a replacement collective bargaining agreement with Local 814 containing terms and conditions substantially similar to the terms and conditions of the existing Collective Bargaining Agreement applicable to such Business Employees.

(v) Buyer agrees that (A) upon request by Seller, Buyer will notify Seller of the status of negotiations with Local 695 and Local 814, and (B) no later than 19 Business Days prior to the Closing Date, Buyer will notify Seller whether the applicable Business Employees will be accreted into an existing bargaining unit of Buyer and, if not, whether new collective bargaining agreements have been successfully negotiated.

(b) Upon Buyer's request, Seller will provide Buyer with access to those Transferred Employee Records which Seller is not restricted by Law, Order or agreement from providing to Buyer.

(c) No later than 20 Business Days prior to the Closing, Buyer will give Qualifying Offers of employment to all Business Employees. Each such person who becomes employed by Buyer pursuant to this Section 7.9(c) is referred to herein as a "Transferred Employee." For this purpose, a "Qualifying Offer" means employment at a level of base pay at least equal to the Transferred Employee's base pay in effect immediately prior to the Closing Date, and with a primary work location no more than 50 miles from the Transferred Employee's primary work location immediately prior to the Closing Date. Buyer will assume the severance compensation agreements listed on Schedule 7.9 (c).

(d) All Qualifying Offers made by Buyer pursuant to Section 7.9(c) will be made in accordance with all applicable Laws, will be conditioned only on the occurrence of the Closing, and will remain open for a period expiring no earlier than ten Business Days prior to the Closing Date. Any such offer which is accepted before it expires will thereafter be irrevocable, except for good cause. Following acceptance of such offers, Buyer will provide written notice thereof to Seller and Seller will provide Buyer with access to the Transferred Employee Records. Seller will be responsible for all liabilities and obligations for and with respect to any Business Employees who do not become Transferred Employees other than (i) pursuant to Exhibit 7.9(e)(ii)(C) or (ii) due to a breach by Buyer of this Section 7.9 or retirement by such employee after the date hereof and prior to Closing.

(e) The following will be applicable with respect to the Business Employees, Current Retirees, and Other Plan Participants:

(i) From and after the Effective Time, the Transferred Employees will accrue no additional benefits under any employee benefit plan, policy, program, or arrangement of Seller or its Affiliates.

(ii) As of the Effective Time, Buyer will cause the Transferred Employees to be covered by Buyer benefit plans available to similarly situated employees of Buyer and, except as provided below, on the same terms and conditions as are made available to such similarly situated employees. If Buyer

has no similarly situated employees, Buyer will cause the Transferred Employees to be covered by Buyer-sponsored benefit plans that provide benefits that are comparable, in the aggregate, to the benefits provided to the Transferred Employees as of the date immediately preceding the Closing Date. The commitments under this Section 7.9(e)(ii) require the following:

(A) With respect to welfare benefit plans, Buyer agrees to waive or to cause the waiver of all limitations as to pre-existing conditions and actively-at-work exclusions and waiting periods for the Transferred Employees. With respect to the calendar year in which the Closing Date occurs, all health care expenses incurred by any such employees or any eligible dependent thereof, including any alternate recipient pursuant to qualified medical child support orders, in the portion of the calendar year preceding the Closing Date that were qualified to be taken into account for purposes of satisfying any deductible or out-of-pocket limit under any Seller health care plans will be taken into account for purposes of satisfying any deductible or out-of-pocket limit under the health care plan of Buyer for such calendar year.

(B) With respect to service and seniority, Buyer will recognize the service and seniority of each of the Transferred Employees recognized by Seller for all non-pension purposes, including the determination of eligibility, the extent of service or seniority-related welfare benefits such as vacation and sick pay benefits, and levels of benefits other than pension benefits, including eligibility for and level of retiree health benefits.

(C) The Parties will comply with the provisions set forth on Exhibit 7.9(e)(ii)(C).

(D) Retiree Health.

(1) Buyer will assume all liabilities, obligations, and responsibilities with respect to providing post-retirement health and life insurance benefits ("Post-Retirement Welfare Benefits") to (i) the persons listed on Schedule 7.9(e)(ii)(D)(1) and any Business Employee who retires between the date hereof and the Closing Date (such listed persons and Business Employees, the "Current Retirees") and their spouses and eligible dependents, and (ii) the Business Employees who have, as of the date hereof, satisfied the age and service eligibility requirements for Post-Retirement Welfare Benefits under the applicable Seller plans (the "Grandfathered Active Employees" and, together with the Current Retirees, the "Grandfathered Individuals") and their spouses and eligible dependents. The Grandfathered Individuals as of the date hereof are listed on Schedule 7.9(e)(ii)(D)(1). Effective as of the Closing Date and for a period continuing for at least two years thereafter (the "Benefit Continuation Period"), Buyer will continue to provide to the Current Retirees Post-Retirement Welfare Benefits that are comparable to or more favorable in the aggregate than those Post-Retirement Welfare Benefits provided to such Current Retirees immediately prior to the Closing Date,

under cost-sharing structures that are at least as favorable as the cost-sharing structures in effect for and available to the Current Retirees immediately prior to the Closing Date. For a period continuing at least through the last day of the Benefit Continuation Period, Buyer will provide to the Grandfathered Active Employees Post-Retirement Welfare Benefits that are comparable to or more favorable in the aggregate than those Post-Retirement Welfare Benefits that would have been available to such Grandfathered Active Employees immediately prior to the Closing Date, commencing at the time such Grandfathered Active Employees retire under cost-sharing structures that are at least as favorable as the cost-sharing structures in effect for and available to the Grandfathered Active Employees immediately prior to the Closing Date (if such employees had retired immediately prior to the Closing Date). For the avoidance of doubt, any Grandfathered Active Employee who earns 1,000 hours of service with Seller in the calendar year in which the Closing occurs will be given a year of credit for such service for purposes of Seller's Post-Retirement Welfare Benefits. Following the Benefit Continuation Period, Buyer may exercise any right that Seller would have had to amend or terminate Post-Retirement Welfare Benefits for the Grandfathered Individuals and their spouses and eligible dependents. Grandfathered Individuals, all other Transferred Employees, and the spouses and eligible dependents of all of the above for whom Seller could amend or terminate coverage will be covered either (x) by the Post-Retirement Welfare Benefits available to similarly situated retirees, spouses, and eligible dependents of Buyer, or (y) at Buyer's sole option, by Post-Retirement Welfare Benefits that are comparable in the aggregate to the Post-Retirement Welfare Benefits offered by Seller as of the date immediately prior to the Closing Date.

(2) On or prior to the Closing Date, Buyer will provide evidence reasonably satisfactory to Seller that Buyer has established and is maintaining one or more trusts meeting the requirements of section 501(c)(9) of the Code (the "Buyer's VEBA"). Following the Closing, in accordance with the provisions of this Section 7.9(e)(ii)(D)(2), Seller will cause the trusts set forth on Schedule 7.9(e)(ii)(D)(2) ("Seller's VEBAs") to transfer cash (or other assets as the Parties mutually agree) to the Buyer's VEBA equal to the Allocated VEBA Amount. The "Allocated VEBA Amount" means the amount of assets in Seller's VEBAs that are allocated by Seller as of the Closing Date, in accordance with Seller's normal policies and past practice, to provide funding in part of the Post-Retirement Welfare Benefits for the Grandfathered Individuals and their spouses and eligible dependents. The Allocated VEBA Amount will be dedicated by Buyer for the funding in part of Post-Retirement Welfare Benefits for the Grandfathered Individuals and their spouses and eligible dependents. The Allocated VEBA Amount will be transferred to Buyer's VEBA as soon as administratively practicable after both: (x) Seller either (I) receives a ruling from the Internal Revenue Service that the transfer of the Allocated VEBA Amount to Buyer's VEBA will not cause Seller's

VEBAs to fail to qualify under section 501(c)(9) of the Code and will not result in taxable income or an excise Tax to Seller or (II) notifies Buyer in writing that Seller has determined not to apply for such a ruling (and Buyer agrees that no ruling should be required), and (y) Buyer provides evidence reasonably satisfactory to Seller that Buyer's VEBA satisfies the requirements of section 501(c)(9) of the Code. Prior to the Closing, Seller will make contributions to and distributions from Seller's VEBAs from time to time in accordance with Seller's normal policies and past practice determined by Seller in the exercise of its reasonable discretion. To the extent the Allocated VEBA Amount exceeds $556,000, Buyer will pay Seller the difference, in immediately available funds, within 10 days following the transfer of such amount. To the extent the Allocated VEBA Amount is less than $556,000, Seller will pay Buyer the difference, in immediately available funds, within 10 days following the transfer of such amount.

(E) With respect to the Aquila, Inc. Retirement Investment Plan (the "Savings Plan"), Seller will vest Transferred Employees in their Savings Plan account balances as of the Closing Date. Buyer will take all actions necessary to cause a Buyer 401(k) plan in which Transferred Employees are eligible to participate (x) to recognize the service that the Transferred Employees had in the Savings Plan for purposes of determining such Transferred Employees' eligibility to participate, vesting, attainment of retirement dates, contribution levels, and, if applicable, eligibility for optional forms of benefit payments, and (y) to accept direct rollovers of Transferred Employees' account balances in the Savings Plan, including transfers of loan balances and related promissory notes, provided that such loans would not be treated as taxable distributions at any time prior to such transfer.

(F) Within 60 days after the Closing Date, Seller will transfer to a flexible spending plan maintained by Buyer any balances standing to the credit of Transferred Employees under Seller's flexible spending plan as of the day immediately preceding the Closing Date. As soon as practicable after the Closing Date, Seller will provide to Buyer a list of those Transferred Employees that have participated in the health or dependent care reimbursement accounts of Seller, together with (x) their elections made prior to the Closing Date with respect to such account and (y) balances standing to their credit as of the day immediately preceding the Closing Date.

(G) Buyer will honor all vacation and sick days accrued by the Transferred Employees during the calendar year of the Closing and unused as of the Closing.

(iii) With respect to severance benefits, Buyer will provide to any Transferred Employee who is not subject to a Collective Bargaining Agreement and who is terminated by Buyer (other than for cause) prior to the date which is one year following the Closing Date, severance benefits comparable to those provided by Seller under Seller's severance plans and policies (other than any

plans or policies with respect to stock options) in effect immediately prior to the Closing Date. Any employee who is provided severance benefits under this Section 7.9(e)(iii) may be required to execute a release of claims against Seller and Buyer, in such form as Buyer reasonably prescribes, as a condition for the receipt of such benefits.

(iv) Seller will be responsible, with respect to the Business, for performing and discharging all requirements under the WARN Act and under applicable state and local laws and regulations for the notification of its employees of any "employment loss" within the meaning of the WARN Act which occurs prior to the Effective Time.

(v) Seller will be responsible for providing COBRA Continuation Coverage to any current and former Business Employees, or to any qualified beneficiaries of such Business Employees, who become or became entitled to COBRA Continuation Coverage on or before the Closing, including those for whom the Closing occurs during their COBRA election period. Buyer is responsible for extending and continuing to extend COBRA Continuation Coverage to all Transferred Employees (and their qualified beneficiaries) who become entitled to such COBRA Continuation Coverage following the Closing.

