Exhibit No.:	_____
Issue(s):	FMGP Remediation/ Safety Line Replacement Program
Witness/Type of Exhibit:	Robertson/Direct
Sponsoring Party:	Public Counsel
Case No.:	GR-2014-0007

DIRECT TESTIMONY

OF

TED ROBERTSON

Submitted on Behalf of the Office of the Public Counsel

MISSOURI GAS ENERGY
A DIVISION OF LACLEDE GAS

CASE NO. GR-2014-0007

January 29, 2014

BEFORE THE PUBLIC SERVICE COMMISSION
OF THE STATE OF MISSOURI

In the Matter of the General Rate Increase Tariffs of Missouri Gas Energy, a Division of Laclede Gas Company	))))	Case No. GR-2014-0007

AFFIDAVIT OF TED ROBERTSON

STATE OF MISSOURI)
) **ss**
COUNTY OF COLE)

Ted Robertson, of lawful age and being first duly sworn, deposes and states:

1. My name is Ted Robertson. I am the Chief Public Utility Accountant for the Office of the Public Counsel.

2. Attached hereto and made a part hereof for all purposes is my direct testimony.

3. I hereby swear and affirm that my statements contained in the attached testimony are true and correct to the best of my knowledge and belief.

Ted Robertson, C.P.A.
Chief Public Utility Accountant

Subscribed and sworn to me this 29th day of January 2014.

NOTARY PUBLIC NOTARY SEAL STATE OF MISSOURI

JERENE A. BUCKMAN
My Commission Expires
August 23, 2017
Cole County
Commission #13754037

Jerene A. Buckman
Notary Public

My Commission expires August 23, 2017.

TABLE OF CONTENTS

DIRECT TESTIMONY
OF
TED ROBERTSON

MISSOURI GAS ENERGY
CASE NO. GR-2014-0007

I. INTRODUCTION

Q. PLEASE STATE YOUR NAME AND BUSINESS ADDRESS.

A. Ted Robertson, PO Box 2230, Jefferson City, Missouri 65102-2230.

Q. BY WHOM ARE YOU EMPLOYED AND IN WHAT CAPACITY?

A. I am employed by the Missouri Office of the Public Counsel ("OPC" or "Public Counsel") as the Chief Public Utility Accountant.

Q. WHAT IS THE NATURE OF YOUR CURRENT DUTIES AT THE OPC?

A. My duties include all activities associated with the supervision and operation of the regulatory accounting section of the OPC. I am also responsible for performing audits and examinations of the books and records of public utilities operating within the state of Missouri.

Q. PLEASE DESCRIBE YOUR EDUCATIONAL BACKGROUND AND OTHER QUALIFICATIONS.

A. I graduated in May, 1988, from Southwest Missouri State University in Springfield, Missouri, with a Bachelor of Science Degree in Accounting. In November of 1988, I passed the Uniform Certified Public Accountant Examination, and I obtained Certified Public Accountant ("CPA") certification from the state of Missouri in 1989. My CPA license number is 2004012798.

Q. HAVE YOU RECEIVED SPECIALIZED TRAINING RELATED TO PUBLIC UTILITY ACCOUNTING?

A. Yes. In addition to being employed by the Missouri Office of the Public Counsel since July 1990, I have attended the NARUC Annual Regulatory Studies Program at Michigan State University, and I have also participated in numerous training seminars relating to this specific area of accounting study.

Q. HAVE YOU PREVIOUSLY TESTIFIED BEFORE THE MISSOURI PUBLIC SERVICE COMMISSION ("COMMISSION" OR "MPSC")?

A. Yes, I have testified on numerous issues before this Commission. Please refer to Schedule TJR-1, attached to this testimony, for a listing of cases in which I have submitted testimony.

II. PURPOSE OF TESTIMONY

Q. WHAT IS THE PURPOSE OF YOUR DIRECT TESTIMONY?

A. The purpose of this direct testimony is to address the Public Counsel's positions regarding the determination of an appropriate level of costs associated with Missouri Gas Energy's ("MGE" or "Company") Former Manufactured Gas Plant Remediation ("FMGP") and Safety Line Replacement Program ("SLRP").

III. FORMER MANFACTURED GAS PLANT REMEDIATION

Q. WHAT IS THE ISSUE?

A. This issue concerns the determination of the appropriate level of remediation costs for Former Manufactured Gas Plant to include in the development of rates for the instant case.

