

UNITED STATES
SECURITIES AND EXCHANGE COMMISSION
WASHINGTON, D.C. 20549

FORM 8-K

CURRENT REPORT

PURSUANT TO SECTION 13 OR 15(d) OF THE SECURITIES EXCHANGE ACT OF 1934

Date of Report (Date of earliest event reported) March 13, 2001

NRG Energy, Inc.

(Exact name of registrant as specified in its charter)

Delaware	001-15891	41-1724239
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(State or other jurisdiction of incorporation)	(Commission File Number)	(IRS Employer Identification No.)
901 Marquette Avenue, Suite 2300, Minneapolis, Minnesota		55402-3265
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(Address of principal executive offices)		(Zip Code)

Registrant's telephone number, including area code (612) 373-5300

None

(Former name and former address, if changed since last report.)

Item 5. Other Events.

In December 2000, NRG Energy, Inc. (the "Company") filed, pursuant to Rule 415 under the Securities Act of 1933, a registration statement on Form S-3 (File No. 333-52508), which was declared effective on January 29, 2001. On March 13, 2001, the Company completed the offering of 18,400,000 shares of common stock and 11,500,000 Equity Units, initially consisting of 11,500,000 Corporate Units. In this connection, the Company is filing certain exhibits as part of this Form 8-K. See "Item 7. Exhibits."

Item 7. Exhibits.

The following exhibits are filed with this report on Form 8-K:

Exhibit No.	Description
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1.1	Underwriting Agreement, dated March 7, 2001, by and among the Company and Credit Suisse First Boston Corporation, Merrill Lynch, Pierce, Fenner & Smith Incorporated, Goldman, Sachs & Co., Salomon Smith

Barney Inc., ABN AMRO Rothschild LLC and Banc of America Securities LLC as Representatives of the several underwriters listed on Schedule I thereto with respect to the issuance and sale of the common stock.

- 1.2 Underwriting Agreement, dated March 7, 2001, by and among the Company and Merrill Lynch, Pierce, Fenner & Smith Incorporated, Credit Suisse First Boston Corporation, CIBC World Markets Corp., J.P. Morgan Securities Inc., and Salomon Smith Barney Inc. as Representatives of the several underwriters listed on Schedule I thereto with respect to the issuance and sale of the Equity Units.
- 4.1 Indenture, dated March 13, 2001, by and between NRG Energy, Inc. and The Bank of New York, a New York banking corporation, as Trustee.
- 4.2 First Supplemental Indenture, dated March 13, 2001, by and between NRG Energy, Inc. and The Bank of New York, a New York banking corporation, as Trustee with a form of Debenture set forth therein.
- 8.1 Opinion of Gibson, Dunn & Crutcher LLP regarding certain tax matters.

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SIGNATURES

Pursuant to the requirements of the Securities Exchange Act of 1934, the registrant has duly caused this report to be signed on its behalf by the undersigned hereunto duly authorized.

/s/ James J. Bender

(Registrant)

Date March 14, 2001

(Signature)*

Name: James J. Bender
Title: Vice President, General
Counsel and Corporate
Secretary

*Print name and title of the signing officer under this signature

NRG Energy, Inc.(1)

16,000,000 Shares
Common Stock
(\$.01 par value)

Underwriting Agreement

New York, New York
March 7, 2001

Credit Suisse First Boston Corporation
Merrill Lynch, Pierce, Fenner & Smith Incorporated
Goldman, Sachs & Co.
Salomon Smith Barney Inc.
ABN AMRO Rothschild LLC
Banc of America Securities LLC
As Representatives of the several Underwriters,
c/o Credit Suisse First Boston Corporation
11 Madison Avenue
New York, New York 10010-6230

Ladies and Gentlemen:

NRG Energy, Inc., a Delaware corporation (the "Company"), proposes to sell to the several underwriters named in Schedule I hereto (the "Underwriters"), for whom you (the "Representatives") are acting as representatives, 16,000,000 shares of Common Stock, \$.01 par value ("Common Stock"), of the Company (said shares to be issued and sold by the Company being hereinafter called the "Underwritten Securities"). The Company also proposes to grant to the Underwriters an option to purchase up to 2,400,000 additional shares of Common Stock to cover over-allotments (the "Option Securities"; the Option Securities, together with the Underwritten Securities, being hereinafter called the "Securities"). To the extent there are no additional Underwriters listed on Schedule I other than you, the term Representatives as used herein shall mean you, as Underwriters, and the terms Representatives and Underwriters shall mean either the singular or plural as the context requires. Any reference herein to the Registration Statement, the Basic Prospectus, any Preliminary Final Prospectus or the Final Prospectus shall be deemed to refer to and include the documents incorporated by reference therein pursuant to Item 12 of Form S-3 which were filed under the Exchange Act on or before the Effective Date of the Registration Statement or the issue date of the Basic Prospectus, any Preliminary Final Prospectus or the Final Prospectus, as the case may be; and any reference herein to the terms "amend", "amendment" or "supplement" with respect to the Registration Statement, the Basic Prospectus, any Preliminary Final Prospectus or the

(1) Plus an option to purchase from the Company up to 2,400,000 additional Securities to cover over-allotments.

