

“Audit” means any audit, examination, proceeding or appeal relating to Taxes.

“Code” means the Internal Revenue Code of 1986, as amended.

“Deconsolidation Date” has the meaning given in the Recitals to this Agreement.

“Effective Date” means the date on which NRG emerges from bankruptcy pursuant to the terms of a confirmed plan of reorganization.

“Final Determination” means with respect to any issue (i) a decision, judgment, decree or other order by any court of competent jurisdiction that has become final and is not subject to further appeal, or (ii) a closing agreement entered into under Section 7121 of the Code or any other binding settlement agreement entered into in connection with or in contemplation of an administrative or judicial proceeding, excluding for this purpose an agreement on Form 870.

“Form 870” means Internal Revenue Service Form 870, Waiver of Restrictions on Assessment and Collection of Deficiency in Tax and Acceptance of Overassessment, any successor thereto, and any similar form used for state or local Tax purposes.

“Indemnification Amount” has the meaning given in Section 6.2.

“Indemnifying Party” means the party required to indemnify another party pursuant to Section 6.1.

“Indemnitee” means the party entitled to indemnification from another party pursuant to Section 6.1.

“NRG Affiliated Company” has the meaning given in the initial paragraph of this Agreement.

“NRG Group” has the meaning given in the initial paragraph of this Agreement.

“NRG Proposed Adjustment” means (i) a deficiency, claim or adjustment relating to an Xcel Consolidated Return that, if sustained, would result in Xcel’s payment of a Tax for which NRG or an NRG Affiliated Company would be responsible under this Agreement, and (ii) an adjustment to any Tax Item of NRG or any NRG Affiliated Company that, if sustained, would cause NRG to be in breach of the representation set forth in Section 6(e) or the covenant set forth in Section 7(c) of the Settlement Agreement.

“NRG Separate Return” means any Separate Return of NRG or an NRG Affiliated Company, and any consolidated, combined or unitary Tax Return filed by NRG or an NRG Affiliated Company as common parent or its state or local equivalent.

“Plan” has the meaning given in the Recitals to this Agreement.

“Post-Deconsolidation Period” means any taxable period or portion thereof beginning on or after the Deconsolidation Date.

“Pre-Deconsolidation Period” means any taxable period or portion thereof ending before the Deconsolidation Date.

“Prior Tax Allocation Agreement” has the meaning given in the Recitals to this Agreement.

“Separate Return” means any Tax Return other than a consolidated, combined or unitary Tax Return.

“Settlement Agreement” means that certain Settlement Agreement entered into as of December , 2003 by and among Xcel, NRG and certain NRG subsidiaries.

“Tax” means any federal, state, local or foreign tax based upon or determined with reference to net income or profits, including capital gains and alternative or add-on minimum tax, together with interest, additions to tax or penalties related thereto.

“Tax Authority” means any federal, state, local or foreign governmental authority or any subdivision, agency, commission or authority thereof or any quasi-governmental or private body having jurisdiction over the assessment, determination, collection or imposition of any Tax.

“Tax Benefit” means a reduction in the Tax liability of a taxpayer (or of the Affiliated Group of which it is a member) for any taxable period, determined in accordance with the principles set forth on Schedule 1.1T to this Agreement. Except as otherwise provided in this Agreement, a Tax Benefit shall be deemed to have been realized or received from a Tax Item in a taxable period only if and to the extent that the Tax liability of the taxpayer (or of the Affiliated Group of which it is a member) for such period, after taking into account the effect of the Tax Item on the Tax liability of such taxpayer in the current period and all prior periods, is less than it would have been if such Tax liability were determined without regard to such Tax Item.

“Tax Detriment” means an increase in the Tax liability of a taxpayer (or of the Affiliated Group of which it is a member) for any taxable period, determined in accordance with the principles set forth on Schedule 1.1T to this Agreement. Except as otherwise provided in this Agreement, a Tax Detriment shall be deemed to have been realized or incurred with respect to a Tax Item in a taxable period only if and to the extent that the Tax liability of the taxpayer (or of the Affiliated Group of which it is a member) for such period, after taking into account the effect of the Tax Item on the Tax liability of such taxpayer in the current period and all prior periods, is more than it would have been if such Tax liability were determined without regard to such Tax Item.

“Tax Item” means any item of income, gain, loss, deduction, credit or other attribute, including net operating loss carrybacks, that may have the effect of increasing or decreasing any Tax.

“Tax Law” means any federal, state, local or foreign law with respect to Taxes, including the Code and Treasury Regulations.

“Tax Return” means any return, report, certificate, form or similar statement or document, including any schedule attached thereto and any information return, amended Tax return, claim for refund or declaration of estimated Tax, required to be filed with a Tax Authority in connection with the determination, assessment or collection of any Tax or the administration of any Tax Law.

“Tax Structure” means the ‘tax structure,’ as that term is defined in Section 1.6011-4 of the Treasury Regulations, of the transactions referred to in the Recitals to this Agreement.

“Tax Treatment” means the ‘tax treatment,’ as that term is defined in Section 1.6011-4 of the Treasury Regulations, of the transactions referred to in the Recitals to this Agreement.

“Treasury Regulations” means the final, temporary and proposed income Tax regulations promulgated under the Code.

“Worthless Stock Deduction” means the deduction that Xcel or an Xcel Affiliated Company will claim under Section 165(g)(3) of the Code and any comparable provision of state or local law with respect to the loss of its investment in NRG.

“Xcel Affiliated Company” has the meaning given in the initial paragraph of this Agreement.

“Xcel Consolidated Return” means a consolidated U.S. federal income Tax Return or a consolidated, combined or unitary state or local income or franchise Tax Return filed by Xcel as common parent of an Affiliated Group (or the state or local equivalent thereof), including Tax Returns filed with respect to periods before the Deconsolidation Date by Xcel or by Xcel’s predecessor, Northern States Power Co.

“Xcel Consolidated Return Year” means any taxable year or portion thereof for which Xcel or a predecessor files or has filed an Xcel Consolidated Return.

“Xcel Group” has the meaning given in the initial paragraph of this Agreement.

“Xcel Separate Return” means any Separate Return of Xcel or an Xcel Affiliated Company.

## 1.2 Principles of Construction.

As used in this Agreement, the singular shall be deemed to include the plural and vice versa and “including” shall mean “including, without limitation.” The captions and section headings used in this Agreement are for convenience only and shall not affect the interpretation or construction of the Agreement’s provisions. “Section” means a section of this Agreement unless otherwise indicated.

## SECTION 2. EFFECT ON PRIOR TAX ALLOCATION AGREEMENT

Except as expressly provided in this Agreement, the Prior Tax Allocation Agreement shall cease to have any effect as of the date hereof for any taxable period, past, present or future, but only as between Xcel or an Xcel Affiliated Company, on the one hand, and NRG or an NRG Affiliated Company, on the other hand. The Prior Tax Allocation Agreement shall continue to apply to the Xcel Group, and any tax sharing agreement to which NRG and the NRG Affiliated Companies are the only parties shall continue to apply to the NRG Group.

## SECTION 3. TAX RETURNS.

### 3.1 Preparation of Tax Returns; Payment of Taxes.

(a) Xcel shall timely file or cause to be filed all Tax Returns required to be filed by Xcel, the Xcel Group or an Xcel Affiliated Company for a Post-Deconsolidation Period, including the Xcel Consolidated Returns for the 2002 tax year and the 2003 tax year. Xcel or an Xcel Affiliated Company shall pay all Taxes due with respect to such Tax Returns.

(b) NRG shall timely file or cause to be filed all Tax Returns required to be filed by NRG, the NRG Group or an NRG Affiliated Company for a Post-Deconsolidation Period, including (i) the short federal tax year that began on the Deconsolidation Date and ended on December 31, 2001, (ii) the federal 2002 tax year, (iii) the federal 2003 tax year and (iv) the short Minnesota tax year that began on May 15, 2003 and will end on December 31, 2003. NRG or an NRG Affiliated Company shall pay all Taxes due with respect to such Tax Returns.

(c) Each of Xcel and NRG shall prepare all Tax Returns on the basis that NRG and the NRG Affiliated Companies joined in the Xcel Consolidated Returns for all Pre-Deconsolidation Periods in which they were permitted to join under the Code or state or local Tax Law, and that NRG and the NRG Affiliated Companies did not and will not join in the Xcel Consolidated Returns for any Post-Deconsolidation Tax Period unless required by state or local Tax Law.

(d) For purposes of Section 3.1(c), NRG and all eligible NRG Affiliated Companies shall be treated as members of the Xcel Minnesota unitary tax group through and including May 14, 2003 and not as members of the Xcel Minnesota unitary tax group on or after May 15, 2003. Income, gains, losses, deductions and credits for the unitary and post-unitary portions of 2003 shall be determined based on a closing of the books as of the end of business on May 14, 2003, which closing of the books shall utilize NRG's month-end records for April 2003 as adjusted in good faith and on a basis consistent with past practice for the period from May 1, 2003 through May 14, 2003. The deduction arising from the Worthless Stock Deduction shall be a post-unitary item (as between Xcel and NRG).

(e) Except as otherwise provided in this Section 3.1, the party required to file a Tax Return shall have the exclusive right to determine how each Tax Item is reported on such Tax Return, whether to request an extension of time in which to file such Tax Return, which elections shall be made on such Tax Return, which accounting methods shall be chosen for such Tax Return, and whether to retain outside professionals in connection with preparation and filing of such Tax Return.

### 3.2 Amendments to Filed Tax Returns.

(a) Xcel, in its sole discretion, may amend any Xcel Consolidated Return, provided that if an amendment would have required NRG or an NRG Affiliated Company to make a payment to Xcel under the Prior Tax Allocation Agreement if the Prior Tax Allocation Agreement still applied or imposes a Tax Detriment on NRG or on an NRG Affiliated Company, neither NRG nor the NRG Affiliated Company shall be required to make such payment and Xcel shall reimburse and indemnify NRG for such Tax Detriment when such Tax Detriment is realized.

(b) NRG may request that Xcel amend, and Xcel shall so amend, any Xcel Consolidated Return for a Pre-Deconsolidation Period, provided that (i) the period for filing an amended Tax Return for such period has not expired, (ii) the amendment does not involve a carryback, (iii) the amendment relates solely to a separate Tax Item of NRG or an NRG Affiliated Company, (iv) Xcel determines or NRG provides an opinion of a nationally-recognized law or accounting firm to the effect that there is at least a "reasonable basis" (as defined in Section 1.6662-3(b)(3) of the Treasury Regulations) for the amendment position and the amended return makes all necessary disclosures, and (v) NRG pays to Xcel any additional amount that NRG or the NRG Affiliated Company would be required to pay under the Prior Tax Allocation Agreement as a result of such amendment if the Prior Tax Allocation Agreement still applied and NRG reimburses and indemnifies Xcel for any Tax Detriment that Xcel incurs as a result of such amendment when such Tax Detriment is realized. If the amended return results in Xcel's receipt of a Tax refund, Xcel shall remit the Tax refund to NRG within two business days of receipt thereof together with any interest received thereon, less any unpaid amount described in clause (v) of the immediately preceding sentence.

(c) Each of Xcel and the Xcel Affiliated Companies, on the one hand, and NRG and the NRG Affiliated Companies on the other hand, may amend any Xcel Separate Return or NRG Separate Return, respectively, without the consent of any other party and without incurring any obligation to compensate any other party.

(d) If a Tax Detriment for which compensation has been paid pursuant to Section 3.2(a) or 3.2(b) is decreased or eliminated as the result of an audit adjustment or otherwise, the compensated party shall pay the compensating party the amount of the decrease or the amount eliminated, without interest.

### 3.3 Carrybacks.

(a) To the extent permitted by Tax Law, Xcel shall include on an amended Xcel Consolidated Return, or file a tentative application for refund with respect to, any net operating loss incurred by NRG or an NRG Affiliated Company in its 2002 U.S. federal tax year or a state or local tax year ending in calendar year 2002, provided that (i) the period for filing an amended Tax Return for purposes of carrying back a net operating loss has not expired and (ii) no portion of the net operating loss is absorbed in an Xcel Consolidated Return Year that begins after December 31, 2000. Xcel shall remit any portion of the associated Tax refund that is not associated with displaced Tax credits to NRG within two business days of receipt thereof, together with any interest received thereon. To the extent that the displaced Tax credits produce

a Tax Benefit for Xcel in a Tax year or years after the year with respect to which Xcel claims the Worthless Stock Deduction, Xcel shall pay NRG an amount equal to the Tax Benefit within ten business days of realization thereof.

