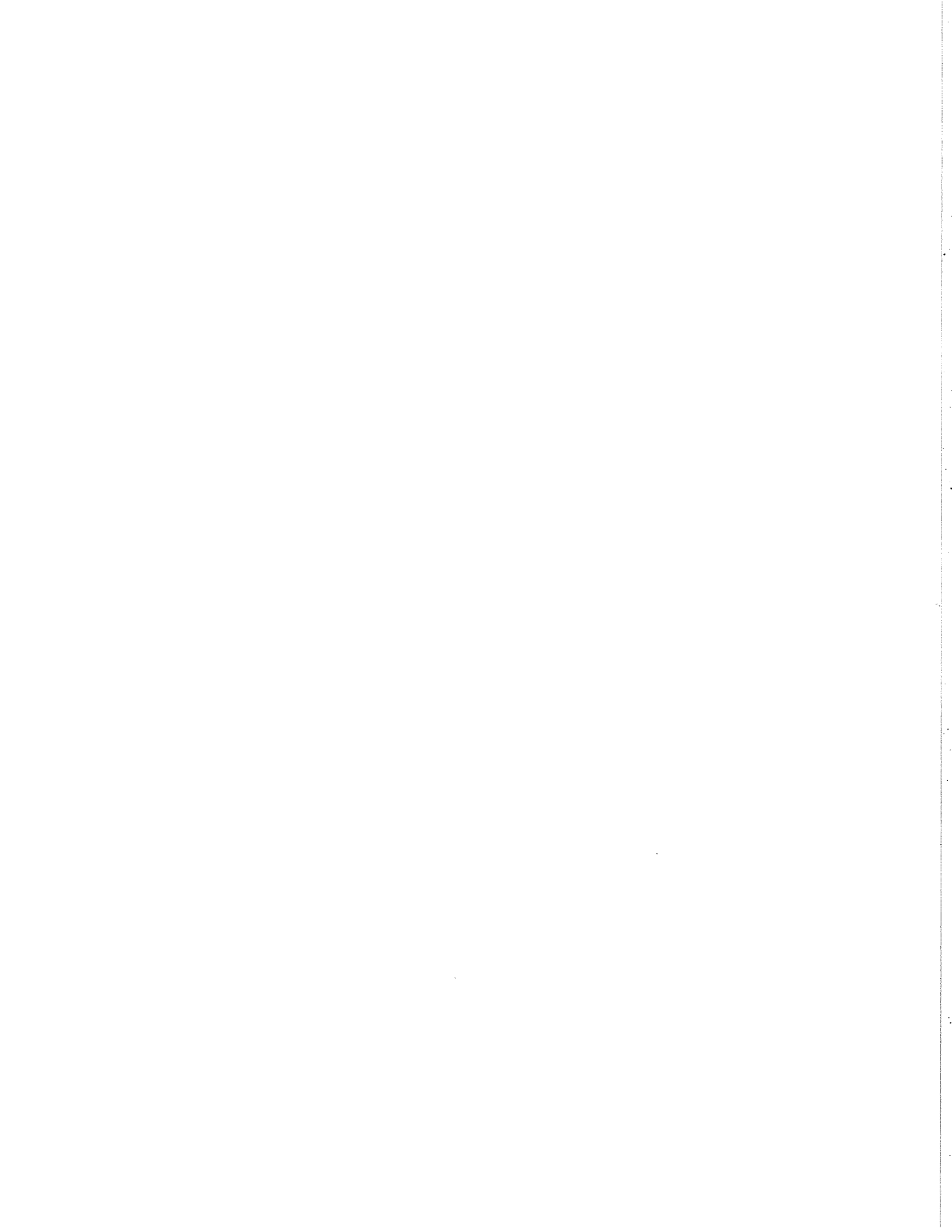


Exhibit A



OWNERSHIP AND MANAGEMENT
AGREEMENT

Dated October 24, 1980

between

UTAH POWER & LIGHT COMPANY

and

DESERET GENERATION & TRANSMISSION CO-OPERATIVE

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OWNERSHIP AND MANAGEMENT AGREEMENT

THIS OWNERSHIP AND MANAGEMENT AGREEMENT, dated October 24, 1980, between UTAH POWER & LIGHT COMPANY, a Utah corporation (*UP&L* or the *Operator*, as the context so requires) and DESERET GENERATION & TRANSMISSION CO-OPERATIVE, a Utah co-operative association (*Deseret*).

W I T N E S S E T H :

WHEREAS, UP&L is a public utility engaged in the generation, transmission and distribution of electric Power and Energy in the State of Utah and parts of the States of Idaho and Wyoming;

WHEREAS, UP&L has constructed a nominal 400 net MW steam electric generating unit known as Hunter Steam Electric Generating Unit No. 2 (*Hunter II*, such term and other capitalized terms used herein without definition having the meanings set forth in Section 1.1 hereof) on the Hunter II Site at UP&L's Hunter Station in Emery County, Utah, and has constructed certain Common Facilities which are being used in connection with Hunter II and other generating units constructed or to be constructed at the Hunter Station;

WHEREAS, UP&L has constructed a nominal 400 net MW steam electric generating unit known as Hunter Steam Electric Generating Unit No. 1 at the Hunter Station and intends to construct two other generating units, in addition to Hunter II, at the Hunter Station;

WHEREAS, UP&L has access to quantities of coal and water which are sufficient for operation of Hunter II for not less than 35 years from the date hereof;

WHEREAS, UP&L has an extensive transmission system within the State of Utah which is interconnected with the electrical systems of the Power Purchasers and other utilities;

WHEREAS, Deseret desires to acquire from UP&L an undivided 39.69% interest in Hunter II and the Hunter II Site, an undivided 19.845% interest in the Common Facilities and an undivided 9.92% interest in the Hunter Station Site, and UP&L desires to sell and transfer to Deseret the Ownership Interest and the Site Ownership Interest, under circumstances

which will have no adverse effect upon the tax revenues or assessed valuation of Emery County or any applicable taxing units in such County;

WHEREAS, the parties hereto desire to establish their respective rights and obligations, as well as certain procedures, with regard to the management of Hunter II and the Common Facilities;

WHEREAS, Deseret desires to obtain from UP&L certain easements, services and supplies in connection with the operation of the Ownership Interest, including (i) an easement over the Hunter Station in connection with the use and enjoyment of the Ownership Interest and the Site Ownership Interest, (ii) operation and maintenance services relating to the operation and maintenance of the Ownership Interest, (iii) coal and water to operate the Ownership Interest, and (iv) wheeling services for the transmission to the Power Purchasers of Power and Energy derived from the Ownership Interest, and UP&L is willing to provide such easements, services and supplies to Deseret so long as Hunter II is in operation; and

WHEREAS, Deseret proposes to sell Power and Energy from the Ownership Interest to the Power Purchasers, in accordance with the several Power Sales Contracts;

NOW THEREFORE, the parties hereto, for and in consideration of the mutual covenants contained herein, hereby agree as follows:

ARTICLE I

DEFINITIONS

SECTION 1.1. *Definitions.*

When used in this Agreement, the following capitalized terms shall have the respective meanings set forth below (such definitions to be applicable to both the singular and the plural forms of the terms herein defined):

Assignments shall have the meaning set forth in Section 2.3 hereof.

Basic Agreements shall mean the REA Mortgage and all documents relating thereto, the CFC Loan Agreement and all documents relating thereto, and the Power Sales Contracts.

Bill of Sale shall mean the full warranty bill of sale, executed by UP&L and dated the date hereof, transferring title to the Ownership Interest from UP&L to Deseret, substantially as set forth as Exhibit A hereto.

Business Day shall mean a calendar day other than (i) a Saturday or a Sunday, (ii) any public holiday under the laws of the United States or the State of Utah at any time in effect or any other day on which banks are closed in the State of Utah, and (iii) any day observed by UP&L as a non-business day of which Deseret has been notified in writing by UP&L.

CFC shall mean the National Rural Utilities Cooperative Finance Corporation.

CFC Loan Agreement shall mean the Loan Agreement, dated on or before the date hereof, between Deseret, as borrower, and CFC, pursuant to which Deseret is obtaining a portion of the funds required for the payment of the purchase price of the Ownership Interest and the Site Ownership Interest.

Capacity Costs shall mean, for any period, the costs, obligations, indebtedness, taxes, liabilities, fees, expenses and disbursements (excluding Energy Related Costs) incurred, created or assumed by or on behalf of Deseret (or Emery County) and payable during such period, in connection with or resulting from (i) the construction, equipping, financing, operation and maintenance of, the repair of, and the acquisition and affixation of Parts and Capital Improvements in respect of, the Ownership Interest and the Site Ownership Interest, and (ii) the preparation, production, execution and delivery of the Basic Agreements (which term, as used in this definition, includes the Pollution Control Financing Agreement and related documents), the consummation of the transactions contemplated thereby and the performance by or on behalf of Deseret or any such successor of its obligations contained in the Basic Agreements, to the extent the same become due and payable or have been paid during such period, including, without limitation (but without duplication), the following:

(a) all principal, premium, if any, and interest and all other amounts payable by Deseret on or with respect to the notes issued under the REA Mortgage, the CFC Loan Agreement and the Pollution Control Financing Agreement.

(b) all amounts payable by Deseret under this Agreement, including, without limitation, Operation and Maintenance Expenses;

(c) administrative and general expenses (including ad valorem taxes, special assessments and like charges) of Deseret and any other amounts attributable, on the basis of a reasonable allocation, to the transactions contemplated by the Basic Agreements;

(d) administrative expenses and operational costs and expenses actually incurred by, or payable or reimbursable by, Deseret in connection with the construction, operation and maintenance of the Ownership Interest and the Site Ownership Interest and in connection with the delivery of Energy; and

(e) any other amount payable under this Agreement and the Basic Agreements, or with respect to additional indebtedness incurred by Deseret from time to time with respect to the Ownership Interest and the Site Ownership Interest or amounts allocable thereto for (A) the prevention or correction of any loss or damage thereto, (B) the purchase of Parts or Capital Improvements or (C) working capital or other costs incurred in connection with or relating to the acquisition of rights therein.

Capacity Factor shall mean, with respect to Hunter II, the ratio of the sum of the average loads of UP&L and Deseret, respectively, in respect of Hunter II to the rated capacity of Hunter II.

Capital Improvement shall mean any item of property, other than a Part, at any time attached to or incorporated in Hunter II or the Common Facilities.

Claims shall have the meaning set forth in Section 2.3 hereof.

Coal Cost shall have the meaning set forth in Section 5.5 hereof.

Common Facilities shall mean those facilities used or useful in connection with the operation of Hunter II and the generating unit at the Hunter Station known as Hunter Steam Electric Generating Unit No. 1, including offices, warehouses, machine shops, roads, fences, fuel handling facilities, utility systems for plant use and all other similar or related facilities, appurtenances and structures required for the operation of the Hunter Station, as more specifically described in Exhibit B hereto, together with any Parts and Capital Improvements affixed thereto or made from time to time prior to the Final Shutdown Date.

Construction Agreements shall have the meaning set forth in Section 2.3 hereof.

Contractors shall have the meaning set forth in Section 2.3 hereof.

Contract Year shall mean the 12-month period commencing at 12:01 a.m. on January 1 of each year and ending at 12:01 a.m. on the following January 1, except that the first Contract Year shall begin on the date hereof and the last Contract Year shall end on the Final Shutdown Date.

Deseret shall mean Deseret Generation & Transmission Co-operative, a Utah co-operative association, and its successors and assigns.

Emery County shall mean Emery County, a political subdivision of the State of Utah.

Energy shall mean kilowatt hours of electric energy.

Energy Related Costs shall mean those costs which vary with the amount of Energy produced from a particular generating facility, including all costs of fuel, costs of disposal of wastes directly related to production of Energy and other operating and maintenance expenses calculated in relation to such facility, which are directly related to the amount of Energy produced from such facility.

Estimated Useful Life of Hunter II shall mean a period of 35 years from the date hereof.

Event of Loss shall mean the total destruction of Hunter II or any damage to Hunter II which shall be so extensive as to render repair of Hunter II impractical or uneconomic, as determined by the Management Council.