Final Prospectus shall be deemed to refer to and include the filing of any document under the Exchange Act after the Effective Date of the Registration Statement or the issue date of the Basic Prospectus, any Preliminary Final Prospectus or the Final Prospectus, as the case may be, deemed to be incorporated therein by reference. Certain terms used herein are defined in Section 17 hereof.

1. Representations and Warranties. The Company represents and warrants to, and agrees with, each Underwriter as set forth below in this Section 1.

(a) The Company meets the requirements for use of Form S-3 under the Act and has prepared and filed with the Commission a registration statement (Registration Statement No. 333-52508) on Form S-3, including a related basic prospectus, for registration under the Act of the offering and sale of the Securities. The Company may have filed one or more amendments thereto, including a Preliminary Final Prospectus, each of which has previously been furnished to you. The Company will next file with the Commission the Final Prospectus in accordance with Rules 424(b). The Company has included in such registration statement, as amended at the Effective Date, all information (other than Rule 430A Information) required by the Act and the rules thereunder to be included in such registration statement and the Final Prospectus. As filed, such Final Prospectus shall contain all Rule 430A Information, together with all other such required information, and, except to the extent the Representatives shall agree in writing to a modification, shall be in all substantive respects in the form furnished to you prior to the Execution Time or, to the extent not completed at the Execution Time, shall contain only such specific additional information and other changes (beyond that contained in the Basic Prospectus and any Preliminary Final Prospectus) as the Company has advised you, prior to the Execution Time, will be included or made therein. The Registration Statement, at the Execution Time, meets the requirements set forth in Rule 415(a)(1)(x).

(b) On the Effective Date, the Registration Statement did or will, and when the Final Prospectus is first filed (if required) in accordance with Rule 424(b) and on the Closing Date (as defined herein) and on any date on which Option Securities are purchased, if such date is not the Closing Date (a "settlement date"), the Final Prospectus (and any supplement thereto) will, comply in all material respects with the applicable requirements of the Act and the Exchange Act, and the respective rules thereunder; on the Effective Date and at the Execution Time, the Registration Statement did not or will not contain any untrue statement of a material fact or omit to state any material fact required to be stated therein or necessary in order to make the statements therein not misleading; and, on the Effective Date, the Final Prospectus, if not filed pursuant to Rule 424(b), will not, and on the date of any filing pursuant to Rule 424(b) and on the Closing Date and any settlement date, the Final Prospectus (together with any supplement thereto) will not, include any untrue statement of a material fact or omit to state a material fact necessary in order to make the statements therein, in the light of the circumstances under which they were made, not misleading; provided, however, that the Company makes no representations or warranties as to the information contained in or omitted from the Registration Statement or the Final Prospectus (or any supplement thereto) in reliance upon and in conformity with information furnished in writing to the Company by or on behalf of any Underwriter through the Representatives

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specifically for inclusion in the Registration Statement or the Final Prospectus (or any supplement thereto).

(c) The Company has been duly incorporated and is validly existing as a corporation in good standing under the laws of the State of Delaware with full corporate power and authority to own or lease, as the case may be, and to operate its properties and conduct its business as described in the Final Prospectus and to enter into and perform its

obligations under this Agreement, and is duly qualified to do business as a foreign corporation and is in good standing under the laws of each jurisdiction which requires such qualification, except where the failure to be so qualified or in good standing is not reasonably likely to have a material adverse effect on the condition (financial or otherwise), prospects, earnings, business or properties of the Company and its Subsidiaries (as defined below) taken as a whole (a "Material Adverse Effect"). Each of the significant subsidiaries of the Company, all of which are set forth in Schedule II (the "Subsidiaries"), has been duly organized and is validly existing in good standing under the laws of its jurisdiction of organization, with full corporate, limited partnership or limited liability company power and authority to own or lease, as the case may be, and to operate its properties and conduct its business, and is duly qualified to do business as a foreign corporation and is in good standing under the laws of each jurisdiction which requires such qualification, except where the failure to be so qualified or in good standing is not reasonably likely to have a Material Adverse Effect.

(d) The Company's authorized equity capitalization is as set forth in the Final Prospectus; the capital stock of the Company conforms in all material respects to the description thereof contained in the Final Prospectus; the outstanding shares of capital stock have been duly and validly authorized and issued and are fully paid and nonassessable; the Securities have been duly and validly authorized, and, when issued and delivered to and paid for by the Underwriters pursuant to this Agreement, will be fully paid and nonassessable; the Securities are duly listed, and admitted and authorized for trading, subject to official notice of issuance and evidence of satisfactory distribution, on the New York Stock Exchange; the certificates for the Securities comply with the requirements of Delaware law; the holders of outstanding shares of capital stock of the Company are not entitled to preemptive or other rights to subscribe for the Securities which have not been waived; and, except as set forth in the Final Prospectus, no options, warrants or other rights to purchase, agreements or other obligations to issue, or rights to convert any obligations into or exchange any securities for, shares of capital stock of or ownership interests in the Company are outstanding; all of the outstanding shares of capital stock or other interests of the Subsidiaries held by the Company, directly or indirectly through other Subsidiaries, have been duly and validly authorized and issued and, if applicable, are fully paid and non-assessable, and are owned of record by the Company or a Subsidiary free and clear of any security interest, claim, lien or encumbrance, other than such liens or other security interests granted or created in connection with indebtedness of the projects owned by such Subsidiaries.