(b) NRG shall waive the carryback period for any net operating loss reflected on an NRG Separate Return not described in Section 3.3(a) if such loss would, absent a waiver, be carried back to a Pre-Deconsolidation Period. To the extent that such carryback period may not be waived, and in the case of any carryback of an NRG or NRG Affiliated Company capital loss, Xcel shall not be required to pay over to NRG any Tax refund received with respect to a Pre-Deconsolidation Period.

### 3.4 Other Refunds.

Any refund of Taxes received or Tax Benefit realized with respect to a Pre-Deconsolidation Period (or a Post-Deconsolidation Period with respect to which the NRG Affiliated Companies are required to join in an Xcel Consolidated Return under state or local law) and unrelated to an amended Tax Return, a carryback or a contest described in Section 5 shall be allocated and paid in a manner consistent with the Prior Tax Allocation Agreement, subject to later adjustment as provided therein.

### 3.5 Information and Cooperation; Record Retention.

Each of Xcel and the Xcel Affiliated Companies, on the one hand, and NRG and the NRG Affiliated Companies, on the other hand, shall provide the other with all documents and information, and make available employees and officers, as reasonably requested by the other party, on a mutually convenient basis during normal business hours, to aid the other party in preparing any Tax Return described in Section 3.1 or participating in an Audit or contest described in Section 5, provided that Xcel and the Xcel Affiliated Companies shall be required to provide NRG only (i) any Tax Return or portion thereof that includes Tax Items of NRG or an NRG Affiliated Company and (ii) any other information that relates to NRG or an NRG Affiliated Company. Each of Xcel and the Xcel Affiliated Companies, on the one hand, and NRG and the NRG Affiliated Companies, on the other hand, shall retain all records relating to Taxes governed by this Agreement until expiry of the related statute of limitations. Prior to discarding or destroying such records, the party retaining them shall offer in writing to transfer them to the other party at the other party's expense. If the other party does not accept such offer within thirty days, the party retaining such records may discard or destroy them.

### 3.6 Continuing Consolidation.

(a) Except as provided in Section 3.6(b), if NRG or any NRG Affiliated Company is required by state or local Tax Law to be included in an Xcel Consolidated Return for a Post-Deconsolidation Period, the parties shall make payments and otherwise take actions as the parties would have been required to make or take pursuant to the Prior Tax Allocation Agreement if the Prior Tax Allocation Agreement still applied.

(b) If the Minnesota Tax Authority requires that NRG or any eligible NRG Affiliated Company be treated as a member of the Xcel Minnesota unitary tax group at the time Xcel recognizes a loss on its investment in NRG, NRG and the NRG Affiliated Companies shall

forgo any payment to which they would be entitled under the Prior Tax Allocation Agreement to the extent, and only to the extent, such payment results from the Worthless Stock Deduction.

#### SECTION 4. ADDITIONAL COVENANTS.

##### 4.1 Worthless Stock Deduction.

Neither Xcel nor any Xcel Affiliated Company shall claim the Worthless Stock Deduction for any tax year prior to the tax year in which the Effective Date occurs.

##### 4.2 Payment of Certain Federal and Minnesota Adjustments.

Xcel shall pay NRG the net amount shown on Schedule 4.2 to this Agreement (as adjusted by reasonable agreement of the parties hereto through the Effective Date) within two business days of the Effective Date.

##### 4.3 Continuing Covenants.

Except as otherwise provided in Section 3, Xcel and each Xcel Affiliated Company, on the one hand, and NRG and each NRG Affiliated Company, on the other hand, shall take any action reasonably requested by the other party that would reasonably be expected to result in a Tax Benefit or avoid a Tax Detriment to the requesting party, provided that such action does not cause the party taking such action to bear any Tax Detriment or other additional cost not fully compensated for by the requesting party.

#### SECTION 5. AUDITS AND CONTEST RIGHTS; JOINT TAX LIABILITY.

##### 5.1 Liability for Adjustments.

If Xcel as common parent of an Affiliated Group (or the state or local equivalent thereof) is required to pay any additional Tax with respect to a Pre-Deconsolidation Period (or a Post-Deconsolidation Period with respect to which the NRG Affiliated Companies are required to join in an Xcel Consolidated Return under state or local law), NRG shall pay Xcel the amount, if any, that NRG or an NRG Affiliated Company would have been required to pay Xcel pursuant to the Prior Tax Allocation Agreement if the Prior Tax Allocation Agreement still applied.

##### 5.2 Notice of Audits.

Xcel shall provide NRG with written notice of any Audit that could give rise to a payment under Section 5.1 within ten business days of Xcel's receipt of notice thereof, provided that this Section 5.2 shall not apply to any Audit commenced before the date of this Agreement, which Audits are described on Schedule 5.2 to this Agreement.

##### 5.3 Contests.

(a) Except as provided in Section 5.3(e), if a Tax Authority assesses, asserts, proposes, recommends or attempts to collect on an NRG Proposed Adjustment, or submits a request for information that reasonably may relate to an NRG Proposed Adjustment or potential

NRG Proposed Adjustment, Xcel shall provide NRG with prompt notice thereof and NRG shall elect in writing, within ten business days of receipt of notice from Xcel, to contest the NRG Proposed Adjustment or potential NRG Proposed Adjustment in the manner provided in Section 5.3(b) or to agree not to contest the NRG Proposed Adjustment and pay Xcel any amount required to be paid under Section 5.1.

(b) If NRG elects to contest the NRG Proposed Adjustment, NRG shall keep Xcel reasonably informed of the contest and NRG's resolution of the contest shall be binding on Xcel (subject to Section 5.3(h)), the Xcel Affiliated Companies, NRG and the NRG Affiliated Companies, provided that NRG pays Xcel any amount required to be paid under Section 5.1. Without limiting the generality of the foregoing, if NRG elects to contest an NRG Proposed Adjustment,

- (i) NRG shall assume responsibility for contesting the NRG Proposed Adjustment and settling or litigating it to a Final Determination, all at NRG's sole cost and expense;
- (ii) Xcel shall take all steps reasonably necessary to authorize NRG to contest the NRG Proposed Adjustment, including executing powers of attorney and promptly delivering to NRG any written materials received by Xcel from any source other than NRG relating to the NRG Proposed Adjustment;
- (iii) NRG shall provide Xcel with copies of all material documents received from or submitted to the Tax Authority in connection with the contest, including copies of any Final Determination, Form 870 or other documentation relating to resolution of the contest;
- (iv) if NRG decides to pay the NRG Proposed Adjustment and sue for a refund, NRG shall advance to Xcel, on an interest-free basis and without duplication, the amount of Tax required to be paid by Xcel in connection with the NRG Proposed Adjustment;
- (v) if NRG and the Tax Authority enter into an agreement that does not result in a Final Determination, including an agreement on Form 870, NRG shall advance to Xcel, on an interest-free basis and without duplication, the amount of Tax required to be paid by Xcel in connection with the NRG Proposed Adjustment; and
- (vi) if a Final Determination requires that Xcel make a payment to the Tax Authority with respect to the NRG Proposed Adjustment, NRG, without duplication, shall pay to Xcel the amount required under Section 5.1.

(c) Payments with respect to amounts contested under Section 5.3(b) shall be made as follows: Xcel and NRG shall agree on the date on which payment will be made to the Tax Authority (the "Payment Date"), NRG shall remit the payment amount to Xcel no later than two business days before the Payment Date, and Xcel shall make payment to the Tax Authority



no later than the Payment Date. If the relevant Tax Law or Tax Authority establishes a date by which payment to the Tax Authority must be made, that date shall be the Payment Date. If Xcel receives a refund of an amount paid pursuant to Section 5.3(b), Xcel shall remit the refund amount to NRG, together with any interest received thereon, within two business days of receipt thereof.

(d) Except as provided in Section 5.3(e), and without regard to whether Xcel obtains a Final Determination with respect to the NRG Proposed Adjustment in issue, if NRG (i) elects not to contest an NRG Proposed Adjustment, (ii) elects to contest an NRG Proposed Adjustment and fails to obtain a Final Determination, or (iii) fails to give Xcel the NRG election notice required under Section 5.3(a), NRG shall be deemed to have agreed to the NRG Proposed Adjustment and shall pay Xcel any amount required to be paid under Section 5.1 on or before the later to occur of (x) the date Xcel makes payment to the Tax Authority and (y) ten business days after NRG receives notice from Xcel of the amount required to be paid, along with a computation in sufficient detail to inform NRG of the basis for its payment obligation and of the manner in which its obligation was computed.

(e) Nothing in this Section 5.3 shall prevent NRG from contending that an asserted NRG Proposed Adjustment is not a matter for which NRG is liable under Section 5.1, provided that NRG gives Xcel written notice to that effect no later than fifteen business days after receipt of the Xcel notice described in Section 5.3(a). Any dispute arising under this Section 5.3(e) shall be resolved in accordance with the procedures set forth in Section 7.10. If a dispute is resolved in Xcel's favor, NRG shall pay Xcel any amount that NRG owes under Section 5.1 at the time of the resolution within ten business days of the date of resolution and any other amount owed under Section 5.1 in accordance with the other provisions of this Section 5. NRG may not contest an asserted NRG Proposed Adjustment and also contend that it is not a matter for which NRG is liable under Section 5.

(f) If a contest or other resolution of a Tax Item of NRG results in Xcel's receipt of a refund or realization of a Tax Benefit other than a refund, Xcel shall pay the refund or the amount of the other Tax Benefit to NRG within two business days of receipt or realization thereof, together with any interest allowed thereon.

(g) Sections 5.3(b), (c), (d) and (f), but not Sections 5.3(a) or (e), shall apply to the NRG Proposed Adjustments proposed or asserted by a Tax Authority before the date of this Agreement, which adjustments are described on Schedule 5.3 to this Agreement, together with their agreed disposition.

(h) Nothing in this Section 5.3 shall waive Xcel's rights under the Settlement Agreement if NRG is in breach of Section 6(e) or 7(c) thereof.

#### 5.4 Adjustment to Amounts Paid.

If NRG makes a payment to Xcel pursuant to Section 5.1, Xcel shall pay NRG the amount of any Tax Benefit realized by Xcel as a result of the adjustment giving rise to such payment. If Xcel makes a payment to NRG pursuant to Section 5.3 (f), NRG shall pay to Xcel the amount of any Tax Detriment realized by Xcel as a result of the adjustment giving rise to

such payment, except as otherwise provided on Schedule 5.4 to this Agreement. Payments with respect to Tax Benefits and Tax Detriments described in this Section 5.4 shall be made in the manner set forth in Sections 6.2, 6.3 and 6.4.

#### 5.5 Waiver.

(a) Xcel in its sole discretion may resolve, settle, agree to, or fail to contest any NRG Proposed Adjustment if Xcel

- (i) provides NRG with a written waiver of Xcel's right to indemnification with respect to the NRG Proposed Adjustment under this Agreement and, in the case of an NRG Proposed Adjustment described in clause (ii) of the definition thereof, a written waiver of Xcel's right to indemnification for any breach of Section 6(e) or Section 7(c) of the Settlement Agreement;
- (ii) promptly reimburses NRG for any amounts previously advanced by NRG to Xcel in connection with the NRG Proposed Adjustment; and
- (iii) compensates NRG for any Tax Detriment or other cost or liability that directly results from Xcel's resolution, settlement, agreement to, or failure to contest the NRG Proposed Adjustment.

(b) No waiver by Xcel under this Section 5.5 with respect to an NRG Proposed Adjustment shall operate as a waiver with respect to any other NRG Proposed Adjustment or any other right afforded Xcel under this Agreement or the Settlement Agreement.

#### 5.6 Breach and Remedy.

Xcel's failure to notify NRG promptly of an NRG Proposed Adjustment or to otherwise comply with the provisions of this Section 5 with respect to an NRG Proposed Adjustment shall not relieve NRG of any liability to Xcel under this Agreement with respect to the NRG Proposed Adjustment except to the extent that NRG's rights hereunder are prejudiced by such failure, in which event NRG's sole remedy, except as otherwise provided in Section 5.5, shall be a reduction in the amount that NRG would otherwise be obligated to pay Xcel pursuant to Section 5.1. In no event shall any such failure on Xcel's part relieve NRG of any other liability or obligation which it may have to Xcel.

#### 5.7 Joint Tax Liability.

(a) To the extent that a Tax Authority, acting pursuant to a provision of foreign Tax Law comparable to Section 1.1502-6 of the Treasury Regulations, collects any Tax from Xcel or an Xcel Affiliated Company for which NRG or an NRG Affiliated Company would be liable under the principles of the Prior Tax Allocation Agreement, NRG, within ten days of Xcel's written demand, shall reimburse Xcel for the amount of Tax collected.

