

Return) owed by Parent, any Subsidiary of Parent or any Parent 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 Parent, (v) neither Parent nor any Subsidiary of Parent has waived in writing or been requested in writing to waive any statute of limitations in respect of Parent 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 Parent 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 Parent, proposed in writing or threatened in writing with respect to Parent Material Taxes or other material Taxes of Parent, any Subsidiary of Parent or any Parent Group, (viii) all deficiencies asserted or assessments made as a result of any examination of any Tax Returns relating to Parent Material Taxes required to be filed by Parent, any Subsidiary of Parent or any Parent Group have been paid in full, (ix) there are no Liens for Parent Material Taxes upon the assets of Parent or any Subsidiary of Parent 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 Parent, (x) all Taxes which Parent or any Subsidiary of Parent 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 Parent, 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 Parent, (xi) to the Knowledge of Parent, neither Parent nor any Subsidiary of Parent 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 Parent, any Subsidiary of Parent 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 and (xiii) the accruals for Taxes reflected in the consolidated financial statements of Parent represent Parent's best estimate of the amounts required to be so reflected as of the dates hereof. For purposes of the representations and warranties contained in this *Section 5.11(a)*, references to Parent or any Subsidiary of Parent shall include, except where the context requires otherwise, any predecessor thereof.

(b) Parent has delivered to the Company a correct and complete summary (i) by year, of all items of income, gain, loss, deduction and credit of Parent (or any predecessor) or any Subsidiary of Parent (or any predecessor) that has been or is expected to be generated by any Listed Transaction and (ii) of any material income or gain of Parent (or any predecessor) or any Subsidiary of Parent (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.

(c) 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 Parent.

(d) Neither Parent nor any of its Affiliates has taken or agreed to take any action that, to the Knowledge of Parent, 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 Parent, the representations set forth in the Parent 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 5.12 Litigation. There is no suit, action, proceeding or investigation pending or, to the Knowledge of Parent, threatened against Parent or any of its Affiliates that would, individually or in

the aggregate, reasonably be expected to have a Material Adverse Effect on Parent. Neither Parent 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 Parent.

Section 5.13 *Parent Benefit Plans.* (a) *Item 5.13(a)* of the Parent Letter sets forth a true and complete list of each Benefit Plan (including each ERISA Benefit Plan) maintained by Parent and its Subsidiaries. Except as required by law, neither Parent 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 Parent Filed SEC Documents. As of the date of this Agreement, none of Parent, its Subsidiaries or any ERISA Affiliate with Parent 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 Parent Compensation Commitments. As of the date of this Agreement, neither Parent 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 5.13(a)* of the Parent Letter, correct and complete copies, where applicable, of the following documents have been made available to the Company: (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 Parent Compensation Commitments and of all related insurance and annuity policies and contracts and other documents with respect to each Parent Compensation Commitment have been made available to the Company. *Item 5.13(b)* of the Parent Letter contains a true and complete description of all material oral Parent Compensation Commitments.

(c) Each Benefit Plan listed on *Item 5.13(a)* of the Parent 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 Parent. Each Benefit Plan listed on *Item 5.13(a)* of the Parent 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 Parent. Neither Parent 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 Parent Compensation Commitment, and neither Parent 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 Parent. There is no dispute, arbitration, grievance, action, suit or claim (other than routine claims for benefits) pending or, to the Knowledge of Parent, 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 Parent. Neither Parent 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 Parent 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 5.13(c)* of the Parent Letter that provides health or death benefits to or in respect of former employees of Parent or any of its Subsidiaries contains provisions that by their terms prohibit Parent 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 Parent 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 Parent.

(d) Parent 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 (regardless of whether based on contributions of an ERISA Affiliate of Parent). 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 PBGC Reg. Section 4043.66, has been required to be filed for any pension plan or by any ERISA Affiliate of Parent 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 Parent 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 Parent Filed SEC Documents. No Benefit Plan maintained by Parent 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 Parent nor any of its Subsidiaries has an outstanding funding waiver. Neither Parent 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 Parent 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 \$2,400,000,000 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 Parent 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 Parent Compensation Commitments, (iii) result in any breach or violation of, or a default under, any of the Benefit Plans or Parent Compensation Commitments, (iv) limit or restrict the right of Parent or any of its Subsidiaries to merge, amend or terminate any of the Benefit Plans maintained by Parent or any of its Subsidiaries or Parent Compensation Commitments, (v) cause 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 Parent Compensation Commitments that are not deductible pursuant to Section 162(m) or Section 280G of the Code.

(h) All Benefit Plans and Parent Compensation Commitments covering current or former employees employed by Parent and its Subsidiaries outside the United States, or their dependents or beneficiaries ("*Parent 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 Parent Non-US Compensation and Benefit Plans. Parent and its Subsidiaries have complied with all material obligations under such Parent Non-US Compensation and Benefit Plans and there is no proceeding, action, complaint, investigation or claim in respect of any Parent 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 Parent). Each Parent 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. None of the Parent Non-US Compensation and Benefit Plans (other than pension plans) provide benefits to retired employees or to the beneficiaries or dependents of retired employees.

(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 5.14 *Labor Matters.* (a) Each of Parent 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 Parent. Neither Parent nor any of its Subsidiaries is a party to any collective bargaining agreement or labor Contract, and to the Knowledge of Parent, there are currently no union organizing activities related to Parent or any of its Subsidiaries. Neither Parent 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 Parent or any of its Subsidiaries (the "*Parent Business Personnel*"), and neither Parent nor any of its Subsidiaries has received written notice of any unfair labor practice charge or complaint against Parent or any of its Subsidiaries by the National Labor Relations Board or any comparable state agency pending or threatened in writing with respect to the Parent Business Personnel, except, in each case, as would not, individually or in the aggregate, reasonably be expected to have a Material Adverse Effect on Parent.

(b) There is (i) no labor strike, dispute, slowdown or stoppage pending or, to the Knowledge of Parent, threatened against or affecting Parent or any of its Subsidiaries that could interfere with the respective business activities of Parent or any of its Subsidiaries, except as would not, individually or in the aggregate, reasonably be expected to have a Material Adverse Effect on Parent and (ii) no pending or, to the Knowledge of Parent, 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 Parent.

Section 5.15 *Environmental*. Except for matters that would not, individually or in the aggregate, reasonably be expected to have a Material Adverse Effect on Parent: (i) Parent and its Subsidiaries have complied at all times with all applicable Environmental Laws and all Parent Permits issued pursuant to Environmental Laws, (ii) to the Knowledge of Parent, no property currently owned or operated by Parent 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 Parent, no property formerly owned or operated by Parent 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 Parent or any of its Subsidiaries is liable for any Hazardous Substance release, disposal or contamination on any third party property, (v) neither Parent nor any of its Subsidiaries has received any notice, demand, letter, claim or request for information alleging that Parent 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 Parent 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 Parent or any of its Subsidiaries, or their respective properties or operations, including, to the Knowledge of Parent, 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.

Section 5.16 *Regulation as a Utility*. Commonwealth Edison Company is regulated as a public utility and an electric utility by the State of Illinois and by no other state. PECO Energy Company is regulated as a public utility by the Commonwealth of Pennsylvania and by no other state. ComEd of Indiana, Inc. is regulated as a public utility by the State of Indiana and by no other State. Except as set forth above, neither Parent nor any "subsidiary company" or "affiliate" of Parent is subject to regulation as a public utility or public service company (or similar designation) by any other state in the United States or any foreign country. Parent is a public utility holding company as defined by PUHCA, and is registered thereunder.

Section 5.17 *Operations of Nuclear Power Plants*. (a) The operations of the nuclear generation stations currently owned, in whole or part, by Parent or any of its Affiliates (collectively, the "*Parent Nuclear Facilities*") are and have been conducted in compliance with all applicable laws and Parent Permits, except for such failures to comply that would not, individually or in the aggregate, reasonably be expected to have a Material Adverse Effect on Parent. Each of the Parent Nuclear Facilities maintains, and is in compliance with, (i) emergency plans designed to respond to an unplanned release of a Hazardous Substance therefrom of radioactive materials and (ii) plans for the storage and disposal of spent nuclear fuel, and each such plan enumerated in *clauses (i) and (ii)* conforms with the requirements of applicable law.