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(e) There is no franchise, contract or other document of a character required to be described in the Registration Statement or Final Prospectus, or to be filed as an exhibit thereto, which is not described or filed as required.

(f) This Agreement has been duly authorized, executed and delivered by the Company and constitutes a valid and binding obligation of the Company enforceable in accordance with its terms.

(g) None of the Company and the Subsidiaries is or, after giving effect to the offering and sale of the Securities and the application of the proceeds thereof as described in the Final Prospectus, will be an "investment company" as defined in the Investment Company Act of 1940, as amended.

(h) No consent, approval, authorization, filing with or

order of any court or governmental agency or body is required in connection with the transactions contemplated herein, except such as have been obtained under the Act or otherwise and such as may be required under the blue sky laws of any jurisdiction in connection with the purchase and distribution of the Securities by the Underwriters in the manner contemplated herein and in the Final Prospectus.

(i) Neither the issue and sale of the Securities nor the consummation of any other of the transactions herein contemplated nor the fulfillment of the terms hereof will conflict with, result in a breach or violation or constitute a default under (i) the charter or by-laws (or other similar documents) of the Company or any Subsidiary, (ii) the terms of any indenture, contract, lease, mortgage, deed of trust, note agreement, loan agreement or other agreement, obligation, condition, covenant or instrument to which the Company or any Subsidiary is a party or is bound or to which their property is subject, or (iii) any statute, law, rule, regulation, judgment, order or decree applicable to the Company or any Subsidiary of any court, regulatory body, administrative agency, governmental body, arbitrator or other authority having jurisdiction over the Company or any Subsidiary or any of their properties, except in the cases of clauses (ii) and (iii) above for any such conflict, breach, violation or default that is not reasonably likely to have a Material Adverse Effect.

(j) No holders of securities of the Company have rights to the registration of such securities under the Registration Statement.

(k) The consolidated historical financial statements of the Company and its consolidated subsidiaries included in the Final Prospectus and the Registration Statement present fairly in all material respects the financial condition, results of operations and cash flows of the Company as of the dates and for the periods indicated, comply as to form with the applicable accounting requirements of the Act and have been prepared in conformity with generally accepted accounting principles applied on a consistent basis throughout the periods involved (except as otherwise noted therein).

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(l) The Company has not paid or agreed to pay to any person any compensation for soliciting another to purchase any Securities (except as contemplated by this Agreement).

(m) The Company and the Subsidiaries possess all licenses, certificates, permits and other authorizations issued by the appropriate federal, state or foreign regulatory authorities necessary to conduct their respective businesses now being operated by them, except where the failure to possess such licenses, certificates, permits or other authorizations is not reasonably likely to have a Material Adverse Effect, and neither the Company nor any Subsidiary has received any notice of proceedings relating to the revocation or modification of any such certificate, authorization or permit which, singly or in the aggregate, if the subject of an unfavorable decision, ruling or finding, would have a Material Adverse Effect; except in all cases as set forth in or contemplated in the Final Prospectus (exclusive of any supplement thereto).

(n) No action, suit or proceeding by or before any court or governmental agency, authority or body or any arbitrator involving the Company or any Subsidiary or its property is pending or, to the knowledge of the Company, threatened that (i) is reasonably likely to

have a material adverse effect on the performance of this Agreement or the consummation of any of the transactions contemplated hereby or (ii) is reasonably likely to have a Material Adverse Effect, except as set forth in or contemplated in the Final Prospectus (exclusive of any supplement thereto).

(o) Except as set forth in the Final Prospectus (exclusive of any supplement thereto), neither the Company nor any Subsidiary is in violation or default of (i) any provision of its charter or bylaws (or other similar document), (ii) the terms of any indenture, contract, lease, mortgage, deed of trust, note agreement, loan agreement or other agreement, obligation, condition, covenant or instrument to which it is a party or bound or to which its property is subject, or (iii) any statute, law, rule, regulation, judgment, order or decree of any court, regulatory body, administrative agency, governmental body, arbitrator or other authority having jurisdiction over the Company or such Subsidiary or any of its properties, as applicable, except in the cases of clauses (ii) and (iii) above for any such violation or default that is not reasonably likely to have a Material Adverse Effect.

(p) PricewaterhouseCoopers LLP, who have certified certain financial statements of the Company and its consolidated subsidiaries and delivered their report with respect to the audited consolidated financial statements included in the Final Prospectus, are independent public accountants with respect to the Company within the meaning of the Act and the applicable published rules and regulations thereunder.

