

**"Listed Transaction"** means (i) any transaction that is the same as or substantially similar to one of the types of transactions that the IRS has identified (by notice, regulation, other form of published guidance or otherwise) as a "listed transaction" pursuant to Treasury Regulation § 1.6011-4(b)(2), (ii) any transaction or arrangement in which there is an acquisition of a leasehold interest in property and the sublease of such property (including, without limitation, any transaction or arrangement that is similar to that described in IRS Notice 2000-15 or that is referred to as a "lease-in/lease-out" or "LILO") or (iii) any transaction or arrangement in which a lessee of property may arrange for a service Contract, replacement lease, residual value insurance or similar arrangement during or at the end of a lease term (including, without limitation, any transaction or arrangement that is structured with an intent to avoid the application of Section 168(g)(3)(A) of the Code or that is referred to as a "sale-in/lease-out" or "SILO").

**"Material Adverse Change"** or **"Material Adverse Effect"** means, when used with reference to the Company or Parent, as the case may be, any event, effect, change or development that, individually or in the aggregate with other events, effects, changes or developments (including, in the case of the Company, any event, effect, change or development with respect to any Company Joint Venture) (a) is, or would reasonably be expected to be, material and adverse to the financial condition, business, assets, liabilities (contingent or otherwise), operations or results of operations of the Company and its Subsidiaries taken as a whole, in the case of the Company, or Parent and its Subsidiaries taken as a whole, in the case of Parent, (b) with respect to Parent, has a material and adverse effect on the ability of Parent to perform its obligations under this Agreement or to consummate the transactions contemplated hereby by the End Date or (c) with respect to the Company, has a material and adverse effect on the ability of the Company to perform its obligations under this Agreement or to consummate the transactions contemplated hereby by the End Date; *provided, however*, that to the extent any event, effect, change or development is caused by or results from any of the following, in each case, it shall not be taken into account in determining whether there has been (or would reasonably be expected to be) a "Material Adverse Change" or a "Material Adverse Effect": (i) factors affecting the economy or financial markets as a whole, (ii) factors affecting the electric energy market as a whole, except to the extent the Company and its Subsidiaries, taken as a whole, or Parent and its Subsidiaries, taken as a whole, as the case may be, are materially and adversely affected in a disproportionate manner as compared to comparable participants in the electric energy market, (iii) the announcement of the execution of this Agreement, (iv) any failure by Parent or the Company to meet any revenue or earnings predictions prepared by the Company or Parent, as the case may be, or revenue or earnings predictions of equity analysts or the receipt by Parent or the Company, or any of their respective Subsidiaries of any credit ratings downgrade (it being understood that the facts or occurrences giving rise or contributing to any such effect, event, change or development which affect or otherwise relate to or result from the failure to meet revenue or earnings predictions prepared by the Company or Parent, as the case may be, or revenue or earnings predictions of equity analysts or to the receipt of any credit ratings downgrade may be deemed to constitute, or be taken into account in determining whether there has been, or would reasonably be expected to be, a Material Adverse Change or Material Adverse Effect), (v) changes in laws, rules or regulations of any Governmental Entity affecting the electric energy market as a whole except to the extent the Company and its Subsidiaries, taken as a whole, or Parent and its Subsidiaries, taken as a whole, as the case may be, are materially and adversely affected in a disproportionate manner as compared to comparable participants in the electric energy market, (vi) any loss, in and of itself, resulting from the sale of assets in accordance with *Section 6.1(a)(viii)(B)* or impairment charge, in and of itself, taken in relation to the assets identified on *Item 6.1(a)(viii)(B)* of the Company Letter, (vii) any sale or disposition of assets that may be ordered by the SEC, as part of its review of the Merger under PUHCA, (viii) any change in generally accepted accounting principles by the Financial Accounting Standards Board, the SEC or any other regulatory body, (ix) any event, effect, change or development resulting from a breach by Exelon Generation Company, LLC of the OSC shall not be deemed to be an event, effect, change or development that would have a

Material Adverse Effect on the Company or (x) any matter to the extent identified on *Item 1.1(b)* of the Parent Letter or *Item 1.1(b)* of the Company Letter.

**"Merger"** shall have the meaning set forth in the first recital provision of this Agreement.

**"Morgan Stanley"** shall have the meaning set forth in *Section 4.22*.

**"Multiemployer Plan"** shall have the meaning set forth in *Section 4.12(d)*.

**"Natural Gas Act"** means the Natural Gas Act.

**"Natural Gas Policy Act"** means the Natural Gas Policy Act of 1978.

**"Net Company Position"** shall have the meaning set forth in *Section 4.18*.

**"Net Parent Position"** shall have the meaning set forth in *Section 5.19*.

**"NJBCA"** shall have the meaning set forth in *Section 2.1*.

**"NRC"** means the Nuclear Regulatory Commission.

**"NYSE"** means the New York Stock Exchange, Inc.

**"Order"** shall have the meaning set forth in *Section 8.1(b)*.

**"OSC"** means the Operating Services Contract, dated as of the date hereof, between Exelon Generation Company, LLC and PSEG Nuclear LLC.

**"Parent"** shall have the meaning set forth in the introductory paragraph of this Agreement.

**"Parent Acquisition Transaction"** shall have the meaning set forth in *Section 9.1(j)*.

**"Parent Business Personnel"** shall have the meaning set forth in *Section 5.14(a)*.

**"Parent Compensation Commitment"** means any material Contract, commitment, understanding, plan, policy or arrangement of any kind, whether written or oral, with or for the benefit of any current or former officer, director, employee or consultant, including each employment, compensation, deferred compensation, severance, supplemental pension, life insurance, termination or consulting Contract or arrangement and any Contracts or arrangements between Parent or any of its Subsidiaries and any current or former employee, officer, director or consultant of Parent or any of its Subsidiaries.

**"Parent Deferred Shares"** means Parent Shares the issuance of which has been deferred pursuant to Parent's Deferred Compensation Plan.

**"Parent Directors' Stock Unit Plan"** means Parents' Non-Employee Directors Deferred Stock Unit Plan.

**"Parent Dividend Equivalents"** means dividend equivalents outstanding under Parent's Retirement Plan for Directors and Parent's Director Fee Plan.

**"Parent DRIP"** shall have the meaning set forth in *Section 5.3(a)*.

**"Parent ESPP"** shall have the meaning set forth in *Section 5.3(a)*.

**"Parent Filed SEC Documents"** means the documents (including portions of exhibits containing the audited financial statements of Parent, the notes thereto or Management's Discussion and Analysis of Financial Condition and Results of

Operations but excluding all other exhibits or portions thereof) filed with or furnished to the SEC by Parent or any of its Subsidiaries and publicly available on the Electronic Data Gathering, Analysis and Retrieval System since December 31, 2001 and prior to the date of the execution of this Agreement.

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**"Parent Group"** means (a) any "affiliated group" (as defined in Section 1504(a) of the Code without regard to the limitations contained in Section 1504(b) of the Code) that, at any time on or before the Closing Date, consists or consisted solely of Parent (or any predecessor), any Subsidiary of Parent (or any predecessor) or any combination thereof or that, at any time on or before the Closing Date, has or had Parent (or any predecessor) or any Subsidiary of Parent (or any predecessor) as the common parent, and (b) any other group of corporations that, at any time on or before the Closing Date, files or has filed Tax Returns on a combined, consolidated or unitary basis and consists or consisted solely of Parent (or any predecessor), any Subsidiary of Parent (or any predecessor) or any combination thereof or that, at any time on or before the Closing Date, files or has filed Tax Returns on a combined, consolidated or unitary basis and has or had Parent (or any predecessor) or any Subsidiary of Parent (or any predecessor) as the common parent.

**"Parent Indebtedness"** means (a) indebtedness for borrowed money of Parent and its Subsidiaries, (b) obligations of Parent and its Subsidiaries evidenced by notes, bonds, debentures or other similar instruments or by letters of credit agreements, including purchase money obligations or other obligations relating to the deferred purchase price of property and (c) direct or indirect guarantees by Parent or any of its Subsidiaries of indebtedness for borrowed money of any Person.

**"Parent Joint Venture"** means any corporation, limited liability company, partnership, joint venture, trust or other entity which is not a Subsidiary of Parent and in which (i) Parent, directly or indirectly, owns or controls any shares of any class of the outstanding voting securities or other equity interests (other than the ownership of securities primarily for investment purposes as part of routine cash management or investments of 2% or less in publicly traded companies) or (ii) Parent or a Subsidiary of the Parent is a general partner.

**"Parent Letter"** means the letter from Parent to the Company dated the date hereof, which letter relates to this Agreement and is designated therein as the Parent Letter.

**"Parent Material Contract"** means any Contract to which Parent or one of its Subsidiaries is a party and which is material to Parent and its Subsidiaries, taken as a whole.