Excess Power shall mean, with respect to any period, and for the duration thereof as stipulated by Deseret in any notice delivered pursuant hereto, the difference between (x) Power available to Deseret from the Ownership Interest and any and all other electric generating units owned by or leased to Deseret, (after deducting any forced-outage reserves required to be maintained by Deseret) and (y) the sum of (i) the average peak loads of all Power Purchasers and, solely with respect to such other electric generating units, all purchasers from Deseret under all requirement contracts, determined, in each case, by Deseret in its sole discretion, and (ii) solely with respect to

such other generating units, the commitment of Deseret to deliver Power to all purchasers from Deseret under firm power contracts.

Final Shutdown Date shall mean the date on which Hunter II is finally and definitively taken out of service as determined by the Management Council.

Forced-outage Reserve shall have the meaning set forth in Section 7.1 hereof.

Hunter II shall mean the nominal 400 net MW steam electric generating unit, known as Hunter Steam Electric Generating Unit No. 2, which has been constructed in accordance with the Construction Agreements and the Plans and Specifications by UP&L on the Hunter II Site at the Hunter Station and completed and placed in commercial operation on June 4, 1980, including, without limitation, the turbine generator, coal-fired steam boiler, condenser, pumps, motors, feedwater heaters, cooling water system, control systems, coal receiving and handling system, air pollution control devices, water treatment system, ash disposal system and other similar or related facilities used in connection with Hunter II (but excluding any Common Facilities and any interest in either the Hunter II Site or the Hunter Station Site), together with all Parts and Capital Improvements attached, incorporated or installed on or attached to Hunter II from time to time prior to the Final Shutdown Date.

Hunter II Site shall mean the site on which Hunter II is located, as more specifically described in the Real Property Deed.

Hunter Station shall mean the Hunter Steam Electric Generating Station in Emery County.

Hunter Station Site shall mean the site on which Hunter Station is located, and more specifically described in the Real Property Deed, which property shall exclude the Hunter II Site and the sites on which Hunter I is located and Hunter III and Hunter IV are to be located.

Inadvertent Energy Account shall mean the account, established pursuant to Section 5.6 hereof, in which the Operator shall record the differences between scheduled and actual output of Power and Energy from Hunter II and provide for the equitable settlement thereof.

Liens shall have the meaning set forth in Section 5.2(a) hereof.

Management Council shall have the meaning set forth in Section 4.1 hereof.

Month shall mean a calendar month.

Municipal Interest shall have the meaning set forth in Section 2.9 hereof.

Operation and Maintenance Expenses shall have the meaning set forth in Section 5.3 hereof.

Operator shall mean UP&L, in its capacity as operator of Hunter II and the Common Facilities, and its permitted successors in accordance with this Agreement.

Ownership Interest shall mean an undivided 39.69% interest in Hunter II and an undivided 19.845% interest in the Common Facilities.

Part shall have the meaning set forth in Section 5.2(b) hereof.

Parties shall mean UP&L and Deseret. *Party* shall mean one of the Parties, individually.

Plans and Specifications shall mean the plans and specifications for Hunter II, as such plans and specifications (i) exist on the date hereof (it being understood that on the date hereof such plans and specifications have not been fully documented or conformed to Hunter II as built) and (ii) may be amended or changed, and documented and conformed to reflect Hunter II as built on or as of the date on which Hunter II was synchronized with the electric utility system of UP&L for immediate production and delivery of Power and Energy for commercial use.

Pollution Control Financing Agreement means an agreement to be executed by Deseret after the date hereof relating to the financing of all or any portion of the qualified pollution control equipment included in the Ownership Interest.

Power shall mean megawatts of electric capacity and associated Energy.

Power Sales Contracts shall mean those certain Power Sales Contracts between Deseret and each of the Power Purchasers, severally, as the same may be amended from time to time pursuant to the terms thereof.

Power Purchasers shall mean those entities, listed in Schedule I hereto, which are the parties, other than Deseret, to the Power Sales Contracts, and their successors and assigns permitted pursuant to this Agreement.

REA shall mean the United States of America, acting through the Administrator of the Rural Electrification Administration.

REA Mortgage shall mean that certain mortgage and security agreement executed by Deseret, as mortgagor, and the United States of America, acting through the REA, under which certain obligations of Deseret are to be issued and secured.

Real Property Deed shall mean the special warranty deed, executed by UP&L and dated the date hereof, transferring fee simple title to the Site Ownership Interest from UP&L to Deseret, substantially as set forth as Exhibit C hereto.

Reasonable Utility Practice shall mean at a particular time any of the practices, methods and acts engaged in or approved by a significant portion of the electric utility industry at such time, or which, in the exercise of reasonable judgment in light of facts known at such time, could have been expected to accomplish the desired results at the lowest reasonable cost consistent with good business practices, reliability, safety and expedition. Reasonable Utility Practice is not intended to be limited to the optimum practice, method or act to the exclusion of all others, but rather to be a spectrum of possible practices, methods and acts, having due regard for manufacturers' warranties and the requirements of governmental agencies of competent jurisdiction; *provided, however*, that Reasonable Utility Practice shall not include any practice, method or act that discriminates against Hunter II or the Ownership Interest in relation to those employed by UP&L at its generating units other than Hunter II or that is less favorable to Hunter II or the Ownership Interest than those employed by UP&L at its generating units at Hunter Station other than Hunter II.

Reserve Capacity shall mean the generating capacity required to be maintained by Deseret pursuant to Article VII hereof to provide for a Forced-outage Reserve.

Site Ownership Interest shall mean the undivided 39.69% interest in the Hunter II Site and the undivided 9.92% interest in the Hunter Station Site being sold by UP&L to Deseret pursuant to, and as more specifically described in, the Real Property Deed.

Surplus Energy shall mean, at any time, the difference between (x) the Energy available to Deseret from the Ownership Interest and any and all other electric generating units owned by or leased to Deseret (after deducting any forced-outage reserves required to be maintained by Deseret), and (y) the sum of (i) the loads of all Power Purchasers and, solely with respect to such other electric generating units, all purchasers from Deseret under all requirement contracts, determined, in each case, by Deseret in its sole discretion, and (ii) solely with respect to such other generating units, the commitment of Deseret to deliver energy to all power purchasers from Deseret under firm power contracts.

Uncontrollable Forces shall have the meaning set forth in Section 10.3 hereof.

Uniform System of Accounts shall mean the Federal Energy Regulatory Commission Uniform System of Accounts for Class A and Class B Electric Public Utilities and Licensees as prescribed by, and, from time to time, as amended or modified or as substitution may be made by, the Federal Energy Regulatory Commission or its successor for such purpose.

UP&L shall mean Utah Power & Light Company, a Utah corporation, and its successors and, to the extent permitted hereby, assigns.

UP&L Mortgage shall mean the Mortgage and Deed of Trust, dated as of December 1, 1943, with Guaranty Trust Company of New York (now Morgan Guaranty Trust Company of New York) and Arthur E. Burke (R. Amundsen successor), as trustees, as supplemented by all supplemental indentures.

Water Cost shall have the meaning set forth in Section 5.4 hereof.

Wheeling Costs shall have the meaning set forth in Article VI hereof.

SECTION 1.2. *Use of Definitions.*

All terms defined in this Agreement shall have the defined meanings when used in any certificate, report or other document made or delivered pursuant to this Agreement.

SECTION 1.3. *Accounting Terms.*

All accounting terms not specifically defined herein shall be construed in conformity with the Uniform System of Accounts.

SECTION 1.4. *Agreements.*

Except as otherwise indicated, all the agreements or instruments herein defined shall mean such agreements or instruments as the same may from time to time be supplemented or amended or the terms thereof waived or modified to the extent permitted by, and in accordance with, the terms thereof.

ARTICLE II

CONSTRUCTION AND OWNERSHIP OF HUNTER II

SECTION 2.1. *Sale of the Ownership Interest by UP&L.*

For and in consideration of the payment by Deseret to UP&L provided for in Section 2.2 hereof, UP&L is executing and delivering to Deseret, concurrently with the execution and delivery of this Agreement, the Bill of Sale.

SECTION 2.2. *Deseret's Purchase Price.*

Deseret, concurrently with the execution and delivery of the Bill of Sale, is transferring to an account designated by UP&L immediately available funds in the amount of \$115,317,305, representing the full and complete purchase price of the Ownership Interest payable by Deseret hereunder. The portions of such purchase price attributable to the pollution control facilities included as part of the Ownership Interest are shown in Exhibit G hereto.

SECTION 2.3. *Construction Agreements.*

UP&L has heretofore entered into agreements with Stearns-Roger Company for design, and JELCO, Inc. (now Townsend & Bottum, Inc.) for construction, of Hunter II and the Common Facilities, and with various manufacturers or suppliers for sale of equipment included in Hunter II and the Common Facilities, (such agreements being referred to herein as the *Construction Agreements*, and the parties to the Construction Agreements, other than UP&L, being referred to herein collectively as the *Contractors*). The Construction Agreements have been performed and remain

in effect with respect to certain warranties and other provisions. Pursuant to the Assignments dated the date hereof from UP&L to Deseret, consented to, where required, by the Contractors, attached hereto as Exhibit D (the *Assignments*), UP&L is transferring and assigning to Deseret an undivided 39.69% interest in all rights of UP&L under those Construction Agreements relating to Hunter II and an undivided 19.845% interest in those Construction Agreements relating to the Common Facilities, and in any amounts received by UP&L in respect of (i) any warranties contained in the Construction Agreements, (ii) any claims or rights of UP&L against any other contractors, suppliers or materialmen for any part of Hunter II or the Common Facilities, as the case may be, and (iii) any settlements of, or judgments or awards in connection with, any claims, disputes, litigation or arbitration relating to or arising out of the Construction Agreements. Notwithstanding the Assignments, Deseret shall have no obligation whatsoever under the Construction Agreements or any other instrument or document relating to the construction or completion of Hunter II or the Common Facilities, including any obligation to pay any construction costs, costs in respect of change orders or other amounts which are, or may become, due and payable under any of the Construction Agreements or any other instrument or document in respect of the construction or completion of Hunter II or the Common Facilities and, in consideration of the payment by Deseret of the purchase price for the Ownership Interest, UP&L agrees to indemnify Deseret, and hold it harmless from and against any and all liabilities, obligations, losses, damages, penalties, judgments, claims (including, without limitation, claims involving strict or absolute liability in tort), actions, suits, costs, expenses and disbursements (including, without limitation, legal fees and expenses) of any kind and nature whatsoever (*Claims*) imposed on, incurred by or asserted against Deseret, in any way relating to the Construction Agreements or the performance of the Contractors thereunder or any other instrument or document relating to the construction or completion of Hunter II or the Common Facilities or Claims of Contractors or any other person thereunder or the construction or completion of Hunter II and the Common Facilities.

SECTION 2.4. *Agency of UP&L.*

Subject to the provisions of Section 4.1 hereof, Deseret hereby irrevocably appoints UP&L as Deseret's agent for the exercise of all rights of Deseret, as assignee, under each of the Construction Agreements, including the right to enter into amendments and supplements thereto, to make change orders with respect thereto and to settle claims thereunder. In such capacity, and notwithstanding the execution and delivery of the Assignments, UP&L shall continue, for purposes of the Construction Agreements, to be solely responsible for all actions and payments under the Construction Agreements. Deseret shall have no obligation whatsoever under the Construction

Agreements or any other instrument or document relating to the construction and completion of Hunter II and the Common Facilities, including any obligation to pay any construction costs, costs in respect of change orders or other amounts which are, or may become, due and payable under any of the Construction Agreements or any other instrument or document in respect of the completion of Hunter II and the Common Facilities. UP&L hereby (i) consents to act as such agent as above provided and agrees, for the benefit of Deseret, to duly exercise and enforce such rights delegated to it, and to perform such duties and obligations retained by it pursuant to the terms of this Section 2.4 so as fully to preserve the rights of Deseret under the Construction Agreements, and (ii) confirms that Deseret may rely upon UP&L to duly perform such rights, duties and obligations. Without limiting the generality of the foregoing, UP&L agrees (i) to cause all notices to the Contractors to be given and delivered promptly and within the time provided in, and otherwise in accordance with the terms of, the Construction Agreements, (ii) forthwith to notify Deseret of any default by the Contractors in the performance of any of the provisions of the Construction Agreements, of any alleged default by UP&L with respect to the Construction Agreements, and of any assertion by a Contractor that circumstances have arisen which may permit or result in the termination of any Construction Agreement, (iii) not to take any action or suffer or permit anything to be done which would constitute a breach of or result in a default under the Construction Agreements, (iv) not to consent to any assignment or transfer of a Contractor's rights or obligations under the Construction Agreements without the prior written consent of Deseret, and (v) not to waive any rights to payments in respect of refunds or warranties from any Contractor under the Construction Agreements.