(b) Parent has funded to the extent required consistent with NRC regulations the decommissioning costs of each Parent Nuclear Facility.

(c) Neither Parent nor any of its Subsidiaries has been given written notice of or been charged with actual or potential violation of, or, to the Knowledge of Parent, is the subject of any ongoing proceeding, inquiry, special inspection, diagnostic evaluation or other NRC action of which Parent or any of its Subsidiaries has received notice under the Atomic Energy Act or the terms and conditions of any license granted to Parent or any of its Subsidiaries regarding the Parent Nuclear Facilities that would, individually or in the aggregate, reasonably be expected to have a Material Adverse Effect on Parent.

(d) Parent makes no representation under *Section 5.17(a)* or *(c)* with respect to any Parent Nuclear Facility for any periods during which such Parent Nuclear Facility was operated by the Company or a Subsidiary of the Company.

Section 5.18 Regulatory Proceedings. Other than fuel adjustment or purchase gas adjustment or similar adjusting rate mechanisms, none of Parent nor any of its Subsidiaries all or part of whose rates or services are regulated by a Governmental Entity (a) is a party to any rate proceeding before a Governmental Entity with respect to rates charged by Parent or any of its Subsidiaries other than in the ordinary course consistent with past practice, (b) has rates in any amounts that have been or are being collected subject to refund, pending final resolution of any rate proceeding pending before a Governmental Entity or on appeal to a court or (c) is a party to any Contract with any Governmental Entity entered into other than in the ordinary course consistent with past practice imposing conditions on rates or services in effect as of the date hereof or which, to the Knowledge of Parent, are as of the date hereof scheduled to go into effect at a later time, except, in case of *clauses (a)* through *(c)* that would not, individually or in the aggregate, reasonably be expected to have a Material Adverse Effect on Parent. No representation or warranty with respect to the Parent Permits is made by this *Section 5.18*.

Section 5.19 Trading. Parent has established risk parameters, limits and guidelines in compliance with the risk management policy approved by the Parent's Board of Directors (the "*Parent Trading Guidelines*") to restrict the level of risk that Parent and its Subsidiaries are authorized to take with respect to, among other things, the net position resulting from all Parent Trading (the "*Net Parent Position*") and monitors compliance by Parent and its Subsidiaries with such Parent Trading Guidelines. Parent has provided a copy of the Parent Trading Guidelines to the Company prior to the date of this Agreement. As of the date of this Agreement, (i) the Net Parent Position is within the risk parameters that are set forth in the Parent Trading Guidelines and (ii) the exposure of Parent and its Subsidiaries with respect to the Net Parent Position resulting from all such transactions is not material to Parent and its Subsidiaries taken as a whole. From December 31, 2003 to the date of this Agreement, Parent and its Subsidiaries have not, in accordance with generally recognized mark to market accounting policies, experienced an aggregate net loss in its Parent Trading and related operations that would be material to Parent and its Subsidiaries taken as a whole.

Section 5.20 Intellectual Property. Parent and its Subsidiaries own or have a valid right to use all Intellectual Property Rights used in connection with the business of Parent and its Subsidiaries. Neither Parent nor any of its Subsidiaries has infringed, misappropriated or violated in any material respect any Intellectual Property Rights of any third party, except where such infringement, misappropriation or violation would not, individually or in the aggregate, reasonably be expected to have a Material Adverse Effect on Parent. No third party infringes, misappropriates or violates any Intellectual Property Rights owned or exclusively licensed by or to Parent or any of its Subsidiaries, except where such infringement, misappropriation or violation would not, individually or in the aggregate, reasonably be expected to have a Material Adverse Effect on Parent.

Section 5.21 Required Vote of Parent Shareholders. The affirmative vote of the holders of a majority of the votes cast by holders of Parent Shares represented at the Parent Shareholders Meeting (provided that at least a majority of the Parent Shares are represented in person or by proxy at such meeting) approving the issuance of Parent Shares in the Merger is the only vote of the holders of any class or series of Parent's or any of its Subsidiaries' Capital Stock necessary to approve this Agreement and the transactions contemplated by this Agreement.

Section 5.22 State Takeover Statutes. Assuming the Company does not beneficially own 10% or more of the Parent Shares on the date hereof or at any time prior to the Effective Time, no Pennsylvania "fair price," "moratorium," "control share acquisition" or other similar anti-takeover statute or regulation or any anti-takeover provision in Parent's Amended and Restated Articles of

Incorporation or Amended and Restated By-laws is, or at the Effective Time will be, applicable to Parent, the Parent Shares, the Merger or the other transactions contemplated by this Agreement.

Section 5.23 *Brokers.* No broker, investment banker, financial advisor or other Person, other than J.P. Morgan Securities Inc. ("*J.P. Morgan*") and Lehman Brothers, Inc. ("*Lehman*"), the fees and expenses of which will be paid by Parent, is entitled to any broker's, finder's, financial advisor's or other similar fee or commission in connection with the transactions contemplated by this Agreement based upon arrangements made by or on behalf of Parent.

Section 5.24 *Opinions of Financial Advisors.* Parent has received the opinion of each of J.P. Morgan and Lehman to the effect that, as of the date hereof, the Exchange Ratio is fair to Parent from a financial point of view.

Section 5.25 *Title to Properties.* Parent or its applicable Subsidiary has good and sufficient title in and to each material parcel of real property owned by Parent or any of its Subsidiaries, subject to no Liens that would, individually or in the aggregate, reasonably be expected to have a Material Adverse Effect on Parent or materially impair Parent's or its Subsidiary's rights to or ability to use any such property.

Section 5.26 *Material Contracts.* (a) Each Parent Material Contract is a valid and binding obligation of Parent or its Subsidiary party thereto enforceable against Parent or its Subsidiary party thereto in accordance with its terms and, to the Parent's Knowledge, each other party thereto, and is in full force and effect, and each of the Parent and each of its Subsidiaries which is a party thereto has performed in all material respects all obligations required to be performed by it to the date hereof under each Parent Material Contract and, to the Parent's Knowledge, each other party to each Parent Material Contract has performed in all material respects all obligations required to be performed by it under such Parent Material Contract, except, in each case, as would not, individually or in the aggregate, reasonably be expected to have a Material Adverse Effect on Parent. None of Parent or any of its Subsidiaries has Knowledge of, or has received notice of, any violation of or default under (or any condition which with the passage of time or the giving of notice would cause such a violation of or default under) any Parent Material Contract to which it is a party or by which it or any of its properties or assets is bound, except for violations or defaults that would not, individually or in the aggregate, reasonably be expected to have a Material Adverse Effect on Parent.

(b) None of ENEH or any of its Subsidiaries is a party to any Contract whereunder a failure to satisfy a condition thereunder, a failure to meet a requirement thereof, a breach thereof or a default thereunder would, individually or in the aggregate, reasonably be expected to (i) result in a breach or default under any Parent Indebtedness or any Parent Material Contract (in each case, other than Parent Indebtedness under which ENEH or any of its Subsidiaries is the sole obligor or guarantor or any Parent Material Contract to which ENEH or any of its Subsidiaries is a party and none of Parent or any of its other Subsidiaries is a party or guarantor), (ii) require Parent or any of its Subsidiaries (other than ENEH and its Subsidiaries) to pay cash or provide materials or services or make any capital contributions to ENEH, any of its Subsidiaries or any third Person or (iii) otherwise be recourse to Parent or any of its Subsidiaries (other than ENEH and its Subsidiaries).

(c) None of ENEH or any of its Subsidiaries is subject to any law, rule, regulation or order whereunder a failure to satisfy a condition thereunder, a failure to meet a requirement thereof, or a violation thereof would, individually or in the aggregate, reasonably be expected to (i) result in a breach or default under any Parent Indebtedness or any Parent Material Contract (in each case, other than Parent Indebtedness under which ENEH or any of its Subsidiaries is the sole obligor or guarantor or any Parent Material Contract to which ENEH or any of its Subsidiaries is a party and none of Parent or any of its other Subsidiaries is a party or guarantor), (ii) require Parent or any of its Subsidiaries (other than ENEH and its Subsidiaries) to pay cash or provide materials or services or make any capital contributions to ENEH, any of its Subsidiaries or any third Person or (iii) grant ENEH, any of its Subsidiaries or any third Person recourse to Parent or any of its Subsidiaries (other than ENEH and its Subsidiaries).