Q WHAT IS THE TEST YEAR AMOUNT OF FORMER MANFACTURED GAS PLANT REMEDIATION EXPENSE COMPANY RECORDED IN ITS FINANCIAL RECORDS?

A. For the Commission ordered test year, twelve months ended April 30, 2013, the amount expensed was $799,647.61 (sources: MPSC Staff DR Nos. 44 and 44.2 and 13 - General Ledger).

Q WHAT IS THE AMOUNT OF FORMER MANFACTURED GAS PLANT REMEDIATION EXPENSE COMPANY RECORDED IN ITS FINANCIAL RECORDS FOR THE TWELVE MONTHS ENDED SEPTEMBER 30, 2013 UPDATE FOR KNOWN AND MEASURABLE CHANGES?

A. For the Commission ordered test year update for known and measureable changes, i.e., twelve months ended September 30, 2013, the amount expensed was $925,650.45 (sources: MPSC Staff DR Nos. 44 and 13 - General Ledger).

Q. WHAT ARE FORMER MANUFACTURED GAS PLANT REMEDIATION COSTS?

A. FMGP remediation costs can be defined as all investigations, testing, land acquisition (if appropriate), cleanup and/or litigation costs and expenses or other liabilities, excluding personal injury claims, specifically relating to former gas manufacturing facility sites, disposal sites or sites to which hazardous material may have migrated, as a result of the operation or decommissioning of the former gas manufacturing facilities.

Q. WHY IS THE COMPANY POTENTIALLY LIABLE TO INCUR FORMER MANUFACTURED GAS PLANT CLEANUP COSTS?

A. To deal with the contamination and cleanup problems presented by abandoned and/or inactive hazardous waste sites, Congress in 1980 enacted the Comprehensive Environment Compensation and Liability Act ("CERCLA" or "Superfund"). CERCLA

provided funding and enforcement authority to the Environmental Protection Agency ("EPA") to enable it to respond to hazardous substance releases and to enable the EPA to undertake or regulate the cleanup of those hazardous sites where owners/operators were either without resources or unwilling to implement such cleanups.

In 1986 CERCLA was amended by the Superfund Amendments and Reauthorization Act which intensified Superfund activities and set a goal of achieving “permanent’ solutions at Superfund sites. CERCLA imposes strict, joint and several liability on present or former owners or operators of facilities where substances have been or are threatened to be released into the environment.

Potentially responsible parties ("PRP") included owners of contaminated land from point of contamination to date, operators (which is interpreted as any party that had possession, control or influence over the premises during the same period), transporters and generators of the contaminants regardless of whether they directly released such substances into the environment.

Q. MISSOURI GAS ENERGY IS A POTENTIALLY RESPONSIBLE PARTY FOR HOW MANY FORMER MANUFACTURED GAS PLANT SITES?

A. MGE has identified that it currently has ownership interests in six (6) FMGP sites that could require potential responsibility for cleanup efforts. In addition to the currently owned sites, Company has identified fourteen (14) facilities it does not own which may or may not involve it as a PRP under the Superfund statute (source: MPSC Staff DR No. 44.1 (referencing MPSC Staff DR No. 9.2 in Case No. GR-2004-0209 and MPSC Staff DR No. 5.1 in Case No. GR-2009-0355)).

Q. IS PUBLIC COUNSEL OPPOSED TO INCLUDING FORMER MANUFACTURED GAS PLANT REMEDIATION COSTS IN MISSOURI GAS ENERGY'S COST OF SERVICE?

A. Yes.

Q. PLEASE EXPLAIN WHY.

A. Public Counsel's opposition to the inclusion of the former manufactured gas plant remediation costs in MGE's cost of service is based on several reasons. For example, MGE and Western Resources Inc. ("WRI") have already recognized and accepted that they, their insurers and potentially other PRP's are responsible for the costs of the FMGP remediation (WRI is the former owner of the Missouri gas utility assets). Pursuant to the terms of the Environmental Liability Agreement attached to the Agreement for Purchase of Assets between Southern Union Company and Western Resources Inc., the Companies have agreed to share the liability for payment of any costs associated with any MGP remediation that might occur subsequent to Southern Union Company buying the Missouri gas utility assets. The Environmental Liability Agreement is attached to this direct testimony as Schedule TJR-2 (source: Robertson Rebuttal Testimony, Schedule TJR-1, MGE Case No. GR-2001-292).