SECTION 2.5. *Completion and Commercial Operation.*

UP&L hereby represents and warrants to Deseret that (i) the construction of Hunter II and the Common Facilities in accordance with the Construction Agreements and the Plans and Specifications has been completed in a good and workmanlike manner in conformity with good construction and engineering practice, (ii) Hunter II was placed in commercial operation on June 4, 1980 and the Common Facilities were placed in service on or before such date, (iii) such construction has been conducted in accordance with, and Hunter II and the Common Facilities have been completed in accordance with, all laws, ordinances, rules, regulations or orders applicable thereto, (iv) operation of Hunter II and the Common Facilities, as completed for commercial operation, does not violate any laws, ordinances, rules, regulations or orders applicable thereto, including, without limitation, any thereof relating to matters of health, safety, or environmental protection, other than immaterial violations that would not, individually or in the aggregate, prevent or interfere with the continuous satisfactory operation of Hunter II and the Common Facilities, result in the imposition of fines or penalties or other charges on Deseret, or involve any danger of any sale, forfeiture or loss, or involve material costs of correction, (v) Hunter II, has the capacity and the functional

ability to operate on the date hereof at a nominal rating of 400 net megawatts, and (vi) each improvement constituting a part or component of Hunter II is wholly located on the Hunter II Site and each improvement constituting a part or component of the Common Facilities is located on the Hunter Station Site and the size, condition of, and access to the Hunter II Site and the Hunter Station Site are sufficient for the efficient operation and maintenance of Hunter II and the Common Facilities, respectively, and for all foreseeable additions thereto.

SECTION 2.6. *Accounting and Reports.*

UP&L shall at all times maintain books of account containing detailed entries of all items of cost under the Construction Agreements and evidence of the payment of such costs. All accounting with respect to construction costs shall be in accordance with the Uniform System of Accounts and customary practices in the electric utility industry. Basic records and supporting documents with respect to the design, engineering and construction of Hunter II and the Common Facilities shall be made available to Deseret upon request at UP&L's offices at all reasonable times for inspection, reproduction and audit.

SECTION 2.7. *Excess Power and Surplus Energy; Other Facilities of Deseret.*

(a) *Right to Purchase Excess Power from Hunter II.* Deseret shall determine from time to time the aggregate Excess Power from Hunter II, expressed in kilowatts, under all Power Sales Contracts then in effect and shall estimate the period (which shall be at least 30 days) during which such excess, expressed in kilowatt months, is expected to exist. Notice of such aggregate and such period shall be given to UP&L as soon as possible, and for a period of 5 Business Days from and after the date of such notice, UP&L shall have the right, for the estimated period of such excess, to purchase such aggregate Excess Power under all Power Sales Contracts for such period. The right of UP&L under this paragraph (a) shall be limited to the purchase and sale of not more than 158,760 kilowatts of Power. Any purchase of Power by UP&L under this paragraph (a) shall be for a price equal to Capacity Costs, as determined from time to time by Deseret, and any Energy scheduled from such Excess Power shall be paid for at Energy Related Costs.

(b) *Right to Purchase Excess Power from Other Facilities of Deseret.* If, at the time and for the period described in this paragraph (b), there shall be no Excess Power from Hunter II under the Power Sales Contracts, if Deseret shall at any time acquire or lease any other generating facility or facilities in addition to the Ownership Interest, Deseret shall

determine from time to time the amount of Excess Power in respect of such facility or facilities. The amount of such excess, expressed in kilowatts, and the period during which such excess, expressed in kilowatt months, is expected to exist, shall be given to UP&L as soon as possible and for a period of 5 business days from and after the date of such notice, UP&L shall have the right, for the estimated period of such excess, to purchase such excess for such period. The right of UP&L under this paragraph (b) shall be limited to the purchase of not more than 158,760 kilowatts of Power. Any purchase of Power and Energy by UP&L under this paragraph (b) shall be paid for by UP&L at the best price then obtainable by Deseret for sale of Power from such facility or facilities to any other utility and payment of such purchase price shall be due and payable by UP&L 10 days after the date on which Deseret shall have submitted to UP&L a bill therefor.

(c) *Right to Purchase Surplus Energy.* Deseret shall from time to time determine the amount of Surplus Energy which is available for sale to UP&L. Not later than 2:00 p.m. on each Business Day, Deseret, shall provide to UP&L its estimated hourly schedule of Surplus Energy for each hour of the following day (or, if such following day shall not be a Business Day, each successive day which shall not be a Business Day, as well as the next Business Day). Immediately upon receipt of such advice or within two hours thereafter, UP&L shall have the right to purchase such Surplus Energy subject to such schedule. The right of UP&L under this paragraph (c) shall be limited to the purchase and sale of Energy associated with not more than 158,760 kilowatts of Power. Any such Surplus Energy used by UP&L within its system shall be purchased at a price equal to Energy Related Cost, plus 15% of such Energy Related Cost. Any such Surplus Energy resold by UP&L to a third party outside its system shall be purchased by UP&L at a price equal to the sum of (i) the Energy Related Cost of such Energy, (ii) an amount equal to one-half of the excess, if any, of (x) the price received by UP&L for such Surplus Energy from such third party over (y) the Energy Related Cost of such Energy, transmission loss charges and interconnection wheeling charges.

(d) *Limitation.* Deseret's (i) sale of all or any portion of the Power and Energy entitlement of a defaulting Power Purchaser pursuant to its Power Sales Contract, or (ii) reallocation of any such Power and Energy entitlement to the remaining Power Purchasers, or (iii) sale of Power and Energy to municipal Power Purchasers after the termination or expiration of their Power Sales Contracts shall not be subject to the rights of UP&L provided for in paragraphs (a), (b) and (c) above so long as, in the case of (i) above, any such sale is to another Power Purchaser or a Power Purchaser whose Power Sales Contract has been terminated or has expired, in either case for service to its retail customers or for its forced-outage reserve requirements.

SECTION 2.8. *Waiver of Partition Rights.*

Each Party hereto agrees to waive any rights which it may have to partition Hunter II, the Common Facilities, the Hunter Station Site and the Hunter II Site, whether by partition in kind or by sale and division of the proceeds, and further agrees that it will not resort to any action at law or in equity to partition Hunter II, the Common Facilities, the Hunter Station Site or the Hunter II Site, and it waives the benefits of all laws that may now or hereafter authorize such partition.

SECTION 2.9. *Certain Rights of UP&L.*

In the event that on or before September 25, 1983, Deseret shall not have sold with the written consent of Emery County as forwarded to UP&L and the Public Service Commission of Utah, and any Power Purchaser constituting a Utah municipality shall not have purchased, directly or indirectly, from the Ownership Interest and the Site Ownership Interest, an undivided percentage ownership interest (the *Municipal Interest*) in the Ownership Interest and the Site Ownership Interest from which shall be derived Power and associated Energy equal to the Contract Capacity (as such term is defined in the Power Sales Contracts) of such Power Purchaser, UP&L shall have the right, subject to the terms and conditions hereinafter contained, to purchase from Deseret the Municipal Interest of such Power Purchaser. UP&L shall exercise such option within a 30-day period following September 25, 1983 by indicating its commitment to purchase such Municipal Interest, and to supply Power and Energy to such Power Purchaser under contracts to be negotiated with such Power Purchaser and approved by regulatory authorities, by written notice to Deseret and such Power Purchaser and such purchase shall be consummated within 90 days after the expiration of such 30-day period, subject to extension, if required, by the number of additional days necessary for UP&L to obtain those regulatory approvals which shall be required for such purchase; *provided, however* that such approvals shall have been diligently applied for by UP&L. The purchase price of such Municipal Interest shall be equal to the greater of (i) the sum of the net book values of the Municipal Interest and subsequent purchases of Capital Improvements relating thereto, as recorded on the books of Deseret at the date of purchase by UP&L pursuant to this Section 2.9 or (ii) the sum of (A) the principal amount of any indebtedness for borrowed money incurred by Deseret in connection with the purchase of the Municipal Interest (which indebtedness shall not be greater than a pro rata portion of the purchase price paid by Deseret hereunder) and the funding of an allocable portion of Deseret's undivided interest in each Capital Improvement and (B) an allocable portion of the original cost to Deseret of an undivided interest in Capital Improvements directly acquired by Deseret and funded from margins or other available monies. If UP&L shall fail to exercise its option to purchase

the Municipal Interest within such 30-day period, if UP&L shall have determined so to purchase such Municipal Interest, but such purchase shall not have been consummated within the period specified herein, or if the sale of such Municipal Interest by Deseret to such Power Purchaser shall have been consummated on or before September 25, 1983, UP&L shall have no further claim to, or right or option to purchase, such Municipal Interest.

SECTION 2.10. *Certain Rights of Deseret and Obligations of UP&L.*

In the event that on or before November 1, 1984, either (i) any Power Purchaser constituting a Utah municipality shall not have purchased, directly or indirectly, from the Ownership Interest and the Site Ownership Interest, its Municipal Interest in the Ownership Interest and the Site Ownership Interest from which shall be derived Power and associated Energy equal to the Contract Capacity of such Power Purchaser, or (ii) UP&L shall not have exercised its option to purchase such Municipal Interest in the Ownership Interest and the Site Ownership Interest pursuant to Section 2.9 hereof, then on or after November 2, 1984 and on or before December 1, 1984, Deseret may, by notice in writing to UP&L delivered on or before December 1, 1984, cause UP&L to purchase, and in such event and upon such notice UP&L hereby agrees to purchase, such Municipal Interest from Deseret for a purchase price equal to the sum of the net book values of the Municipal Interest and all subsequent purchases of Capital Improvements relating thereto, as recorded on the books of Deseret at the date of purchase by UP&L pursuant to this Section 2.10. Such purchase shall be consummated within 90 days after the date of such notice subject to extension, if required, by the number of additional days necessary for UP&L to obtain those regulatory approvals which shall be required for such purchase; *provided, however*, that such approvals shall have been diligently applied for by UP&L.

ARTICLE III

SITE OWNERSHIP INTEREST

SECTION 3.1. *Sale of the Site Ownership Interest by UP&L.*

For and in consideration of the payment by Deseret provided for in Section 3.2 hereof, UP&L is executing and delivering to Deseret, concurrently with the execution and delivery of this Agreement, the Real Property Deed, together with copies of a current survey of the Hunter II Site and the Hunter Station Site, prepared and certified by Messrs. Bush & Gudgell, duly licensed surveyors, showing (i) the exact location and dimensions of each such

property, including the location or proposed location of all improvements thereon, (ii) the exact location of all means of access to each such property, and all easements relating thereto, (iii) no encroachment on any such property, (iv) no encroachment by any part of Hunter II or the Common Facilities or means of access thereto on adjoining property (as constructed or as proposed to be constructed), other than, in the case of Hunter II, property constituting part of the Common Facilities, and (v) no other defect except as set forth or referred to in the Real Property Deed and except easements, rights-of-way, exceptions or reservations for the purpose of utility facilities and other like purposes which do not and will not, individually or in the aggregate, impair the use and operating efficiency of Hunter II or the Common Facilities or materially detract from the value of the site of the Hunter II Site and the Hunter Station Site, the Site Ownership Interest or the Ownership Interest.

SECTION 3.2. *Deseret's Purchase Price.*

Concurrently with the execution and delivery of the Real Property Deed, Deseret is transferring to an account designated by UP&L immediately available funds in an amount equal to \$100.00, multiplied by the aggregate number of acres in the Site Ownership Interest reflected in the Real Property Deed, representing the purchase price of the Site Ownership Interest payable by Deseret.

ARTICLE IV

MANAGEMENT OF HUNTER II AND THE COMMON FACILITIES

SECTION 4.1. *Management Council.*

UP&L and Deseret agree to form and maintain, until the final disposition of Hunter II after the Final Shutdown Date, a management council (the *Management Council*) which shall meet at least semi-annually and more frequently if requested by either Party for the purpose of reviewing the management of Hunter II and the Common Facilities. The Management Council shall consist of two representatives, one of whom shall be designated by UP&L and one of whom shall be designated by Deseret. The following decisions shall be implemented only with the unanimous consent of the Management Council:

(a) decisions relating to expenditures for Capital Improvements which are to be implemented within six months from the date first reported to the Management Committee by UP&L.