ARTICLE VI
COVENANTS RELATING TO CONDUCT OF BUSINESS

Section 6.1 *Conduct of Business Pending the Merger.*

(a) *Conduct of Business by the Company Pending the Merger.* During the period from the date of this Agreement until the Effective Time, except as expressly permitted by this Agreement or as set forth on *Item 6.1(a)* of the Company Letter, the Company shall and shall cause each of its Subsidiaries to carry on its business in the ordinary course as currently conducted and, to the extent consistent therewith, use reasonable best efforts to preserve its business organization intact, maintain in full force and effect the Company Permits and maintain its existing relations and goodwill with Governmental Entities, customers, suppliers, distributors, creditors, lessors, licensors, licensees, employees and business associates to the end that their goodwill and ongoing businesses shall not be impaired in any material respect at the Effective Time. To the extent permitted by applicable law and whether or not an action is one specified below, the Company will consult with Parent with respect to any action or failure to take an action that would be considered not to be in the ordinary course of the Company's business as it is currently conducted. Without limiting the generality of the foregoing, and except as otherwise expressly permitted by this Agreement or as set forth on *Item 6.1(a)* of the Company Letter, during the period from the date of this Agreement to the Effective Time, the Company shall not and shall not permit any of its Subsidiaries to without the prior written consent of Parent (which consent shall not be unreasonably withheld or delayed) take any of the following actions (it being understood that any action allowed by any of *clauses (i)* through *(xix)* but otherwise restricted under this Agreement shall be so restricted):

(i) (A) declare, set aside or pay any dividends on, or make any other distributions in respect of, any of its Capital Stock, other than (1) dividends and distributions by a direct or indirect Subsidiary of the Company to its parent, (2) regular quarterly cash dividends and distributions with respect to the Company Common Stock, in accordance with the Company's dividend policy as set forth on *Item 6.1(a)(i)(A)(2)* of the Company Letter, with record dates and payment dates consistent with the Company's past dividend practice and (3) regular cash dividends and distributions with respect to preferred stock of the Company or its Subsidiaries in accordance with the terms thereof as existing on the date hereof, (B) split, combine or reclassify any of its Capital Stock or issue or authorize the issuance of any other securities in respect of, in lieu of or in substitution for its Capital Stock or (C) purchase, redeem or otherwise acquire any Capital Stock of the Company or any of its Subsidiaries or any other securities thereof or any rights, warrants or options to acquire any Capital Stock or other securities thereof;

(ii) other than (1) the issuance of Company Common Stock upon the exercise or conversion of Company Stock Options, Company RSUs, Company Performance Units, Company Dividend Equivalents and Company Stock Phantom Shares outstanding on the date of this Agreement and in accordance with their present terms, upon the exercise or conversion of Company Stock Options, Company RSUs, Company Performance Units, Company Stock Dividend Equivalents and Company Stock Phantom Shares awarded in accordance with *Section 6.1(a)(ii)(2)* or pursuant to the terms of any Compensation Commitment as in effect on the date of this Agreement or as amended in accordance with or as permitted by this Agreement, (2) the issuance, subject to *Section 6.1(a)(vi)*, of additional Company Stock Options, Company RSUs, Company Performance Units, Company Dividend Equivalents, Company Stock Phantom Shares and Company Performance Shares pursuant to the Company Stock Plans as set forth on *Item 6.1(a)(ii)(2)* of the Company Letter, (3) issuances by a direct or indirect Subsidiary of the Company of its Capital Stock to its parent, (4) the issuance of Shares upon settlement of forward purchase contracts forming a part of Company Equity Units pursuant to the terms thereof as existing on the date hereof, (5) the issuance of Shares in accordance with *Item 6.1(a)(ii)(5)* of the Company Letter, (6) the issuance of Shares pursuant to the Company ESPP, the Company DRIP, the Company

Thrift Plan and the Company Employee Savings Plan and (7) the issuance of Company Cash Phantom Shares and Company Cash Dividend Equivalents in the ordinary course of business consistent with past practice, issue, deliver, pledge, encumber, sell, dispose of or grant (A) any of its Capital Stock or any Capital Stock in any of its direct or indirect Subsidiaries or of any Company Joint Venture, (B) any Company Voting Debt, Company Stock Equivalents or other voting securities, (C) any securities convertible into or exchangeable for, or any options, warrants or rights to acquire, any Capital Stock referred to in *clause (A)*, Company Voting Debt, Company Stock Equivalents, voting securities or convertible or exchangeable securities or (D) any "phantom" stock, "phantom" stock rights, stock appreciation rights or stock-based performance units;

(iii) amend the Certificate of Incorporation of the Company;

(iv) amend the By-laws of the Company or amend the certificate of incorporation, by-laws or other comparable charter or organizational documents of any Subsidiary of the Company, except for such amendments that do not have an adverse effect on the Merger and that are not inconsistent with any of the obligations of the Company hereunder;

(v) (A) acquire or agree to acquire by merging or consolidating with, or by purchasing a substantial equity interest in or portion of the assets of, or by any other manner, any business or any corporation, partnership, joint venture, association or other business organization or division thereof, (B) acquire or agree to acquire any assets, other than in the ordinary course of business consistent with past practice or pursuant to capital expenditures made in accordance with *Section 6.1(a)(x)* or (C) make any investment in the Capital Stock of, or other instrument convertible into or exchangeable for the Capital Stock of, any other Person (other than direct or indirect Subsidiaries of the Company that are direct or indirect Subsidiaries of the Company as of the date hereof and investments by the managers of Benefit Plans and nuclear decommissioning trusts in the ordinary course of business consistent with past practice) other than, (1) in the case of *clauses (A) through (C)*, acquisitions of assets and investments in Persons located and operating solely in the United States of America that are not greater than \$5 million individually or \$25 million in the aggregate in any consecutive 12 month period (including the value of any indebtedness assumed) or (2) investments in any Person by Holdings or any of its Subsidiaries solely for purposes of effecting the transactions described in *Section 6.1(a)(viii)(B)*; *provided, however*, that the Company shall not be permitted hereunder to acquire or agree to acquire any asset or to make any investment in any Person to the extent such agreement, acquisition or investment would reasonably be expected to have an adverse effect on the ability of Parent or the Company to obtain any Parent Required Statutory Approval or Company Required Statutory Approval, respectively, or to delay by a material period the receipt thereof;

(vi) except to the extent required by applicable law or by the terms of any Benefit Plan maintained by the Company, Compensation Commitment or collective bargaining agreement in effect as of the date of this Agreement, (A) grant to any current or former employee, officer or director of the Company or any of its Subsidiaries any increase in compensation or benefits or new incentive compensation grants, except in the ordinary course of business consistent with past practice (including, without limitation, annual salary and compensation increases in respect of any fiscal year regardless of when such increases are approved), (B) grant to any current or former employee, officer or director of the Company or any of its Subsidiaries any increase in severance, pay to stay or termination pay, except to the extent consistent with past practice and that, in the aggregate, does not result in a material increase in benefits or compensation expenses, (C) enter into or amend any Compensation Commitment with any such current or former employee, officer or director, (D) establish, adopt, enter into or amend in any material respect any collective bargaining agreement or Benefit Plan, except, (1) with respect to any Benefit Plan maintained by the Company that is a Qualified Plan, as may be required to facilitate or obtain a determination

from the IRS that such Benefit Plan is a Qualified Plan and (2) with respect to the collective bargaining agreements set forth on *Item 6.1(a)(vi)(D)(2)* of the Company Letter, renewing such collective bargaining agreements at their expiration on terms substantially similar to their current respective terms or (E) take or permit to be taken any action to accelerate any rights or benefits or the funding thereof, or make or permit to be made any material determinations not in the ordinary course of business consistent with past practice, under any collective bargaining agreement, Benefit Plan or Compensation Commitment; *provided, however*, that notwithstanding anything in this *Section 6.1(a)(vi)* to the contrary, the foregoing shall not restrict the Company or its Subsidiaries from entering into or making available to newly hired officers and employees or to officers and employees in the context of promotions based on job performance or workplace requirements in the ordinary course of business consistent with past practice, plans, agreements, benefits and compensation arrangements (including incentive grants) that have, consistent with past practice, been made available to newly hired or promoted officers and employees;