**"Parent Material Taxes"** means (a) federal income Taxes imposed on any Parent Group, (b) Illinois income Taxes imposed on Parent, any Subsidiary of Parent or any Parent Group, (c) Pennsylvania Corporate Net Income Taxes imposed on Exelon Ventures Company, LLC or PECO Energy Company and (d) material foreign Taxes imposed on Parent, any Subsidiary of Parent or any Parent Group (including, in the case of each reference to Parent or any Subsidiary of Parent, any predecessor thereof).

**"Parent Non-US Compensation and Benefit Plans"** shall have the meaning set forth in *Section 5.13(h)*.

**"Parent Nuclear Facilities"** shall have the meaning set forth in *Section 5.17(a)*.

**"Parent Performance Shares"** shall have the meaning set forth in *Section 5.3(a)*.

**"Parent Permits"** shall have the meaning set forth in *Section 5.9(a)*.

**"Parent Phantom Shares"** means amounts credited to participants' retirement accounts and matching contribution accounts under Parent's Deferred Compensation Unit Plan and credited as or benchmarked against Parent Shares.

**"Parent Preferred Stock"** shall have the meaning set forth in *Section 5.3(a)*.

**"Parent Regulatory Approval Coordinators"** shall have the meaning set forth in *Section 7.10(d)(i)*.

**"Parent Reporting Subsidiary"** means each Subsidiary of Parent required to file documents with or furnish documents to the SEC pursuant to the Securities Act or the Exchange Act.

**"Parent Required Statutory Approvals"** shall have the meaning set forth in *Section 5.5(b)*.

**"Parent Restricted Shares"** means Parent Shares subject to forfeiture.

**"Parent SEC Documents"** shall have the meaning set forth in *Section 5.6(a)*.

**"Parent Shareholder Approval"** shall have the meaning set forth in *Section 7.3(a)*.

**"Parent Shareholders Meeting"** shall have the meaning set forth in *Section 7.3(a)*.

**"Parent Share Issuance"** means the issuance of the Parent Shares upon conversion of the Shares pursuant to *Section 3.2(c)*.

**"Parent Shares"** shall have the meaning set forth in the first recital provision of this Agreement.

**"Parent Stock Equivalents"** shall have the meaning set forth in *Section 5.3(a)*.

**"Parent Stock Incentive Plans"** shall have the meaning set forth in *Section 5.3(a)*.

**"Parent Stock Options"** shall have the meaning set forth in *Section 5.3(a)*.

**"Parent Tax Certificate"** means a form of certificate attached to the Parent Letter which contains certain representations substantially to the effect of the representations to be made by Parent in connection with the tax opinions contemplated by *Sections 8.2(c)* and *8.3(e)*.

**"Parent Trading"** means any transaction which does not hedge an underlying exposure, is conducted to increase expected margin at increased expected risk and is recorded in Parent's Proprietary Trading Book.

**"Parent Trading Guidelines"** shall have the meaning set forth in *Section 5.19*.

**"Parent Voting Debt"** shall have the meaning set forth in *Section 5.3(a)*.

**"PBCL"** shall have the meaning set forth in *Section 2.1*.

**"PBGC"** shall have the meaning set forth in *Section 4.12(d)*.

**"Person"** means any person, employee, individual, corporation, limited liability company, partnership, trust, or any other non-governmental entity (including any foreign entity) or any governmental or regulatory authority or body (including any foreign entity).

**"Power"** means PSEG Power LLC, a Delaware limited liability company.

**"Power Agreement"** shall have the meaning set forth in *Section 6.1(a)(xii)*.

**"Proxy Statement"** shall have the meaning set forth in *Section 4.8*.

**"PUHCA"** shall have the meaning set forth in *Section 4.2(a)*.

**"PURPA"** shall have the meaning set forth in *Section 4.2(a)*.

**"Qualified Plan"** means any Benefit Plan that is intended to be qualified and exempt from federal income Taxes under Sections 401(a) and 501(a) of the Code.

**"Registration Statement"** shall have the meaning set forth in *Section 4.8*.

**"Regulatory Approval Coordinators"** shall have the meaning set forth in *Section 7.10(d)(i)*.

**"Regulatory Approval Team"** shall have the meaning set forth in *Section 7.10(d)(i)*.

**"Regulatory Approval Team Chairperson"** shall have the meaning set forth in *Section 7.10(d)(i)*.

**"Regulatory Approval Team Vice-Chair"** shall have the meaning set forth in *Section 7.10(d)(i)*.

**"Resources"** means PSEG Resources L.L.C., a New Jersey limited liability company.

"**Sarbanes-Oxley Act**" shall have the meaning set forth in *Section 4.9(b)*.

"**SEC**" means the Securities and Exchange Commission.

"**Section 16 Information**" shall have the meaning set forth in *Section 7.11*.

"**Securities Act**" means the Securities Act of 1933, as amended, together with the rules and regulations promulgated thereunder.

"**Shareholders Meetings**" shall have the meaning set forth in *Section 7.3(a)*.

"**Shares**" shall have the meaning set forth in the first recital provision of this Agreement.

"**Significant Subsidiary**" of any Person means a Subsidiary of such Person that would constitute a "significant subsidiary" of such Person within the meaning of Rule 1.02(w) of Regulation S-X as promulgated by the SEC.

"**State Committees**" shall have the meaning set forth in *Section 7.10(d)(ii)*.

"**Subsidiary**" or "**subsidiary**" of any Person means another Person, an amount of the voting securities, other voting ownership or voting partnership interests of which is sufficient to elect at least a majority of its Board of Directors or other governing body (or, if there are no such voting interests, greater than 50% of the equity interests of which) is owned directly or indirectly by such first Person.

"**Substitute Option**" shall have the meaning set forth in *Section 7.2(a)*.

"**Superior Proposal**" shall have the meaning set forth in *Section 6.2(a)*.

"**Surviving Corporation**" shall have the meaning set forth in *Section 2.1*.

"**Takeover Proposal**" shall have the meaning set forth in *Section 6.2(a)*.

"**Tax**" and "**Taxes**" means: (i) any federal, state, local or foreign net income, gross income, gross receipts, windfall profit, severance, property, production, sales, use, license, excise, franchise, employment, payroll, withholding, alternative or add-on minimum, ad valorem, value-added, transfer, stamp, or environmental (including taxes under Section 59A of the Code) tax, or any other tax, custom, duty, governmental fee or other like assessment or charge of any kind whatsoever, together with any interest or penalty, addition to tax or additional amount imposed by any governmental authority and (ii) any liability for the payment of amounts with respect to payments of a type described in *clause (i)* as a result of being a member of an affiliated, consolidated, combined or unitary group, or as a result of any obligation under any Tax Sharing Arrangement or Tax indemnity arrangement.

"**Tax Return**" means any return, report or similar statement required to be filed with respect to any Tax (including any attached schedules), including, without limitation, any information return, claim for refund, amended return or declaration of estimated Tax.

"**Tax Sharing Arrangement**" means any written or unwritten arrangement for the allocation or payment of Tax liabilities or payment for Tax benefits with respect to a consolidated, combined or unitary Tax Return.

"**Transition Chairperson**" shall have the meaning set forth in *Section 7.4(b)*.

"**Transition Coordinators**" shall have the meaning set forth in *Section 7.4(b)*.

"**Transition Team**" shall have the meaning set forth in *Section 7.4(b)*.

"**Transfer Taxes**" shall have the meaning set forth in *Section 7.7*.

**"Unvested Restrictions"** shall have the meaning set forth in *Section 7.2(b)*.

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## ARTICLE II THE MERGER

Section 2.1 *The Merger.* Upon the terms and subject to the conditions hereof, and in accordance with the New Jersey Business Corporation Act (the "NJBCA") and the Pennsylvania Business Corporation Law of 1988, as amended (the "PBCL") the Company shall be merged with and into Parent at the Effective Time. Following the Effective Time, the separate corporate existence of the Company shall cease and Parent shall continue as the surviving corporation (the "Surviving Corporation") and shall succeed to and assume all the rights and obligations of the Company and Parent in accordance with the PBCL and the NJBCA.

Section 2.2 *Closing.* The closing of the Merger will take place at 10:00 a.m. on a date mutually agreed to by Parent and the Company, which shall be no later than the second business day after satisfaction or waiver of the conditions set forth in Article VIII (the "Closing Date"), at the offices of Sidley Austin Brown & Wood LLP, Chicago, Illinois 60603, unless another date, time or place is agreed to in writing by the parties hereto.

Section 2.3 *Effective Time.* The Merger shall become effective when (a) a Certificate of Merger (the "Certificate of Merger"), executed in accordance with the relevant provisions of the NJBCA, is duly filed with the Department of Treasury of the State of New Jersey and (b) Articles of Merger (the "Articles of Merger"), executed in accordance with the relevant provisions of the PBCL, are duly filed with the Department of State of the Commonwealth of Pennsylvania, or at such other time as Parent and the Company shall agree should be specified in the Certificate of Merger and the Articles of Merger. When used in this Agreement, the term "Effective Time" shall mean the later of (i) the date and time at which the Certificate of Merger is duly filed with the Department of Treasury of the State of New Jersey and the Articles of Merger are duly filed with the Department of State of the Commonwealth of Pennsylvania and (ii) such later time as Parent and the Company shall agree and as shall be specified in the Certificate of Merger and the Articles of Merger.