(b) decisions the effect of which may be to reduce by an amount in excess of 5 MW the long-term capacity of Hunter II, unless such action is required by any Federal, state or local law, rule or regulation applicable to Hunter II, or any decree or decision of any court or regulatory body having jurisdiction over Hunter II;

(c) any decision with respect to the determination that an Event of Loss has occurred or any decision finally and definitively to take Hunter II out of service or to dispose of Hunter II thereafter, unless such action is required by any Federal, state or local law applicable to Hunter II, or any decree or decision of any court or regulatory body having jurisdiction over Hunter II;

(d) decisions regarding the settlement of claims, disputes, litigation or arbitration relating to or arising out of the Construction Agreements which affect the warranties of Contractors thereunder; and

(e) voluntary decisions (excluding those circumstances under which Hunter II shall be taken out of service in consequence of any health, safety or environmental law or regulation) to take Hunter II out of service for any period which exceeds one year.

SECTION 4.2. *Management Responsibilities of UP&L.*

With the exception of those matters with respect to which the unanimous consent of the Management Council is required pursuant to paragraphs (a) through (e) of Section 4.1 hereof, the Operator shall have exclusive responsibility for the management of Hunter II and the Common Facilities in accordance with Reasonable Utility Practice and the provisions of this Agreement, including, but not limited to, responsibility for decisions with respect to (i) the timing, extent and nature of any actions with respect to Parts or Capital Improvements in the ordinary course of business, (ii) scheduling of maintenance outages and the installation of Parts and Capital Improvements, and (iii) the integration of the operation of Hunter II with the remainder of the UP&L system.

ARTICLE V

OPERATION AND MAINTENANCE OF HUNTER II AND THE COMMON FACILITIES

SECTION 5.1. *Designation of Operator.*

UP&L is hereby designated the Operator of Hunter II and the Common Facilities until the Final Shutdown Date, subject to the terms and conditions hereinafter set forth.

SECTION 5.2. *Covenants of Operator.*

(a) *Operation and Maintenance.* The Operator covenants that it will at all times prior to the Final Shutdown Date (i) operate, service and maintain Hunter II and the Common Facilities in accordance with (x) Reasonable Utility Practice for projects of a similar size and nature, (y) such operating standards as shall be required to enforce warranty claims against all Contractors under the terms and conditions of all Construction Agreements, and (z) the terms and conditions of all insurance policies in effect at any time with respect to Hunter II and the Common Facilities or any Part thereof or any equipment contained therein, (ii) comply with all applicable statutes, laws, rules, codes, ordinances, regulations and orders of Federal, state, county, municipal, regional or other governmental authorities, whether pertaining to health, safety, the environment or otherwise, affecting Hunter II and the Common Facilities and the use, operation and maintenance thereof, the Hunter II Site and the Hunter Station Site, (iii) keep Hunter II and the Common Facilities, including the Ownership Interest and the Hunter II Site and the Hunter Station Site, including the Site Ownership Interest, free and clear of liens, mortgages, encumbrances, pledges, charges, leases, easements, rights of others reservations, conditions, covenants, restrictions, rights-of-way or security interests (herein called *Liens*) including, without limitation, Liens resulting from (x) nonpayment by UP&L of any Federal, state or local taxes imposed on all or any portion of such property, and (y) non-payment of amounts payable by UP&L in respect of its undivided interest in Hunter II and the Common Facilities, including, without limitation, amounts described in Section 5.3 hereof, but excluding, with respect to UP&L's undivided interest in Hunter II and the Common Facilities and the Hunter II Site and the Hunter Station Site, the Lien of the UP&L Mortgage as in effect on the date hereof and any "Excepted Encumbrances" and "Qualified Liens", as such terms are defined in Section 6 of the UP&L Mortgage, and (iv) keep and maintain

proper books and records relating to all services rendered and all funds expended for operation and maintenance of Hunter II and the Common Facilities in accordance with the Uniform System of Accounts and customary practices in the electric utility industry.

(b) *Replacement Parts.* Except after the occurrence of an Event of Loss, the Operator shall, unless prohibited by applicable law or regulation, promptly replace all necessary or useful appliances, parts, instruments, appurtenances, accessories and miscellaneous equipment of whatever nature, the replacement of which shall not be required to be capitalized under the Uniform System of Accounts (each such replacement item being herein referred to as a *Part*) which have been or may from time to time be incorporated or installed in or attached to Hunter II and the Common Facilities and which may from time to time fail to function in accordance with its intended use, or become worn out, destroyed, damaged beyond repair, lost, condemned, confiscated, stolen or seized for any reason whatsoever. Deseret hereby authorizes the Operator to order Parts as the agent for, and in the name of, Deseret. In addition, in the ordinary course of maintenance, service, repair or testing, the Operator may remove any Parts; *provided, however*, that the Operator shall cause such Parts to be replaced as promptly as practicable and shall sell or otherwise dispose of the Parts so removed and remit to Deseret its proportionate share of the net proceeds of any such sale. Each replacement Part shall be free and clear of all Liens, other than those Liens permitted under subclause (y) of clause (iii) of paragraph (a) above, and shall be in at least as good operating condition as, and shall have a value and utility at least equal to, the Part replaced, assuming such replaced Part was in the condition and repair required to be maintained by paragraph (a) of this Section 5.2. All such repairs and replacements shall be done in a good workmanlike manner and in compliance with the standards prescribed in paragraph (a) of this Section 5.2.

(c) *Title to Parts.* Title to an appropriate undivided interest in each Part or Capital Improvement incorporated or installed in, or attached to, Hunter II or the Common Facilities pursuant to this Agreement shall, without further act on the part of the Operator or Deseret, vest in Deseret and such Part or Capital Improvement shall be deemed to constitute a part of the Ownership Interest.

(d) *Deferral of Compliance.* If, to the extent, and for so long as, (i) a test, challenge, appeal or proceeding for review of any applicable requirement of law or of a governmental authority relating to the operation or maintenance of Hunter II or the Common Facilities shall be diligently prosecuted in good faith by the Operator, or (ii) compliance with such requirement shall have been excused or exempted by a nonconforming use permit, waiver, extension or forbearance believed in good faith by the Operator to excuse or

exempt it from such requirement, the Operator shall not be required to comply with such requirement if, but only if, such test, challenge, appeal, proceeding or noncompliance shall not involve any danger of (w) foreclosure, sale, forfeiture or loss of, or imposition of any Lien on, any part of Hunter II or the Common Facilities or (x) impairment of the operation of Hunter II or the Common Facilities in any material respect, or (y) any civil or criminal liability on the part of Deseret.

SECTION 5.3. *Operation and Maintenance Expenses.*

Operation and Maintenance Expenses (herein referred to as *Operation and Maintenance Expenses*) for any Month in any Contract Year shall mean all amounts attributable to the operation of Hunter II and the Common Facilities which shall be paid by the Operator during such Month in the performance of its obligations under this Article V, including, without duplication, but not limited to, the following:

(a) the cost of improvements, repairs and replacements (including Parts and Capital Improvements), net of salvage, paid to material and equipment vendors and contractors; *provided, however*, that such cost shall not include amounts in respect of the cost of any Part or Capital Improvement if Deseret shall have made a capital investment in an appropriate undivided interest in any such Part or Capital Improvement;

(b) the cost of all services performed by UP&L, as Operator hereunder, and directly applicable to operation and maintenance of Hunter II and the Common Facilities;

(c) payroll cost of UP&L employees assigned regularly to work on Hunter II and the Common Facilities and of other UP&L employees or contractors, on an actual time basis, assigned temporarily to work on Hunter II and the Common Facilities, including payroll taxes and employee benefits;

(d) the cost of materials, supplies and spare parts for Hunter II (excluding inventories thereof existing on the date hereof, to the extent that an undivided 39.69% interest in such inventories for Hunter II or an undivided 19.845% interest in such inventories for the Common Facilities is included in the Ownership Interest, but including any replenishment of such inventories or any additions thereto made from time to time by the Operator) used or consumed during such Month, including related purchasing, carrying, storage and handling costs;

(e) Water Cost, determined pursuant to Section 5.4 hereof, and Coal Cost, determined pursuant to Section 5.5 hereof;

(f) the cost of station use Power and Energy from sources other than Hunter II for any period during which Hunter II shall be subject to an outage;

(g) any Federal, state or local taxes imposed upon Hunter II or the Common Facilities, the Hunter II Site or the Hunter Station Site; *provided, however,* that Federal, state or local taxes imposed on Hunter II, the Common Facilities, the Hunter II Site or the Hunter Station Site shall not be payable by Deseret hereunder if such taxes shall have been paid directly by Deseret in respect of the Ownership Interest or the Site Ownership Interest, in each case in accordance with Section 9.2(c) hereof; and *provided, further,* that such taxes shall in no event include any income taxes payable by UP&L with respect to any income derived from its function as Operator or from the sale of Power and Energy derived from its undivided 60.31% interest in Hunter II or its interests in other generating units located at the Hunter Station;

(h) the cost of load and frequency control and system dispatch service;

(i) the cost of insurance obtained and maintained by the Operator in accordance with Section 5.10 hereof, including an amount which bears the same relation to any reserve deposit made by UP&L during such period or which, on an actuarial basis, could have been made by UP&L during such period, in respect of its self-insurance or deductible risks, as Hunter II capacity bears to the total capacity of all generating units (including Hunter II) in the UP&L system covered by such insurance; *provided, however,* that such cost shall not include amounts in respect of the cost of insurance (including, without limitation, the cost of any reserve deposit relating to self-insurance or deductible risks) if, and to the extent that, Deseret shall have paid the cost of insurance obtained by it in respect of risks arising from the ownership, use or operation of the Ownership Interest;

(j) the cost of oil or other fuels (excluding inventories thereof existing on the date hereof, to the extent that an undivided 39.69% interest in such inventories for Hunter II or an undivided 19.845% interest in such inventories for the Common Facilities is included in the Ownership Interest, but including any replenishment of such inventories or any additions thereto made from time to time by the Operator) used or consumed during such Month and required for start-up, flame stabilization or other purposes;

(k) the cost of fines and penalties resulting from non-compliance with environmental regulations, except fines and penalties resulting from intentional non-compliance not agreed to by the Parties in writing; and

(l) administrative and general expenses, calculated as shown, for illustrative purposes, on attached Exhibit E.

There shall be credited against Operation and Maintenance Expenses payable by Deseret for such Month (i) the proceeds of the sale by UP&L, for its own account and for the account of Deseret of any surplus materials or supplies constituting part of, or used in connection with, Hunter II or the Common Facilities, and (ii) the cost of Power and Energy from Hunter II used in the operation of the Hunter Station (other than Hunter II) during any period during such Month.

SECTION 5.4. *Water Supply.*

UP&L agrees, subject to the occurrence of Uncontrollable Forces, to provide Hunter II with sufficient quantities of water to permit the operation of Hunter II, including the Ownership Interest, at its projected Capacity Factor, which for purposes of this Agreement is estimated to average 65% over the Estimated Useful Life of Hunter II, from the date hereof (i) through the Estimated Useful Life of Hunter II and (ii) on a best efforts basis thereafter until the Final Shutdown Date. The monthly charge for such water (*Water Cost*) shall be a properly allocated share of the average cost of water furnished by UP&L to Hunter Station during such Month. Concurrently with the execution and delivery of this Agreement, UP&L is providing Deseret, at Deseret's cost, with a report of a qualified engineer satisfactory to Deseret establishing that (i) the sources of water, specified in such report as being available to UP&L for use at the Hunter Station, are sufficient to permit the operation of Hunter II at its projected Capacity Factor throughout the period from the date hereof until at least the end of the Estimated Useful Life of Hunter II, and (ii) the facilities constructed to supply water to Hunter II are capable of supplying water at a rate sufficient for the operation of Hunter II at its projected Capacity Factor.