(vii) make any material change in accounting methods, principles or practices except as required by generally accepted accounting principles or by the Company's independent auditors;

(viii) sell, lease (as lessor), license or otherwise dispose of or subject to any Lien (other than Liens as required by after acquired property covenants in Contracts evidencing Company Indebtedness and Liens created in connection with the refinancing of Company Indebtedness in accordance with *Section 6.1(a)(ix)* that are no less favorable to the Company and its Subsidiaries than those Liens that were created in connection with the Company Indebtedness that is being refinanced) any properties or assets that are material, individually or in the aggregate, to the Company and its Subsidiaries, taken as a whole, other than (A) sales of excess or obsolete assets in the ordinary course of business consistent with past practice and (B) sales of assets by Holdings or any Subsidiary of Holdings described on *Item 6.1(a)(viii)(B)* of the Company Letter and sales of assets by Power or any Subsidiary of Power described on *Item 6.1(a)(viii)(B)* of the Company Letter in each case, on commercially reasonable terms, after having given Parent notice of the intent to make any such sale, lease, license or other disposition, and at least five business days' prior notice of the entering into of any agreement with respect thereto, including the material terms of any such agreement and any amendment thereto;

(ix) except in the ordinary course of business consistent with past practice, (A) incur any indebtedness for borrowed money or guarantee any such indebtedness of another Person, issue or sell any debt securities or warrants or other rights to acquire any debt securities of the Company or any of its Subsidiaries, guarantee any debt securities of another Person, enter into any "keep well" or other agreement to maintain any financial statement condition of another Person or enter into any arrangement having the economic effect of any of the foregoing, in each case, other than (1) in connection with a refinancing on commercially reasonable terms and borrowings under revolving credit agreements or similar credit facilities in effect on the date hereof (or under any extensions or replacements thereof) in accordance with their terms, (2) indebtedness incurred by any Subsidiary of the Company under any loan permitted by *clause (B)*, and (3) the assumption of indebtedness in connection with an acquisition or investment made pursuant to *Section 6.1(a)(v)* or (B) make any loans, advances or capital contributions to, or investments in, any other Person, other than to or in the Company or any Subsidiary; *provided, however*, that the Company shall not, and shall not permit any of its Subsidiaries to, take any such action with respect to Holdings or any of its Subsidiaries or any Holdings Joint Ventures and the Company shall not permit Holdings or any of its Subsidiaries to take any such action;

(x) make or agree to make any new capital expenditure or expenditures, other than (A) expenditures in accordance with *Item 6.1(a)(x)* of the Company Letter, (B) expenditures that do not exceed \$10 million individually or \$150 million in the aggregate in any consecutive 12 month period and (C) expenditures to the extent made or agreed to be made in order to

ensure compliance with the rules and regulations or an order of the NRC or any other Governmental Entity or to ensure compliance with the terms of any Permit, in which case, to the extent permissible under applicable law, the Company shall consult with Parent prior to making or agreeing to make any such expenditure;

(xi) engage in any activities not engaged in on the date hereof which would cause a change in the Company's status as an exempt holding company under PUHCA;

(xii) other than participation in the New Jersey Basic Generation Service auction in a manner consistent with past practice, enter into any Contract for the purchase and/or sale of capacity and/or energy ("*Power Agreement*") other than any Power Agreement entered into in the ordinary course of business that does not exceed (1) a notional value of purchase and/or sale energy commitments of \$150 million, (2) a fixed notional value of purchase and/or sale of capacity of \$25 million, (3) a notional value for the underlying sale of options of \$75 million and (4) a notional value for the aggregate premiums paid in a calendar year for the purchase of options of \$25 million unless the Company consults with Parent regarding such Power Agreement and the Company has obtained the prior written consent of Parent to such Power Agreement or such Power Agreement is fully compliant with criteria to which Parent has previously given a generic consent, in each case, which consent shall not be unreasonably withheld or delayed, it being understood that in such consultation process Parent and the Company shall comply with all applicable laws and any applicable confidentiality or similar third party agreement;

(xiii) pay, discharge, settle, compromise or satisfy any material claims, liabilities, litigation or other obligations (absolute, accrued, asserted or unasserted, contingent or otherwise), other than the payment, discharge or satisfaction, in the ordinary and usual course of business consistent with past practice or in accordance with their terms, of liabilities reflected or reserved against in, or contemplated by, the most recent consolidated financial statements (or the notes thereto) of the Company included in the Company Filed SEC Documents, or incurred in the ordinary and usual course of business consistent with past practice, or waive, release or assign any such material rights or claims;

(xiv) enter into, or, other than in the ordinary course of business consistent with past practice, modify or amend the terms of, any Leveraged Lease or Financing Contract;

(xv) take any action that would, individually or in the aggregate, reasonably be expected to cause the Company Indebtedness or other obligations under which Holdings or any Subsidiary of Holdings is the obligor or any indebtedness for borrowed money or other obligations under which any Company Joint Venture is the obligor or direct or indirect guarantee by any Company Joint Venture of any indebtedness for borrowed money or other obligations of any Person to be recourse to the Company or any of its Subsidiaries other than Holdings and the Subsidiaries of Holdings, or after giving effect to the Merger, the Surviving Corporation or any of its Subsidiaries other than Holdings and the Subsidiaries of Holdings or would reasonably be expected to make it necessary for the Company or any of its Subsidiaries, or after giving effect to the Merger, the Surviving Corporation or any of its Subsidiaries to make any capital contributions or pay cash, or incur a liability or provide property or services, in order to enable Holdings and its Subsidiaries to operate in the ordinary course;

(xvi) amend or modify the Company Trading Guidelines in a manner that results in such Company Trading Guidelines being less restrictive than the Company Trading Guidelines in effect on the date hereof or, other than in the ordinary course of business consistent with past practice, terminate the Company Trading Guidelines; *provided* that, in the case of any such termination, new Company Trading Guidelines are adopted that are at least as restrictive as the Company Trading Guidelines in effect on the date hereof or, take any action that violates the Company Trading Guidelines or cause or permit the Net Company Position to be outside the risk parameters set forth in the Company Trading Guidelines; and if at any time the Net Company Position becomes outside the risk parameters set forth in the Company Trading Guidelines due to a move in market prices then action will be taken to bring the Net Company Position back inside the parameters as is required by the Company Trading Guidelines;

(xvii) adopt a plan of complete or partial liquidation or a dissolution or resolutions providing for or authorizing such a liquidation or a dissolution, restructuring, recapitalization or reorganization other than with respect to Subsidiaries of Global and Resources in connection with the transactions described in *Section 6.1(a)(viii)(B)*;

(xviii) retire, commit to retire or otherwise indicate an intention to retire any generation facility of the Company or any of its Subsidiaries; or

(xix) commit or agree to take any of, the foregoing actions.

(b) *Conduct of Business by Parent Pending the Merger.* During the period from the date of this Agreement until the Effective Time, except as expressly permitted by this Agreement or as set forth on *Item 6.1(b)* of the Parent Letter, Parent shall and shall cause each of its Subsidiaries to, carry on its business in the ordinary course as currently conducted and, to the extent consistent therewith, use reasonable best efforts to preserve its business organization intact, maintain in full force and effect the Parent Permits and maintain its existing relations and goodwill with Governmental Entities, customers, suppliers, distributors, creditors, lessors, licensors, licensees, employees and business associates to the end that their goodwill and ongoing businesses shall not be impaired in any material respect at the Effective Time. To the extent permitted by applicable law and whether or not an action is one specified below, Parent will consult with the Company with respect to any action or failure to take an action that would be considered not to be in the ordinary course of Parent's business as it is currently conducted. Without limiting the generality of the foregoing, and except as otherwise expressly permitted by this Agreement or as set forth on *Item 6.1(b)* of the Parent Letter, during the period from the date of this Agreement to the Effective Time, Parent shall not and shall not permit any of its Subsidiaries to without the prior written consent of the Company (which consent shall not be unreasonably withheld or delayed) take any of the following actions (it being understood that any action allowed by any of *clauses (i)* through *(xvi)* but otherwise restricted under this Agreement shall be so restricted:

