CITY COUNCIL/ELECTRICAL ADVISORY COMMITTEE

July 13, 2011 – 6:00 p.m.

CITY COUNCIL
Gilbert X. Cheves, Mayor
Leo Evans, Mayor Pro-tem
Patricia Baribeau, Council Member
Brady Nelson, Council Member
Walter Baker, Council Member

ADMINISTRATION
James V. O'Toole, City Manager
Robert S. Richards, CMC, City Clerk
Ralph B.K. Peterson, City Attorney
Mike Furmanski, Electrical Superintendent
Michael Dewar, City Controller
Thomas Butz, Power System Engineering

ELECTRICAL ADVISORY COMMITTEE
Ronald Beauchamp, Chairman
Vacant, Vice Chairman
Larry Arkens, Committee Member
Glendon Brown, Committee Member
Ann Bissell, Committee Member
Tim Wilson, Committee Member
John Anthony, Committee Member
Donald Racicot, Committee Member

Escanaba City Council Chambers: 410 Ludington Street - Escanaba, MI 49829

Meeting Agenda
Wednesday, July 13, 2011

CALL TO ORDER
ROLL CALL
APPROVAL/ADJUSTMENTS TO MINUTES – June 8, 2011
APPROVAL/ADJUSTMENTS TO THE AGENDA
CONFLICT OF INTEREST DECLARATION

NEW BUSINESS

1. **Electrical Advisory Committee Election of Officers.**
Explanation: Annually, the Electrical Advisory Committee elects officers for the positions of Chairperson and Vice Chairperson.

2. **Update - Electric Department – Distribution Operations.**
Explanation: Electrical Superintendent Michael Furmanski will discuss current departmental activities and operations.

3. **Update– Operation and Maintenance of Power Plant – Pro Energy Services, Inc.**
Explanation: Pro Energy Services, Inc will update the City Council, Electrical Advisory Committee and Citizens of Escanaba on the status of the operation and maintenance of the power plant.

4. **Discussion – MISO Market Agent Provider.**
Explanation: Administration will discuss the transition of Great Lakes Utilities providing MISO market agent services.

5. **Update– Sale of Generation Facilities Asset Purchase Agreement(s).**
Explanation: Administration will update the City Council, Electrical Advisory Committee and Citizens of Escanaba on the status of the Asset Purchase Agreements that have been sent out to the various parties interested in purchasing the power plant.

6. **Update – Environmental Work Plan.**
Explanation: Administration will update the City Council, Electrical Advisory Committee and Citizens of Escanaba on the status of the Environmental Work Plan being completed by Mountain Engineering, Inc. of Iron Mountain, Michigan.

7. **Update – Power Purchase Agreement(s) – Short Term/ Long Term – Power Cost Options.**
Explanation: Administration will provide an overview and update on the various options being considered for short-term and/or long-term power including purchase power contracts and Fix to Float hedging. Additionally, a review will take place on future options being investigated by the Administration in securing reliable, long-term power.

GENERAL PUBLIC COMMENT
COMMISSION/STAFF COMMENT AND ANNOUNCEMENTS
ADJOURNMENT

The City of Escanaba will provide all necessary, reasonable aids and services, such as signers for the hearing impaired and audiotapes of printed materials being considered at the meeting to individuals with disabilities at the meeting/hearing upon five days notice to the City of Escanaba. Individuals with disabilities requiring auxiliary aids or services should contact the City of Escanaba by writing or calling City Hall at (906) 786-9402.

Respectfully Submitted,

James V. O'Toole
City Manager

OFFICIAL PROCEEDINGS
CITY COUNCIL
ELECTRICAL ADVISORY COMMITTEE
CITY OF ESCANABA, MICHIGAN
Special Joint Meeting
Wednesday, June 8, 2011

Pursuit to a special meeting posted May 20, 2011, the meeting was called to order by the Mayor Gilbert X. Cheves at 6:00 p.m. in Room 121 of the Catherine Bonifas Civic Center located at 225 North 21st Street.

Present: Mayor Gilbert X. Cheves, Council Members Leo J. Evans (arrived 6:16 p.m.) Patricia A. Baribeau, Pete Baker, and Brady L. Nelson.

Absent: None.

Present: Electrical Advisory Committee Members: Chairman Ronald Beauchamp, Larry Arkens, Glendon Brown, Tim Wilson, Ann Bissell, and Don Racicot.

Absent: One Vacancy, and Committee Member John Anthony was excused.

Also Present: City Manager James V. O'Toole, Electric Superintendent Mike Furmanski, City Controller Mike Dewar, Power Plant Manager Jerry Pirkola, Consultant Tom Butz of Power Systems Engineering (PSE), John Smeltzer of Pro Energy, and members of the public, and Media.

Minutes from May 11, 2011, were approved by Council at the June 2, 2011, regular Council Meeting. Members having any further questions were asked to contact City Clerk Richards.

Nelson moved, Baribeau seconded, **CARRIED UNANIMOUSLY**, to approve the agenda as presented.

UNFINISHED BUSINESS - None

CONFLICT OF INTEREST – None

PUBLIC HEARING – None

NEW BUSINESS

Update - Power Plant Operations.

Electrical Superintendent Michael Furmanski discussed current departmental activities and operations, and reviewed the following:

- Power Plant costs from April 2011;
- New electric service at County Landfill nearly completed;
- Conduit construction for Street lights on the State of Michigan South Lincoln Road/M-35 project.

Operation and Maintenance of Power Plant – Pro Energy Services, Inc.

Administration updated the City Council, Electrical Advisory Committee and Citizens of Escanaba on the status of the Operation and Maintenance transition with Pro Energy Services, Inc., the following information was reviewed:

- Transition from UPPCO to Pro Energy, Inc. to operate the Power Plant went off with only a few change over issues, which were identified and being taken care of;
- Letters of Pro Energy employment were sent to former UPPCO employees;
- Power Plant Budget was reviewed;
- An estimated 19,500 tons of coal was remaining on the dock at the end of May;
- Power Plant employee Mr. DeTiege reviewed Environmental Issues and emission testing;
- Reviewed MISO callouts. Both units were up running and available;
- Mr. Pat Fulcher was introduced. Mr. Fulcher was hired at the last Joint Meeting as the City Representative between Pro Energy, Inc., and the City. Mr. Fulcher was the former UPPCO Manager at the City Power Plant;
- Administration and all those involved were thanked for the smooth transition from UPPCO to Pro Energy, Inc.

Great Lakes Utilities (GLU) Membership.

Administration had a discussion on the timing of becoming a member of Great Lakes Utilities. GLU was requesting that the City become a member by January 1, 2012, as part of receiving MISO Market Agent Services. The following was reviewed:

- Discussion on MISO setback points;
- Discussion on RTU information;
- PSE Consultant Tom Butz reviewed information to become a GLU Member. He stated it was not a requirement for the City to become a member of GLU until January 1, 2012;
- City should have a better idea what service it was obtaining before signing any agreement;
- Comments and concerns should be forwarded to Council.

Sale of Generation Facilities Proposal(s).

Administration updated the City Council, Electrical Advisory Committee and Citizens of Escanaba on the status of the Asset Sales and Purchase Agreements being developed for the sale of the Power Plant. The following was reviewed:

- Negotiating team was reviewing information with Legal Counsel, from the four interested parties who wished to purchase the City Power Plant;

- Need to remember target date of December 31, 2012, regarding need of Power Plant purchaser to spend 5% of initial investment in order to obtain Green Energy credits from the Federal Government.

Environmental Work Plan.

Administration updated the City Council, Electrical Advisory Committee and Citizens of Escanaba on the status of the Environmental Work Plan being completed by Mountain Engineering, Inc. of Iron Mountain, Michigan.

- Monitoring wells had been put in.
- Quotes were being obtained on environmental cleanup, and would be brought to Members for next monthly meeting.

Coal Supply/Coal Delivery.

Manager O'Toole updated the City Council, Electrical Advisory Committee and Citizens of Escanaba on the status of the current coal supplies and future coal deliveries. He advised written information would be forwarded to members shortly. He also stated a second party to purchase additional coal was being reviewed.

Power Purchase Agreement(s) – Short Term/ Long Term – Power Cost Options.

Administration provided an overview and update on the various options being considered for short-term and/or long-term power. Additionally, a review would take place on future options being investigated by the Administration in securing reliable, long-term power.

- PSE Consultant Butz reviewed congestion numbers;
- Updated pricing information was being sought;
- Final decision could be sooner if new information could be obtained;
- City Controller Dewar reviewed probable year end budget projections, but still need two months worth of information.

GENERAL PUBLIC COMMENT - None

COUNCIL/COMMITTEE, STAFF REPORTS - None

ADJOURNMENT

Hearing no further public comment, or further reports from the Electrical Advisory Committee and Council, the meeting adjourned at 6:49 p.m.

Respectfully submitted,

Robert S. Richards, CMC
City Clerk

Approved: _____
Gilbert X. Cheves, Mayor

CITY OF ESCANABA

Summary of MISO Transactions

Eleven Months Ended 5/31/11

U:\123R3\ELECTRIC\PowerCosts\201011\MISOSummary

		Jul	Aug	Sep	Oct	Nov	Dec	Jan	Feb	Mar	Apr	May	One Time Adjustments	Fiscal Year Totals
Power Purchases														
	KWh's	14,042,836	14,429,166	11,920,605	11,921,820	12,149,576	13,656,139	13,939,482	12,189,271	13,319,406	12,013,427	11,683,303		141,265,031
	Cost	$912,372.19	$897,813.95	$565,516.32	$621,820.83	$714,832.21	$717,203.28	$665,783.72	$633,798.64	$559,749.77	$541,995.16	$437,362.00		$7,167,908.07
	Cost per KWh	$0.064971	$0.062208	$0.047440	$0.043753	$0.058836	$0.052525	$0.047760	$0.051997	$0.042025	$0.045116	$0.037435		$0.050741
Power Sales														
Steam	KWh's	10,454,456	10,838,078	8,262,158	7,403,904	8,991,818	5,262,677	6,399,419	5,158,711	5,601,824	7,163,332	4,349,246		79,883,623
	Revenue	$862,281.15	$885,261.52	$857,160.07	$591,653.63	$802,794.03	$431,384.93	$523,996.39	$399,883.57	$405,265.87	$540,446.74	$284,230.90		$6,384,458.80
	Revenue per KWh	$0.082480	$0.081681	$0.079539	$0.079911	$0.089281	$0.081958	$0.081882	$0.077566	$0.072345	$0.075446	$0.065352		$0.079922
CT	KWh's	311,700	192,000	58,600	76,100	0	137,400	34,300	25,900	0	0	194,800		1,030,800
	Revenue	$116,492.40	$84,254.63	$24,662.86	$8,457.48	$0.00	$55,996.28	$13,571.90	$13,397.49	$0.00	$0.00	$72,275.25		$391,108.29
	Revenue per KWh	$0.380149	$0.438826	$0.420866	$0.111136	$0.000000	$0.407542	$0.395682	$0.517278	$0.000000	$0.000000	$0.371023		$0.379422
Totals	KWh's	10,766,156	11,030,078	8,320,758	7,480,004	8,991,818	5,400,277	6,433,719	5,182,611	5,601,824	7,163,332	4,544,046		80,914,623
	Revenue	$980,773.55	$969,516.15	$881,822.93	$600,111.11	$802,794.03	$487,381.21	$537,568.29	$413,381.06	$405,265.87	$540,446.74	$356,506.15		56,775,567.09
	Revenue per KWh	$0.091098	$0.087897	$0.081942	$0.080229	$0.089281	$0.090251	$0.083555	$0.079763	$0.072345	$0.075446	$0.078456		$0.083737
Power Generation														
Steam	KWh's	10,454,950	10,811,820	8,268,600	7,403,230	8,005,450	5,261,700	6,393,990	5,158,200	5,579,800	7,159,590	4,343,760		79,852,090
	Cost	$1,004,116.54	$1,008,418.38	$949,514.34	$855,155.96	$879,104.20	$766,389.90	$845,231.99	$721,696.97	$777,020.72	$982,108.13	$689,073.50	($250,171.97)	$9,227,658.66
	Cost per KWh	$0.095950	$0.093270	$0.114834	$0.115511	$0.097619	$0.145654	$0.132192	$0.139885	$0.139256	$0.137174	$0.158635		$0.115559
CT	KWh's	304,417	183,522	47,679	58,213	(26,980)	105,051	(8,007)	(12,771)	(39,872)	(35,028)	169,685		746,409
	Cost	$108,882.52	$74,307.60	$28,127.92	$22,838.61	$513.98	$110,593.59	$45,482.19	$12,439.30	$0.00	$383.35	$82,142.43		$485,651.49
	Cost per KWh	$0.357876	$0.404898	$0.587479	$0.392328	N/A	$1.052190	($5.680303)	($0.974027)	$0.000000	($0.010944)	$0.484088		$0.650651
Totals	KWh's	10,759,367	10,995,342	8,316,479	7,461,443	8,978,470	5,366,751	6,385,983	5,146,429	5,540,228	7,124,562	4,513,445		80,598,499
	Cost	$1,112,999.06	$1,082,725.98	$977,642.26	$877,994.57	$879,618.18	$876,983.49	$890,714.18	$734,136.27	$777,020.72	$982,491.48	$771,215.93	($250,171.97)	$9,713,310.15
	Cost per KWh	$0.103349	$0.098471	$0.117555	$0.117671	$0.097970	$0.163399	$0.139480	$0.142650	$0.140251	$0.137902	$0.170871		$0.120515
Other Costs														
	ATC Charges	$100,432.81	$100,432.81	$100,432.81	$100,432.81	$100,432.81	$100,432.81	$94,392.77	$94,392.77	$94,392.77	$94,392.77	$94,392.77		$1,074,660.71
	UPPCo Charges	5,724.11	5,724.11	5,724.11	5,724.11	5,724.11	5,724.11	6,009.52	6,009.52	6,009.52	6,009.52	6,002.32		64,385.06
	Other MISO Charges	14,498.71	13,901.99	13,797.56	11,903.30	12,134.83	12,333.07	12,785.15	15,868.84	15,383.68	14,364.21	13,482.98		150,434.32
	Cargill FIF	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00		0.00
Generation Reconciliation (KWh's)		(3,211)	34,736	4,279	16,561	13,348	33,526	47,736	36,162	61,596	38,770	30,601		315,124
Net To City														
	KWh's	14,042,836	14,429,166	11,920,605	11,921,820	12,149,576	13,656,139	13,939,482	12,189,271	13,319,406	12,013,427	11,683,303		141,265,031
	Net Cost	$1,165,253.33	$1,130,882.59	$981,289.13	$917,564.51	$909,948.11	$1,225,326.55	$1,132,067.05	$1,070,625.98	$1,047,290.59	$1,099,806.40	$965,949.85		$11,395,031.22
	Cost per KWh	$0.082978	$0.078375	$0.082319	$0.076965	$0.074895	$0.089727	$0.081213	$0.087850	$0.078629	$0.091495	$0.082678		$0.080664
Contribution to Fixed Costs		$182,899	$184,920	$105,467	$76,164	$231,976	$27,355	$77,997	$59,481	$43,150	$61,092	$15,136		$1,076,637
MISO Make Whole Payments		$183,198	$187,854	$257,480	$272,182	$108,333	$145,543	$140,466	$103,309	$178,434	$233,427	$191,703		$1,989,929

CC: O'TOOLE
FINNANSKI

7/1/11

ASSET PURCHASE AGREEMENT

BY AND BETWEEN

THE CITY OF ESCANABA, MICHIGAN

AND

[_____]

DATED AS OF [_____], 2011

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ASSET PURCHASE AGREEMENT

THIS ASSET PURCHASE AGREEMENT (this "Agreement") is made as of [_____], 2011 (the "Effective Date"), by and between the City of Escanaba, Michigan, a Michigan municipal corporation ("Seller"), and [_____], a [_____] ("Buyer"). Seller and Buyer may be referred to individually as a "Party," and collectively as the "Parties."

RECITALS:

WHEREAS, Seller owns generation facilities consisting of two 12.5 nameplate megawatt coal-fired steam turbines (the "Generation Facilities") and one 18 nameplate megawatt diesel-fired combustion turbine unit (the "CT Unit," and together with the Generation Facilities, the "Escanaba Power Facilities") located within the City of Escanaba, Michigan, and other assets associated therewith and ancillary thereto; and

WHEREAS, Buyer desires to purchase and assume and Seller desires to sell and assign, the Purchased Assets (as defined below), upon the terms and conditions hereinafter set forth in this Agreement; and

WHEREAS, in consideration of the willingness of Seller to enter into this Agreement, [_____], a [_____] and the [indirect] parent of Buyer ("Guarantor") concurrently with the execution by the Parties of this Agreement is entering into the Guaranty Agreement, in the form of Exhibit A, pursuant to which Guarantor guarantees the payment and performance obligations of Buyer under this Agreement, subject to and on the terms and conditions therein (the "APA Guaranty"); and

WHEREAS, Seller and Buyer are entering into this Agreement to evidence their respective rights, duties, obligations and responsibilities in respect of the purchase and sale of the Purchased Assets and the related transactions contemplated by this Agreement and the Transaction Documents (as defined below) (collectively, the "Contemplated Transactions").

NOW, THEREFORE, in consideration of the mutual covenants, obligations, representations and warranties hereinafter set forth, the adequacy and sufficiency of which is hereby acknowledged, and intending to be legally bound hereby, the Parties agree as follows:

ARTICLE I
DEFINITIONS

1.1 Definitions.

As used in this Agreement, the following terms have the meanings specified in this Section 1.1.

"Affiliate" means, with respect to any Person, any other Person that directly, or through one or more intermediaries, Controls or is Controlled by or is under common Control with such Person.

"Agreement" means this Asset Purchase Agreement, together with the Schedules and Exhibits attached hereto, as the same may be amended or supplemented in accordance with its terms.

"APA Guaranty" has the meaning set forth in the Recitals.

"Assignment and Assumption Agreement" means the Assignment and Assumption Agreement between Seller and Buyer, substantially in the form of Exhibit B.

"Assumed Environmental Liabilities" means all Liabilities associated with any Claims initiated, issued, or delivered by any Governmental Authority or any other Person after the Closing pursuant to any Environmental Law or related to any Environmental Condition, provided that Assumed Environmental Liabilities shall not include any Seller Retained Environmental Liabilities.

"Assumed Liabilities" has the meaning set forth in Section 2.3.

"BEA" has the meaning set forth in Section 6.9.

"Bill of Sale" means the Bill of Sale from Seller, substantially in the form of Exhibit C.

"Business Day" means any day other than Saturday, Sunday and any day which is a day on which banking institutions in the State of Michigan are authorized or required by Law to close.

"Buyer" has the meaning set forth in the Preamble.

"Buyer Indemnified Parties" means Buyer and its officers, directors, employees, agents and Affiliates.

"Buyer Material Adverse Effect" means any change, circumstance or event that (a) has a material adverse effect on the business, assets, operations or condition (financial or otherwise) of Buyer or (b) is materially adverse to Buyer's ability to perform its obligations under this Agreement or to consummate the Contemplated Transactions.

"Buyer's Required Regulatory Approvals" has the meaning set forth in Section 5.4(a).

"Claims" means any and all administrative, regulatory or judicial actions or causes of action, suits, petitions, proceedings (including arbitration proceedings, investigations, hearings, demands, demand letters, claims or notices of non-compliance or violation, and notices of potential liability), initiated, issued, or delivered by any Governmental Authority or any other Person.

"Closing" has the meaning set forth in Section 3.1.

"Closing Date" has the meaning set forth in Section 3.1.

"Closing Fuel Inventories" has the meaning set forth in Section 3.2(b).

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

"Contemplated Transaction" has the meaning set forth in the Recitals.

"Contract" means any contract, indenture, note, bond, loan, instrument, lease, commitment or other agreement.

"Control" means the power, direct or indirect, to direct or cause the direction of the management and policies of a Person through voting securities, contract or otherwise.

"CT Unit" has the meaning set forth in the Recitals.

"Direct Loss" has the meaning set forth in Section 8.6(b).

"Direct Loss Indemnity Notice" has the meaning set forth in Section 8.6(b).

"Disputed Fuel Inventories Cost Notice" has the meaning set forth in Section 3.2(c).

"Dispute Period" has the meaning set forth in Section 8.6(b).

"Easements" means, with respect to the Purchased Assets, the easements and access rights reserved by Seller in the Warranty Deed and the Easement Agreement.

"Easement Agreement" means the Easement Agreement between Buyer and Seller, substantially in the form of Exhibit D.

"Effective Date" has the meaning set forth in the Preamble.

"Election to Assume Defense Notice" has the meaning set forth in Section 8.6(a).

"Emergency Power Supply Agreement" has the meaning set forth in Section 6.5(d).