Section 2.4 *Effects of the Merger.* The Merger shall have the effects set forth in this Agreement and in the NJBCA and the PBCL.

Section 2.5 *Articles of Incorporation and By-laws; Officers and Directors.* (a) The Amended and Restated Articles of Incorporation, as amended, of Parent, as in effect immediately prior to the Effective Time shall be amended so that Article I reads in its entirety as follows: "The name of the Corporation is Exelon Electric & Gas Corporation (the "Corporation")." The Amended and Restated Articles of Incorporation of Parent, as so amended, shall be the Articles of Incorporation of the Surviving Corporation until thereafter changed or amended as provided therein or by applicable law.

(b) The Amended and Restated By-laws, as amended, of Parent as in effect immediately prior to the Effective Time, shall be amended as set forth on *Exhibit A*. The Amended and Restated By-laws of Parent, as so amended, shall be the By-laws of the Surviving Corporation until thereafter changed or amended as provided by the Certificate of Incorporation of the Surviving Corporation or by applicable law.

(c) Subject to *Section 7.14(a)*, the directors of Parent immediately prior to the Effective Time shall be the directors of the Surviving Corporation, until the next annual meeting of shareholders (or the earlier of their resignation or removal) and until their respective successors are duly elected and qualified, as the case may be.

(d) At the Effective Time, the officers of Parent shall be the officers of the Surviving Corporation with such substitutions, additions and deletions as shall be determined by Parent's Chief Executive Officer in consultation with the Company's Chief Executive Officer and approved by the Board of Directors of the Surviving Corporation, until the earlier of their resignation or removal and until their respective successors are duly elected and qualified, as the case may be.

**ARTICLE III**  
**EFFECT OF THE MERGER ON THE STOCK OF THE CONSTITUENT**  
**CORPORATIONS; EXCHANGE OF CERTIFICATES**

Section 3.1 *Effect on Stock.* As of the Effective Time, by virtue of the Merger and without any action on the part of any of Parent, the Company or the holders of any securities of the Constituent Corporations, the capital stock of the Constituent Corporations shall be treated as set forth in this *Article III* and in accordance with the terms of this Agreement.

Section 3.2 *Conversion.* (a) *Capital Stock of Parent.* Each issued and outstanding Parent Share shall remain outstanding following the Effective Time as a share of the Surviving Corporation.

(b) *Treasury Stock and Parent Owned Stock.* Each Share that is owned by the Company or by any Subsidiary of the Company and each Share that is owned by Parent or any Subsidiary of Parent shall automatically be cancelled and retired and shall cease to exist, and no consideration shall be delivered in exchange therefor.

(c) *Conversion of Shares.* Each Share issued and outstanding (other than Shares to be cancelled in accordance with *Section 3.2(b)*) shall be converted into the right to receive 1.225 of duly authorized, validly issued, fully paid and non-assessable Parent Shares (the "*Exchange Ratio*"). As of the Effective Time, all such Shares, when so converted, shall no longer be outstanding and shall automatically be cancelled and retired, and each holder of a certificate representing any such Shares shall cease to have any rights with respect thereto, except the right to receive any dividends or distributions in accordance with *Section 3.3(c)*, certificates representing the Parent Shares into which such Shares are converted and any cash, without interest, in lieu of fractional shares to be issued or paid in consideration therefor upon the surrender of such certificate in accordance with *Section 3.3(d)*.

Section 3.3 *Exchange of Certificates.* (a) Promptly after the Effective Time, the Surviving Corporation shall deposit, or shall cause to be deposited, with a banking or other financial institution selected by Parent and reasonably satisfactory to the Company (the "*Exchange Agent*"), for the benefit of the holders of Shares, for exchange in accordance with this *Article III*, certificates representing the Parent Shares to be issued in connection with the Merger and, subject to *Section 3.3(d)*, cash in lieu of fractional shares (such cash and certificates for Parent Shares, together with any dividends or distributions with respect thereto (relating to record dates for such dividends or distributions after the Effective Time), being hereinafter referred to as the "*Exchange Fund*") to be issued pursuant to *Section 3.2* and paid pursuant to this *Section 3.3* in exchange for outstanding Shares.

(b) *Exchange Procedure.* Promptly after the Effective Time, the Surviving Corporation shall cause the Exchange Agent to mail to each holder of record of a certificate or certificates that immediately prior to the Effective Time represented Shares, other than Shares referred to in *Section 3.2(b)* (the "*Certificates*"), (i) a letter of transmittal (which shall specify that delivery shall be effected, and risk of loss and title to the Certificates shall pass, only upon delivery of the Certificates to the Exchange Agent and shall be in a form and have such other provisions as Parent may specify) and (ii) instructions for use in effecting the surrender of the Certificates in exchange for the consideration contemplated by *Section 3.2* and this *Section 3.3*, including cash in lieu of fractional shares, if applicable. Upon surrender of a Certificate for cancellation to the Exchange Agent, together with such letter of transmittal, duly executed, and such other documents as may reasonably be required by the Exchange Agent, the holder of such Certificate shall be entitled to receive in exchange therefor (x) a certificate representing that number of whole Parent Shares and (y) a check representing the amount of cash in lieu of fractional shares, if any, and unpaid dividends and distributions with respect to the Parent Shares as provided for in *Section 3.3(c)*, if any, that such holder has the right to receive in respect of the Certificate surrendered pursuant to the provisions of this *Article III*, after giving effect to any required withholding Tax. No interest will be paid or accrued on the cash payable to holders of Shares. In the event of a transfer of ownership of Shares that is not registered in the transfer records

of the Company, a certificate representing the proper number of Parent Shares, together with a check for the cash to be paid pursuant to this *Section 3.3*, if applicable, may be issued to such a transferee if such Certificate shall be properly endorsed or otherwise be in proper form for transfer and the transferee shall pay any transfer or other Taxes required by reason of the payment to a Person other than the registered holder of such Certificate or establish to the satisfaction of the Surviving Corporation that such Tax has been paid or is not applicable. The Surviving Corporation or the Exchange Agent shall be entitled to deduct and withhold from the consideration otherwise payable pursuant to this Agreement such amounts as the Surviving Corporation or the Exchange Agent is required to deduct and withhold with respect to the making of such payment under the Code or under any provision of state, local or foreign Tax law. To the extent that amounts are so withheld by the Surviving Corporation or the Exchange Agent, such withheld amounts shall be treated for all purposes of this Agreement as having been paid to the Person in respect of which such deduction and withholding was made.

(c) *Dividends.* Notwithstanding any other provisions of this Agreement, no dividends or other distributions declared with a record date on or after the Effective Time on Parent Shares shall be paid with respect to any Shares represented by a Certificate until such Certificate is surrendered for exchange as provided herein. Following surrender of any such Certificate, there shall be paid to the holder of the certificates representing whole Parent Shares issued in exchange therefor, without interest, (i) at the time of such surrender, the amount of dividends or other distributions with a record date after the Effective Time theretofore payable with respect to such whole Parent Shares and not paid, less the amount of any withholding Taxes which may be required thereon, and (ii) at the appropriate payment date or as promptly as practicable thereafter, the amount of dividends or other distributions with a record date after the Effective Time but prior to such surrender and a payment date subsequent to such surrender payable with respect to such whole Parent Shares, less the amount of any withholding Taxes which may be required thereon. The Surviving Corporation will provide or cause to be provided to the Exchange Agent the cash necessary to make the payments contemplated by this *Section 3.3(c)*.

(d) *No Fractional Securities.* No fractional Parent Shares shall be issued pursuant hereto. In lieu of the issuance of any fraction of a Parent Share, cash adjustments will be paid to holders in respect of any fraction of a Parent Share that would otherwise be issuable, and the amount of such cash adjustment shall be equal to the product obtained by multiplying such shareholder's fraction of a Parent Share that would otherwise be issuable by the closing price per share of Parent Shares on the New York Stock Exchange Composite Transaction Tape on the Closing Date as reported by *The Wall Street Journal* (or, if not reported thereby, any other authoritative source).

(e) *No Further Ownership Rights in Shares.* All Parent Shares issued upon the surrender for exchange of Certificates in accordance with the terms of this *Article III* (including any cash paid pursuant to this *Section 3.3*) shall be deemed to have been issued in full satisfaction of all rights pertaining to the Shares theretofore represented by such Certificates. At the Effective Time, the stock transfer books of the Company shall be closed, and there shall be no further registration of transfers on the stock transfer books of the Surviving Corporation of the Shares that were outstanding immediately prior to the Effective Time. If, after the Effective Time, Certificates are presented to the Surviving Corporation or the Exchange Agent for any reason, they shall be cancelled and exchanged as provided in this *Article III*.