SECTION 5.5. *Coal Supply and Coal Costs.*

(a) *Supply of Coal by UP&L.* UP&L agrees, subject to the occurrence of Uncontrollable Forces, to provide Hunter II with coal in sufficient quantities and of sufficient quality to permit the operation of Hunter II, including the Ownership Interest, in compliance with all Federal, state and local laws and regulations applicable to Hunter II, at its projected Capacity

Factor, from the date hereof (i) through the Estimated Useful Life of Hunter II and (ii) on a best efforts basis thereafter until the Final Shutdown Date. The coal supply to be utilized as fuel for operation of Hunter II shall be furnished by UP&L from its own coal resources or other supplies obtained by UP&L. Such coal will be supplied to Hunter II at a cost (*Coal Cost*) for any Month equal to the average cost of coal in the Hunter Station coal pile, with such average cost being computed as follows: (i) in the case of coal delivered to the Hunter Station coal pile from UP&L's own resources, cost shall equal the sum of (A) UP&L's total cost of mining, delivering, carrying and stockpiling such coal at Hunter Station, including, but not limited to, actual costs of mine operation (including washing, treating and transportation of coal delivered), depreciation, amortization and cost depletion, (B) an amount equal to 10% of the amount determined under clause (A) above, and (C) an amount equal to the sum of (x) a return on UP&L's investment in the mine or mines from which coal is actually delivered and associated facilities (determined on the basis of the number of tons delivered from each mine) equal to the then allowed overall rate of return on such investment allowed by the Public Service Commission of Utah, and (y) an amount equal to the difference (which may be a negative number) between (aa) Federal income taxes payable with respect to UP&L's net income earned on sales of coal to Deseret hereunder and (bb) the depletion allowance with respect to such sales, and (ii) in the case of coal delivered to the Hunter Station coal pile obtained by UP&L from other sources, the cost shall equal the cost to UP&L of purchasing, delivering and stockpiling such coal at Hunter Station. Concurrently with the execution and delivery of this Agreement, UP&L is providing Deseret, at Deseret's cost, with a report of a qualified engineer satisfactory to Deseret establishing that (i) the sources of coal specified in such report as being available to UP&L for use at Hunter Station are adequate to provide Hunter II, in common with other generating units at the Hunter Station, and based upon the assumed useful lives of such generating units as reflected in the books and records of UP&L, with coal in sufficient quantities and of sufficient quality to permit the operation of Hunter II in compliance with all present Federal, state and local laws and regulations applicable to Hunter II at its projected Capacity Factor throughout the period from the date hereof until at least the end of the Estimated Useful Life of Hunter II, and (ii) the facilities constructed to supply coal to the Hunter Station are capable of supplying coal at a rate sufficient for the operation of Hunter II at its projected Capacity Factor.

(b) *Right of Deseret to Supply Coal.* In lieu of the coal supply to be provided by UP&L and allocated for operation of the Ownership Interest and payment therefor by Deseret, as provided in (a) above, Deseret, at its option, but subject to the prior written approval of UP&L of any coal supply agreement, may, pursuant to the conditions herein set forth, supply up to 39.69% of the coal requirements for operation of Hunter II; *provided, however,*

that the supply of such coal shall not disrupt deliveries of coal to either Hunter II or any other generating units at the Hunter Station or, in the opinion of UP&L directly or indirectly impair or adversely affect UP&L's operations as a result of labor, labor-related or similar problems, and that all coal so supplied will be (i) of a kind and quality that will be comparable to the coal supplied by UP&L for Hunter II and will be compatible with the design characteristics and environmental requirements of Hunter II, (ii) delivered and unloaded at the Hunter Station coal handling facilities at such times and in such amounts as UP&L may reasonably specify in order to permit the continuous operation of Hunter II, (iii) supplied for a continuous period equal to the remaining Estimated Useful Life of Hunter II, or such lesser period as may be mutually agreed upon. If Deseret should supply coal hereunder, inventories of coal shall be shared and losses adjusted proportionately. The right of Deseret to supply coal as provided in this Section 5.5(b) may be exercised only by written notice given to UP&L within 60 days of the date that UP&L shall give to Deseret written notice of UP&L's intention to purchase coal under long-term contracts (approximate remaining life of Hunter II) for generating units at the Hunter Station. Notice of election shall be accompanied by a coal supply agreement executed by the supplier. In the event Deseret elects hereunder to supply less than 39.69% of the Hunter II coal supply, the provisions of paragraph (a) above will apply to all coal supplied by UP&L, over and above that supplied by Deseret, required for operation of the Ownership Interest and Operation and Maintenance Expenses under paragraph (e) of Section 5.3 shall be appropriately adjusted. If deliveries of coal by Deseret shall commence, but shall thereafter be interrupted, UP&L and Deseret shall attempt to agree on means for the continued operation of the Ownership Interest at its most efficient load. During any period of interruption of coal deliveries arranged by Deseret hereunder Deseret's right to the output of Power and Energy from the Ownership Interest shall be limited to that part of such output as shall be furnished by coal furnished by Deseret hereunder, and Deseret shall pay to UP&L an amount which shall be sufficient to reimburse UP&L for any losses incurred during such period in the course of maintaining an efficient load on Hunter II.

(c) *Right of Deseret to Supply Water and Coal Under Limited Circumstances.* For the period, if any, after the end of the Estimated Useful Life of Hunter II and prior to the Final Shutdown Date, during which period UP&L shall be obligated to provide water and coal to Hunter II on a best efforts basis pursuant to Sections 5.4 and 5.5(a) hereof, if UP&L shall fail to provide such water and coal in sufficient quantities to permit the operation of Hunter II, including the Ownership Interest, at its projected Capacity Factor, Deseret may, at its option, supply sufficient quantities of water and/or coal to permit such operation under a contract approved by UP&L and UP&L agrees to reimburse Deseret for its costs for such water and/or coal to the extent that

Deseret furnishes more than 39.69% of the water and coal requirements for such operation.

SECTION 5.6. *Operation and Scheduling.*

UP&L and Deseret, respectively, shall have the right to schedule their respective percentage shares of Hunter II's Power and Energy at any time within the ability of Hunter II to operate and meet such schedule. In the event Hunter II cannot produce at its rated output for any reason, Power and Energy available to UP&L and Deseret, respectively, shall be proportionately reduced (based upon an allocation of 60.31% and 39.69%, respectively). UP&L and Deseret, respectively, shall allow 5% of their respective shares of Hunter II's Power and Energy for load and frequency control and regulation. Not later than 2:00 p.m. on each Business Day, Deseret shall provide to the Operator and each of the Power Purchasers through its dispatchers, its estimated hourly schedule of generation from Hunter II for each Power Purchaser for each hour of the following day (or, if such following day shall not be a Business Day, each successive day which shall not be a Business Day, as well as the next Business Day). Such schedule may thereafter be changed by Deseret at any time. The schedule shall not be less in any hour than Deseret's percentage share of the minimum capability of Hunter II, as determined by the Operator, unless the Parties agree to a shutdown of Hunter II, or except to the extent the other Party agrees to schedule more than its share of minimum capability so that the total of the two schedules equals the minimum capability of Hunter II. Such schedule will not exceed the maximum percentage of capability to which each Party is entitled by its ownership share of Hunter II. The Operator shall promptly notify Deseret of any change in operating limits or operating capability of Hunter II, and the Parties shall thereupon make any necessary changes in their respective percentages of such changed operating limits and capability. Any departure from advance schedules shall be spread proportionately to Deseret's previously established schedules unless Deseret shall give to UP&L notice to the contrary. The Operator shall, subject to unscheduled outages or impairments, operate Hunter II as scheduled by the Parties (up to the operating limits or operating capability of Hunter II) and shall hold deviations from the schedule to a minimum and shall correct deviations from the schedule as soon as possible. The Parties acknowledge that efficient operation and scheduling of Power and Energy from Hunter II will require establishing an Inadvertent Energy Account (the *Inadvertent Energy Account*) to account for differences between scheduled and actual output of Hunter II and to provide for equitable settlement. All transactions hereunder will be scheduled and recorded to the nearest whole megawatt.

SECTION 5.7. *Records of Operation.*

The Operator shall keep adequate records of Hunter II's operations, including operation and maintenance programs, generation of Power and other records in accordance with Reasonable Utility Practice or as required by regulatory agencies. All records shall be readily available for inspection and/or audit by Deseret at the Operator's offices and copies thereof shall be furnished to Deseret upon request.

SECTION 5.8. *Outages.*

The Operator shall prepare and deliver to Deseret at least 120 days before the beginning of each Contract Year a schedule of outages for inspection and ordinary maintenance for Hunter II for such Contract Year and, to the extent practicable, shall adhere to the schedule for routine inspection and maintenance of Hunter II. Scheduling of such outages will be coordinated with the Operator's other plant maintenance outages on the UP&L system. Any outages required for maintenance affecting the safety of Hunter II will be scheduled by the Operator as required. In the event of emergency outages, forced outages, or reductions in Hunter II's capability for any reason, the Operator shall schedule and perform all required repairs and replacements, and restore Hunter II's capability, in an expeditious manner in accordance with Reasonable Utility Practice.

SECTION 5.9. *Major Capital Improvements.*

At the request of Deseret, for the purpose of allowing Deseret additional time, if necessary, to secure funds to pay Deseret's share of costs of Capital Improvements, UP&L will pay the full amount of such excess costs and Deseret shall be obligated to reimburse UP&L for such payments on Deseret's behalf on or before a date six months following the date of such payment, together with interest on such amount at a rate equal to the prime rate of Morgan Guaranty Trust Company of New York from time to time in effect, plus 1%.

SECTION 5.10. *Insurance.*

(a) *Obligation to Insure.* UP&L, for itself and as agent for Deseret, shall procure and thereafter maintain in effect at all times during operation (including any period of outage prior to the occurrence of an Event of Loss or the Final Shutdown Date) of Hunter II, in accordance with Reasonable Utility Practice, adequate insurance coverage for the construction and operation of Hunter II, with UP&L and Deseret (and any other person designated to the Operator by notice in writing) each as a named assured and

loss payee, as their respective interests may appear, to protect and insure against: (i) workmen's compensation and employer's liability (it being understood that UP&L may self-insure in respect of such risks; provided that, UP&L in consideration of the payments made by Deseret pursuant to paragraph (i) of Section 5.3 hereof, shall indemnify Deseret and each additional assured and loss payee and hold each of them harmless from and against any Claims for workmen's compensation and employer's liability), (ii) public liability for bodily injury and property damage, (iii) all risks of physical damage to property or equipment, including transportation and installation perils, and including any such damage caused by the negligence of the Operator, and (iv) such other insurance as UP&L and Deseret deem necessary with reasonable limits and subject to appropriate exclusions and deductibles. If any such insurance shall provide for deductibles, the amount of any such deductible shall, in consideration of the payment by Deseret of the amounts set forth in paragraph (i) of Section 5.3 hereof, be the sole responsibility of UP&L and, in any such event UP&L shall indemnify Deseret and each additional assured and loss payee and hold each of them harmless from and against any Claims falling within the amount of such deductible. All policies of property insurance shall be in amounts sufficient to prevent Deseret and any additional assureds and loss payees from becoming a co-insurer of any loss under such policy with respect to risks relating to the Ownership Interest. The Operator agrees that all such insurance may be maintained in effect for the term thereof by Deseret or any additional assured, at Deseret's or any such additional assured's cost and expense, if the Operator shall fail to do so, in which event Operation and Maintenance Expenses under paragraph (i) of Section 5.3 shall be appropriately adjusted and UP&L shall be unconditionally obligated to pay to Deseret or any such additional assured or loss payee, as the case may be, that portion of the cost of such insurance which exceeds the cost specifically allocable to the Ownership Interest. In addition, Deseret may obtain insurance with respect to the Ownership Interest for its own account, the proceeds of which shall be payable directly to Deseret.

(b) *Identification of Insurers.* The Operator has heretofore identified to Deseret the insurers with which the insurance referred to in paragraph (a) hereof shall be placed. The Operator shall hereafter notify Deseret, in writing within 30 days, when coverage from any additional insurer or new insurer has been obtained.