(q) No labor problem or dispute with the employees of the Company or any Subsidiary exists or, to the Company's knowledge, is threatened that is reasonably likely to have a Material Adverse Effect, except as set forth in or contemplated in the Final Prospectus (exclusive of any supplement thereto).

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(r) The Company and the Subsidiaries are insured by insurers of recognized financial responsibility against such losses and risks and in such amounts as the Company believes are customary in the businesses in which they are engaged; all policies of insurance and fidelity or surety bonds insuring the Company or any Subsidiary or their respective businesses, assets, employees, officers and directors are in full force and effect; the Company and the Subsidiaries are in compliance with the terms of such policies and instruments in all material respects; and there are no claims by the Company or any Subsidiary under any such policy or instrument as to which any insurance company is denying liability or defending under a reservation of rights clause.

(s) The Company and each Subsidiary maintain a system of internal accounting controls sufficient to provide reasonable assurance that (i) transactions are executed in accordance with management's general or specific authorizations; (ii) transactions are recorded as necessary to permit preparation of financial statements in conformity with generally accepted accounting principles and to maintain asset accountability; (iii) access to assets is permitted only in accordance with management's general or specific authorization; and (iv) the recorded accountability for assets is compared with the existing assets at reasonable intervals and appropriate action is taken with respect to any differences.

(t) The Company has not taken, directly or indirectly, any action that has constituted or that was designed to or might

reasonably be expected to cause or result in, under the Exchange Act or otherwise, the stabilization or manipulation of the price of any security of the Company to facilitate the sale or resale of the Securities.

(u) The Company and each Subsidiary are (i) in compliance with any and all applicable foreign, federal, state and local laws and regulations relating to the protection of human health and safety, the environment or hazardous or toxic substances or wastes, pollutants or contaminants ("Environmental Laws"), (ii) have received and are in compliance with all permits, licenses or other approvals required of them under applicable Environmental Laws to conduct their respective businesses and (iii) have not received notice of any actual or potential liability for the investigation or remediation of any disposal or release of hazardous or toxic substances or wastes, pollutants or contaminants, except where such non-compliance with Environmental Laws, failure to receive required permits, licenses or other approvals, or liability (A) would not, individually or in the aggregate, have a Material Adverse Effect, or (B) is set forth in or contemplated in the Final Prospectus (exclusive of any supplement thereto). Except as set forth in the Final Prospectus, neither the Company nor any Subsidiary has been named as a "potentially responsible party" under the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended.

(v) Except as set forth in the Final Prospectus and except for (i) San Francisco Thermal, Limited Partnership, (ii) Pittsburgh Thermal, Limited Partnership, and (iii) RSD Power Partners, L.P. (each of which is subject to regulation by virtue of its steam sales), none of the Company or the Subsidiaries is subject to regulation as a "steam corporation", "electric utility", "electric utility company", "utility company" or "public utility company"

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(collectively, "Regulated Utilities") or any similar term by any federal, state, local or foreign public utility commission or regulatory body or under any applicable federal, state, local or foreign law as a Regulated Utility other than as public utilities that have been granted market-based rates under the Federal Power Act or any state regulation applicable to "exempt wholesale generators," as defined in Section 32 of the Public Utility Holding Company Act of 1935, as amended ("PUHCA").

(w) None of the Company or the Subsidiaries is an "electric utility company", a "public utility company", a "holding company", a "subsidiary company" of any of the foregoing or an "affiliate" of any of the foregoing or an "affiliate" of a "subsidiary" of a "holding company" (except insofar as the Company is a subsidiary of a registered holding company), each as defined in PUHCA.

(x) The Company's percentage ownership interest in its facilities, operations or projects under construction as set forth in the Final Prospectus are true and accurate in all material respects as of the date presented and any changes in the Company's percentage ownership interest in its facilities, operations or projects under construction which have occurred between such date and the date of this Agreement are as set forth on Schedule III hereto.

Any certificate signed by any officer of the Company and delivered to the Representatives or counsel for the Underwriters in connection with the offering of the Securities shall be deemed a representation and warranty by the Company, as to matters covered thereby, to each Underwriter.

2. Purchase and Sale. (a) Subject to the terms and

conditions and in reliance upon the representations and warranties herein set forth, the Company agrees to sell to each Underwriter, and each Underwriter agrees, severally and not jointly, to purchase from the Company, at a purchase price of \$25.78 per share, the amount of the Underwritten Securities set forth opposite such Underwriter's name in Schedule I hereto.

(b) Subject to the terms and conditions and in reliance upon the representations and warranties herein set forth, the Company hereby grants an option to the several Underwriters to purchase, severally and not jointly, up to 2,400,000 Option Securities at the same purchase price per share as the Underwriters shall pay for the Underwritten Securities. Said option may be exercised only to cover over-allotments in the sale of the Underwritten Securities by the Underwriters. Said option may be exercised in whole or in part at any time on or before the 30th day after the date of the Final Prospectus upon written or telegraphic notice by the Representatives to the Company setting forth the number of shares of the Option Securities as to which the several Underwriters are exercising the option and the settlement date. The number of Option Securities to be purchased by each Underwriter shall be the same percentage of the total number of shares of the Option Securities to be purchased by the several Underwriters as such Underwriter is purchasing of the Underwritten Securities, subject to such adjustments as you in your absolute discretion shall make to eliminate any fractional shares.