"Employee Benefit Plans" means all plans, programs, contracts, policies and practices providing benefits to any employee or former employee of the City either contractual or provided by law, including any "employee benefit plan" within the meaning of the Employee Retirement Income Security Act of 1974, as amended, any pension, thrift, savings, profit sharing, retirement, bonus, incentive, health, dental, death, accident, disability, stock purchase, stock option, stock appreciation, stock bonus, executive or deferred compensation, hospitalization, "parachute," severance, vacation, sick leave, fringe or welfare benefits, any employment or consulting contracts, "golden parachutes," collective bargaining agreements, employee manuals and written or binding oral statements of policies, practices or understandings related to employment.

"Encumbrance" means any mortgage, pledge, lien, claim, security interest, easement, activity and use restriction and limitation, deed restriction, defect of title or title encumbrance of any kind.

"Environmental Condition" means the Release to, or the presence in, on, or under, the soil, sediments, groundwater, surface water, indoor air, ambient air, or any other environmental medium, whether at the Site or at an off-Site location, of any Hazardous Substance, including any migration of that Hazardous Substance to or from the Site or any off-Site location, regardless of when such Release or presence occurred or is or was discovered.

"Environmental Laws" means all Laws or Governmental Approvals relating to the environment, natural resources, or human health and safety, including laws relating to Releases or threatened Releases of Hazardous Substances (including Releases to ambient air, surface water, groundwater, land, surface and subsurface strata) or relating to the manufacture, processing, distribution, use, treatment, storage, disposal, Release, transport, or handling of Hazardous Substances.

"Environmental Reports" means (i) the Phase I Environmental Assessment report for the Escanaba generating station property dated January 29, 2010, prepared by Environmental Consulting and Technology, Inc., as updated on December 3, 2010 by Berry Engineering, Inc.; (ii) the Phase II Environmental Site Assessment for the Escanaba generating station property dated July 2010, prepared by Weston Solutions of Michigan, Inc.; and (iii) any other reports required to be delivered by Seller to Buyer pursuant to Section 4.11(b), provided that Environmental Reports shall not include Seller's privileged or confidential communications.

"Escanaba Power Facilities" has the meaning set forth in the Recitals.

"Excluded Assets" has the meaning set forth in Section 2.2.

"Excluded Liabilities" has the meaning set forth in Section 2.4.

"Facilities Material Adverse Effect" means any change, circumstance or event that has a material adverse effect on the condition, use or operation of the Purchased Assets (including the Escanaba Power Facilities), taken as a whole, but excluding any such change, circumstance or event to the extent resulting from (a) changes in general economic conditions, interest rates or securities markets in the U.S. or worldwide; (b) any change or effect resulting from changes in the national, state, regional or local electric industry as a whole and not specific and exclusive to the Purchased Assets; (c) any change or effect resulting from changes in the national, state, regional or local markets for any fuel used by the Escanaba Power Facilities; (d) any change or effect resulting from changes in the national, state, regional or local wholesale or retail markets for electricity; (e) changes, after the Effective Date, in Laws or interpretation thereof by Governmental Authorities that apply generally to similarly situated Persons and not specifically and exclusively to the Purchased Assets or the Escanaba Power Facilities; or (f) the announcement, pendency or consummation of the sale of the Purchased Assets.

"FERC" means the Federal Energy Regulatory Commission or any successor agency thereto.

"Fuel Inventories" means coal and diesel fuel oil, which in each case are located at, or are in transit to, the Escanaba Power Facilities.

"Fuel Inventories Cost" has the meaning set forth in Section 3.2(b).

"Fuel Inventories Cost Notice" has the meaning set forth in Section 3.2(b).

"Generation Facilities" has the meaning set forth in the Recitals.

"Governmental Approval" means any consent, license, permit, order, approval, filing, waiver, exemption, variance, clearance, entitlement, allowance, franchise, decree or other authorization from or by a Governmental Authority.

"Governmental Authority" means any federal, state, local or other governmental, regulatory or administrative agency, commission, department, board, or other governmental subdivision, court, tribunal, arbitral body or other governmental authority.

"Guarantor" has the meaning set forth in the Recitals.

"Hazardous Substance" means any substance, material, element, compound, waste, or chemical, whether solid, liquid, or gaseous, which is defined, listed, or regulated under any Environmental Laws, or any substance, material, element, compound, waste, or chemical that contains such Hazardous Substances, including but not limited to petroleum and its refined products or byproducts (including oil or coal ash), radioactive materials, asbestos-containing materials, and polychlorinated biphenyls.

"Improvements" means all buildings, structures (including all fuel handling and storage facilities), machinery and equipment, fixtures, construction in progress, and other improvements, including all piping, cables and similar equipment forming part of the mechanical, electrical, plumbing or HVAC infrastructure of any building, structure or equipment, located on and affixed to the Site.

"Income Tax" means any federal, state, local or foreign Tax (a) based upon, measured by or calculated with respect to net income or profits (including minimum Taxes) or (b) based upon, measured by or calculated with respect to multiple bases (including corporate franchise taxes) if one or more of the bases on which such Tax may be based, measured by or calculated with respect to, is described in clause (a), in each case, together with any interest, penalties, or additions to such Tax.

"Indemnifiable Loss" has the meaning set forth in Section 8.5(a).

"Indemnified Party" means the Party entitled to be indemnified by the other Party according to Section 8.6.

"Indemnifying Party" means the Party with an obligation to indemnify the other Party according to Section 8.6.

"Intellectual Property" means patents and patent rights, trademarks and trademark rights, trade names and trade name rights, service marks and service mark rights, service names and service name rights, brand names, inventions, copyrights and copyright rights, and pending applications for and registrations of patents, trademarks, service marks and copyrights.

"Interconnection Agreement" means an interconnection agreement to be entered into by Seller, MISO and American Transmission Company, pursuant to which the Escanaba Power Facilities will be interconnected to MISO's wholesale transmission system.

"Knowledge" means (i) in the case of Seller, the actual knowledge of Michael Furmanski, Michael Dewar and James O'Toole, and (ii) in the case of Buyer, the actual knowledge of [_____].

"Laws" means any federal, state or local law, statute, code, ordinance, rule, regulation, Order or other requirement enacted, promulgated, issued or entered by a Governmental Authority.

"Liability" or "Liabilities" means any liability or obligation (whether known or unknown, whether asserted or unasserted, whether absolute or contingent, whether accrued or unaccrued, whether liquidated or unliquidated, whether incurred or consequential, and whether due or to become due).

"Loss" or "Losses" means losses, liabilities, damages, obligations, payments, costs and expenses (including the costs and expenses of any and all actions, suits, proceedings, assessments, judgments, settlements and compromises relating thereto and reasonable attorneys fees and reasonable disbursements in connection therewith).

"MDEQ" means the Michigan Department of Environmental Equality, and any successor thereto.

"MDNRE" means the Michigan Department of Natural Resources and Environment, and any successor thereto.

"MISO" means the Midwest Independent Transmission System Operator, Inc., and any successor thereto.

"No Further Action Letter" means a written determination from the applicable Governmental Authority stating that no further action, material additional work or similar response activity is required for the condition or conditions(s) referenced in the No Further Action Letter, or stating that the conditions or conditions have been addressed to the satisfaction of the Governmental Authority.

"Non-Fuel Inventories" means materials, spare parts, consumable supplies and chemical inventories relating to the operation of the Escanaba Power Facilities which are located at the Escanaba Power Facilities, but excluding the Fuel Inventories.

"O&M Agreement" means that certain Operation and Maintenance Agreement, dated as of April 13, 2011, between Seller and the O&M Operator, pursuant to which the O&M Operator operates and maintains the Escanaba Power Facilities pursuant to the terms and conditions provided for therein.

"O&M Operator" means ProEnergy Services, LLC, a Missouri limited liability company.

"O&M Operator Property" has the meaning set forth in Section 2.2(d).

"Order" means any order, injunction, judgment, decree, ruling, writ, assessment or arbitration award issued by a Governmental Authority.

"Ordinary Course of Business" means, as it relates to the Escanaba Power Facilities, an action taken by or on behalf of Seller in the ordinary course of the normal day-to-day operations of the Escanaba Power Facilities which is consistent with past customs and practices.

"Operations Agreement" means the Operations Agreement between Seller and Buyer, substantially in the form of Exhibit E.

"Operating Documents" has the meaning set forth in Section 2.1(g).

"Part 55 Consent Order" means the Stipulation for Entry of Final Order by Consent and the related Final Order (AQD No. 13-2009), both dated July 10, 2009.

"Party" and "Parties" have the meanings set forth in the Preamble.

"Permits" has the meaning set forth in Section 4.9(b).

"Permitted Encumbrances" means: (i) the Easements; (ii) those exceptions to title to the Purchased Assets listed in Schedule 4.5 and those Encumbrances set forth in Schedule 1.1(a); (iii) construction, mechanics', carriers', workers', repairers' and other similar liens or other payment obligations arising or incurred in the ordinary course of business securing obligations that (A) are not overdue for a period of more than thirty (30) days or (B) are being contested in good faith in appropriate proceedings, provided that at or prior to the Closing, with respect to those items which are liens on the Site, Seller shall either (x) satisfy such liens, (y) cause such liens to be omitted from the exceptions to the title insurance policy being obtained by Buyer by bonding, escrow or otherwise, or (z) cause the issuer of such title insurance policy to insure Buyer that such liens will not be collected out of or enforced against the Site; (iv) all easements and rights of way of record and all utility service easements of record; (v) all matters of title or survey with respect to which timely objections are not made by Buyer and therefore are waived pursuant to Section 6.12(d); (vi) all taxes for the tax period in which the Closing occurs which are liens not yet due and payable; (vii) any matter of title or survey with respect to which a timely objection is made but for which the issuer of the title insurance policy agrees to insure

over or provide affirmative coverage; (viii) any Encumbrance which does not have a Facilities Material Adverse Effect; (ix) zoning, entitlement, conservation restriction and other land use and environmental regulations by Governmental Authorities; and (x) any Encumbrance or other matter which is otherwise acceptable to Buyer in its sole discretion.

"Person" means any individual, partnership, limited liability company, joint venture, corporation, trust, unincorporated organization or any other business entity or governmental entity or any department or agency thereof.

"Purchase Price" has the meaning set forth in Section 3.2(a).

"Purchased Assets" has the meaning set forth in Section 2.1.

"Release" means any spilling, leaking, pumping, pouring, emitting, emptying, discharging, injecting, escaping, leaching, dumping, or disposing of Hazardous Substances into the environment.

"Remedial Action Plan" has the meaning set forth in Section 6.14.

"Remediation" means action required by a Governmental Authority to address an Environmental Condition, including any or all of the following activities to the extent they relate to or arise from an Environmental Condition: (a) monitoring, investigation, assessment, treatment, cleanup, containment, removal, mitigation, response or restoration work; (b) obtaining any Governmental Approvals of any Governmental Authority necessary to conduct any such activity; (c) preparing and implementing any plans or studies for any such activity; (d) obtaining a No Further Action Letter; (e) the use, implementation, application, installation, operation or maintenance of removal actions on the Site or an off-Site location, remedial technologies applied to the surface or subsurface soils, excavation and off-Site treatment or disposal of soils, systems for long-term treatment of surface water or ground water, engineering controls or institutional controls (including restrictive covenants imposing activity or use limitations, or both); and (f) any other activities reasonably determined by the Party responsible for an Environmental Condition to be necessary or required under Environmental Laws to address the Environmental Condition.

"Renewable Operating Permit" has the meaning set forth in Section 6.11.

"Representatives" of a Party, means the Party and its Affiliates and their respective directors, officers, employees, agents, partners, advisors (including accountants, legal counsel, environmental consultants, engineering consultants, financial advisors and other authorized representatives), lenders and prospective lenders, and parents and other Controlling Persons.

"Seller" has the meaning set forth in the Preamble.

"Seller Distribution Facilities" has the meaning set forth in Section 2.2(b).

~~"Seller Water Facilities" has the meaning set forth in Section 2.2(c).~~

"Seller Indemnified Parties" means Seller and its officers, directors, employees, agents and Affiliates.

"Seller's Insurance Policies" has the meaning set forth in Section 4.4.

"Seller Material Adverse Effect" means any change, circumstance or event that (a) has a material adverse effect on the business, assets, operations or condition (financial or otherwise) of Seller or (b) is materially adverse to Seller's ability to perform its obligations under this Agreement or to consummate the Contemplated Transactions.

"Seller Retained Environmental Liabilities" means (a) all Liabilities associated with any Claims related to or arising out of any Environmental Condition in existence at the time of Closing, (b) all Liabilities associated with Remediation in accordance with the Remedial Action Plan defined in Section 6.14, and (c) all Liabilities associated with any Claims related to violations of Environmental Laws arising solely out of Seller's actions prior to Closing.

"Seller's Agreements" has the meaning set forth in Section 2.1(e).

"Seller's Insurance Policies" has the meaning set forth in Section 4.4.

"Seller's Required Regulatory Approvals" has the meaning set forth in Section 4.3(b).

"Site" has the meaning set forth in Section 2.1(a).

"Sound Utility Practices" mean any of the practices, methods and acts engaged in or approved by a significant portion of the electric utility industry during the relevant time period, or any of the practices, methods or acts which, in the exercise of reasonable judgment in light of the facts known at the time the decision was made, could have been expected to accomplish the desired result at a reasonable cost consistent with good business practices, reliability, safety and expedition. Sound Utility Practices are not intended to be limited to the optimum practices, methods or acts to the exclusion of all others, but rather to be practices, methods or acts generally accepted in the MISO region.

"Survey" has the meaning set forth in Section 6.12(b).

"Tangible Personal Property" has the meaning set forth in Section 2.1(b).

"Tax Return" means any return, report, information return or other document (including any related or supporting information) required to be supplied to any taxing authority with respect to Taxes.

"Taxes" means all taxes, charges, fees, levies, penalties or other assessments imposed by any federal, state or local taxing authority.

"Termination Date" has the meaning set forth in Section 9.1(b)(i).

"Third Party Claim" has the meaning set forth in Section 8.6(a).

"Third Party Claim Indemnity Notice" has the meaning set forth in Section 8.6(a).

"Title Commitment" has the meaning set forth in Section 6.12(a).

"Transaction Documents" means any agreement or instrument executed in connection herewith or pursuant hereto, including the Assignment and Assumption Agreement, the Bill of Sale, the Easement Agreement, the Warranty Deed, the Operations Agreement, the APA Guaranty, and the Emergency Power Supply Agreement (only if entered into by the Parties pursuant to Section 6.5(d)).

"Transferable Permits" means all Permits, and any applications pertaining thereto, which are lawfully transferable by Seller to Buyer (with or without a filing with, notice to, consent or approval of any Governmental Authority), and which are listed in Schedule 1.1(b), true and complete copies of which have been provided to Buyer.

"Warranty Deed" means the Warranty Deed from Seller, substantially in the form of Exhibit F.

1.2 Rules as to Usage.

Except as otherwise expressly provided herein, the following rules shall apply to the usage of terms in this Agreement:

(a) The terms defined in this Agreement have the meanings set forth in this Agreement for all purposes, and such meanings are equally applicable to both the singular and plural forms of the terms defined.

(b) "Include," "includes" and "including" shall be deemed to be followed by "without limitation" whether or not they are in fact followed by such words or words of like import.

(c) Any Law defined or referred to herein means such Law as from time to time amended, modified or supplemented, including by succession of comparable successor Law and any rules and regulations promulgated thereunder.

(d) Reference to any Person includes such Person's successors and assigns but, if applicable, only if such successors and assigns are permitted by this Agreement, and reference to a Person in a particular capacity excludes such Person in any other capacity.

(e) Reference to any agreement (including this Agreement), document or instrument means such agreement, document or instrument as amended or modified and in effect from time to time in accordance with the terms thereof and, if applicable, the terms hereof.

(f) Any term defined herein by reference to any agreement, instrument or Law has such meaning whether or not such agreement, instrument or Law is in effect.

(g) "Hereof," "herein," "hereunder" and comparable terms refer, unless otherwise expressly indicated, to the entire agreement or instrument in which such terms are used and not to any particular article, section or other subdivision thereof or exhibit or schedule or other attachment thereto. References in an instrument to "Article," "Section," or another subdivision or to an "Exhibit" or "Schedule" or other attachment are, unless the context otherwise requires, to an article, section, subsection or subdivision of or an exhibit or schedule or other attachment to such agreement or instrument.

(h) References to any gender include, unless the context otherwise requires, references to all genders.

(i) "Shall" and "will" have equal force and effect.

(j) Whenever the consent or approval of any Party is required pursuant to this Agreement, unless expressly stated that such consent or approval is to be given in the sole discretion of such Party, such consent or approval shall not be unreasonably withheld, conditioned or delayed.

(k) Whenever this Agreement refers to a number of days, months or years, such number shall refer to calendar days, months or years unless Business Days are specified. Whenever any action must be taken hereunder on or by a day that is not a Business Day, then such action may be validly taken on or by the next day that is a Business Day.

(l) All references herein to "$" or dollars shall refer to United States dollars.

ARTICLE II
PURCHASE AND SALE

2.1 Transfer of Assets.

Upon the terms and subject to the satisfaction of the conditions set forth in this Agreement, at the Closing, Seller will sell, assign, convey, transfer and deliver to Buyer, and Buyer will purchase, assume and acquire from Seller, free and clear of all Encumbrances (except for Permitted Encumbrances), all of Seller's right, title and interest in, to and under the assets constituting, or used in and necessary to the operation of, the Escanaba Power Facilities, as in existence on the Effective Date (except to the extent consumed or disposed of in the Ordinary Course of Business on or before the Closing or pursuant to the O&M Agreement or the sale of energy or capacity or any other service or commodity from the Escanaba Power Facilities prior to the Closing), together with any Fuel Inventories in existence on the Closing Date, but excluding the Excluded Assets (collectively, the "Purchased Assets"), including the following (to the extent not the Excluded Assets):

(a) That certain parcel of real property (including all Improvements thereon and all appurtenances and beneficial easements thereto) described in Schedule 2.1(a) (the "Site");

(b) The machinery, equipment (including communications equipment (other than the O&M Operator Property)), vehicles, furniture and other personal property listed on Schedule

2.1(b), together with all the personal property of Seller at the Site used in and necessary for the operation of the Escanaba Power Facilities as of the Effective Date, except to the extent consumed or disposed of in the Ordinary Course of Business on or before the Closing or pursuant to the O&M Agreement prior to the Closing (collectively, the "Tangible Personal Property");

(c) The electrical transmission and distribution facilities of Seller located on the Site (whether or not regarded as a "transmission" or "generation" assets for regulatory or accounting purposes), including all substation facilities and support equipment, but excluding the Seller Distribution Facilities;

(d) The Non-Fuel Inventories in existence on the Effective Date, except to the extent consumed or disposed of in the Ordinary Course of Business on or before the Closing or pursuant to the O&M Agreement prior to the Closing, and the Fuel Inventories in existence on the Closing Date;

(e) Subject to Section 6.5(c), those Contracts set forth on Schedule 2.1(e) that Seller is a party to, that relate to the ownership, operation and maintenance of the Escanaba Power Facilities, and that are in effect on the Closing Date (collectively, the "Seller's Agreements");

(f) Subject to Section 6.5(c), the Transferable Permits;

(g) All books, operating records, operating, safety and maintenance manuals, engineering design plans, blueprints and as built plans, specifications, procedures, studies, reports (including all Environmental Reports), equipment repair, safety, maintenance or service records, and similar items related to the Purchased Assets, in each case, located at the Site, provided that to the extent that any of the foregoing is contained in an electronic format, Seller shall cooperate with Buyer to transfer such items to Buyer in a format that is reasonably acceptable to Buyer (collectively, the "Operating Documents"); and

(h) Prepaid expenses in respect of any Purchased Assets allocable to any period on or after the Closing Date.

2.2 Excluded Assets.

Notwithstanding anything to the contrary in this Agreement, nothing in this Agreement will constitute or be construed as conferring on Buyer, and Buyer is not acquiring, any right, title or interest in or to (a) any properties or assets of Seller not expressly set forth in Section 2.1, or (b) the following specific assets which are associated with the Purchased Assets, but which are hereby specifically excluded from the sale and the definition of Purchased Assets (collectively, the "Excluded Assets"):

(a) Seller's rights under this Agreement and the Transaction Documents.