(i) (A) declare, set aside or pay any dividends on, or make any other distributions in respect of, any of its Capital Stock, other than (1) dividends and distributions by a direct or indirect Subsidiary of Parent to its parent, (2) regular quarterly cash dividends and distributions with respect to the Parent Shares, in accordance with Parent's dividend policy as set forth on *Item 6.1(b)(i)(A)(2)* of the Parent Letter, with record dates and payment dates consistent with Parent's past dividend practice, and (3) regular cash dividends and distributions with respect to preferred stock of Parent or its Subsidiaries in accordance with the terms thereof as existing on the date hereof, (B) split, combine or reclassify any of its Capital Stock or issue or authorize the issuance of any other securities in respect of, in lieu of or in substitution for its Capital Stock or (C) purchase, redeem or otherwise acquire any Capital Stock of Parent or any of its Subsidiaries or any other securities thereof or any rights, warrants or options to acquire any Capital Stock or other securities thereof other than the purchase of Parent Shares on the open market pursuant to the Parent DRIP and the Parent ESPP;

(ii) other than (1) the issuance of Parent Shares upon the exercise or conversion of Parent Stock Options, Parent Performance Shares, Parent Deferred Shares, Parent Restricted Shares, Parent Dividend Equivalents and Directors' Units outstanding on the date of this Agreement and in accordance with their present terms, upon the exercise or conversion of Parent Stock Options, Parent Performance Shares, Parent Deferred Shares, Directors' Units, Parent Dividend Equivalents and Parent Restricted Shares awarded in accordance with *Section 6.1(b)(ii)(2)* or pursuant to the terms of any Parent Compensation Commitment as in effect on the date of this Agreement or as amended in accordance with or as permitted by this Agreement, (2) the issuance, subject to *Section 6.1(b)(vi)*, of additional Parent Stock Options, Parent Performance Shares, Parent Restricted Shares, Parent Dividend Equivalents, Directors' Units, Parent Deferred Shares and other securities as set forth on *Item 6.1(b)(ii)(2)* of the Parent Letter, (3) the issuance of Parent Shares pursuant to the Parent ESPP and the Parent DRIP, (4) issuances by a direct or indirect Subsidiary of Parent of its Capital Stock to its parent and (5) the issuance of Parent Phantom Shares, issue, deliver, pledge, encumber, sell, dispose of or grant (A) any of its Capital Stock or any Capital Stock in any of its direct or indirect Subsidiaries, (B) any Parent Voting Debt, Parent Stock Equivalents or other voting securities, (C) any securities convertible into or exchangeable for, or any options, warrants or rights to acquire, any Capital Stock referred to in *clause (A)*, Parent Voting Debt, Parent Stock Equivalents, voting securities or convertible or exchangeable securities or (D) any "phantom" stock, "phantom" stock rights, stock appreciation rights or stock-based performance units;

(iii) amend the Amended and Restated Articles of Incorporation of Parent other than to increase Parent's authorized capital stock;

(iv) amend the Amended and Restated By-laws of Parent or amend the certificate of incorporation, by-laws or other comparable charter or organizational documents of any Subsidiary of Parent, except for such amendments that do not have an adverse effect on the Merger and that are not inconsistent with any of the obligations of Parent hereunder;

(v) (A) acquire or agree to acquire by merging or consolidating with, or by purchasing a substantial equity interest in or portion of the assets of, or by any other manner, any business or any corporation, partnership, joint venture, association or other business organization or division thereof, (B) acquire or agree to acquire any assets, other than in the ordinary course of business consistent with past practice or pursuant to capital expenditures made in accordance with *Section 6.1(b)(x)* or (C) make any investment in the Capital Stock of, or other instrument convertible into or exchangeable for the Capital Stock of, any other Person (other than direct or indirect Subsidiaries of Parent and investments by the managers of Benefit Plans and nuclear decommissioning trusts in the ordinary course of business consistent with past practice) and other than, in the case of *clauses (A)* through *(C)*, acquisitions of assets and investments in Persons that are not greater than \$10 million individually or \$50 million in the aggregate in any consecutive 12 month period (including the value of any indebtedness assumed); *provided, however*, that Parent shall not be permitted hereunder to acquire or agree to acquire any asset or to make any investment in any Person to the extent such agreement, acquisition or investment would reasonably be expected to have an adverse effect on the ability of Parent or the Company to obtain any Parent Required Statutory Approval or Company Required Statutory Approval, respectively, or to delay by a material period the receipt thereof;

(vi) except to the extent required by applicable law or by the terms of any Benefit Plan maintained by Parent, Parent Compensation Commitment or collective bargaining agreement in effect as of the date of this Agreement (A) grant to any current or former employee, officer or director of Parent or any of its Subsidiaries any increase in compensation or benefits or new incentive compensation grants, except in the ordinary course of business consistent with past practice (including, without limitation, annual salary and compensation increases in respect of any

fiscal year regardless of when such increases are approved), (B) grant to any current or former employee, officer or director of Parent or any of its Subsidiaries any increase in severance, pay to stay or termination pay, except to the extent consistent with past practice and that, in the aggregate, does not result in a material increase in benefits or compensation expenses, (C) enter into or amend any Parent Compensation Commitment with any such current or former employee, officer or director, (D) establish, adopt, enter into or amend in any material respect any collective bargaining agreement or Benefit Plan, except, (1) with respect to any Benefit Plan maintained by Parent that is a Qualified Plan, as may be required to facilitate or obtain a determination from the IRS that such Benefit Plan is a Qualified Plan and (2) with respect to the collective bargaining agreements set forth on *Item 6.1(b)(vi)(D)(2)* of the Parent Letter, renewing such collective bargaining agreements at their expiration on terms substantially similar to their current respective terms or (E) take or permit to be taken any action to accelerate any rights or benefits or the funding thereof, or make or permit to be made any material determinations not in the ordinary course of business consistent with past practice, under any collective bargaining agreement, Benefit Plan or Parent Compensation Commitment; *provided, however*, that notwithstanding anything in this *Section 6.1(b)(vi)* to the contrary, the foregoing shall not restrict Parent or its Subsidiaries from entering into or making available to newly hired officers and employees or to officers and employees in the context of promotions based on job performance or workplace requirements in the ordinary course of business consistent with past practice, plans, agreements, benefits and compensation arrangements (including incentive grants) that have, consistent with past practice, been made available to newly hired or promoted officers and employees;

(vii) make any material change in accounting methods, principles or practices except as required by generally accepted accounting principles or by Parent's independent auditors;

(viii) sell, lease (as lessor), license or otherwise dispose of or subject to any Lien (other than Liens as required by after acquired property covenants in Contracts evidencing Parent Indebtedness and Liens created in connection with the refinancing of Parent Indebtedness in accordance with *Section 6.1(b)(ix)* that are no less favorable to Parent and its Subsidiaries than those Liens that were created in connection with the Parent Indebtedness that is being refinanced) any properties or assets that are material, individually or in the aggregate, to Parent and its Subsidiaries, taken as a whole, other than sales of excess or obsolete assets in the ordinary course of business consistent with past practice and except to the extent necessary to obtain the Parent Required Statutory Approvals and the Company Required Statutory Approvals;

(ix) except in the ordinary course of business consistent with past practice, (A) incur any indebtedness for borrowed money or guarantee any such indebtedness of another Person, issue or sell any debt securities or warrants or other rights to acquire any debt securities of Parent or any of its Subsidiaries, guarantee any debt securities of another Person, enter into any "keep well" or other agreement to maintain any financial statement condition of another Person or enter into any arrangement having the economic effect of any of the foregoing, in each case, other than (1) in connection with a refinancing on commercially reasonable terms and borrowings under revolving credit agreements or similar credit facilities in effect on the date hereof (or under any extensions or replacements thereof) in accordance with their terms, (2) indebtedness incurred by any Subsidiary of Parent under any loan permitted by *clause (B)* and (3) the assumption of indebtedness in connection with an acquisition or investment made pursuant to *Section 6.1(b)(v)* or (B) make any loans, advances or capital contributions to, or investments in, any other Person, other than to or in Parent or any Subsidiary of Parent;

(x) make or agree to make any new capital expenditure or expenditures other than (A) expenditures in accordance with *Item 6.1(b)(x)* of the Parent Letter, (B) expenditures that do not exceed \$15 million individually or \$300 million in the aggregate in any consecutive 12 month period and (C) expenditures to the extent made or agreed to be made in order to ensure

compliance with the rules and regulations or an order of the NRC or any other Governmental Entity or to ensure compliance with the terms of any Permit, in which case, to the extent permissible under applicable law, Parent shall consult with the Company prior to making or agreeing to make any such expenditure;