(b) To the extent that a Tax Authority, acting pursuant to Section 1.1502-6 of the Treasury Regulations or any comparable provision of state, local or foreign Tax Law, collects any Tax from NRG or an NRG Affiliated Company for which Xcel or an Xcel Affiliated Company would have been responsible under the Prior Tax Allocation Agreement if the Prior Tax Allocation Agreement (or, in the case of a foreign Tax, the principles of the Prior Tax Allocation Agreement) still applied, Xcel, within ten days of NRG's written demand, shall reimburse NRG for the amount of Tax collected.

## SECTION 6. INDEMNIFICATION.

### 6.1 Indemnification.

(a) NRG and each NRG Affiliated Company shall jointly and severally indemnify Xcel, each Xcel Affiliated Company and their respective directors, officers and employees and hold them harmless from and against any and all Taxes for which NRG or any NRG Affiliated Company is liable under this Agreement and any loss, cost, damage or expense, including reasonable attorneys' fees and costs, that is attributable to, or results from, the failure of NRG or an NRG Affiliated Company to make any payment required to be made under this Agreement; provided, however, that any indemnification required under this Section 6.1(a) shall be without duplication for payments made pursuant to Section 5.

(b) Xcel and each Xcel Affiliated Company shall jointly and severally indemnify NRG, each NRG Affiliated Company and their respective directors, officers and employees and hold them harmless from and against any and all Taxes for which Xcel or any Xcel Affiliated Company is liable under this Agreement and any loss, cost, damage or expense, including reasonable attorneys' fees and costs, that is attributable to, or results from the failure of Xcel or an Xcel Affiliated Company to make any payment required to be made under this Agreement.

(c) The Indemnifying Party shall pay to the Indemnitee the sum (such sum, the "Indemnification Amount") of (i) the amount of the indemnified liability, (ii) any penalties or interest imposed with respect to the indemnified liability, to the extent not already included therein, and (iii) an additional amount such that when the sum of the amounts set forth in clauses (i), (ii) and this clause (iii) is reduced by all Taxes imposed on the Indemnitee as a result of its receipt of such sum, the reduced amount equals the sum of the amounts set forth in clauses (i) and (ii) of this Section 6.1.

(d) The Indemnitee shall pay the Indemnifying Party any Tax Benefit realized by the Indemnitee as a result of having incurred, and having been indemnified by the Indemnifying Party for, an indemnified liability described in this Section 6.1.

### 6.2 Payment.

(a) All indemnification payments shall be made to the Indemnitee or, at the Indemnitee's written direction, to the appropriate Tax Authority, on the later of (i) the date ten days after delivery by the Indemnitee to the Indemnifying Party of written demand for payment and (ii) the date on which the Indemnitee is obligated to pay the associated Tax, provided such tax has, in fact, been paid.

(b) The Indemnatee shall provide the Indemnifying Party with its calculation of the Indemnification Amount at the time the Indemnatee makes written demand therefor. The calculation shall provide detail that is sufficient to allow the Indemnifying Party to understand the basis for the indemnification claim and its determination.

(c) Any indemnification payment required under this Agreement in an amount in excess of \$1,000,000 shall be made by electronic funds transfer of immediately available funds

(d) Tax Benefits described in Section 6.1(d) shall be paid within ten business days of the Indemnatee's realization thereof. If the Indemnatee incurs an indemnified liability and realizes a Tax Benefit described in Section 6.1(d) with respect to that indemnified liability in the same Tax period, the Indemnifying Party shall pay the Indemnatee the net amount to which the Indemnatee is entitled under this Section 6.1.

### 6.3 Interest.

Any Indemnification Amount that is not paid within the period prescribed in Section 6.2(a) shall bear interest for the period from and including the date on which it was due to but excluding the date of payment at a per annum rate equal to the bank prime rate published in The Wall Street Journal on the date the payment was due. Such interest shall be payable at the same time as the indemnification payment to which it relates and shall be calculated on the basis of a year of 365 days and the actual number of days elapsed.

### 6.4 Disputes.

Any disputes with respect to indemnification shall be resolved in accordance with Section 7.10. Pending the resolution of any dispute over the existence or amount of a Tax Benefit described in Section 6.1(d), the Indemnifying Party shall pay the Indemnatee the Indemnification Amount, calculated as if the disputed portion of the Tax Benefit did not exist, and preserve all rights under Section 6.1(d). If the dispute is resolved in the Indemnifying Party's favor, the Indemnatee shall pay the Indemnifying Party, within two business days of receipt of notice of the resolution, any additional Tax Benefit determined to have been realized, together with interest, calculated in the manner described in Section 6.3, from the date of realization to the date of payment.

## SECTION 7. MISCELLANEOUS

### 7.1 Effectiveness; Termination.

This Agreement shall become effective on the Effective Date.

### 7.2 Notices.

Any notice, request, instruction or other document to be given or delivered under this Agreement by a party to another party shall be in writing and shall be deemed to have been duly given when (a) delivered in person, (b) deposited in the United States mail, postage prepaid

and sent certified mail, return receipt requested, or (c) delivered to Federal Express or similar service for overnight delivery, in each case to the address of the party set forth below:

If to Xcel or an Xcel Affiliated Company:

Xcel Energy Inc.  
414 Nicollet Mall  
Minneapolis, Minnesota 55401  
Attn: James J. Duevel

with a copy to:

Edward Purnell  
Jones Day  
77 West Wacker, Suite 3500  
Chicago, Illinois 60601-1692

If to NRG or an NRG Affiliated Company:

NRG Energy, Inc.  
901 Marquette Avenue, Suite 2300  
Minneapolis, Minnesota 55402-3265  
Attn: JoAnn Cochran

with a copy to:

Matthew A. Cantor  
Kirkland & Ellis  
Citicorp Center  
153 East 53<sup>rd</sup> Street  
New York, New York 10022-4675

Any party may, by written notice to the other parties, change the address or the party to which any notice, request, instruction or other document is to be delivered.

### 7.3 Change in Law.

(a) Any reference to a provision of the Code or other Tax Law shall include a reference to any applicable successor provision or law.

(b) If, due to any change in applicable law or regulations or their interpretation by any court or other governing body having jurisdiction subsequent to the date of this Agreement, performance of any provision of this Agreement shall become impracticable or impossible, the parties hereto shall use their commercially reasonable efforts to find and employ an alternative means to achieve the same or substantially the same result as that contemplated by such provision.

#### 7.4 Confidentiality.

(a) Except as provided in Section 7.4(b), for a period of three years commencing on the date of this Agreement, each party shall hold and cause its directors, officers, employees, advisors and consultants to hold in strict confidence all information concerning the other parties furnished to it by such other parties or their representatives pursuant to this Agreement, except to the extent that (i) such information can be shown to have been in the public domain through no fault of such party or lawfully acquired from other sources not themselves under a duty of confidentiality by the party to which it was furnished, or (ii) disclosure is compelled by judicial or administrative process. Each party shall be deemed to have satisfied its obligation to hold confidential information concerning or supplied by the other party if it exercises the same care as it takes to preserve confidentiality for its own similar information.

(b) Notwithstanding any other express or implied agreement, arrangement or understanding to the contrary, except as reasonably necessary to comply with applicable securities laws, any party to this Agreement may (i) consult with any tax advisor regarding the Tax Treatment and Tax Structure, and (ii) disclose to any and all persons, without limitation of any kind, the Tax Treatment and Tax Structure and all other materials of any kind (including opinions or other tax analyses) required by Section 1.6011-4 of the Treasury Regulations, provided that this authorization shall not permit disclosure of (x) any information not related to the Tax Treatment or Tax Structure or (y) the identities of any party to this Agreement.

#### 7.5 Successors.

This Agreement shall be binding on and inure to the benefit and detriment of the parties and any successor, by merger, acquisition of assets or otherwise, to any of the parties hereto, to the same extent as if such successor had been an original party.

#### 7.6 Guarantee of Affiliated Company Performance.

Xcel shall cause to be performed, and guarantees the performance of, all actions, agreements and obligations set forth herein to be performed by any Xcel Affiliated Company, and NRG shall cause to be performed, and hereby guarantees the performance of, all actions, agreements and obligations set forth herein to be performed by any NRG Affiliated Company.

#### 7.7 Authorization.

Each of the parties hereto represents and warrants that it has the power and authority to execute, deliver and perform this Agreement, that this Agreement has been duly authorized by all necessary corporate action on the part of such party, that this Agreement constitutes a legal, valid and binding obligation of each such party and that the execution, delivery and performance of this Agreement by such party does not contravene or conflict with any provision of law or of its charter or bylaws or any agreement, instrument or order binding on such party.

#### 7.8 Entire Agreement.

This Agreement and the Prior Tax Allocation Agreement, solely to the extent incorporated by reference in this Agreement, contain the entire agreement among the parties hereto with respect to the subject matter hereof.

#### 7.9 Governing Law.

This Agreement shall be governed by and construed and enforced in accordance with the laws of the State of Delaware as to all matters regardless of the law that might otherwise govern under the principles of conflicts of law applicable thereto.

#### 7.10 Dispute Resolution.

Any dispute between Xcel or an Xcel Affiliated Company, on the one hand, and NRG or an NRG Affiliated Company, on the other hand, with respect to the operation or interpretation of this Agreement shall be decided by three arbitrators, one appointed by Xcel, one appointed by NRG, and one appointed by the other two arbitrators. Alternatively, the dispute may be resolved by a single arbitrator agreed to by each of Xcel and NRG. The arbitrators' decision shall be final and binding on the parties hereto. Xcel and NRG shall each pay one-half of the arbitrators' fees and expenses.

#### 7.11 Counterparts.

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

#### 7.12 Severability.

If any term, provision, covenant or restriction of this Agreement is held by a court of competent jurisdiction (or an arbitrator or arbitration panel) to be invalid, void or unenforceable, the remainder of the terms, provisions, covenants and restrictions set forth herein shall remain in full force and effect, and shall in no way be affected, impaired or invalidated. In the event that any such term, provision, covenant or restriction is held to be invalid, void or unenforceable, the parties hereto shall use their reasonable best efforts to find and employ an alternate means to achieve the same or substantially the same result as that contemplated by such terms, provisions, covenant or restriction.

#### 7.13 No Third Party Beneficiaries.

This Agreement is solely for the benefit of Xcel, the Xcel Affiliated Companies, NRG and the NRG Affiliated Companies. This Agreement confers upon no third party any remedy, claim, liability, reimbursement, cause of action or other right.

#### 7.14 Waivers.

No failure or delay on the part of a party in exercising any power or right hereunder shall operate as a waiver thereof, nor shall any single or partial exercise of any such right or power, or any abandonment or discontinuance of steps to enforce such right or power,

preclude any other or further exercise thereof or the exercise of any other right or power. No modification or waiver of any provision of this Agreement nor consent to any departure by the parties therefrom shall in any event be effective unless the same shall be in writing.

7.15 Setoff.

All payments to be made by any party under this Agreement may be netted against payments due to such party under this Agreement, but otherwise shall be made without setoff, counterclaim or withholding, all of which are hereby expressly waived.

IN WITNESS WHEREOF, each of the parties hereto has caused this Agreement to be executed by a duly authorized officer as of the date first above written.

XCEL ENERGY INC.

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

NRG ENERGY, INC.

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

XCEL AFFILIATED COMPANY

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

NRG AFFILIATED COMPANY

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_



## Schedule 1.1T

### Principles for Determining Tax Benefits and Tax Detriments

For purposes of this Agreement:

(a) A Tax Benefit or Tax Detriment is taken into account when realized. A Tax Benefit inuring to Xcel is realized following the utilization of the net operating loss carryforward expected to result from the Worthless Stock Deduction. A Tax Benefit inuring to NRG is realized following the utilization of any allowable net operating loss carryforward arising from a taxable period beginning before the Effective Date.

(b) Audits of multiple issues, for multiple years, or both that are resolved at the same time and in the same procedural manner give rise to a single amount, not separate amounts for each issue or year.

(c) Xcel and NRG shall endeavor in good faith, on a reasonable basis, to determine appropriate tax rates (federal and state) for calculating Tax Benefits and Tax Detriments for each party and to share with each other any information as may be relevant in making such determination.

(d) Audit adjustments of \$100,000 or less do not give rise to a Tax Benefit. Refunds of \$100,000 or less do not give rise to a Tax Detriment.

(e) The reduction in federal and Minnesota state taxes associated with an increase in the Worthless Stock Deduction occasioned by an NRG audit adjustment is a Tax Benefit to Xcel. The increase in federal and Minnesota state taxes associated with a decrease in the Worthless Stock Deduction occasioned by an NRG audit adjustment is a Tax Detriment to Xcel. Increases or decreases in taxes from jurisdictions other than the U.S. and Minnesota do not give rise to a Tax Benefit or a Tax Detriment.

