the Trustee in its sole discretion directing the Pass Through Trustees to direct the Indenture Trustees to credit bid for the Indenture Purchased Assets and providing the Trustee, in its individual capacity and in its capacities as Pass Through Trustees and Indenture Trustees, such indemnities, exculpatory protections and releases as required by the Trustee (the "Requisite Trustee Direction") shall have been satisfied;

(b) The Requisite Trustee Direction shall be in full force and effect; and

(c) Notice of the Sale Order, as may be required by the Bankruptcy Court, shall have been provided to the creditors of Sellers, the Owner Trust (as defined in the Pass Through Agreements) and Somerset Railroad Corporation.

Section 10.5 Frustration of Closing Conditions.

None of Sellers, Trustee or NewCo may rely on the failure of any condition set forth in Section 10.1, Section 10.2, Section 10.3 or Section 10.4 as the case may be, if such failure was primarily caused by such Party's failure to comply with any provision of this Agreement.

ARTICLE XI

NON-SURVIVAL OF REPRESENTATIONS AND WARRANTIES

Section 11.1 Non-Survival of Representations and Warranties.

The representations, warranties, covenants and agreements (other than covenants and agreements that, by their terms, survive the Closing or termination of this Agreement) in this Agreement shall terminate at the Closing, or upon termination of this Agreement pursuant to Section 4.4, and, following the Closing or the termination of this Agreement, as the case may be,

no Party shall make any claim whatsoever for any breach of any such representation, warranty or covenant hereunder, subject to Section 4.6. All covenants and agreements contained in this Agreement that, by their terms, survive the Closing or termination of this Agreement shall survive such Closing or termination in accordance with their respective terms; provided, that any covenant or agreement contained herein whose survival is not limited by its terms shall survive until fully performed in accordance with its terms.

ARTICLE XII

MISCELLANEOUS

Section 12.1 Remedies.

The Parties acknowledge and agree that, prior to the Closing, (a) the sole and exclusive remedy available to Trustee and NewCo in the event of Sellers' breach of any representation, warranty, covenant or agreement of any Seller in this Agreement (including a willful breach) shall be to terminate this Agreement pursuant to and in accordance with Section 4.4; and (b) the sole and exclusive remedy available to Sellers in the event of a breach by Trustee or NewCo, respectively, of any representation, warranty, covenant or agreement by Trustee or NewCo, respectively, in this Agreement shall be to terminate this Agreement pursuant to and in accordance with Section 4.4. It is understood and agreed by the Parties that, from and after the Closing, money damages would not be a sufficient remedy for any breach of this Agreement by any Party and each non-breaching Party should be entitled to specific performance and injunctive or other equitable relief as a remedy of such a breach in addition to any other rights which such Party may have at law, in equity or pursuant to this Agreement.

Section 12.2 Expenses.

NewCo and Sellers shall each pay fifty percent (50%) of the costs associated with an updated survey, title examination costs, and an American Land Title Association Form extended policy of Title Insurance in favor of NewCo (or any designees) and customary endorsements to such policy (such costs "Title Fees"); provided, that in no event shall Sellers be responsible for more than \$350,000 in the aggregate pursuant to this Section 12.2 and Section 9.3(a) hereof.

Section 12.3 Non-Recourse.

The Parties acknowledge and agree that no past, present or future director, officer, employee, incorporator, member, partner, stockholder, agent, attorney, Representative or Affiliate of any of the Parties to this Agreement, in such capacity, shall have any liability or responsibility (in contract, tort or otherwise) for any Liabilities of Trustee or NewCo or any Seller, as applicable, under this Agreement or for any claim based on, in respect of, or by reason of, the Transactions.

Section 12.4 Submission to Jurisdiction; Consent to Service of Process.

(a) Without limiting any Party's right to appeal any Order of the Bankruptcy Court, (i) the Bankruptcy Court shall retain exclusive jurisdiction to enforce the terms of this Agreement and to decide any claims or disputes which may arise or result from, or be connected with, this Agreement, any other Transaction Document, any breach or default hereunder or thereunder, or the Transactions, and (ii) any and all proceedings related to the foregoing shall be filed and maintained only in the Bankruptcy Court, and the Parties hereby consent to and submit to the jurisdiction and venue of the Bankruptcy Court and shall receive notices at such locations as indicated in Section 12.10 hereof; provided, however, that if the Chapter 11 Cases have closed, the Parties agree to unconditionally and irrevocably submit to the exclusive jurisdiction of the United States District Court for the Southern District of New York sitting in New York County or the Commercial Division, Civil Branch of the Supreme Court of the State of New York sitting in New York County and any appellate court from any thereof, for the resolution of any such claim or dispute. 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 dispute brought in such court or any defense of inconvenient forum for the maintenance of such dispute. Each of the Parties agrees that a judgment in any such dispute may be enforced in other jurisdictions by suit on the judgment or in any other manner provided by Law.

(b) Each of the Parties hereby consents to process being served by any Party to this Agreement in any suit, action or proceeding by delivery of a copy thereof by personal delivery, prepaid overnight courier or certified mail in accordance with the provisions of Section 12.10.

Section 12.5 Waiver of Right to Trial by Jury.

THE PARTIES HEREBY IRREVOCABLY AND UNCONDITIONALLY WAIVE, TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, ANY RIGHT THAT THEY MAY HAVE TO TRIAL BY JURY OF ANY CLAIM OR CAUSE OF ACTION, OR IN ANY PROCEEDING, DIRECTLY OR INDIRECTLY BASED UPON OR ARISING OUT OF THIS AGREEMENT OR THE TRANSACTIONS (WHETHER BASED ON CONTRACT, TORT, OR ANY OTHER THEORY). EACH PARTY (A) CERTIFIES THAT NO REPRESENTATIVE, AGENT, OR ATTORNEY OF ANY OTHER PARTY HAS REPRESENTED, EXPRESSLY OR OTHERWISE, THAT SUCH OTHER PARTY WOULD NOT, IN THE EVENT OF LITIGATION, SEEK TO ENFORCE THE FOREGOING WAIVER AND (B) ACKNOWLEDGES THAT IT AND THE OTHER PARTY HAS BEEN INDUCED TO ENTER INTO THIS AGREEMENT BY, AMONG OTHER THINGS, THE MUTUAL WAIVERS AND CERTIFICATIONS IN THIS SECTION 12.5.

Section 12.6 Authorization of Representative of Sellers.