(vi) Seller or its Affiliates will pay or cause to be paid to all Transferred Employees, all compensation (including any accrued vacation and sick days carried over to the calendar year of the Closing from a previous calendar year), workers' compensation or other employment benefits to which they are entitled under the terms of the applicable compensation or Seller benefit plans or programs prior to the Effective Time. Buyer will pay to each Transferred Employee all unpaid salary or other compensation or employment benefits (but not including any compensation attributable to stock options granted by Seller) which have accrued to such employee from and after the Effective Time, at such times as provided under the terms of the applicable compensation or benefit programs.

(vii) Individuals who would otherwise be Transferred Employees but who on the Closing Date are not actively at work due to a leave of absence covered by the Family and Medical Leave Act or other authorized leave of absence, including short-term or long-term disability, will be treated as Transferred Employees on the date that they are able to return to work (provided that such return to work occurs within the authorized period of their leaves following the Closing Date) and perform the essential functions of their jobs with or without reasonable accommodation.

(viii) Buyer will be responsible, with respect to the Business, for performing and discharging all requirements under the WARN Act and under applicable state and local laws and regulations for the notification of its employees of any "employment loss" within the meaning of the WARN Act which occurs at or following the Effective Time.

(ix) Buyer will assume Seller's obligations as of the Effective Time to pay nonqualified deferred compensation to the persons set forth on Schedule 7.9(e)(ix).

7.10 Eminent Domain; Casualty Loss.

(a) If, before the Closing Date, any of the Purchased Assets are taken by eminent domain or condemnation, or are the subject of a pending or (to Seller's Knowledge) contemplated taking which has not been consummated, Seller will (i) notify Buyer promptly in writing of such fact and (ii) at the Closing assign to Buyer all of Seller's right, title, and interest in and to any proceeds or payments received, or to be received, in compensation for such taking.

(b) If, before the Closing Date, all or any portion of the Purchased Assets are damaged or destroyed by fire or other casualty, Seller will notify Buyer promptly in writing of such fact and, at the Closing pay to Buyer all insurance proceeds received by, and assign all of Seller's right, title, and interest in and to any insurance proceeds to be received (and Seller will pay to Buyer at Closing an amount equal to any unpaid deductibles with respect to any such insurance), in compensation for such damage or destruction less any such amounts received, or to be received, to reimburse Seller for expenditures incurred by Seller.

7.11 Transitional Use of Signage and Other Materials Incorporating Seller's Name or other Logos. Buyer acknowledges that it will have no ongoing claim or rights in or to the Seller Marks. Buyer will not use or permit the use of any Seller Marks, and within 180 days following the Closing Date, Buyer will remove or cause the removal of the Seller Marks from all signage or other items relating to or used in the Business or the Purchased Assets.

7.12 Litigation Support. In the event and for so long as either Party is actively contesting or defending against any third-party Claim in connection with (i) any transaction contemplated under this Agreement or (ii) any fact, situation, circumstance, status, condition, activity, practice, plan, occurrence, event, incident, action, failure to act, or transaction on or prior to the Closing Date involving Seller, the other Party will cooperate with the contesting or defending Party and its counsel in the contest or defense, make available its personnel, and provide such testimony and access to its books and records as is reasonably necessary in connection with the contest or defense, all at the sole cost and expense of the contesting or defending Party (unless the contesting or defending Party is entitled to indemnification therefor under Article IX hereof).

7.13 Notification of Customers. As soon as practicable following the Closing, Seller and Buyer will cause to be sent to customers of the Business a notice of the transfer of the customers from Seller to Buyer (the "Customer Notification"). The Customer Notification will contain such information as is required by Law and approved by Buyer and Seller, which approval will not be unreasonably withheld or delayed.

7.14 Audit Assistance. If, during the period beginning on the date hereof and ending on the last day of the calendar year of the Closing, Buyer is required by the SEC to file audited financial statements of the Business in respect of any period occurring prior the Closing Date,

then at Buyer's request, Seller will use its commercially reasonable efforts (without paying any money) to cause Seller's auditor to agree to provide to Buyer, at Buyer's sole cost and expense, an audit of the financial statements of the Business, for the periods necessary to satisfy the SEC requirements (and any consents, if any, to use such audited financial statements in Buyer's SEC filings). Further, after the Closing Date and whether or not Seller's auditor is retained by Buyer to conduct an audit of the Business, Seller will (i) use its commercially reasonable efforts (without paying any money) to cause Seller's auditor to make available to Buyer and its auditors the work papers and other documents and records reasonably requested by Buyer that were created prior to the Closing and relate principally to the Business, and (ii) cooperate with Buyer in obtaining an audit of the Business, in each case, to the extent required by the SEC and at Buyer's sole cost and expense.

7.15 Purchased Gas Adjustments.

(a) If, after the Closing Date, the PSC issues one or more final and non-appealable regulatory orders disallowing more than $50,000 in the aggregate of purchased gas costs in respect of the Business for the periods prior to the Effective Time (the "Purchased Gas Cost Disallowances") which must be refunded or credited (in any form) to customers of the Business through a purchased gas adjustment mechanism after the Closing Date, then Seller agrees to reimburse Buyer for any and all such Purchased Gas Cost Disallowances exceeding $50,000 in the aggregate; provided, that Seller will not be obligated to reimburse Buyer for any Purchased Gas Cost Disallowance to the extent the disallowance is reflected in the Purchase Price (including the Adjustment Amount) calculations made pursuant to Article III.

(b) The Parties agree that Seller may, in its sole discretion, elect to participate in the post-Closing proceedings that determine Purchased Gas Cost Disallowances. Buyer agrees that it will support, and not oppose, Seller's intervention and participation in any such proceedings. No PSC order related to a Purchased Gas Cost Disallowance will be considered final and non-appealable until Seller has either (i) exhausted all available PSC procedures and judicial appellate processes that Seller considers appropriate to challenge any Purchased Gas Cost Disallowance, or (ii) consented in writing to a waiver of such PSC procedures and judicial appellate processes with respect to challenging any such Purchased Gas Cost Disallowance. Buyer will participate and cooperate with Seller in all PSC proceedings relating to any Purchased Gas Cost Disallowance, and the Parties agree that each Party will bear its own costs and expenses with respect to such proceedings. In any such proceeding, Buyer will use its commercially reasonable efforts to defend against any Purchased Gas Cost Disallowance proposed by any Person, and Seller will cooperate with Buyer in this effort by (A) maintaining and providing any documents related to Seller's gas purchasing practices relevant to the period of time addressed in such proceeding, and (B) providing testimony of its employees or other evidence necessary to defend against any proposed Purchased Gas Cost Disallowance. Seller will reimburse Buyer for all of Buyer's out-of-pocket costs and expenses associated with any judicial appeal of any such PSC proceeding.

ARTICLE VIII
CONDITIONS TO CLOSING

8.1 Conditions to Each Party's Obligations to Effect the Closing. The respective obligations of each Party to effect the transactions contemplated hereby are subject to the fulfillment at or prior to the Closing Date of the following conditions:

(a) The waiting period under the HSR Act, including any extension thereof, applicable to the consummation of the transactions contemplated hereby shall have expired or been terminated;

(b) No Order which prevents the consummation of any material aspect of the transactions contemplated hereby shall have been issued and remains in effect (each Party agreeing to use its commercially reasonable efforts to have any such Order lifted) and no Law shall have been enacted which prohibits the consummation of the transactions contemplated hereby;

(c) All consents and approvals for the consummation of the transactions contemplated hereby required from third parties shall have been obtained (including the consents and approvals set forth in Schedule 5.3 and Schedule 6.3), other than any of such consents or approvals that the failure to obtain would not, in the aggregate, create or reasonably be expected to create a Material Adverse Effect; provided that satisfaction of the foregoing condition shall be determined (i) without consideration of any Required Regulatory Approval (which condition will be governed by Sections 8.2(e) and 8.3(d)), and (ii) after taking into account the reasonably expected effects of any actions taken, or to be taken, by the Parties, or which Seller has offered to take but which Buyer has declined, pursuant to Section 7.4. Failure of this condition may not be asserted by a Party as justification for failure to effect the transactions herein contemplated if the failure resulted from such Party's breach of a covenant hereunder with respect to obtaining such consent or approval or breach of a representation or warranty of the full force and effect of the underlying Business Agreement or Permit.

(d) All consents and approvals required (if any) for assignment of the Business Agreements marked with (*) on Schedule 5.13(a).

8.2 Conditions to Obligations of Buyer. The obligation of Buyer to effect the transactions contemplated hereby is subject to the fulfillment at or prior to the Closing Date of the following additional conditions:

(a) Since the date of this Agreement and through the period ending immediately prior to the Effective Time, no Material Adverse Effect shall have occurred and be continuing, and no change or event has occurred which either individually or in the aggregate could reasonably be expected to result in a Material Adverse Effect;

(b) Seller shall have performed and complied in all material respects with the covenants and agreements contained in this Agreement which are required to be performed and complied with by Seller on or prior to the Closing Date;

(c) The representations and warranties of Seller which are set forth in Article V of this Agreement shall be true and correct as of the Effective Time as though made at and as of the Effective Time (except to the extent that any such representation or warranty speaks as of a particular date, in which case such representation and warranty will be true and correct only as of such date), except for any failure or failures of such representations and warranties to be true and correct that would not, individually or in the aggregate, cause, constitute, or represent a Material Adverse Effect;

(d) Buyer shall have received a certificate from the Chief Executive Officer of Seller, dated the Closing Date, to the effect that, to the best of such officer's knowledge, the conditions set forth in Sections 8.2(b) and 8.2(c) have been satisfied;

(e) The Required Regulatory Approvals shall have been obtained and become Final Regulatory Orders, and no terms in addition to the Required Regulatory Approvals shall have been imposed in connection with such Final Regulatory Orders by any Governmental Entity which terms, individually or in the aggregate, would cause (i) a Material Adverse Effect or (ii) other than in respect of the Business or the Purchased Assets, any material adverse effect, or the imposition of any material adverse requirements, on Buyer or any operations or assets of Buyer;

(f) The Purchased Assets shall have been released from any Encumbrance under the Indenture;

(g) Any Encumbrances on the Purchased Assets that are not Permitted Encumbrances, including Encumbrances pursuant to the Financing Agreement, shall have been released other than any of such releases that the failure to obtain would not, in the aggregate, create a Material Adverse Effect; and

(h) Buyer shall have received the other items to be delivered pursuant to Section 4.3.

8.3 Conditions to Obligations of Seller. The obligation of Seller to effect the transactions contemplated hereby is subject to the fulfillment at or prior to the Closing Date of the following additional conditions:

(a) Buyer shall have performed and complied in all material respects with the covenants and agreements contained in this Agreement which are required to be performed and complied with by Buyer on or prior to the Closing Date;

(b) The representations and warranties of Buyer which are set forth in Article VI shall be true and correct as of the Effective Time as though made at and as of the Effective Time (except to the extent that any such representation or warranty speaks as of a particular date, in which case such representation and warranty will be true and correct only as of such date), except for any failure or failures of such representations and warranties to be true and correct that do not, individually or in the aggregate, cause such representations and warranties of Buyer to be materially inaccurate taken as a whole.