(b) All of Seller's distribution facilities and equipment located on the Site that are used to serve Seller's electrical distribution load, including those certain switches and meters at

the Escanaba Power Facilities and in the substation facilities, distribution lines, revenue meters and remote terminal units, described on Schedule 2.2(b) (the "Seller Distribution Facilities");

(c) All of Seller's water lines serving Seller's facilities and Seller's public water utility system located on the Site, described on Schedule 2.2(c) (the "Seller Water Facilities");

(d) All of the equipment and facilities of the O&M Operator located on the Site and listed on Schedule 2.2(d) (collectively, the "O&M Operator Property");

(e) Certificates of deposit, shares of stock, securities, bonds, debentures, evidences of indebtedness, and interests in joint ventures, partnerships, limited liability companies and other entities;

(d) All cash, cash equivalents, bank deposits, accounts and notes receivable (trade or otherwise), prepaid expenses relating to the operation of the Purchased Assets and any income, sales, payroll or other tax receivables;

(e) All tariffs, agreements and arrangements to which Seller is a party for the purchase or sale of electric capacity and/or energy or for the purchase or sale of transmission or ancillary services involving the Purchased Assets or otherwise;

(f) All of Seller's corporate books and records, council minutes, board or committee minutes or records and other corporate records of Seller;

(g) All of the rights and interests, and all of the liabilities and obligations, of Seller in, to, under or pursuant to any Contract other than the Seller's Agreements (but only to the extent to which they are successfully transferred to Buyer);

(h) All insurance policies relating to the Purchased Assets; and

(i) All other assets and properties owned by Seller which are not used in and needed for the operation of the Escanaba Power Facilities and are located at the Site on the Closing Date.

At any time or from time to time, up to sixty (60) days following the Closing, any and all of the Excluded Assets may be removed from the Escanaba Power Facilities by Seller, provided that Seller shall be entitled to remove the Seller Distribution Facilities after such 60-day period in accordance with the Operations Agreement. Under no circumstance shall any Excluded Asset become the asset of Purchaser for failure of Seller to remove the Excluded Asset in the period set forth above.

2.3 Assumed Liabilities.

Except for Excluded Liabilities, upon the Closing, Purchaser shall assume, and shall thereafter pay, perform and discharge, without recourse to Seller, as and when due the following (collectively, the "Assumed Liabilities"):

(a) Any Liabilities of Seller under the Seller's Agreements and the Transferable Permits (but only as and to the extent such Seller's Agreements and Transferable Permits are successfully transferred to Buyer) on or after the Closing Date;

(b) Any Liability in respect of Taxes attributable to the Purchased Assets for taxable periods commencing on and after the Closing Date;

(c) Any payment obligations of Seller under the Seller's Agreement for goods delivered or services rendered on or after the Closing Date (but only as and to the extent such Seller's Agreements are successfully transferred to Buyer) on or after the Closing Date;

(d) Any Tax that may be imposed by any Governmental Authority on the ownership, sale, operation or use of the Purchased Assets on or after the Closing Date, except for any Income Taxes attributable to income received or entitled to be received by Seller;

(e) Any Liabilities arising out of events, conditions, or circumstances first occurring on or after the Closing Date;

(f) Any Liabilities arising out of any act or omission of Buyer after the Closing Date with respect to employees working at the Escanaba Power Facilities (including any Liabilities relating to the hiring, employment or termination of employment by Buyer of any individual on or after the Closing Date);

(g) Any Liabilities arising out of the ownership or operation of the Purchased Assets after the Closing; and

(h) Any Liability in respect of, arising from, or related to the Assumed Environmental Liabilities.

2.4 Excluded Liabilities.

Except for the Assumed Liabilities, Buyer shall not assume by virtue of this Agreement or the Contemplated Transactions, by operation of law or otherwise, shall have no liability for and Seller shall remain liable in respect of, any Liability of Seller, including any of the following Liabilities (the "Excluded Liabilities"):

(a) Any Liability of Seller in respect of any Excluded Assets or other assets of Seller which are not Purchased Assets;

(b) Any Liability in respect of Taxes attributable to the Purchased Assets for taxable periods ending before the Closing Date;

(c) Any Liability of Seller arising from the breach, violation or default by Seller, prior to the Closing Date, of any Transferable Permit;

(d) Any Liability of Seller arising from the breach, violation or default by Seller or the termination, prior to the Closing Date, of any Seller's Agreement or any other Contract entered into by Seller with respect to the Purchased Assets;

(e) Any and all Liability to a third party for personal injury or tort, or similar causes of action arising out of the ownership or operation of the Purchased Assets prior to the Closing Date;

(f) Any payment or other obligations of Seller for goods delivered or services rendered prior to the Closing Date;

(g) Any Liability of Seller arising from the making or performance of this Agreement or the transactions contemplated hereby;

(h) Any Liability arising out of events, conditions, or circumstances that first occurred prior to the Closing Date, notwithstanding the disclosure thereof in any Schedule, or any subsequent claim, action, suit or proceeding arising out of or relating to such matters;

(i) Any Liability in respect of, arising from, or related to any Seller Retained Environmental Liability; and

(j) Any Liability to any employees of Seller or of the O&M Operator.

ARTICLE III
THE CLOSING

3.1 Closing.

The sale, assignment, conveyance, transfer and delivery of the Purchased Assets to Buyer, the payment of the Purchase Price to Seller, the assumption of the Assumed Liabilities by Buyer, and the consummation of the Contemplated Transaction by the Parties shall take place at a closing (the "Closing"), to be held at the offices of the City of Escanaba Electric Department, 1711 Sheridan Road, Escanaba, Michigan 49829, on the fifth (5th) Business Day after the conditions set forth in Article VII (other than conditions that, by their terms, cannot be satisfied until the Closing) have been satisfied or waived by the Party for whose benefit such conditions exist or on such other date as may be mutually agreed upon by the Parties. The Closing shall be deemed effective as of 12:01 A.M. Eastern Daylight Time on the date of the Closing (the "Closing Date").

3.2 Payment of Purchase Price.

(a) Upon the terms and subject to the satisfaction of the conditions contained in this Agreement, in consideration of the sale, assignment, conveyance, transfer and delivery of the Purchased Assets, Buyer will assume the Assumed Liabilities and will pay to Seller at the Closing an aggregate amount in U.S. dollars of [_____] ($[_____]) plus the

Fuel Inventories Cost (collectively, the "Purchase Price") by wire transfer of immediately available funds or by such other means as are agreed upon by Seller and Buyer.

(b) Not more than two (2) Business Days before the Closing Date, or at such other time as may be mutually agreed upon by the Parties in writing, Seller shall deliver to Buyer a written notice (the "Fuel Inventories Cost Notice") setting forth Seller's good faith estimate of quantity of Fuel Inventories that is expected to be at the Site on the Closing Date (the "Closing Fuel Inventories"), together with the value of the Closing Fuel Inventories which shall be based on the actual cost incurred by the City for the Closing Fuel Inventories (the "Fuel Inventories Cost"). The Fuel Inventories Cost Notice shall provide sufficient detail on the quantity of the Closing Fuel Inventories and the calculation of the Fuel Inventories Cost to permit an audit of the same subsequent to Closing in accordance with Section 3.2(c).

(c) Not more than sixty (60) days the Closing, Buyer may, at its own cost, at any time during normal business hours and with reasonable notice of not less than three (3) Business Days to Seller, audit the books and records of Seller to the extent reasonably related to the Closing Fuel Inventories and Fuel Inventories Cost. If Buyer's audit discloses that the actual cost incurred by Seller for the Closing Fuel Inventories differ from the costs used for determining the Fuel Inventories Cost or the quantities of Fuel Inventories differ from the quantities of Fuel Inventories used for determining the Closing Fuel Inventories, then Buyer shall notify Seller in writing of such difference (the "Disputed Fuel Inventories Cost Notice"). The Parties shall attempt, in good faith and for not less than thirty (30) days (or such longer period as the Parties may mutually agree in writing) following delivery of the Disputed Fuel Inventories Cost Notice, to reach agreement on the appropriate amount of the Closing Fuel Inventories and Fuel Inventories Cost to be used for purposes of determining the Purchase Price, and to adjust the Purchase Price paid under Section 3.2(a) to reflect such agreement. If the Parties are unable to reach agreement within such thirty (30)-day period, then the Parties shall retain an independent accounting firm of national reputation mutually appointed by the Parties to audit the actual quantity of the Closing Fuel Inventories and the costs incurred by Seller for the Closing Fuel Inventories to determine the Fuel Inventories Cost. The decision of the accounting firm shall be final and binding upon the Parties and the Purchase Price shall be adjusted to reflect the results of the accounting firm's determination. Each Party shall be liable for fifty percent (50%) of the accounting firm's charges.

3.3 Deliveries by Seller.

At the Closing, Seller will deliver, or cause to be delivered, the following to Buyer, each of which shall be in the form attached hereto, if applicable, and otherwise in form and substance reasonably satisfactory to Buyer:

(a) The Assignment and Assumption Agreement, the Easement Agreement, the Interconnection Assignment Agreement, the Bill of Sale, and each other Transaction Document (other than the Warranty Deed) to which Seller is a party, each duly executed by Seller;

(b) The Warranty Deed, duly executed and acknowledged by Seller and in recordable form;

(c) A certificate from an authorized representative of Buyer, dated as of the Closing Date, to the effect that the conditions set forth in Sections 7.2(c) and 7.2(d) have been satisfied by Buyer;

(d) Copies, certified by the City Clerk of Seller, of resolutions authorizing the execution and delivery of this Agreement and each Transaction Document to which Seller is a party, and the consummation of the transactions contemplated hereby and thereby;

(e) A certificate of the City Clerk of Seller identifying the name and title and bearing the signatures of the officers of Seller authorized to execute and deliver this Agreement and each Transaction Document to which Seller is a party;

(f) A copy of (i) the charter, (ii) applicable sections of the city code of Seller requested in writing by Buyer, and (iii) the ballot language used by Seller and the election results for the vote relating to the Escanaba Power Facilities, each certified by the City Clerk;

(g) Such affidavits and, to the extent consistent with and not in addition to the terms hereof, indemnities reasonably requested by the title insurance company issuing the Title Commitment;

(h) Title Commitment meeting the requirements of Section 6.12(a) and Survey meeting the requirements of Section 6.12(b);

(i) An ALTA owner's policy of title insurance consistent with the Title Commitment in all respects;

(j) A notice of facility status and related information required to be provided under MCL 324.20116;

(k) Certificates of title, duly endorsed for transfer, with respect to all registered motor vehicles and trailers included among the Tangible Personal Property, if any;

(l) The Operating Documents;

(m) All such other instruments of assignment or conveyance as shall, in the reasonable opinion of Buyer and its counsel, be necessary to transfer to Buyer the Purchased Assets, in accordance with this Agreement and where necessary or desirable in recordable form;

(n) Copies of any and all Seller Required Regulatory Approvals; and

(o) Such other agreements, instruments and documents as are required to be delivered by Seller at or prior to the Closing Date pursuant to this Agreement.

3.4 Deliveries by Buyer.

At the Closing, Buyer will deliver, or cause to be delivered, the following to Seller, each of which shall be in the form attached hereto, if applicable, and otherwise in form and substance reasonably satisfactory to Seller:

(a) The Purchase Price by wire transfer of immediately available funds in accordance with Seller's instructions or by such other means as may be agreed to by Seller and Buyer;

(b) The Assignment and Assumption Agreement, the Easement Agreement, the Interconnection Assignment Agreement and each other Transaction Document to which Buyer is a party, each duly executed by Buyer;

(c) A certificate from an authorized representative of Buyer, dated as of the Closing Date, to the effect that the conditions set forth in Sections 7.2(c) and 7.2(d) have been satisfied by Buyer;

(d) Copies, certified by the Secretary or Assistant Secretary of Buyer, of resolutions authorizing the execution and delivery of this Agreement and each Transaction Document to which Buyer is a party, and the consummation of the transactions contemplated hereby and thereby;

(e) Copies, certified by the Secretary or Assistant Secretary of Guarantor, of resolutions authorizing the execution and delivery of each Transaction Document to which Guarantor is a party, and the consummation of the transactions contemplated thereby;

(f) A certificate of the Secretary or Assistant Secretary of Buyer identifying the name and title and bearing the signatures of the officers of Buyer authorized to execute and deliver this Agreement and each Transaction Document to which Buyer is a party;

(g) A certificate of the Secretary or Assistant Secretary of Guarantor identifying the name and title and bearing the signatures of the officers of Guarantor authorized to execute and deliver each Transaction Document to which Guarantor is a party;

(h) A copy of the certificate of formation and operating agreement (or similar governing documents) of Buyer, certified by the Secretary or Assistant Secretary of Buyer, and a copy of the certificate of formation (or similar governing document) of Buyer certified by the Secretary of State of the State of [_____];

(i) A copy of the certificate of formation and operating agreement (or similar governing documents) of Guarantor, certified by the Secretary or Assistant Secretary of Guarantor, and a copy of the certificate of formation (or similar governing document) of Guarantor certified by the Secretary of State of the State of [_____];

(j) All such other instruments of assumption as shall, in the reasonable opinion of Seller and its counsel, be necessary for Buyer to assume the Assumed Liabilities in accordance with this Agreement;

(k) Copies of any and all Buyer Required Regulatory Approvals; and

(l) Such other agreements, instruments and documents as are required to be delivered by Buyer at or prior to the Closing Date pursuant to this Agreement.

ARTICLE IV
REPRESENTATIONS AND WARRANTIES OF SELLER

Seller hereby represents and warrants to Buyer as follows:

4.1 Incorporation; Qualification.

Seller is a city duly created, organized, and validly existing under the Constitution of the State of Michigan of 1963 and the laws of the State of Michigan and has all requisite power and authority to own and operate its properties and to operate the Escanaba Power Facilities as it is now being operated.

4.2 Authority.

Seller has full power and authority to execute and deliver this Agreement and each of the Transaction Documents to which it is a party and to consummate the transactions contemplated hereby and thereby. The execution and delivery by Seller of this Agreement and each of the Transaction Documents to which it is a party and the consummation of the transactions contemplated hereby and thereby have been duly and validly authorized by all necessary corporate action required on the part of Seller. This Agreement has been duly and validly executed and delivered by Seller, this Agreement constitutes, and upon the execution and delivery by Seller of each of the Transaction Documents to which it is a party, each such Transaction Document will constitute, legal, valid and binding obligations of Seller, enforceable against Seller in accordance with their terms, except that such enforceability may be limited by applicable bankruptcy, insolvency, reorganization, fraudulent conveyance, moratorium or other similar laws affecting or relating to enforcement of creditors' rights generally and general principles of equity (regardless of whether enforcement is considered in a proceeding at law or in equity).

4.3 No Violation; Consents and Approvals.

(a) No Violation. Except as disclosed in Schedule 4.3(a), neither the execution and delivery of this Agreement and each Transaction Document to which it is a party, nor the consummation by Seller of the transactions contemplated hereby and thereby will (i) conflict with or result in any breach of any provision of the certificate of formation or operating agreement (or other similar governing documents) of Seller; (ii) result in a default (or give rise to any right of termination, cancellation or acceleration) under any of the terms, conditions or

provisions of any note, bond, mortgage, indenture, material agreement or other material instrument or obligation to which Seller is a party or by which any of its respective assets may be bound, except for such defaults (or rights of termination, cancellation or acceleration) as to which requisite waivers or consents have been obtained or which would not, individually or in the aggregate, reasonably be expected to create a Seller Material Adverse Effect or a Facilities Material Adverse Effect; or (iii) constitute a violation of any Law or Governmental Approval applicable to Seller, which violations would, individually or in the aggregate, reasonable be expected to create a Seller Material Adverse Effect or a Facilities Material Adverse Effect.

(b) Consents and Approvals. Except as set forth in Schedule 4.3(b) (the consents, approvals, filings and notices referred to in Schedule 4.3(b) are collectively referred to as the "Seller's Required Regulatory Approvals"), no consent or approval of, filing with, or notice to, any Governmental Authority is necessary for the execution and delivery of this Agreement and the Transaction Documents to which it is a party or the consummation by Seller of the transactions contemplated hereby and thereby, other than (i) such consents, approvals, filings or notices, which, if not obtained or made, would not, individually or in the aggregate, reasonably be expected to create a Seller Material Adverse Effect or a Facilities Material Adverse Effect, and (ii) such consents, approvals, filings or notices which become applicable to Seller or the Purchased Assets as a result of the specific regulatory status of Buyer (or any of its Affiliates).

4.4 Insurance.

Schedule 4.4 lists all insurance policies relating to the Escanaba Power Facilities and the Purchased Assets maintained by Seller ("Seller's Insurance Policies"). Except as disclosed in Schedule 4.4, there is no claim by or with respect to the Escanaba Power Facilities and the Purchased Assets under Seller's Insurance Policies pending as of the Effective Date, and within the twenty-four (24) months preceding this Agreement, there have been no claim under any of Seller's Insurance Policies as to which coverage has been questioned, denied, or disputed by the underwriters of the Seller's Insurance Policies or in respect of which such underwriters have reserved their rights.

4.5 Title and Related Matters.

Subject to Permitted Encumbrances and the exceptions to title set forth on Schedule 4.5, Seller is the holder of good and marketable record title to the Site and Seller has, or as of the Closing will have, and can deliver to Buyer at Closing good and valid title to the other Purchased Assets which it purports to own, free and clear of all Encumbrances, other than Permitted Encumbrances. Except for the sale of energy and capacity and any other service or commodity from the Escanaba Power Facilities prior to the Closing Date and as provided or permitted herein or in the O&M Agreement, Seller has not sold, or transferred or contracted to sell or transfer any right or title to, or interest in, the Purchased Assets.

4.6 Real Property.

(a) Real Property Used for Purchased Assets. Schedule 2.1(a) describes all of the real property (including easements, if any) that are owned or used by Seller principally in

connection with, or that are necessary for, the ownership and operation of the Purchased Assets, substantially as presently owned and operated by Seller. To Seller's Knowledge, no fact or condition exists which would prohibit or materially adversely affect the ordinary rights of access to and from the Site from and to the existing highways and roads, as applicable, and to Seller's Knowledge there is no pending or threatened restriction or denial, governmental or otherwise, upon such ingress or egress.

(b) Notice of Violations and Claims. Except as disclosed on Schedule 4.6(b), Seller has not received written notice that its occupation and use of the Site is in violation of any applicable Law. Seller has not received any written notice of any claim of adverse possession or prescriptive rights involving any of the Site. Except as disclosed on Schedule 4.6(b), to Seller's Knowledge there is no Order requiring repair or alteration of any existing condition affecting the Site or any Improvement at the Site.

4.7 Contracts and Leases.

(a) Schedule 4.7(a) lists all Contracts to which Seller is a party which are material to the ownership, use or operation of the Purchased Assets.

(b) Except as disclosed in Schedule 4.7(b), each Seller's Agreement (i) constitutes a legal, valid and binding obligation of Seller and, to Seller's Knowledge, constitutes a valid and binding obligation of the other parties thereto, (ii) is in full force and effect and Seller has not delivered or received any written notice of termination or claim of default or intention to terminate thereunder, and (iii) may be transferred to Buyer pursuant to this Agreement without the consent of the other parties thereto and will continue in full force and effect thereafter, in each case without breaching the terms thereof or resulting in the forfeiture or impairment of any rights thereunder.

(c) Except as set forth in Schedule 4.7(c), there is not under any Seller's Agreement any default or event which, with notice or lapse of time or both, (i) would constitute a default on the part of Seller or, to Seller's Knowledge, any other party thereto, or (ii) would cause the acceleration of any of Seller's obligations thereunder or result in the creation of any Encumbrance (other than any Permitted Encumbrance) on any of the Purchased Assets. There are no claims, actions, proceedings or investigations pending against Seller or, to the Seller's Knowledge, pending against any other party to any Seller's Agreement or threatened against Seller or any other party to any Seller's Agreements, before any Governmental Authority relating to any of Seller's Agreements or the subject matter thereof. Seller has no Knowledge of any defense, offset or counterclaim arising under any Seller's Agreement.

4.8. Legal Proceedings.

Except as set forth in Schedule 4.8, there are no actions or proceedings pending or, to Seller's Knowledge, threatened against Seller before any court, arbitrator or Governmental Authority, which relate to or affect or would reasonably be expected to affect the Purchased Assets, or that question the validity of, this Agreement or the Seller's Agreements or of any action taken or to be taken by Seller pursuant to or in connection with the provisions of this Agreement or the

Seller's Agreements. Except as set forth in Schedule 4.8, Seller is not subject to any outstanding Order which relate to or affect or would reasonably be expected to affect the Purchased Assets.

4.9. Permits.

(a) Except as disclosed in Schedule 4.9(a), Seller has not received any written or oral notification that it is in violation, nor does Seller have Knowledge of any violation, of any one or more Permits, of any Government Authority with respect to the Purchased Assets.