(f) *Termination of Exchange Fund.* Any portion of the Exchange Fund (including the proceeds of any investments thereof and any Parent Shares) which remains undistributed to the holders of Shares for 12 months after the Effective Time may be delivered to the Surviving Corporation, upon demand, and any holders of Shares who have not theretofore complied with this *Article III* and the instructions set forth in the letter of transmittal mailed to such holders after the Effective Time shall thereafter look only to the Surviving Corporation or its agent (subject to abandoned property, escheat or other

similar laws) for payment of their Parent Shares, cash and unpaid dividends and distributions on Parent Shares deliverable in respect of each Share such shareholder holds as determined pursuant to this Agreement, in each case, without any interest thereon.

(g) *No Liability.* None of Parent, the Surviving Corporation, the Company or the Exchange Agent shall be liable to any Person in respect of any amount properly delivered or deliverable to a public official pursuant to any applicable abandoned property, escheat or other similar law.

Section 3.4 *Tax Consequences.* It is intended by the parties hereto that the Merger shall constitute a "reorganization" within the meaning of Section 368(a) of the Code, and the parties hereto adopt this Agreement as a "plan of reorganization" for such purposes.

Section 3.5 *Adjustment of Exchange Ratio.* In the event that Parent changes or establishes a record date for changing the number of Parent Shares issued and outstanding as a result of a stock split, stock dividend, recapitalization, subdivision, reclassification, combination or similar transaction with respect to the outstanding Parent Shares and the record date therefor shall be prior to the Effective Time, the Exchange Ratio applicable to the Merger and any other calculations based on or relating to Parent Shares shall be appropriately, equitably and proportionately adjusted in light of such stock split, stock dividend, recapitalization, subdivision, reclassification, combination or similar transaction.

Section 3.6 *Lost Certificates.* If any Certificate shall have been lost, stolen or destroyed, upon the making of an affidavit of that fact by the Person claiming such Certificate to be lost, stolen or destroyed and, if required by Parent or the Exchange Agent, the posting by such Person of a bond, in such reasonable amount as Parent or the Exchange Agent may direct as indemnity against any claim that may be made against them with respect to such Certificate, the Exchange Agent will issue in exchange for such lost, stolen or destroyed Certificate the Parent Shares, any cash in lieu of fractional shares of Parent Shares to which the holders thereof are entitled pursuant to *Section 3.3(d)* and any dividends or other distributions to which the holders thereof are entitled pursuant to *Section 3.3(c)*.

Section 3.7 *Further Assurances.* If at any time after the Effective Time the Surviving Corporation shall consider or be advised that any deeds, bills of sale, assignments or assurances or any other acts or things are necessary, desirable or proper (a) to vest, perfect or confirm, of record or otherwise, in the Surviving Corporation its right, title or interest in, to or under any of the rights, privileges, powers, franchises, properties, permits, licenses or assets of either of the Constituent Corporations, or (b) otherwise to carry out the purposes of this Agreement, the Surviving Corporation and its proper officers and directors or their designees shall be authorized to execute and deliver, in the name and on behalf of either of the Constituent Corporations, all such deeds, bills of sale, assignments and assurances and to do, in the name and on behalf of either Constituent Corporation, all such other acts and things as may be necessary, desirable or proper to vest, perfect or confirm the Surviving Corporation's right, title or interest in, to or under any of the rights, privileges, powers, franchises, properties or assets of such Constituent Corporation and otherwise to carry out the purposes of this Agreement.

#### ARTICLE IV REPRESENTATIONS AND WARRANTIES OF THE COMPANY

The Company represents and warrants to Parent, (i) other than in the case of *Sections 4.1, 4.3(a), 4.4, 4.20, 4.21, 4.22 and 4.23*, except as set forth in the Company Letter (with specific reference to the relevant sections of the representations and warranties in *Article IV* or disclosure in such a way as to make its relevance to the information called for by such representation or warranty readily apparent) or (ii) other than in the case of *Sections 4.1, 4.2(a), 4.3, 4.4, 4.10, 4.20, 4.21, 4.22, 4.23 and 4.26*, except as disclosed in the Company Filed SEC Documents (it being understood that any matter set forth in the

Company Filed SEC Documents shall be deemed to qualify any representation or warranty in *Article IV* only to the extent that the description of such matter in the Company Filed SEC Documents is made in such a way as to make its relevance to the information called for by such representation or warranty readily apparent), as follows:

**Section 4.1 Organization.** Each of the Company and each of its Subsidiaries is duly organized, validly existing and in good standing under the laws of the jurisdiction of its organization and has requisite power and authority to carry on its businesses as now being conducted, except where the failure to be so organized, existing and in good standing or to have such power and authority would not, individually or in the aggregate, reasonably be expected to have a Material Adverse Effect on the Company. Each of the Company and each of its Subsidiaries is duly qualified or licensed to do business and in good standing in each jurisdiction in which the nature of its businesses or the ownership or leasing of its properties makes such qualification or licensing necessary, except in such jurisdictions where the failure to be so duly qualified or licensed and in good standing would not, individually or in the aggregate, reasonably be expected to have a Material Adverse Effect on the Company. The Company has delivered to Parent complete and correct copies of its Certificate of Incorporation and By-laws and has delivered to Parent complete and correct copies of the charter and by-laws (or similar organizational documents) of each of its Significant Subsidiaries.

**Section 4.2 Subsidiaries.** (a) *Item 4.2(a)* of the Company Letter lists each Significant Subsidiary of the Company and its jurisdiction of organization and specifies each of the Subsidiaries of the Company that is (i) a "public-utility company," a "holding company," a "subsidiary company," an "affiliate" of any public-utility company, an "exempt wholesale generator" or a "foreign utility company" within the meaning of Section 2(a)(5), 2(a)(7), 2(a)(8), 2(a)(11), 32(a)(1) or 33(a)(3) of the Public Utility Holding Company Act of 1935, as amended ("*PUHCA*"), respectively, (ii) a "public utility" within the meaning of Section 201(e) of the Federal Power Act (the "*Federal Power Act*") or (iii) a "qualifying facility" within the meaning of the Public Utility Regulatory Policies Act of 1978, as amended ("*PURPA*"), or that owns such a qualifying facility.

(b) All of the outstanding Capital Stock of each Subsidiary of the Company has been validly issued and is fully paid and nonassessable. All of the outstanding Capital Stock of each Subsidiary of the Company is owned by the Company, by one or more Subsidiaries of the Company or by the Company and one or more Subsidiaries of the Company and is free and clear of all Liens. Except for the Capital Stock of its Subsidiaries, the Company does not own, directly or indirectly, any Capital Stock of any corporation, partnership, joint venture, limited liability company or other entity. Neither the Company nor any of its Subsidiaries is a party to, or has any commitment to become a party to, any joint venture, off-balance sheet partnership or any similar Contract (including without limitation any Contract relating to any transaction or relationship between or among the Company and any of its Subsidiaries, on the one hand, and any unconsolidated Affiliate, including without limitation any structured finance, special purpose or limited purpose entity or Person, on the other hand, or any "off-balance sheet arrangement" (as defined in Item 303(a) of Regulation S-K of the SEC)). There are no outstanding bonds, debentures, notes or other indebtedness of the Company or any of its Subsidiaries having the right to vote (or convertible into, or exchangeable for, securities having the right to vote) on any matter on which the shareholders or other equity holders of any Subsidiary may vote.

**Section 4.3 Capital Structure.** (a) The authorized capital stock of the Company consists of 500,000,000 Shares and 50,000,000 shares of preferred stock, no par value per share ("*Company Preferred Stock*"). At the close of business on December 15, 2004, (i) 237,789,891 Shares were issued and outstanding, all of which were validly issued, fully paid and nonassessable and, except as provided in the Certificate of Incorporation, as amended, of the Company, free of preemptive rights, (ii) 26,029,740 Shares were held by the Company in its treasury, (iii) 9,411,565 Shares were reserved for issuance pursuant to outstanding options to purchase Company Common Stock (the "*Company Stock*").