(c) Seller shall have received a certificate from the Chief Executive Officer of Buyer, dated the Closing Date, to the effect that, to the best of such officer's knowledge, the conditions set forth in Sections 8.3(a) and 8.3(b) have been satisfied;

(d) The Required Regulatory Approvals shall have been obtained and become Final Regulatory Orders; and no terms in addition to the Required Regulatory Approvals shall have been imposed in connection with such Final Regulatory Orders by any Governmental Entity which terms, individually or in the aggregate, would cause (i) a Material Adverse Effect, or (ii) other than in respect of the Business or the Purchased Assets, any material adverse effect, or the imposition of any material adverse requirements, on Seller or any operations or assets of Seller; and

(e) Seller shall have received the other items to be delivered pursuant to Section 4.4.

ARTICLE IX
INDEMNIFICATION

9.1 Survival of Representations and Warranties. The representations and warranties of the Parties contained in this Agreement will survive the Closing and will expire as follows: (i) unless otherwise specified in this Section 9.1, 18 months after the Closing Date; (ii) Sections 5.8 and 5.10 will expire three years after the Closing Date; and (iii) Sections 5.1, 5.2, 5.3(a), 5.18, 5.20, 6.1, 6.2, 6.3(a), 6.5, and 6.6 will expire upon the expiration of the applicable statute of limitations.

9.2 Indemnification.

(a) Subject to Section 9.1 and Section 9.4 hereof, from and after the Closing, Seller will indemnify, defend, and hold harmless Buyer from and against any and all Claims and Losses (each, an "Indemnifiable Loss"), asserted against or suffered by Buyer relating to, resulting from, or arising out of (i) any breach by Seller of any covenant or agreement of Seller contained in this Agreement which by its terms is to be performed prior to or at the Closing, (ii) any breach by Seller of the representations and warranties of Seller contained in this Agreement or the certificates delivered by Seller pursuant to Section 8.2(d) (determined without regard to the knowledge of the officer signing the certificates), (iii) any breach by Seller of any covenant or agreement of Seller contained in this Agreement not covered by Section 9.2(a)(i), or (iv) the Excluded Liabilities.

(b) Subject to Section 9.1 and Section 9.4 hereof, from and after the Closing, Buyer will indemnify, defend, and hold harmless Seller from and against any and all Indemnifiable Losses asserted against or suffered by Seller relating to, resulting from, or arising out of (i) any breach by Buyer of any covenant or agreement of Buyer contained in this Agreement which by its terms is to be performed prior to the Closing, (ii) any breach by Buyer of the representations and warranties of Buyer contained in this Agreement or the certificates delivered by Buyer pursuant to Section 8.3(c) (determined without regard to the knowledge of the officer signing the certificates), (iii) any breach by Buyer of any covenant or agreement of Buyer contained in this Agreement not covered by Section 9.2(b)(i), (iv) the Assumed Obligations, or (v) any and all liabilities and

obligations associated with the ownership and operation of the Purchased Assets and the Business from and after the Effective Time.

(c) Any Person entitled to receive indemnification under this Agreement (an "Indemnitee") having a claim under these indemnification provisions will use commercially reasonable efforts to mitigate any Losses, including commercially reasonable efforts to recover all Losses from insurers of such Indemnitee under applicable insurance policies so as to reduce the amount of any Indemnifiable Loss hereunder, and will not take any action specifically excluding from any of its insurance policies any Indemnifiable Losses if Losses of such type are otherwise covered by such policies.

9.3 Indemnification Procedures.

(a) Third Party Claims. If an Indemnitee receives notice of the assertion or commencement of any Claim by any Person who is neither a Party to this Agreement nor an Affiliate of a Party to this Agreement (a "Third Party Claim") for which the Indemnitee claims a right to indemnification hereunder from the other Party (the "Indemnifying Party"), the Indemnitee will promptly give written notice of such Third Party Claim to the Indemnifying Party. Such notice will describe the nature of the Third Party Claim in reasonable detail and will indicate the estimated amount, to the extent practicable, of the Indemnifiable Loss that the Indemnitee claims it has sustained or may sustain as a result of such Third Party Claim. The Indemnifying Party, at its sole cost and expense, will have the right, upon written notice to the Indemnitee, to assume the defense of the Third Party Claim while reserving its right to contest the issue of whether it is liable to the Indemnitee for any indemnification hereunder with respect to such Third Party Claim.

(b) Defense of Third Party Claims. If the Indemnifying Party assumes the defense of a Third Party Claim pursuant to Section 9.3(a), the Indemnifying Party will appoint counsel reasonably satisfactory to the Indemnitee for the defense of such Third Party Claim, will diligently pursue such defense, and will keep the Indemnitee reasonably informed with respect to such defense. The Indemnitee will cooperate with the Indemnifying Party and its counsel, including permitting reasonable access to books, records, and personnel, in connection with the defense of any Third Party Claim (provided, that any out-of-pocket costs incurred by the Indemnitee in providing such cooperation will be paid by the Indemnifying Party). The Indemnitee will have the right to participate in such defense, including appointing separate counsel, but the costs of such participation will be borne solely by the Indemnitee. The Indemnifying Party will have full authority, in consultation with the Indemnitee, to make all decisions and determine all actions to be taken with respect to the defense and settlement of the Third Party Claim, including the right to pay, compromise, settle, or otherwise dispose of such Third Party Claim at the Indemnifying Party's expense; provided, that any such settlement will be subject to the prior consent of the Indemnitee, which will not be unreasonably withheld or delayed. If a firm offer is made to settle a Third Party Claim, which the Indemnifying Party desires to accept and which acceptance requires the consent of the Indemnitee pursuant to the immediately preceding sentence, the Indemnifying Party will give written notice to the Indemnitee to that effect. If the Indemnitee fails to consent to

such firm offer within 10 days after its receipt of such notice, and such firm offer involves only the payment of money, the maximum liability of the Indemnifying Party with respect to such Third Party Claim will be the amount of such settlement offer, plus reasonable costs and expenses paid or incurred by the Indemnitee up to the date of such notice for which the Indemnifying Party is otherwise liable. In no event will the Indemnifying Party have authority to agree to any relief binding on the Indemnitee other than the payment of money damages by the Indemnifying Party unless agreed to by the Indemnitee.

(c) Failure of Indemnifying Party to Assume Defense. If the Indemnifying Party does not assume the defense of a Third Party Claim in accordance with the terms hereof within 20 Business Days after the receipt of notice thereof, the Indemnitee may elect to defend against the Third Party Claim, and the Indemnifying Party will be liable for all reasonable expenses of such defense to the extent the Indemnifying Party is otherwise obligated hereunder to indemnify Indemnitee with respect to such Third Party Claim.

(d) Direct Losses. Any claim by an Indemnitee on account of an Indemnifiable Loss which does not result from a Third Party Claim (a "Direct Loss") will be asserted by giving the Indemnifying Party prompt written notice thereof, stating the nature of such Loss in reasonable detail and indicating the estimated amount, if practicable. The Indemnifying Party will have a period of 20 Business Days within which to respond to such claim of a Direct Loss. If the Indemnifying Party rejects such claim, or does not respond within such period, the Indemnitee may seek enforcement of its rights to indemnification under this Agreement. Any failure by the Indemnifying Party to respond under this Section 9.3(d) will not constitute an admission by the Indemnifying Party with respect to the claim asserted.

(e) If the amount of any Indemnifiable Loss, at any time subsequent to the making of an indemnity payment in respect thereof, is reduced by recovery, settlement, or otherwise under or pursuant to any insurance coverage, or pursuant to any claim, recovery, settlement, or payment by or against any other Person, the amount of such reduction, less any costs, expenses, or premiums incurred in connection therewith, will promptly be repaid by the Indemnitee to the Indemnifying Party. Upon making any indemnity payment, the Indemnifying Party will, to the extent of such indemnity payment, be subrogated to all rights of the Indemnitee against any third party in respect of the Indemnifiable Loss to which the indemnity payment relates; provided, however, that (i) the Indemnifying Party is then in compliance with its obligations under this Agreement in respect of such Indemnifiable Loss and (ii) until the Indemnitee recovers full payment of its Indemnifiable Loss, any and all claims of the Indemnifying Party against any such third party on account of said indemnity payment will be subordinated to the Indemnitee's rights against such third party. Without limiting the generality or effect of any other provision hereof, the Indemnitee and the Indemnifying Party will duly execute upon request all instruments reasonably necessary to evidence and perfect the above described subrogation and subordination rights, and otherwise cooperate in the prosecution of such claims at the direction of the Indemnifying Party.

(f) A failure to give timely notice as provided in this Section 9.3 will affect the rights or obligations of a Party hereunder only to the extent that, as a result of such failure, the Party entitled to receive such notice was actually prejudiced as a result of such failure. Notwithstanding the foregoing, no claim for indemnification made after expiration of the applicable time periods set forth in this Article IX will be valid.

9.4 Limitations on Indemnification.

(a) A Party may assert a claim for indemnification under Section 9.2(a)(ii) or Section 9.2(b)(ii), as the case may be, only to the extent the Indemnitee gives notice of such claim to the Indemnifying Party prior to the expiration of the applicable time period set forth in Section 9.1. Any claims pursuant to Section 9.2(a)(i) or Section 9.2(b)(i) must be asserted within 18 months following the Closing Date. Any claim for indemnification not made in accordance with Section 9.3 by a Party on or prior to the applicable date set forth in Section 9.1 or this Section 9.4(a), and the other Party's indemnification obligations with respect thereto, will be irrevocably and unconditionally released and waived.

(b) Notwithstanding any other provision of this Article IX: (i) Seller will not have any indemnification obligations for Indemnifiable Losses under Sections 9.2(a)(i) and 9.2(a)(ii) (A) for any individual item where the Loss relating thereto is less than $50,000 and (B) in respect of each individual item where the Loss relating thereto is equal to or greater than $50,000, unless the aggregate amount of all such Losses exceeds $1,000,000, and then only to the extent of such excess; and (ii) in no event will the aggregate indemnification to be paid by Seller under Sections 9.2(a)(i) and 9.2(a)(ii) exceed 15% of the Purchase Price. Notwithstanding the foregoing, (x) the limitations set forth in Sections 9.4(b)(i) and 9.4(b)(ii) will not apply to claims asserted by Buyer for breaches of Sections 5.1, 5.2, 5.3(a), 5.8, 5.18, and 5.20, and (y) the aggregate indemnification to be paid by Seller under Section 9.2(a)(ii) with respect to breaches of Sections 5.1, 5.2, 5.3(a), 5.8, 5.18, and 5.20, will not exceed 50% of the Purchase Price, less any other indemnification payments made by Seller pursuant to Sections 9.2(a)(i) and 9.2(a)(ii).

(c) Notwithstanding any other provision of this Article IX: (i) Buyer will not have any indemnification obligations for Indemnifiable Losses under Sections 9.2(b)(i) and 9.2(b)(ii) (A) for any individual item where the Loss relating thereto is less than $50,000 and (B) in respect of each individual item where the Loss relating thereto is equal to or greater than $50,000, unless the aggregate amount of all such Losses exceeds $1,000,000, and then only to the extent of such excess; and (ii) in no event will the aggregate indemnification to be paid by Buyer under Sections 9.2(b)(i) and 9.2(b)(ii) exceed 15% of the Purchase Price. Notwithstanding the foregoing, (x) the limitations set forth in Sections 9.4(c)(i) and 9.4(c)(ii) will not apply to claims asserted by Seller for breaches of Sections 6.1, 6.2, 6.3(a), 6.5, and 6.6, and (y) the aggregate indemnification to be paid by Buyer under Section 9.2(b)(ii) with respect to breaches of Sections 6.1, 6.2, 6.3(a), 6.5, and 6.6 will not exceed 50% of the Purchase Price, less any other indemnification payments made by Buyer pursuant to Sections 9.2(b)(i) and 9.2(b)(ii).