(a) By entering into and executing this Agreement, each Seller irrevocably makes, constitutes and appoints Lead Seller as its agent, effective as of the date hereof, and authorizes and empowers Lead Seller to fulfill the role of Sellers' representative hereunder, and each Seller appoints the Lead Seller as such Person's true and lawful attorney in fact and agent, for such Person and in such Person's name, place and stead for all purposes necessary or

desirable in order for the Lead Seller to take all actions contemplated by this Agreement, with the ability to execute and deliver all instruments, certificates and other documents of every kind incident to the foregoing to all intents and purposes and with the same effect as such Lead Seller could do personally, including to give and receive notices and communications; to object to such deliveries, to agree to, negotiate, enter into settlements and compromises of, and comply with orders of courts with respect to such claims; and to take all actions necessary or appropriate in the judgment of the Lead Seller for the accomplishment of the foregoing. The dissolution, liquidation, insolvency or bankruptcy of any Seller shall not terminate the authority and agency of Lead Seller as each Seller's representative pursuant to this Section 12.6. The power of attorney granted in this Section 12.6 is coupled with an interest and is irrevocable.

(b) Trustee and NewCo shall be entitled to rely exclusively upon any communication given or other action taken by the Lead Seller pursuant to this Agreement, and shall not be liable for any action taken or not taken in good faith reliance on a communication or other instruction from Lead Seller.

Section 12.7 Time of Essence.

With regard to all dates and time periods set forth or referred to in this Agreement, time is of the essence.

Section 12.8 Entire Agreement; Amendments and Waivers.

This Agreement (including the Schedules and Exhibits hereto) and the other Transaction Documents represent the entire understanding and agreement between the Parties with respect to the subject matter hereof and supersede all prior discussions and agreements between the Parties with respect to the subject matter hereof. This Agreement can be amended, supplemented or changed only by written instrument making specific reference to this Agreement and executed by each of the Parties hereto. Any provision hereof can be waived only by written instrument making specific reference to this Agreement and signed by the applicable Party against whom enforcement of any such waiver is sought. No action taken pursuant to this Agreement, including without limitation, any investigation by or on behalf of any Party, shall be deemed to constitute a waiver by the Party taking such action of compliance with any representation, warranty, covenant or agreement contained herein. The waiver by any Party hereto of a breach of any provision of this Agreement shall not operate or be construed as a further or continuing waiver of such breach or as a waiver of any other or subsequent breach. No failure on the part of any Party to exercise, and no delay in exercising, any right, power or remedy hereunder shall operate as a waiver thereof, nor shall any single or partial exercise of such right, power or remedy by such Party preclude any other or further exercise thereof or the exercise of any other right, power or remedy. All remedies hereunder are cumulative and are not exclusive of any other remedies provided by Law.

Section 12.9 Governing Law.

THIS AGREEMENT, THE RIGHTS AND OBLIGATIONS OF THE PARTIES HEREUNDER, AND ANY CLAIM OR CONTROVERSY (WHETHER BASED ON CONTRACT, TORT, OR ANY OTHER THEORY) DIRECTLY OR INDIRECTLY BASED

UPON OR ARISING OUT OF THIS AGREEMENT OR THE NEGOTIATION, EXECUTION OR PERFORMANCE OF THIS AGREEMENT (INCLUDING ANY CLAIM OR CAUSE OF ACTION BASED UPON, ARISING OUT OF OR RELATED TO ANY REPRESENTATION OR WARRANTY MADE IN OR IN CONNECTION WITH THIS AGREEMENT OR AS AN INDUCEMENT TO ENTER INTO THIS AGREEMENT), INCLUDING ALL MATTERS OF CONSTRUCTION, VALIDITY AND PERFORMANCE, SHALL IN ALL RESPECTS BE GOVERNED BY AND INTERPRETED, CONSTRUED, AND DETERMINED IN ACCORDANCE WITH THE INTERNAL LAWS OF THE STATE OF NEW YORK (WITHOUT REGARD TO ANY CONFLICT OF LAWS PROVISION THAT WOULD REQUIRE THE APPLICATION OF THE LAW OF ANY OTHER JURISDICTION OTHER THAN THE PRINCIPLES SET FORTH IN SECTION 5-1401 OF THE GENERAL OBLIGATIONS LAW OF THE STATE OF NEW YORK) AND, TO THE EXTENT APPLICABLE, THE BANKRUPTCY CODE.

Section 12.10 Notices.

All notices and other communications under this Agreement shall be in writing and shall be deemed duly given (i) when delivered personally or by prepaid overnight courier, with a record of receipt, (ii) the fourth day after mailing if mailed by certified mail, return receipt requested, or (iii) the day of transmission, if sent by email, facsimile or telecopy prior to 5:00 p.m. eastern prevailing time on any Business Day or the Business Day after transmission, if sent after such time (with a copy promptly sent by prepaid overnight courier with record of receipt or by certified mail, return receipt requested), to the Parties at the following addresses, email addresses or facsimile numbers (or to such other address, email address or facsimile number as a Party may have specified by notice given to the other Parties pursuant to this Section 12.10):

If to Sellers, to:

AES Eastern Energy, L.P.
130 East Seneca Street, Suite 505

Ithaca, NY 14850
Telephone: 703-682-6445
Facsimile: 607-272-5971
Attention: Peter S. Norgeot, President

With copies (which shall not constitute notice) to:

Weil, Gotshal & Manges LLP
767 Fifth Avenue
New York, NY 10153
Telephone: 212-310-8000
Facsimile: 212-310-8007
Attention: Marcia L. Goldstein
Joseph H. Smolinsky
Simeon Gold
Email: marcia.goldstein@weil.com

joseph.smolinsky@weil.com
simeon.gold@weil.com

and

Weil, Gotshal & Manges LLP
1300 Eye Street, NW, Suite 900
Washington, DC 20005
Telephone: 202-682-7000
Facsimile: 202-857-0940
Attention: Adam P. Storchak
Email: adam.storchak@weil.com

If to Trustee, to:

Address:
Telephone:
Facsimile:
Attention:

With copies (which shall not constitute notice) to:

Ropes & Gray LLP
1211 Avenue of the Americas
New York, NY 10036-8704
Telephone: 212-841-8814
Facsimile: 212-596-9090
Attention: Mark R. Somerstein
Email: mark.somerstein@ropesgray.com

If to NewCo, to:

Address:
Telephone:
Facsimile:
Attention:

With copies (which shall not constitute notice) to:

Cadwalader, Wickersham & Taft LLP
One World Financial Center
New York, NY 10281
Telephone: 212-504-6000
Facsimile: 212-504-6666
Attention: George A. Davis
Email: george.davis@cwt.com

Section 12.11 Severability.

If any term or provision of this Agreement is invalid, illegal, or incapable of being enforced by any law or public policy, all other terms or provisions of this Agreement shall nevertheless remain in full force and effect so long as the economic or legal substance of the Transactions is not affected in any manner materially adverse to any Party. Upon such determination that any term or other provision is invalid, illegal, or incapable of being enforced, the Parties shall negotiate in good faith to modify this Agreement so as to effect the original intent of the Parties as closely as possible in an acceptable manner in order that the Transactions are consummated as originally contemplated to the greatest extent possible.