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3. Delivery and Payment. Delivery of and payment for the Securities and the Option Securities (if the option provided for in Section 2(b) hereof shall have been exercised on or before the third Business Day prior to the Closing Date) shall be made at 10:00 AM, New York City time, on March 13, 2001, or at such time on such later date not more than three Business Days after the foregoing date as the Representatives shall designate, which date and time may be postponed by agreement between the Representatives and the Company or as provided in Section 9 hereof (such date and time of delivery and payment for the Securities being herein called the "Closing Date"). Delivery of the Securities shall be made to the Representatives for the respective accounts of the several Underwriters, against payment by the several Underwriters through the Representatives, of the purchase price thereof to or upon the order of the Company by wire transfer payable in same-day funds to an account specified by the Company. Delivery of the Underwritten Securities and the Option Securities shall be made through the facilities of The Depository Trust Company unless the Representatives shall otherwise instruct.

If the option provided for in Section 2(b) hereof is exercised after the third Business Day prior to the Closing Date, the Company will deliver the Option Securities (at the expense of the Company) to the Representatives, at 11 Madison Avenue, New York, New York, on the date specified by the Representatives (which shall be within three Business Days after exercise of said option) for the respective accounts of the several Underwriters, against payment by the several Underwriters through the Representatives of the purchase price thereof to or upon the order of the Company by wire transfer payable in same-day funds to an account specified by the Company. If settlement for the Option Securities occurs after the Closing Date, the Company will deliver to the Representatives on the settlement date for the Option Securities, and the obligation of the Underwriters to purchase the Option Securities shall be conditioned upon receipt of, supplemental opinions, certificates and letters confirming as of such date the opinions, certificates and letters delivered on the Closing Date pursuant to Section 6 hereof.

4. Offering by Underwriters. It is understood that the several Underwriters propose to offer the Securities for sale to the public as set forth in the Final Prospectus.

5. Agreements. The Company agrees with the several Underwriters that:

(a) The Company will use its best efforts to cause the Registration Statement, if not effective at the Execution Time, and any amendment thereof, to become effective. Prior to the termination of the offering of the Securities, the Company will not file any amendment of the Registration Statement or supplement (including the Final Prospectus or any Preliminary Final Prospectus) to the Basic Prospectus or any Rule 462(b) Registration Statement unless the Company has furnished you a copy for your review prior to filing and will not file any such proposed amendment or supplement to which you reasonably object. Subject to the foregoing sentence, if the Registration Statement has become or becomes effective pursuant to Rule 430A, or filing of the Final Prospectus is otherwise required under Rule 424(b), the Company will cause the Final Prospectus, properly completed, and any supplement thereto to be filed with the Commission pursuant to the applicable paragraph of Rule 424(b) within the time period prescribed and will provide evidence satisfactory to the Representatives of such timely filing. The Company will promptly advise the

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Representatives (1) when the Registration Statement, if not effective at the Execution Time, shall have become effective, (2) when the Final Prospectus, and any supplement thereto, shall have been filed (if required) with the Commission pursuant to Rule 424(b) or when any Rule 462(b) Registration Statement shall have been filed with the Commission, (3) when, prior to termination of the offering of the Securities, any amendment to the Registration Statement shall have been filed or become effective, (4) of any request by the Commission or its staff for any amendment of the Registration Statement, or any Rule 462(b) Registration Statement, or for any supplement to the Final Prospectus or for any additional information, (5) of the issuance by the Commission of any stop order suspending the effectiveness of the Registration Statement or the institution or threatening of any proceeding for that purpose and (6) of the receipt by the Company of any notification with respect to the suspension of the qualification of the Securities for sale in any jurisdiction or the institution or threatening of any proceeding for such purpose. The Company will use its best efforts to prevent the issuance of any such stop order or the suspension of any such qualification and, if issued, to obtain as soon as possible the withdrawal thereof.

(b) If, at any time when a prospectus relating to the Securities is required to be delivered under the Act, any event occurs as a result of which the Final Prospectus as then supplemented would include any untrue statement of a material fact or omit to state any material fact necessary to make the statements therein in the light of the circumstances under which they were made not misleading, or if it shall be necessary to amend the Registration Statement or supplement the Final Prospectus to comply with the Act or the Exchange Act or the respective rules thereunder, the Company promptly will (1) notify the Representatives of such event, (2) prepare and file with the Commission, subject to the second sentence of paragraph (a) of this Section 5, an amendment or supplement which will correct such statement or omission or effect such compliance and (3) supply any supplemented Final Prospectus to you in such quantities as you may reasonably request.

(c) As soon as practicable, the Company will make generally available to its security holders and to the Representatives an earnings statement or statements of the Company and its subsidiaries which will satisfy the provisions of Section 11(a) of the Act and Rule 158 under the Act.