(d) No representation or warranty of either Party contained herein will be deemed untrue or incorrect, and such Party will not be deemed to have breached a representation, warranty, or covenant as a consequence of the existence of any fact, circumstance, action, or event that is permitted to be taken by such Party under the terms of this Agreement, or that is disclosed in this Agreement, any Schedule, or Exhibit hereto, or any certificate or other instrument delivered in accordance with the terms hereof.

(e) **Notwithstanding anything contained in this Agreement to the contrary, except for the representations and warranties contained in this Agreement, neither Seller nor any other Person is making any other express or implied representation or warranty with respect to Seller, the Business, the Purchased Assets, the Assumed Obligations or the transactions contemplated by this Agreement, and Seller disclaims any other representations or warranties, whether made by Seller or its Affiliates, officers, directors, employees, agents, or representatives, INCLUDING THE IMPLIED WARRANTY OF MERCHANTABILITY AND ANY IMPLIED WARRANTY OF FITNESS. Any claims Buyer may have for breach of representation or warranty must be based solely on the representations and warranties of Seller set forth in this Agreement. In furtherance of the foregoing, except for the representations and warranties contained in this Agreement, Buyer acknowledges and agrees that none of Seller, any of its Affiliates or any other Person will have or be subject to any liability to Buyer or any other Person for, and Seller hereby disclaims all liability and responsibility for, any representation, warranty, projection, forecast, statement, or information made, communicated, or furnished (orally or in writing) to Buyer or any of Buyer's Representatives, including any confidential memoranda distributed on behalf of Seller relating to the Business, the Purchased Assets, or the Assumed Obligations or other publications or data room information provided to Buyer or Buyer's Representatives, or any other document or information in any form provided to Buyer or Buyer's Representatives in connection with the sale of the Purchased Assets, the assumption of the Assumed Obligations, and the transactions contemplated hereby (including any opinion, information, projection, or advice that may have been or may be provided to Buyer or Buyer's Representatives by any of Seller's Representatives). BUYER HEREBY ACKNOWLEDGES THAT, EXCEPT FOR THE WARRANTIES EXPRESSLY SET FORTH IN ARTICLE V, THE BUSINESS AND THE PURCHASED ASSETS ARE BEING PURCHASED ON AN "AS IS, WHERE IS" BASIS, WITH ALL FAULTS.**

9.5 Applicability of Article IX. For the avoidance of doubt, Seller and Buyer agree that the remedies and obligations under this Article IX apply only following the Closing, and that prior to the Closing or in the event that this Agreement is terminated the Parties' remedies will be determined by applicable Law and the provisions of Article X.

9.6 Tax Treatment of Indemnity Payments. Seller and Buyer agree to treat any indemnity payment made pursuant to this Article IX as an adjustment to the Purchase Price for federal, state, and local income Tax purposes.

9.7 No Consequential Damages. Notwithstanding anything to the contrary elsewhere in this Agreement or provided for under any applicable Law, from and after the Closing no Party

will, in any event, be liable to the other Party, either in contract or in tort, for any consequential, incidental, indirect, special, or punitive damages of the other Party, including loss of future revenue, income, or profits, diminution of value, or loss of business reputation or opportunity, relating to the breach or alleged breach hereof or otherwise, whether or not the possibility of such damages has been disclosed to the other Party in advance or could have been reasonably foreseen by such other Party. The exclusion of consequential, incidental, indirect, special, and punitive damages as set forth in the preceding sentence does not apply to any such damages sought by third parties against Buyer or Seller, as the case may be, in connection with Losses that may be indemnified pursuant to this Article IX.

9.8 Exclusive Remedy. Seller and Buyer acknowledge and agree that, from and after the Closing, the sole and exclusive remedy for any breach or inaccuracy, or alleged breach or inaccuracy, of any representation or warranty in this Agreement or any covenant or agreement to be performed hereunder will be indemnification in accordance with this Article IX and the remedies provided for in Section 10.4 except for claims or damages arising from fraud by the other Party. In furtherance of the foregoing, Seller and Buyer hereby waive, to the fullest extent permitted by applicable Law, any and all other rights, claims, and causes of action (including rights of contributions, if any) that may be based upon, arise out of, or relate to this Agreement, or the negotiation, execution, or performance of this Agreement (including any tort or breach of contract 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), known or unknown, foreseen or unforeseen, which exist or may arise in the future, that it may have against the other arising under or based upon any Law (including any such Law under or relating to environmental matters), common law, or otherwise.

ARTICLE X
TERMINATION AND OTHER REMEDIES

10.1 Termination.

(a) This Agreement may be terminated at any time prior to the Closing Date by mutual written consent of Seller and Buyer.

(b) This Agreement may be terminated by Seller or Buyer if the Closing has not occurred on or before 12 months following the date of this Agreement (the "Termination Date"); provided that the right to terminate this Agreement under this Section 10.1(b) will not be available to a Party whose failure to fulfill any obligation under this Agreement has been the cause of, or resulted in, the failure of the Closing to occur on or before the Termination Date; and provided, further, that if 12 months following the date of this Agreement the conditions to the Closing set forth in Section 8.2(e) or Section 8.3(d) have not been fulfilled but all other conditions to the Closing have been fulfilled or are capable of being fulfilled, then the Termination Date will be the day which is 15 months following the date of this Agreement.

(c) This Agreement may be terminated by either Seller or Buyer if (i) any Required Regulatory Approval has been denied by the applicable Governmental Entity and all appeals of such denial have been taken and have been unsuccessful, or (ii) one or more courts of competent jurisdiction in the United States or any State has issued an

Order permanently restraining, enjoining, or otherwise prohibiting the Closing, and such Order has become final and nonappealable.

(d) This Agreement may be terminated by Buyer if there has been a breach by Seller of any representation, warranty, or covenant made by it in this Agreement which has prevented the satisfaction of any condition to the obligations of Buyer to effect the Closing and such breach has not been cured by Seller or waived by Buyer within 20 Business Days after all other conditions to Closing have been satisfied or are capable of being satisfied. For the avoidance of doubt, supplements or amendments to Schedules pursuant to Section 7.8 will not be deemed a breach giving rise to a right to terminate pursuant to this Section 10.1(d).

(e) This Agreement may be terminated by Buyer in accordance with the terms of Section 7.8.

(f) This Agreement may be terminated by Seller if there has been a breach by Buyer of any representation, warranty, or covenant made by it in this Agreement which has prevented the satisfaction of any condition to the obligations of Seller to effect the Closing and such breach has not been cured by Buyer or waived by Seller within 20 Business Days after all other conditions to Closing have been satisfied or are capable of being satisfied.

10.2 Procedure and Effect of Termination. In the event of termination of this Agreement by either or both of the Parties pursuant to Section 10.1, written notice thereof will forthwith be given by the terminating Party to the other Party and this Agreement will terminate and the transactions contemplated hereby will be abandoned, without further action by either Party, whereupon the liabilities of the Parties hereunder will terminate, except as otherwise expressly provided in this Agreement (including Section 10.3).

10.3 Remedies upon Termination.

(a) The obligations of the Parties under Articles I, X, and XI, and Sections 7.2(b), 7.2(c), 7.3, and 7.5 will survive the termination of this Agreement pursuant to Section 10.1. In the event of any such termination, each of the Parties will be and remain liable for any breach of its obligations under this Agreement prior to such termination, including liability for all damages suffered or sustained by the other Party.

(b) Upon any termination of this Agreement, all filings, applications and other submissions made pursuant to this Agreement, to the extent practicable, will be withdrawn from the Governmental Entity or other Person to which they were made.

10.4 Specific Performance. This Agreement is being entered into (i) by Buyer as a strategic action in furthering Buyer's business strategy, and (ii) by Seller as part of a strategic corporate-wide restructuring process, and consummation of the transactions contemplated hereby will be a significant contributing factor to the success of such process. The Parties acknowledge that any failure to consummate the transactions provided for herein will frustrate the Parties' respective objectives in entering into this Agreement. Accordingly, the Parties agree and stipulate that the Purchased Assets are unique, and that (x) any failure to consummate the transactions provided for in this Agreement due to breach of this Agreement by either Party

would result in irreparable injury to the other Party, (y) in the event of any such failure to consummate such transactions it would be very difficult or impracticable to determine monetary damages caused by such a breach, and (z) in any event, monetary damages would not be an adequate remedy for any such breach. Therefore, the Parties expressly agree that in the event of breach of this Agreement by either Party, the other Party will, in addition to any other rights and remedies hereunder, have the right to enforce this Agreement by obtaining an order for specific performance of the Parties' obligations hereunder.

10.5 Costs. If either Party resorts to legal proceedings to enforce this Agreement, the prevailing Party in such proceedings will be entitled to recover all costs incurred by such Party, including reasonable attorney's fees, in addition to any other relief to which such Party may be entitled under the terms hereof.

ARTICLE XI
MISCELLANEOUS PROVISIONS

11.1 Amendment and Modification. Except as provided in Section 7.8, this Agreement may be amended, modified, or supplemented only by written agreement of Seller and Buyer.

11.2 Waiver of Compliance; Consents. Except as otherwise provided in this Agreement, any failure of either Party to comply with any obligation, covenant, agreement, or condition herein may be waived by the Party entitled to the benefits thereof only by a written instrument signed by the Party granting such waiver, but such waiver or failure to insist upon strict compliance with such obligation, covenant, agreement, or condition will not operate as a waiver of, or estoppel with respect to, any subsequent or other failure.

11.3 Notices. All notices and other communications hereunder will be in writing and will be deemed given if delivered personally or by facsimile transmission, or mailed by overnight courier or certified mail (return receipt requested), postage prepaid, to the Party being notified at such Party's address indicated below (or at such other address for a Party as is specified by like notice; provided that notices of a change of address will be effective only upon receipt thereof):

(a) If to Seller, to:

Aquila, Inc.
Attn: General Counsel
20 West Ninth Street
Kansas City, Missouri 64105
Fax: (816) 467-3486

with a copy to:

Blackwell Sanders Peper Martin LLP
Attn: Robin V. Foster, Esq. and Michael J. Eason, Esq.
4801 Main Street, Suite 1000
Kansas City, Missouri 64112
Fax: (816) 983-8080

(b) if to Buyer, to:

The Empire District Electric Company
Attn: President
602 Joplin St.
Joplin, Missouri 64801
Fax: (417) 625-5153

with a copy to:

Bryan Cave LLP
Attn: James P. Pryde, Esq.
1200 Main Street, Ste 3500
Kansas City, Missouri 64105
Fax: (816) 374-3300

11.4 Assignment. This Agreement and all of the provisions hereof will be binding upon and inure to the benefit of the Parties and their respective successors and permitted assigns, but neither this Agreement nor any of the rights, interests, or obligations hereunder may be assigned by either Party, without the prior written consent of the other Party, nor is this Agreement intended to confer upon any other Person except the Parties any rights or remedies hereunder. The immediately preceding sentence will not be construed so as to prohibit Buyer from assigning this Agreement and the rights and benefits described herein to a wholly-owned Affiliate without the consent of Seller, provided that such assignment does not affect Buyer's obligations hereunder. No provision of this Agreement creates any third party beneficiary rights in any employee or former employee of Seller (including any beneficiary or dependent thereof) in respect of continued employment or resumed employment, and no provision of this Agreement creates any rights in any such Persons in respect of any benefits that may be provided, directly or indirectly, under any employee benefit plan or arrangement.