Section 12.12 Binding Effect; Assignment.

This Agreement shall be binding upon the parties and their respective successors (including any trustee, receiver, receiver-manager, interim receiver or monitor or similar officer appointed in respect of Sellers in the Chapter 11 Cases) and permitted assigns. Except for the Trustee's assignment of the rights to receive the Indenture Purchased Assets to NewCo as contemplated herein (and except for NewCo's right to direct that some or all of the Purchased Assets be assigned and conveyed to one or more subsidiaries of NewCo), no assignment of this Agreement or of any rights or obligations hereunder may be made by any Seller, Trustee or NewCo (by operation of law or otherwise) without the prior written consent of the other Parties and any attempted assignment without the required consents shall be void; provided, however, that after the Closing, NewCo shall have the right to assign its rights and/or delegate its obligations hereunder (A) to any Affiliates (B) to any financing sources for collateral purposes or (C) to any subsequent purchaser of all or any portion of the stock or assets of NewCo or the Business. Upon any such permitted assignment, the references in this Agreement to NewCo shall also apply to any such assignee unless the context requires otherwise.

Section 12.13 No Third Party Beneficiaries.

This Agreement shall inure solely to the benefit of the Parties and their respective successors and permitted assigns and nothing herein, express or implied, is intended to or shall confer upon any Person that is not a Party (or a successor or permitted assign of any such Party) any legal or equitable right, benefit or remedy of any nature whatsoever, including any rights of employment for any specified period, under or by reason of this Agreement.

Section 12.14 Counterparts.

This Agreement may be executed and delivered (including by electronic transmission) in one or more counterparts, each of which will be deemed to be an original copy of this Agreement and all of which, when taken together, will be deemed to constitute one and the same agreement.

Section 12.15 Certain Rights for Trustee.

Notwithstanding anything to the contrary in this Agreement or any other agreement, instrument or document executed in connection herewith, notwithstanding any reference to "Party," "Parties", "party" or "parties" in this Agreement or any other agreement,

instrument or document executed in connection herewith, Deutsche Bank Trust Company Americas, as Trustee or otherwise (i) is not making any representations or warranties to Sellers, NewCo or any Affiliate of any of the foregoing in connection with this Agreement or any other agreement, instrument or document executed in connection herewith, or the transactions contemplated herein or therein, (ii) shall not be liable to any Person for any breach by any or all of the Seller, NewCo or its or their Affiliates of any of their respective representations, warranties, covenants or other agreements in connection with this Agreement or any other agreement, instrument or document executed in connection herewith or any of the transactions contemplated herein or therein and (iii) except to the extent of the Trustee's obligations explicitly set forth herein or in any other agreement, instrument or document executed in connection herewith or any of the transactions contemplated herein or therein, shall not have any liabilities under or in respect of any of this Agreement or any other agreement, instrument or document executed in connection herewith or any of the transactions contemplated herein or therein; provided, however, that the Parties hereby acknowledge that the sole recourse against the Trustee for any breach of this Agreement shall be to seek a decree of specific performance from any court of competent jurisdiction, and appropriate injunctive relief may be applied for and granted in connection therewith (and the prevailing party in any such proceeding shall be entitled to payment of their reasonable fees and expenses incurred in connection with the enforcement of their rights hereunder). Notwithstanding anything to the contrary in this Agreement or any other agreement, instrument or document executed in connection herewith, in making the credit bid for the Indenture Purchased Assets, and in transferring the right to receive the Indenture Purchased Assets to NewCo and in taking all other actions in connection with the foregoing (whether pursuant to this Agreement, any other agreement, instrument or document executed in connection therewith or otherwise), (i) the Trustee shall not be deemed to have assumed in any respect possession, title or control with respect to any of the Indenture Purchased Assets or other any other assets, (ii) the Trustee shall be entitled to all of the indemnification, reimbursement, exculpatory and other protections provided in the applicable Operative Documents (as defined in the Pass Through Agreements), and the Requisite Trustee Direction, and (iii) the transfer of the right to receive the Indenture Purchased Assets by the Trustee to NewCo shall be AS IS, WHERE IS, without any representations, warranties or recourse whatsoever.

Notwithstanding anything to the contrary herein or in any Transaction Documents, in the event that it is not the successful bidder at the Auction or does not otherwise acquire the Purchased Assets and/or the Business, Deutsche Bank Trust Company Americas, as Trustee or in any other capacity, (i) expressly reserves all of its rights, remedies, privileges, options, benefits and protections under the Operative Documents, including, without limitation, (x) all of its rights in respect of the proceeds of its credit bid hereunder of a portion of the Lessor Note Indebtedness for the Indenture Purchased Assets and (y) the charging liens and other rights provided in sections 3.3, 3.6, and 5.4 of the Indentures and section 7.7 of the Pass Through Agreements, and (ii) shall not be obligated to release any claims against any Person. Further, notwithstanding anything to the contrary herein or in any Transaction Documents, nothing in this Agreement or the Transaction Documents shall (or shall be deemed to) compromise, reduce, or otherwise impair the Trustee's rights, remedies, privileges, options, benefits and protections with respect to (x) the assets remaining in the Indenture Estate following the consummation of the transactions contemplated herein, including, without limitation, deficiency claims against the Debtors remaining after the credit bids provided for herein or (y) the charging liens and other rights provided in sections 3.3, 3.6, and 5.4 of the Indentures and section 7.7 of the Pass Through

Agreements. No provision of this Agreement, whether stated as a condition, covenant or otherwise, purporting to benefit the Trustee or limiting the duties or obligations of the Trustee, may be invoked by any party (including without limitation, any of Sellers or NewCo) other than the Trustee, whether as a condition of closing, condition of the effectiveness of any Credit Bid hereunder, or otherwise.

[REMAINDER OF PAGE INTENTIONALLY BLANK]

IN WITNESS WHEREOF, each of the Parties has caused this Agreement to be executed by its respective officers thereunto duly authorized, as of the date first written above.

AES EASTERN ENERGY, L.P.