(d) The Company will furnish to the Representatives and counsel for the Underwriters signed copies of the Registration Statement (including exhibits thereto) and to each other Underwriter a copy of the Registration Statement (without exhibits thereto) and, so long as delivery of a prospectus by an Underwriter or dealer may be required by the Act, as many copies of each Preliminary Final Prospectus and the Final Prospectus and any supplement thereto as the Representatives may reasonably request.

(e) The Company will arrange, if necessary, for the qualification of the Securities for sale under the laws of such jurisdictions as the Representatives may designate, will maintain such qualifications in effect so long as required for the distribution of the Securities; provided that in no event shall the Company be obligated to qualify to do business in any jurisdiction where it is not now so qualified or to take any action that would subject it to

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service of process in suits, other than those arising out of the offering or sale of the Securities, in any jurisdiction where it is not now so subject.

(f) Except as contemplated by the Underwriting Agreement dated as of March 7, 2001 between the Company and the Underwriters named therein relating to the sale by the Company of its Equity Units consisting of its senior debentures and contracts to purchase Common Stock, the Company will not, without the prior written consent of Credit Suisse First Boston Corporation and Merrill Lynch, Pierce, Fenner & Smith Incorporated, offer, sell, contract to sell, pledge, or otherwise dispose of, (or enter into any transaction which is designed to, or might reasonably be expected to, result in the disposition (whether by actual disposition or effective economic disposition due to cash settlement or otherwise) by the Company or any affiliate of the Company or any person in privity with the Company or any affiliate of the Company) directly or indirectly, including the filing (or participation in the filing) of a registration statement with the Commission in respect of, or establish or increase a put equivalent position or liquidate or decrease a call equivalent position within the meaning of Section 16 of the Exchange Act, any other shares of Common Stock or any securities convertible into, or exercisable, or exchangeable for, shares of Common Stock; or publicly announce an intention to effect any such transaction, for a period of ninety days after the date of the Underwriting Agreement, provided, however, that the Company may issue and sell Common Stock pursuant to any employee stock option plan, stock ownership plan or dividend reinvestment plan of the Company in effect at the Execution Time and the Company may issue Common Stock issuable upon the conversion of securities or the exercise of warrants outstanding at the Execution Time.

(g) The Company will not take, directly or indirectly, any action designed to or that would constitute or that might reasonably be expected to cause or result, under the Exchange Act or otherwise, in stabilization or manipulation of the price of any security of the Company to facilitate the sale or resale of the Securities.

(h) The Company agrees to pay the costs and expenses relating to the following matters: (i) the preparation, printing or reproduction and filing with the Commission of the Registration Statement (including financial statements and exhibits thereto), each Preliminary Final Prospectus, the Final Prospectus, and each amendment or supplement to any of them; (ii) the printing (or reproduction) and delivery (including postage, air freight charges and charges for

counting and packaging) of such copies of the Registration Statement, each Preliminary Final Prospectus, the Final Prospectus, and all amendments or supplements to any of them, as may, in each case, be reasonably requested for use in connection with the offering and sale of the Securities; (iii) the preparation, printing, authentication, issuance and delivery of certificates for the Securities, including any stamp or transfer taxes in connection with the original issuance and sale of the Securities; (iv) the printing (or reproduction) and delivery of this Agreement, any blue sky memorandum and all other agreements or documents printed (or reproduced) and delivered in connection with the offering of the Securities; (v) the listing of the Securities on the New York Stock Exchange; (vi) any registration or qualification of the Securities for offer and sale under the securities or blue sky laws of the several states (including filing fees and the reasonable fees

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and expenses of counsel for the Underwriters relating to such registration and qualification); (vii) any filings required to be made with the National Association of Securities Dealers, Inc. (including filing fees and the reasonable fees and expenses of counsel for the Underwriters relating to such filings up to but not exceeding an aggregate of \$10,000 in the case of (vi) and (vii)); (viii) the transportation and other expenses incurred by or on behalf of Company representatives in connection with presentations to prospective purchasers of the Securities; (ix) the fees and expenses of the Company's accountants and the fees and expenses of counsel (including local and special counsel) for the Company; and (x) all other costs and expenses incident to the performance by the Company of its obligations hereunder.

6. Conditions to the Obligations of the Underwriters.

The obligations of the Underwriters to purchase the Underwritten Securities and the Option Securities, as the case may be, shall be subject to the accuracy of the representations and warranties on the part of the Company contained herein as of the Execution Time, the Closing Date and any settlement date pursuant to Section 3 hereof, to the accuracy of the statements of the Company made in any certificates pursuant to the provisions hereof, to the performance by the Company of its obligations hereunder and to the following additional conditions:

(a) If the Registration Statement has not become effective prior to the Execution Time, unless the Representatives agree in writing to a later time, the Registration Statement will become effective not later than (i) 6:00 PM New York City time, on the date of determination of the public offering price, if such determination occurred at or prior to 3:00 PM New York City time on such date or (ii) 9:30 AM on the Business Day following the day on which the public offering price was determined, if such determination occurred after 3:00 PM New York City time on such date; if filing of the Final Prospectus, or any supplement thereto, is required pursuant to Rule 424(b), the Final Prospectus, and any such supplement, will be filed in the manner and within the time period required by Rule 424(b); and no stop order suspending the effectiveness of the Registration Statement shall have been issued and no proceedings for that purpose shall have been instituted or threatened.