(f) If a Tax Benefit equals or exceeds the indemnified liability that gives rise to it, the Tax Benefit is deemed to equal the indemnified liability and no payment is due any party with respect to that indemnified liability. If a Tax Detriment equals or exceeds the refund that gives rise to it, the Tax Detriment is deemed to equal the refund and no payment is due any party with respect to that refund.

Xcel and NRG may by written instrument modify or supplement this schedule without amending this Agreement and without notice to the other parties hereto.

Schedule 4.2

Amounts Payable with respect to Certain Adjustments

Adjustment	Jurisdiction	Date of Adjustment	Amount
1994 Return True Up	Federal	Agreed Nov. 2003	\$ (632,666)
2001 Return True Up	Federal	December 16, 2002	3,969,095
2002 4 <sup>th</sup> Quarter Estimated Payment	Minnesota	December 16, 2002	421,000
2002 Extension Payment	Minnesota	March 17, 2003	2,108,000
2002 Return True Up	Minnesota	TBD	TBD
2003 1 <sup>st</sup> Quarter Estimated Payment	Minnesota	March 17, 2003	2,021,000
2003 2 <sup>nd</sup> Quarter Estimated Payment	Minnesota	June 16, 2003	(807,000)
Audit Adjustment (1995-1997)	Minnesota	June 30, 2003	(532,952)
Other Adjustments as of Effective Date	_____	_____	\$ _____
	_____	_____	_____
Net Amount Due NRG	_____	_____	\$ _____

## Schedule 5.2

### Audits Commenced as of Date of Agreement

Type of Tax	Years Covered	NRG Proposed Adjustments?
Income (U.S. Federal)	1995-1997	Yes.
Income (U.S. Federal)	1998-2000*	Yes.
Income (Minnesota)	1989-1994	Yes.
Income (Minnesota)	1995-1997	Yes.
Income (California)	1998-2001	Yes.

\* IRS has issued IDR's with respect to 2001 but audit has not formally begun.

Schedule 5.3

NRG Proposed Adjustments  
as of Date of Agreement

Item	Tax Authority and Tax Period(s)	Total Adjustment Proposed (Income)	Agreed Disposition
Hybrid Debt Issue/U.S. Federal	1995-1997	\$22,781,062	NRG to contest.
Non-Hybrid Debt Issues/Federal	1995-1997	(\$ 7,414,333)*	Agreed with IRS.

\* This adjustment relates to the \$2,546,382 amount described on Schedule 5.4.

#### Schedule 5.4

##### Exception to Application of Section 5.4

Xcel and NRG estimate that NRG will be due a payment from Xcel of \$2,546,382 with respect to agreed NRG issues in the 1995-1997 federal audit cycle, and that NRG will owe Xcel \$418,646 with respect to an NRG deficiency from the 1989-1994 federal audit cycle. If no deficiency is sustained with respect to the 1995-1997 federal audit, with respect to the hybrid issue or otherwise, Section 5.4 will not apply to the difference between the refund and the deficiency (estimated to be  $\$2,546,382 - \$418,646 = \$2,127,736$ ).

NRG ENERGY, INC., as Issuer  
and  
WILMINGTON TRUST COMPANY, as Trustee  
INDENTURE

Dated as of [                      ], 2003

Up to \$500,000,000

10.0% Senior Notes due 2010

# CROSS-REFERENCE TABLE

TIA Section	Indenture Section
310(a)(1)	7.10
(a)(2)	7.10
(a)(3)	N.A.
(a)(4)	N.A.
(a)(5)	7.08; 7.10
(b)	7.08; 7.10; 13.02
(c)	N.A.
311(a)	7.11
(b)	7.11
(c)	N.A.
312(a)	2.05
(b)	13.03
(c)	13.03
313(a)	7.06
(b) (1)	N.A.
(b) (2)	7.06
(c)	7.06; 13.02
(d)	7.06
314(a)	4.07; 4.08; 13.02
(b)	N.A.
(c) (1)	13.04
(c) (2)	13.04
(c) (3)	N.A.
(d)	N.A.
(e)	13.05
(f)	N.A.
315(a)	7.01(b)
(b)	7.05; 13.02
(c)	7.01(a)
(d)	7.01(c)
(e)	6.11
316(a) (last sentence)	2.09
(a) (1)(A)	6.05
(a) (1)(B)	6.04
(a) (2)	N.A.
(b)	6.07
(c)	9.05
317(a) (1)	6.08

	TIA Section	Indenture Section
(a) (2)		6.09
(b)		2.04
318(a)		13.01
(c)		13.01

N.A. means Not Applicable

NOTE: This Cross-Reference Table shall not, for any purpose, be deemed to be a part of the Indenture.



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Note: This Table of Contents shall not, for any purpose, be deemed to be part of the Indenture.

THIS INDENTURE (this “**Indenture**”), dated as of [     ], 2003, is made by and between NRG Energy, Inc., a Delaware corporation (the “**Company**”), and Wilmington Trust Company, a Delaware trust company, as Trustee (the “**Trustee**”).

## RECITALS

WHEREAS, on May 14, 2003, the Company and certain of its directly and indirectly Wholly Owned Subsidiaries filed voluntary petitions under Chapter 11 of the United States Code, as amended (the “**Bankruptcy Code**”) with the United States Bankruptcy Court for the Southern District of New York (the “**Bankruptcy Court**”);

WHEREAS, the Company and certain of its directly and indirectly Wholly Owned Subsidiaries filed a Joint Plan of Reorganization (the “**Plan**”) which was approved by the Bankruptcy Court on [     ];

WHEREAS, pursuant to the Plan, the Company is required to issue the Notes (as defined herein), to certain holders of unsecured claims against the Company and NRG Power Marketing, Inc., a Delaware corporation and Wholly Owned Subsidiary of the Company;

WHEREAS, the Company has duly authorized the creation of an issue of 10.0% Senior Notes due 2010 (the “**Notes**”) and, to provide therefor, the Company has duly authorized the execution and delivery of this Indenture; and

WHEREAS, all things necessary to make the Notes, when executed by the Company and authenticated and delivered hereunder and duly issued by the Company, the valid obligations of the Company, and to make this Indenture a valid and binding agreement of the Company, in accordance with their and its terms, have been done.

NOW, THEREFORE, THIS INDENTURE WITNESSETH:

For and in consideration of the premises and the acquisition of the Notes by the Holders thereof, it is mutually agreed, for the equal and ratable benefit of all Holders of the Notes, as follows:

## ARTICLE ONE

### DEFINITIONS AND INCORPORATION BY REFERENCE

#### SECTION 1.01. Definitions.<sup>1</sup>

“**10% Equity Holder**” means, as of any date of determination, any Equity Holder which, together with its Affiliates, owns of record 10% or more of the Company’s common stock then outstanding.

---

<sup>1</sup> Defined terms that relate to the financial covenants herein shall be conformed to the same or analogous terms used the indenture governing the Exit Financing Notes or the Credit Agreement.

**“Acceleration Notice”** has the meaning provided in Section 6.02(a).

**“Acquired Indebtedness”** means Indebtedness of a Person or any of its Subsidiaries (i) existing at the time such Person becomes a Restricted Subsidiary or (ii) assumed by the Company or any Restricted Subsidiary in connection with the acquisition of assets from such Person and not incurred by such Person in connection with, or in anticipation or contemplation of, such Person becoming a Restricted Subsidiary or such acquisition.

**“Affiliate”** means, with respect to any Person, any other Person who directly or indirectly through one or more intermediaries controls, or is controlled by, or is under common control with, such Person. The term “control” means the possession, directly or indirectly, of the power to direct or cause the direction of the management and policies of a Person, whether through the ownership of voting securities, by contract or otherwise; provided, that beneficial ownership of more than 50% of the voting securities of any Person shall be deemed to be control. Notwithstanding the foregoing, (a) no Person (other than the Company or any Subsidiary of the Company) in whom a Securitization Entity makes an Investment in connection with a Qualified Securitization Transaction shall be deemed to be an Affiliate of the Company, or any of its Subsidiaries solely by reason of such Investment and (b) no Person shall be considered to be an Affiliate of the Company or any of its Subsidiaries solely because such Person had or exercised the right to nominate one or more members of the Board of Directors of the Company pursuant to the Plan. Unless otherwise provided or the context requires, any reference herein to “Affiliate” shall mean an “Affiliate” of the Company.

**“Affiliate Transaction”** has the meaning provided in Section 4.11.

**“Agent”** means any Registrar, Paying Agent, co-Registrar or agent for service of demands and notices in connection with the Notes.

**“Agent Members”** has the meaning provided in Section 2.16.

**“Asset Acquisition”** means (a) an Investment by the Company or any Restricted Subsidiary in any other Person if, as a result of such Investment, such Person shall (i) become a Restricted Subsidiary or (ii) be merged with or into the Company or any Restricted Subsidiary, or (b) the acquisition by the Company or any Restricted Subsidiary of the assets of any Person which constitute all or substantially all of the assets of such Person, any division or line of business of such Person or any other properties or assets of such Person other than in the ordinary course of business.

**“Asset Sale”** means any direct or indirect sale, issuance, conveyance, transfer, lease (other than operating leases entered into in the ordinary course of business), assignment or other transfer for value by the Company or any Restricted Subsidiary to any Person other than the Company or a Restricted Subsidiary of (a) any Capital Stock of any Restricted Subsidiary or (b) any other property or assets of the Company or any Restricted Subsidiary other than in the ordinary course of business; provided, however, that Asset Sales shall not include (i) a transaction or series of related transactions for which the Company or the Restricted Subsidiaries receive aggregate cash consideration of less than \$10.0 million, (ii) the sale, lease, conveyance, disposition or other transfer of all or substantially all of the assets of the Company as permitted

under Section 5.01 or any disposition that constitutes a Change of Control, (iii) the sale or discount, in each case without recourse, of accounts receivable arising in the ordinary course of business, but only in connection with the compromise or collection thereof, (iv) the factoring of accounts receivable arising in the ordinary course of business pursuant to arrangements on customary terms and conditions, (v) the licensing of intellectual property, (vi) disposals, leases or replacements of obsolete or worn-out equipment or equipment that is no longer useful in the conduct of the business of the Company and the Restricted Subsidiaries, in each case, in the ordinary course of business, (vii) a Restricted Payment permitted under Section 4.10, (viii) sales of accounts receivable, equipment and related assets (including contract rights) of the type specified in the definition of “Qualified Securitization Transaction” to a Securitization Entity for the fair market value thereof, including cash in an amount at least equal to 75% of the fair market value thereof as determined in accordance with GAAP, (ix) transfers of accounts receivable, equipment and related assets (including contract rights) of the type specified in the definition of “Qualified Securitization Transaction” (or a fractional undivided interest therein) by a Securitization Entity in a Qualified Securitization Transaction, (x) the exchange of assets held by the Company or a Restricted Subsidiary for assets held by any Person, provided, that (a) the assets received by the Company or such Restricted Subsidiary in any such exchange will immediately constitute, be part of, or be used as permitted under Section 4.21; and (b) any such assets received are of a comparable fair market value to the assets exchanged as determined in good faith by the Company, (xi) the sale, lease, conveyance, disposition or other assignment or transfer for value of fuel or emission credits in the ordinary course of the business of the Company or such Restricted Subsidiary; (xii) the sale, lease, conveyance, disposition or other assignment or transfer for value of any property or assets of, or any Capital Stock of, any Foreign Subsidiary; (xiii) the sale or disposition of cash or Cash Equivalents; (xiv) the sale, lease, conveyance, disposition or other assignment or transfer for value of any property or asset listed on Exhibit B attached hereto and (xv) any sale, lease, conveyance, disposition or other assignment or transfer for value of any property or asset not otherwise excluded from the definition of “Asset Sale” pursuant to clauses (i) through (xiv) above to the extent the aggregate cash consideration received from all such sales, conveyances, dispositions or other transfers does not exceed \$250.0 million. For the purposes of clause (viii) above, Purchase Money Notes shall be deemed to be cash.

**“Authenticating Agent”** has the meaning provided in Section 2.02.

**“Bankruptcy Law”** means Title 11, U.S. Code or any similar Federal, state or foreign law for the relief of debtors.

**“Beneficial Owner”** has the meaning assigned to such term in Rule 13d-3 and Rule 13d-5 under the Exchange Act.

**“Board of Directors”** means, as to any Person, the board of directors of such Person or any duly authorized committee thereof.

**“Board Resolution”** means, with respect to any Person, a duly adopted resolution of the Board of Directors or other equivalent governing body of such Person.

**“Business Day”** means a day that is not a Legal Holiday.

**“Capital Stock”** means (i) with respect to any Person that is a corporation, any and all shares, interests, participations or other equivalents (however designated) of corporate stock, including each class of common stock and preferred stock of such Person, (ii) with respect to any Person that is not a corporation, any and all partnership or other equity interests of such Person and (iii) excluding, in each case, debt securities convertible or exchangeable for securities of the type described in the foregoing clauses (i) and (ii).