11.5 Governing Law. This Agreement is governed by and construed in accordance with the laws of the State of Missouri (regardless of the laws that might otherwise govern under applicable principles of conflicts of law) as to all matters, including but not limited to matters of validity, construction, effect, performance and remedies.

11.6 Severability. Any term or provision of this Agreement that is invalid or unenforceable in any situation in any jurisdiction will not affect the validity or enforceability of the remaining terms and provisions hereof or the validity or enforceability of the offending term or provision in any other situation or in any other jurisdiction.

11.7 Entire Agreement. This Agreement will be a valid and binding agreement of the Parties only if and when it is fully executed and delivered by the Parties, and until such execution and delivery no legal obligation will be created by virtue hereof. This Agreement, together with the Schedules and Exhibits hereto and the certificates and instruments delivered under or in accordance herewith, embodies the entire agreement and understanding of the Parties hereto in respect of the transactions contemplated by this Agreement. There are no restrictions, promises, representations, warranties, covenants, or undertakings in respect of the transactions contemplated by this Agreement, other than those expressly set forth or referred to herein or therein, and it is expressly acknowledged and agreed that there are no restrictions, promises, representations, warranties, covenants, or undertakings contained in any other material made available to Buyer, including any such material made available in any data room information, confidential information memoranda, management information presentations, or otherwise. This Agreement supersedes all prior agreements and understandings between the Parties with respect to such transactions.

11.8 Bulk Sales or Transfer Laws. Buyer acknowledges that Seller will not comply with the provision of any bulk sales or transfer laws of any jurisdiction in connection with the transactions contemplated by this Agreement. Buyer hereby waives compliance by Seller with the provisions of the bulk sales or transfer laws of all applicable jurisdictions.

11.9 Delivery. This Agreement, and any certificates and instruments delivered under or in accordance herewith, may be executed in multiple counterparts (each of which will be deemed an original, but all of which together will constitute one and the same instrument), and may be delivered by facsimile transmission, with originals to follow by overnight courier or certified mail (return receipt requested).

[Signature Page Follows]

IN WITNESS WHEREOF, the Parties have caused this Agreement to be signed by their respective duly authorized officers as of the date first above written.

Aquila, Inc.

By: _____
Name: Richard C. Green, Jr.
Title: President and Chief Executive Officer

The Empire District Electric Company

By: _____
Name: William L. Gipson
Title: President and Chief Executive Officer

IN WITNESS WHEREOF, the Parties have caused this Agreement to be signed by their respective duly authorized officers as of the date first above written.

Aquila, Inc.

By: _____
Name: Richard C. Green, Jr.
Title: President and Chief Executive Officer

The Empire District Electric Company

By: William L. Gipson
Name: William L. Gipson
Title: President and Chief Executive Officer

Exhibit 1.1-A
Form of Assignment and Assumption Agreement

Assignment and Assumption Agreement ("Agreement"), made as of _____, _____, by and between Aquila, Inc., a Delaware corporation ("Seller"), and The Empire District Electric Company, a Kansas corporation ("Buyer"). Unless otherwise indicated, capitalized terms used but not otherwise defined herein have the meanings ascribed to such terms in the Asset Purchase Agreement (as defined below).

WHEREAS, Seller and Buyer have entered into that certain Asset Purchase Agreement, dated September 21, 2005 (the "Asset Purchase Agreement"), pursuant to which, among other things, Buyer agreed to assume from Seller the Assumed Obligations, and Seller agreed to assign to Buyer all of Seller's rights to the Purchased Assets.

NOW, THEREFORE, pursuant and subject to the terms of Asset Purchase Agreement and in consideration of the mutual covenants set forth below and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Seller and Buyer agree as follows:

1. Seller hereby assigns and transfers all of the Assumed Obligations and all of Seller's rights to the Purchased Assets to Buyer, and Buyer hereby accepts such assignment and hereby assumes and agrees to pay, perform, and discharge when due all of the Assumed Obligations.

2. The Parties agree, on behalf of themselves and their respective successors and assigns, to do, execute, acknowledge, and deliver, or to cause to be done, executed, acknowledged, and delivered, all such further acts, documents, and instruments that may reasonably be required to give full effect to the intent of this Agreement.

3. This Agreement is being delivered pursuant to the Asset Purchase Agreement and will be construed consistently therewith. This Agreement is not intended to, and does not, in any manner enhance, diminish, or otherwise modify the rights and obligations of the Parties under the Asset Purchase Agreement. To the extent that any provision of this Agreement conflicts or is inconsistent with the terms of the Asset Purchase Agreement, the terms of the Asset Purchase Agreement will govern.

4. This Agreement may be executed in multiple counterparts (each of which will be deemed an original, but all of which together will constitute one and the same instrument), and may be delivered by facsimile transmission, with originals to follow by overnight courier or certified mail (return receipt requested).

5. This Agreement and all of the provisions hereof will be binding upon and inure to the benefit of the Parties and their respective successors and permitted assigns.

[Signature Page Follows]

IN WITNESS WHEREOF, the Parties have caused this Agreement to be signed by their respective duly authorized officers as of the date first above written.

Aquila, Inc.

By: _____
Name:
Title:

The Empire District Electric Company

By: _____
Name:
Title:

Exhibit 1.1-B
Form of Assignment of Easements

Prepared by and please return to:

_____
_____
_____
_____

ASSIGNMENT OF EASEMENTS

In consideration of Ten Dollars ($10.00) and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, AQUILA, INC., a Delaware corporation ("Assignor"), as grantor, with an address of 20 West Ninth Street, Kansas City, Missouri 64105, has granted, sold, conveyed, transferred, and assigned, and by these presents does hereby grant, sell, convey, transfer, and assign unto THE EMPIRE DISTRICT ELECTRIC COMPANY, a Kansas corporation ("Assignee"), as grantee, with a mailing address of 602 Joplin Street, Joplin, Missouri 64801, without representation or warranty of any kind except as set forth in that certain "Asset Purchase Agreement" dated as of September 21, 2005 by and between Assignor and Assignee, all of Assignor's right, title, and interest in and to the Easements (as such term is defined in the Asset Purchase Agreement) and the Shared Easement Rights (as such term is defined in the Asset Purchase Agreement), including the interests and rights described or set forth on Exhibit A attached hereto and by this reference made a part hereof.

This Assignment is being delivered pursuant to the Asset Purchase Agreement and will be construed consistently therewith. This Assignment is not intended to, and does not, in any manner enhance, diminish, or otherwise modify the rights and obligations of Assignor and Assignee under the Asset Purchase Agreement. To the extent that any provision of this Assignment conflicts or is inconsistent with the terms of the Asset Purchase Agreement, the terms of the Asset Purchase Agreement will govern.

TO HAVE AND TO HOLD the above-described premises unto Assignee and its successors and assigns, forever.

IN WITNESS WHEREOF, the undersigned has executed this Assignment effective the ____ day of _____, 20___.

AQUILA, INC., a Delaware corporation

[SEAL] By: _____

Name: _____

Title: _____

STATE OF MISSOURI)
) ss.
COUNTY OF _____)

On this _____ day of _____, _____, before me, appeared _____, to me personally known, who being by me duly sworn, did say that he/she is the _____ of Aquila, Inc., a Delaware corporation, that the seal affixed to the foregoing instrument is the corporate seal of the corporation, that said instrument was signed and sealed on behalf of said corporation by authority of its Board of Directors, and acknowledged said instrument to be the free act and deed of said corporation.

IN WITNESS WHEREOF I have hereunto set my hand and affixed my official seal at my office in said county and state the day and year last above written.

[SEAL]

_____
Printed Name: _____
Notary Public in and for
said County and State

My Commission Expires:

_____

EXHIBIT A

Easements and Shared Easements

Exhibit 1.1-C
Form of Bill of Sale

Bill of Sale, made as of _____, _____, by and between Aquila, Inc., a Delaware corporation ("Seller"), and The Empire District Electric Company, a Kansas corporation ("Buyer"). Unless otherwise indicated, capitalized terms used but not otherwise defined herein have the meanings ascribed to such terms in the Asset Purchase Agreement (as defined below).

WHEREAS, Seller and Buyer have entered into that certain Asset Purchase Agreement, dated September 21, 2005 (the "Asset Purchase Agreement"), pursuant to which, among other things, Seller agreed to sell to Buyer and Buyer agreed to purchase from Seller the Purchased Assets.

NOW, THEREFORE, pursuant and subject to terms of the Asset Purchase Agreement and in consideration of the mutual covenants set forth below and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Seller and Buyer agree as follows:

1. Seller hereby sells, assigns, conveys, transfers, and delivers to Buyer all of Seller's right, title, and interest in, to, and under the Purchased Assets, and Buyer hereby purchases and accepts from Seller, as of the date hereof, all right, title, and interest of Seller in, to, and under the Purchased Assets.

2. From time to time, at the request of Buyer, Seller will do, execute, acknowledge, and deliver, or will cause to be done, executed, acknowledged, and delivered, all such further acts, documents, and instruments that may reasonably be required to give full effect to the intent of this Bill of Sale.

3. This Bill of Sale is being delivered pursuant to the Asset Purchase Agreement and will be construed consistently therewith. This Bill of Sale is not intended to, and does not, in any manner enhance, diminish, or otherwise modify the rights and obligations of the Parties under the Asset Purchase Agreement. To the extent that any provision of this Bill of Sale conflicts or is inconsistent with the terms of the Asset Purchase Agreement, the terms of the Asset Purchase Agreement will govern.

4. This Bill of Sale may be executed in multiple counterparts (each of which will be deemed an original, but all of which together will constitute one and the same instrument), and may be delivered by facsimile transmission, with originals to follow by overnight courier or certified mail (return receipt requested).

5. This Bill of Sale and all of the provisions hereof will be binding upon and inure to the benefit of the Parties and their respective successors and permitted assigns.

[Signature Page Follows]

IN WITNESS WHEREOF, the Parties have caused this Bill of Sale to be signed by their respective duly authorized officers as of the date first above written.

Aquila, Inc.

By: _____
Name:
Title:

The Empire District Electric Company

By: _____
Name:
Title:

Exhibit 1.1-D
Form of Special Warranty Deed

THIS SPACE FOR RECORDER'S USE ONLY

Date: _____ __, ____

RECORDING REQUESTED BY:

Bryan Cave LLP

AND WHEN RECORDED MAIL TO:

Bryan Cave LLP
Attn: James P. Pryde
1200 Main Street, Suite 3500
Kansas City, MO 64105

SPECIAL WARRANTY DEED

GRANTOR:	Aquila, Inc.
GRANTEE:	The Empire District Electric Company
GRANTEE MAILING ADDRESS:	602 Joplin Street Joplin, Missouri 64801
LEGAL DESCRIPTION:	See Exhibit A, attached hereto.