(xi) engage in any activities which would cause a change in Parent's status under PUHCA;

(xii) enter into any Power Agreement other than any Power Agreement entered into in the ordinary course of business that does not exceed (1) a notional value of purchase and/or sale energy commitments of \$300 million, (2) a fixed notional value of purchase and/or sale of capacity of \$25 million, (3) a notional value for the underlying sale of options of \$100 million and (4) a notional value for the aggregate premiums paid in a calendar year for the purchase of options of \$50 million unless Parent consults with the Company regarding such Power Agreement and Parent has obtained the prior written consent of the Company to such Power Agreement or such Power Agreement is fully compliant with criteria to which the Company has previously given a generic consent, in each case, which consent shall not be unreasonably withheld or delayed, it being understood that in such consultation process the Company and Parent shall comply with all applicable laws and any applicable confidentiality or similar third party agreement;

(xiii) amend or modify the Parent Trading Guidelines in a manner that results in such Parent Trading Guidelines being less restrictive than the Parent Trading Guidelines in effect on the date hereof or, other than in the ordinary course of business consistent with past practice, terminate the Parent Trading Guidelines; *provided* that, in the case of any such termination new Parent Trading Guidelines are adopted that are at least as restrictive as the Parent Trading Guidelines in effect on the date hereof or take any action that violates the Parent Trading Guidelines or cause or permit the Net Parent Position to be outside the risk parameters set forth in the Parent Trading Guidelines; and if at any time the Net Parent Position becomes outside the risk parameters set forth in the Parent Trading Guidelines due to a move in market prices then action will be taken to bring the Net Parent Position back inside the parameters as is required by the Parent Trading Guidelines;

(xiv) take any action that would, individually or in the aggregate, (A) reasonably be expected to cause the Parent Indebtedness or other obligations under which ENEH or any Subsidiary of ENEH is the obligor or any indebtedness for borrowed money or other obligations of any Person to be recourse to the Parent or any of its Subsidiaries other than ENEH and the Subsidiaries of ENEH or would reasonably be expected to make it necessary for Parent or any of its Subsidiaries (other than ENEH and its Subsidiaries) to make any capital contributions or pay cash, or incur a liability or provide property or services, in order to enable ENEH and its Subsidiaries to operate in the ordinary course;

(xv) adopt a plan of complete or partial liquidation or a dissolution or resolutions providing for or authorizing such a liquidation or dissolution, restructuring, recapitalization or reorganization; or

(xvi) commit or agree to take any of, the foregoing actions.

Section 6.2 *No Solicitation.* (a) From the date hereof until the earlier of the Effective Time or the date on which this Agreement is terminated in accordance with the terms hereof, the Company shall not, nor shall it permit any of its Subsidiaries to, nor shall it or its Subsidiaries authorize or permit any of their respective officers, directors, employees, representatives or agents to, directly or indirectly, (i) solicit, initiate or knowingly encourage or facilitate (including by way of furnishing non-public information) any inquiries regarding, or the making of any proposal which constitutes or that may reasonably be expected to lead to, any Takeover Proposal, (ii) enter into any letter of intent or agreement related to any Takeover Proposal (each, an "Acquisition Agreement") or (iii) participate in

any discussions or negotiations regarding, or take any other action to facilitate any inquiries or the making of any proposal that constitutes, or that may reasonably be expected to lead to, any Takeover Proposal; *provided, however*, that if, at any time after the date hereof and prior to the Company Shareholders Meeting the Company receives an unsolicited *bona fide* written Takeover Proposal from any third Person that in the reasonable good faith judgment of the Company's Board of Directors constitutes a Superior Proposal and the Board of Directors of the Company determines in its reasonable good faith judgment, after consultation with outside counsel, that it would be required to do so by its fiduciary duties under applicable law, the Company may, in response to such Superior Proposal, (x) furnish information with respect to the Company to any such Person pursuant to a confidentiality agreement no more favorable to such Person than the Confidentiality Agreement is to Parent and (y) participate in negotiations with such Person regarding such Superior Proposal if (A) prior to furnishing such non-public information to, or entering into discussions or negotiations with, such third Person the Company or any of its Subsidiaries provides at least three business days advance written notice to Parent of the identity of the third Person making, and the proposed terms and conditions of, such Superior Proposal and a copy of all written materials delivered by such third Person to the Company or any of its Subsidiaries, (B) the Company shall have provided to Parent a copy of all written materials delivered to the third Person making the Superior Proposal in connection with such Superior Proposal and made available to Parent all materials and information made available to the third Person making the Superior Proposal in connection with such Superior Proposal and (C) the Company shall have fully complied with this *Section 6.2*. For purposes of this Agreement, "*Takeover Proposal*" means any inquiry, proposal or offer from any Person (other than Parent and its Affiliates) relating to any direct or indirect acquisition or purchase of 20% or more of the assets of the Company and its Significant Subsidiaries or 20% or more of the voting power of the Capital Stock of the Company or the Capital Stock of any of its Significant Subsidiaries then outstanding, any tender offer or exchange offer that if consummated would result in any Person beneficially owning 20% or more of the voting power of the capital stock of the Company or the Capital Stock of such Subsidiaries then outstanding, or any merger, consolidation, business combination, recapitalization, liquidation, dissolution or similar transaction involving the Company or any of its Significant Subsidiaries, other than the transactions with Parent contemplated by this Agreement. For purposes of this Agreement, a "*Superior Proposal*" means any unsolicited *bona fide* written offer made by any Person (other than Parent and its Affiliates) to acquire, directly or indirectly, for consideration consisting of cash and/or securities, more than 50% of the voting power of the capital stock of the Company then outstanding or all or substantially all the assets of the Company and otherwise on terms which the Board of Directors of the Company determines in its reasonable good faith judgment (after consultation with its financial advisors) to be more favorable, from a financial point of view, to the Company's shareholders than the Merger (and any revised proposal made by Parent), which is not conditioned on any financing and which is reasonably likely to receive all required governmental approvals in the form of Final Orders prior to the End Date and is otherwise reasonably capable of being completed on the terms proposed (taking into account the ability to deliver any consideration to be paid in connection with such transaction).

(b) Except as set forth in *Section 9.1(e)*, neither the Board of Directors of the Company nor any committee thereof shall (i) withdraw, qualify or modify, or propose to withdraw, qualify or modify, in a manner adverse to Parent, the approval by such Board of Directors of the Merger and this Agreement or the recommendation by such Board of Directors of this Agreement or such Board of Directors declaration that this Agreement and the Merger are advisable and fair to, and in the best interests of, the Company and its shareholders, or take any other action or make any other statement in connection with the Company Shareholders Meeting inconsistent with such recommendation, approval or declaration, (ii) approve or recommend, or propose to approve or recommend, any Takeover Proposal or (iii) authorize or permit the Company or any of its Subsidiaries to enter into any Acquisition Agreement.

(c) Nothing contained in this *Section 6.2* shall prohibit the Company from complying with Rules 14d-9 or 14e-2 promulgated under the Exchange Act with respect to a Takeover Proposal; *provided, however*, that compliance with such rules shall not in any way limit or modify the effect that any action taken pursuant to such rules has under any other provision of this Agreement, including *Section 9.1(d)*.

(d) The Company agrees that it and its Subsidiaries shall, and the Company shall direct and cause its and its Subsidiaries' respective officers, directors, employees, representatives and agents to, immediately cease and cause to be terminated any activities, discussions or negotiations with any Persons with respect to any Takeover Proposal. The Company agrees that it will notify Parent in writing as promptly as practicable (and in any event within 18 hours) after any Takeover Proposal is received by, any information is requested from, or any discussions or negotiations relating to a Takeover Proposal are sought to be initiated or continued with, the Company, its Subsidiaries, or their officers, directors, employees, representatives or agents. The notice shall indicate the name of the Person making such Takeover Proposal or taking such action, the material terms and conditions of any proposals or offers and a copy of all written materials delivered by such Person making the Takeover Proposal to the Company or any of its Subsidiaries, and thereafter the Company shall keep Parent informed, on a current basis, of the status and materials terms of any such proposals or offers and the status of any such discussions or negotiations and provide Parent with copies of all written materials delivered by such Person making the Takeover Proposal to the Company or any of its Subsidiaries. The Company also agrees that it will promptly request each Person that has heretofore executed a confidentiality agreement in connection with any Takeover Proposal to return or destroy all confidential information heretofore furnished to such Person by or on behalf of it or any of its Subsidiaries.