**“Capitalized Lease Obligation”** means, as to any Person, the obligations of such Person under a lease that are required to be classified and accounted for as capital lease obligations under GAAP and, for purposes of this definition, the amount of such obligations at any date shall be the capitalized amount of such obligations at such date, determined in accordance with GAAP.

**“Cash Equivalents”** means: (i) marketable direct obligations issued by, or unconditionally guaranteed by, the United States Government or issued by any agency thereof and backed by the full faith and credit of the United States, in each case maturing within one year from the date of acquisition thereof; (ii) marketable direct obligations issued by any state of the United States of America or any political subdivision of any such state or any public instrumentality thereof maturing within one year from the date of acquisition thereof and, at the time of acquisition, having one of the two highest ratings obtainable from either S&P or Moody’s or carrying an equivalent rating by a nationally recognized rating agency, if both of the above named rating agencies cease publishing ratings of investments; (iii) commercial paper maturing no more than one year from the date of creation thereof and, at the time of acquisition, having a rating of at least A-2 or the equivalent thereof from S&P or at least P-2 or the equivalent thereof from Moody’s or carrying an equivalent rating by a nationally recognized rating agency, if both of the above named rating agencies cease publishing ratings of investments; (iv) certificates of deposit or bankers’ acceptances maturing within one year from the date of acquisition thereof issued by any bank organized under the laws of the United States of America or any state thereof or the District of Columbia having at the date of acquisition thereof combined capital and surplus of not less than \$500.0 million (or, with respect to foreign banks meeting equivalent capital and surplus requirements, similar instruments, including eurodollar time deposits); (v) repurchase obligations with a term of not more than seven days for underlying securities of the types described in clause (i) above entered into with any bank meeting the qualifications specified in clause (iv) above; and (vi) investments in any investment company or money market fund which invests substantially all its assets in securities of the types described in clauses (i) through (v) above.

**“Change of Control”** means the occurrence of one or more of the following events: (i) any sale, lease, exchange or other transfer (in one transaction or a series of related transactions) of all or substantially all of the assets of the Company and its Subsidiaries, taken as a whole, to any “person” (as such term is defined in) Section 13(d) of the Exchange Act) (whether or not otherwise in compliance with the provisions of this Indenture); (ii) the approval by the holders of Capital Stock of the Company of any plan or proposal for the liquidation or dissolution of the Company (whether or not otherwise in compliance with the provisions of this Indenture); (iii) the consummation of any transaction (including, without limitation, any merger or consolidation) the result of which is that any “person” (as defined above) (other than Matlin-Patterson) shall become the Beneficial Owner, directly or indirectly, of shares of the Company’s



Capital Stock representing more than 50% of the aggregate ordinary voting power represented by the issued and outstanding voting stock of the Company; (iv) the consummation of any transaction (including, without limitation, any merger or consolidation) the result of which is that Matlin-Patterson shall become the Beneficial Owner, directly or indirectly, of shares of the Company's Capital Stock representing more than 1% of the aggregate ordinary voting power represented by the issued and outstanding stock of the Company; or (v) during any twelve-month period, individuals who at the beginning of such period constituted the Board of Directors (together with any new directors whose election by the Board of Directors or whose nomination for election by the stockholders was approved by a vote of a majority of the directors then in office who were either directors at the beginning of such period or whose nomination was previously so approved) cease for any reason to constitute a majority of the Board of Directors then in office.

**"Change of Control Date"** has the meaning provided in Section 4.15.

**"Change of Control Offer"** has the meaning provided in Section 4.15.

**"Change of Control Payment Date"** has the meaning provided in Section 4.15.

**"Commission"** means the United States Securities and Exchange Commission.

**"Company"** means the party named as such in this Indenture until a successor replaces it pursuant to this Indenture and thereafter means such successor.

**"Comparable Treasury Issue"** means a particular United States treasury security selected by the Company as having a maturity comparable to the earliest optional redemption of the Notes that would be utilized in accordance with customary financial practice, in pricing new issues of corporate debt securities.

**"Comparable Treasury Yield"** means, with respect to any Redemption Date for a Makewhole Redemption: (a) the yield for the Comparable Treasury Issue (expressed as a yield to maturity) on the third Business Day preceding such Redemption Date, as set forth under the heading which represents the average for the immediately preceding week, appearing in the most recently published statistical release designated "H.15(519)" (or any successor release) published by the Board of Governors of the Federal Reserve System and which establishes yields on actively traded United States treasury securities adjusted to constant maturity under the caption "Treasury Constant Maturities" or (b) if that release (or any successor release) is not published or does not contain the applicable prices on the applicable Business Day, the yield to maturity for the Comparable Treasury Issue for that redemption date quoted to the Company by an independent investment banking firm of national standing selected by the Company.

**"Consolidated EBITDA"** means, with respect to the Company, for any period, the sum (without duplication) of (i) Consolidated Net Income and (ii) to the extent Consolidated Net Income has been reduced thereby, (A) all income taxes and foreign withholding taxes of the Company and the Restricted Subsidiaries paid or accrued in accordance with GAAP for such period, (B) Consolidated Interest Expense and (C) Consolidated Non-cash Charges.

**“Consolidated Fixed Charge Coverage Ratio”** means, with respect to the Company for any Consolidated Fixed Charges Measurement Period, the ratio of (i) Consolidated EBITDA of the Company during the applicable Consolidated Fixed Charges Measurement Period to (ii) Consolidated Fixed Charges (excluding interest capitalized in accordance with GAAP) of the Company for such Consolidated Fixed Charges Measurement Period. In addition to and without limitation of the foregoing, for purposes of this definition, “Consolidated EBITDA” and “Consolidated Fixed Charges” shall each be calculated after giving effect on a pro forma basis for the applicable Consolidated Fixed Charges Measurement Period to (i) the incurrence of any Indebtedness giving rise to the need to make such calculation and any incurrence or repayment of other Indebtedness occurring during such Consolidated Fixed Charges Measurement Period as if such incurrence or repayment, as the case may be (and the application of the proceeds thereof), occurred on the first day of such Consolidated Fixed Charges Measurement Period, and (ii) any Asset Sales or Asset Acquisitions (including any Asset Acquisition giving rise to the need to make such calculation as a result of the Company or one of the Restricted Subsidiaries (including any Person who becomes a Restricted Subsidiary as a result of the Asset Acquisition) incurring, assuming or otherwise being liable for Acquired Indebtedness and also including any Consolidated EBITDA (including any pro forma expense and cost reductions calculated on a basis consistent with Regulation S-X under the Securities Act as in effect and applied as of [ ], 2003) attributable to the assets which are the subject of the Asset Acquisition or Asset Sale) occurring during such Consolidated Fixed Charges Measurement Period, as if such Asset Sale or Asset Acquisition (including the incurrence, assumption or liability for any such Indebtedness or Acquired Indebtedness) occurred on the first day of such Consolidated Fixed Charges Measurement Period. If the Company or any of the Restricted Subsidiaries directly or indirectly guarantees Indebtedness of a third Person, the preceding sentence shall give effect to the incurrence of such guaranteed Indebtedness as if such Person or Restricted Subsidiary had directly incurred or otherwise assumed such guaranteed Indebtedness. Furthermore, in calculating “Consolidated Fixed Charges” for purposes of determining the denominator (but not the numerator) of this “Consolidated Fixed Charge Coverage Ratio,” (1) interest on outstanding Indebtedness determined on a fluctuating basis as of the Transaction Date and which will continue to be so determined thereafter shall be deemed to have accrued at a fixed rate per annum equal to the rate of interest on such Indebtedness in effect on the Transaction Date, (2) if interest on any Indebtedness actually incurred on the Transaction Date may optionally be determined at an interest rate based upon a factor of a prime or similar rate, a eurocurrency interbank offered rate, or other rates, then the interest rate in effect on the Transaction Date will be deemed to have been in effect during the Consolidated Fixed Charges Measurement Period, and (3) notwithstanding clauses (1) and (2) above, interest on Indebtedness determined on a fluctuating basis, to the extent such interest is covered by an Interest Rate Agreement, shall be deemed to accrue at the rate per annum resulting after giving effect to the operation of such Interest Rate Agreements.

**“Consolidated Fixed Charges”** means, with respect to the Company for any period, the sum, without duplication, of (i) Consolidated Interest Expense (before amortization or write-off of debt issuance costs) plus (ii) the amount of all cash dividend payments on any series of Preferred Stock of the Company plus (iii) the amount of all dividend payments on any series of Permitted Domestic Subsidiary Preferred Stock.

**“Consolidated Fixed Charges Measurement Period”** means (i) if the Transaction Date occurs on or after the first anniversary of the last day of the first fiscal quarter ending subsequent to the Effective Date, the four full fiscal quarters ending on or prior to the Transaction Date and (ii) if the Transaction Date occurs at any time prior to the first anniversary of the last day of the first fiscal quarter ending subsequent to the Effective Date, the period consisting of the number of full fiscal quarters commencing subsequent to the Effective Date and ending on or prior to the Transaction Date; provided, that, if no such full fiscal quarter has ended prior to the Transaction Date, the “Consolidated Fixed Charges Measurement Period” shall mean the period beginning on the Effective Date and ending on such Transaction Date.

**“Consolidated Interest Expense”** means, with respect to the Company for any period, the sum of, without duplication, (i) the aggregate of all cash interest expense with respect to all outstanding Indebtedness of the Company and the Restricted Subsidiaries, including the net costs associated with Interest Rate Obligations, for such period determined on a consolidated basis in conformity with GAAP, and (ii) the interest component of Capitalized Lease Obligations accrued and/or scheduled to be paid or accrued by the Company and the Restricted Subsidiaries during such period as determined on a consolidated basis in accordance with GAAP.

**“Consolidated Net Income”** of the Company means, for any period, the aggregate net income (or loss) of the Company for such period on a consolidated basis, determined in accordance with GAAP; provided, that there shall be excluded therefrom (a) gains and losses from Asset Sales (without regard to the \$10.0 million limitation set forth in the definition thereof) or abandonments or reserves relating thereto and the related tax effects according to GAAP, (b) gains and losses due solely to fluctuations in currency values and the related tax effects according to GAAP, (c) items classified as extraordinary, unusual or nonrecurring gains and losses (including non-cash fresh start accounting charges and non-cash purchase accounting charges), and the related tax effects according to GAAP, (d) the net income (or loss) of any Person acquired in a pooling of interests transaction accrued prior to the date it becomes a Restricted Subsidiary or is merged or consolidated with the Company or any Restricted Subsidiary, (e) the net income of any Restricted Subsidiary to the extent that the declaration of dividends or similar distributions by that Restricted Subsidiary of that income is restricted by contract, operation of law or otherwise, (f) the net loss of any Person, other than a Restricted Subsidiary, (g) the net income of any Person, other than a Restricted Subsidiary, except to the extent of cash dividends or distributions paid to the Company or a Restricted Subsidiary by such Person, (h) only for purposes of clause (3)(v) of Section 4.10(a), any amounts included pursuant to clause (3)(y) of Section 4.10(a), (i) one time non-cash compensation charges, including any arising from existing stock options resulting from any merger or recapitalization transaction; (j) the cumulative effect of a change in accounting principles; (k) any amortization or write-off of debt issuance or deferred financing costs and premiums and prepayment penalties, in each case, to the extent attributable to the incurrence of Refinancing Indebtedness; (l) income or loss attributable to discontinued operations (including operations disposed of during such period whether or not such operations were classified as discontinued) and (m) any non-cash charges relating to the mark-to-market of derivative instruments as required by FAS 133.

**“Consolidated Non-cash Charges”** means, with respect to the Company for any period, the aggregate depreciation, amortization and other non-cash expenses of the Company

and the Restricted Subsidiaries reducing Consolidated Net Income of the Company and the Restricted Subsidiaries for such period, determined on a consolidated basis in accordance with GAAP (excluding any such non-cash charge constituting an extraordinary item or loss or any such non-cash charge which requires an accrual of or a reserve for cash charges for any future period).

**“Covenant Defeasance”** has the meaning provided in Section 8.02.

**“Credit Agreement”** means that certain Credit Agreement, dated as of , by and among the Company, PMI, the lenders party thereto, Credit Suisse First Boston, acting through its Cayman Islands Branch, and Lehman Brothers, Inc., as joint lead book runners and joint lead arrangers; Credit Suisse First Boston, acting through its Cayman Islands Branch, as administrative agent and collateral agent; Lehman Commercial Paper Inc., as syndication agent, and , as borrowing base agent; providing for up to \$[ ] of revolving credit and term loan borrowings, including any related notes, guarantees, collateral documents, instruments and agreements executed in connection therewith, and in each case as amended, restated, modified, renewed, refunded, replaced (whether upon or after termination or otherwise) or refinanced (including by means of sales of debt securities to institutional investors) in whole or in part from time to time.