(b) Schedule 4.9(b) lists all Governmental Approvals applicable to the ownership, use or operation of the Purchased Assets, including the Transferable Permits (collectively, "Permits"). Except as set forth in Schedule 4.9(b), to Seller's Knowledge (i) such Permits are valid and in full force and effect, (ii) Seller is not in default under such Permits, and (iii), none of such Permits is subject to revocation, termination, suspension, or forfeiture; and (iv) none of such Permits will be terminated or impaired or become terminable, in whole or in part, as a result of the Contemplated Transactions. True and complete copies of all Permits have been provided to Buyer.

4.10 Intellectual Property.

Seller has not received any notice that it is infringing and, to Seller's Knowledge, is not infringing any Intellectual Property of any other Person in connection with the operation of the Purchased Assets. There is no Intellectual Property material to the operation of the Purchased Assets which is not being sold, transferred and assigned to Purchaser pursuant hereto.

4.11 Environmental.

(a) Except as disclosed in Schedule 4.11 and to Seller's Knowledge , Seller has at all times operated the Site and all facilities and assets situated thereon in compliance with, and has otherwise complied with, all applicable Environmental Laws, including timely application for, procurement of, and compliance with all applicable Governmental Approvals, and Seller has not received, orally or in writing, notice of any claim, any threat to assert a claim, or any request or demand for information, under any Environmental Law.

(b) Except as disclosed in Schedule 4.11, Seller has delivered or made available to Buyer copies of any and all Phase I environmental site assessments, Phase II environmental site assessments, and environmental compliance reports in Seller's possession or under Seller's ownership or control constituting, regarding, or referring to environmental assessments, investigations, and compliance audits, and all data, orders, consent orders, consent decrees, notices of violation, information requests, and correspondence to or from any Governmental Authority, regarding or referring to the environmental condition of the Site or Seller's compliance with Environmental Laws.

4.12 Employees; Employee Benefit Plans.

Seller has no employees employed at the Escanaba Power Facilities and Seller has no Employee Benefit Plans for the benefit of anyone employed at the Escanaba Power Facilities.

4.13 Sufficiency of Assets, Etc.

The Purchased Assets constitute all of the material assets required for the conduct of the Escanaba Power Facilities as currently conducted.

4.14 Compliance with Laws.

Except as disclosed in Schedule 4.14, Seller is and has been in compliance in all material respects with, and to Seller's Knowledge is not under investigation with respect to and has not been threatened to be charged with or given notice of, any material violation of any Laws, applicable to the Escanaba Power Facilities or the Purchased Assets.

4.15 Tax Matters.

The Site and the Tangible Personal Property are, and will be prior to the Closing Date, exempt from real property tax and personal property tax, respectively. There are no special assessments outstanding or, to Sellers' Knowledge, pending against the Site. Seller makes no payments to any governmental unit or other entity in lieu of such taxes or assessments.

4.16 Operating Documents.

To Seller's Knowledge, the Operating Documents are complete and accurate in all material respects and have been maintained in accordance with Sound Utility Practice.

4.17 Good Repair.

To Seller's Knowledge, the Escanaba Power Facilities have been maintained in a good state of repair.

4.18 Financial Advisors.

Except as disclosed in Schedule 4.18, neither Seller nor any of its Affiliates is or will become obligated to pay any fee or like payment to any broker, finder or financial advisor as a result of the consummation of the Contemplated Transactions based upon any arrangement made by or on behalf of Seller.

4.19 No Knowledge of Buyer's Breach.

Seller has no Knowledge of any facts or circumstances that would serve as the basis for a claim by Seller against Buyer based upon a breach of any of the representations, warranties, covenants or obligations of Buyer contained in this Agreement at or prior to Closing. Seller shall be deemed to have waived in full and forever discharge Buyer of any and all claims, demands or charges with respect to any breach of any of such representations, warranties, covenants and obligations of Buyer of which Seller had Knowledge at or prior to the Closing, including for purposes of the indemnification provisions in Article VIII.

ARTICLE V
REPRESENTATIONS AND WARRANTIES OF BUYER

Buyer hereby represents and warrants to Seller as follows:

5.1 Organization.

Buyer is a [_____] duly organized, validly existing and in good standing under the laws of the State of [_____] and has all requisite power and authority to own, lease or operate its properties and to carry on its business as it is now being conducted. Buyer is qualified to do business in the State of Michigan. Buyer has heretofore delivered to Seller complete and correct copies of its certificate of formation and operating agreement (or other similar governing documents) as currently in effect.

5.2 Authority.

Buyer has full power and authority to execute and deliver this Agreement and each of the Transaction Documents to which it is a party and to consummate the transactions contemplated hereby and thereby. The execution and delivery by Buyer of this Agreement and each of the Transaction Documents to which it is a party and the consummation of the transactions contemplated hereby and thereby have been duly and validly authorized by all necessary corporate action required on the part of Buyer. This Agreement has been duly and validly executed and delivered by Buyer, this Agreement constitutes, and upon the execution and delivery by Buyer of each of the Transaction Documents to which it is a party, each such Transaction Document will constitute, legal, valid and binding obligations of Buyer, enforceable against Buyer in accordance with their terms, except that such enforceability may be limited by applicable bankruptcy, insolvency, reorganization, fraudulent conveyance, moratorium or other similar laws affecting or relating to enforcement of creditors' rights generally and general principles of equity (regardless of whether enforcement is considered in a proceeding at law or in equity).

5.3 No Violation.

Except as disclosed in Schedule 5.3, neither the execution and delivery of this Agreement and each Transaction Document to which it is a party, nor the consummation by Buyer of the transactions contemplated hereby and thereby will (i) conflict with or result in any breach of any provision of the certificate of formation or operating agreement (or other similar governing documents) of Buyer; (ii) result in a default (or give rise to any right of termination, cancellation or acceleration) under any of the terms, conditions or provisions of any note, bond, mortgage, indenture, material agreement or other material instrument or obligation to which Buyer is a party or by which any of its respective assets may be bound, except for such defaults (or rights of termination, cancellation or acceleration) as to which requisite waivers or consents have been obtained or which would not, individually or in the aggregate, reasonably be expected to create a Buyer Material Adverse Effect; or (iii) constitute a violation of any Law or Governmental Approval applicable to Buyer, which violations would not, individually or in the aggregate, reasonable be expected to create a Buyer Material Adverse Effect.

5.4 Consents and Approvals.

Except as set forth in Schedule 5.4 (the consents, approvals, filings and notices referred to in Schedule 5.4 are collectively referred to as the "Buyer's Required Regulatory Approvals"), no consent or approval of, filing with, or notice to, any Governmental Authority is necessary for the execution and delivery of this Agreement and the Transaction Documents to which it is a party or the consummation by Buyer of the transactions contemplated hereby and thereby, other than such consents, approvals, filings or notices, which, if not obtained or made, would not, in individually or in the aggregate, reasonably be expected to create a Buyer Material Adverse Effect.

5.5 Legal Proceedings.

There are no actions or proceedings pending or, to Buyer's Knowledge, threatened against Buyer before any court, arbitrator or Governmental Authority, which would, individually or in the aggregate, reasonably be expected to create a Buyer Material Adverse Effect or that questions the legality or validity of this Agreement or the Transaction Documents or of any action taken or to be taken pursuant to or in connection with the provisions of this Agreement or the Transaction Documents. Buyer is not subject to any outstanding Orders which would, individually or in the aggregate, reasonably be expected to create a Buyer Material Adverse Effect.

5.6 Availability of Funds.

Buyer has sufficient funds and lines of credit available to it to pay the Purchase Price and to consummate the Contemplated Transactions, including payments of fees and expenses contemplated hereunder.

5.7 Financial Advisors.

Neither Buyer nor any of its Affiliates is or will become obligated to pay any fee or like payment to any broker, finder or financial advisor as a result of the consummation of the Contemplated Transactions based upon any arrangement made by or on behalf of Buyer.

5.8 Solvency.

Both Buyer and Guarantor are solvent and neither Buyer nor Guarantor will be rendered unable to pays its debts or obligations when such debts or obligations become due as a result of any of the Contemplated Transactions.

5.9 No Knowledge of Seller's Breach.

Buyer has no Knowledge of any facts or circumstances that would serve as the basis for a claim by Buyer against Seller based upon a breach of any of the representations, warranties, covenants or obligations of Seller contained in this Agreement at or prior to Closing. Buyer shall be deemed to have waived in full and forever discharge Seller of any and all claims, demands or charges with respect to any breach of any of such representations, warranties, covenants and

obligations of Seller of which Buyer had Knowledge at or prior to the Closing, including for purposes of the indemnification provisions in Article VIII.

5.10 No Additional Representations and Warranties.

Buyer acknowledges and agrees that, except as otherwise expressly set forth in this Agreement and any Transaction Document to which Seller is a Party: (a) Seller does not make any other representations or warranties, written or oral, statutory, express or implied, about the Purchased Assets and the Contemplated Transactions, and (b) the Purchased Assets shall be transferred to Purchaser in their condition at the time of Closing, AS-IS, WHERE-IS, without any further representation or warranty of condition whatsoever and without any further representation or warranty that the Purchased Assets are free from latent defects or vices INCLUDING ANY WARRANTY OR REPRESENTATION THAT THE PURCHASED ASSETS ARE FIT FOR BUYER'S INTENDED USE OR BUYER'S PARTICULAR PURPOSE OR THAT THE PURCHASED ASSETS ARE FREE FROM HIDDEN, REDHIBITORY, OR LATENT DEFECTS OR VICES AND BUYER WAIVES ANY SUCH WARRANTY TO WHICH IT MAY BE ENTITLED UNDER ANY APPLICABLE LAW AND BUYER WAIVES (A) ANY WARRANTY TO WHICH IT MIGHT BE ENTITLED UNDER ANY APPLICABLE LAW THAT THE PURCHASED ASSETS BE REASONABLY FIT FOR THEIR ORDINARY USE, (B) ALL RIGHTS IN REDHIBITION PURSUANT TO ANY APPLICABLE LAW, (C) THE WARRANTY AGAINST HIDDEN OR REDHIBITORY DEFECTS IN THE PURCHASED ASSETS, AND (D) THE WARRANTY THAT THE PERSONAL PROPERTY IS FIT FOR ITS INTENDED USE, EACH OF WHICH WOULD OTHERWISE BE IMPOSED UPON SELLER BY APPLICABLE LAW AND BUYER HEREBY RELEASES SELLER FROM ANY LIABILITY FOR HIDDEN, REDHIBITORY, OR LATENT DEFECTS OR VICES UNDER ANY APPLICABLE LAW. BUYER HEREBY AGREES THAT IT HAS KNOWINGLY AND VOLUNTARILY AGREED TO THE SAME.

ARTICLE VI
COVENANTS OF THE PARTIES

6.1 Conduct of Business Relating to the Purchased Assets.

Except as otherwise expressly contemplated by this Agreement or disclosed in Schedule 6.1 or with the prior written consent of Buyer, during the period from the Effective Date to and through the Closing Date, (a) Seller shall operate and maintain the Escanaba Power Facilities or cause the Escanaba Power Facilities to be operated and maintained in all material respects in the Ordinary Course of Business and (b) Seller shall preserve intact the Purchased Assets, maintain insurance now in effect, and endeavor to preserve the goodwill and relationships with customers, suppliers and others having dealings with it.

6.2 Access to Information.

(a) Between the Effective Date and the Closing Date, Seller will use commercially reasonable efforts to, and will use commercially reasonable efforts to cause the O&M Operator to, (i) during ordinary business hours and upon reasonable notice, give Buyer and its Representatives reasonable access to all books, records, plans, offices and other facilities and

properties constituting the Purchased Assets or the Assumed Liabilities; (ii) furnish Buyer with such operating data and other information with respect to the Purchased Assets or the Assumed Liabilities as Buyer may from time to time request to the extent reasonably accessible; (iii) furnish Buyer with a copy of each report, schedule, written communication (including email) or other document filed or received by Seller or the O&M Operator with or from a Governmental Authority with respect to the Purchased Assets or the Assumed Liabilities, in each case, to the extent filed or received within the last three (3) years and otherwise reasonable accessible; and (iv) furnish Buyer with all such other information as shall be necessary, in Buyer's reasonable judgment, to enable Buyer to verify the accuracy of the representations and warranties of Seller contained in this Agreement, to evaluate the physical and operating condition of the Escanaba Power Facilities and the liability risk issues associated with the Contemplated Transaction; provided, however, that (A) any such inspections and investigations shall be conducted in such a manner as not to interfere with the normal operation of the Purchased Assets, (B) Seller and the O&M Operator shall not be required to take any action which would constitute a waiver of the attorney-client or other privilege, and (C) Seller need not supply Buyer with any information which Seller is under a legal or contractual obligation not to supply. In the event Seller should exercise its right to withhold any information pursuant to clause (B) or (C), Seller shall inform Buyer in writing that Seller is exercising that right and shall describe generally, to the extent possible, the nature and volume of the information or documents withheld.

(b) Between the Effective Date and the Closing Date, Buyer will use commercially reasonable efforts to furnish Seller with all such information as shall be necessary, in Seller's reasonable judgment, to enable Seller to verify the accuracy of the representations and warranties of Buyer contained in this Agreement and the liability risk issues associated with the Contemplated Transaction; provided, however, that (A) Buyer shall not be required to take any action which would constitute a waiver of the attorney-client or other privilege, and (B) Buyer need not supply Seller with any information which Buyer is under a legal or contractual obligation not to supply. In the event Buyer should exercise its right to withhold any information pursuant to clause (A) or (B), Buyer shall inform Seller in writing that Buyer is exercising that right and shall describe generally, to the extent possible, the nature and volume of the information or documents withheld.

(c) All non-public information furnished to or obtained by either Party or its Representatives pursuant to this Section 6.2 shall be Confidential Information. Each Party shall, and shall cause its Representatives to, (a) keep all Confidential Information of the other Party confidential and not disclose or reveal any such Confidential Information to any Person other than its Representatives and (b) not use such Confidential Information other than in connection with the Contemplated Transactions. The obligations of the Parties under this Section 6.2(c) shall be in full force and effect for two (2) years from the Effective Date and will survive the termination of this Agreement and the Closing of the Contemplated Transactions.

(d) Notwithstanding any terms of this Agreement to the contrary, the Parties agree that prior to the Closing, Buyer may reveal or disclose Confidential Information to any other Persons in connection with Buyer's financing of its purchase of the Purchased Assets (provided that such Persons agree in writing to maintain the confidentiality of the Confidential Information in accordance with this Agreement).

(e) Notwithstanding the terms of Section 6.2(b), any Party may provide Confidential Information of the other Party to the FERC or any other Governmental Authority with jurisdiction, but only as and to the extent necessary to obtain Seller's Required Regulatory Approvals or Buyer's Required Regulatory Approvals, or otherwise to comply with applicable Laws. The disclosing Party will seek confidential treatment for the Confidential Information provided to any Governmental Authority and the disclosing Party will notify the other Parties, to the extent not prohibited from doing so, as far in advance as is practicable of its intention to release to any Governmental Authority any Confidential Information.

6.3 Public Statements.

Subject to the requirements imposed by any Governmental Authority and except as required by Law, including any disclosures made pursuant to the Freedom of Information Act and the Open Meetings Act, or in connection with oral and written reports to the City Council or other boards or commissions of the City of Escanaba, Michigan, no press release or other public announcement or public statement or comment in response to any inquiry relating to the Contemplated Transactions shall be issued or made by any Party without the prior approval of the other Party (which approval shall not be unreasonably withheld). The Parties agree to cooperate in preparing such announcements.

6.4 Expenses.

Except to the extent specifically provided herein, whether or not the Contemplated Transactions are consummated, all costs and expenses incurred in connection with this Agreement and the Contemplated Transactions shall be borne by the Party incurring such costs and expenses.

6.5 Further Assurances.

(a) Subject to the terms and conditions of this Agreement, each of the Parties shall use commercially reasonable efforts to take, or cause to be taken, all actions, and to do, or cause to be done, all things necessary, proper or advisable under applicable Laws to consummate and make effective the purchase and sale of the Purchased Assets pursuant to this Agreement, the assumption of the Assumed Liabilities and the execution and delivery of each Transaction Document, including using commercially reasonable efforts to ensure satisfaction of the conditions precedent to its obligations hereunder, including obtaining all necessary consents, approvals, and authorizations of third parties required to be obtained in order to consummate the Contemplated Transactions hereunder, and to effectuate a transfer of the Transferable Permits to Buyer. Seller shall cooperate with Buyer in its efforts to obtain all Buyer's Required Regulatory Approvals, and Buyer shall cooperate with Seller in its efforts to obtain all Seller's Required Regulatory Approvals. Neither of the Parties shall, without prior written consent of the other Party, take or fail to take any action, which would reasonably be expected to prevent or materially impede, interfere with or delay the Contemplated Transactions.

(b) In the event that any Purchased Asset shall not have been conveyed to Buyer at the Closing, Seller shall, subject to Section 6.5(c), convey such asset to Buyer as promptly as is practicable after the Closing.

(c) To the extent that Seller's rights under any Seller's Agreement or Transferable Permit may not be assigned without the consent of another Person which consent has not been obtained by the Closing Date, this Agreement shall not constitute an agreement to assign the same, if an attempted assignment would constitute a breach thereof or be unlawful. Seller and Buyer agree that if any consent to an assignment of any Seller's Agreement or Transferable Permit shall not be obtained or if any attempted assignment would be ineffective or would impair Buyer's rights, economic benefits and obligations under the Seller's Agreement or Transferable Permit in question, so that Buyer would not in effect acquire the benefit of all such rights, economic benefits and obligations, Seller, to the maximum extent permitted by law and such Seller's Agreement or Transferable Permit, as the case may be, shall, after the Closing Date, (i) appoint Buyer to be Seller's agent with respect to such Seller's Agreement or Transferable Permit or (ii) to the maximum extent permitted by law and such Seller's Agreement or Transferable Permit, enter into such reasonable arrangements with Buyer or take such other actions as are necessary to provide Buyer with the same or substantially similar rights and obligations of such Seller's Agreement or Transferable Permit, as the case may be, and in such capacity to receive and retain all rights and economic benefits, together with the associated obligations and liabilities. Seller and Buyer shall cooperate and shall each use commercially reasonable efforts prior to and after the Closing Date to obtain an assignment of such Seller's Agreement and Transferable Permits to Buyer.

(d) Promptly after the Effective Date, the Parties shall negotiate in good faith the terms and conditions of an agreement ("Emergency Power Supply Agreement") that provides for Buyer to provide from the Escanaba Power Facilities, if and to the extent available and subject to then applicable Laws and Governmental Approvals and Sound Utility Practices and Buyer's then contractual obligations to third parties, all of Seller's energy and capacity needs at any time during which Seller is unable to obtain energy and capacity from any Person because of an emergency or other fact or circumstance preventing Seller from receiving energy and capacity from the wholesale transmission system.

6.6 Consents and Approvals.

(a) As promptly as possible, and in any case within thirty (30) days, after the Effective Date, each Party shall file, or cause to be filed, with any Governmental Authority, any initial filings required to be made in order to obtain its Seller's Required Regulatory Approvals or Buyer's Required Regulatory Approvals, as the case may be, with respect to the Contemplated Transactions. The Parties shall respond promptly to any requests for additional information made by such Governmental Authorities, and use commercially reasonable efforts to cause regulatory approval to be obtained at the earliest possible date after the date of filing. Each Party will bear its own costs of the preparation of any such filing.

(b) Seller and Buyer shall cooperate with each other and promptly prepare and file notifications with, and request Tax clearances from, state and local taxing authorities in

jurisdictions in which a portion of the Purchase Price may be required to be withheld or in which Buyer would otherwise be liable for any Tax liabilities of Seller pursuant to such state and local Tax law.

(c) Notwithstanding anything herein to the contrary, Seller shall use commercially reasonable efforts to assist Buyer in obtaining all third party consents, agreements, certificates and other documents or instruments reasonably requested by Buyer's lenders in connection with the financing of Buyer's acquisition of the Purchased Assets hereunder, all of which shall be at Buyer's sole cost and expense.

(d) Each Party will advise the other Party in writing, promptly upon obtaining Knowledge thereof but in any event within a reasonable period of time prior thereto, of any hearings or proceedings before any Governmental Authority which concern any of the Seller's Required Regulatory Approvals or Buyer's Required Regulatory Approvals. Each Party agrees that the other Party shall be permitted to participate in any such hearings or proceedings and to use commercially reasonable efforts to cooperate with such other Party in the advancement of any position reasonably taken by such other Party to protect their respective interests, and in any case shall not take any position that would reasonably be expected to create a Facilities Material Adverse Effect, a Seller Material Adverse Effect or a Buyer Material Adverse Effect in any such hearing or proceeding.