Also, Public Counsel believes that the costs should not be included in customer's rates because, 1) to my knowledge, none of the former manufactured gas plants are currently in operation. Therefore, the FMGP plant is not used and useful in providing service to current customers. If current customers are required to pay for the cost of service not recovered from past customers (e.g., past rates were set too low), the result is intergenerational inequity, and possibly retroactive ratemaking will occur, 2) present customers should not be required to pay for past deficits of the Company in future rates, 3) Public Counsel believes that shareholders are compensated for this particular business risk through the risk

premium inherent to the equity portion of the Company's weighted average rate of return, 4) shareholders, not ratepayers, receive the benefits of any gains or losses (i.e., below-the line treatment) of any sale or removal from service of Company-owned land or investment. Since it is the shareholder who receives the benefit associated with the gain, or the loss, on an investment's disposal, it is the shareholder who should bear the responsibility for any legal liability that arises at a later date related to the investment, 5) the liability for the remediation costs are not incurred because of the gas service Missouri Gas Energy provides to its current customers. Missouri Gas Energy is a PRP because it either owns the property now or its predecessor owned the property in the past, and 6) automatic recovery of the remediation costs from Missouri Gas Energy's customers may reduce the incentive for the Company to seek partial or complete recovery of the costs from other past owners of the plant sites or Company insurers.

IV. SAFETY LINE REPLACEMENT PROGRAM

Q. WHAT IS THE ISSUE?

A. The issue concerns the appropriate ratemaking recognition of costs associated with Company's last remaining Safety Line Replacement Programs, i.e., SLRP #5 and #6. The Safety Line Replacement Program was mandated by Commission Rule 4 CSR 240-40.030 which required all gas companies to establish a gas main and service line replacement program. The Company accumulated the costs and then deferred the amounts pursuant to Accounting Authority Orders ("AAO") authorized by the Commission. Therefore, the issue concerns the determination of the appropriate level of SLRP costs to include in the development of rates for the instant case.

Q. WHAT IS AN ACCOUNTING AUTHORITY ORDER?

A. An Accounting Authority Order is an accounting mechanism that permits deferral of costs from one period to another. The items deferred are booked as an asset rather than as an expense, thus improving the financial picture of the utility in question during the deferral period. During a subsequent rate case, the Commission determines what portion, if any, of the deferred amounts will be recovered in rates via a possible "return on" and "return of." An AAO allows an utility to increase reported earnings for the financial period in which the deferral occurs and subsequently recover those earnings in a future period to the extent the deferred amounts are included in future rates.

Q. WHAT HAPPENS WHEN A COST IS DEFERRED?

A. When a cost (i.e., expense) is deferred, it is removed from the income statement and entered on the balance sheet. In this instance, Company has booked the deferred costs to USOA Account No. 1823 - Extraordinary Property Losses.

Q. PLEASE EXPLAIN THE TERMS “RETURN OF” AND “RETURN ON.”

A. If an expenditure is recorded on the income statement as an expense it is compared dollar for dollar to revenues. This comparison is referred to as a “return of” because a dollar of expense is matched by a dollar of revenue in the determination of revenue requirement. “Return on” occurs when an expenditure is capitalized within the balance sheet because it increased the value of a balance sheet asset or investment. This capitalization is then included in the rate base calculation along with an annual level of amortized expense in the cost of service both of which are included in determining the earnings the company achieves on its total regulatory investment.

Q WHAT IS THE TEST YEAR AMOUNT OF SAFETY LINE REPLACEMENT PROGRAM COSTS COMPANY RECORDED IN ITS FINANCIAL RECORDS?

A. For the Commission ordered test year, twelve months ended April 30, 2013, the unamortized amount booked in USOA Account No. 182300006 at the end of the period was $0.00. The zero balance in the asset account occurred because the amounts deferred became fully amortized (recovered by the utility in rates) during the test year. However, the amount amortized to the expense accounts 40300002, 40810015 and 41900001 was $298,767 (source: MPSC DR No. 13 - General Ledger).

Q WHAT IS THE PUBLIC COUNSEL'S RECOMMENDATION FOR THIS ISSUE?