**“Currency Agreement”** means any foreign exchange contract, currency swap agreement or other similar agreement or arrangement designed to protect any Person against fluctuations in currency values.

**“Custodian”** means any receiver, trustee, assignee, liquidator, sequestrator or similar official under any Bankruptcy Law.

**“Default”** means an event or condition the occurrence of which is, or with the lapse of time or the giving of notice or both would be, an Event of Default.

**“Depository”** means The Depository Trust Company, its nominees and successors and any Person appointed by the Company as a successor to The Depository Trust Company in its capacity as depository pursuant to the terms and conditions hereof.

**“Disqualified Capital Stock”** means that portion of any Capital Stock which, by its terms (or by the terms of any security into which it is convertible or for which it is exchangeable), or upon the happening of any event (other than an event which would constitute a Change of Control), matures (excluding any maturity as the result of an optional redemption by the issuer thereof) or is mandatorily redeemable, pursuant to a sinking fund obligation or otherwise, or is redeemable at the sole option of the holder thereof (except, in each case, upon the occurrence of a Change of Control) on or prior to the final maturity date of the Notes. Notwithstanding the preceding sentence, any Capital Stock that would constitute Disqualified Capital Stock solely because the holders of the Capital Stock have the right to require the Company to repurchase such Capital Stock upon the occurrence of a change of control or asset sale will not constitute Disqualified Capital Stock if the terms of such Capital Stock provide that the Company may not repurchase any such Capital Stock pursuant to such provisions unless such repurchase or redemption complies with Section 4.10. The amount of Disqualified Capital Stock

deemed to be outstanding at any time for purposes of this Indenture will be the maximum amount that the Company and its Restricted Subsidiaries may become obligated to pay upon the maturity of, or pursuant to any mandatory redemption provision of, such Disqualified Capital Stock, exclusive of accrued dividends.

**“Domestic Subsidiary”** means any Restricted Subsidiary that is organized under the laws of the United States of America or any state thereof or the District of Columbia.

**“Effective Date”** means the date of original issuance of the Notes.

**“Equity Holder”** means, as of any date of determination, any Original Equity Holder who holds Registrable Common Stock or any transferee who acquired at least 1% of the Company’s common stock then outstanding from an Original Equity Holder, in each case who, as of such date of determination (i) owns of record at least 1% of the Company’s common stock then outstanding and (ii) is a signatory to the Registration Rights Agreement or has delivered to the Company a Joinder Agreement (as defined in the Registration Rights Agreement) in accordance with the terms of the Registration Rights Agreement.

**“Equity Offering”** means any public or private offering for cash of the Company’s common stock after the Effective Date (other than sales made to any Restricted Subsidiary and other than sales of Disqualified Capital Stock).

**“Event of Default”** has the meaning provided in Section 6.01.

**“Exchange Act”** means the Securities Exchange Act of 1934, as amended, and the rules and regulations promulgated by the Commission thereunder.

**“Exit Financing Indebtedness”** means, collectively, Indebtedness (including, without limitation, any guarantees) incurred pursuant to the Credit Agreement and Indebtedness represented by the Exit Financing Notes.

**“Exit Financing Notes”** means the Company’s Second Priority Senior Secured Notes (and any exchange notes issued with respect thereof) to be issued under and pursuant to that certain Indenture, dated as of [ ], by and among [ ], as amended, restated, modified, refunded, replaced or refinanced in whole or in part from time to time.

**“Facility”** means a power or energy generation facility.

**“fair market value”** means, unless otherwise specified, with respect to any asset or property, the price which could be negotiated in an arm’s-length, free market transaction, for cash, between a willing seller and a willing and able buyer, neither of whom is under undue pressure or compulsion to complete the transaction.

**“FAS”** means statements of Financial Accounting Standards as promulgated from time to time by the Financial Accounting Standards Board.

**“Foreign Subsidiary”** means any Restricted Subsidiary that is not organized under the laws of the United States of America or any state thereof or the District of Columbia.

**“GAAP”** means generally accepted accounting principles in the United States of America as in effect as of the date of this Indenture, including those set forth in the opinions and pronouncements of the Accounting Principles Board of the American Institute of Certified Public Accountants and statements and pronouncements of the Financial Accounting Standards Board or in such other statements by such other entity as is approved by a significant segment of the accounting profession. All ratios and computations based on GAAP contained in this Indenture shall be computed in conformity with GAAP applied on a consistent basis.

**“Global Note”** has the meaning provided in Section 2.01.

**“Good Utility Practices”** means any of those practices, methods, standards and acts (including the practices, methods and acts engaged in or approved by a significant portion of the electric power generation industry in the United States) that, at a particular time, in the exercise of reasonable judgment in light of the facts known or that should have reasonably been known at the time a decision was made, could have reasonably been expected to accomplish the desired result consistent with good business practices, reliability, economy, safety and expedition. “Good Utility Practices” is not intended to be limited to optimal practices that could be used to accomplish a desired result.

**“Governmental Authority”** means any government or state (or any subdivision thereof), whether domestic, foreign or multinational, or any agency, authority, bureau, commission, department or similar body or instrumentality, or any governmental court or tribunal.

**“guarantee”** means (i) any obligation, contingent or otherwise, of any Person directly or indirectly guaranteeing any Indebtedness of any other Person and (ii) any obligation, direct or indirect, contingent or otherwise, of any Person:

- (1) to purchase or pay (or advance or supply funds for the purchase or payment of) such Indebtedness of any other Person (whether arising by virtue of partnership arrangements, or by agreement to keep-well, to purchase assets, goods, securities or services, to take-or-pay, or to maintain financial statement conditions or otherwise); or
- (2) entered into for purposes of assuring in any other manner the obligee of such Indebtedness of the payment thereof or to protect such obligee against loss in respect thereof (in whole or in part);

provided, however, that the term “guarantee” will not include endorsements for collection or deposit in the ordinary course of business. The term “guarantee” used as a verb has a corresponding meaning.

**“Holder”** or **“Noteholder”** means the Person in whose name a Note is registered on the Registrar's books.

**“incur”** has the meaning provided in Section 4.12.

**“Indebtedness”** means with respect to any Person on any date of determination, without duplication, (i) the principal of obligations of such Person for borrowed money, (ii) the principal of obligations of such Person evidenced by bonds, debentures, notes or other similar instruments, (iii) all Capitalized Lease Obligations of such Person, (iv) the principal component of all obligations of such Person issued or assumed as the deferred purchase price of property, all conditional sale obligations and all obligations under any title retention agreement (but excluding, in each case, trade accounts payable, warranty and service obligations, and all other obligations arising in the ordinary course of business), (v) the principal component of all obligations for the reimbursement of any obligor on any letter of credit, banker’s acceptance or similar credit transaction, (vi) guarantees in respect of Indebtedness referred to in clauses (i) through (v) above and clause (viii) below, (vii) all monetary obligations of any other Person of the type referred to in clauses (i) through (vi) which are secured by any Lien on any property or asset of such Person, the amount of such obligation being deemed to be the lesser of the fair market value of such property or asset or the amount of the obligation so secured, (viii) all Obligations under Currency Agreements and Interest Rate Agreements of such Person and (ix) all Disqualified Capital Stock issued by such Person with the amount of Indebtedness represented by such Disqualified Capital Stock being equal to the greater of its voluntary or involuntary liquidation preference and its maximum fixed repurchase price, but excluding accrued dividends, if any. For purposes hereof, (x) the “maximum fixed repurchase price” of any Disqualified Capital Stock which does not have a fixed repurchase price shall be calculated in accordance with the terms of such Disqualified Capital Stock as if such Disqualified Capital Stock were purchased on any date on which Indebtedness shall be required to be determined pursuant to this Indenture, and if such price is based upon, or measured by, the fair market value of such Disqualified Capital Stock, such fair market value shall be determined reasonably and in good faith by the Board of Directors of the issuer of such Disqualified Capital Stock and (y) any transfer of accounts receivable, equipment or other assets (including contract rights) which constitute a sale for purposes of GAAP and any related recourse provisions under instrument sales programs entered into in the ordinary course of business shall not constitute Indebtedness hereunder.

**“Indenture”** means this Indenture, as amended, supplemented or otherwise modified from time to time in accordance with the terms hereof.

**“Initial Public Offering”** means the first underwritten public offering of Qualified Capital Stock (other than pursuant to the Plan) by the Company pursuant to a registration statement filed with the Commission in accordance with the Securities Act for aggregate net cash proceeds of at least \$[ ] million.

**“Interest Payment Date”** means the stated maturity of an installment of interest on the Notes.

**“Interest Rate Agreement”** means any interest rate protection agreement, interest rate future agreement, interest rate swap agreement, interest rate option agreement, interest rate hedge agreement or other similar agreement or arrangement designed to protect against fluctuations in interest rates to or under which any Person is a party or beneficiary.

**“Interest Rate Obligation”** means any obligation of the Company or any Restricted Subsidiary pursuant to any Interest Rate Agreement.

**“Investment”** means, with respect to any Person, any direct or indirect loan or other extension of credit (including a guarantee) or capital contribution to (by means of any transfer of cash or other property to any other Person or any payment for property or services for the account or use of any other Person), or any purchase or acquisition by such Person of any Capital Stock, bonds, notes, debentures or other securities or evidences of Indebtedness issued by, any Person. “Investment” shall exclude (a) issuances of any Person’s common stock (including in connection with an acquisition of assets, Capital Stock or other securities by the Company or any Subsidiary) and (b) extensions of trade credit by the Company and its Subsidiaries on commercially reasonable terms in accordance with normal trade practices of the Company or such Subsidiary, as the case may be. For the purposes of Section 4.10, (i) “Investment” shall include the portion (proportionate to the Company’s equity interest in a Restricted Subsidiary to be designated as an Unrestricted Subsidiary) of the book value of the net assets of any Restricted Subsidiary at the time that such Restricted Subsidiary is designated an Unrestricted Subsidiary and shall exclude the book value of the net assets of any Unrestricted Subsidiary at the time that such Unrestricted Subsidiary is designated a Restricted Subsidiary and (ii) the amount of any Investment shall be the original cost of such Investment plus the cost of all additional Investments by the Company or any of its Restricted Subsidiaries, without any adjustments for increases or decreases in value, or write-ups, write-downs or write-offs with respect to such Investment.

**“Investment Grade Rating”** means a rating equal to or higher than Baa3 (or the equivalent) by Moody’s or BBB- (or the equivalent) by S&P.

**“Legal Defeasance”** has the meaning provided in Section 8.02.

**“Legal Holiday”** has the meaning provided in Section 13.07.

**“Lien”** means any lien, mortgage, deed of trust, pledge, security interest, charge or encumbrance of any kind (including any conditional sale or other title retention agreement, any lease in the nature thereof and any agreement to give any security interest).

**“Makewhole Rate”** means, for any redemption date, the annual rate equal to the yield to maturity, compounded semi-annually, of a selected Comparable Treasury Issue, assuming a yield for the selected Comparable Treasury Issue equal to the Comparable Treasury Yield for the particular redemption date.

**“Matlin-Patterson”** means, collectively, [Matlin-Patterson Asset Management LLC] and its Affiliates.

**“Maturity Date”** means [ ], 2010.

**“Moody’s”** means Moody’s Investors Service, Inc. and its successors.

**“Net Cash Proceeds”** means, with respect to any Asset Sale, the proceeds in the form of cash or Cash Equivalents received by the Company or any of its Subsidiaries from such



Asset Sale net of (a) out-of-pocket expenses and fees relating to such Asset Sale (including legal, accounting, title and recording tax expenses, investment banking fees and sales commissions and any relocation expenses incurred as a result thereof), (b) taxes paid or payable as a result of such Asset Sale after taking into account any reduction in consolidated tax liability due to available tax credits or deductions and any tax sharing arrangements, (c) repayment of Indebtedness that is required to be repaid in connection with such Asset Sale, (d) any portion of cash proceeds which the Company determines in good faith should be reserved for post-closing adjustments, it being understood and agreed that on the day that all such post-closing adjustments have been determined, the amount (if any) by which the reserved amount in respect of such Asset Sale exceeds the actual post-closing adjustments payable by the Company or any of its Subsidiaries shall constitute Net Cash Proceeds on such date and (e) the deduction of appropriate amounts to be provided by the seller as a reserve, in accordance with GAAP, against any liabilities retained by the Company or any Restricted Subsidiary after such Asset Sale that are associated with the assets disposed of in such Asset Sale.