6.7 Tax Matters.

(a) Transfer Taxes. Seller shall pay any transfer and excise taxes arising from the sale of the Purchased Assets. All documentary, filing, recordation and similar taxes shall be borne by Seller. All sales taxes (including Michigan sales tax) incurred in connection with this Agreement and the Contemplated Transactions shall be borne by Seller. Seller shall file, to the extent required by, or permissible under, applicable law, all necessary Tax Returns and other documentation with respect to all such transfer and sales taxes, and, if required by applicable law, Buyer shall join in the execution of any such Tax Returns and other documentation. Prior to the Closing Date, to the extent applicable, Buyer shall provide to Seller appropriate certificates of Tax exemption from each applicable taxing authority.

(b) Assistance. Buyer and Seller shall provide the other with such assistance as may reasonably be requested by the other Party in connection with the preparation of any Tax Return, any audit or other examination by any taxing authority, or any judicial or administrative proceedings relating to liability for Taxes, and each shall retain and provide the requesting party with any records or information which may be relevant to such return, audit, examination or proceedings. Any information obtained pursuant to this Section 6.7(b) or pursuant to any other Section hereof providing for the sharing of information or review of any Tax Return or other instrument relating to Taxes shall be kept confidential by the Parties.

6.8 Employees.

On or about the Closing Date, Buyer will extend offers of employment to all existing employees of the O&M Operator working at the Escanaba Power Facilities on terms to be determined by

Buyer and to permit such employees to continue working at the Escanaba Power Facilities subject to their acceptance of such terms.

6.9 Environmental Assessment.

Buyer shall have the right to conduct, at Buyer's sole liability and expense, an environmental assessment of the Site in one or more phases, including the procurement and analysis of samples of soil, groundwater, surface water, indoor or outdoor air, or any other environmental medium, and any building component or other material located at the Site. Without limiting the generality of the foregoing, Buyer shall have the right to conduct, at its expense, a Phase I Environmental Site Assessment of the Site in accordance with ASTM Standard E 1527-05. Seller shall provide access and information to, and otherwise cooperate with, Buyer and Buyer's Representatives in the environmental assessment as required by the ASTM Standard. Buyer shall have the right to review Seller's non-privileged records regarding, and to interview employees or representatives of Seller who have or may have knowledge of conditions and events relevant to, the operating history or environmental condition of the Site. If the Site is a "facility" within the meaning of Part 201 of the Michigan Natural Resources and Environmental Protection Act, MCL 324.20101 et seq., Buyer may prepare and submit to MDNRE a "baseline environmental assessment" ("BEA") pursuant to MCL 324.20126. The BEA may include copies of all Environmental Reports. Buyer may also prepare, at its sole liability and expense, a plan to meet due care obligations at the Site imposed under MCL 324.20107a. Buyer may, at its option and expense, petition the MDNRE for a determination of the adequacy of the BEA and due care plan pursuant to MCL 324.20129a. Buyer intends to apply to the State of Michigan for certain incentives to defray the cost of a BEA and certain costs of Remediation, if deemed appropriate. The grant or denial of such incentives shall not expand or reduce the obligations of the Parties under this Agreement. Buyer shall be liable and responsible for any and all damages, expenses, and liabilities associated with the preparation, implementation and completion of the BEA and other activities described in this Section 6.9.

6.10 Interconnection Agreement.

Seller shall enter into the Interconnection Agreement on American Transmission Company's customary terms.

6.11 Part 55 Consent Order.

Buyer acknowledges that Seller has advised Buyer of the existence of the Part 55 Consent Order in accordance with Paragraph 25 thereof and has provided a copy of the same to Buyer. Buyer agrees, following Closing, to assume all obligations of Seller arising under the Part 55 Consent Order. As promptly as is practicable after the Closing, but in no event later than thirty (30) days following the Closing Date, Buyer shall apply to the MDNRE for an administrative amendment of Renewable Operating Permit MI-ROP-B1573-2004 (the "Renewable Operating Permit") for the Generation Facilities. Seller agrees to take all actions and execute all documents that may be necessary to effectuate that administrative amendment. Nothing contained in this Agreement shall prohibit Buyer from negotiating with the MDNRE for a modification or early termination of the Part 55 Consent Order. Upon completion of all requirements of the Part 55 Consent

Order, Seller shall have no further responsibility under this Agreement for issues covered by the Part 55 Consent Order.

6.12 Real Property Title; Title Insurance; Survey.

(a) Title Commitment. Seller shall deliver to Buyer a title insurance commitment ("Title Commitment") for the Site meeting the requirements of this Section 6.12(a) within sixty (60) days after the Effective Date. The Title Commitment shall be issued by a nationally recognized title insurer selected by Seller and reasonably acceptable to Buyer, and shall contain such title insurer's agreement to issue to Buyer a standard form owner's policy of title insurance with respect to the Site, together with a copy of each document to which reference is made in the Title Commitment, to the extent available. Such policy shall be a standard ALTA form 2006 owner's policy in the amount of [_____] ($[_____] the standard printed exceptions, insuring good and marketable title thereto (expressly including all easements of record and other appurtenances of record) subject to Permitted Encumbrances.

(b) Survey. Seller shall deliver to Buyer a complete survey ("Survey") for the Site meeting the requirements of this Section 6.12(b) within ninety (90) days after the Effective Date. The Survey shall be prepared in accordance with ALTA/ACSM 2005 standards (including such Table A items as Buyer may request), and detailing the legal description, the perimeter boundaries, all improvements located thereon, all easements and encroachments affecting each such parcel of Site and such other matters as may be reasonably requested by Buyer, Seller or the title insurance company, containing a surveyor certificate reasonably acceptable to Buyer and the title insurance company, and prepared by a Michigan registered land surveyor selected by Buyer.

(c) Costs. Seller and Buyer agree that (i) the aggregate out-of-pocket cost of obtaining the Title Commitment and final policy coverage for the Site shall be paid by Seller; provided, however, the costs of any endorsements requested by Buyer shall be paid by Buyer; and (ii) the aggregate out-of-pocket cost of obtaining the Survey shall be paid by Buyer, and such Survey shall be certified to Seller, Buyer, the title insurance company, and Buyer's lender, if any.

(d) Notice of Encumbrances. Buyer shall notify Seller promptly after receipt of the Title Commitment and the Survey as to any matters disclosed therein which Buyer has determined are not Permitted Encumbrances; provided, however, that if Buyer does not object to the status of title and/or survey within one hundred twenty (120) days after the Effective Date, then any matters disclosed therein shall be deemed to be Permitted Encumbrances.

6.13 Risk of Loss, Casualty, Condemnation and Insurance.

(a) Risk of Loss. From the Effective Date to the Closing, the risk of loss or damage to the Purchased Assets shall be borne by Seller. After the Closing, the risk of loss or damage to the Purchased Assets shall be borne by Buyer.

(b) Casualty. If, prior to the Closing, the Escanaba Power Facilities is damaged by fire, vandalism, acts of God or other casualty or cause (other than as result of the acts or

omissions of Buyer), Seller shall promptly give Buyer notice of any such damage and Seller shall, at its option, either (i) elect not to rebuild the Escanaba Power Facilities and terminate this Agreement by written notice to Buyer, or (ii) elect to rebuild the Escanaba Power Facilities, and bear the costs of repairing or restoring the damaged portion of the Escanaba Power Facilities and, at Seller's election, delay the Closing and any right to terminate this Agreement for a reasonable time necessary to accomplish the same. Any failure of a condition to the Closing related to any such damage or destruction of which Seller has so notified Buyer shall be deemed not to exist, provided, that Seller exercises its election pursuant to the preceding sentence within fourteen (14) days prior to the Closing.

(c) Condemnation. If, before the Closing Date, all or any portion of the Escanaba Power Facilities is taken by eminent domain or condemnation, or is the subject of a pending or, to Seller's Knowledge, threatened, taking which has not been consummated, then Seller will notify Buyer in writing of such fact and Buyer may elect either: (i) to require Seller upon the Closing to assign to Buyer any claim, settlement, or proceeds thereof related to such proceeding to which Seller or any of its Affiliates may be entitled and proceed with the transactions contemplated hereby, or (ii) to terminate this Agreement.

(d) Insurance. The Parties acknowledge and agree that effective upon the Closing, Seller's insurance policies shall be terminated or modified to exclude coverage of the Escanaba Power Facilities by Seller. Nothing in this Agreement is intended to provide or shall be construed as providing a benefit or release to any insurer or claims service organization of any obligation under any insurance policy. Nothing herein shall be construed as creating or permitting any insurer or contract claims service company the right of subrogation against Seller or Buyer or any of their respective Affiliates in respect of payments made by one to the other under any insurance policy.

6.14 Seller Remediation Activities.

Seller is in the process of preparing a "Remedial Action Plan" with respect to environmental matters associated with the Site. The Remedial Action Plan will be filed with the MDNRE using the Request for MDNRE Review of Response Activity Plan form for their review and approval pursuant to Part 201 of the Michigan Natural Resources and Environmental Protection Act, as amended. The Remedial Action Plan will be accompanied, as and to the extent required, by a post closure plan and/or a post closure agreement. Seller shall complete the Remedial Action Plan at its sole cost and expense. Seller will commence implementation of the Remedial Action Plan as soon as reasonably practicable, with the goal of completing implementation prior to Closing, but will commence or continue implementation after Closing to the extent necessary, for which Buyer shall provide Seller access to the Site after the Closing as reasonably necessary to complete the Remedial Action Plan. To the extent the Remedial Action Plan relies on long-term maintenance of engineering controls and compliance with deed restrictions or other institutional controls that will be defined in the Remedial Action Plan, Buyer will assume responsibility for such maintenance and compliance after Closing.

ARTICLE VII
CONDITIONS

7.1 Conditions Precedent to Obligations of Buyer.

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

(a) No Order issued by a Governmental Authority of competent jurisdiction preventing or prohibiting the consummation of any of the Contemplated Transactions shall be in effect, nor shall any material proceeding initiated by any Governmental Authority of competent jurisdiction having valid enforcement authority seeking such an Order be pending, nor shall there be any Law or Order in effect that prohibits the consummation of any of the Contemplated Transactions;

(b) The Buyer Required Regulatory Approvals shall have been obtained and be in full force and effect and in form and substance satisfactory to Buyer;

(c) 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;

(d) The representations and warranties of Seller contained herein that are qualified as to materiality (whether "material," "Seller Material Adverse Effect" or "Facilities Material Adverse Effect") shall be true and complete in all respects and each such representation or warranty that is not so qualified shall be true and complete in all material respects, in each case as of the Effective Date and at and as of the Closing Date (as though those representations and warranties had been made again at and as of that time), except to the extent that any such representations or warranties refer specifically to a date other than to the Effective Date or the Closing Date, in which case as of such other date;

(e) Seller shall have delivered, or caused to be delivered, to Buyer at the Closing, Seller's closing deliveries described in Section 3.4;

(f) The Purchased Assets shall be free and clear of all Encumbrances except Permitted Encumbrances;

(g) Each of the Transferable Permits shall have been transferred to Buyer (or Buyer shall have acquired satisfactory substitutes for such Transferable Permits) on terms equivalent to the terms of such Transferable Permits applicable to Seller prior to the Closing Date, or otherwise reasonably acceptable to Buyer; and

(h) Seller shall have received all of the consents or approvals necessary to assign each of the Seller's Agreements to Buyer.

7.2 Conditions Precedent to Obligations of Seller.

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

(a) No Order issued by a Governmental Authority of competent jurisdiction preventing or prohibiting the consummation of any of the Contemplated Transactions shall be in effect, nor shall any material proceeding initiated by any Governmental Authority of competent jurisdiction having valid enforcement authority seeking such an Order be pending, nor shall there be any Law or Order in effect that prohibits the consummation of any of the Contemplated Transactions;

(b) The Seller Required Regulatory Approvals shall have been obtained and be in full force and effect and in form and substance satisfactory to Seller;

(c) Buyer shall have performed and complied in all material respects with the covenants and obligations contained in this Agreement which are required to be performed and complied with by Buyer on or prior to the Closing Date, and Guarantor shall have performed and complied in all material respects with the covenants and obligations contained in the APA Guaranty which are required to be performed and complied with by Guarantor on or prior to the Closing Date;

(d) The representations and warranties of Buyer contained herein that are qualified as to materiality (whether "material" or "Buyer Material Adverse Effect") shall be true and complete in all respects and each such representation or warranty that is not so qualified shall be true and complete in all material respects, in each case as of the Effective Date and at and as of the Closing Date (as though those representations and warranties had been made again at and as of that time), except to the extent that any such representations or warranties refer specifically to a date other than to the Effective Date or the Closing Date, in which case as of such other date;

(e) Buyer shall have delivered, or caused to be delivered, to Seller at the Closing, Buyer's closing deliveries described in Section 3.5; and

(f) The APA Guaranty shall be in full force and effect and the Guarantor shall not be in breach thereof.

ARTICLE VIII
CERTAIN REMEDIES AND LIMITATIONS

8.1 No Reliance.

Buyer has had appropriate access to review documents, records and information which it has deemed necessary to review, and has had the opportunity to conduct such due diligence investigation and review as Buyer has deemed sufficient in connection with its decision to enter into this Agreement and to consummate the Contemplated Transactions. In connection with the

execution and delivery of this Agreement and the consummation of the Contemplated Transactions, Buyer has not relied upon, and Buyer expressly waives and releases Seller from any liability for any claims (including claims based upon fraudulent inducement) relating to or arising from, any representation, warranty, statement, advice, document, projection, or other information of any type provided to Buyer or any of its Representatives, except for those representations and warranties made by Seller and expressly set forth in Article IV or the Transaction Documents to which it is a party. In deciding to enter into this Agreement, and to consummate the Contemplated Transactions, Buyer has relied solely upon its own knowledge, investigation and analysis (and that of its Representatives) and not on any disclosure or representation made by, or any duty to disclose on the part of, Seller or any of its Representatives, other than the express representations and warranties of Seller set forth in Article IV and the Transaction Documents to which it is a party.

8.2 No Consequential or Punitive Damages.

No Party (or its Representatives) shall, under any circumstance, be liable to any other Party (or its Representatives) for any consequential, exemplary, special, indirect, incidental or punitive damages claimed by such other Party (or its Representatives) under the terms of or due to any breach or default of this Agreement.

8.3 No Recourse.

(a) Seller. No past, present or future officer, director or employee of Seller shall have any liability for any representation, warranty, covenant or obligation of Seller under this Agreement or any Transaction Document or for any claim based on, in respect of or by reason of such representation, warranty, covenant or obligation or their creation.

(b) Buyer. No past, present or future officer, director or employee of Buyer shall have any liability for any representation, warranty, covenant or obligation of Buyer under this Agreement or any Transaction Document or for any claim based on, in respect of or by reason of such representation, warranty, covenant or obligation or their creation.

8.4 Expiration of Representations and Warranties and Covenants.

Subject to the limitations and other provisions of this Agreement, all of the representations and warranties and covenants and obligations of Seller and Buyer set forth in this Agreement and the other Transactional Documents covered by Section 8.5(a)(i), Section 8.5(a)(ii), Section 8.5(b)(i) and Section 8.5(b)(ii), shall terminate and expire, and shall cease to be of any force or effect, on the date that is twenty four (24) months after the Closing Date, and all liability with respect to such representations and warranties and covenants and obligations shall thereupon be extinguished, except to the extent that notice of an alleged breach or inaccuracy of or Indemnifiable Loss with respect to such representations or warranties or an alleged breach or default of or Indemnifiable Loss with respect to such covenants or obligations has been provided before such date in accordance with the terms of this Agreement. Except in the case of fraud, no claim or cause of action arising out of the inaccuracy or breach of any representation or warranty in Section 8.5(a)(i) or Section 8.5(b)(i) or the breach or default of any covenant or obligation in

Section 8.5(a)(ii) or Section 8.5(b)(ii), may be made following the termination of the applicable survival period referred to in this Section 8.4.

8.5 Indemnification.

(a) Seller Indemnification. Subject to the provisions of Section 8.4 relating to the limitations on bringing a Claim under this Agreement and the other limitations contained in this Agreement, from and after the Closing, Seller shall indemnify the Buyer Indemnified Parties and each of them in respect of, and hold each of them harmless from and against, any and all Claims and Losses (each, an "Indemnifiable Loss") suffered, incurred or sustained by, or asserted against, any of the Buyer Indemnified Parties, resulting from, arising out of or relating to:

(i) any breach of any representation or warranty made by Seller in this Agreement or in any Transaction Document to which it is a party;

(ii) any breach of any covenant or other obligation of Seller contained in this Agreement or any other Transaction Document to which it is a party; and

(iii) any Excluded Liability, including the Seller Retained Environmental Liability.

(b) Buyer Indemnification. Subject to the provisions of Section 8.4 relating to the limitations on bringing a Claims under this Agreement and the other limitations contained in this Agreement, from and after the Closing, Buyer shall indemnify the Seller Indemnified Parties and each of them in respect of, and hold each of them harmless from and against, any and all Indemnifiable Losses suffered, incurred or sustained by, or asserted against, any of the Seller Indemnified Parties, resulting from, arising out of or relating to:

(i) any breach of any representation or warranty made by Buyer or Guarantor in this Agreement or in any Transaction Document to which it is a party;

(ii) any breach of any covenant or other obligation of Buyer or Guarantor contained in this Agreement or any other Transaction Document to which Buyer or Guarantor is a party; and

(iii) any Assumed Liability, including any Assumed Environmental Liability.

(c) Limitation on Indemnification. Seller shall have no indemnification obligations for Indemnifiable Losses under Section 8.5(a) unless and until, and then only to the extent that, the Buyer Indemnified Parties have suffered, incurred, sustained or become subject to Indemnifiable Losses in excess of Fifty Thousand Dollars ($50,000) in the aggregate. Buyer shall have no indemnification obligations for Indemnifiable Losses under Section 8.5(b) unless and until, and then only to the extent that, the Seller Indemnified Parties have suffered, incurred, sustained or become subject to Indemnifiable Losses in excess of Fifty Thousand Dollars ($50,000) in the aggregate.

(d) Insurance Proceeds. The amount of any Indemnifiable Losses shall be reduced to the extent that a Party actually receives insurance proceeds with respect to such Indemnifiable Loss (net of any deductible or expenses incurred in filing the insurance claim), it being agreed that a Party shall be under no obligation to institute legal proceedings to recover insurance proceeds if an insurance claim is denied.

(e) Maximum Liability. Notwithstanding any provision to the contrary contained herein, in no event shall Seller's maximum liability under this Agreement (including under Section 8.5(a)(i)-(ii)) to Buyer and the Buyer Indemnified Parties exceed the Purchase Price; provided, however, that this limitation shall not apply to fraud or liability pursuant to Section 8.5(a)(iii). Notwithstanding any provision to the contrary contained herein, in no event shall Buyer's maximum liability under this Agreement (including under Section 8.5(b)(i)-(ii)) to Seller and the Seller Indemnified Parties exceed the Purchase Price; provided, however, that this limitation shall not apply to fraud or liability pursuant to Section 8.5(b)(iii).

(f) Mitigation. From and after the Closing, if a Indemnified Party becomes aware of an Indemnifiable Loss for which it may seek indemnification under this Article VIII, then it shall use commercially reasonable efforts to mitigate such Indemnifiable Loss, and the Indemnifying Party shall not be liable for any Indemnifiable Loss to the extent that it is attributable to the failure of the Indemnified Party to comply with this Section 8.5(f).