THIS INDENTURE, made on the ___ day of _____, ____, by and between AQUILA, INC., a Delaware corporation, Grantor, and THE EMPIRE DISTRICT ELECTRIC COMPANY, a Kansas corporation, Grantee, with a mailing address of 602 Joplin Street, Joplin, Missouri 64801.

WHEREAS, Grantor and Grantee have signed that certain "Asset Purchase Agreement" dated as of September 21, 2005 (the "Agreement"), which Agreement provides for the conveyance of certain assets to Grantee, including, without limitation, the real estate lying, being, and situate in the County of _____ and State of Missouri legally described on Exhibit A attached hereto (the "Property").

WITNESSETH: THAT GRANTOR, in consideration of the sum of Ten and 00/100 Dollars ($10.00), and other valuable consideration, to it in hand paid by Grantee, the receipt of which is hereby acknowledged, does by these presents, sell and convey unto Grantee and its successors and assigns, the Property;

SUBJECT TO taxes and assessments for _____ and subsequent years and further subject to all Permitted Encumbrances, as defined in the Agreement.

TO HAVE AND TO HOLD, the Property aforesaid, with all and singular the rights, privileges, appurtenances, and immunities thereto belonging or in anywise appertaining, unto Grantee and unto its successors and assigns forever, Grantor hereby covenanting that the Property is free and clear from any encumbrance done by it, except as hereinabove stated; and that Grantor will warrant and defend the title of the Property unto Grantee and unto its successors and assigns forever, against the lawful claims and demands of all persons whomsoever, lawfully claiming the same by, through, or under the party of the Grantor, except as hereinafter stated; PROVIDED, HOWEVER, notwithstanding the foregoing, Grantee shall not be entitled to recover any remedies otherwise available to Grantee for any and all breaches of the foregoing deed warranties unless such remedies are available to Grantee under the Agreement (and then only to the extent and subject to all limitations provided in the Agreement); and PROVIDED, FURTHER, the terms of the Agreement shall govern in the event of any inconsistency between the terms of the Agreement and the terms of this Indenture.

IN WITNESS WHEREOF, Grantor has caused this Indenture to be executed by its duly authorized officer, the day and the year first above written.

AQUILA, INC., a Delaware corporation

[SEAL]

By: _____

Name: _____

Title: _____

STATE OF MISSOURI)
) ss.
COUNTY OF _____)

On this _____ day of _____, _____, before me, appeared _____, to me personally known, who being by me duly sworn, did say that he/she is the _____ of Aquila, Inc., a Delaware corporation, that the seal affixed to the foregoing instrument is the corporate seal of the corporation, that said instrument was signed and sealed on behalf of said corporation by authority of its Board of Directors, and acknowledged said instrument to be the free act and deed of said corporation.

IN WITNESS WHEREOF I have hereunto set my hand and affixed my official seal at my office in said county and state the day and year last above written.

[SEAL]

_____
Printed Name: _____
Notary Public in and for
said County and State

My Commission Expires:

_____

EXHIBIT A

Legal Description

Exhibit 1.1-E
Form of Transition Services Agreement

Transitional Services Agreement ("Services Agreement") made as of _____ __, _____ (the "Execution Date") by and between Aquila, Inc., a Delaware corporation ("Aquila"), and The Empire District Electric Company, a Kansas corporation ("Buyer"). Aquila and Buyer are referred to collectively as the "Parties" and each individually as a "Party."

WHEREAS, Aquila is selling certain assets and assigning certain liabilities to Buyer pursuant to that certain Asset Purchase Agreement dated as of September 21, 2005 between Aquila and Buyer (the "Purchase Agreement");

WHEREAS, in connection with the transactions contemplated by the Purchase Agreement, Buyer desires that Aquila provide certain transitional services to Buyer in respect of the Business;

WHEREAS, Aquila has agreed to provide certain transitional services to Buyer in accordance with the terms and conditions of this Services Agreement; and

WHEREAS, capitalized terms used but not defined herein have the meanings ascribed to them in the Purchase Agreement;

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

ARTICLE I
SERVICES

1.1 The Services. Aquila will provide Buyer the transitional services set forth on Schedule 1.1 (the "Services").

1.2 Service Parameters. Aquila will provide the Services only to the extent that the Services were provided by Aquila for the Business prior to the date hereof, and only for purposes of supporting the conduct of the Business substantially in the manner it was conducted prior to the date hereof.

1.3 Performance Exceptions. Aquila is not required to provide any Service to the extent the provision thereof (i) becomes impracticable, in any material respect, as a result of a cause or causes outside of Aquila's reasonable control (including any labor dispute or labor or materials shortage or interruption), or (ii) would require Aquila to violate any Law, Order, or other binding commitment or obligation of Aquila to any Governmental Entity or other third party.

1.4. Cooperation; Information and Access. The Parties will cooperate in good faith in all matters relating to the provision and receipt of the Services. Without limiting the generality of the foregoing, Buyer will provide Aquila, in a timely manner, all information and access to facilities required or reasonably requested by Aquila in connection with providing the Services.

1.5 Additional Resources. In providing the Services, Aquila is not obligated to (i) hire any additional employees, (ii) maintain the employment of any specific employee, or (iii) purchase, lease, or license any additional equipment or materials.

ARTICLE II
TERM AND TERMINATION

2.1 Term. The Services will commence on the date hereof and terminate as provided on Schedule 1.1.

2.2 Termination. This Services Agreement or Aquila's obligation to provide all or any of the Services may be terminated by the mutual written consent of the Parties at any time. In addition, except as otherwise provided on Schedule 1.1, Buyer may terminate this Services Agreement, or Aquila's obligation to provide any particular Service hereunder, at any time by providing not less than 30 days prior written notice to Aquila. If any such termination is with respect to less than all of the Services, then Aquila will continue to be obligated to provide the remaining Services in accordance with this Services Agreement.

2.3 Effect of Termination. Upon the termination of this Services Agreement or Aquila's obligation to provide all or any of the Services, the Parties will have no further obligations hereunder with respect to the terminated Service or Services; provided, however, that notwithstanding such termination (i) Buyer will remain liable to Aquila for all amounts payable in respect of the terminated Services provided prior to the effective date of the termination, and (ii) the provisions of Articles II, IV, V, and VII of this Services Agreement will survive any such termination indefinitely.

ARTICLE III
COMPENSATION

3.1 Fee for Services. Buyer will compensate Aquila for the Services in accordance with Schedule 1.1 and this Article III.

3.2 Payment Terms. Aquila will bill Buyer on a monthly basis for all Services provided hereunder. Such bills will be accompanied by documentation reasonably supporting the amounts shown as payable thereunder, and must be paid by Buyer within 30 days after receipt. Late payments will bear interest at the Prime Rate plus 5%.

3.3 Sales and Use Taxes. For state and local sales and use tax purposes, Aquila and Buyer will cooperate in good faith to segregate amounts payable under this Services Agreement into the following categories: (i) taxable Services; (ii) non-taxable Services; and (iii) payments made by Aquila merely as a purchasing agent for Buyer in procuring goods or services. Aquila will collect from Buyer all state and local sales and use taxes in respect of the Services and will timely remit such taxes to the appropriate state and local tax authorities. Buyer will pay such taxes to Aquila monthly, or as otherwise reasonably required by Aquila. Within 20 days following the receipt by Aquila of notice thereof, Aquila will notify Buyer of the commencement of any sales or use tax audit by a taxing authority which involves any Services provided hereunder or any payments made by Aquila as purchasing agent pursuant hereto. Thereafter,

Buyer may, at its own expense, participate in the defense of that audit to the extent related to any such Services or payments. Buyer will be responsible for any additional taxes imposed in respect of the Services, and all related interest, as a result of any such sales or use tax audit.

ARTICLE IV
PERFORMANCE STANDARDS; DISCLAIMER; LIMITATION OF LIABILITY

4.1 Performance Standards. Aquila will provide the Services in accordance with its policies, procedures, and practices in effect immediately prior to the date hereof and, in providing the Services, will exercise the same degree of care and skill as it exercises in providing similar functions for its own operations.

4.2 **DISCLAIMER OF WARRANTIES. EXCEPT AS OTHERWISE SET FORTH HEREIN, AQUILA MAKES NO REPRESENTATIONS OR WARRANTIES, EXPRESS, IMPLIED, OR STATUTORY, INCLUDING BUT NOT LIMITED TO THE IMPLIED WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE, WITH RESPECT TO THE SERVICES OR OTHER DELIVERABLES PROVIDED BY IT HEREUNDER.**

4.3 Indemnification. Buyer agrees to indemnify and hold harmless Aquila and its directors, officers, employees, and agents from and against any and all Losses arising out of, or resulting from, third party claims regarding the provision of the Services by Aquila hereunder, other than Losses arising or resulting from Aquila's gross negligence or willful misconduct.

4.4 Limitation of Liability. In no event will Aquila be liable to Buyer for any lost profits, loss of data, loss of use, business interruption, or other special, incidental, indirect, punitive, or consequential damages, however caused, under any theory of liability, arising from Aquila's performance of, or relating to, the Services or this Services Agreement.

ARTICLE V
RELATIONSHIP BETWEEN THE PARTIES

The relationship of Aquila to Buyer under this Services Agreement is that of an independent contractor, and Aquila will not be deemed an employee, partner, joint venturer, or agent of Buyer in connection with the provision of the Services by Aquila. Aquila will be solely responsible for the payment of any employment-related costs, taxes, or benefits in respect of the provision of the Services.

ARTICLE VI
SUBCONTRACTORS

Aquila may engage one or more subcontractors to provide all or any portion of the Services, provided that Aquila remains directly responsible for its obligations hereunder.

ARTICLE VII
MISCELLANEOUS

7.1 Amendment and Modification. This Services Agreement may be amended, modified, or supplemented only by written agreement of the Parties.

7.2 Waiver of Compliance; Consents. Except as otherwise provided in this Services Agreement, any failure of either Party to comply with any obligation, covenant, agreement, or condition herein may be waived by the Party entitled to the benefits thereof only by a written instrument signed by the Party granting such waiver, but such waiver or failure to insist upon strict compliance with such obligation, covenant, agreement, or condition will not operate as a waiver of, or estoppel with respect to, any subsequent or other failure.

7.3 Notices. All notices and other communications hereunder shall be made in accordance with, and in the manner provided by, the provisions for notices and other communications in the Purchase Agreement.

7.4 Assignment. This Services Agreement is binding upon and inures to the benefit of the Parties and their respective successors and permitted assigns, but neither this Services Agreement nor any of the rights, interests, or obligations hereunder may be assigned by either Party without the prior written consent of the other Party, except that Aquila may (i) engage one or more subcontractors to provide all or any portion of the Services in accordance with Article VI above or (ii) assign this Agreement, without the consent of Buyer, to any Person that acquires, by purchase, merger, reorganization, or otherwise, all or substantially all of Aquila's assets. Other than as provided in the preceding sentence, this Services Agreement does not confer upon any Person other than the Parties any rights or remedies hereunder.

7.5 Governing Law. This Services Agreement is governed by and construed in accordance with the laws of the State of Missouri (regardless of the laws that might otherwise govern under applicable principles of conflicts of law) as to all matters, including but not limited to matters of validity, construction, effect, performance, and remedies.