**“Net Proceeds Offer”** has the meaning provided in Section 4.16.

**“Net Proceeds Offer Payment Date”** has the meaning provided in Section 4.16.

**“Net Proceeds Offer Trigger Date”** has the meaning provided in Section 4.16.

**“Non-Recourse Debt”** means Indebtedness of the Company or any Restricted Subsidiary incurred by such Person to acquire, construct, improve or develop a Facility or any other asset used in the business of the Company or any Restricted Subsidiary to the extent that such Indebtedness is without recourse to the Company or any Restricted Subsidiary or to any of their respective assets other than such Facility or such other asset and the income from, and proceeds of, such Facility or such other asset.

**“Notes”** has the meaning set forth in the recitals hereto.

**“Obligations”** means, without duplication, all obligations for principal, premium, interest, penalties, fees, indemnifications, reimbursements, damages and other liabilities payable under the documentation governing any Indebtedness.

**“Officer”** means, with respect to any Person, the Chairman of the Board, the Chief Executive Officer, the President, any Vice President, the Chief Financial Officer, the Treasurer, the Controller, or the Secretary of such Person, or any other officer designated by the Board of Directors serving in a similar capacity.

**“Officers’ Certificate”** means, with respect to any Person, a certificate signed by two Officers or by an Officer and either an Assistant Treasurer or an Assistant Secretary of such Person and otherwise complying with the requirements of Sections 13.04 and 13.05, as they relate to the making of an Officers’ Certificate.

**“Opinion of Counsel”** means a written opinion from legal counsel, who may be in-house counsel for the Company, and who is reasonably acceptable to the Trustee complying with the requirements of Sections 13.04 and 13.05, as they relate to the giving of an Opinion of Counsel.

**“Original Equity Holder”** means those Persons that (i) received shares of the Company’s common stock on or after the Effective Date pursuant to the Plan and (ii) are signatories to the Registration Rights Agreement.

**“Paying Agent”** has the meaning provided in Section 2.03.

**“Permitted Domestic Subsidiary Preferred Stock”** means any series of Preferred Stock of a Domestic Subsidiary of the Company that constitutes Qualified Capital Stock and has a fixed dividend rate, the liquidation value of all series of which, when combined with the aggregate amount of Indebtedness of the Company and its Restricted Subsidiaries incurred pursuant to clause (xx) of the definition of Permitted Indebtedness, does not exceed \$[ ] million; provided, that such amount shall increase to \$[ ] million upon consummation of an Initial Public Offering.

**“Permitted Indebtedness”** means, without duplication, (i) the Notes, (ii) the Xcel Note, (iii) other Indebtedness of the Company and its Subsidiaries outstanding on the Effective Date reduced by the amount of any scheduled amortization payments or mandatory prepayments when actually paid or permanent reductions thereon, (iv) Interest Rate Obligations of the Company or any of its Subsidiaries incurred in the ordinary course of business and not for speculative purposes, (v) Indebtedness under Currency Agreements, (vi) intercompany Indebtedness owed by the Company to any Restricted Subsidiary or by any Restricted Subsidiary to the Company or any other Restricted Subsidiary, (vii) Acquired Indebtedness to the extent the Company could have incurred such Indebtedness in accordance with Section 4.12 on the date such Indebtedness became Acquired Indebtedness (other than Permitted Indebtedness), (viii) guarantees by (A) the Company and the Restricted Subsidiaries of each other’s Indebtedness; provided, that such Indebtedness is permitted to be incurred under this Indenture and (B) the Company of the obligations of PMI entered into in the ordinary course of business to the extent that such obligations are considered to be Indebtedness, (ix) Indebtedness (including Capitalized Lease Obligations) incurred by the Company or any Restricted Subsidiary to finance the purchase, lease, cost of design, construction, installation or improvement of property (real or personal), plant or equipment (whether through the direct purchase of assets or the Capital Stock of any Person owning such assets) in an aggregate principal amount outstanding not to exceed \$50.0 million, (x) Indebtedness incurred by the Company or any Restricted Subsidiary constituting reimbursement obligations with respect to letters of credit issued in the ordinary course of business, including letters of credit in respect of (A) power marketing and trading activity, (B) workers’ compensation claims or (C) self-insurance, or other Indebtedness with respect to reimbursement type obligations regarding workers’ compensation claims, (xi) Indebtedness arising from agreements of the Company or any Restricted Subsidiary providing for indemnification, adjustment of purchase price, earn out or other similar obligations, in each case, incurred or assumed in connection with the disposition of any business, assets or a Restricted Subsidiary, other than guarantees of Indebtedness incurred by any Person acquiring all or any portion of such business, assets or Restricted Subsidiary for the purpose of financing such acquisition; provided, that the maximum assumable liability in respect of all such Indebtedness shall at no time exceed the gross proceeds actually received by the Company and its Restricted Subsidiaries in connection with such disposition, (xii) obligations in respect of performance and surety bonds and completion guarantees provided by the Company or any Restricted Subsidiary in the ordinary course of business, (xiii) any refinancing, modification,

replacement, renewal, restatement, refunding, deferral, extension, substitution, supplement, reissuance or resale of existing or future Indebtedness, including any additional Indebtedness incurred to pay interest or premiums required by the instruments governing such existing or future Indebtedness as in effect at the time of issuance thereof ("**Required Premiums**") and including any Indebtedness issued in exchange for, or the net proceeds of which are used to refund, refinance, replace, defease or discharge such existing or further Indebtedness and, in each case, fees and expenses in connection therewith ("**Refinancing Indebtedness**"); provided, that (1) any such event shall not result in an increase in the aggregate principal amount of Permitted Indebtedness by more than \$100.0 million (except to the extent such increase is a result of a simultaneous incurrence of additional Indebtedness (A) to pay Required Premiums and related fees and expenses or (B) otherwise permitted to be incurred under this Indenture) of the Company and its Subsidiaries, (2) any such event shall not create Indebtedness with a Weighted Average Life to Maturity at the time such Indebtedness is incurred that is less than the Weighted Average Life to Maturity at such time of the Indebtedness being refinanced, modified, replaced, renewed, restated, refunded, deferred, extended, substituted, supplemented, reissued or resold (except that this subclause (2) will not apply in the event the Indebtedness being refinanced, modified, replaced, renewed, restated, refunded, deferred, extended, substituted, supplemented, reissued or resold was originally incurred in reliance upon clauses (vi) or (xiv) of this definition) and (3) if the Indebtedness being refinanced is subordinated in right of payment to the Notes, such Refinancing Indebtedness is subordinated in right of payment to the Notes on terms at least as favorable to the Holders as those contained in the documentation governing the Indebtedness being extended, refinanced, renewed, replaced, defeased or refunded, (xiv) the incurrence by a Securitization Entity of Indebtedness in a Qualified Securitization Transaction that is not recourse to the Company or any other Subsidiary of the Company (except for Standard Securitization Undertakings), (xv) Indebtedness arising from the honoring by a bank or other financial institution of a check, draft or similar instrument (except in the case of daylight overdrafts) drawn against insufficient funds in the ordinary course of business; provided, that such Indebtedness is extinguished within five Business Days of incurrence, (xvi) unfunded pension fund and other employee benefit plan obligations and liabilities to the extent they are permitted to remain unfunded under applicable law, (xvii) Indebtedness incurred pursuant to the Working Capital Facility, (xviii) Non-Recourse Debt, (xix) Exit Financing Indebtedness in an aggregate principal amount not to exceed \$2.7 billion, and (xx) additional Indebtedness of the Company and the Restricted Subsidiaries in an aggregate principal amount not to exceed \$100.0 million at any one time outstanding.

**"Permitted Investments"** means (i) Investments by the Company or any Restricted Subsidiary in (A) any Restricted Subsidiary (whether existing on the Effective Date or created thereafter) or (B) any other Person (including by means of any transfer of cash or other property) if as a result of such Investment such Person shall become a Restricted Subsidiary or such Person is merged, consolidated or amalgamated with or into or transfers substantially all of its assets to, or is liquidated into, the Company or a Restricted Subsidiary, (ii) Investments in the Company by any Restricted Subsidiary, (iii) cash and Cash Equivalents, (iv) Investments existing on the Effective Date, (v) loans or advances to employees and officers of the Company and the Restricted Subsidiaries (including for travel expenses and similar expenses incurred on behalf of the Company or any of the Restricted Subsidiaries) in the ordinary course of business, (vi) accounts receivable created or acquired in the ordinary course of business, (vii) Currency Agreements and Interest Rate Agreements entered into in the ordinary course of the Company's

or the Restricted Subsidiaries' businesses and otherwise in compliance with this Indenture, (viii) Investments received in compromise or resolution of any litigation, arbitration or other dispute with any Person who is not an Affiliate of the Company or any Subsidiary, including pursuant to any plan of reorganization or similar arrangement upon the bankruptcy or insolvency of such Person, (ix) guarantees by the Company or any Restricted Subsidiary of Indebtedness otherwise permitted to be incurred by the Company or the Restricted Subsidiaries under this Indenture, (x) any Investment by the Company or a Wholly Owned Subsidiary of the Company in a Securitization Entity or any Investment by a Securitization Entity in any other Person in connection with a Qualified Securitization Transaction; provided, that any Investment in a Securitization Entity is in the form of a Purchase Money Note or an equity interest, (xi) any transaction to the extent it constitutes an Investment that is permitted by, and made in accordance with, clause (b) of Section 4.11 (other than transactions described in clause (b)(v) of such clause), (xii) Investments the payment for which consists exclusively of Qualified Capital Stock of the Company, (xiii) Investments received by the Company or the Restricted Subsidiaries as consideration for asset sales, including Asset Sales; provided, that in the case of an Asset Sale, such Asset Sale is effected in compliance with Section 4.16, (xiv) the creation of Liens on the assets of the Company or any of the Restricted Subsidiaries in compliance with Section 4.18, (xv) endorsements of negotiable instruments and similar obligations in the ordinary course of business, (xvi) Investments in joint ventures of up to \$50.0 million at any one time outstanding, (xvii) repurchases of the Notes or the Exit Financing Notes, and (xviii) additional Investments having an aggregate fair market value, taken together with all other Investments made pursuant to this clause (xviii) that are at that time outstanding, not to exceed 10% of Total Assets at the time of such Investment (with the fair market value of each Investment being measured at the time made and without giving effect to subsequent changes in value).

**"Permitted Liens"** means the following types of Liens:

(i) Liens for taxes, assessments, duties or governmental charges or claims either (a) not delinquent or (b) contested in good faith by appropriate proceedings and as to which the Company or the Restricted Subsidiaries shall have set aside on its books such reserves as may be required pursuant to GAAP;

(ii) statutory Liens of landlords and Liens of carriers, warehousemen, mechanics, suppliers, vendors, materialmen, repairmen and other Liens imposed by law incurred in the ordinary course of business for sums not yet delinquent or being contested in good faith, if such reserve or other appropriate provision, if any, as shall be required by GAAP shall have been made in respect thereof;

(iii) Liens incurred or deposits made in the ordinary course of business in connection with workers' compensation, unemployment insurance and other types of social security, including any Lien securing letters of credit issued in the ordinary course of business consistent with past practice in connection therewith, or to secure the performance of tenders, statutory obligations, surety and appeal bonds, bids, tenders, leases, government contracts, performance and return-of-money bonds and other similar obligations (exclusive of obligations for the payment of borrowed money);

(iv) judgment Liens not giving rise to an Event of Default;

(v) survey exceptions, easements or reservations of, or rights of others for, licenses, rights-of-way, sewers, electric lines, telegraph and telephone lines, and other similar purposes, zoning restrictions and other similar charges or encumbrances in respect of real property or Liens incidental to the conduct of the business of the Company or any Restricted Subsidiary or to the ownership of their respective properties, in each case not interfering in any material respect with the ordinary conduct of the business of the Company or any of the Restricted Subsidiaries;

(vi) any interest or title of a lessor under any Capitalized Lease Obligation;

(vii) purchase money Liens to finance the acquisition of property or assets of the Company or any Restricted Subsidiary acquired in the ordinary course of business; provided, however, that (A) the related purchase money Indebtedness shall not exceed the cost of such property or assets and shall not be secured by any property or assets of the Company or any Restricted Subsidiary other than the property and assets so acquired and (B) the Lien securing such Indebtedness shall be created within 90 days of such acquisition;

(viii) Liens upon specific items of inventory or other goods and proceeds of any Person securing such Person's obligations in respect of bankers' acceptances issued or created for the account of such Person to facilitate the purchase, shipment, or storage of such inventory or other goods;

(ix) Liens securing reimbursement obligations with respect to commercial letters of credit which encumber documents and other property relating to such letters of credit and products and proceeds thereof;