By: AES NY, LLC, its General Partner

By: _____

Name:

Title:

AES SOMERSET, LLC

By: _____

Name:

Title:

AES CAYUGA, LLC

By: _____

Name:

Title:

AES WESTOVER, LLC

By: _____
Name:
Title:

AES GREENIDGE, LLC

By: _____
Name:
Title:

AES NY3, LLC

By: _____
Name:
Title:

**DEUTSCHE BANK TRUST COMPANY
AMERICAS, AS TRUSTEE**

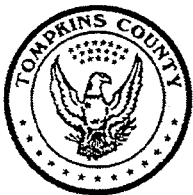
**BY: DEUTSCHE BANK NATIONAL TRUST
COMPANY**

By: _____
Name:
Title:

By: _____
Name:
Title:

**SOMERSET CAYUGA HOLDING
COMPANY, INC.**

By: _____
Name:
Title:



Aurora R. Valenti
TOMPKINS COUNTY CLERK

320 North Tioga Street
Ithaca, NY 14850
(607) 274-5431
Fax (607) 274-5445

Instrument Number
598401-037

No of Pages 9
(including this
cover page)

Receipt No 598401

Date 10/10/2012

Time 12 41 PM

Document Type DEED

Parties
To Transaction MILLIKEN TERM

Town/City LANSING

Delivered By
LORI SCANLON

Return To
ENV

Deed Information

Taxable Consideration \$0 00

State Transfer Tax \$0 00

County Transfer Tax \$0 00

RETT No 00390

State of New York
Tompkins County Clerk

Mortgage Information

Taxable Mortgage Amount

Basic Mortgage Tax

Special Mortgage Tax

Additional Mortgage Tax

Local Mortgage Tax

Mortgage Serial No

This sheet constitutes the Clerk endorsement required by Section 316-A(5) & Section 319 of the Real Property Law of the State of New York

Aurora R. Valenti

Tompkins County Clerk

Please do not remove this page.



Record + return to.
First American
633 Third Ave
New York, NY 10017

QUITCLAIM DEED

THIS INDENTURE, made as of the 8th day of August 20 12,

BETWEEN:

MILLIKEN FACILITY TRUST A-1
c/o Wilmington Trust Company, as Trustee
Rodney Square North, 1100 North Market Street
Wilmington, Delaware 19890

MILLIKEN FACILITY TRUST A-2
c/o Wilmington Trust Company, as Trustee
Rodney Square North, 1100 North Market Street
Wilmington, Delaware 19890

MILLIKEN FACILITY TRUST B-1
c/o Wilmington Trust Company, as Trustee
Rodney Square North, 1100 North Market Street
Wilmington, Delaware 19890

MILLIKEN FACILITY TRUST B-2
c/o Wilmington Trust Company, as Trustee
Rodney Square North, 1100 North Market Street
Wilmington, Delaware 19890

MILLIKEN FACILITY TRUST C-1
c/o Wilmington Trust Company, as Trustee
Rodney Square North, 1100 North Market Street
Wilmington, Delaware 19890

MILLIKEN FACILITY TRUST C-2
c/o Wilmington Trust Company, as Trustee
Rodney Square North, 1100 North Market Street
Wilmington, Delaware 19890

PARTY OF THE FIRST PART

CAYUGA OPERATING COMPANY LLC,
a Delaware limited liability company
228 Cayuga Drive
Lansing, New York 14882

PARTY OF THE SECOND PART

WITNESSETH, that the party of the first part, in consideration of ONE DOLLAR (\$1 00), and other good and valuable consideration, paid by the party of the second part, does hereby remise, release and quitclaim unto the party of the second part, the heirs or successors and assigns of the party of the second part, forever

SEE SCHEDULE "A" ATTACHED HERETO AND MADE A PART HEREOF.

TOGETHER with the appurtenances and all the estate and rights of the party of the first part in and to said premises

TO HAVE AND TO HOLD the premises herein granted unto the party of the second part, the heirs or successors and assigns of the party of the second part, forever.

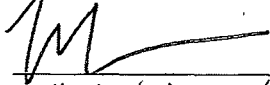
THIS QUITCLAIM DEED is subject to the trust provisions of Section 13 of the Lien Law

IN WITNESS WHEREOF, the party of the first part has duly executed this Quitclaim
Deed the day and year first above written

In presence of


MILLIKEN FACILITY TRUST A-1

By Wilmington Trust Company, not in its individual
capacity but solely as Trustee

By  _____ L S
Mark H. Brzoska


MILLIKEN FACILITY TRUST A-2

By Wilmington Trust Company, not in its individual
capacity but solely as Trustee

By  _____ L S
Mark H. Brzoska


MILLIKEN FACILITY TRUST B-1

By Wilmington Trust Company, not in its individual
capacity but solely as Trustee

By:  _____ L S
Mark H. Brzoska


MILLIKEN FACILITY TRUST B-2

By Wilmington Trust Company, not in its individual
capacity but solely as Trustee

By  _____ L S.
Mark H. Brzoska


MILLIKEN FACILITY TRUST C-1

By Wilmington Trust Company, not in its individual
capacity but solely as Trustee

By  _____ L S
Mark H. Brzoska

MILLIKEN FACILITY TRUST C-2

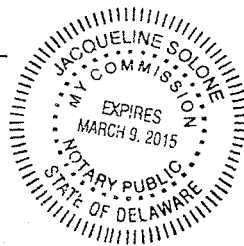
By Wilmington Trust Company, not in its individual
capacity but solely as Trustee

By:  _____ L S
Mark H. Brzoska

STATE OF Delaware)
COUNTY OF New Castle)

On this 8 day of Aug 20 12, before me, the undersigned, a notary public in and for said state, personally came Mark H. Brzoska, personally known to me or proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to the within instrument and acknowledged to me that he executed the same in his capacity, and that by his signature on the instrument, the individual or the person upon behalf of which the individual acted, executed the instrument

Jacqueline Solone
Notary Public JACQUELINE SOLONE
Notary Public - State of Delaware
My Comm. Expires March 9, 2015



CAYUGA PROPERTY:

[SURVEY AND RECORD DESCRIPTION]:

ALL THOSE CERTAIN LOTS, PIECES, OR PARCELS OF LAND SITUATE, LYING AND BEING SOUTHWESTERLY OF LAKE RIDGE ROAD IN THE TOWN OF LANSING, COUNTY OF TOMPKINS, AND STATE OF NEW YORK AS SHOWN ON A MAP ENTITLED "ALTA/ACSM LAND TITLE SURVEY, AES EASTERN ENERGY, L.P., TMN'S 11-1-3.211 & 11-1-3.212, TOWN OF LANSING, TOMPKINS COUNTY, NEW YORK STATE", AS PREPARED BY HULBERT ENGINEERING AND LAND SURVEYING, P.C., BINGHAMTON, NEW YORK DATED MAY 10, 2012. (HELS JOB# 12047 01), BOUNDED AND DESCRIBED AS FOLLOWS:

PARCEL I

(FOR INFORMATION ONLY: FORMERLY TAX PARCEL 12-1-15.4, CURRENTLY PART OF TAX PARCEL 11-1-3.212)