A. Since the costs deferred pursuant to SLRP #5 and SLRP #6 have been fully recovered as of the the end of the Commission ordered test year, Public Counsel recommends that the expense amortization booked during the test year (i.e., $298,767) be adjusted out of the costs of service on a going forward basis since there is no longer a deferred amount to be recovered.

Q. DID THE COMPANY AGREE THAT IT WOULD NOT SEEK RATE RECOVERY OF THESE COSTS SUBSEQUENT TO THE CONCLUSION OF ITS LAST GENERAL RATE INCREASE CASE, MGE CASE NO. GR-2009-0355?

A. Yes, it did. Beginning on page 3 of Attachment A (i.e., the Partial Stipulation And Agreement) to the Report And Order in Case No. GR-2009-0355 it states:

> As part of this settlement, the Safety Line Replacement Plan (SLRP) deferral balances from Case Nos. GR-98-140 and GR-2001-292 as of March 1, 2010 shall be combined and amortized over a 48 month period for financial statement purposes. MGE shall not seek rate recovery of any remaining unamortized costs related to those SLRP deferrals in any general rate proceeding initiated subsequent to the conclusion of Case No. GR-2009-0355.

Q. DOES THIS CONCLUDE YOUR DIRECT TESTIMONY?

A. Yes, it does.

CASE PARTICIPATION
OF
TED ROBERTSON

Company Name	Case No.
Missouri Public Service Company	GR-90-198
United Telephone Company of Missouri	TR-90-273
Choctaw Telephone Company	TR-91-86
Missouri Cities Water Company	WR-91-172
United Cities Gas Company	GR-91-249
St. Louis County Water Company	WR-91-361
Missouri Cities Water Company	WR-92-207
Imperial Utility Corporation	SR-92-290
Expanded Calling Scopes	TO-92-306
United Cities Gas Company	GR-93-47
Missouri Public Service Company	GR-93-172
Southwestern Bell Telephone Company	TO-93-192
Missouri-American Water Company	WR-93-212
Southwestern Bell Telephone Company	TC-93-224
Imperial Utility Corporation	SR-94-16
St. Joseph Light & Power Company	ER-94-163
Raytown Water Company	WR-94-211
Capital City Water Company	WR-94-297
Raytown Water Company	WR-94-300
St. Louis County Water Company	WR-95-145
United Cities Gas Company	GR-95-160
Missouri-American Water Company	WR-95-205
Laclede Gas Company	GR-96-193
Imperial Utility Corporation	SC-96-427
Missouri Gas Energy	GR-96-285
Union Electric Company	EO-96-14
Union Electric Company	EM-96-149
Missouri-American Water Company	WR-97-237
St. Louis County Water Company	WR-97-382
Union Electric Company	GR-97-393
Missouri Gas Energy	GR-98-140
Laclede Gas Company	GR-98-374
United Water Missouri Inc.	WR-99-326
Laclede Gas Company	GR-99-315
Missouri Gas Energy	GO-99-258
Missouri-American Water Company	WM-2000-222
Atmos Energy Corporation	WM-2000-312
UtiliCorp/St. Joseph Merger	EM-2000-292
UtiliCorp/Empire Merger	EM-2000-369
Union Electric Company	GR-2000-512
St. Louis County Water Company	WR-2000-844
Missouri Gas Energy	GR-2001-292