Section 6.3 Third Party Standstill Agreements. During the period from the date of this Agreement through the Effective Time, the Company shall enforce and shall not terminate, amend, modify or waive any standstill or employee non-solicitation provision of any confidentiality, standstill, employee non-solicitation or similar agreement between the Company and any other Persons which relates to any transaction that could constitute a Takeover Proposal or that has as a counterparty any Person other than Parent. During such period, the Company agrees to enforce, to the fullest extent permitted under applicable law, the provisions of any such agreements, including using its reasonable best efforts to obtain injunctions to prevent any threatened or actual breach of such agreements and to enforce specifically the terms and any provision thereof in any court of the United States or any state thereof having jurisdiction.

Section 6.4 Disclosure of Certain Matters; Delivery of Certain Filings. (a) The Company shall promptly advise Parent orally and in writing if, to the Knowledge of the Company, there exists a material breach of a representation or warranty made by the Company contained herein or if there occurs, to the Knowledge of the Company, any change or event which results in the executive officers of the Company having a good faith belief that such change or event has resulted in, or is reasonably likely to result in, a material breach of a representation or warranty made by the Company contained herein. Parent shall promptly advise the Company orally and in writing, to the Knowledge of Parent, if there exists a material breach of a representation or warranty made by Parent contained herein or if there occurs, to the Knowledge of Parent, any change or event which results in the executive officers of Parent having a good faith belief that such change or event has resulted in, or is reasonably likely to result in, a material breach of a representation or warranty made by Parent contained herein. The Company shall provide to Parent, and Parent shall provide to the Company, copies of all filings made by the Company or Parent, as the case may be, with any Governmental Entity in connection with this Agreement and the transactions contemplated hereby.

(b) To the extent permitted by applicable law, the Company shall, and shall cause its Subsidiaries to, promptly notify Parent in writing of (i) any written communications with or notice from any taxing authority relating to any Listed Transaction (excluding information document or similar requests from

any taxing authority) or (ii) any material change in the appraised value of any property leased pursuant to a Leveraged Lease. To the extent permitted by applicable law, the Company shall not, and shall not permit its Subsidiaries or any of their respective officers, employees or other representatives or agents to participate in any formal discussions or negotiations with any taxing authority related to the foregoing, unless, in each case, it consults with Parent in advance of such discussions or negotiations.

(c) To the extent permitted by applicable law, Parent and the Company shall, and shall cause their respective Subsidiaries to, promptly notify the Company or Parent, as the case may be, of any written communication with or notice from any taxing authority relating to any material Tax audit or examination relating to any Parent Material Taxes or Company Material Taxes, as the case may be (excluding information document or similar requests from any taxing authority), any extension of any statute of limitations relating to Parent Material Taxes or Company Material Taxes, as the case may be or any change in method of accounting relating to Parent Material Taxes or Company Material Taxes, as the case may be.

(d) To the extent permitted by applicable law, each of the parties shall, and shall cause its Subsidiaries to, consult with the other party with respect to negotiations relating to the renewal of any collective bargaining agreement. No consultation in accordance with this *Section 6.4(d)* shall be deemed to be a consent by either party to any action proposed by the other party with respect to renewal of a collective bargaining agreement.

Section 6.5 Reorganization. During the period from the date of this Agreement through the Effective Time, unless the other party shall otherwise agree in writing, none of Parent, the Company or any of their respective Subsidiaries shall take or fail to take any action which action or failure would, to its Knowledge, jeopardize the qualification of the Merger as a "reorganization" within the meaning of Section 368(a) of the Code.

Section 6.6 Rate Matters. To the extent permitted by applicable law, the Company and Parent shall, and shall cause each of its Subsidiaries to, deliver to Parent or the Company, as the case may be, a copy of each principal filing or agreement related to its generally applicable rates, charges, standards of service, accounting or regulatory policy which could lead to a material change in any of those areas as soon as practicable and in any event no later than five business days prior to the filing or execution thereof so that Parent or the Company, as the case may be, may comment thereon. Except as set forth on *Item 6.6* of the Company Letter or *Item 6.6* of the Parent Letter, as the case may be, the Company and Parent shall, and shall cause its Subsidiaries to, make all such filings only in the ordinary course of business consistent with past practice or as required by a Governmental Entity or regulatory agency with appropriate jurisdiction or under existing settlement agreements to which the Company or Parent, as the case may be, is a party.

ARTICLE VII ADDITIONAL AGREEMENTS

Section 7.1 Employee Benefits; Workforce Matters. (a) From and after the Effective Time, Parent shall, or shall cause one of its Subsidiaries to, honor and perform in accordance with their respective terms (as in effect on the date of this Agreement or as amended in accordance with or as permitted by this Agreement), all the collective bargaining agreements to which the Company or one of its Subsidiaries is a party and is set forth on *Item 4.13(a)* of the Company Letter. Nothing in this *Section 7.1(a)* shall be interpreted to prevent Parent or any of its Subsidiaries from enforcing such agreements in accordance with their respective terms, including enforcement of any reserved right to amend, modify, suspend, revoke or terminate any such agreement.

(b) Subject to applicable law and obligations under each applicable collective bargaining agreement, Compensation Commitments and Benefit Plan, and except as provided in *Section 7.2*, Parent shall, or shall cause one of its Subsidiaries to, assume, maintain in effect, honor and perform in

accordance with their respective terms (as in effect on the date of this Agreement or as amended or established in accordance with or as permitted by this Agreement) each Benefit Plan and Compensation Commitment listed on *Item 4.12(a)* of the Company Letter and in effect on the date of this Agreement (or established as permitted by this Agreement), with respect to the current and former employees, officers or directors of the Company and its Subsidiaries who are covered by such plans or commitments immediately prior to the Effective Time. Nothing in this *Section 7.1(b)* shall be interpreted to limit any reserved right contained in any such Benefit Plan or Compensation Commitment to amend, modify, suspend, revoke or terminate any such plan or commitment in accordance with its terms.

(c) Following the Effective Time, Parent shall continue to provide to individuals who are employed by the Company and its Subsidiaries as of the Effective Time who remain employed with Parent or any of its Subsidiaries after the Effective Time ("*Affected Employees*"), for so long as such Affected Employees remain employed by Parent or any of its Subsidiaries, employee benefits (i) pursuant to the Benefit Plans maintained by the Company immediately prior to the Effective Time (which are maintained by Parent or one of its Subsidiaries after the Effective Time in accordance with *Section 7.1(b)*) or (ii) pursuant to Benefit Plans maintained by Parent or any of its Subsidiaries providing coverage and benefits which, in the aggregate, are no less favorable than those provided to employees of Parent in positions comparable to positions held by Affected Employees with Parent or its Subsidiaries from time to time after the Effective Time.

(d) Each Affected Employee who becomes eligible to participate in a Benefit Plan maintained by Parent or any of its Subsidiaries shall receive credit for purposes of eligibility to participate, vesting and eligibility to receive benefits (but specifically excluding for benefit accrual purposes or where such crediting would result in a duplication of benefits) under such Benefit Plan for service credited for the corresponding purpose under any Benefit Plan listed on *Item 4.12(a)* of the Company Letter; *provided, however*, that such crediting of service shall not operate to cause any such plan to fail to comply with the applicable provisions of the Code or ERISA.

(e) Each Benefit Plan maintained by Parent or any of its Subsidiaries which is a welfare benefit plan, and in which Affected Employees become eligible to participate, shall take into account for purposes of determining an Affected Employee's deductibles and out-of-pocket limits thereunder expenses previously incurred by the Affected Employee during the same year while participating in any other such Benefit Plan listed on *Item 4.12(a)* of the Company Letter and shall waive any waiting periods and restrictions and limitations for pre-existing conditions (or evidence of insurability requirements, in the case of life insurance plans) provided therein for any Affected Employee to the extent not applicable to the participant in any other such Benefit Plan listed on *Item 4.12(a)* in which the Affected Employee participated immediately prior to participating in the Benefit Plan maintained by Parent or any of its Subsidiaries.