BEGINNING AT A FOUND 5/8 INCH REBAR (CAP DESTROYED) AT THE INTERSECTION OF THE DIVISION LINE BETWEEN THE PROPERTY OWNED BY AES EASTERN ENERGY, L.P. ON THE NORTHEAST AND THE PROPERTY NOW OR FORMERLY OWNED BY ROGER B AND DORIS M. SOVOCOOL ON THE SOUTHWEST WITH THE EXISTING SOUTHEASTERLY ROAD BOUNDARY OF MILLIKEN STATION ROAD;

RUNNING THENCE ALONG SAID ROAD BOUNDARY THE FOLLOWING TEN (10) COURSES AND DISTANCES:

(1) NORTH 42°33'03" EAST, A DISTANCE OF 6.31 FEET TO A POINT;
(2) THENCE NORTH 36°55'09" EAST, A DISTANCE OF 231.35 FEET TO A POINT;
(3) THENCE NORTH 36°58'55" EAST, A DISTANCE OF 148.03 FEET TO A POINT;
(4) THENCE NORTH 45°59'38" EAST, A DISTANCE OF 279.03 FEET TO A POINT;
(5) THENCE NORTH 56°44'31" EAST, A DISTANCE OF 573.26 FEET TO A POINT;
(6) THENCE NORTH 57°53'32" EAST, A DISTANCE OF 481.66 FEET TO A POINT;
(7) THENCE NORTH 56°55'34" EAST, A DISTANCE OF 191.91 FEET TO A POINT;
(8) THENCE NORTH 53°19'29" EAST, A DISTANCE OF 215.01 FEET TO A FOUND 3/4 INCH REBAR;
(9) THENCE NORTH 49°59'32" EAST, A DISTANCE OF 164.68 FEET TO A POINT;
(10) THENCE NORTH 51°24'49" EAST, A DISTANCE OF 302.11 FEET TO A FOUND 3/4 INCH REBAR AT ITS INTERSECTION WITH THE DIVISION LINE BETWEEN SAID PROPERTY OWNED BY AES EASTERN ENERGY, L.P. ON THE SOUTHWEST AND THE PROPERTY NOW OR FORMERLY OWNED BY HOLCIM (US) INC ON THE NORTHEAST,
THENCE SOUTH 41°09'02" EAST, ALONG THE LAST MENTIONED DIVISION LINE AND PASSING THROUGH A FOUND 3/4 INCH REBAR, A DISTANCE OF 162.59 FEET TO A POINT AT ITS INTERSECTION WITH THE DIVISION LINE BETWEEN SAID PROPERTY OWNED BY AES EASTERN ENERGY, L.P. ON THE NORTHWEST AND SAID PROPERTY NOW OR FORMERLY OWNED BY HOLCIM (US) INC ON THE SOUTHEAST,
THENCE SOUTH 50°51'05" WEST ALONG THE LAST MENTIONED DIVISION LINE, A DISTANCE OF 465.80 FEET TO A POINT AT ITS INTERSECTION WITH THE DIVISION LINE BETWEEN SAID PROPERTY OWNED BY AES EASTERN ENERGY, L.P. ON THE WEST AND THE PROPERTY NOW OR FORMERLY OWNED BY ROGER B. SOVOCOOL ON THE EAST;
THENCE ALONG THE LAST MENTIONED DIVISION LINE, THE FOLLOWING NINE (9) COURSES AND DISTANCES

(1) SOUTH 12°41'50" WEST, A DISTANCE OF 241.39 FEET TO A POINT;
(2) THENCE SOUTH 29°29'34" EAST, A DISTANCE OF 101.18 FEET TO A POINT;
(3) THENCE SOUTH 33°48'57" WEST, A DISTANCE OF 162.71 FEET TO A POINT;
(4) THENCE SOUTH 56°20'40" WEST, A DISTANCE OF 120.23 FEET TO A POINT;
(5) THENCE SOUTH 85°26'00" WEST, A DISTANCE OF 169.68 FEET TO A POINT;
(6) THENCE SOUTH 39°53'52" WEST, A DISTANCE OF 142.33 FEET TO A POINT;
(7) THENCE SOUTH 44°56'59" WEST, A DISTANCE OF 195.26 FEET TO A POINT;
(8) THENCE SOUTH 40°07'15" WEST, A DISTANCE OF 137.66 FEET TO A POINT;

(9) THENCE SOUTH 66°08'22" WEST, A DISTANCE OF 157.66 FEET TO A POINT AT ITS INTERSECTION WITH THE DIVISION LINE BETWEEN SAID PROPERTY OWNED BY AES EASTERN ENERGY, L.P. ON THE NORTHWEST AND SAID PROPERTY NOW OR FORMERLY OWNED BY ROGER B. SOVOCOL ON THE SOUTHEAST;

THENCE ALONG THE LAST MENTIONED DIVISION LINE AND ALONG THE DIVISION LINE BETWEEN SAID PROPERTY OWNED BY AES EASTERN ENERGY, L.P. ON THE NORTHWEST AND THE PROPERTY NOW OR FORMERLY OWNED BY GLENN A. COBB AND HEATHER E. MILLER ON THE SOUTHEAST, THE FOLLOWING THREE (3) COURSES AND DISTANCES:

(1) SOUTH 50°57'51" WEST, A DISTANCE OF 382.75 FEET TO A POINT;

(2) THENCE SOUTH 24°26'48" WEST, A DISTANCE OF 170.62 FEET TO A POINT,

(3) THENCE SOUTH 52°08'38" WEST, A DISTANCE OF 362.44 FEET TO A FOUND 5/8 INCH REBAR WITH "HAWK" CAP AT ITS INTERSECTION WITH THE ABOVE FIRST MENTIONED DIVISION LINE;

THENCE NORTH 35°50'06" WEST ALONG SAID FIRST MENTIONED DIVISION LINE, A DISTANCE OF 482.38 FEET TO THE POINT OR PLACE OF BEGINNING.

CONTAINING 1,085,028 SQUARE FEET OR 24.9088 ACRES, MORE OR LESS.