8.6 Indemnification Procedures

(a) Third Party Claims. In the event any Claim in respect of which an Indemnified Party has a right to seek indemnification under this Article VIII is asserted against such Indemnified Party by a Person other than a Party or any of its Affiliates (a "Third Party Claim"), then such Indemnified Party shall give written notice of such Third Party Claim, accompanied by a copy of all papers served, if any (a "Third Party Claim Indemnity Notice") to the Indemnifying Party. Such Third Party Claim Indemnity Notice will describe the nature of the Third Party Claim in reasonable detail, to the extent known by the Indemnified Party, and will indicate the estimated amount, to the extent known by the Indemnified Party, of the Indemnifiable Loss that the Indemnified Party claims it has sustained or may sustain as a result of such Third Party Claim. The failure of any Indemnified Party to give a Third Party Claim Indemnity Notice as provided herein shall not relieve the Indemnifying Party of its obligations under this Section 8.6(a), except to the extent that the Indemnifying Party is actually prejudiced by such failure to give such Third Party Claim Indemnity Notice. In the event that any such Third Party Claim is brought against an Indemnified Party, the Indemnifying Party shall be entitled to assume and control the defense thereof, with counsel reasonably satisfactory to such Indemnified Party, while reserving its right to contest the issue of whether it is liable to the Indemnified Party for any indemnification hereunder with respect to such Third Party Claim; provided that in order to assume and control the defense of such action the Indemnifying Party must first deliver to the Indemnified Party a notice of its election to assume and control the defense thereof (an "Election to Assume Defense Notice"). After such Election to Assume Defense Notice is received by the Indemnified Party, the Indemnifying Party shall not be liable to such Indemnified Party for any legal or other expenses subsequently incurred by such Indemnified Party in connection with the defense of such Third Party Claim; provided that the Indemnified Party may participate in such

defense at the Indemnified Party's sole expense. If the Indemnifying Party elects not to assume the defense of a Third Party Claim of which it is entitled to assume in accordance with the foregoing sentence, the Indemnifying Party will not be obligated to pay the fees and expenses of more than one counsel for the Indemnified Parties with respect to such claim, unless the Indemnified Parties shall have been advised by counsel that representation of any such Indemnified Parties by the same counsel would be inappropriate under applicable standards of professional conduct due to actual or potential differing interests between them, in which case such Indemnified Parties shall have the right to select separate counsel, the reasonable fees and expenses of which shall be paid by the Indemnifying Party. If the Indemnifying Party does not assume the defense of such Third Party Claim, then the Indemnified Party shall be entitled to assume and control such defense and to settle or agree to pay in full such Third Party Claim without the consent of the Indemnifying Party without prejudice to the ability of the Indemnified Party to enforce its claim for indemnification against the Indemnifying Party hereunder. If the Indemnifying Party assumes the defense of a Third Party Claim, the Indemnifying Party will not consent to the entry of any judgment which does not include a provision whereby the plaintiff or claimant in the matter fully releases the Indemnified Party. In no event will the Indemnifying Party have authority to agree to any relief binding on or will serve as an adverse precedent with respect to the Indemnified Party other than the payment of money damages by the Indemnifying Party unless agreed to in writing by the Indemnified Party.

(b) Direct Losses. In the event of any claim by an Indemnified Party for indemnification on account of an Indemnifiable Loss which does not result from or relate to a Third Party Claim (a "Direct Loss"), such Indemnified Party shall deliver a written notice thereof (a "Direct Loss Indemnity Notice") with reasonable promptness to the Indemnifying Party. Such Direct Loss Indemnity Notice will describe the nature of the Direct Loss in reasonable detail and will indicate the estimated amount, to the extent known by the Indemnified Party, of the Indemnifiable Loss that the Indemnified Party claims it has sustained or may sustain as a result of such Direct Loss. The failure of any Indemnified Party to give notice as provided herein shall not relieve the Indemnifying Party of its obligations under this Section 8.6(b), except to the extent that the Indemnifying Party is actually prejudiced by such failure to give notice. The Indemnifying Party will notify the Indemnified Party within thirty (30) days following its receipt of such Direct Loss Indemnity Notice (the "Dispute Period") as to whether the Indemnifying Party disputes its liability to the Indemnified Party hereunder. If the Indemnifying Party notifies the Indemnified Party that it does not dispute the claim described in such Indemnity Notice, the Indemnifiable Loss specified in the Direct Loss Indemnity Notice will be conclusively deemed a liability of the Indemnifying Party under this Section 8.6(b) and the Indemnifying Party shall pay the amount of such Indemnifiable Loss, when it has been finally determined, to the Indemnified Party on demand. If the Indemnifying Party has timely disputed its liability with respect to such Claim for Direct Loss, or fails to notify the Indemnified Party within the Dispute Period whether the Indemnifying Party disputes the claim described in such Direct Loss Indemnity Notice, the Indemnifying Party and the Indemnified Party will proceed in good faith to negotiate a resolution of the Direct Loss, and if not resolved through negotiations within sixty (60) days following the receipt of the Direct Loss Indemnity Notice disputing such claim, either Party may initiate appropriate judicial proceedings relating to the subject matter of the claim. Notwithstanding anything in this Agreement to the contrary, except as otherwise may be ordered by a court of competent jurisdiction, the Indemnified Party shall bear its own costs, including counsel fees and

expenses, incurred in connection with claims against the Indemnifying Party hereunder that are not based upon Third Party Claims.

(c) Tax Treatment of Indemnity Payments. To the maximum extent permitted by applicable Law, Seller and Buyer agree to treat any indemnity payment made pursuant to this Article VIII as an adjustment to the Purchase Price for federal, state, and local income Tax purposes.

(d) 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 the Transactional Documents or breach or default of any covenant or obligation to be performed hereunder or thereunder on or prior to the Closing Date, or any other matter covered by Section 8.5(a) or Section 8.5(b), will be indemnification in accordance with this Article VIII and the remedies provided for in Article IX, except with respect to fraud. 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 Transactional Documents, or the negotiation, execution, or performance of this Agreement or the Transactional Documents (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 any Transactional Document or as an inducement to enter into this Agreement or any Transactional Document), known or unknown, foreseen or unforeseen, which exist or may arise in the future, that it may have against the other Party arising under or based upon any Law (including any such Law under or relating to environmental matters), common law, or otherwise.

ARTICLE IX
TERMINATION

9.1 Termination.

Subject to the limitations set forth in Section 9.2, this Agreement may be terminated prior to the Closing Date as follows:

(a) Termination by Mutual Consent. At any time prior to the Closing Date by mutual written consent of Seller and Buyer; or

(b) Termination by Either Party. By either Seller or Buyer if:

(i) the Closing has not occurred on or before May 31, 2012 (as the same date may be extended by mutual written agreement of the Parties, the "Termination Date"); or

(ii) any Government Authority of competent jurisdiction shall have issued an Order preventing or prohibiting the consummation of any of the Contemplated Transactions, and such Order shall have become final and nonappealable; or

(iii) any Law shall exist or have been enacted or issued by any Governmental Authority which prevents or prohibits the consummation of any of the Contemplated Transactions;

(c) Termination by Seller. By Seller if:

(i) Buyer has breached any of its representations, warranties, covenants or other obligations contained in this Agreement; provided, that such breach (A) cannot be or has not been cured within thirty (30) days of Seller's written notice of such breach, provided, further, that if such failure is not capable of being cured within such thirty (30) days with the exercise of reasonable diligence, then such cure period shall be extended for an additional period of time (not to exceed an additional thirty (30) days), so long as Buyer is exercising reasonable diligence to cure such failure, and (B) would cause the failure of any condition set forth in Section 7.2; or

(ii) any of the conditions set forth in Section 7.2 shall not have been, or if it becomes reasonably apparent that any of such conditions will not be fulfilled; provided, however, that the right of Seller to terminate this Agreement under this Section 9.1(c)(ii) shall not be available to Seller if Seller's failure to fulfill any covenant or other obligation under this Agreement has been the cause of, or resulted in, the failure of such condition to be fulfilled; or

(iii) pursuant to and in accordance with Section 6.13(b) or Section 6.13(c); or

(d) Termination by Buyer. By Buyer if:

(i) Seller has breached any of its representations, warranties, covenants or other obligations contained in this Agreement; provided, that such breach (A) cannot be or has not been cured within thirty (30) days of Buyer's written notice of such breach, provided, further, that if such failure is not capable of being cured within such thirty (30) days with the exercise of reasonable diligence, then such cure period shall be extended for an additional period of time (not to exceed an additional thirty (30) days), so long as Seller is exercising reasonable diligence to cure such failure, and (B) would cause the failure of any condition set forth in Section 7.1; or

(ii) any of the conditions set forth in Section 7.1 shall not have been, or if it becomes reasonably apparent that any of such conditions will not be fulfilled; provided, however, that the right of Buyer to terminate this Agreement under this Section 9.1(d)(ii) shall not be available to Buyer if Buyer's failure to fulfill any covenant or other obligation under this Agreement has been the cause of, or resulted in, the failure of such condition to be fulfilled.

9.2 Procedure; Effect of Termination and Break Fee.

No termination of this Agreement pursuant to Section 9.1 shall be effective until written notice thereof is given in accordance with Section 10.3 to the non-terminating Party specifying the provision hereof pursuant to which such termination is made. Subject to the other provisions in this Section 9.2, if validly terminated pursuant to Section 9.1, this Agreement shall become wholly void and of no further force and effect without liability to Buyer or Seller or any of their respective Affiliates, officers, directors, employees, agents, advisors or other representatives, and each shall be fully released and discharged from any liability or obligation under or resulting

from this Agreement, and no party shall have any other remedy or cause of action under or relating to this Agreement , including for reimbursement of expenses. In the event this Agreement is terminated by Seller pursuant to Section 9.1(b) or Section 9.1(c) or by Buyer pursuant to Section 9.1(d)(ii), then in lieu of all other claims and remedies that otherwise might be available to Seller with respect thereto, Buyer shall pay as liquidated damages to Seller in immediately available funds Two Hundred Fifty Thousand Dollars ($250,000). In the event this Agreement is terminated by Buyer pursuant to Section 9.1(d)(i), then in lieu of all other claims and remedies that otherwise might be available to Buyer with respect thereto, Seller shall pay as liquidated damages to Buyer in immediately available funds Two Hundred Fifty Thousand Dollars ($250,000). The payment of liquidated damages in this Section 9.2 have been included because in the event of termination pursuant to Section 9.1(b), Section 9.1(c) or Section 9.1(d), the actual damages to be incurred by Seller or Buyer, as the case may be, are reasonably expected to approximate the amount of liquidated damages set forth above and because the actual amount of damages would be difficult if not impossible to measure precisely.

ARTICLE X
MISCELLANEOUS PROVISIONS

10.1 Amendment and Modification.

This Agreement may be amended, modified or supplemented only by a written agreement executed by Seller and Buyer.

10.2 Waiver of Compliance; Consents.

Except as otherwise specifically provided in this Agreement, any failure to comply with any obligation, covenant 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 of such obligation, covenant or condition shall not operate as a waiver of, or estoppel with respect to, any subsequent failure to comply therewith.

10.3 Notices.

All notices and other communications required or permitted hereunder shall be in writing and shall be deemed duly given (a) when delivered personally or by prepaid overnight courier, with a record of receipt, (b) the fourth (4th) day after mailing if mailed by certified mail, return receipt requested, or (c) the day of transmission, if sent by facsimile during regular business hours, or the day after transmission, if sent after regular business hours (with a copy promptly sent by prepaid overnight courier with record of receipt or by certified mail, return receipt requested), to the recipient Party at its address (or at such other address or facsimile number for a Party as shall be specified by like notice; provided, however, that notices of a change of address shall be effective only upon receipt thereof):

If to Seller, to:

City of Escanaba
P.O. Box 948
410 Ludington Street
Escanaba, MI 49829
Attention: James V. O'Toole
Facsimile: (906) 786-4755

with a copy to:

Troutman Sanders LLP
401 9th Street, NW, Suite 1000
Washington, DC 20004
Attention: Todd Coles, Esq.
Facsimile: (202) 654-5649

if to Buyer, to:

[_____]
[_____]
[_____]
[_____]
Attention: [_____]
Facsimile: [_____]

with a copy to:

[_____].
[_____]
[_____]
[_____]
Attention: [_____]
Facsimile: [_____]

10.4 Assignment.

This Agreement and all of the provisions hereof shall 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 shall be assigned by any Party, including by operation of law, 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, interests, obligations or remedies hereunder. No provision of this Agreement shall create 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 shall create 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 except as expressly provided for thereunder. Notwithstanding the foregoing, Buyer may assign its rights

hereunder and under any Transaction Document to any bank, financial institution or other lender providing financing to Buyer from time to time as collateral security for such financing; provided, however, that no such assignment shall relieve or discharge Buyer from any of its obligations hereunder.

10.5 Governing Law.

This Agreement shall be governed by and construed in accordance with the law of the State of Michigan (without giving effect to conflict of law principles) as to all matters, including matters of validity, construction, effect, performance and remedies. The Parties agree that venue in any and all actions and proceedings related to the subject matter of this Agreement shall be in the state and federal courts in and for the State of Michigan which courts shall have exclusive jurisdiction for such purpose, and the Parties irrevocably submit to the exclusive jurisdiction of such courts and irrevocably waive the defense of an inconvenient forum to the maintenance of any such action or proceeding. Service of process may be made in any manner recognized by such courts. Each of the Parties irrevocably waives its right to a jury trial with respect to any action or claim arising out of any dispute in connection with this Agreement or the Contemplated Transactions.

10.6 Counterparts.

This Agreement may be executed in two or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument.

10.7 Interpretation.

The article and section headings contained in this Agreement are solely for the purpose of reference, are not part of the agreement of the Parties and shall not in any way affect the meaning or interpretation of this Agreement.

10.8 Exhibits and Schedules.

(a) Except as otherwise provided in this Agreement, all Exhibits and Schedules referred to herein are intended to be and hereby are specifically made a part of this Agreement. Each Schedule to this Agreement shall be deemed to include and incorporate all disclosures made by the same Party on the other Schedules to this Agreement. Certain information set forth in the Schedules is included solely for informational purposes, is not an admission of liability with respect to the matters covered by the information, and may not be required to be disclosed pursuant to this Agreement. The specification of any dollar amount in the representations and warranties contained in this Agreement or the inclusion of any specific item in the Schedules is not intended to imply that such amounts (or higher or lower amounts) are or are not material, and no Party shall use the fact of the setting of such amounts or the fact of the inclusion of any such item in the Schedules in any dispute or controversy between the Parties as to whether any obligation, item, or matter not described herein or included in a Schedule is or is not material for purposes of this Agreement.

(b) Seller may, from time to time prior to or at the Closing by written notice to Buyer, supplement or amend the Seller's disclosure Schedules. Such supplements or amendments will be effective to cure and correct, for all purposes, any breach of any representation or warranty which would have existed if Seller had not made such supplements or amendments; provided, that for purposes of determining whether Buyer's conditions set forth in Section 7.1(d) have been fulfilled, the Seller's disclosure Schedules shall be deemed to include only that information contained therein on the Effective Date and shall be deemed to exclude all information contained in any supplement or amendment thereto, but if the Closing shall occur, then any matters disclosed to Buyer pursuant to any supplement or amendment after the Effective Date and prior to the Closing shall be deemed to be waived by Buyer, and Buyer shall not be entitled to make a claim thereon under this Agreement or otherwise. All references to the Seller's disclosure Schedules which are supplemented or amended pursuant to this Section 10.8(b) shall be deemed to be a reference to such disclosure Schedules as supplemented or amended.

10.9 Entire Agreement.

This Agreement, the Confidentiality Agreement and the Transactional Documents, including the Schedules, Exhibits, documents, certificates and instruments referred to herein or therein, embody the entire agreement and understanding of the Parties in respect of the transactions contemplated by this Agreement.

10.10 Severability.

Any provision of this Agreement that is prohibited or unenforceable in any jurisdiction shall, as to such jurisdiction, be ineffective to the extent of such prohibition or unenforceability without invalidating the remaining provisions of this Agreement, and any such prohibition or unenforceability in any jurisdiction shall not invalidate or render unenforceable such provision in any other jurisdiction.

[signature pages follow]

IN WITNESS WHEREOF, the Parties have executed this Asset Purchase Agreement on the date first above written.

SELLER:

CITY OF ESCANABA, MICHIGAN

By:
Name:
Title:

BUYER:

[_____]

By:
Name:
Title:

EXHIBIT A

Form of APA Guaranty

GUARANTY

This Guaranty Agreement (this "Guaranty") dated and effective as of [_____], 2011, is made and entered into by [_____], a [_____] ("Guarantor") in favor of the City of Escanaba, Michigan, a Michigan municpal corporation ("Beneficiary").

RECITALS

WHEREAS, [_____] ("Company"), a [_____] and [indirect] parent of Guarantor, and Beneficiary are parties to that certain Asset Purchase Agreement, dated as of the date hereof (as amended, the "Agreement");

WHEREAS, it is a condition of Beneficiary entering into the Agreement that Guarantor execute and deliver this Guaranty for the benefit of Beneficiary; and

WHEREAS, Guarantor has benefited and in the future will directly or indirectly benefit from the Agreement.

NOW THEREFORE, in consideration of Beneficiary entering into the Agreement, Guarantor hereby covenants and agrees as follows:

1. Guaranty. Subject to the provisions hereof, Guarantor hereby absolutely, irrevocably and unconditionally guarantees the full, prompt and punctual payment, whether on demand, at stated maturity, by acceleration or otherwise of all debts, liabilities and obligations owed by the Company to the Beneficiary whenever, however or wherever incurred under or pursuant to the Agreement (the "Obligations"). This is an absolute and continuing guaranty of payment rather than a guaranty of collection. If for any reason Company shall fail to duly and punctually pay the Obligations owed by it under the Agreement, then Guarantor shall promptly pay such Obligations upon Guarantor's receipt of Beneficiary's demand.

2. Nature of Guaranty. Guarantor's liability under this Guaranty is absolute and will not be affected by the existence, validity, enforceability, perfection or extent of any collateral or security for the Obligations. The Beneficiary shall not be obligated to file any claim relating to the Obligations if the Company becomes subject to a bankruptcy, reorganization or similar proceeding and the failure of the Beneficiary to do so shall not affect the Guarantor's obligations under this Guaranty. Guarantor waives any right to require that an action be brought against the Company or any other person or entity or to require that resort be had to any security in favor of the Company or any other person or entity. In the event of a default under the Agreement, Beneficiary shall have the right to enforce its rights, powers and remedies thereunder or

hereunder or under any other instrument now or hereafter evidencing, security or otherwise relating to the obligations created by the Agreement, in any order, and all rights, powers and remedies available to Beneficiary in such event shall be non-exclusive and cumulative of all other rights, powers and remedies provided thereunder or hereunder or by law or in equity. If the liabilities and obligations guaranteed hereby are partially paid by reason of the election of Beneficiary to pursue any of the remedies available to it, or otherwise are partially paid, this Guaranty shall nevertheless remain in full force and effect, and Guarantor shall remain liable for the entire balance of the liabilities and obligations guaranteed hereby. Until all of the obligations and liabilities of the Company have been paid and performed in full, Guarantor shall have no right of subrogation to Beneficiary against the Company, and Guarantor hereby waives any rights to enforce any remedy which Beneficiary may have against the Company.

3. Guarantee Absolute. The Guarantor expressly agrees that the duties and obligations of the Guarantor under this Guaranty shall remain in full force and effect, without the necessity of any reservation of rights against the Guarantor or notice to or further assent by the Guarantor at any time and from time to time, in whole or in part, and without regard to, and shall not be impaired, released, discharged, terminated or affected by any of the following actions or the occurrence of any of the following:

(a) the lack of power or authority of the Company to execute and deliver the Agreement or to perform any of its obligations thereunder or the existence or continuance of the Company or any other person or entity as a legal entity;

(b) any change in the ownership of the Company or the insolvency, bankruptcy or any other change in the legal status of the Company or any rejection, modification or release of the obligations of the Company or those of any person or entity under the Agreement as a result of any bankruptcy, reorganization, insolvency or similar proceeding;

(c) the existence of any setoff or similar rights that the Guarantor may have at any time against the Company or any other person or entity in connection herewith or with an unrelated transaction;

(d) any merger or consolidation of the Company or the Guarantor into or with any other person or entity, or any sale, lease or transfer of any or all of the assets of the Company or the Guarantor to any other person or entity;

(e) any assignment of the Agreement or the Escanaba Power Facilities (as defined in the Agreement) or any part thereof or any transfer, sale or other disposition of the Escanaba Power Facilities by the Company or any destruction of the Escanaba Power Facilities;

(f) the failure of the Guarantor to receive any benefit from or as a result of its execution, delivery and performance of this Guaranty; or

(g) any other action, omission, occurrence or circumstance whatsoever which may in any manner or to any extent constitute a legal or equitable defense of the Guarantor (other than the defense of prior payment or performance) or vary the risk, prejudice any rights of

subrogation, limit the recourse or effect a discharge of the Guarantor hereunder as a matter of law or otherwise (other than the defense of prior payment or performance.).

4. Representations and Warranties. Guarantor represents and warrants that:

(a) it is a [_____] duly organized and validly existing under the laws of the jurisdiction of its formation and has the [_____] power and authority to execute, deliver and carry out the terms and provisions of this Guaranty;

(b) no authorization, approval, consent or order of, or registration or filing with, any court or other governmental body or authority having jurisdiction over Guarantor is required on the part of Guarantor for the execution, delivery and performance of this Guaranty;

(c) this Guaranty, when executed and delivered, constitutes a valid and legally binding agreement of Guarantor, except as the enforceability of this Guaranty may be limited by the effect of any applicable bankruptcy, insolvency, reorganization, moratorium or similar laws affecting creditors' rights generally and by general principles of equity;

(d) the individual signing below is authorized to bind Guarantor to its obligations under this Guaranty; and

(e) there are no actions, suits or proceedings pending or, to the knowledge of Guarantor, threatened against or affecting Guarantor before any court, governmental body or authority or arbitrator, which may, individually or in the aggregate, materially adversely affect the ability of Guarantor to perform its obligations under the Guaranty.