(f) Each Benefit Plan maintained by Parent or any of its Subsidiaries which is a cafeteria plan under Section 125 of the Code, and in which any Affected Employee becomes eligible to participate, shall cause credits and debits for a plan year in respect of any such Affected Employee participating in a Benefit Plan listed on *Item 4.12(a)* of the Company Letter which is a cafeteria plan under Section 125 of the Code to be transferred to and maintained in such Benefit Plan maintained by Parent or any of its Subsidiaries in which such Affected Employee may subsequently participate during the same year. Nothing contained in this *Section 7.1(f)* shall be deemed to constitute an employment Contract between Parent or any Subsidiary of Parent and any individual, or a waiver of Parent's or any its Subsidiaries' right to discharge any employee at any time, with or without cause.

(g) Following the Effective Time, subject to the terms of this Agreement, applicable law and applicable collective bargaining agreements: (i) the Surviving Corporation will, in good faith and consistent with business needs, consider reductions in work force in a fair and equitable manner and in light of the circumstances and the objectives to be achieved, giving consideration to previous work history, job experience and qualifications and (ii) all employees of the Surviving Corporation shall be entitled to fair and equitable consideration in connection with any job opportunities with the Surviving Corporation and its Subsidiaries, in each case without regard to whether employment prior to the Effective Time was with the Company and its Subsidiaries or Parent and its Subsidiaries.

(h) Nothing contained in this *Section 7.1* shall be deemed to constitute an employment Contract between Parent or any Subsidiary of Parent and any individual, or a waiver of Parent's or any of its Subsidiaries' right to discharge any employee at any time, with or without cause. Nothing in this *Section 7.1* or elsewhere in this Agreement (other than *Section 7.9*) is intended to confer upon any Person other than the parties hereto any rights or remedies hereunder. Other than as provided in *Section 7.9*, nothing herein expressed or implied shall confer upon any employee of the Company or its Subsidiaries or Parent or its Subsidiaries, or upon any legal representative of such employee, or upon any collective bargaining agent, any rights or remedies, including any right to employment or continued employment of any specified period, of any nature or kind whatsoever under or by reason of this Agreement. Nothing in this Agreement shall be deemed to confer upon any Person (nor any beneficiary thereof) any rights under or with respect to any plan, program, or arrangement described in or contemplated by this Agreement, and each Person (and any beneficiary thereof) shall be entitled to look only to the express terms of any such plan, program or arrangement for his or her rights thereunder.

Section 7.2 Options. (a) At the Effective Time, each Company Stock Option which is outstanding immediately prior to the Effective Time pursuant to Company Stock Option Plans shall become and represent an option to purchase the number of Parent Shares (a "*Substitute Option*") (decreased to the nearest full share) determined by multiplying (i) the number of shares of Company Common Stock subject to such Company Stock Option immediately prior to the Effective Time by (ii) the Exchange Ratio, at an exercise price per Parent Share (rounded up to the nearest cent) equal to the exercise price per share of Company Common Stock under such Company Stock Option immediately prior to the Effective Time divided by the Exchange Ratio. After the Effective Time, except as provided in this *Section 7.2*, each Substitute Option shall be exercisable upon the same terms and conditions as were applicable under the related Company Stock Option immediately prior to or at the Effective Time. The Company shall take all necessary action to implement and make effective the provisions of this *Section 7.2*.

(b) Subject to *Section 7.2(a)*, as of the Effective Time, all Company Stock-Based Awards, whether vested or unvested, shall cease to represent a right or award with respect to shares of Company Common Stock and shall be converted into a right or award with respect to Parent Shares (an "*Assumed Stock-Based Award*") on the same terms and conditions as were applicable under the Company-Stock Based Awards, including all repurchase and forfeiture rights held by the Company. The number of Parent Shares subject to each Assumed Stock-Based Award shall be equal to the number of shares of Company Common Stock subject to such Company Stock-Based Award immediately prior to the Effective Time multiplied by the Exchange Ratio (decreased to the nearest full share). All dividend equivalents and Company Cash Awards credited to the account of each holder of a Company Stock-Based Award as of the Effective Time shall remain credited to such holder's account immediately following the Effective Time, subject to adjustment in accordance with the foregoing. All Unvested Restrictions, including all repurchase and forfeiture rights held by the Company, with respect to each Company Stock-Based Award and each Company Cash Award shall be and hereby are assigned as of the Effective Time to Parent, and the Assumed Stock-Based Awards and Company Cash Awards shall continue to be subject to the same Unvested Restrictions which applied to such Company Stock-Based

Award or Company Cash Award immediately prior to the Effective Time, after giving effect to any acceleration, lapse or other vesting occurring by operation of the Merger. The Company shall take all actions necessary to ensure that, from and after the Effective Time, the Surviving Corporation (or its assignee) shall be entitled to exercise the rights held by the Company immediately prior to the Effective Time with respect to all Unvested Restrictions. For purposes of this Agreement, (i) "Company Cash Award" means any award granted under the Company Stock Plans or otherwise other than Company-Stock Based Awards and (ii) "Unvested Restrictions" means all repurchase, cancellation, forfeiture, vesting and other conditions or restrictions applicable to a Company Stock-Based Award or a Company Cash Award.

(c) After the Effective Time, the Surviving Corporation shall file a registration statement on Form S-8 under the Securities Act covering the Parent Shares issuable upon the exercise of Substitute Options, and will maintain the effectiveness of such registration, and the current status of the prospectus contained therein, until the exercise or expiration of such Substitute Options.

(d) Prior to the Effective Time the Company shall cause the Company ESPP and all rights thereunder to be suspended immediately following the close of the Investment Period (as such term is defined in the Company ESPP) ending immediately prior to the Effective Time, with the effect of such suspension being that no offering period and no Investment Period shall commence or continue under such plan during the period of such suspension. Prior to the Effective Time, the Company shall cause the Company DRIP and all rights thereunder to be suspended immediately following the close of the Investment Period (as defined in the Company DRIP) ending immediately prior to the Effective Time, with the effect of such suspension being that no offering period and no Investment Period shall commence or continue under such plan during the period of such suspension. Prior to the Effective Time, the Company shall cause the Company Thrift Plan and Company Employee Savings Plan to be amended to suspend investments in the Company Common Stock Fund and Non-ESOP Company Common Stock Fund (as defined therein, respectively) effective as of the last business day prior to the Effective Time.

Section 7.3 Shareholder Approval; Preparation of Proxy Statement; Other Actions. (a) As soon as practicable following the date of this Agreement, each of the Company and Parent will duly call, give notice of, convene and hold meetings of their respective shareholders (including any adjournments or postponements thereof, the "Company Shareholders Meeting" and the "Parent Shareholders Meeting," respectively, and collectively, the "Shareholders Meetings") for the purpose, in the case of the Company, of the holders of Company Common Stock duly approving this Agreement ("Company Shareholder Approval") and, in the case of Parent, of the holders of Parent Shares duly approving the issuance of Parent Shares in the Merger ("Parent Shareholder Approval"). Parent and the Company will use their reasonable best efforts to hold the Parent Shareholders Meeting and the Company Shareholders Meeting on the same date. The Company shall, through its Board of Directors (but subject to the right of the Company's Board of Directors to terminate this Agreement as set forth in *Section 9.1(e)*) recommend to its shareholders that the Company Shareholder Approval be given. Subject to the remainder of this *Section 7.3(a)*, Parent shall, through its Board of Directors, recommend to its shareholders that the Parent Shareholder Approval be given. Parent shall not withdraw, qualify or modify, or propose to withdraw, qualify or modify, in a manner adverse to the Company, the approval by such Board of Directors of the Parent Share Issuance, the Merger and this Agreement or the recommendation by such Board of Directors of the Parent Share Issuance or such Board of Directors' declaration that this Agreement and the Merger are advisable and fair to and in the best interest of, Parent and its shareholders except to the extent the Board of Directors of Parent determines in its reasonable good faith judgment that the making of, or the failure to withdraw, qualify or modify such recommendation would violate the fiduciary duties of such Board of Directors of Parent under applicable law. Parent shall not take any of the actions set forth in the preceding sentence at any time after the Parent Shareholders Meeting.