(c) *Coverage and Terms of Insurance.* All insurance (other than workmen's compensation and employer's liability insurance) maintained by the Operator pursuant to paragraph (a) hereof shall:

(i) provide, except in the case of public liability insurance, that all insurance proceeds for losses of less than

\$500,000 shall be adjusted with and payable to the Operator, that all insurance proceeds for losses of \$500,000 or more shall be adjusted with the Operator and Deseret, jointly, and that that portion of such insurance proceeds which shall be attributable to the Ownership Interest shall be payable to Deseret;

(ii) include effective waivers by the insurer of all claims for insurance premiums against Deseret and any additional assured or loss payee;

(iii) provide that, so long as the coverage and terms set forth herein shall be available in the commercial insurance market at reasonable cost, any loss proceeds shall be payable to the loss payee notwithstanding:

(1) any act of negligence, wilful misconduct or any breach of any condition or warranty in any policy of insurance, of the Operator, Deseret or any additional assureds,

(2) the occupation or use of Hunter II or the Common Facilities for purposes more hazardous than permitted by the terms of the policy,

(3) any foreclosure or other proceeding or notice of sale relating to Hunter II, the Common Facilities, or the Ownership Interest, or

(4) any change in the title to or ownership of Hunter II, the Common Facilities or the Ownership Interest or the termination of this Agreement;

(iv) provide that all of the provisions thereof (except the limits of liability) and liability for premiums (which shall be solely a liability of the Operator) shall operate in the same manner as if there were a separate policy covering each insured, and such insurance shall be primary insurance and that the insurers under such insurance policies shall be liable under such policies without right of contribution from any other insurance coverage effected by Deseret, under any other insurance policies with any other insurance companies covering a loss which is also covered under the insurance policies maintained by the Operator pursuant to paragraph (a) hereof;

(v) provide that no cancellation, termination or material change thereof shall be effective until at least 30 days after receipt by Deseret, each additional assured and each loss payee of written notice thereof;

(vi) waive any right of subrogation of the insurers against Deseret and each additional assured or loss payee and waive any right of the insurers to any setoff or counterclaim or any other deduction, whether by attachment or otherwise, in respect of any liability of Deseret and each additional assured or loss payee;

(vii) be reasonably satisfactory to Deseret, each additional assured and each loss payee in all other respects; and

(viii) provide that the insurer shall advise Deseret and each additional assured and loss payee in writing promptly of any circumstance of which such insurer has knowledge which may invalidate or render unenforceable, in whole or in part, any such insurance.

(d) *Delivery of Insurance Policies.* The Operator shall promptly deliver to Deseret and each additional assured and loss payee certified copies of all insurance policies with respect to Hunter II which the Operator is required to maintain pursuant to paragraph (a) hereof (or certificates thereof executed by the insurer or its duly authorized agent), together with evidence as to the payment of all premiums then due thereon.

(e) *Access to Records.* UP&L shall provide access to its records and accounts so that agents or employees of Deseret shall be able to prepare for Deseret a report setting forth the insurance obtained by the Operator pursuant to paragraph (a) hereof and then in effect, and stating (i) whether, in the opinion of such agent or employee, such insurance policies comply with the requirements of paragraphs (a) and (c) hereof, (ii) that all premiums then due thereon have been paid, and (iii) that the same are in full force and effect.

(f) *Payment of Claims.* All insurance proceeds received by or payable to Deseret, each additional assured and any loss payee on account of any damage to or destruction of Hunter II or the Common Facilities or any part thereof (less the actual costs, fees and expenses incurred in the collection thereof), other than any damage or destruction constituting an Event of Loss, shall, so long as the Operator is not in default hereunder, be paid over to the Operator, or as it may direct from time to time, as repair and restoration

progresses to pay (or reimburse the Operator for) the cost of repair and restoration of Hunter II or the Common Facilities, but only upon the written request of the Operator accompanied by appropriate evidence satisfactory to Deseret that the sum requested is a proper item for such cost and has been paid or will be applied to the payment of a sum then due and payable and receipt by Deseret of evidence satisfactory to it that such proceeds, together with funds of the Operator available for the purpose, shall be sufficient to complete repair and restoration of Hunter II or the Common Facilities. Upon receipt by Deseret of evidence satisfactory to it that repair and restoration has been completed and the cost thereof paid in full and that there are no Liens for labor or materials supplied in connection therewith, the balance, if any, of such proceeds shall be paid over or assigned (i) to the order of the Operator as to 60.39% thereof, in the case of Hunter II, or 80.155% thereof, in the case of the Common Facilities, and (ii) to the order of Deseret as to 39.69% thereof, in the case of Hunter II, or 19.845% thereof, in the case of the Common Facilities.

ARTICLE VI

TRANSMISSION OF POWER AND ENERGY

SECTION 6.1. *Wheeling Service.*

UP&L, acting for and on behalf of Deseret shall wheel to each of the Power Purchasers in accordance with the terms and conditions hereof, all Power and Energy generated by the Ownership Interest to which the Power Purchasers are respectively entitled under the terms of the Power Sales Contracts over transmission facilities of UP&L. Except as set forth in a footnote to Schedule I hereto, UP&L shall construct and own all transmission lines in its certificated service area required for service hereunder.

SECTION 6.2. *Points of Delivery.*

Power and Energy wheeled by UP&L hereunder shall be delivered (i) at the various points of delivery specified in Schedule I hereto, or (ii) to such other points of delivery as may be mutually agreed upon by UP&L and Deseret.

SECTION 6.3. *Delivery Voltages.*

Power and Energy wheeled by UP&L hereunder shall be delivered (i) at the nominal delivery voltages set forth in Schedule I hereto, or (ii) as shall be agreed to by UP&L and Deseret.

SECTION 6.4. *Wheeling Costs.*

(a) *Determination of Wheeling Costs.* Wheeling Costs with respect to all wheeling services supplied by UP&L to the Power Purchasers shall be determined as follows:

(i) transmission wheeling services provided by UP&L over backbone facilities shall be charged at an annual backbone wheeling charge per kilowatt equal to the annual charges for backbone facilities by UP&L, excluding interconnections, divided by the UP&L system non-coincidental peak load, subject to annual adjustment for significant changes determined by UP&L and to approval of regulatory authorities having jurisdiction; and

(ii) transmission wheeling services provided by UP&L over subtransmission facilities shall be charged at an annual subtransmission wheeling charge per kilowatt equal to the average cost per kilowatt of firm load served by a subtransmission network, or at a specific cost where service rendered hereunder is for one customer only. Wheeling charges shall be updated annually and shall be subject to approval of regulatory authorities having jurisdiction; and

(iii) wheeling services provided by UP&L over distribution facilities shall be charged at an annual wheeling charge per kilowatt equal to annual charges for facilities used and useful for service to such customers, divided by the firm load served by such facilities. Such Wheeling Charges shall be updated annually and shall be subject to approval of regulatory authorities having jurisdiction.

(b) *Annual Costs.* Annual charges determined under clauses (i), (ii) and (iii) of subsection (a) above shall include, but not be limited to, the following:

(i) the cost of UP&L's debt and preferred stock;

(ii) UP&L's return on common stock as authorized by the Utah Public Service Commission;

(iii) UP&L's operation and maintenance costs for its transmission system, including labor and material, labor and other overheads and equipment expenses;

- (iv) contract labor expenses;
- (v) depreciation recorded by UP&L with respect to its transmission system in accordance with the Uniform System of Accounts; and
- (vi) administrative and general expense, taxes and insurance costs relating specifically to UP&L's transmission system.

(c) *Monthly Wheeling Costs.* Wheeling Costs for any Month (*Wheeling Costs*) shall equal one-twelfth of the annual kilowatt-year charge as determined in paragraphs (a) and (b) above, for each kilowatt of scheduled hourly demand wheeled. Such demand shall be the greater of the scheduled hourly demand wheeled during the current month or during any of the preceding 11 months.

(d) *Transmission Losses.* Quantities received from the Hunter II bus bar for Deseret shall be reduced by an amount equal to transmission losses incurred in making such deliveries over UP&L's transmission, subtransmission and distribution network. The percentage by which Deseret's generation must be increased to obtain quantities delivered to Power Purchasers shall be determined by Reasonable Utility Practice. Initial loss factors in respect of the Power Purchasers are as shown on Schedule I and shall be subject to review and adjustment at 5-year intervals if requested by either Party.

(e) *Illustration of Calculation of Wheeling Costs.* Concurrently with the execution and delivery of this Agreement, UP&L is delivering to Deseret, for illustrative purposes only, an example of the calculation of Wheeling Costs utilizing the foregoing factors.

SECTION 6.5. *Metering.*

The total amount of Power and Energy delivered by UP&L under this Agreement to the Power Purchasers shall be the sum of the quantities individually scheduled from Hunter II to each of the Power Purchasers, appropriately adjusted for losses as provided in Section 6.4 above. Deseret shall arrange and pay for the installation and operation of adequate metering and load control equipment with respect to each Power Purchaser to assist in calculation of Power and Energy received from sources other than Hunter II.

SECTION 6.6. *Underfrequency Relaying.*

Deseret shall arrange for the implementation and/or maintenance of an underfrequency relaying program which shall include installation of sufficient underfrequency relaying equipment to shed Deseret's load in a manner consistent with the load shedding procedures used by UP&L. Such load shedding equipment shall shed Deseret's load in the same manner as would occur if the load shed were UP&L load.

SECTION 6.7. *Power Factor.*

Deseret shall be obligated to maintain a power factor at each point of delivery between 90% lagging and 90% leading. Should the power factor as metered at the point of delivery from UP&L's transmission system not be maintained within such limits, UP&L shall notify Deseret and request that the power factor be corrected. If Deseret has not begun corrective action at the end of 90 days, UP&L may take corrective action and Deseret shall be obligated to compensate UP&L for all sums expended and all services contracted for or performed by UP&L, including UP&L's standard overhead.

SECTION 6.8. *Service Continuity.*

UP&L shall use reasonable diligence in accordance with Reasonable Utility Practice to prevent and minimize interruption of service supplied hereunder, but does not guarantee such service against interruptions. In the event sufficient transmission capacity is not available to serve all firm power schedules, including schedules hereunder, such schedules contributing to overloading of transmission lines shall be reduced on a pro-rata basis.

SECTION 6.9. *Term.*

Wheeling service to be supplied hereunder shall commence on the date hereof and shall continue until the Final Shutdown Date, unless otherwise agreed with respect to any period by UP&L and Deseret.

SECTION 6.10. *Parties Rights and Obligations.*

The obligation of UP&L hereunder is to wheel to each of the Power Purchasers, on the terms and conditions herein set forth, Power and Energy derived from the Ownership Interest in consideration of the payment of Wheeling Costs, as such Wheeling Costs may be determined from time to time hereunder subject to such regulatory approvals as may be required. Nothing in this Agreement is intended to give Deseret or the Power Purchasers (i) any right or interest in any transmission facilities owned by UP&L, or (ii) any right

to delivery of Power and Energy other than Power and Energy from the Ownership Interest. Nothing in this Agreement is intended to obligate UP&L to sell Power and Energy to any Power Purchaser.

ARTICLE VII

RESERVES

SECTION 7.1. *Forced Outage Reserves.*

Deseret shall maintain as a forced-outage reserve (the *Forced-outage Reserve*) generating capacity in Hunter II, or from other sources, in an amount equal to 17% of Hunter II capability attributable to the Ownership Interest. The foregoing percentage shall be subject to adjustment from time to time, upon notice to Deseret from UP&L, and shall at all times be equal to the percentage required to be maintained by UP&L with respect to the UP&L system.

SECTION 7.2. *Emergency Capacity.*

During a forced outage, either Party shall have the right to request and receive from the other Party emergency generating capacity in an amount up to Deseret's Forced-outage Reserve, to the extent that the supplying Party has Forced-outage Reserves in excess of forced outages on its system and has not committed such Forced-outage Reserves to others under agreements existing prior to this Agreement and heretofore specified in writing by such supplying Party to the other Party hereto. The receiving Party shall reimburse the supplying Party for the incremental cost of energy supplied during the forced outage.

SECTION 7.3. *Additional Emergency Capacity.*

If either Party requests emergency capacity in excess of that provided for in Section 7.2 above and such capacity is available in the sole discretion of the supplying Party, such Party shall make such emergency capacity available to the other Party. The receiving Party shall pay the supplying Party for Power and Energy supplied at the supplying Party's system average Power cost (\$/kW Day) for each day Power is supplied, and actual cost of Energy supplied during forced outage.

SECTION 7.4. *Interconnection Sources.*

If Deseret requires emergency Power in excess of that provided for in Section 7.2 above and such Power is not available from resources on the UP&L system, UP&L will, at Deseret's request, use its best efforts to promptly purchase Power and Energy from other utilities. Deseret will pay to UP&L for non-firm Power and Energy under this Section 7.4 on the basis of an applicable rate schedule filed pursuant to Section 35.23 of the rules of the Federal Energy Regulatory Commission.