Schedule TJR-1.1

CASE PARTICIPATION
OF
TED ROBERTSON

Company Name	Case No.
UtiliCorp United, Inc.	ER-2001-672
Union Electric Company	EC-2002-1
Empire District Electric Company	ER-2002-424
Missouri Gas Energy	GM-2003-0238
Aquila Inc.	EF-2003-0465
Aquila Inc.	ER-2004-0034
Empire District Electric Company	ER-2004-0570
Aquila Inc.	EO-2005-0156
Aquila, Inc.	ER-2005-0436
Hickory Hills Water & Sewer Company	WR-2006-0250
Empire District Electric Company	ER-2006-0315
Central Jefferson County Utilities	WC-2007-0038
Missouri Gas Energy	GR-2006-0422
Central Jefferson County Utilities	SO-2007-0071
Aquila, Inc.	ER-2007-0004
Laclede Gas Company	GR-2007-0208
Kansas City Power & Light Company	ER-2007-0291
Missouri Gas Utility, Inc.	GR-2008-0060
Empire District Electric Company	ER-2008-0093
Missouri Gas Energy	GU-2007-0480
Stoddard County Sewer Company	SO-2008-0289
Missouri-American Water Company	WR-2008-0311
Union Electric Company	ER-2008-0318
Aquila, Inc., d/b/a KCPL GMOC	ER-2009-0090
Missouri Gas Energy	GR-2009-0355
Empire District Gas Company	GR-2009-0434
Lake Region Water & Sewer Company	SR-2010-0110
Lake Region Water & Sewer Company	WR-2010-0111
Missouri-American Water Company	WR-2010-0131
Kansas City Power & Light Company	ER-2010-0355
Kansas City Power & Light Company	ER-2010-0356
Timber Creek Sewer Company	SR-2010-0320
Empire District Electric Company	ER-2011-0004
Union Electric Company, d/b/a AmerenUE	ER-2011-0028
Missouri-American Water Company	WR-2011-0337
Union Electric Company, d/b/a AmerenMO	EU-2012-0027
Missouri-American Water Company	WA-2012-0066
Union Electric Company, d/b/a AmerenMO	ER-2012-0166
Laclede Gas Company	GO-2012-0363
Kansas City Power & Light Company	ER-2012-0174
Kansas City Power & Light Company GMOC	ER-2012-0175
Empire District Electric Company	ER-2012-0345

CASE PARTICIPATION
OF
TED ROBERTSON

Company Name	Case No.
Emerald Pointe Utility Company, Inc.	SR-2013-0016
Liberty Utilities	GO-2014-0006
Lincoln County Sewer & Water, LLC	SR-2013-0321
Lincoln County Sewer & Water, LLC	WR-2013-0322
Lake Region Water & Sewer Company	WR-2013-0461
Missouri Gas Energy	GR-2014-0007

ENVIRONMENTAL LIABILITY AGREEMENT

ENVIRONMENTAL LIABILITY AGREEMENT (the "Agreement"), dated as of _____, 199___ between WESTERN RESOURCES, INC., a Kansas corporation ("Seller") and SOUTHERN UNION COMPANY, a Delaware corporation ("Buyer").

WHEREAS, Seller and Buyer have entered into an Agreement for Purchase of Assets dated as of _____ 1993, (the "Asset Purchase Agreement"), in which this Agreement is incorporated by reference pursuant to Article XIII of the Asset Purchase Agreement; and

WHEREAS, Buyer and Seller desire to provide a framework for the liability of the parties for Environmental Claims and for the sharing of Environmental Costs;

NOW, THEREFORE, in consideration thereof and of the respective covenants, representations and warranties herein contained, the parties agree as follows:

Article 1. ASSUMPTION OF LIABILITY. Except as hereinafter provided, Buyer hereby (a) assumes and agrees to be responsible for all Environmental Claims now pending or that may hereafter arise with respect to the Assets and the Business and (b) agrees to pay, perform and discharge, as and when due and payable, all Environmental Costs with respect to such Environmental Claims. Buyer hereby agrees, except as herein provided, to indemnify and hold Seller harmless from and against all Environmental Claims and Environmental Costs which Buyer has assumed or agreed to be responsible for pursuant to this Article 1. The procedures set

forth in Section 12.02 of the Asset Purchase Agreement concerning recovery of costs for matters subject to indemnification are incorporated herein by reference and made a part hereof, and Seller and Buyer agree to comply with the procedures set forth in said Section 12.02 in making any claim relating to indemnification. For the purposes of Buyer's assumption of liability, agreement to pay, perform and discharge and to indemnify set forth in this Article 1, Article 2(c)(v) and Article 2(d) only, the term "Environmental Claim" shall include, in addition to those claims which are included within such term as defined in the Asset Purchase Agreement, any and all such claims and other matters hereafter arising which are based in whole or in part upon (A) any amendment or modification which occurs after the Closing Date of any Environmental Law which is extant on the Closing Date; (B) any law, statute, ordinance, rule, regulation, order or determination of any governmental authority or agency enacted or adopted after the Closing Date which would, if such law, statute, ordinance, rule, regulation, order or determination were in effect on the Closing Date, be an Environmental Law; or (C) any change in interpretation of any Environmental Law after the Closing Date by any court or by any governmental agencies having authority to enforce such Environmental Law.

Article 2. DEFINITION OF COVERED MATTERS. (a) Definition. As used herein, the term "Covered Matters" shall mean and refer to all Environmental Claims and Environmental Costs related to the Assets or the Business which (i) arise out of or are based upon

Environmental Laws, and (ii) are not included in Assumed Liabilities.