*Options*") granted under the Company's 2004 Long-Term Incentive Plan, the Company's 2001 Long-Term Incentive Plan and the Company's 1989 Long-Term Incentive Plan (together, and each as amended, the "*Company Option Plans*"), (iv) 88,850 Shares were reserved for issuance pursuant to outstanding restricted stock units ("*Company RSUs*") under the Company Stock Plans, (v) 88,850 Shares were reserved for issuance pursuant to outstanding Company Performance Units and Company Performance Shares under the Company Stock Plans, (vi) 10,410,735 Shares were reserved for the grant of additional awards under the Company Stock Plans (exclusive of *clauses (vii) through (xii)*), (vii) 100,000 Shares were reserved for issuance pursuant to the Company's Stock Plan for Outside Directors, (viii) 100,000 Shares were reserved for issuance pursuant to the Company's Compensation Plan for Outside Directors, (ix) 123,048 Shares were reserved for issuance pursuant to the Company's Thrift and Tax Deferred Savings Plan (the "*Company Thrift Plan*"), (x) 349,313 Shares were reserved for issuance pursuant to the Company's Employee Savings Plan (the "*Company Employee Savings Plan*"), (xi) 1,044,195 Shares were reserved for issuance pursuant to the Company's Dividend Reinvestment and Stock Purchase Plan ("*Company DRIP*"), (xii) 1,965,809 Shares were reserved for issuance pursuant to the Company's Employee Stock Purchase Plan (the "*Company ESPP*" and together with the Company Option Plans, the Company Thrift Plan, the Company Employee Savings Plan, the Company DRIP, the Company's Compensation Plan for Outside Directors and the Company's Stock Plan for Outside Directors, the "*Company Stock Plans*"), (xiii) 14,200,000 Shares were reserved for issuance pursuant to the purchase contracts forming a part of the 9,200,000 issued and outstanding Company Equity Units and (xiv) 22,000 Shares were reserved for issuance pursuant to outstanding Company Stock Phantom Shares. Between 11,400,000 and 14,200,000 Shares are subject to purchase pursuant to the purchase contracts forming a part of Company Equity Units. 186,850 Shares of the outstanding Shares are restricted Shares still subject to forfeiture ("*Company Restricted Shares*"). As of the close of business on the date of this Agreement, except as set forth above, no Shares or shares of Company Preferred Stock were issued, reserved for issuance or outstanding, no awards or grants have been made under the Company Stock Plans and there are not any phantom stock or other contractual rights the value of which is determined in whole or in part by the value of any capital stock of the Company (other than the Company Cash Phantom Shares and Company Cash Dividend Equivalents) ("*Company Stock Equivalents*"). There are no outstanding stock appreciation rights with respect to the capital stock of the Company. Each outstanding Share is, and each Share which may be issued pursuant to the Company Stock Plans, the Company ESPP, the Company DRIP, the Company RSUs, the Company Performance Units, the Company Performance Shares or purchase contracts forming part of the Company Equity Units will be, when issued, duly authorized, validly issued, fully paid and nonassessable and, except as set forth in the Certificate of Incorporation, as amended, of the Company, not subject to preemptive rights. Other than the Company Common Stock and the Company Preferred Stock, there are no other authorized classes of capital stock of the Company. There are no outstanding bonds, debentures, notes or other indebtedness of the Company having the right to vote (or convertible into, or exchangeable for, securities having the right to vote) on any matter on which the Company's shareholders may vote ("*Company Voting Debt*"). The treatment of Company Stock Options and Company Stock-Based Awards contemplated by *Section 7.2* is permitted under the plans and agreements under which they were issued.

(b) As of the date of this Agreement, there are no securities, options, warrants, calls, rights, commitments, agreements, arrangements or undertakings of any kind to which the Company or any of its Subsidiaries is a party or by which any of them is bound obligating the Company or any of its Subsidiaries to issue, deliver or sell or create, or cause to be issued, delivered or sold or created, additional Capital Stock, Company Stock Options, Company Voting Debt or other securities or Company Stock Equivalents of Company or of any of its Subsidiaries or obligating the Company or any of its Subsidiaries to issue, grant, extend or enter into any such security, option, warrant, call, right, commitment, agreement, arrangement or undertaking. As of the date of this Agreement, there are no outstanding contractual obligations of the Company or any of its Subsidiaries to repurchase, redeem or

otherwise acquire any Capital Stock of the Company or any of its Subsidiaries. There are no outstanding agreements to which the Company, its Subsidiaries or any of their respective officers or directors is a party concerning the voting of any Capital Stock of the Company or any of its Subsidiaries.

**Section 4.4 Authority.** On or prior to the date of this Agreement, the Board of Directors of the Company unanimously approved this Agreement, declared this Agreement and the Merger advisable and fair to and in the best interest of the Company and its shareholders, resolved to recommend the approval of this Agreement by the Company's shareholders, directed that this Agreement be submitted to the Company's shareholders for approval and adoption (all in accordance with the NJBCA) and approved the other agreements to be entered into by it as contemplated hereby. The Company has all requisite corporate power and authority to execute and deliver this Agreement and, subject to approval by the Company's shareholders of this Agreement, to consummate the transactions contemplated hereby. The execution, delivery and performance of this Agreement by the Company and the consummation by the Company of the Merger and of the other transactions contemplated hereby have been duly authorized by all necessary corporate action on the part of the Company, subject to approval by the Company's shareholders of this Agreement. This Agreement has been duly executed and delivered by the Company and (assuming the valid authorization, execution and delivery of this Agreement by Parent) constitutes the valid and binding obligation of the Company enforceable against the Company in accordance with its terms, except that such enforceability (i) may be limited by bankruptcy, insolvency, moratorium or other similar laws affecting or relating to the enforcement of creditors' rights generally and (ii) is subject to general principles of equity.

**Section 4.5 Consents and Approvals; No Violations.** (a) Except for filings, permits, authorizations, consents and approvals contemplated by *Section 4.5(b)*, neither the execution, delivery or performance of this Agreement by the Company nor the consummation by the Company of the transactions contemplated hereby will (i) conflict with or result in any breach of any provision of the Certificate of Incorporation or By-laws of the Company or of the similar organizational documents of any of its Subsidiaries or any Company Joint Venture, (ii) result in a violation or breach of, or constitute (with or without due notice or lapse of time or both) a default (or give rise to any right of termination, guaranteed payment, loss of rights, cancellation or acceleration) under any of the terms, conditions or provisions of any Contract to which the Company or any of its Subsidiaries or any Company Joint Venture is a party or by which any of them or any of their properties or assets may be bound or any Company Permit, (iii) violate any order, writ, injunction, decree, statute, rule or regulation applicable to the Company, any of its Subsidiaries or any Company Joint Venture or any of their properties or assets or (iv) result in the creation of any Lien upon any of the properties or assets of the Company or any of its Affiliates (including Parent and its Subsidiaries following the Merger), except in the case of *clause (i)* (solely with respect to Company Joint Ventures) and *clauses (ii)* through *(iv)* for such items that would not, individually or in the aggregate, reasonably be expected to have a Material Adverse Effect on the Company.

(b) No filing or registration with, or authorization, consent or approval of, any Governmental Entity (other than filings, registrations, authorizations, consents and approvals the failure of which to make or obtain would not, individually or in the aggregate, reasonably be expected to have a Material Adverse Effect on the Company or, after giving effect to the Merger, on Parent) is required by or with respect to the Company or any of its Subsidiaries or any Company Joint Venture in connection with the execution and delivery of this Agreement by the Company or is necessary for the consummation by the Company of the Merger and the other transactions contemplated by this Agreement, except (i) in connection, or in compliance, with the provisions of the HSR Act, (ii) the filing of the Certificate of Merger with the Secretary of State of the State of New Jersey, the filing of the Articles of Merger with the Secretary of State of the Commonwealth of Pennsylvania and appropriate documents with the relevant authorities of other states in which the Company or any of its Subsidiaries is qualified to do

business, (iii) as may be required by state takeover laws and foreign or supranational laws relating to antitrust and competition clearances disclosed on *Item 4.5(b)* of the Company Letter, (iv) such filings as may be required in connection with the Taxes described in *Section 7.7*, (v) as may be required under the Securities Act or the Exchange Act and (vi) such other filings, registrations, authorizations, consents and approvals as set forth on *Item 4.5(b)* of the Company Letter (collectively, whether or not legally required to be made or obtained, the "*Company Required Statutory Approvals*"). For purposes of this Agreement, references to "obtained" with respect to Parent Required Statutory Approvals and Company Required Statutory Approvals shall include the making of all filings and registrations and the giving of all applicable notices.

**Section 4.6 *SEC Documents and Other Reports.*** (a) Each of the Company and its Subsidiaries has timely filed with or furnished to the SEC all documents required to be filed or furnished by it since December 31, 2001 under the Securities Act or the Exchange Act (as such documents have been amended or supplemented prior to the date hereof, the "*Company SEC Documents*"). As of their respective filing or furnishing dates, the Company SEC Documents complied in all material respects with the requirements of the Securities Act or the Exchange Act, as the case may be, each as in effect on the date so filed or furnished, and at the time filed with the SEC, none of the Company SEC Documents so filed contained any untrue statement of a material fact or omitted to state a material fact required to be stated therein or necessary to make the statements therein, in light of the circumstances under which they were made, not misleading. The consolidated financial statements of the Company included in the Company SEC Documents complied as of their respective dates in all material respects with the then applicable accounting requirements and the published rules and regulations of the SEC with respect thereto, were prepared in accordance with generally accepted accounting principles (except in the case of the unaudited statements, as permitted by Form 10-Q under the Exchange Act) applied on a consistent basis during the periods involved (except as may be indicated therein or in the notes thereto) and fairly present in all material respects the consolidated financial position of the Company and its consolidated Subsidiaries as at the dates thereof and the consolidated results of their operations and their consolidated cash flows for the periods then ended (subject, in the case of unaudited statements, to normal year-end audit adjustments and to any other adjustments described therein).