SECTION 7.5. *Capacity During Planned Outages.*

During a planned outage or a period in which a generation impairment shall exist, either Party shall have the right to request and receive from the other Party emergency generating capacity on the terms and conditions set forth in Sections 7.3 and 7.4.

ARTICLE VIII

BUDGET, BILLING & PAYMENT

SECTION 8.1. *Budget.*

On the date hereof and on or before the ninetieth day prior to the beginning of each Contract Year hereafter, the Operator shall prepare and mail to Deseret a budget presenting a detailed estimate, for each Month of such Contract Year, of (i) 39.69%, in the case of Hunter II, and 19.845%, in the case of the Common Facilities, of Operation and Maintenance Expenses, which estimate shall itemize the costs in relation to paragraphs (a) through (l) of Section 5.3 hereof, and (ii) 100% of Wheeling Costs.

SECTION 8.2. *Revised Budget.*

At the end of each Month of each Contract Year, the Operator shall review its budget of Operation and Maintenance Expenses and Wheeling Costs for such Contract Year and in the event that any revision thereof is necessary the Operator shall prepare and mail to Deseret a revised budget of Operation and Maintenance Expenses and Wheeling Costs for the remainder of such Contract Year incorporating all appropriate adjustments, which revised budget shall supersede the previous budget of Operation and Maintenance Expenses and Wheeling Costs.

SECTION 8.3. *Billing; Payment; Monthly Adjustment.*

On or before the first day of each Month beginning with the first day of the first Month following the date hereof, the Operator shall render to Deseret a monthly statement presenting the amount payable by Deseret in respect of Operation and Maintenance Expenses and Wheeling Costs for the ensuing Month as shown on the budget of Operation and Maintenance Expenses and Wheeling Costs for such Contract Year furnished by the Operator pursuant to Section 8.1 or Section 8.2 hereof. Beginning with the third Month of the first Contract Year, in addition to the charge for the current month, based on the estimate, such monthly statement shall show an adjustment for actual Operation and Maintenance Expenses and Wheeling Costs for the second preceding Month, except that adjustments with respect to income taxes shall be made annually. Any difference between such actual Operation and Maintenance Expenses, and Wheeling Costs and the amount paid by Deseret in respect of estimated Operation and Maintenance Expenses and Wheeling Costs for such second preceding Month shall be added to or deducted from, as the case may be, the amount of such monthly statement for the then current Month. Deseret shall pay the amounts shown on such statement on or before the fifteenth day of such Month. Payments shall be made to the Operator in a manner so that the Operator will have funds available on the day such payment shall become due. In the event that any day on which any payment under this Agreement is due shall not be a Business Day, such payment shall be made on the next succeeding day which is a Business Day. Payments shall be made at the office of UP&L specified in Section 10.2 hereof or such other place as shall be designated by UP&L.

SECTION 8.4. *Disputes.*

In the event of any dispute as to any portion of any monthly statement, Deseret shall nevertheless pay the full amount shown on such statement when due and shall, within 60 days from the date of such statement, give written notice of the dispute to the Operator. Such notice shall identify the disputed statement, state the amount in dispute and set forth a full statement of the grounds on which such dispute is based. No adjustment shall be considered or made for disputed charges unless notice is given as aforesaid. The Operator shall give consideration to such dispute and shall advise Deseret with regard to the Operator's position relative thereto within 30 days following receipt of such written notice. Upon agreement or final adjudication, as the case may be, of the correct amount, any difference between such correct amount and such full amount shall be subtracted from the statement next submitted to Deseret after such determination pursuant to Section 8.3 above.

SECTION 8.5. *Annual Audit.*

The Operator shall keep accurate records and accounts of Operation and Maintenance Expenses and Wheeling Costs in accordance with the Uniform System of Accounts. Such records and accounts shall be subjected to an audit as of the end of and for each Contract Year by a firm of independent public accountants selected by the Operator, which firm shall be experienced in electric utility accounting and of national reputation and the internal accounting staff of Deseret shall be permitted to check and review all accounting records relating to the operation of Hunter II and to observe the procedures followed by the Operator's accountants. The report of such firm of independent public accountants shall be submitted to the Operator, with a copy to Deseret, within 90 days after the end of such Contract Year. The cost of such annual audits shall be included in Operation and Maintenance Expenses.

SECTION 8.6. *Annual Adjustment.*

On or before the one hundred twentieth day after the end of each Contract Year, the Operator shall determine, after review of the annual audit of accounts provided for in Section 8.5 hereof, whether the aggregate amount paid by Deseret pursuant to Section 8.3 hereof for such preceding Contract Year was the proper amount. The Operator shall advise Deseret in writing of such determination. The aggregate of any amount found to have been paid by Deseret in excess of the amount which should have been paid by Deseret shall be deducted from the amount to be paid by Deseret to the Operator pursuant to Section 8.3 hereof for the Month or, if necessary, Months next following the Month in which such determination is made or at the option of the Operator shall be refunded to Deseret. The aggregate of any amount by which the amount which should have been paid exceeds the amount which was paid shall be added to the amount to be paid by Deseret to the Operator pursuant to Section 8.3 above for the Month next following the Month in which such determination was made.

ARTICLE IX

REPRESENTATIONS, WARRANTIES AND COVENANTS

SECTION 9.1. *Representations, Warranties and Covenants of UP&L.*

UP&L represents and warrants to Deseret, and covenants as follows:

(a) *Organization, Authorization and Execution of Documents.*

UP&L is a corporation duly organized, validly existing and in good standing under the laws of the State of Utah with full power and authority to execute and deliver and to perform its obligations under this Agreement, the Assignments, the Bill of Sale and the Real Property Deed. Each of such agreements has been duly authorized and executed by UP&L with the approval of regulatory authorities having jurisdiction, and constitutes a valid and binding obligation of UP&L enforceable in accordance with its terms.

(b) *No Violation.* The execution, delivery and performance by UP&L of this Agreement, the Assignments, the Bill of Sale and the Real Property Deed will not violate any provisions of (i) any patent, applicable law (including, without limitation, the Federal Power Act, as amended) or regulation or any order, writ, judgment or decree of any court, arbitrator or governmental authority applicable to UP&L, or (ii) the certificate of incorporation or by-laws of UP&L, or constitute a default under, or result in the creation or imposition of any Lien on any of the assets of UP&L pursuant to the provisions of any mortgage, indenture, contract, agreement or other undertaking to which UP&L is a party or which purports to be binding upon UP&L or upon any of its assets.

(c) *Consents, Approvals, etc.* No authorizations, consents, approvals, waivers, exemptions, variances, franchises, permissions, permits or licenses of, or filings and declarations with, any Federal, state and other governmental authorities, including, without limitation, any public utility regulatory commission having jurisdiction over UP&L, are required in connection with the construction, use, occupancy or operation of Hunter II, the Common Facilities or the Hunter Station, compliance with environmental laws and regulations, the conveyance of the Ownership Interest by UP&L to Deseret, the conveyance of the Site Ownership Interest by UP&L to Deseret, the operation of the Ownership Interest by UP&L, the extraction and sale by UP&L of the

coal to be supplied under this Agreement and its use in Hunter II by the Operator, the supply of water to Hunter II, or the execution, delivery and performance by UP&L of this Agreement, the Bill of Sale, the Real Property Deed and the Assignments, except such as are set forth in Exhibit F hereto, each of which, except as specified therein, has been duly obtained or made, is in full force and effect and is not the subject of any pending or threatened judicial or administrative proceedings.

(d) *No Litigation.* There are no actions, suits, investigations or proceedings pending or, to the best knowledge of UP&L, threatened against or affecting UP&L or its properties, which, if adversely determined, might either individually or in the aggregate have a material adverse effect on the ability of UP&L to deliver, or perform its obligations under, this Agreement, the Bill of Sale, the Real Property Deed or the Assignments.

(e) *Transfer of Interests; No Liens.* Upon delivery to Deseret of the Bill of Sale and the Real Property Deed (i) Deseret will acquire good title to all real and personal property included in the Ownership Interest and the Site Ownership Interest, and will be lawfully seized of an estate in fee simple in and to the Ownership Interest and the Site Ownership Interest, with good and marketable title to the same, (ii) the Ownership Interest and the Site Ownership Interest will be free of all Liens (except the encumbrance, if any, of the lease between UP&L and Emery County executed in connection with UP&L's pollution control financing) and will have been duly released from the UP&L Mortgage, (iii) Deseret will be entitled to the quiet and peaceable enjoyment of the Ownership Interest and the Site Ownership Interest subject only to (x) the rights of UP&L as co-tenant-in-common of Hunter II, the Common Facilities, the Hunter II Site and the Hunter Station Site, and (y) the provisions of this Agreement relating to the management, operation and maintenance of Hunter II.

(f) *Adequacy of Water and Coal.* UP&L owns or otherwise has available to it for use at the Hunter Station and for the operation of Hunter II until the end of the Estimated Useful Life of Hunter II, sufficient quantities of water to comply with the provisions of Section 5.4 hereof, and the facilities constructed to supply water to the Hunter Station and Hunter II are capable of supplying water at a rate sufficient for the operation of Hunter II at its projected Capacity Factor. UP&L owns or otherwise has available to it for use at the Hunter Station for the operation of Hunter II until the end of the Estimated Useful Life of Hunter II, coal in sufficient quantities and of sufficient quality to comply with the provisions of Section 5.5 of this Agreement, and the facilities constructed to supply coal to the Hunter Station and Hunter II are capable of supplying coal to Hunter II at a rate sufficient for the operation of Hunter II at its projected Capacity Factor.

(g) *Ad Valorem Taxes; Repurchase.* In the event Deseret or any proposed purchaser from Deseret shall not be obligated to pay ad valorem taxes to Emery County or any applicable taxing units in such County, or cannot arrange to make payments in lieu of taxes in amounts equal to such ad valorem taxes, UP&L shall be obligated to purchase the Ownership Interest and the Site Ownership Interest from Deseret at a purchase price equal to the greater of (a) the sum of the net book values of the Ownership Interest and the Site Ownership Interest and subsequent purchases of Capital Improvements, as recorded on the books of Deseret at the date of purchase by UP&L pursuant to this Section 9.1(g) or (b) the sum of (i) the principal amount of any indebtedness for borrowed money incurred by Deseret in connection with the purchase of the Ownership Interest and the Site Ownership Interest and the funding of Deseret's undivided interest in each Capital Improvement, and (ii) the net book values of an undivided interest in Capital Improvements directly acquired by Deseret and funded from margins or other available monies.

(h) *Delivery of Plans and Specifications.* When available, UP&L will, upon request of Deseret and at its cost with respect to the cost of reproduction of documents, deliver to Deseret copies of the Plans and Specifications.

(i) *Consents of Contractors.* Except for its contracts with JELCO, Inc. (now Townsend and Bottum, Inc.) and Stearns-Rogers Company referred to in Section 2.4 hereof, none of the Construction Agreements requires any consent of the Contractor thereunder for the assignment of an undivided interest therein.

SECTION 9.2. *Representations, Warranties and Covenants of Deseret.*

Deseret represents and warrants to UP&L, and covenants as follows:

(a) *Organization and Authority.* Deseret is a co-operative association duly organized, validly existing and in good standing under the laws of the State of Utah with full power and authority to execute and deliver, and to perform its obligations under, this Agreement. Each of such agreements or instruments has been duly authorized and executed by Deseret and constitutes a valid and binding obligation of Deseret.

(b) *No Violation.* The execution, delivery and performance by Deseret of this Agreement will not violate any provisions of any applicable law or regulation or any order, writ, judgment or decree of any court, arbitrator or governmental authority applicable to Deseret.

(c) *Ad Valorem Taxes.* Deseret is unconditionally obligated to pay, and will pay, ad valorem taxes to Emery County and all taxing units of such County in respect of the Ownership Interest and the Site Ownership Interest, in an amount equal to the amount of ad valorem taxes that UP&L would be required to pay if UP&L owned the Ownership Interest and the Site Ownership Interest. At such time as Deseret or any purchaser from Deseret shall not be obligated to pay ad valorem taxes as herein provided and arrangements cannot be made for payment thereof or for payments in lieu of such taxes, as provided in Section 9.1(g), Deseret shall sell the Ownership Interest and the Site Ownership Interest to UP&L at the purchase price determined pursuant to Section 9.1(g) hereof under circumstances where UP&L shall thereupon become obligated to pay ad valorem taxes, including any delinquent ad valorem taxes.