(b) The Company shall have requested and caused Gibson, Dunn & Crutcher LLP, counsel for the Company, to have furnished to the Representatives their opinion, dated the Closing Date and addressed to the Representatives, to the effect that:

(i) the Securities have been duly and validly authorized, and, when issued and delivered to and paid for by

the Underwriters pursuant to this Agreement, will be fully paid and nonassessable; the Securities are duly listed, and admitted and authorized for trading, subject to official notice of issuance and evidence of satisfactory distribution, on the New York Stock Exchange; the certificates for the Securities comply with the requirements of Delaware law; the holders of outstanding shares of capital stock of the Company are not entitled to preemptive or other rights to subscribe for the

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Securities pursuant to the Company's Certificate of Incorporation or Delaware law;

(ii) the Registration Statement has become effective under the Act; any required filing of the Basic Prospectus, any Preliminary Final Prospectus and the Final Prospectus, and any supplements thereto, pursuant to Rule 424(b) have been made in the manner and within the time period required by Rule 424(b); to the knowledge of such counsel, no stop order suspending the effectiveness of the Registration Statement has been issued, no proceedings for that purpose have been instituted or threatened, and the Registration Statement and the Final Prospectus (other than the financial statements and other financial information contained therein, as to which such counsel need express no opinion) comply as to form in all material respects with the applicable requirements of the Act and the Exchange Act and the respective rules thereunder;

(iii) this Agreement has been duly authorized, executed and delivered by the Company; and

(iv) the Company is not and, after giving effect to the offering and sale of the Securities and the application of the proceeds thereof as described in the Final Prospectus, will not be an "investment company" required to be registered under the Investment Company Act of 1940, as amended;

Furthermore, following the opinion paragraphs, such counsel shall state the following:

"We have participated in conferences with officers and other representatives of the Company, representatives of the independent auditors of the Company and your representatives and counsel at which the contents of the Registration Statement, Final Prospectus and related matters were discussed. Because the purpose of our professional engagement was not to establish or confirm factual matters and because the scope of our examination of the affairs of the Company did not permit us to verify the accuracy, completeness or fairness of the statements set forth in the Registration Statement and/or Final Prospectus, we are not passing upon and do not assume any responsibility for the accuracy, completeness or fairness of the statements contained in the Registration Statement and/or Final Prospectus, except to the extent set forth below in the last sentence of the immediately following paragraph.

On the basis of the foregoing, and except for the financial statements and schedules and other financial and statistical data included therein, as to which we express no opinion or belief, no facts have come to our attention that lead us to believe that the Registration Statement, on the Effective Date or on the date the Registration Statement was last deemed amended, contained any untrue statement of a

fact or omitted to state a material fact required to be stated therein or necessary to make the statements therein not misleading, or that the Final Prospectus, as of its date and as of the Closing Date, contained or contains any untrue statement of a material fact or omitted or omits to state a material fact necessary to make the statements therein, in the light of the circumstances under which they were made, not misleading."

In rendering such opinion, such counsel may rely (A) as to matters involving the application of laws of any jurisdiction other than the State of Delaware or the Federal laws of the United States, to the extent they deem proper and specified in such opinion, upon the opinion of other counsel of good standing whom they believe to be reliable and who are satisfactory to counsel for the Underwriters and (B) as to matters of fact, to the extent they deem proper, on certificates of responsible officers of the Company and public officials. References to the Final Prospectus in this paragraph (b) include any supplements thereto at the Closing Date.

(c) The Company shall have furnished to the Representatives the opinion of James J. Bender, Esq., general counsel of the Company, dated the Closing Date and addressed to the Representatives, to the effect that:

(i) each of the Company and the Subsidiaries has been duly incorporated and is validly existing as a corporation in good standing under the laws of the jurisdiction in which it is chartered or organized, with full corporate power and authority to own or lease, as the case may be, and to operate its properties and conduct its business as described in the Final Prospectus, and is duly qualified to do business as a foreign corporation and is in good standing under the laws of each jurisdiction which requires such qualification, except where the failure to be so qualified or in good standing is not reasonably likely to have a Material Adverse Effect;

(ii) all the outstanding shares of capital stock of the Company and of each Subsidiary have been duly and validly authorized and issued and are fully paid and nonassessable, and, except as otherwise set forth in the Final Prospectus, all outstanding shares of capital stock of each of the Subsidiaries are owned of record by the Company either directly or through wholly owned Subsidiaries free and clear of any perfected security interest and, to the knowledge of such counsel, after due inquiry, any other security interest, claim, lien or encumbrance, other than such liens or other security interests granted or created in connection with indebtedness of the projects owned by such Subsidiaries;