5. Subrogation. Guarantor hereby agrees not to assert or enforce any right of contribution, reimbursement, indemnity, subrogation or any other right to payment from Company as a result of Guarantor's performance of its obligations pursuant to this Guaranty until all Obligations are irrevocably paid in full. Any amount paid to Guarantor in violation of the preceding sentence shall be held by Guarantor for the benefit of Beneficiary and shall forthwith be paid to Beneficiary to be credited and applied to the Obligations.

6. Notices. Any demand, notice, request, instruction, correspondence or other document to be given hereunder by any party to another (collectively, "Notice") shall be in writing and delivered personally or mailed by certified mail, postage prepaid and return receipt requested or by overnight courier service, as follows:

To Beneficiary:	To Guarantor:
Phone No:	Phone No.
Fax No.	Fax No.

Notice given by personal delivery, mail or by overnight courier service shall be effective upon receipt. Any party may change any address to which Notice is to be given to it by giving notice as provided above of such change of address.

7. Waivers.

(a) Guarantor hereby unconditionally waives any circumstance which might constitute a legal or equitable discharge of Guarantor, and waives any defense related thereto, including but not limited to (i) notice of acceptance of this Guaranty; (ii) diligence, presentment, demand, notice of dishonor, protest, notice of any sale of collateral security and all other notices whatsoever concerning the liabilities of Guarantor; (iii) any right to require that any action or proceeding be brought against Company or any other person; and (iv) any requirement that Beneficiary seek enforcement of any performance against Company or any other person prior to taking any action against Guarantor under the terms hereof.

(b) Guarantor hereby unconditionally waives and agrees not to assert or take advantage of (i) the defense of the statute of limitations in any action hereunder or for the performance of any obligation hereby guaranteed; (ii) any defense that may arise by reason of the lack of authority of the Company or Guarantor or any other person or entity or the failure of Beneficiary to file or enforce a claim against the Company or any other person or entity; (iii) any defense based on the failure of Beneficiary to give notice of the existence, creation or incurring of any new or additional indebtedness or obligations, or of any action or non-action on the part of any other person or entity whomsoever, in connection with any obligation hereby guaranteed; (iv) any defense based upon an election of remedies by Beneficiary which destroys or otherwise impairs any rights of subrogation of Guarantor or the right of Guarantor to proceed against the Company to commence an action against the Company; (v) any duty on the part of Beneficiary to disclose to Guarantor any facts it may now or hereafter know regarding the Company; (vi) acceptance or notice of acceptance of this Guaranty by Beneficiary and of any change in the financial condition of the Company; (vii) notice of presentment and demand for payment of any of the liabilities or performance of any of the obligations hereby guaranteed; (viii) protest, notice of protest and notice of dishonor or of default to Guarantor or the Company or to any other party with respect to the liabilities or performance of obligations hereby guaranteed; (ix) any and all other notices whatsoever to which Guarantor might otherwise be entitled; (x) any defense based on lack of due diligence by Beneficiary in collection, protection or realization upon any collateral securing the obligations of the Company under the Agreement; or (xi) any other legal or equitable defenses whatsoever to which Guarantor might otherwise be entitled, except the defense of prior payment or prior performance by the Company.

(c) No delay of Beneficiary in the exercise of, or failure to exercise, any rights hereunder shall operate as a waiver of such rights, a waiver of any other rights or a release of Guarantor from any obligations hereunder, nor shall any single or partial exercise by Beneficiary of any right, remedy or power hereunder preclude any other or future exercise of any right, remedy or power. Each and every right, remedy and power hereby granted to Beneficiary or allowed it by law or other agreement shall be cumulative and not exclusive of any other, and may be exercised by Beneficiary from time to time.

(d) Guarantor consents to the renewal, compromise, extension, acceleration or other changes in the time of payment of or other changes in the terms of the Obligations, or any part thereof or any changes or modifications to the terms of the Agreement, and Guarantor further agrees that Beneficiary, at any time and from time to time without notice to or consent of Guarantor and without impairing or releasing the obligations of Guarantor hereunder, may take

or fail to take any action of any kind in respect of any security for any Obligation or liability of Company to Beneficiary.

8. Term and Termination. This Guaranty shall expire on the Termination Effective Date (as defined below). This Guaranty shall be effective until sixty (60) days after the Obligations are satisfied in full or have terminated in accordance with the terms of the Agreement (the "Termination Effective Date"). Any such termination shall not affect Guarantor's continuing liability with respect to any agreement entered into or any Obligations existing or arising thereunder prior to the Termination Effective Date. While this Guaranty is in effect, in the event any payment to Beneficiary in respect of the Obligations is rescinded or must otherwise be returned for any reason whatsoever, Guarantor shall remain liable hereunder in respect of such Obligations as if such payment had not been made.

9. Expenses. Guarantor agrees to pay to Beneficiary on demand all reasonable costs and expenses (including, without limitation, reasonable attorneys' fees) in any way relating to the enforcement or protection of the rights of Beneficiary hereunder should Guarantor be required to pay under this Guaranty.

10. Amendment of Guaranty. No term or provision of this Guaranty shall be amended, modified, altered, waived or supplemented except in a written instrument signed by Guarantor and Beneficiary.

11. Assignment. This Guaranty shall be binding upon Guarantor, its successors and assigns, and shall inure to the benefit of and be enforceable by Beneficiary, its successors, assigns and creditors. Beneficiary may assign its rights hereunder with the written consent of Guarantor. Guarantor may not assign its rights, interest or obligations hereunder to any other person without the prior written consent of Beneficiary, which consent may be withheld in its sole discretion and any purported assignment absent such consent is void.

12. Miscellaneous.

(a) **THIS GUARANTY SHALL IN ALL RESPECTS BE GOVERNED BY, AND CONSTRUED IN ACCORDANCE WITH, THE LAWS OF THE STATE OF MICHIGAN.**

(b) Guarantor irrevocably submits to the non-exclusive jurisdiction of the courts of Michigan in any action or proceeding arising out of or relating to this Guaranty. Guarantor waives any objection to such jurisdiction on the grounds that it is an inconvenient forum or any similar grounds. Guarantor consents to the service of process in any action or proceeding relating to this Guaranty by notice to Guarantor in accordance with the notice provisions of this Guaranty. Nothing shall prevent Beneficiary from enforcing any related judgment against Guarantor in any other jurisdiction.

(c) EACH PARTY HEREBY IRREVOCABLY WAIVES ANY AND ALL RIGHTS TO TRIAL BY JURY WITH RESPECT TO ANY LEGAL PROCEEDING ARISING OUT OF OR RELATING TO THIS GUARANTY.

(d) This Guaranty embodies the entire agreement and understanding between Guarantor and Beneficiary and supersedes all prior agreements and understandings relating to the subject matter hereof.

(e) If any provision of this Guaranty or any application thereof shall be invalid or unenforceable, the remainder of this Guaranty and any other application of such provision shall not be affected thereby.

(f) Nothing in this Guaranty or any other document referred to herein is intended to waive any rights not specifically waived in said documents nor is intended to enlarge or modify the obligations or duties of Beneficiary.

(g) The headings of this Guaranty are for purposes of reference only, and shall not affect the meaning hereof.

IN WITNESS WHEREOF, Guarantor has executed this Guaranty on the [_____] day of [_____], 2011, but it is effective as of the date first above written.

GUARANTOR

[_____]

By: _____
Name:
Title:

EXHIBIT B

Form of Assignment and Assumption Agreement

ASSIGNMENT AND ASSUMPTION AGREEMENT

This ASSIGNMENT AND ASSUMPTION AGREEMENT (this "Assignment"), dated as of [_____], 20[__], is by and between the City of Escanaba, Michigan, a Michigan municipal corporation (the "Assignor") and [_____], a [_____] (the "Assignee"). Any capitalized term used, but not defined, herein shall have the meaning attributable to such term in the Asset Purchase Agreement (as defined below).

WITNESSETH:

WHEREAS, the Assignor is party to those certain agreements set forth on Schedule 1 (the "Assigned Agreements") relating to the Purchased Assets;

WHEREAS, the Assignor is party to that certain Asset Purchase Agreement (the "Asset Purchase Agreement"), dated [_____], 2011, providing for, among other things, the transfer and sale of the Purchased Assets by the Assignor to the Assignee;

WHEREAS, pursuant to Asset Purchase Agreement, the closing of the transaction contemplated thereunder is, among other things, conditioned on the delivery by the Assignor and the Assignee of this Assignment;

WHEREAS, in connection with the transaction contemplated by the Asset Purchase Agreement, Assignor desires to assign and transfer to Assignee all of its right, title and interest in, to and under the Assigned Agreements, as provided by and subject to the terms of this Assignment; and

WHEREAS, in connection with the transactions contemplated by the Asset Purchase Agreement, Assignee desires to accept such assignment and to assume and discharge all of the liabilities, obligations and contractual commitments of Assignor under the Assigned Agreements, as provided by and subject to the terms of this Assignment.

NOW, THEREFORE, in consideration of the recitals and the mutual promises, covenants and agreements contained herein and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto hereby agree as follows:

1. Assignment. Assignor hereby assigns, transfers and conveys to Assignee all of its right, title and interest in, to and under the Assigned Agreements, and delegates to Assignee all of its duties and obligations under the Assigned Agreements, to the extent allocable to any period on or after the Closing Date.

2. Acceptance and Assumption. Assignee hereby accepts the foregoing assignment and expressly assumes, confirms and agrees to perform and observe all of the covenants, agreements, terms, conditions, obligations, duties and liabilities of Assignor under the Assigned Agreements, to the extent allocable to any period on or after the Closing Date. From and after the Closing Date, Assignee is and shall be bound by, and shall enjoy the benefits of, the Assigned

Agreements as if Assignee had been a party thereto from the original execution and delivery thereof, pursuant to the terms and conditions of the Assigned Agreements.

3. Release. From and after the Closing Date, Assignor shall cease to be party to the Assigned Agreements. Accordingly, from and after the Closing Date, Assignor shall have no rights, and shall be released from any and all of its obligations, under the Assigned Agreements, to the extent allocable to any period on or after the Closing Date.

4. Governing Law. This Assignment shall be governed by and construed in accordance with the law of the State of Michigan (without giving effect to conflict of law principles) as to all matters, including matters of validity, construction, effect, performance and remedies.

5. Amendments and Modifications. This Assignment may not be amended, supplemented or otherwise modified, nor may any obligations hereunder be deemed waived, except by a written instrument signed by each of the parties hereto.

6. Further Assurances. The parties hereto agree to execute all documents and instruments, and to take any other action, that may be necessary or useful to carry out the assignment and assumption contemplated by this Assignment.

7. Counterpart Execution. This Assignment may be executed in counterparts, each of which shall be fully effective as an original and all of which together shall constitute one and the same instrument.

8. Successors and Assigns. This Assignment shall inure to the benefit of and shall be binding upon the parties hereto and their respective successors and permitted assigns.

9. Subject to Asset Purchase Agreement. This Assignment is subject to, in all respects, the terms and conditions of the Asset Purchase Agreement, and to the extent that there is a conflict between this Assignment and the Asset Purchase Agreement, the terms of the Asset Purchase Agreement shall control.

10. Severability. If any provision of this Assignment is invalid or unenforceable, the balance of this Assignment shall remain in effect, and this Assignment shall be interpreted so as to give full effect to its terms and still be valid and enforceable.

[SIGNATURE PAGE FOLLOWS]

IN WITNESS WHEREOF, this Assignment has been duly executed by the parties hereto as of the date first above written.

THE CITY OF ESCANABA, MICHIGAN

By: _____
Name:
Title:

[_____]

By: _____
Name:
Title:

Schedule 1

1. [Large Generator Interconnection Agreement, dated as of [_____], among Seller, MISO and American Transmission Company.]

2. [Operation and Maintenance Agreement, dated as of April 13, 2011, between Seller and the O&M Operator.]

EXHIBIT C

Form of Bill of Sale

THIS BILL OF SALE is made and entered into as of [_____], 20[__] (this "Bill of Sale") by the City of Escanaba, Michigan, a Michigan municipal corporation ("Seller"), for the benefit of [_____], a [_____] ("Buyer"). Capitalized terms used but not defined in this Bill of Sale shall have the meanings assigned to such terms in the Agreement (as defined below).

RECITALS

WHEREAS, pursuant to that certain Asset Purchase Agreement, dated as of [_____], 20[__] (the "Agreement"), between Seller and Buyer, Seller has agreed, subject to the terms and conditions of the Agreement, to sell, assign, convey, transfer and deliver to Buyer, free and clear of all Encumbrances (other than Permitted Encumbrances), all of Seller's right, title, and interest in, to and under the Purchased Assets; and

WHEREAS, pursuant to the Agreement, Seller has agreed to enter into this Bill of Sale pursuant to which the tangible property included in the Purchased Assets will be sold, transferred, assigned, conveyed, set over and delivered to Buyer.

NOW, THEREFORE, in consideration of the foregoing premises and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, Seller hereby agrees as follows:

1. Assignment. Subject to the terms and conditions of the Agreement, Seller does hereby sell, assign, convey, transfer and deliver to Buyer, free and clear of all Encumbrances (other than Permitted Encumbrances), all of Seller's right, title, and interest in and to the Purchased Assets.

2. Excluded Assets Not Assigned. Notwithstanding anything expressed herein to the contrary, the Excluded Assets are specifically excluded from the Purchased Assets as provided in the Agreement and shall be retained by Seller at and following the Closing.

3. Further Assurances. Seller shall, from time to time after the delivery of this Bill of Sale, at Buyer's request and expense, prepare, execute and deliver to Buyer such other instruments of conveyance and transfer and take such other action as Buyer may reasonably request so as to more effectively sell, transfer, assign and deliver and vest in Buyer title to and possession of the Purchased Assets free and clear of all Encumbrances (other than Permitted Encumbrances) as provided in the Agreement and to further effect the purposes of this Bill of Sale.

4. Relationship to Agreement. The provisions of this Bill of Sale are subject, in all respects, to the terms and conditions of the Agreement, including all of the covenants,

representations and warranties, indemnification, remedies (including limitations) contained therein, all of which shall survive the execution and delivery of this Bill of Sale to the extent indicated in the Agreement.

5. No Waiver. It is understood and agreed that nothing in this Bill of Sale shall constitute a waiver or release of any claims arising out of the contractual relationships between Seller and Buyer.

6. No Third Party Beneficiary. Nothing in this Bill of Sale, express or implied, is intended or shall be construed to confer upon, or give to, any person other than Buyer, Seller and their successors and permitted assigns any remedy or claim under or by reason of this Bill of Sale or any agreements, terms, covenants or conditions hereof and all the agreements, terms, covenants and conditions contained in this Bill of Sale shall be for the sole and exclusive benefit of Buyer, Seller and their successors and permitted assigns.

7. Binding Effect. This Bill of Sale and all of the provisions hereof shall be binding upon and shall inure to the benefit of Seller, Buyer and their respective successors and permitted assigns.

8. Governing Law. This Bill of Sale shall be governed by and construed in accordance with the law of the State of Michigan (without giving effect to conflict of law principles) as to all matters, including matters of validity, construction, effect, performance and remedies.

9. Construction. This Bill of Sale is delivered pursuant to and is subject to the Agreement. In the event of any conflict between the terms of the Agreement and the terms of this Bill of Sale, including the terms set forth in Section 7 hereof, the terms of the Agreement shall prevail.

10. Severability. Any term or provision of this Bill of Sale that is invalid or unenforceable in any situation 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. Counterparts. This Bill of Sale may be executed in one or more counterparts, each of which will be deemed to be an original copy of this Bill of Sale and all of which, when taken together, will be deemed to constitute one and the same agreement.

12. Notices. All notice, requests, demands and other communications under this Bill of Sale shall be given in accordance with Section 10.3 of the Agreement and at the addresses set forth therein.

[Signature page follows]

IN WITNESS WHEREOF, Seller has caused its duly authorized representative to execute this Bill of Sale as of the date first above written.

CITY OF ESCANABA, MICHIGAN

By: _____
Name:
Title:

EXHIBIT D

Form of Easement Agreement

EASEMENT AGREEMENT

THIS EASEMENT AGREEMENT ("Agreement") has been made as of [_____], 2011 ("Effective Date"), by and between [_____], a [_____], of [_____] ("Company"), and the City of Escanaba, Michigan, a Michigan municipal corporation, of P.O. Box 948, 410 Ludington Street, Escanaba, MI 49829 ("City").

RECITALS

A. This Agreement is delivered pursuant to that certain Asset Purchase Agreement dated as of [_____], 2011, between City, as seller, and Company, as buyer (the "Asset Purchase Agreement"), for the sale and purchase of the Purchased Assets, including the Escanaba Power Facilities, each as defined in the Asset Purchase Agreement.

B. On the Effective Date, City transferred to Company the Purchased Assets, including, without limitation, the real estate located in the City of Escanaba, Delta County, Michigan, legally described on Exhibit 1 attached to this Agreement (the "Company Parcel").

C. Pursuant to the Asset Purchase Agreement, City retained title to (a) City's distribution facilities and equipment located on the Company Parcel that are used to serve City's electrical distribution load, including those certain switches and meters at the Escanaba Power Facilities and in the substation facilities, distribution lines, revenue meters and remote terminal units, as further described in Schedule 2.2(b) to the Asset Purchase Agreement (the "City Electrical Facilities"), and (b) all of City's water lines serving City's facilities and City's public water utility system located on the Company Parcel, as further described in Schedule 2.2(c) to the Asset Purchase Agreement (the "City Water Facilities"). The City Electrical Facilities and the City Water Facilities are sometimes referred to herein collectively as the "City Utility Facilities".

D. Pursuant to the Asset Purchase Agreement, City has undertaken a Remedial Action Plan (as defined in the Asset Purchase Agreement) with respect to environmental matters on the Company Parcel, which Remedial Action Plan includes the construction and maintenance of monitoring wells on the Company Parcel (the "Monitoring Wells").

E. City requires access for itself and its designee, Upper Peninsula Power Company, to one or more electrical meters at the Escanaba Power Facilities (the "Electrical Meters").

F. Pursuant to the Asset Purchase Agreement, Company and City are entering into this Agreement to evidence City's reservation of easements for its continuing right to use, operate, inspect, replace, repair, maintain and remove the City Utility Facilities, the Monitoring

Wells and the Electrical Meters (collectively, "Easements"), which Easements are more particularly described in Section 1, Section 2, Section 3 and Section 4 below.

E. Company and City and their respective heirs, personal representatives, distributees, executors, administrators, successors and assigns are referred to in this Agreement collectively as "Parties" and individually as a "Party."

F. This Agreement is exempt from the real estate transfer taxes under MCL §§ 207.505(a) and 207.526(a) because the value of the consideration shown is less than One Hundred and no/100 Dollars ($100.00).

AGREEMENT

In consideration of the facts described above and other good and valuable consideration, the receipt and sufficiency of which are acknowledged, Company and City agree as follows:

1. Grant of Driveway Easement. Company grants to City a perpetual, non-exclusive easement ("Driveway Easement") over, across and through the Company Parcel for the use of the existing driveway, and all replacements of it located on the Company Parcel and the other area(s) described on Exhibit 2 attached to this Agreement (the "Driveway"), for the purpose of ingress and egress to and from the portions of the Company Parcel containing City Utility Facilities, the Monitoring Wells and the Electrical Meters. The Driveway Easement is to be used by City solely for pedestrian and vehicular transportation for access to the portions of the Company Parcel containing City Utility Facilities, the Monitoring Wells and the Electrical Meters by City and its agents, employees, contractors and invitees (each, a "Representative").

2. Grant of Utility Easements. Company grants to City a perpetual, non-exclusive easement over, under, across and through the Company Parcel and the other area(s) described on Exhibit 3 attached to this Agreement (collectively, the "Electrical Utility Easement Area") to use, operate, inspect, replace, repair, maintain and remove the City Electrical Facilities. In addition, Company grants to City a perpetual, non-exclusive easement over, under, across and through the Company Parcel and the other area(s) described on Exhibit 4 attached to this Agreement (collectively, the "Water Utility Easement Area") to use, operate, inspect, replace, repair, maintain and remove the City Water Facilities.

3. Grant of Monitoring Wells Easements. Company grants to City a perpetual, non-exclusive easement over, under, across and through the Company Parcel and the other area(s) described on Exhibit 5 attached to this Agreement (collectively, the "Monitoring Wells Easement Area") to use, operate, inspect, replace, repair, maintain and remove the Monitoring Wells.