PARCEL II

(FOR INFORMATION ONLY: FORMERLY TAX PARCEL 12-1-15.5; CURRENTLY PART OF TAX PARCEL 11-1-3.212)

BEGINNING AT A POINT ON THE DIVISION LINE BETWEEN THE PROPERTY OWNED BY AES EASTERN ENERGY, L.P. ON THE NORTHEAST AND THE PROPERTY NOW OR FORMERLY OWNED BY PENNSYLVANIA LINES LLC ON THE SOUTHWEST AT ITS INTERSECTION WITH THE EXISTING SOUTHEASTERLY ROAD BOUNDARY OF MILLIKEN STATION ROAD; RUNNING THENCE ALONG SAID ROAD BOUNDARY THE FOLLOWING TWO (2) COURSES AND DISTANCES:

(1) NORTH 52°23'08" EAST, A DISTANCE OF 126.26 FEET TO A POINT;

(2) THENCE NORTH 44°53'16" EAST, A DISTANCE OF 174.04 FEET TO A FOUND 5/8 INCH REBAR WITH "HAWK" CAP AT ITS INTERSECTION WITH THE DIVISION LINE BETWEEN SAID PROPERTY OWNED BY AES EASTERN ENERGY, L.P. ON THE SOUTHWEST AND THE PROPERTY NOW OR FORMERLY OWNED BY ROGER B. AND DORIS M. SOVOCOL ON THE NORTHEAST; THENCE SOUTH 35°50'06" EAST, ALONG THE LAST MENTIONED DIVISION LINE, A DISTANCE OF 465.35 FEET TO A FOUND 5/8 INCH REBAR WITH "HAWK" CAP AT ITS INTERSECTION WITH THE DIVISION LINE BETWEEN SAID PROPERTY OWNED BY AES EASTERN ENERGY, L.P. ON THE NORTHWEST AND THE PROPERTY NOW OR FORMERLY OWNED BY PETER F. SOVOCOL ON THE SOUTHEAST;

THENCE SOUTH 52°08'38" WEST ALONG THE LAST MENTIONED DIVISION LINE, A DISTANCE OF 280.00 FEET TO A POINT AT ITS INTERSECTION WITH SAID FIRST MENTIONED DIVISION LINE,

THENCE NORTH 38°10'38" WEST ALONG SAID FIRST MENTIONED DIVISION LINE, A DISTANCE OF 443.62 FEET TO THE POINT OR PLACE OF BEGINNING.

CONTAINING 130,000 SQUARE FEET OR 2.9844 ACRES, MORE OR LESS.

PARCEL III

(FOR INFORMATION ONLY: FORMERLY TAX PARCEL 11-1-32; CURRENTLY TAX PARCEL 11-1-3.211 AND PART OF 11-1-3.212)

BEGINNING AT A FOUND 1 1/4 INCH BOLT ON THE EXISTING SOUTHWESTERLY ROAD BOUNDARY OF LAKE RIDGE ROAD

AT ITS INTERSECTION WITH THE DIVISION LINE BETWEEN THE PROPERTY OWNED BY AES EASTERN ENERGY, L.P. ON THE NORTH AND THE PROPERTY NOW OR FORMERLY OWNED BY HENRY TOLEN ON THE SOUTH;

RUNNING THENCE SOUTH 85°30'32" WEST, ALONG SAID DIVISION LINE, A DISTANCE OF 24.71 FEET TO A FOUND 5/8 INCH REBAR AT ITS INTERSECTION WITH THE DIVISION LINE BETWEEN SAID PROPERTY OWNED BY AES EASTERN ENERGY, L.P. ON THE WEST AND SAID PROPERTY NOW OR FORMERLY OWNED BY HENRY TOLEN ON THE EAST;

THENCE SOUTH 06°42'21" EAST ALONG THE LAST MENTIONED DIVISION LINE, ALONG THE DIVISION LINE BETWEEN SAID PROPERTY OWNED BY AES EASTERN ENERGY, L.P. ON THE WEST AND THE PROPERTY NOW OR FORMERLY OWNED BY STEPHEN JAMES AND DOREEN M. MACK ON THE EAST, AND ALONG THE DIVISION LINE BETWEEN SAID PROPERTY OWNED BY

AES EASTERN ENERGY, L.P. ON THE WEST AND THE PROPERTY NOW OR FORMERLY OWNED BY CHARLES D., SR. AND JOLAN E. BALOG ON THE EAST, A DISTANCE OF 817.60 FEET TO A FOUND 5/8 INCH REBAR IN CONCRETE WITH "MACNEILL" CAP ON THE NORTHEASTERLY ROAD BOUNDARY OF MILLIKEN DRIVE (COUNTY ROAD 156) AT ITS INTERSECTION WITH THE DIVISION LINE BETWEEN SAID PROPERTY OWNED BY AES EASTERN ENERGY, L.P. ON THE NORTH AND THE PROPERTY NOW OR FORMERLY OWNED BY SARAH TRENHOLM AND ROBERT MEZZANOTTE ON THE SOUTH;

THENCE SOUTH 87°59'24" WEST, ALONG THE LAST MENTIONED DIVISION LINE AND ALONG THE DIVISION LINE BETWEEN SAID PROPERTY OWNED BY AES EASTERN ENERGY, L.P. ON THE NORTH AND THE PROPERTY NOW OR FORMERLY OWNED BY RICHARD C. JONES, JR. ON THE SOUTH, A DISTANCE OF 421.89 FEET TO A FOUND 5/8 INCH REBAR AT ITS INTERSECTION WITH THE DIVISION LINE BETWEEN SAID PROPERTY OWNED BY AES EASTERN ENERGY, L.P. ON THE WEST AND SAID PROPERTY NOW OR FORMERLY OWNED BY RICHARD C. JONES, JR. ON THE EAST;

THENCE SOUTH 02°11'01" EAST, ALONG THE LAST MENTIONED DIVISION LINE, A DISTANCE OF 358.43 FEET TO A FOUND 5/8 INCH REBAR AT ITS INTERSECTION WITH SAID NORTHWESTERLY ROAD BOUNDARY OF MILLIKEN DRIVE;

THENCE ALONG THE LAST MENTIONED ROAD BOUNDARY AND ALONG MILLIKEN STATION ROAD (COUNTY ROAD 156), THE FOLLOWING TWENTY-THREE (23) COURSES AND DISTANCES:

- (1) SOUTH 73°59'07" WEST, A DISTANCE OF 118.96 FEET TO A POINT;
- (2) THENCE SOUTH 68°24'42" WEST, A DISTANCE OF 274.77 FEET TO A POINT;
- (3) THENCE SOUTH 61°34'36" WEST, A DISTANCE OF 315.82 FEET TO A POINT;
- (4) THENCE SOUTH 58°34'58" WEST, A DISTANCE OF 114.45 FEET TO A POINT;
- (5) THENCE SOUTH 56°02'40" WEST, A DISTANCE OF 654.22 FEET TO A FOUND 5/8 INCH REBAR WITH "HAWK" CAP;
- (6) THENCE NORTH 84°42'07" WEST, A DISTANCE OF 226.88 FEET TO A FOUND 5/8 INCH REBAR WITH "HAWK" CAP;
- (7) THENCE SOUTH 04°20'49" WEST, A DISTANCE OF 171.75 FEET TO A FOUND 5/8 INCH REBAR WITH "HAWK" CAP;
- (8) THENCE SOUTH 60°35'39" WEST, A DISTANCE OF 276.49 FEET TO A POINT;
- (9) THENCE SOUTH 61°12'56" WEST, A DISTANCE OF 548.78 FEET TO A POINT;
- (10) THENCE SOUTH 56°20'26" WEST, A DISTANCE OF 167.16 FEET TO A FOUND 5/8 INCH REBAR,