7.6 Severability. Any term or provision of this Services Agreement that is invalid or unenforceable in any situation in any jurisdiction will not affect the validity or enforceability of the remaining terms and provisions hereof or the validity or enforceability of the offending term or provision in any other situation or in any other jurisdiction.

7.7 Entire Agreement. This Services Agreement will be a valid and binding agreement of the Parties only if and when it is fully executed and delivered by the Parties, and until such execution and delivery no legal obligation will be created by virtue hereof. This Services Agreement, together with the Schedules hereto (which are incorporated herein by this reference), (i) embodies the entire agreement and understanding of the Parties hereto in respect of provision of transitional services by Aquila to Buyer in connection with the transactions contemplated by the Purchase Agreement, and (ii) supersedes all prior agreements and understandings between the Parties with respect to such transitional services.

7.8 Delivery. This Services Agreement may be executed in multiple counterparts (each of which will be deemed an original, but all of which together will constitute one and the

same instrument), and may be delivered by facsimile transmission, with originals to follow by overnight courier or certified mail (return receipt requested).

[Signature Page Follows]

IN WITNESS WHEREOF, the Parties have caused this Services Agreement to be signed by their respective duly authorized officers as of the date first above written.

Aquila, Inc.

By: _____
Name:
Title:

The Empire District Electric Company

By: _____
Name:
Title:

Schedule 1.1
The Services (and Terms); Fee for Services

The Services, together with the termination date for each, are set forth below:

Service	Term

The Parties agree that the fees, costs and expenses to be paid by Buyer to Aquila for the Services provided under this Services Agreement will include:

1. Fees. The fees payable by Buyer to Aquila for the Services will be based on the fully-allocated direct and indirect inter-business unit amounts allocated by Aquila to the Business for the Services, as calculated by Aquila in a manner consistent with past practice prior to the Execution Date. If any Services are to be provided by Aquila after the initial six-month period immediately following the Execution Date (the last day of the six-month period being the "Initial Expiration Date"), the fees charged for all Services provided after the Initial Expiration Date will increase by 2%; and

2. Costs and Expenses. The Buyer will reimburse Aquila for all out-of-pocket costs and expenses incurred by Aquila in the provision of the Services.

Exhibit 3.1
Determination of Purchase Price

A. The following principles (the "Accounting Principles") will govern certain accounting matters provided for herein:

1. Unless otherwise indicated, all amounts will be determined in accordance with GAAP and applicable FERC Accounting Rules.

2. The amount of any item reflected in Seller's financial statements or in Schedule 3.1-A, Schedule 3.1-B, or Schedule 3.1-C as of any specified time, including in any FERC Account, as determined in accordance with GAAP and the FERC Accounting Rules, is referred to as the "Book Value" of such item as of such specified time.

3. "GAAP" means United States generally accepted accounting principles, applied on a consistent basis.

4. "FERC Accounting Rules" means the requirements of FERC with respect to and in accordance with the Uniform System of Accounts established by FERC, applied on a consistent basis.

5. All determinations and calculations will be made and performed in a manner to (a) avoid double counting of any item, to the extent that any such item is otherwise accounted for in such determination or calculation, and (b) give effect to the change in accounting policies described in note 1 to Schedule 3.1-C. For purposes of computing the Adjustment Amount, any changes in applicable accounting rules, including the FERC Accounting Rules, following the date of this Agreement (other than the changes described in note 1 to Schedule 3.1-C) will not be given effect for purposes of computing the Adjustment Amount to the extent that such changes would have the effect of changing any of the items included in Net Plant or the FERC Accounts in a manner that would cause the Adjustment Amount, if computed taking such changes into account, to be greater or lesser than the Adjustment Amount, as computed without taking such changes into account.

6. Certain account balances and other values will be determined as set forth below:

"Base Net Plant Amount" equals the Net Plant as of June 30, 2005, which the Parties stipulate is $46,872,000.

"Extraordinary Expenditures" means any expenditures by Seller (not reasonably expected to be paid by or reimbursed by insurance) during the period from the date hereof through the Effective Time incurred for the purpose of repair, replacement, or addition to assets, other than expenditures reflected as Net Plant or in any FERC Account, as a result of (i) damage resulting from weather or other extraordinary or catastrophic occurrence; or (ii) the imposition of any requirement by a Governmental Entity; provided, however, that any expenditure (which, with respect to any matter referred to in clauses (i) or (ii) of this definition, will be deemed to include all costs,

expenses, and payments incurred by Seller in respect of such matter (e.g, all costs incurred due to a catastrophic storm)) of the type described in clauses (i) and (ii) of this definition will be deemed an Extraordinary Expenditure only if such expenditure exceeds five percent of the Extraordinary Expenditures Reference Amount, in which case the full amount of such expenditure (from dollar one) will be deemed an Extraordinary Expenditure.

Extraordinary Expenditures Adjustment" means all Extraordinary Expenditures, plus interest on each such expenditure at the Prime Rate from the date of the expenditure until the Closing Date.

"Extraordinary Expenditures Reference Amount" means the earnings before interest and Income Taxes attributed to the Business after deducting all corporate-level charges, determined in a manner consistent with Seller's normal accounting practices, for the annual period ended December 31, 2004.

"FERC Accounts" means the accounts listed on lines 12-32 and 39-48 of Schedule 3.1-C maintained by Seller with respect to the Business in accordance with the FERC Accounting Rules.

"Lease Buy-Out Amount" is the total amount paid or to be paid by Seller pursuant to Section 7.4(d) of the Agreement in connection with the purchase of leased assets to be included in the Purchased Assets. For purposes of calculating the Purchase Price and the Adjustment Amount, the Book Value of assets purchased pursuant to Section 7.4(d) will be excluded from Net Plant and the FERC Accounts (even if the assets purchased would normally be reflected as Net Plant or in one or more FERC Accounts following such purchase).

"Net Plant" means the Book Value of net plant of the Business, which is comprised of the amounts listed on lines 2-6 of Schedule 3.1-C.

"Net Plant Adjustment" may be a positive or negative number, and means Net Plant at Closing minus the Base Net Plant Amount.

"Net Plant at Closing" will be the Net Plant, determined as of the Effective Time.

B. Determination of the Adjustment Amount

The Adjustment Amount will be the sum of the following amounts, in each case determined as of the Effective Time: (i) the Net Plant Adjustment; (ii) the net total Book Value of the FERC Accounts; (iii) the Lease Buy-Out Amount; and (iv) the Extraordinary Expenditures Adjustment.

C. Payments Unrelated to the Adjustment Amount.

The Adjustment Amount will not include or otherwise take into account any amounts attributable to the adjustments and payments made with respect to (i) items and amounts prorated pursuant to Section 3.4, (ii) collateral or other security, as contemplated by Section 7.4(f), (iii) any and all payments made or to be made under any provision of Section 7.9, (iv) any and all proceeds or

payments received or to be received by a Party under any provision of Section 7.10, (v) any payment under Section 7.4(c)(ii), or (vi) indemnification, as contemplated by Article IX.

D. Example of Computation of Purchase Price.

An example of the computation of the Purchase Price (using financial information for the Business as of June 30, 2005) is depicted on Schedule 3.1-A, Schedule 3.1-B, and Schedule 3.1-C. Specifically, (i) Schedule 3.1-A provides a high-level overview of the computation of the Closing Payment Amount, (ii) Schedule 3.1-B provides an example (in summary form) of the Post-Closing Adjustment Statement, and (iii) Schedule 3.1-C provides a sample determination of the Purchase Price (including the Adjustment Amount) in detailed form.

Exhibit 7.9(e)(ii)(C)
Pension Matters

The following terms will govern the Parties' obligations under Section 7.9(e)(ii)(C) of the Agreement (and any reference to Section 7.9 will be deemed to include a reference to this Exhibit):

A. Post-Closing Spin-Off to Buyer Plan

(1) Transfer of Liabilities.

(a) As of the Effective Time, Buyer will cause a Buyer Pension Plan to accept all liabilities for benefits under the Seller Pension Plan that would have been paid or payable (but for the transfer of assets and liabilities pursuant to this Paragraph A) to or with respect to the Transferred Employees and Other Plan Participants (as defined below), and Buyer will become with respect to each Transferred Employee and Other Plan Participant responsible for all benefits due under the Seller Pension Plan. Seller will not take any action to fully vest the Business Employees in their accrued benefits under the Seller Pension Plan. Buyer will not amend the Buyer Pension Plan, or permit the Buyer Pension Plan to be amended, to eliminate any benefit accrued as of the Effective Time, whether or not vested, with respect to which liabilities are transferred pursuant to this Paragraph A. Notwithstanding any other provision of this Agreement, the Seller Pension Plan will continue to make all benefit payments to Transferred Employees and Other Plan Participants due under the Seller Pension Plan until both the Initial Transfer Amount and the True-Up Amount have been transferred to the Buyer Pension Plan. "Other Plan Participants" mean any individuals (x) who have an accrued benefit under the Seller Pension Plan but who are not actively employed by Seller on the Closing Date, or whose employment is terminated by Seller on the Closing Date, and (y) whose employment was principally associated with the Business. The Other Plan Participants are set forth on Schedule 7.9(e)(ii)-A, as the same is amended by Seller on the Closing Date.

(b) As soon as practicable after the Closing Date, Seller will deliver to Buyer a list reflecting each Transferred Employee's service and compensation under the Seller Pension Plan, each Transferred Employee's and Other Plan Participant's accrued benefit thereunder as of the Closing Date, and a copy of each pending or final domestic relations order affecting the benefit of any Transferred Employee or Other Plan Participant, and any additional information needed for Buyer to properly administer the pension benefits for any Transferred Employee or Other Plan Participant after the Closing Date.

(2) Transfer of Assets.

(a) Not later than 10 days after the Closing, Seller will direct its actuary to determine the amount of assets allocable to the benefits with respect to the Transferred Employees and Other Plan Participants in the Seller Pension Plan based on section 4044 of ERISA, and in compliance with and using the safe harbor assumptions of section 414(l) of the Code (the "Section 4044 Amount"). At the option of Buyer, once Seller's actuary has completed its determination, Seller (or its actuary) will provide to Buyer (or its actuary), all of the information reasonably necessary, including Seller's methodology and back-up documentation, for Buyer's

actuary to review the calculation of the Section 4044 Amount. Buyer's actuary will have 60 days following the receipt of all requested information to review the calculation of the Section 4044 Amount. In the event of any disagreement between the actuaries regarding the Section 4044 Amount, the Parties will appoint a third actuary from a nationally recognized actuarial firm to resolve any differences, except that the third actuary will not resolve any difference regarding Seller's actuary's use of the safe harbor assumptions pursuant to Section 414(l) of the Code. The costs of the third actuary will be shared equally by the Parties. The third actuary will consider only the specific issues of disagreement between the first two actuaries, and will not be retained to conduct its own independent review of the calculation of the Section 4044 Amount. The third actuary's determination of any dispute will be final.