(x) Liens encumbering deposits made to secure obligations arising from statutory, regulatory, contractual, or warranty requirements of the Company or any of the Restricted Subsidiaries, including rights of offset and set-off;

(xi) Liens securing Interest Rate Obligations which Interest Rate Obligations relate to Indebtedness that is otherwise permitted under this Indenture;

(xii) Liens securing Indebtedness under Currency Agreements;

(xiii) Liens securing Acquired Indebtedness that is permitted under clause (vii) of the definition of Permitted Indebtedness;

(xiv) Liens incurred in the ordinary course of business of the Company or any Restricted Subsidiary with respect to obligations that do not in the aggregate exceed \$[25.0] million at any one time outstanding;

(xv) Liens on assets transferred to a Securitization Entity or on assets of a Securitization Entity, in either case incurred in connection with a Qualified Securitization Transaction;

(xvi) leases or subleases granted to others that do not materially interfere with the ordinary course of business of the Company and the Restricted Subsidiaries;

(xvii) Liens arising from filing Uniform Commercial Code financing statements regarding operating leases;

(xviii) Liens on property at the time the Company or a Restricted Subsidiary acquired the property, including any acquisition by means of a merger or consolidation with or into the Company or any Restricted Subsidiary; provided, that such Liens may not extend to any other property owned by the Company or any Restricted Subsidiary;

(xix) Liens securing Indebtedness or other obligations of a Restricted Subsidiary owing to the Company or any Restricted Subsidiary;

(xx) Liens on property or shares of Capital Stock of any Person at the time such Person becomes a Subsidiary; provided, that such Liens may not extend to any other property owned by the Company or any Restricted Subsidiary;

(xxi) Liens incurred by a Subsidiary to secure Non-Recourse Debt incurred pursuant to clause (xviii) of the definition of "Permitted Indebtedness"; provided, that such Lien does not extend to any asset or property of the Company or any other Subsidiary that is a Restricted Subsidiary;

(xxii) Liens securing the Working Capital Facility;

(xxiii) Liens securing Exit Financing Indebtedness (and any guarantees by the Company or any Subsidiary thereof); and

(xxiv) Liens existing on the Effective Date, together with any Liens securing Indebtedness incurred in reliance on clause (xiii) of the definition of Permitted Indebtedness in order to refinance the Indebtedness secured by Liens existing on the Effective Date; provided, that the Liens securing any Refinancing Indebtedness shall not extend to property other than that pledged under the Liens securing the Indebtedness being refinanced.

**"Person"** means an individual, partnership, corporation, company, limited liability company, unincorporated organization, trust or joint venture, or any Governmental Authority.

**"Physical Notes"** has the meaning provided in Section 2.01.

**"Plan"** has the meaning provided in the recitals hereto.

**"Plan of Liquidation"** means, with respect to any Person, a plan that provides for or contemplates, or the effectuation of which is preceded or accompanied by (whether or not substantially contemporaneously, in phases or otherwise) (i) the sale, lease, conveyance or other disposition of all or substantially all of the assets of such Person otherwise than as an entirety or substantially as an entirety and (ii) the distribution of all or substantially all of the proceeds of

such sale, lease, conveyance or other disposition and all or substantially all of the remaining assets of such Person to holders of Capital Stock of such Person.

**“PMI”** means NRG Power Marketing Inc., a Delaware corporation.

**“Preferred Stock”** of any Person means any Capital Stock of such Person the rights with respect to which are preferential to the rights of any other Capital Stock of such Person with respect to dividends or redemptions or upon liquidation.

**“principal”** of any Indebtedness (including the Notes) means the principal amount of such Indebtedness plus the premium, if any, on such Indebtedness.

**“Productive Assets”** means assets (including Capital Stock) of a kind used or usable in the businesses of the Company and the Restricted Subsidiaries permitted by Section 4.21.

**“Purchase Money Note”** means a promissory note of a Securitization Entity evidencing a line of credit, which may be irrevocable, from the Company or any Subsidiary of the Company in connection with a Qualified Securitization Transaction to a Securitization Entity, which note shall be repaid from cash available to the Securitization Entity, other than amounts required to be established as reserves pursuant to agreements, amounts paid to investors in respect of interest, principal and other amounts owing to such investors and amounts paid in connection with the purchase of newly generated receivables or newly acquired equipment.

**“Qualified Capital Stock”** means any stock that is not Disqualified Capital Stock.

**“Qualified Investment”** means any purchase of, or other investment in, Productive Assets.

**“Qualified Securitization Transaction”** means any transaction or series of transactions that may be entered into by the Company or any of its Subsidiaries pursuant to which the Company or any or its Subsidiaries may sell, convey or otherwise transfer to (a) a Securitization Entity (in the case of a transfer by the Company or any of its Subsidiaries) and (b) any other Person (in the case of a transfer by a Securitization Entity), or may grant a security interest in, any accounts receivable or equipment (whether now existing or arising or acquired in the future) of the Company or any of its Subsidiaries, and any assets related thereto including all collateral securing such accounts receivable and equipment, all contracts and contract rights and all guarantees or other obligations in respect of such accounts receivable and equipment, proceeds of such accounts receivable and equipment and other assets (including contract rights) which are customarily transferred or in respect of which security interests are customarily granted in connection with asset securitization transactions involving accounts receivable and equipment.

**“Record Date”** means the Record Dates specified in the Notes, whether or not a Legal Holiday.

**“Redemption Date”** when used with respect to any Note to be redeemed, means the date fixed for such redemption pursuant to this Indenture and the Notes.

**“Redemption Price”** when used with respect to any Note to be redeemed, means the price fixed for such redemption pursuant to this Indenture and the Notes.

**“Reference Date”** has the meaning provided in Section 4.10.

**“Refinancing Indebtedness”** has the meaning provided in clause (xiii) of the definition of Permitted Indebtedness.

**“Refunding Capital Stock”** has the meaning provided in Section 4.10.

**“Registrable Common Stock”** means any of the Company’s common stock owned by the Equity Holders from time to time; provided, that a share of the Company’s common stock will cease to be Registrable Common Stock when (i) a registration statement covering such Registrable Common Stock has been declared effective or (ii) such Registrable Common Stock has been Transferred to a Person who is not (and does not become as a result of such Transfer) an Equity Holder.

**“Registrar”** has the meaning provided in Section 2.03.

**“Registration Rights Agreement”** means that certain Registration Rights Agreement, dated as of \_\_\_\_\_, 2003, by and among the Company and those Persons signatory thereto, as amended, restated or modified from time to time.

**“Reorganization Proceedings”** means reorganization proceedings conducted under Title 11 of the United States Code, as amended from time to time.

**“Required Premiums”** has the meaning provided in clause (xiv) of the definition of Permitted Indebtedness.

**“Restricted Investment”** means an Investment other than a Permitted Investment.

**“Restricted Payment”** has the meaning provided in Section 4.10.

**“Restricted Subsidiary”** means any Subsidiary of the Company which at the time of determination is not an Unrestricted Subsidiary.

**“Retired Capital Stock”** shall have the meaning provided in Section 4.10.

**“S&P”** means Standard & Poor’s Corporation and its successors.

**“Securities Act”** means, the Securities Act of 1933, as amended, and the rules and regulations of the Commission promulgated thereunder.

**“Securitization Entity”** means a Wholly Owned Subsidiary of the Company (or another Person in which the Company or any Subsidiary of the Company makes an Investment



and to which the Company or any Subsidiary of the Company transfers accounts receivable or equipment and related assets) which engages in no activities other than in connection with the financing of accounts receivable or equipment and which is designated by the Board of Directors of the Company (as provided below) as a Securitization Entity (a) no portion of the Indebtedness or any other Obligations (contingent or otherwise) of which (i) is guaranteed by the Company or any Subsidiary of the Company (excluding guarantees of Obligations (other than the principal of, and interest on, Indebtedness)) pursuant to Standard Securitization Undertakings, (ii) is recourse to or obligates the Company or any Subsidiary of the Company in any way other than pursuant to Standard Securitization Undertakings or (iii) subjects any property or asset of the Company or any Subsidiary of the Company, directly or indirectly, contingently or otherwise, to the satisfaction thereof, other than pursuant to Standard Securitization Undertakings, (b) with which neither the Company nor any Subsidiary of the Company has any material contract, agreement, arrangement or understanding other than on terms no less favorable to the Company or such Subsidiary than those that might be obtained at the time from Persons that are not Affiliates of the Company, other than fees payable in the ordinary course of business in connection with servicing receivables of such entity, and (c) to which neither the Company nor any Subsidiary of the Company has any obligation to maintain or preserve such entity's financial condition or cause such entity to achieve certain levels of operating results. Any such designation by the Board of Directors of the Company shall be evidenced to the Trustee by filing with the Trustee a certified copy of the resolution of the Board of Directors of the Company giving effect to such designation and an Officers' Certificate certifying that such designation complied with the foregoing conditions.

**"Significant Subsidiary"** means any Restricted Subsidiary that would be a "Significant Subsidiary" of the Company within the meaning of Rule 1-02 under Regulation S-X promulgated by the Commission.

**"Standard Securitization Undertakings"** means representations, warranties, covenants and indemnities entered into by the Company or any Subsidiary of the Company which are reasonably customary in an accounts receivable or equipment securitization transaction.

**"Subordinated Obligation"** means any Indebtedness of the Company (whether outstanding on the Effective Date or thereafter incurred) which is subordinate or junior in right of payment to the Notes.

**"Subsidiary"** means, with respect to any Person, (i) any corporation of which the outstanding Capital Stock having at least a majority of the votes entitled to be cast in the election of directors under ordinary circumstances shall at the time be beneficially owned, directly or indirectly, by such Person or (ii) any other Person of which at least a majority of the voting interest under ordinary circumstances is at the time, directly or indirectly, beneficially owned by such Person.

**"Suspended Covenants"** has the meaning set forth in Section 4.19.

**"TIA"** means the Trust Indenture Act of 1939 (15 U.S.C. §§ 77aaa-77bbb), as amended, as in effect on the date of this Indenture, except as otherwise provided in Section 9.03.

**“Total Assets”** means the total consolidated assets of the Company and its Restricted Subsidiaries, as set forth on the Company’s most recent consolidated balance sheet.

**“Transaction Date”** means, with respect to any transaction giving rise to the need to calculate the Consolidated Fixed Charge Coverage Ratio, the date on which such transaction is consummated.

**“Transfer”** means any transfer, sale, assignment, pledge, hypothecation or other disposition of any interest. “Transferor” and “Transferee” have correlative meanings.

**“Trust Officer”** means any officer of the Trustee assigned by the Trustee to administer this Indenture, or in the case of a successor trustee, an officer assigned to the department, division or group performing the corporation trust work of such successor and assigned to administer this Indenture.

**“Trustee”** means the party named as such in this Indenture until a successor replaces it in accordance with the provisions of this Indenture and thereafter means such successor.

**“Unrestricted Subsidiary”** means (i) any Subsidiary of the Company that at the time of determination shall be or continue to be designated an Unrestricted Subsidiary by the Board of Directors of the Company in the manner provided below and (ii) any Subsidiary of an Unrestricted Subsidiary. The Board of Directors of the Company may designate any Subsidiary (including any newly acquired or newly formed Subsidiary) to be an Unrestricted Subsidiary unless such Subsidiary owns any Capital Stock of, or owns or holds any Lien on any property of, the Company or any other Subsidiary of the Company that is not a Subsidiary of the Subsidiary to be so designated; provided, that (x) the Company certifies to the Trustee that such designation complies with Section 4.10 and (y) each Subsidiary to be so designated and each of its Subsidiaries has not at the time of designation, and does not thereafter, create, incur, issue, assume, guarantee or otherwise become directly or indirectly liable with respect to any Indebtedness pursuant to which the lender has recourse to any of the assets of the Company or any of the Restricted Subsidiaries. If a Subsidiary that the Board of Directors of the Company has designated an Unrestricted Subsidiary subsequently acquires any Capital Stock of, or Lien on any property of, the Company or any of its Subsidiaries that is not a Subsidiary of such Subsidiary, such Subsidiary shall be considered a Restricted Subsidiary for purposes of this Indenture without any further action by the Board of Directors of the Company. The Board of Directors of the Company may designate any Unrestricted Subsidiary to be a Restricted Subsidiary only if (x) immediately after giving effect to such designation, the Company is able to incur at least \$1.00 of additional Indebtedness (other than Permitted Indebtedness) in compliance with Section 4.12 and (y) immediately before and immediately after giving effect to such designation, no Default or Event of Default shall have occurred and be continuing. Any such designation by the Board of Directors of the Company shall be evidenced to the Trustee by promptly filing with the Trustee a copy of the resolution giving effect to such designation and an Officers’ Certificate certifying that such designation complied with the foregoing provisions.