- (11) THENCE SOUTH 51°24'49" WEST, A DISTANCE OF 310.82 FEET TO A POINT;
- (12) THENCE SOUTH 49°59'32" WEST, A DISTANCE OF 163.88 FEET TO A POINT;
- (13) THENCE SOUTH 53°20'04" WEST, A DISTANCE OF 211.38 FEET TO A POINT;
- (14) THENCE SOUTH 56°55'34" WEST, A DISTANCE OF 189.95 FEET TO A POINT;
- (15) THENCE SOUTH 57°53'32" WEST, A DISTANCE OF 481.74 FEET TO A POINT;
- (16) THENCE SOUTH 56°44'31" WEST, A DISTANCE OF 578.42 FEET TO A POINT;
- (17) THENCE SOUTH 45°59'38" WEST, A DISTANCE OF 287.59 FEET TO A POINT;
- (18) THENCE SOUTH 36°58'55" WEST, A DISTANCE OF 151.95 FEET TO A POINT;
- (19) THENCE SOUTH 36°55'09" WEST, A DISTANCE OF 229.36 FEET TO A POINT;
- (20) THENCE SOUTH 42°33'03" WEST, A DISTANCE OF 103.53 FEET TO A POINT;
- (21) THENCE SOUTH 44°53'16" WEST, A DISTANCE OF 170.82 FEET TO A POINT;
- (22) THENCE SOUTH 52°23'08" WEST, A DISTANCE OF 123.62 FEET TO A POINT;
- (23) THENCE SOUTH 38°31'17" EAST, A DISTANCE OF 24.75 FEET TO A POINT AT ITS INTERSECTION WITH THE DIVISION LINE BETWEEN SAID PROPERTY OWNED BY AES EASTERN ENERGY, L.P. ON THE NORTH AND THE PROPERTY NOW OR FORMERLY OWNED BY PENNSYLVANIA LINES LLC ON THE SOUTH;

THENCE SOUTH 51°54'52" WEST, ALONG THE LAST MENTIONED DIVISION LINE, A DISTANCE OF 66.00 FEET TO A POINT AT ITS INTERSECTION WITH THE DIVISION LINE BETWEEN SAID PROPERTY OWNED BY AES EASTERN ENERGY, L.P. ON THE NORTHEAST AND THE PROPERTY NOW OR FORMERLY OWNED BY HERITAGE PARK TOWNHOUSES, INC. ON THE SOUTHWEST; THENCE ALONG THE LAST MENTIONED DIVISION LINE, ALONG THE DIVISION LINE BETWEEN SAID PROPERTY OWNED BY AES EASTERN ENERGY, L.P. ON THE NORTHEAST AND THE PROPERTY NOW OR FORMERLY OWNED BY FRED J. AND SHIRLEY D. STONE ON THE SOUTHWEST, AND ALONG THE DIVISION LINE BETWEEN SAID PROPERTY OWNED BY AES EASTERN ENERGY, L.P. ON THE NORTHEAST AND THE PROPERTY NOW OR FORMERLY OWNED BY FRED J. STONE AND SHIRLEY DEEB STONE ON THE SOUTHWEST, THE FOLLOWING SIX (6)

COURSES AND DISTANCES:

(1) NORTH 38°31'19" WEST, A DISTANCE OF 56.50 FEET TO A POINT;
(2) THENCE NORTH 51°28'43" EAST, A DISTANCE OF 16.50 FEET TO A POINT;
(3) THENCE NORTH 38°31'17" WEST, A DISTANCE OF 56.00 FEET TO A POINT;
(4) THENCE SOUTH 51°28'43" WEST, A DISTANCE OF 16.50 FEET TO A POINT;
(5) THENCE NORTH 38°31'17" WEST, A DISTANCE OF 136.00 FEET TO A FOUND 5/8 INCH REBAR WITH "HAWK" CAP;
(6) THENCE SOUTH 51°28'43" WEST, A DISTANCE OF 36.00 FEET TO A POINT AT ITS INTERSECTION WITH THE EXISTING EASTERLY SHORELINE OF CAYUGA LAKE;
THENCE GENERALLY NORTHERLY ALONG SAID SHORELINE, A DISTANCE OF 4,711 FEET, MORE OR LESS,

DEFINED BY THE FOLLOWING FOUR (4) CHORDS AND DISTANCES:

(1) NORTH 31°20'00" WEST, A DISTANCE OF 1,030.76 FEET TO A POINT,
(2) THENCE NORTH 12°06'25" WEST, A DISTANCE OF 1,117.23 FEET TO A POINT;
(3) THENCE NORTH 18°16'16" WEST, A DISTANCE OF 1,143.50 FEET TO A POINT;
(4) THENCE NORTH 12°11'02" WEST, A DISTANCE OF 1,241.70 FEET TO A POINT AT ITS INTERSECTION WITH THE DIVISION LINE BETWEEN SAID PROPERTY OWNED BY AES EASTERN ENERGY, L.P. ON THE SOUTH AND THE PROPERTY NOW OR FORMERLY OWNED BY NEW YORK STATE ELECTRIC & GAS CORPORATION ON THE NORTH;

THENCE ALONG THE LAST MENTIONED DIVISION LINE THE FOLLOWING SEVEN (7) COURSES AND DISTANCES:

(1) SOUTH 89°53'55" EAST, A DISTANCE OF 341.37 FEET TO A FOUND 5/8 INCH REBAR WITH "HAWK" CAP;
(2) THENCE SOUTH 82°57'21" EAST, A DISTANCE OF 2,100.00 FEET TO A POINT;
(3) THENCE NORTH 10°27'25" WEST, A DISTANCE OF 24.75 FEET TO A FOUND 5/8 INCH REBAR WITH "HAWK" CAP;
(4) THENCE NORTH 79°32'39" EAST, A DISTANCE OF 1,166.28 FEET TO A FOUND 5/8 INCH REBAR WITH "HAWK" CAP,
(5) THENCE NORTH 85°27'44" EAST, A DISTANCE OF 170.25 FEET TO A POINT;
(6) THENCE NORTH 87°42'52" EAST, A DISTANCE OF 398.52 FEET TO A POINT,
(7) THENCE NORTH 87°57'59" EAST, A DISTANCE OF 1,234.97 FEET TO A FOUND 5/8 INCH REBAR WITH "HAWK" CAP AT ITS INTERSECTION WITH THE DIVISION LINE BETWEEN SAID PROPERTY OWNED BY AES EASTERN ENERGY, L.P. ON THE EAST AND SAID PROPERTY NOW OR FORMERLY OWNED BY NEW YORK STATE ELECTRIC & GAS CORPORATION ON THE WEST;
THENCE NORTH 01°20'08" WEST, ALONG THE LAST MENTIONED DIVISION LINE, A DISTANCE OF 1,467.61 FEET TO A FOUND 5/8 INCH REBAR WITH "HAWK" CAP AT ITS INTERSECTION WITH THE DIVISION LINE BETWEEN SAID PROPERTY OWNED BY AES EASTERN ENERGY, L.P. ON THE SOUTH AND SAID PROPERTY NOW OR FORMERLY OWNED BY NEW YORK STATE ELECTRIC & GAS CORPORATION ON THE NORTH;
THENCE NORTH 88°13'10" EAST, ALONG THE LAST MENTIONED DIVISION LINE, A DISTANCE OF 676.39 FEET TO A FOUND 5/8 INCH REBAR WITH "HAWK" CAP AT ITS INTERSECTION WITH THE ABOVE FIRST MENTIONED ROAD BOUNDARY;