(b) In accordance with the procedures set forth in this Paragraph A(2)(b), Seller will cause cash (or other assets as the Parties mutually agree) equal to the Section 4044 Amount to be transferred to the trust established by Buyer as part of the Buyer Pension Plan (the "Buyer Pension Plan Trust"). On the Initial Transfer Date, Seller will cause the trust which is a part of the Seller Pension Plan (the "Seller Pension Plan Trust") to make a transfer of cash (or other assets as the Parties mutually agree) equal to the Initial Transfer Amount to the Buyer Pension Plan Trust. The "Initial Transfer Date" is the date that is five Business Days after the requirements of Paragraphs A(2)(d) and A(2)(e) have been met. The "Initial Transfer Amount" means 75% of Seller's good faith estimate of the Section 4044 Amount. As soon as practicable after the Section 4044 Amount is determined in accordance with the requirements of Paragraph A(2)(a) (the "True-Up Date"), and in no event more than 60 days after such final determination, the True-Up Amount will be transferred as provided below. If the Section 4044 Amount is greater than the Reduction Amount, then Seller will cause a transfer in cash (or other assets as the Parties mutually agree) equal to the True-Up Amount to be made from the Seller Pension Plan Trust to the Buyer Pension Plan Trust. If the Reduction Amount is greater than the Section 4044 Amount, then Buyer will cause a transfer in cash (or other assets as the Parties mutually agree) equal to the True-Up Amount to be made from the Buyer Pension Plan Trust to the Seller Pension Plan Trust. The "True-Up Amount," if any, means the difference between the Section 4044 Amount, adjusted for interest pursuant to Paragraph A(2)(c), and the Reduction Amount, adjusted for interest pursuant to Paragraph A(2)(c). The "Reduction Amount" equals the sum of (x) the Initial Transfer Amount, plus (y) benefit payments made to any Transferred Employees and Other Plan Participants by the Seller Pension Plan after the Effective Time.

(c) For purposes of Paragraph A(2)(b), (x) the Section 4044 Amount will be increased by interest from the Closing Date through the True-Up Date, and (y) interest on each payment that is included in the Reduction Amount will be computed, and added to the Reduction Amount, from the date of such payment through the True-Up Date. All interest will be compounded daily, and computed at the Prime Rate as of the Closing Date.

(d) In connection with the transfer of assets and liabilities pursuant to this Section, Seller will provide to Buyer, and Buyer will provide to Seller, evidence reasonably satisfactory to the other Party that the other Party's Pension Plan is or continues to be qualified under section 401(a) of the Code and is in compliance with the funding requirements of section 302 of ERISA and section 412 of the Code.

(e) In connection with the transfer of assets and liabilities pursuant to Paragraph A, Seller and Buyer will cooperate with each other in making all appropriate filings required by the

Code or ERISA, and the transfer of assets and liabilities pursuant to this Section will not take place until after the expiration of the 30-day period following the filing of any required notices with the Internal Revenue Service pursuant to section 6058(b) of the Code.

(3) Benefits.

(a) The benefit provided by the Buyer Pension Plan to each Transferred Employee who becomes a participant in the Buyer Pension Plan will be at least equal to (x) the benefits accrued by such Transferred Employee under the Seller Pension Plan on the Closing Date, computed by taking into account the service credited to such Transferred Employee with Seller and Buyer (in the case of service with Buyer, such service will be taken into account only for the purpose of vesting and early retirement subsidies), plus (y) such Transferred Employee's benefit determined under the terms of the Buyer Pension Plan, as it may be amended from time to time, taking into account the Transferred Employee's service and compensation earned with Buyer, except that service credited by and compensation with Seller will be taken into account for purposes of eligibility, vesting, computation of compensation, and early retirement subsidies.

(b) Notwithstanding Paragraph (3)(a) above, any Transferred Employee will be entitled to a benefit at retirement under the Buyer Pension Plan at least equal to the benefit such Transferred Employee would have received had such Transferred Employee continued to participate in the Seller Pension Plan from the Closing Date until the earlier of (x) such Transferred Employee's actual retirement date or (y) two years after the Closing Date.

B. Option to Transfer Assets to New Pension Plan.

(1) Notwithstanding Paragraph A, at Seller's option and in Seller's sole discretion, Seller may elect to transfer prior to Closing the assets and liabilities for accrued benefits, whether or not vested, that would have been paid or payable (but for this Paragraph B) to or with respect to the Business Employees and Other Plan Participants to a new pension plan ("New Pension Plan") to be established by Seller. Seller will not take any action to fully vest the Business Employees in their accrued benefits in the New Pension Plan. Buyer will not amend the New Pension Plan, or permit the New Pension Plan to be amended, to eliminate any benefit accrued as of the Effective Time, whether or not vested, with respect to which liabilities are transferred pursuant to this Paragraph B. The New Pension Plan will be a defined benefit pension plan qualified under section 401(a) of the Code and will be identical to the Seller Pension Plan with respect to the Transferred Employees and Other Plan Participants and provide a future rate of benefit accrual equal to the future rate of benefit accrual provided under the Seller Pension Plan.

(2) In the event that Seller elects to spin off assets and liabilities prior to Closing to a New Pension Plan, Seller will cause its actuary to determine the amount of assets allocable to the accrued benefits with respect to the Business Employees and Other Plan Participants in the Seller Pension Plan based on section 4044 of ERISA (the "New Plan Section 4044 Amount") as of the effective date of the transfer of assets and liabilities to the New Pension Plan pursuant to Paragraph B(1) (the "Spin-Off Date"). Interest from the date of determination of the Section 4044 Amount to the date of the transfer of assets to the New Pension Plan will be compounded daily, and computed at the Prime Rate as of the Spin-Off Date. Seller acknowledges that, as of the date hereof and except as otherwise required by Law, Seller intends for the actuarial methodologies to be used in calculating the amounts to be transferred pursuant to this Paragraph

B to be consistent with the actuarial methodologies to be used in calculating amounts to be similarly transferred in connection with Seller's other potential asset divestitures. At the option of Buyer, once Seller's actuary has completed its determination, Seller (or its actuary) will provide to Buyer (or its actuary), all of the information reasonably necessary, including Seller's methodology and back-up documentation, for Buyer's actuary to review the calculation of the New Plan Section 4044 Amount. Buyer's actuary will have 60 days following the receipt of all requested information to review the calculation of the New Plan Section 4044 Amount. In the event of any disagreement between the actuaries regarding the New Plan Section 4044 Amount, the Parties will appoint a third actuary from a nationally recognized actuarial firm to resolve any differences, except that the third actuary will not resolve any difference regarding Seller's actuary's use of the safe harbor assumptions pursuant to Section 414(l) of the Code. The costs of the third actuary will be shared equally by the Parties. The third actuary will consider only the specific issues of disagreement between the first two actuaries, and will not be retained to conduct its own independent review of the calculation of the New Plan Section 4044 Amount. The third actuary's determination of any dispute will be final.

(3) As soon as practicable after the final determination of the New Plan Section 4044 Amount for the New Pension Plan is made, Seller will cause the Seller Pension Plan to transfer cash (or other assets as the Parties mutually agree) equal to the New Plan Section 4044 Amount, less any benefit payments made by Seller Pension Plan to Business Employees and Other Plan Participants from the Spin-Off Date to the date of transfer of assets, to the New Pension Plan. From and after such date, the New Pension Plan will be solely responsible for all benefits due to Transferred Employees and Other Plan Participants under the Seller Pension Plan, whether arising prior to, or after, the Closing Date.

(4) Effective as of the Effective Time, Buyer will assume sponsorship of the New Pension Plan. Seller will provide to Buyer evidence reasonably satisfactory to Buyer that the New Pension Plan is qualified under section 401(a) of the Code and is in compliance with the funding requirements of section 302 of ERISA and section 412 of the Code.

(5) In connection with the change in sponsorship of the New Pension Plan, (a) the Parties will cooperate with each other in making all appropriate filings required by the Code or ERISA, and (b) Seller will, to the extent practicable (as determined by Seller acting in good faith), cooperate with Buyer prior to the Closing so that Buyer does not, as of result of this Paragraph B, have to maintain multiple pension plans for any extended period of time after the Closing.

(6) Benefits.

(a) The benefit provided by Buyer to each Transferred Employee who is a participant in a pension plan sponsored by Buyer following the Closing will be at least equal to (x) the benefits accrued by such Transferred Employee under the New Pension Plan on the Closing Date, computed by taking into account the service credited to such Transferred Employee with Seller and Buyer (in the case of service with Buyer, such service will be taken into account only for the purpose of vesting and early retirement subsidies), plus (y) such Transferred Employee's benefit determined under the terms of the pension plan sponsored by Buyer, as it may be amended from time to time, taking into account the Transferred Employee's service and compensation earned with Buyer, except that service credited by and compensation with Seller

will be taken into account for purposes of eligibility, vesting, computation of compensation, and eligibility for early retirement subsidies.

(b) Notwithstanding subparagraph (6)(a) above, any Transferred Employee will be entitled to a benefit at retirement under the Buyer Pension Plan at least equal to the benefit such Transferred Employee would have received had such Transferred Employee continued to participate in the Seller Pension Plan from the Spin-Off Date until the earlier of (x) such Transferred Employee's actual retirement date or (y) two years after the Closing Date.

C. Post-Closing Adjustment.

(1) For purposes of this Section, the term "Accrued Liability" means the present value of the accrued benefit, as of the Effective Time, of each Transferred Employee and each Other Plan Participant, determined on an "accumulated benefit obligation" basis using the interest and other assumptions and methods used by Seller's actuary on the measurement date most recently preceding the Closing Date for purposes of satisfying Statement of Financial Accounting Standards 132; provided that if the interest rate actually used by Seller's actuary on such measurement date was less than six percent, then the interest rate to be used for purposes of this paragraph C(1) will be six percent. The interest rate and other assumptions and methods to be used pursuant to the preceding sentence are referred to herein as the "SFAS 132 Assumptions." Seller's actuary will determine the Accrued Liability in accordance with its normal procedures and practices in preparing Seller's actuarial report and such determination will be reviewed by the actuary for the Buyer Pension Plan. In the event of disagreement between them, they will appoint a third actuary from a nationally recognized actuarial firm to resolve their differences (the costs of the third actuary will be shared equally by Seller and Buyer). The third actuary's determination of any dispute will be final. In reaching such resolution, the third actuary will consider only the issues of disagreement between the first two actuaries, it being understood that the third actuary will not be retained to conduct its own independent review but rather will be retained to resolve specific differences between Buyer's actuary and Seller's actuary. The actuarial assumptions and methods used by Seller's actuary in determining the Accrued Liability will not be subject to dispute unless such assumptions and methods are inconsistent with the SFAS 132 Assumptions.

(2) Following the Closing, if Seller elected to establish the New Pension Plan prior to Closing, Seller and Buyer will compare the New Plan Section 4044 Amount and the Accrued Liabilities. If the Accrued Liabilities exceed the New Plan Section 4044 Amount, Seller will pay to Buyer the difference, in cash, within five Business Days of the determination. If the New Plan Section 4044 Amount exceeds the Accrued Liabilities, Buyer will pay to Seller the difference, in cash, within five Business Days of the determination. If Seller did not elect to establish the New Pension Plan prior to Closing, Seller and Buyer will compare the Section 4044 Amount and the Accrued Liabilities. If the Accrued Liabilities exceed the Section 4044 Amount, Seller will pay to Buyer the difference, in cash, within five Business Days of the determination. If the Section 4044 Amount exceeds the Accrued Liabilities, Buyer will pay to Seller the difference, in cash, within five Business Days of the determination.