(b) Newly Discovered Matters. Covered Matters that are discovered by Buyer prior to the date which is two (2) years following the date of this Agreement shall be subject to the cost sharing provisions contained herein. All Covered Matters discovered by Buyer more than two (2) years following the date of this Agreement shall be the sole responsibility of Buyer.

(c) Shared Liability. (i) Insurance First Line of Recovery. Seller shall undertake, at its sole expense, to conduct an Environmental Insurance Archaeology Survey ("Survey") for all Plants and other locations identified on Schedule 6.18 of the Asset Purchase Agreement within thirty (30) days of the Closing Date and promptly thereafter provide Buyer with the results of the Survey. To the extent that Seller may lawfully do so without adversely affecting the insurance coverage disclosed by the Survey, Seller hereby agrees that the insurance coverage disclosed by that Survey shall constitute the first line of recovery. For any Covered Matter discovered by Buyer after Closing, Buyer shall as promptly as possible after the discovery of such Covered Matter provide notice of such discovery, together with all factual information and copies of all notices, environmental assessments, reports and other information, to Seller's Environmental Services Department so as to allow Seller to provide prompt and timely notice to the appropriate insurance carrier or carriers identified in the Survey. The parties thereafter agree to cooperate in the filing and prosecution of

claims with the appropriate insurance carrier(s) in a manner that the parties mutually agree so as to expeditiously prosecute such claims. Amounts recovered from such insurance carrier(s) from the prosecution of such claims shall, after allowance for Seller's post closing outside legal fees and other reasonable out of pocket expenses, be paid to Buyer. In the event insurance recovery is protracted, the parties shall accelerate the shared cost provisions of subparagraphs (c)(ii) through (v), crediting subsequent insurance or PRP contributions to the parties as their interests appear in subparagraphs (iv) and (v).

(ii) Potentially Responsible Party First Line of Recovery. In those instances where other Potentially Responsible Parties (PRPs) are identified for purposes of cost sharing in the remediation of any site, amounts recovered from such PRPs shall, after allowance for Buyer and Seller's post closing outside legal fees and other reasonable out of pocket expenses, be paid to Buyer and credited against the cost incurred with respect to such required remediation. In the event PRP recovery is protracted, the parties shall accelerate the sharing of cost as provided for in subparagraphs (c)(iii) through (v) hereof, crediting subsequent insurance or PRP contributions to the parties as their interests appear in subparagraphs (iv) and (v).. If Seller and Buyer agree to so accelerate the sharing of costs, then Seller shall, prior to the application of any subsequent insurance proceeds or PRP contributions, be entitled to receive reimbursement of amounts advanced under subparagraph (c)(v) for post-closing costs incurred

in connection with Covered Matters as provided herein pursuant to said subparagraph.

(iii) Recovery of Remediation Costs through Regulated Cost of Service. In addition to seeking the relief contemplated under subparagraphs (c)(i) or (ii), Buyer shall request from the appropriate regulatory agency having jurisdiction in the state where any remediation site is located for authority to include the cost incurred by Buyer in connection with the remediation of such site, above that recovered under subparagraphs (c)(i) or (ii), in its applicable rates or other charges for service. Notwithstanding anything to the contrary contained in this Agreement, Buyer shall retain complete discretion as to the timing of any filings with the appropriate regulatory agencies and may seek to recover such amount in rates either before or after the recovery of any amounts pursuant to any other provision of this agreement. Buyer shall be deemed to have recovered in its applicable rates or other charges for service an amount equal to the greater of (A) the amount actually authorized for inclusion in Buyer's applicable rate or other charges for service reflected in tariffs, or (B) the amount which would be recovered if Buyer would have been authorized to include in its applicable rate or other charges for service reflected in tariffs an amount which would have been authorized for such inclusion if Buyer's request for inclusion had been accorded the treatment accorded similar expenditures under similar facts and circumstances by the applicable regulatory agency.

(iv) Buyer's Initial Sole Liability Amount. Upon exhaustion

of relief contemplated under subparagraphs (c)(i), (ii) and (iii), Buyer shall thereafter be solely liable (as between Seller and Buyer) for the payment of costs incurred by Buyer or Seller in connection with Covered Matters in excess of the amounts received by Buyer under subparagraphs (c)(i), (ii) and (iii) in the aggregate amount of Three Million Dollars ($3,000,000.00), without regard to the number of claims concerning Covered Matters required to reach said amount.