(b) The financial statements of each of the deconsolidated Subsidiaries of the Company, if any, for each of the last three fiscal years fairly present in all material respects the financial position of such deconsolidated Subsidiary of the Company as at the dates thereof and the results of their operations and their cash flows for the periods then ended (subject, in the case of unaudited statements, to normal year-end audit adjustments and to any other adjustments described therein).

(c) Each of the Company and its Subsidiaries has filed with the SEC, FERC, the NRC, or the appropriate state public utilities commission, as the case may be, all material documents required to be filed by it under PUHCA, the Federal Power Act, the Atomic Energy Act, the Natural Gas Act, the Natural Gas Policy Act and applicable state public utility laws and regulations. All such documents complied, as of the date so filed or, if amended, as of the date of the last amendment prior to the date hereof, in all material respects with all applicable requirements of the applicable statute and rules and regulations thereunder.

**Section 4.7 *Absence of Material Adverse Change.*** Since December 31, 2003 and through the date hereof the Company and its Subsidiaries have conducted their respective businesses in all material respects only in the ordinary course, and there has not been (i) any Material Adverse Change with respect to the Company, (ii) any declaration, setting aside or payment of any dividend or other distributions with respect to its or any of its Subsidiaries' Capital Stock (other than (a) regular quarterly cash dividends paid by the Company on Company Common Stock not in excess of \$0.55 per share per quarter with usual record and payment dates and consistent with the Company's past dividend policy, (b) dividends and distributions by a direct or indirect Subsidiary of the Company to its

parent or another Subsidiary of the Company, and (c) regular cash dividends and distributions paid by the Subsidiaries of the Company on their preferred stock in accordance with their respective terms), (iii) any split, combination or reclassification of any of its or any of its Subsidiaries' Capital Stock or any issuance or the authorization of any issuance of any other securities in respect of, in lieu of or in substitution for shares of its or any of its Subsidiaries' Capital Stock, (iv) any change in accounting methods, principles or practices by the Company or any of its Subsidiaries, (v) any Tax Return relating to Company Material Taxes prepared or filed materially inconsistent with past practice, or with respect to any such Tax Return any position taken, election made or method adopted that is materially inconsistent with positions taken, elections made or methods used in preparing or filing similar Tax Returns, (vi) any settlement entered into involving any material claim for Company Material Taxes, (vii) any material damage, destruction or other casualty loss with respect to any material asset or property owned, leased or otherwise used by the Company or any of its Subsidiaries, whether or not covered by insurance or (viii) any increase in the compensation payable or that could become payable by the Company or any of its Subsidiaries to officers or key employees or any amendment of any of the Benefit Plans of the Company or any of its Subsidiaries other than increases or amendments in the ordinary course.

Section 4.8 *Information Supplied.* None of the information supplied or to be supplied by the Company specifically for inclusion or incorporation by reference in Parent's registration statement on Form S-4 (together with any amendments or supplements thereto, the "*Registration Statement*"), pursuant to which Parent Shares issuable in the Merger will be registered, or the joint proxy statement/prospectus (together with any amendments or supplements thereto, the "*Proxy Statement*") relating to the Shareholders Meetings, will, in the case of the Registration Statement, at the time it becomes effective, and, in the case of the Proxy Statement, at the time it is first mailed to the shareholders of the Company or Parent and at the time of the Shareholders Meetings, contain any untrue statement of a material fact or omit to state any material fact required to be stated therein or necessary in order to make the statements therein, in light of the circumstances under which they are made, not misleading. The Proxy Statement will comply as to form in all material respects with the requirements of the Exchange Act, except that no representation or warranty is made by the Company with respect to statements made or incorporated by reference in the Proxy Statement based on information supplied by Parent or any of its representatives specifically for inclusion or incorporation by reference therein.

Section 4.9 *Compliance with Laws; Permits.* (a) The businesses of the Company and its Subsidiaries are not being and have not been conducted in violation of any law, ordinance or regulation of any Governmental Entity, except for violations that would not, individually or in the aggregate, reasonably be expected to have a Material Adverse Effect on the Company. The Company and each of its Subsidiaries is in possession of all franchises, grants, authorizations, licenses, permits, easements, variances, rights-of-way, exceptions, consents, certificates, approvals and orders of any Governmental Entity necessary for the Company and its Subsidiaries to own, lease and operate its properties or to carry on its business as it is now being conducted (the "*Company Permits*"), except where the failure to have any of the Company Permits would not, individually or in the aggregate, reasonably be expected to have a Material Adverse Effect on the Company, and, as of the date of this Agreement, no suspension or cancellation of any of the Company Permits is pending or, to the Knowledge of the Company, threatened, except where the suspension or cancellation of any of the Company Permits would not, individually or in the aggregate, reasonably be expected to have a Material Adverse Effect on the Company.

(b) The Company and each of its Subsidiaries is in compliance in all material respects with (i) the applicable provisions of the Sarbanes-Oxley Act of 2002 and the related rules and regulations promulgated thereunder or under the Exchange Act (the "*Sarbanes-Oxley Act*") and (ii) the applicable listing and corporate governance rules and regulations of the NYSE. Except as permitted by the Exchange Act, including Sections 13(k)(2) and (3), since the enactment of the Sarbanes-Oxley Act,

neither the Company nor any of its Affiliates has made, arranged or modified (in any material way) personal loans to any executive officer or director of the Company or any of its Subsidiaries.

(c) Each of the principal executive officer of the Company and of each Company Reporting Subsidiary and the principal financial officer of the Company and of each Company Reporting Subsidiary (or each former principal executive officer of the Company and of each Company Reporting Subsidiary and each former principal financial officer of the Company and of each Company Reporting Subsidiary, as applicable) has made all certifications required by Rule 13a-14 or 15d-14 under the Exchange Act or Sections 302 and 906 of the Sarbanes-Oxley Act and the rules and regulations of the SEC promulgated thereunder with respect to Company SEC Documents. For purposes of the preceding sentence, "principal executive officer" and "principal financial officer" shall have the meanings given to such terms in the Sarbanes-Oxley Act. The Company has delivered to Parent a summary of any disclosure made by management to the Company's auditors and audit committee since January 1, 2002 referred to in such certifications.

(d) The Company and each Company Reporting Subsidiary has (i) designed disclosure controls and procedures to ensure that material information relating to it and its consolidated Subsidiaries, is made known to its management by others within those entities and (ii) to the extent required by applicable laws, disclosed, based on its most recent evaluation, to its auditors and the audit committee of its Board of Directors (A) any significant deficiencies and material weaknesses in the design or operation of internal controls over financial reporting which are reasonably likely to adversely affect its ability to record, process, summarize and report financial information and (B) to the Knowledge of the Company, any fraud, whether or not material, that involves management or other employees who have a significant role in its internal control over financial reporting.

(e) The Company has prepared a plan for the Company and each Company Reporting Subsidiary to comply with the requirements of Section 404 of the Sarbanes-Oxley Act on the date by which they must comply with such requirements. None of the Company or any Company Reporting Subsidiary is aware of any reason the Company or any Company Reporting Subsidiary will not comply with the requirements of Section 404 of the Sarbanes-Oxley Act on the applicable compliance date.

(f) Through the date hereof the Company has delivered to Parent copies of any written notifications it has received since December 31, 2001 of a (i) "reportable condition" or (ii) "material weakness" in the Company's internal controls. For purposes of this Agreement, the terms "*reportable condition*" and "*material weakness*" shall have the meanings assigned to them in the Statements of Auditing Standards No. 60, as in effect on the date hereof.

Section 4.10 *Tax Matters.* (a) (i) Each of the Company, each Subsidiary of the Company and each Company Group has timely filed all Tax Returns relating to Company Material Taxes required to be filed, except where the failure to timely file would not, individually or in the aggregate, reasonably be expected to have a Material Adverse Effect on the Company, (ii) all such Tax Returns are complete and accurate and disclose all Company Material Taxes required to be paid by the Company, each Subsidiary of the Company and each Company Group for the periods covered thereby, except where the failure to be complete or accurate or to disclose all Company Material Taxes would not, individually or in the aggregate, reasonably be expected to have a Material Adverse Effect on the Company, (iii) none of the Company, any Subsidiary of the Company or any Company Group is currently the beneficiary of any extension of time within which to file any Tax Return relating to Company Material Taxes, (iv) all Company Material Taxes (whether or not shown on any Tax Return) owed by the Company, any Subsidiary of the Company or any Company Group have been timely paid, except where the failure to timely pay would not, individually or in the aggregate, reasonably be expected to have a Material Adverse Effect on the Company, (v) neither the Company nor any Subsidiary of the Company has waived in writing or been requested in writing to waive any statute of limitations in respect of Company Material Taxes which waiver is currently in effect, (vi) the Tax