THENCE ALONG SAID FIRST MENTIONED ROAD BOUNDARY, THE FOLLOWING TWO (2) COURSES AND DISTANCES:

(1) SOUTH 22°47'17" EAST, A DISTANCE OF 730.30 FEET TO A POINT;
(2) THENCE SOUTH 23°03'52" EAST, A DISTANCE OF 903.69 FEET TO THE POINT OR PLACE OF BEGINNING

CONTAINING 17,802,087 SQUARE FEET OR 408.6797 ACRES, MORE OR LESS.

TOGETHER WITH THE BENEFITS OF AND SUBJECT TO THE BURDENS CONTAINED IN THAT CERTAIN AMENDED AND RESTATED RECIPROCAL EASEMENT AGREEMENT (MILLIKEN STATION) DATED AS OF 5/1/1999 MADE BY AND BETWEEN NEW YORK STATE ELECTRIC & GAS CORPORATION AND AES EASTERN ENERGY, L.P., AND RECORDED ON 5/20/1999 IN LIBER 847 CP 46.

EXCEPTING AND RESERVING FROM THE ABOVE DESCRIBED PARCEL III, THE SUBSTATION PARCEL AS FOLLOWS:

COMMENCING AT A POINT IN THE CENTERLINE OF MILLIKEN ROAD, SAID POINT BEING 4,130 FEET SOUTHWESTERLY MEASURED ALONG SAID CENTERLINE FROM A POINT AT ITS INTERSECTION WITH THE CENTERLINE OF RELOCATED MILLIKEN ROAD;

RUNNING THENCE NORTH 08°06'12" WEST, THROUGH THE PROPERTY OWNED BY AES EASTERN ENERGY, L.P., A DISTANCE OF 1,036.40 FEET TO A FOUND 5/8 INCH REBAR WITH "HAWK" CAP AT ITS INTERSECTION WITH THE DIVISION LINE BETWEEN SAID PROPERTY OWNED BY AES EASTERN ENERGY L.P. ON THE WEST AND THE PROPERTY NOW OR FORMERLY OWNED BY NEW YORK STATE ELECTRIC AND GAS CORPORATION ON THE EAST, SAID 5/8 INCH REBAR ALSO BEING THE POINT OR PLACE OF BEGINNING;
THENCE FROM SAID POINT OR PLACE OF BEGINNING, ALONG THE LAST MENTIONED DIVISION LINE, THE FOLLOWING FIFTEEN (15) COURSES AND DISTANCES
(1) NORTH 18°27'27" WEST, A DISTANCE OF 120.43 FEET TO A FOUND 5/8 INCH REBAR WITH "HAWK" CAP;
(2) THENCE NORTH 71°32'33" EAST, A DISTANCE OF 24.00 FEET TO A FOUND 5/8 INCH REBAR WITH "HAWK" CAP;
(3) THENCE NORTH 19°00'30" EAST, A DISTANCE OF 50.72 FEET TO A FOUND 5/8 INCH REBAR WITH "HAWK" CAP;
(4) THENCE NORTH 71°38'14" EAST, A DISTANCE OF 124.62 FEET TO A FOUND 5/8 INCH REBAR WITH "HAWK" CAP;
(5) THENCE NORTH 34°08'45" EAST, A DISTANCE OF 34.78 FEET TO A FOUND 5/8 INCH REBAR WITH "HAWK" CAP;
(6) THENCE NORTH 18°12'56" WEST, A DISTANCE OF 62.67 FEET TO A FOUND 5/8 INCH REBAR WITH "HAWK" CAP;
(7) THENCE SOUTH 71°56'47" WEST, A DISTANCE OF 38.37 FEET TO A FOUND 5/8 INCH REBAR WITH "HAWK" CAP;
(8) THENCE NORTH 18°10'09" WEST, A DISTANCE OF 121.12 FEET TO A FOUND 5/8 INCH REBAR WITH "HAWK" CAP;
(9) THENCE NORTH 72°11'11" EAST, A DISTANCE OF 48.83 FEET TO A FOUND 5/8 INCH REBAR WITH "HAWK" CAP;
(10) THENCE NORTH 18°30'01" WEST, A DISTANCE OF 60.86 FEET TO A FOUND 5/8 INCH REBAR WITH "HAWK" CAP;
(11) THENCE NORTH 71°56'43" EAST, A DISTANCE OF 251.15 FEET TO A POINT;
(12) THENCE SOUTH 18°09'51" EAST, A DISTANCE OF 357.80 FEET TO A POINT;
(13) THENCE SOUTH 71°49'49" WEST, A DISTANCE OF 244.57 FEET TO A FOUND 5/8 INCH REBAR WITH "HAWK" CAP;
(14) THENCE SOUTH 18°04'07" EAST, A DISTANCE OF 68.93 FEET TO A FOUND 5/8 INCH REBAR WITH "HAWK" CAP;
(15) THENCE SOUTH 71°52'26" WEST, A DISTANCE OF 222.67 FEET TO THE POINT OR PLACE OF BEGINNING.



Tompkins County Clerk Recording Page

Return To

Aurora R. Valenti, County Clerk

Tompkins County Clerk
320 North Tioga Street
Ithaca, NY 14850
(607) 274-5431

Document Type: **JUDGMENT**

Receipt Number: 13-37829

Party 1	
AES CREATIVE RESOURCES LP	

Fees	
Total Fees Paid:	\$0.00

Party 2
NEW YORK STATE DEPT OF LABOR - UNEMPLOYMENT INSURANCE DIVISION

Damages Amt: \$1,161.61

Instrument #: 2013-11566

Total Judgment Amt: \$1,448.53

State of New York
County of Tompkins

Filed on August 26th, 2013 at 12:41:13 PM
with a total page count of 3.

Aurora R. Valenti

Tompkins County Clerk

This sheet constitutes the Clerk's endorsement required by section 319 of the Real Property Law of the State of New York

HH

Do Not Detach