ARTICLE X

MISCELLANEOUS

SECTION 10.1. *Regulatory Authorities.*

The Parties, in their performance of their obligations hereunder, shall conform to all applicable laws, rules and regulations and such performance shall be subject to the terms of valid and applicable orders of any regulatory agency having jurisdiction.

SECTION 10.2. *Notices.*

Any notices, statements or requests provided for herein shall be hand delivered or mailed, by certified or registered mail, to the following addresses:

FOR UP&L:

Utah Power & Light Company
1407 West North Temple
P. O. Box 899
Salt Lake City, Utah 84110
Attention: Secretary

FOR DESERET:

Deseret Generation & Transmission Co-operative
P.O. Box BB
Sandy, Utah 84070
Attention: General Manager

In computing any period of time from such notice, statement, or request, such period shall commence at 12:01 a.m. on the day following the date on which such notice, statement, or request was mailed, if mailed, or the time of delivery, if hand delivered. Any Party may, at any time, by written notice to the other Parties, change its address to which notice shall be given.

SECTION 10.3. *Uncontrollable Forces.*

No Party shall be considered to be in default in the performance of any of the obligations hereunder, other than obligations of the Parties to pay costs and expenses, if failure of performance shall be due to Uncontrollable Forces. The term *Uncontrollable Forces* shall mean any cause beyond the control of the Party affected thereby and which, by the exercise of reasonable diligence, such Party is unable to prevent or overcome, including, but not limited to, an act of God, fire, flood, explosion, earthquake, strike, sabotage, pestilence, an act of the public enemy, civil or military authority, including court orders, injunctions and orders of government agencies of competent jurisdiction prohibiting acts necessary to performance hereunder or permitting any such act only subject to unreasonable conditions, insurrection or riot, an act of the elements, failure of equipment, or inability to obtain or ship materials or equipment because of the effect of similar causes on suppliers or carriers. Nothing contained herein shall be construed so as to require a Party to settle any strike or labor dispute in which it may be involved. Any Party rendered unable to fulfill any obligation by reason of Uncontrollable Forces shall exercise due diligence to remove such inability with all reasonable dispatch.

SECTION 10.4. *Late Payments.*

In the event any payment required to be made hereunder is not submitted within the time period herein specified, the Party failing to make such payment will pay, in addition to the amount of the required payment, the legal rate of interest charged from the date when such payment was due to the date of payment.

SECTION 10.5. *Nature of Obligations.*

The duties, obligations and liabilities of each of the Parties are intended to be several and not joint, and no Party shall be jointly or severally liable for the acts, omissions or obligations of another Party. Nothing herein contained shall be construed to create an association, joint venture or partnership, or impose a partnership duty, obligation or liability on or with regard to any of the Parties. UP&L and Deseret intend that the joint ownership of Hunter II, the Common Facilities, the Hunter II Site and the Hunter Station Site shall not be treated as a partnership for Federal income tax purposes and agree to make the appropriate election under section 761 of Internal Revenue Code of 1954, as amended, to have excluded from the application of the provisions of Subchapter K, Chapter 1, Subtitle A thereof, any unincorporated organization which may be deemed to exist between them as a result of such joint ownership. No Party shall have the right or authority to bind another Party without its express written consent, except as may be expressly provided in this Agreement or other agreement contemplated hereby.

SECTION 10.6. *Assignees or Transferees of UP&L.*

Except with respect to the sales of undivided interests in Hunter Steam Electric Generating Unit No. 1 and related facilities to each of the Cities of Provo, Utah and Bountiful, Utah, UP&L may not assign any of its rights or obligations hereunder to any other person except with the prior written consent of Deseret, which consent shall not be unreasonably withheld. Except as approved by the Public Service Commission of the State of Utah in connection with a transfer of all assets of UP&L's utility system to another public utility, UP&L shall not sell or transfer to any other person its undivided interest in the Hunter II Site, the Hunter Station Site, Hunter II or the Common Facilities except with the prior written consent of Deseret, which consent shall not be unreasonably withheld.

SECTION 10.7. *Consent to Sale and Transfer by Deseret.*

UP&L hereby consents to the sale and transfer by Deseret, at any time during the period from the date hereof to September 25, 1983, of a portion of the Ownership Interest and the Site Ownership Interest individually to each Power Purchaser constituting a Utah municipality or to any entity formed by the Power Purchasers constituting Utah municipalities, subject to the condition that (i) such Power Purchaser or such entity shall assume and agree to be bound by the provisions of this Agreement, and (ii) Deseret shall have obtained the written consent of Emery County prior to the date of such sale or transfer, which consent shall be forwarded to UP&L and the Public Service Commission of Utah. In order to effectuate such sale and transfer to such Power Purchaser

or such entity, UP&L agrees, at the request of Deseret, from time to time to execute and deliver such instruments and documents of further assurances or otherwise, and to take any and all such actions as may be reasonably required to carry out and consummate such sale and transfer, including the appropriate amendment of this Agreement to reflect (i) the addition of such Power Purchaser or such entity as a party to this Agreement, (ii) the portion of the Ownership Interest and the Site Ownership Interest acquired by such Power Purchaser or such entity and the decreased portion of the Ownership Interest and the Site Ownership Interest of Deseret and (iii) the rights, duties and obligations of Deseret and such Power Purchaser or such entity under this Agreement; *provided, however*, that the consent of any such municipality or entity shall not be required for any actions taken by UP&L and Deseret pursuant to Article IV of this Agreement.

SECTION 10.8. *Successors and Assigns.*

This Agreement shall be binding upon and inure to the benefit of UP&L and Deseret and their respective successors and permitted assigns. Without limiting the foregoing, UP&L shall indemnify security assignees of Deseret and the members of Deseret under the same circumstances as UP&L is bound to indemnify Deseret pursuant to this Agreement.

SECTION 10.9. *Further Assurances; Pollution Control.*

(a) *Further Assurances.* In order to effectuate the sale and transfer of the Ownership Interest and the Site Ownership Interest to Deseret as contemplated by the Bill of Sale and the Real Property Deed, UP&L agrees, at the request of Deseret, from time to time to execute and deliver to Deseret all such instruments and documents of further assurances or otherwise, and to take any and all such further actions, as may be reasonably required to carry out and consummate such sale, assignment and transfer and to establish, protect and preserve the rights and interests created or intended to be created thereunder.

(b) *Pollution Control.* As soon as possible after the date hereof Deseret intends to cause Emery County to issue pollution control bonds, to the extent permitted by the Internal Revenue Code and the laws of the State of Utah, with respect to qualified costs of pollution control equipment described in Exhibit G hereto and included in the Ownership Interest. UP&L agrees not to take any action inconsistent with any such sale of pollution control bonds. Furthermore, in recognition of its special knowledge of Hunter II and the Common Facilities and of the Plans and Specifications, UP&L hereby agrees to provide to Deseret and Bond Counsel or Co-Bond Counsel for such issue of pollution control bonds such information and representations of fact as

Deseret or such counsel may reasonably request in connection with such sale of bonds.

SECTION 10.10. *Consent to Assignment for Security Purposes.*

UP&L hereby consents to the assignment by Deseret of its rights, title and interest in, to and under this Agreement and the mortgage of its rights, title and interest in and to the Ownership Interest and the Site Ownership Interest, in each case as security for the performance by Deseret of its obligations in respect of borrowed money.

SECTION 10.11. *Survival of Obligations; Recovery of Delinquent Payments.*

(a) *Survival of Obligations.* UP&L hereby agrees that no dispute with Deseret and no default by Deseret in the performance of any of its obligations under this Agreement shall give UP&L the right to discontinue the performance of its obligations under this Agreement.

(b) *Recovery of Delinquent Payments from Deseret.* UP&L shall have the right to claim, and to commence actions, suits or proceedings for the collection of, all amounts due and payable by Deseret hereunder and unpaid.

SECTION 10.12. *Binding Obligations.*

All of the respective covenants, undertakings and obligations of the Operator set forth in this Agreement shall bind and shall be and become the covenants and obligations of the Operator and, to the extent permitted by law and the existing contracts of the Operator, shall apply to and bind:

(a) All mortgagees, trustees and secured parties under all present and future mortgages, indentures and deeds of trust, security agreements and other financing arrangements which are or may become a lien upon any of the properties of the Operator;

(b) All receivers, assignees for the benefit of creditors, bankruptcy trustees and referees of, or having control or jurisdiction over, the Operator;

(c) All other persons, firms, partnerships, corporations or entities claiming by, through or under any of the foregoing; and

(d) Any successors or assigns of any of those mentioned above in this Section 10.12;

and shall be covenants and obligations running with the Operator's right, title and interest in Hunter II and the Hunter II Site and the Common Facilities and the Hunter Station Site and with all of the rights and interests of the Operator under this Agreement, and shall be for the benefit of Deseret and its successors and assigns, in and to Hunter II, the Hunter II Site, the Common Facilities and the Hunter Station Site. It is the specific intention of this provision that all such covenants and obligations shall be binding upon any party which acquires any of the rights, titles and interests of the Operator in Hunter II, the Hunter II Site, the Common Facilities or the Hunter Station Site or in, to and under this Agreement and that all of the above-described persons and groups shall be obligated to use the Operator's rights, titles and interests in Hunter II, the Hunter II Site, the Common Facilities and the Hunter Station Site or in, to or under this Agreement for the purpose of discharging the covenants and obligations under this Agreement.

SECTION 10.13. *Amendments; Severability.*

(a) *Amendments.* This Agreement may not be amended, modified or otherwise altered in any manner except in writing signed by UP&L and Deseret.

(b) *Severability.* In the event that any provision in this Agreement is declared illegal or no longer in force by reason of any judgment or order issued by a court or regulatory body of competent jurisdiction, all remaining provisions of this Agreement not affected by such judgment or order shall continue in full force and effect.

SECTION 10.14. *Counterparts.*

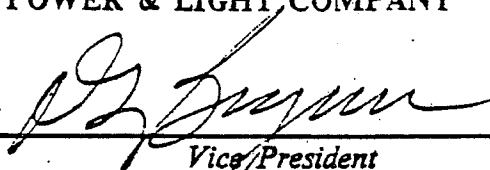
This Agreement may be executed in any number of counterparts. All such counterparts shall be deemed originals and shall constitute but one and the same instrument.

SECTION 10.15. *Governing Law.*

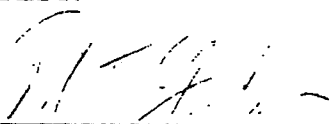
The interpretation of this Agreement and the rights and obligations of the Parties shall be governed by and construed and enforced in accordance with the laws of the State of Utah.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement the day and year first above written.

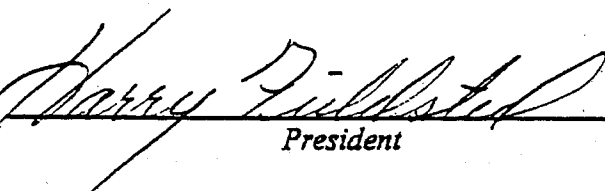
UTAH POWER & LIGHT COMPANY

By 
Vics President

ATTEST:


Secretary

DESERET GENERATION & TRANSMISSION
CO-OPERATIVE

By 
President

ATTEST:


Secretary

STATE OF UTAH)
 : ss
COUNTY OF SALT LAKE)

On the 24th day of October, 1980, personally appeared before me, D.L. Bauman, who, being duly sworn, did say, that he is a Vice President of Utah Power & Light Company, and that said instrument was signed on behalf of said corporation by resolution of its board of directors, and said D.L. Bauman acknowledged to me that said corporation executed the same.

Jennifer S. Heap
Notary Public

My Commission Expires:

7/20/83

Residing at: Midvale, Utah

STATE OF UTAH)
 : ss
COUNTY OF SALT LAKE)

On the 24th day of October, 1980, personally appeared before me, HARRY FIELDSTEAD, who, being duly sworn, did say, that he is the President of Deseret Generation & Transmission Co-operative, and that said instrument was signed on behalf of said Co-operative by resolution of its governing Board, and said HARRY FIELDSTEAD acknowledged to me that said Co-operative executed the same.

Jennifer A. Hays
Notary Public

My Commission Expires:

7/20/83

Residing at: Midvale, Utah