Returns referred to in *clause (i)* (without regard to any Material Adverse Effect qualifier) have been examined by the appropriate taxing authority or the period for assessment of the Company Material Taxes in respect of which each such Tax Return was required to be filed (taking into account all applicable extensions and waivers) has expired, (vii) there is no action, suit, inquiry, investigation, audit, claim or assessment pending or, to the Knowledge of the Company, proposed in writing or threatened in writing with respect to Company Material Taxes or other material Taxes of the Company, any Subsidiary of the Company or any Company Group, (viii) all deficiencies asserted or assessments made as a result of any examination of any Tax Returns relating to Company Material Taxes required to be filed by the Company, any Subsidiary of the Company or any Company Group have been paid in full, (ix) there are no Liens for Company Material Taxes upon the assets of the Company or any Subsidiary of the Company except Liens relating to current Taxes not yet due or except to the extent such Liens would not, individually or in the aggregate, reasonably be expected to have a Material Adverse Effect on the Company, (x) all Taxes which the Company or any Subsidiary of the Company are required by law to withhold or to collect for payment have been duly withheld and collected and have been either paid or accrued, reserved against and entered on the books of the Company, except where the failure to do any of the foregoing would not, individually or in the aggregate, reasonably be expected to have a Material Adverse Effect on the Company, (xi) to the Knowledge of the Company, neither the Company nor any Subsidiary of the Company has any material liability for Taxes of another Person under Treasury Regulation § 1.1502-6 (or any similar provision of state, local or foreign law), (xii) to the extent the Company, any Subsidiary of the Company or any Affiliate thereof has participated in a transaction that is described as a "reportable transaction" within the meaning of Treasury Regulation § 1.6011-4(b)(1), such participation has been adequately disclosed to the IRS on IRS Form 8886 (Reportable Transaction Disclosure Statement) (or predecessor Form) or on a written attachment to such Form or predecessor Form, (xiii) the accruals for Taxes reflected in the consolidated financial statements of the Company represent the Company's best estimate of the amounts required to be so reflected as of the dates hereof and (xiv) during the last three years, none of the Company or any Subsidiary of the Company has been a party to any transaction (other than a transaction described in Section 355(e)(2)(C) of the Code) treated by the parties thereto as one to which Section 355 of the Code (or any similar provision of state, local or foreign law) applied. For purposes of the representations and warranties contained in this *Section 4.10(a)*, references to the Company or any Subsidiary of the Company shall include, except where the context requires otherwise, any predecessor thereof.

(b) The Company has delivered to Parent a correct and complete summary (i) by year, of all items of income, gain, loss, deduction and credit of the Company (or any predecessor) or any Subsidiary of the Company (or any predecessor) that has been or is expected to be generated by any Listed Transaction, (ii) of any material income or gain of the Company (or any predecessor) or any Subsidiary of the Company (or any predecessor) deferred pursuant to Treasury Regulation §§ 1.1502-13 or -14, or any similar or predecessor Treasury Regulation, whether proposed, temporary or final and (iii) of any excess loss account (as described in Treasury Regulation §§ 1.1502-19 and 1.1502-32) that exists with respect to the stock of any Subsidiary of the Company.

(c) No transaction contemplated by this Agreement is subject to withholding under Section 1445 of the Code and no stock transfer Taxes, sales Taxes, use Taxes, real estate transfer or gains Taxes, or other similar Taxes will be imposed on the transactions contemplated by this Agreement, except such Taxes so imposed that would not, individually or in the aggregate, reasonably be expected to have a Material Adverse Effect on the Company.

(d) Neither the Company nor any of its Affiliates has taken or agreed to take any action that, to the Knowledge of the Company, will (or will be reasonably likely to) prevent the Merger from qualifying as a "reorganization" within the meaning of Section 368(a) of the Code. To the Knowledge of the Company, the representations set forth in the Company Tax Certificate, if made on the date

hereof (assuming the Merger were consummated on the date hereof and based on reasonable estimates in the case of certain information not available on the date hereof), would be true and correct in all material respects.

Section 4.11 *Litigation*. There is no suit, action, proceeding or investigation pending or, to the Knowledge of the Company threatened against the Company or any of its Affiliates that would, individually or in the aggregate, reasonably be expected to have a Material Adverse Effect on the Company. Neither the Company nor any of its Affiliates is subject to any outstanding judgment, order, writ, injunction or decree that would, individually or in the aggregate, reasonably be expected to have a Material Adverse Effect on the Company.

Section 4.12 *Benefit Plans*. (a) *Item 4.12(a)* of the Company Letter sets forth a true and complete list of each Benefit Plan (including each ERISA Benefit Plan) maintained by the Company and its Subsidiaries. Except as required by law, neither the Company nor any of its Subsidiaries has adopted or amended in any material respect any Benefit Plan since the date of the most recent audited financial statements included in the Company Filed SEC Documents. As of the date of this Agreement, none of the Company, its Subsidiaries or any trade or business which is treated as a single employer ("*ERISA Affiliate*") with the Company under Section 414(b), (c), (m) or (o) of the Code contributes to any ERISA Benefit Plan that is a "multiemployer plan" (as defined in Section 3(37) of ERISA) or maintains any ERISA Benefit Plan that is subject to Title IV of ERISA or Section 412 of the Code. As of the date of this Agreement there exists no material Contract, commitment, understanding, plan, policy or arrangement of any kind, whether written or oral, with or for the benefit of any current or former officer, director, employee or consultant, including each employment, compensation, deferred compensation, severance, supplemental pension, life insurance, termination or consulting Contract or arrangement and any Contracts or arrangements associated with a change in control between the Company or any of its Subsidiaries and any current or former employee, officer, director or consultant of the Company or any of its Subsidiaries ("*Compensation Commitments*"). As of the date of this Agreement, neither the Company nor any of its Subsidiaries maintains or contributes to any Benefit Plans or employs any employees outside of the United States.

(b) With respect to each Benefit Plan listed on *Item 4.12(a)* of the Company Letter, correct and complete copies, where applicable, of the following documents have been made available to Parent: (i) all Benefit Plan documents and amendments, trust agreements and insurance and annuity contracts and policies, (ii) the most recent IRS determination letter or opinion letter if the Benefit Plan is intended to satisfy the requirements for Tax favored treatment pursuant to Sections 401-417 of the Code, (iii) the Annual Reports (Form 5500 Series) and accompanying schedules, as filed, for the three most recently completed plan years, (iv) any discrimination or coverage tests performed during the last two plan years and (v) the current summary plan description. True and complete copies of all written Compensation Commitments and of all related insurance and annuity policies and contracts and other documents with respect to each Compensation Commitment have been made available to Parent. *Item 4.12(b)* of the Company Letter contains a true and complete description of all material oral Compensation Commitments.

(c) Each Benefit Plan listed on *Item 4.12(a)* of the Company Letter which is intended to be a Qualified Plan has received a favorable determination letter from the IRS that such plan is so qualified under the Code (or an application for such letter has been or will be submitted to the IRS within the applicable remedial amendment period) or has been established pursuant to a prototype plan that has received a favorable opinion letter from the IRS, and no circumstance exists which, might cause such plan to cease being so qualified except for any circumstance that would not, individually or in the aggregate, reasonably be expected to have a Material Adverse Effect on the Company. Each Benefit Plan listed on *Item 4.12(a)* of the Company Letter complies and has been maintained in all respects with its terms and all requirements of law and regulations applicable thereto, and there has been no notice issued by any Governmental Entity questioning or challenging such compliance, except for any

circumstance that would not, individually or in the aggregate, reasonably be expected to have a Material Adverse Effect on the Company. Neither the Company nor any of its Subsidiaries has taken any action within the 12-month period ending on the date hereof to take corrective action or make a filing under any voluntary correction program of the IRS, Department of Labor or any other Governmental Entity with respect to any Benefit Plan or Compensation Commitment, and neither the Company nor any of its Subsidiaries has any Knowledge of any plan defect which would qualify for correction under any such program, except for any action, filing or plan defect that would not, individually or in the aggregate, reasonably be expected to have a Material Adverse Effect on the Company. There is no dispute, arbitration, grievance, action, suit or claim (other than routine claims for benefits) pending or, to the Knowledge of the Company, threatened involving such Benefit Plans or the assets of such plans that would, individually or in the aggregate, reasonably be expected to have a Material Adverse Effect on the Company. Neither the Company nor any of its Subsidiaries has any obligation under any welfare plans or otherwise to provide health or death benefits to or in respect of former employees of the Company or any of its Subsidiaries, except as specifically required by the continuation requirements of Part 6 of Title I of ERISA or applicable state law. No plan or arrangement disclosed on *Item 4.12(c)* of the Company Letter that provides health or death benefits to or in respect of former employees of the Company or any of its Subsidiaries contains provisions that by their terms prohibit the Company or its Subsidiaries from amending or terminating such plan or arrangement at any time without the consent of any other Person and without incurring liability thereunder other than in respect of claims incurred prior to such amendment or termination. Neither the Company nor any of its Subsidiaries has, directly or indirectly, any liability (i) on account of any violation of the health care requirements of Part 6 of Title I of ERISA or Section 4980B of the Code, (ii) under Section 502 (i) or Section 502(l) of ERISA or Section 4975 of the Code, (iii) under Section 302 of ERISA or Section 412 of the Code or (iv) under Title IV of ERISA that would, individually or in the aggregate, reasonably be expected to have a Material Adverse Effect on the Company.