4. Grant of Electrical Meters Easements. Company grants to City a perpetual, non-exclusive easement over, under, across and through the Company Parcel and the other area(s) described on Exhibit 6 attached to this Agreement (collectively, the "Electrical Meters Easement Area") to use, operate, inspect, replace, repair, maintain and remove the Electrical Meters.

5. Enjoyment of Property. City agrees to use reasonable efforts to conduct its activities under this Agreement so as not to interfere unreasonably with Company's operation of the Escanaba Power Facilities on the Company's Parcel in substantially the manner as operated on the date hereof or with Company's ability to sell energy from the Escanaba Power Facilities and deliver such energy to the grid.

6. Repair and Maintenance. To the extent requested by Company and necessary to permit Company's operation of the Escanaba Power Facilities, City shall maintain and repair the City Utility Facilities in a good condition consistent with Sound Utility Practices (as defined in the Asset Purchase Agreement). Company agrees to reimburse City fifty percent (50%) of the reasonable cost of such City Utility Facilities maintenance and repairs. Company shall pay its share of such maintenance and repair costs, if any, to City within thirty (30) days following receipt of an invoice for such costs, together with reasonable supporting documentation. Company acknowledges that City has the right to abandon, remove or decommission the City Utility Facilities and the Monitoring Wells, or any of them, at any time and from time to time, in which case the foregoing covenant shall no longer apply to such abandoned, removed or recommissioned facilities. Company shall maintain and repair the Driveway in a good and passable condition consistent with the practices prevailing in the operation of driveways of similar quality in Delta County, Michigan.

7. Improvements. Each Party may upgrade or otherwise make improvements to the Driveway, but each such Party agrees to give advance written notice thereof to the other Party. City may upgrade or otherwise make improvements to the City Utility Facilities, the Monitoring Wells and the Electrical Meters, but City agrees to give advance written notice thereof to Company. The costs of any upgrades or improvements to the City Utility Facilities, the Monitoring Wells and the Electrical Meters shall be paid by City. The costs of any upgrades or improvements to Driveway (as distinguished from maintenance and repair costs) will be paid by Company without any obligation of reimbursement by City unless otherwise agreed to in writing by the Parties.

8. Encumbrances. The Easements are made subject to all covenants, conditions, restrictions, encumbrances and easements of record as of the date this Agreement is recorded, but shall not be subject to any liens which have attached or may hereafter attach to property of Company or to the Company Parcel. The Parties acknowledge that Company may grant other easements over and across the Company Parcel so long as such easements do not interfere with the use of the Easements and such easements shall be subordinate in all respects to the Easements.

9. Property Taxes. The owner of the Company Parcel will pay all real property taxes and special assessments levied against the Company Parcel, without any reimbursement from City for any portion of them. City will cooperate with Company to assure that the City Utility Facilities, the Monitoring Wells and the Electrical Meters are not assessed to Company, and to provide confirmation of this Agreement so as to permit the assessment of the Company Parcel to be valued to reflect City's rights under this Agreement.

10. Compliance with Laws. Each Party will comply with all applicable laws, codes, ordinances, rules and regulations governing the maintenance and use of the Easements.

11. Damage. If either Party, or a Representative of either Party, causes any damage to the Easements or the other Party's property located on the Company Parcel (other than normal wear and tear), then the responsible Party will pay for the repair or replacement of such damaged property. Neither Party shall be liable or responsible to the other Party for any other damages suffered by the non-responsible Party as a consequence of such damage to property, including, without limitation, direct, indirect, consequential or punitive damages.

12. Default. If a Party fails to comply with any provision in this Agreement, including, without limitation, the obligation to pay any maintenance costs or property taxes and assessments ("Defaulting Party"), then the other Party ("Non-Defaulting Party") may upon twenty (20) days' prior written notice to the Defaulting Party, cure the default by the payment of money or performance of other action for the account of the Defaulting Party. The foregoing right to cure may not be exercised if within twenty (20) days of the written notice: (i) the Defaulting Party cures the default; or (ii) if the default is curable, but cannot reasonably be cured within that time period, the Defaulting Party begins to cure such default within such time period and thereafter diligently pursues such cure to completion. The twenty (20) day notice period will not be required if the Non-Defaulting Party gives reasonable notice of its intent to cure to the Defaulting Party and the Defaulting Party thereafter notifies the Non-Defaulting Party that it does not intend to cure the default. Within ten (10) days following written demand, including copies of paid invoices, the Defaulting Party shall reimburse the Non-Defaulting Party any sum reasonably expended by the Non-Defaulting Party to cure the default in accordance with the terms hereof. The Non-Defaulting Party also has the right to restrain by injunction any violation or threatened violation by the Defaulting Party of any of the terms, covenants, or conditions of this Agreement, or to obtain a decree to compel performance of any such term, covenant, or condition. The Non-Defaulting Party may obtain a personal judgment against the Defaulting Party who failed to pay any maintenance costs or property taxes and assessments. All remedies are cumulative and will be deemed additional to any and all other remedies which the Parties may have at law or in equity.

13. Notices. All notices, requests, claims, demands and other communications under this Agreement must be in writing and delivered by personal delivery, a recognized overnight courier service, or postage prepaid certified mail, return receipt requested to the Parties at their addresses first indicated above or to such other address or such additional recipient as any Party may have furnished to the other Party in writing in accordance with this Agreement. All notices will only be effective upon receipt or refusal.

14. Duration and Effect. The Easements burden the Company Parcel and benefit the City. This Agreement will continue in effect perpetually and constitute an easement and a covenant running with the land; but nothing contained in this Agreement will be construed as a conveyance by Company of its fee simple rights to the Company Parcel. Company will automatically be released from any liability arising under this Agreement after the date that it conveys its entire interest in the Company Parcel, provided that the transferee assumes the Company's obligations hereunder arising from and after the date of such conveyance.

15. Amendments. This Agreement may be amended, modified or terminated (in whole or in part) from time to time by a written document executed and acknowledged by the then owner of the Company Parcel and City and duly recorded in the office of the Delta County Register of Deeds, Michigan, or in such other office as may from time to time by law be charged with the duty of maintaining the public records of Delta County, Michigan, and will not otherwise be amended, modified or terminated during the term of this Agreement.

16. Parties Bound. The terms and conditions of this Agreement bind and benefit each Party and their respective heirs, personal representatives, distributees, executors, administrators, successors and assigns. Notwithstanding the foregoing, City may not assign, transfer, sublet or farm out any of its rights under this Agreement without the prior written consent of Company, which consent may be withheld in Company's sole discretion.

17. Governing Law. This Agreement is governed by and will be construed in accordance with the laws of the State of Michigan.

18. Entire Agreement. This Agreement contain the entire understanding of Company and City with respect to the subject matter hereof and the Parties acknowledge that there have been no representations or understandings other than those expressly set forth in this Agreement and the Asset Purchase Agreement.

19. Counterparts. This Agreement may be executed in one or more counterparts, each such counterpart being deemed an original and all such counterparts taken together constituting but one and the same instrument.

Company and City signed this Easement Agreement as of the date first set forth above.

[_____],
a [_____]

By_____

Its_____

Company

STATE OF _____)
) ss:
COUNTY OF _____)

The foregoing instrument was acknowledged before me this _____, 2011, by _____, as _____ of [_____], a [_____],on behalf of the [_____].

_____

Notary public, State of _____, County of _____
My commission expire_____

Acting in the County of _____

THE CITY OF ESCANABA, MICHIGAN,
a Michigan municipal corporation

By _____

Its Mayor

And By _____

Its City Clerk

City

STATE OF MICHIGAN)
) ss:
COUNTY OF _____)

The foregoing instrument was acknowledged before me this _____ _____, 2011 by _____, the Mayor, and _____, the City Clerk, of THE CITY OF ESCANABA, MICHIGAN, a Michigan municipal corporation, on behalf of the corporation.

_____

Notary public, State of Michigan, County of _____
My commission expires _____

Acting in the County of _____

PREPARED BY AND RETURN TO:

[_____] Esq.
[_____]
[_____]
[_____]
[_____]
Telephone: ([___]) [_____]

EXHIBIT 1

Company Parcel Legal Description

From the C 1/4 corner of Section 18, T39N, R22W; thence measure S00°25'23"E along the West line of Government Lot 3 of said Section a distance of 626.65 feet to Westerly extension of the South right-of-way line of Power Plant Road; thence N85°05'37"E along said South right-of-way line a distance of 661.73 feet to the point of beginning of the land herein described; thence continue N85°05'37"E along said South right-of-way line a distance of 312.15 feet; thence S02°27'54"E a distance of 243.54 feet to a fence corner; thence N88°31'55"E a distance of 317.62 feet to the Southwesterly right-of-way line of a Southerly spur track of C M ST P&P Railroad point being on a 561.65 foot radius curve to the left; thence Southeasterly along said curve a chord bearing of S61°02'58"E a chord distance of 434.24 feet to the shore of Little Bay De Noc of Lake Michigan; thence Southerly along said shore a distance of 1250 feet more or less to the North line of those lands described at Liber 579 of Deeds on Pages 469 & 470 of Delta County Records; thence S87°39'45"W along said North line a distance of 800.44 feet to a fence corner; thence N02°09'40"W a distance of 1142.45 feet to the point of beginning. Containing 18.6 acres more or less.

The property address and tax parcel number listed below are provided solely for informational purposes, without warranty as to accuracy or completeness. If the information listed below is inconsistent in any way with the legal description listed above, the legal description listed above shall control.

Property Address: _____

Tax Parcel No.: _____

EXHIBIT 2

Depiction and Legal Descriptions of Driveway Easement Area

See attached.

EXHIBIT 3

Depiction and Legal Descriptions of Electrical Utility Easement Area

See attached.

EXHIBIT 4

Depiction and Legal Description of Water Utility Easement Area

See attached.

EXHIBIT 5

Depiction and Legal Descriptions of Monitoring Wells Easement Area

See attached.

EXHIBIT 6

Depiction and Legal Descriptions of Electrical Meters Easement Area

See attached.

EXHIBIT E

Form of Operations Agreement

[To be provided.]

EXHIBIT F

Form of Warranty Deed

WARRANTY DEED

THE GRANTOR:	THE CITY OF ESCANABA, MICHIGAN, a Michigan municipal corporation,
WHOSE ADDRESS IS:	P.O. Box 948, 410 Ludington Street, Escanaba, MI 49829,
CONVEYS AND WARRANTS TO THE GRANTEE:	[_____], a [_____],
WHOSE ADDRESS IS:	[_____] [_____],

the real estate situated in the City of Escanaba, Delta County, Michigan, more fully described on Exhibit 1 attached to this Deed, together with all improvements, fixtures, easements, hereditaments, and appurtenances associated with the real estate, excluding, however, any water rights with respect thereto ("Property"), subject to the Easement Agreement between Grantor and Grantee dated the date of this Deed and the conditions, restrictions, reservations and easements affecting the Property that are contained in duly recorded deeds, plats and other instruments constituting constructive notice in the chain of title that may have not expired by a time limitation contained therein or otherwise become ineffective, including those matters described on Exhibit 2 attached to this Deed.

The conveyance of the Property specifically excludes the conveyance of any water rights with respect to the real estate described on Exhibit 1 attached to this Deed, and by its acceptance of this Deed, Grantee covenants and agrees that in no event shall Grantee use, collect or distribute, or permit any other party to use, collect or distribute, for any purposes whatsoever, any water that may be located on or under the Property or which may flow over or through the Property, which covenant shall run with the land and be binding all successors and assigns of Grantee and all future owners of the Property.

The Grantor grants to the Grantee the right to make zero (0) division(s) under Section 108 of the Land Division Act, Act No. 288 of the Public Acts of 1967, as amended ("Act").

This Property may be located within the vicinity of farmland or a farm operation. Generally accepted agricultural and management practices which may generate noise, dust, odors and other associated conditions may be used and are protected by the Michigan Right to Farm Act.

This Deed is given for the consideration of _____ Dollars ($_____). This Deed is exempt from the real estate transfer taxes under MCL §§ 207.505(h)(i) and 207.526(h)(i) because the Grantor is the United States, the state, any political subdivision or municipality thereof, or an officer thereof acting in his official capacity.

Dated: _____, 20__.

THE CITY OF ESCANABA, MICHIGAN,
a Michigan municipal corporation

By _____

Its Mayor

And By _____

Its City Clerk

STATE OF MICHIGAN)
) ss:
COUNTY OF _____)

The foregoing instrument was acknowledged before me this _____ _____, 2011 by _____, the Mayor, and _____, the City Clerk, of THE CITY OF ESCANABA, MICHIGAN, a Michigan municipal corporation, on behalf of the corporation.

_____

Notary public, State of Michigan, County of _____
My commission expires _____

Acting in the County of _____

PREPARED BY AND RETURN TO:

[_____] Esq.
[_____]
[_____]

[_____]
[_____]
Telephone: ([___]) [_____]

EXHIBIT 1

Property

From the C 1/4 corner of Section 18, T39N, R22W; thence measure S00°25'23"E along the West line of Government Lot 3 of said Section a distance of 626.65 feet to Westerly extension of the South right-of-way line of Power Plant Road; thence N85°05'37"E along said South right-of-way line a distance of 661.73 feet to the point of beginning of the land herein described; thence continue N85°05'37"E along said South right-of-way line a distance of 312.15 feet; thence S02°27'54"E a distance of 243.54 feet to a fence corner; thence N88°31'55"E a distance of 317.62 feet to the Southwesterly right-of-way line of a Southerly spur track of C M ST P&P Railroad point being on a 561.65 foot radius curve to the left; thence Southeasterly along said curve a chord bearing of S61°02'58"E a chord distance of 434.24 feet to the shore of Little Bay De Noc of Lake Michigan; thence Southerly along said shore a distance of 1250 feet more or less to the North line of those lands described at Liber 579 of Deeds on Pages 469 & 470 of Delta County Records; thence S87°39'45"W along said North line a distance of 800.44 feet to a fence corner; thence N02°09'40"W a distance of 1142.45 feet to the point of beginning. Containing 18.6 acres more or less.

The property address and tax parcel number listed below are provided solely for informational purposes, without warranty as to accuracy or completeness. If the information listed below is inconsistent in any way with the legal description listed above, the legal description listed above shall control.

Property Address: _____

Tax Parcel No.: _____

EXHIBIT 2

[List those Permitted Encumbrances of record as disclosed by Schedule B II of the Title Commitment]

SCHEDULE 1.1(a)

Permitted Encumbrances

1. [None.]

SCHEDULE 1.1(b)

Transferable Permits

The Transferable Permits consist of the following:

1. Renewable Operating Permit (MI-ROP-B1573-2010) issued by the MDNRE on September 24, 2010 to Seller in respect of the Escanaba Power Facilities.

2. National Pollutant Discharge Elimination System Permit (MI0026697) issued by the MDEQ on August 23, 2007 to Seller in respect of the Escanaba Power Facilities.

3. Groundwater Discharge Permit (GW1010285) issued by the MDNRE on March 15, 2010 to Seller in respect of the Escanaba Power Facilities.

4. Part 55 Consent Order.

[5. Permit to Install (No. 143-10; State Registration Number B1573) issued by the MDEQ on April 14, 2011.][Need to discuss whether Seller should retain or affirmatively seek to cancel or terminate this Permit.]

SCHEDULE 2.1(a)

Real Property

The description of the Site is as follows:

From the C 1/4 corner of Section 18, T39N, R22W; thence measure S00°25'23"E along the West line of Government Lot 3 of said Section a distance of 626.65 feet to Westerly extension of the South right-of-way line of Power Plant Road; thence N85°05'37"E along said South right-of-way line a distance of 661.73 feet to the point of beginning of the land herein described; thence continue N85°05'37"E along said South right-of-way line a distance of 312.15 feet; thence S02°27'54"E a distance of 243.54 feet to a fence corner; thence N88°31'55"E a distance of 317.62 feet to the Southwesterly right-of-way line of a Southerly spur track of C M ST P&P Railroad point being on a 561.65 foot radius curve to the left; thence Southeasterly along said curve a chord bearing of S61°02'58"E a chord distance of 434.24 feet to the shore of Little Bay De Noc of Lake Michigan; thence Southerly along said shore a distance of 1250 feet more or less to the North line of those lands described at Liber 579 of Deeds on Pages 469 & 470 of Delta County Records; thence S87°39'45"W along said North line a distance of 800.44 feet to a fence corner; thence N02°09'40"W a distance of 1142.45 feet to the point of beginning. Containing 18.6 acres more or less.

SCHEDULE 2.1(b)

Tangible Personal Property

[To be provided.]

SCHEDULE 2.1(e)

Seller's Agreements

The Seller's Agreements consist of the following:

1. the O&M Agreement; and

2. the Interconnection Agreement

SCHEDULE 2.2(b)

Seller Distribution Facilities

[To be provided.]

SCHEDULE 2.2(c)

Seller Water Facilities

[To be provided.]

SCHEDULE 2.2(d)

O&M Operator Property

[To be provided.]

SCHEDULE 4.3(a)

No Violations

[To be provided.]

SCHEDULE 4.3(b)

Seller's Required Regulatory Approvals

[To be provided.]

SCHEDULE 4.4

Insurance

1. INSURANCE FOR GENERAL CITY OPERATIONS

Michigan Municipal Risk Management Authority
14001 Merriman Road
Livonia, MI 48154

Date of Expiration -	June 30, 2011	
General Liability -	Limits per Occurrence	$5,000,000
	Annual Aggregate	Not
Applicable		
	Self-Insured Retention	$116,000
Auto -	Per Michigan No-Fault Statute No Collision / Comprehensive Coverage	
Property and Crime -	Blanket Limits Safety National Casualty Corporation 1832 Schuetz Road St Louis, MO 63146	$91,494,764
Date of Expiration-	June 30, 2013	

Worker's Disability Compensation Excess Stop Loss Insurance

Specific Attachment Point	$350,000
Aggregate Attachment Point (2 Yr)	$960,360

City of Escanaba Self-Insured

The City of Escanaba is self-insured for purposes of worker's disability compensation liability, based on approval from the State of Michigan. The City has acquired stop loss insurance, as indicated above, to cover claims in excess of our specified retention limits.

2. INSURANCE FOR POWER FACILITIES OPERATIONS

The insurance scheduled below covers the City of Escanaba Electric Utility operations as they pertain to generation and transmission functions only; coverage is not provided for distribution functions.

Ace American Insurance Company
Ace Property and Casualty Insurance Company

Date of Expiration -	June 5, 2012	
General Liability -	Limits per Occurrence	$1,000,000
	Annual Aggregate	$2,000,000
	Self-Insured Retention	$0
	Combined Single limits	$1,000,000
Auto -	Combined Single Limits	$1,000,000
	No Collision / Comprehensive Coverage	
Umbrella Insurance-	Applies to underlying G/L, Auto & W/C	
	Limits per Occurrence -	$20,000,000
	Annual Aggregate -	$20,000,000
	Self-Insured Retention	$25,000 per occurrence

Coverage includes W/C employers' liability coverage.

SCHEDULE 4.5

Exceptions to Title

[To be provided.]

SCHEDULE 4.6(b)

Real Property

1. See the disclosures on Schedule 4.8, Schedule 4.11 and Schedule 4.14.

SCHEDULE 4.7(a)

Contracts

1. O&M Agreement.

2. Interconnection Agreement.

3. Inter-control Center Communication Protocol Services Agreement, between Upper Peninsula Power Company and Seller, dated November 30, 2009.

4. Distribution-Transmission Interconnection Agreement, between American Transmission Company LLC and Seller, dated February 10, 2009.

5. [Others to be provided.]

SCHEDULE 4.7(b)

Contract Enforceability

[To be provided.]

SCHEDULE 4.7(c)

Contract Defaults

1. [None.]

SCHEDULE 4.8

Legal Proceeding

1. See the disclosures in Schedule 4.11.

2. Part 55 Consent Order

SCHEDULE 4.9(a)

Permits – Violations

1. See the disclosures in Schedule 4.11.

2. Part 55 Consent Order

SCHEDULE 4.9(b)

Permits

1. See the disclosures in Schedule 1.1(b).

2. Seller received confirmation from MISO that the Escanaba Power Facilities are fully deliverable to MISO for 46.9 megawatts. However, after Seller's load is served from the new substation, the transformer may not be large enough to allow the maximum plant output to reliably be delivered to the grid.

SCHEDULE 4.11

Environmental

1. Seller received a request for information dated July 31, 2009, issued to Seller by the United States Environmental Protection Agency, pursuant to Section 114 of the Clean Air Act.

2. Part 55 Consent Order.

SCHEDULE 4.14

Compliance with Laws

1. See the disclosures in Schedule 4.11.

SCHEDULE 4.18

Financial Advisors

[To be provided.]

SCHEDULE 5.3

No Violations

SCHEDULE 5.4

Consents and Approvals

SCHEDULE 6.1

Conduct of Business