(v). Buyer/Seller Shared Liability Amount. Upon exhaustion of relief contemplated under subparagraphs (c)(i) through (iv), Buyer and Seller shall share equally in payment of costs incurred by Buyer in connection with Covered Matters in excess of the amounts received by Buyer under subparagraphs (c)(i) through (iii) (or paid by Buyer under subparagraph (c)(iv)) to a maximum aggregate amount of Fifteen Million Dollars ($15,000,000.00), without regard to the number of claims concerning Covered Matters required to reach said amount. Notwithstanding anything to the contrary herein, Seller's total liability for Covered Matters shall be limited to the amount of Seven Million Five Hundred Thousand Dollars ($7,500,000.00), and Buyer shall indemnify and hold Seller harmless with respect to all claims, costs, demands and liabilities with respect to all other Covered Matters.

(d) Limitation on Seller's Liability. Seller's liability under Subparagraph (c) above shall terminate upon that date (the "Termination Date") which is fifteen (15) years after the Closing Date. From and after the Termination Date, Seller shall have no

further obligations or responsibilities with respect to all other Covered Matters.

(e) Costs Incurred by Buyer and Seller. For the purposes of this Agreement, Seller and Buyer agree that the costs incurred by Buyer or Seller with respect to Covered Matters for which the other party is liable pursuant to Subparagraph (c) above shall include only costs and expenses actually paid to unrelated third parties, and in no event shall Buyer or Seller be responsible for nor shall either party receive credit for (i) pre-closing costs or expenses, or (ii) any costs or expenses paid with respect to any of either party's employees or any of either party's overhead. Each party hereby agrees to use its best reasonable efforts to control costs incurred for which the other party may be responsible and shall provide such other party with quarterly reports of costs incurred.

(f) Duty to Consult. Buyer and Seller shall at all times consult with and keep each other apprised of all activities and costs incurred in connection with Covered Matters, and Buyer and Seller shall indemnify and hold the other party harmless from any unreasonable expense incurred. Each party shall apprise the other party of those respective activities on a quarterly interval on all active Covered Matters.

(g) Standstill Agreement. In the event either Buyer or Seller is notified that they or either of them is asked to respond as a Potentially Responsible Party ("PRP") under any federal, state or local law or regulation with regard to a Covered Matter, the party receiving such notice shall notify the other party of the receipt

of such notice, and shall deliver a copy of all notices and documents received, within ten (10) business days after receipt. With regard to Covered Matters, Buyer and Seller each covenant and agree not to sue the other or attempt in any manner to avoid responsibility as a PRP by seeking or attempting to shift or allocate responsibility to the other. Buyer and Seller agree to cooperate in the identification of all other PRPs for purposes of participation, remediation cost sharing and liability to regulatory agencies.

Article 3. MISCELLANEOUS. (a) Dispute Resolution. No party to this Agreement shall be entitled to take legal action with respect to any dispute relating hereto until it has complied in good faith with the following alternative dispute resolution procedures, provided however, this Article shall not apply to the extent it is deemed necessary to take legal action immediately to preserve a party's adequate remedy.

(i) Negotiation. The parties shall attempt promptly and in good faith to resolve any dispute arising out of or relating to this Agreement, through negotiations between representatives who have authority to settle the controversy. Any party may give the other party written notice of any such dispute not resolved in the normal course of such negotiations. Within twenty (20) days after delivery of the notice, representatives of both parties shall meet at a mutually acceptable time and place, and thereafter as often as they reasonably deem necessary, to exchange information and to attempt to resolve the dispute, until the parties conclude that the

dispute cannot be resolved through unassisted negotiation. Negotiations extending sixty (60) days after notice shall be deemed at an impasse, unless otherwise agreed by the parties.

If a negotiator for a party hereto intends to be accompanied at a meeting by an attorney, the other negotiator(s) shall be given at least ten (10) business days' notice of such intention and may also be accompanied by an attorney. All negotiations pursuant to this Article are confidential and shall be treated as compromise and settlement negotiations for purposes of the Federal and state Rules of Evidence.