(d) The Company and its Subsidiaries have not, within the 12-month period ending on the date hereof, incurred and do not expect to incur any material withdrawal liability with respect to a "multiemployer plan" (within the meaning of Section 3 (3) of ERISA) (a "*Multiemployer Plan*") (regardless of whether based on contributions of an ERISA Affiliate of the Company). No notice of a "reportable event," within the meaning of Section 4043 of ERISA for which the 30-day reporting requirement has not been waived or extended, other than pursuant to Pension Benefit Guaranty Corporation ("*PBGC*") Reg. Section 4043.66, has been required to be filed for any pension plan or by any ERISA Affiliate of the Company within the 12-month period ending on the date hereof or will be required to be filed in connection with the transactions contemplated by this Agreement.

(e) All contributions or premiums required to be paid under the terms of any Benefit Plan maintained by the Company or any of its Subsidiaries, collective bargaining agreement or by any applicable laws as of the date hereof have been timely made or have been reflected on the most recent consolidated balance sheet filed or incorporated by reference in the Company Filed SEC Documents. No Benefit Plan maintained by the Company or any of its Subsidiaries that is subject to Section 412 of the Code or Section 302 of ERISA has an "accumulated funding deficiency" (whether or not waived) within the meaning of Section 412 of the Code or Section 302 of ERISA and neither the Company nor any of its Subsidiaries has an outstanding funding waiver. Neither the Company nor any of its Subsidiaries has provided, or is required to provide, security to any Benefit Plan pursuant to Section 401(a)(29) of the Code.

(f) Under each Benefit Plan maintained by the Company or any of its Subsidiaries which is a single-employer plan (as defined in Section 4001(a)(15) of ERISA), as of the last day of the most recent plan year ended prior to the date hereof, the actuarially determined present value of all "benefit liabilities," within the meaning of Section 4001(a)(16) of ERISA (as determined on the basis of the

actuarial assumptions contained in the Benefit Plan's most recent actuarial valuation), did not exceed the then current value of the assets of such Benefit Plan by more than \$400 million as of the date hereof, and there has been no material adverse change in the financial condition of such Benefit Plan since the last day of the most recent plan year.

(g) None of the execution and delivery of this Agreement, approval of this Agreement, or consummation of the transactions contemplated by this Agreement will: (i) entitle any employees of the Company or its Subsidiaries to severance pay or any increase in severance pay upon termination of employment, (ii) accelerate the time of payment or vesting or trigger any payment of compensation or benefits under, increase the amount payable or trigger any other material obligation pursuant to, any of the Benefit Plans or Compensation Commitments, (iii) result in any breach or violation of, or a default under, any of the Benefit Plans or Compensation Commitments, (iv) limit or restrict the right of the Company or, after the consummation of the transactions contemplated hereby, Parent or any of its Subsidiaries to merge, amend or terminate any of the Benefit Plans maintained by the Company or any of its Subsidiaries or Compensation Commitments, (v) cause the Company or any of its Subsidiaries or, after the consummation of the transactions contemplated hereby, Parent or any of its Subsidiaries to record additional compensation expense on its income statement with respect to any outstanding stock option or other equity-based award or (vi) result in payments under any of the Benefit Plans or Compensation Commitments that are not deductible pursuant to Section 162(m) or Section 280G of the Code.

(h) All Benefit Plans and Compensation Commitments covering current or former employees employed by the Company and its Subsidiaries outside the United States, or their dependents or beneficiaries ("*Company Non-US Compensation and Benefit Plans*"), are and have been registered, qualified, invested and administered in all material respects in accordance with applicable local law and the terms of such Company Non-US Compensation and Benefit Plans. The Company and its Subsidiaries have complied with all material obligations under such Company Non-US Compensation and Benefit Plans and there is no proceeding, action, complaint, investigation or claim in respect of any Company Non-US Compensation and Benefit Plan initiated by any Governmental Entity or any other Person (other than routine inquiries and claims for benefits that would not, individually or in the aggregate reasonably be expected to have a Material Adverse Effect on the Company). Each Company Non-US Compensation and Benefit Plan which is a funded plan is fully funded as of the last actuarial valuation date on both a going concern and a solvency basis pursuant to the actuarial assumptions and methodology utilized in the most recent actuarial valuation therefor as filed with the applicable regulatory authorities, except as would not, individually or in the aggregate, reasonably be expected to have a Material Adverse Effect on the Company. None of the Company Non-US Compensation and Benefit Plans (other than pension plans) provide benefits to retired employees or to the beneficiaries or dependents of retired employees, except as would not, individually or in the aggregate, reasonably be expected to have a Material Adverse Effect on the Company.

(i) As a direct or indirect result of the transactions contemplated by this Agreement, no payment or other benefit, and no acceleration of the vesting of any options, payments or other benefits, will be (or under Section 280G of the Code and the Treasury Regulations thereunder will be presumed to be) a "parachute payment" to a "disqualified individual" as those terms are defined in Section 280G of the Code and the Treasury Regulations thereunder, without regard to whether such payment or acceleration is reasonable compensation for personal services performed or to be performed in the future.

Section 4.13 *Labor Matters.* (a) Each of the Company and its Subsidiaries has complied with all applicable requirements of law which relate to prices, wages, hours, discrimination in employment and collective bargaining and to the operation of its business and is not liable for any arrears of wages or any withholding Taxes or penalties for failure to comply with any of the foregoing, except as would not, individually or in the aggregate, reasonably be expected to have a Material Adverse Effect on the Company. Neither the Company nor any of its Subsidiaries is a party to any collective bargaining agreement or labor Contract, and to the Knowledge of the Company, there are currently no union organizing activities related to the Company or any of its Subsidiaries. Neither the Company nor any of its Subsidiaries has engaged in any unfair labor practice with respect to any Persons employed by or otherwise performing services primarily for the Company or any of its Subsidiaries (the "*Company Business Personnel*"), and neither the Company nor any of its Subsidiaries has received written notice of any unfair labor practice charge or complaint against the Company or any of its Subsidiaries by the National Labor Relations Board or any comparable state agency pending or threatened in writing with respect to Company Business Personnel, except, in each case, as would not, individually or in the aggregate, reasonably be expected to have a Material Adverse Effect on the Company.

(b) There is (i) no labor strike, dispute, slowdown or stoppage pending or, to the Knowledge of the Company, threatened against or affecting the Company or any of its Subsidiaries that could interfere with the respective business activities of the Company or any of its Subsidiaries, except as would not, individually or in the aggregate, reasonably be expected to have a Material Adverse Effect on the Company and (ii) no pending or, to the Knowledge of the Company, threatened employee or governmental claim or investigation regarding employment matters, including any charges to the Equal Employment Opportunity Commission or state employment practice agency or investigations regarding Fair Labor Standards Act or similar state law or other wage and hour compliance, or audits by the Office of Federal Contractor Compliance Programs, except as would not, individually or in the aggregate, reasonably be expected to have a Material Adverse Effect on the Company.

Section 4.14 *Environmental Matters.* Except for matters that would not, individually or in the aggregate, reasonably be expected to have a Material Adverse Effect on the Company: (i) the Company and its Subsidiaries have complied at all times with all applicable Environmental Laws and all Company Permits issued pursuant to Environmental Laws, (ii) to the Knowledge of the Company, no property currently owned or operated by the Company or any of its Subsidiaries (including soils, groundwater, surface water, buildings or other structures) contains or is contaminated with any Hazardous Substance of a type or quantity which would reasonably be expected to require remediation pursuant to any Environmental Law, (iii) to the Knowledge of the Company, no property formerly owned or operated by the Company or any of its Subsidiaries contained or was contaminated with any Hazardous Substance during or prior to such period of ownership or operation of a type or quantity which would reasonably be expected to require remediation pursuant to any Environmental Law, (iv) none of the Company or any of its Subsidiaries is liable for any Hazardous Substance release, disposal or contamination on any third party property, (v) neither the Company nor any of its Subsidiaries has received any notice, demand, letter, claim or request for information alleging that the Company or any of its Subsidiaries is or may be in violation of or subject to liability under any Environmental Law (including claims of exposure, personal injury or property damage), (vi) neither the Company nor any of its Subsidiaries is party to any proceeding, or subject to any order, decree, injunction, indemnity or other agreement with any Governmental Entity or any third party resolving or relating to violations of or liability under any Environmental Law or liability with respect to Hazardous Substances and (vii) there are no other circumstances or conditions involving the Company or any of its Subsidiaries, or their respective properties or operations, including, to the Knowledge of the Company, any pending Environmental Law, that would reasonably be expected to result in any claim, liability, investigation, increased costs to comply or restriction on the operation, ownership, use, or transfer of any property or operation pursuant to any Environmental Law.