(ii) ADR Procedure. If a dispute with more than $100,000.00 at issue has not been resolved within sixty (60) days of the disputing party's notice, a party wishing resolution of the dispute ("Claimant") shall initiate assisted Alternative Dispute Resolution (ADR) proceedings as described in this Article. Once the Claimant has notified the other ("Respondent") of a desire to initiate ADR proceedings, the proceedings shall be governed as follows: By mutual agreement, the parties shall select the ADR method they wish to use. That ADR method may include arbitration, mediation, mini-trial, or any other method which best suits the circumstances of the dispute. The parties shall agree in writing to the chosen ADR method and the procedural rules to be followed within thirty (30) days after receipt of notice of intent to initiate ADR proceedings. To the extent the parties are unable to agree on procedural rules in whole or in part, the current Center for Public Resources (CPR) Model Procedure for Mediation of Business Disputes, CPR Model Mini-

trial Procedure, or CPR Commercial Arbitration Rules--whichever applies to the chosen ADR method--shall control, to the extent such rules are consistent with the provisions of this Article. If the parties are unable to agree on an ADR method, the method shall be arbitration.

The parties shall select a single neutral third party (a "Neutral") to preside over the ADR proceedings, by the following procedure: Within fifteen (15) days after an ADR method is established, the Claimant shall submit a list of five (5) acceptable Neutrals to the Respondent. Each Neutral listed shall be sufficiently qualified, including demonstrated neutrality, experience and competence regarding the subject matter of the dispute. A Neutral shall be deemed to have adequate experience if an attorney or former judge. None of the Neutrals may be present or former employees, attorneys, or agents of either party. The list shall supply information about each Neutral, including address, and relevant background and experience (including education, employment history and prior ADR assignments). Within fifteen (15) days after receiving the Claimant's list of Neutrals, the Respondent shall select one Neutral from the list, if at least one individual on the list is acceptable to the Respondent. If none on the list are acceptable to the Respondent, the Respondent shall submit a list of five (5) Neutrals, together with the above background information, to the Claimant. Each of the Neutrals shall meet the conditions stated above regarding the Claimant's Neutrals. Within fifteen (15) days after receiving the

Respondent's list of Neutrals, the Claimant shall select one Neutral, if at least one individual on the list is acceptable to the Respondent. If none on the list are acceptable to the Claimant, then the parties shall request assistance from the Center for Public Resources, Inc., to select a Neutral.

The ADR proceeding shall take place within thirty (30) days after the Neutral has been selected. The Neutral shall issue a written decision within thirty (30) days after the ADR proceeding is complete. Each party shall be responsible for an equal share of the costs of the ADR proceeding. The parties agree that any applicable statute of limitations shall be tolled during the pendency of the ADR proceedings, and no legal action may be brought in connection with this agreement during the pendency of an ADR proceeding.

The Neutral's written decision shall become final and binding on the parties, unless a party objects in writing within thirty (30) days of receipt of the decision. The objecting party may then file a lawsuit in any court allowed by this Contract. The Neutral's written decision and the record of the proceeding shall be admissible in the objecting party's lawsuit.

(b) Incorporation By Reference. This Agreement constitutes a part of the Asset Purchase Agreement dated _____ , 1993 between the parties.

(c) Savings Provision. This Agreement, and the terms, provisions, covenants and agreements contained herein, shall

survive the Closing.

(d) Defined Terms. All terms used herein as defined terms and not defined herein shall have the meaning set forth in the Asset Purchase Agreement.

Article 4. WARRANTIES AND REPRESENTATIONS CONTAINED IN THE ASSET PURCHASE AGREEMENT. Notwithstanding any provision that may be contained in this Agreement or the Asset Purchase Agreement to the contrary, the terms and the conditions of this Agreement shall not affect, or in any way limit, any claim for an Indemnifiable Loss that Buyer may have arising out of any breach of the Seller's warranties and representations contained in the Asset Purchase Agreement, including, but not limited to Section 6.18 thereof, and not withstanding the provisions of Article XII, Loss in the event of a breach of the warranties and representations contained in Section 6.18 in the same manner as provided for other Indemnifiable Losses under Article XII of the Asset Purchase Agreement.

IN WITNESS WHEREOF, The parties hereto have duly executed this Agreement as of the date first above written.

THIS AGREEMENT CONTAINS A BINDING ARBITRATION PROVISION WHICH MAY BE ENFORCED BY THE PARTIES.

BUYER

By _____

SELLER

By _____