(iii) the Company's authorized equity capitalization is as set forth in the Final Prospectus; the capital stock of the Company conforms in all material respects to the description thereof contained in the Final Prospectus; and, except as set forth in the Final Prospectus, no options, warrants or other

rights to purchase, agreements or other obligations to issue, or rights to convert any obligations into or exchange any securities for, shares of capital stock of or ownership interests in the Company are outstanding;

(iv) there is no pending or, to the knowledge of such counsel, threatened action, suit or proceeding by or before any court or governmental agency, authority or body or any arbitrator involving the Company or any of its subsidiaries or its or their property of a character required to be disclosed in the Registration Statement which is not adequately disclosed in the Final Prospectus, and there is no franchise, contract or other document of a character required to be described in the Registration Statement or Final Prospectus, or to be filed as an exhibit thereto, which is not described or filed as required;

(v) no consent, approval, authorization, filing with or order of any court or governmental agency or body is required in connection with the transactions contemplated herein, except such as have been obtained under the Act and such as may be required under the blue sky laws of any jurisdiction in connection with the purchase and distribution of the Securities by the Underwriters (about which such counsel need express no opinion) in the manner contemplated in this Agreement and in the Final Prospectus and such other approvals (specified in such opinion) as have been obtained;

(vi) neither the issuance and sale of the Securities, nor the consummation of any other of the transactions herein contemplated nor the fulfillment of the terms hereof will conflict with, result in a breach or violation or constitute a default under (i) the charter or by-laws of the Company or its Subsidiaries, (ii) the terms of any indenture, contract, lease, mortgage, deed of trust, note agreement, loan agreement or other agreement, obligation, condition, covenant or instrument to which the Company or its Subsidiaries is a party or bound or to which its or their property is subject, or (iii) any statute, law, rule, regulation, judgment, order or decree applicable to the Company or its Subsidiaries of any court, regulatory body, administrative agency, governmental body, arbitrator or other authority having jurisdiction over the Company or its Subsidiaries or any of its or their properties, except in the cases of clauses (ii) and (iii) above, such conflict, breach, violation or default which is not reasonably likely to have a Material Adverse Effect;

(vii) except as set forth in the Final Prospectus and except for (i) San Francisco Thermal, Limited Partnership, (ii) Pittsburgh Thermal, Limited Partnership, and (iii) RSD Power Partners, L.P., (each of which is subject to regulation by virtue of its steam sales) none of the Company or its Subsidiaries is subject to regulation as a Regulated Utility or any similar term by any federal law, law of the state of Minnesota or Minnesota public utility commission or federal regulatory body or under any such law as a Regulated

Utility other than as public utilities that have been granted market-based rates under the Federal Power Act or any state

regulation applicable to "exempt wholesale generators," as defined in Section 32 of PUHCA;

(viii) none of the Company or its Subsidiaries is an "electric utility company", a "public utility company", a "holding company", a "subsidiary company" of any of the foregoing, an "affiliate" of any of the foregoing, or an "affiliate" of a "subsidiary" of a "holding company" (except insofar as the Company is a subsidiary of a registered holding company), each as defined in PUHCA;

(ix) except as set forth in the Final Prospectus, the Company and its Subsidiaries possess and are in compliance with all approvals, certificates, authorizations, licenses and permits issued by the appropriate state, Federal or foreign regulatory agencies or bodies necessary to conduct their business as described in the Final Prospectus, except where the failure to possess such approvals, certificates, authorizations, licenses and permits or be in compliance therewith would not be reasonably likely to have a Material Adverse Effect and to the knowledge of such counsel, none of the Company or its Subsidiaries has received any notice of proceedings relating to the revocation or modification of any such approval, certificate, authorization, license or permit which, individually or in the aggregate, if it became the subject of an unfavorable decision, ruling or finding, would be reasonably likely to have a Material Adverse Effect; and

(x) no holders of securities of the Company have rights to the registration of such securities under the Registration Statement that have not been waived with respect to the offering of the Securities.

(d) The Representatives shall have received from Skadden, Arps, Slate, Meagher & Flom LLP, counsel for the Underwriters, such opinion or opinions, dated the Closing Date and addressed to the Representatives, with respect to the issuance and sale of the Securities, the Registration Statement, the Final Prospectus (together with any supplement thereto) and other related matters as the Representatives may reasonably require, and the Company shall have furnished to such counsel such documents as they request for the purpose of enabling them to pass upon such matters.

(e) The Company shall have furnished to the Representatives a certificate of the Company, signed by the Chairman of the Board or the President and the principal financial or accounting officer of the Company, dated the Closing Date, to the effect that the signers of such certificate have carefully examined the Registration Statement, the Final Prospectus, any supplements to the Final Prospectus and this Agreement and that:

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(i) the representations and warranties of the Company in this Agreement are true and correct on and as of the Closing Date with the same effect as if made on the Closing Date and the Company has complied with all the agreements and satisfied all the conditions on its part to be performed or satisfied at or prior to the Closing Date;

(ii) no stop order suspending the effectiveness of the Registration Statement has been issued and no proceedings for that purpose have been instituted or, to the Company's knowledge, threatened; and

(iii) since the date of the most recent financial statements included or incorporated by reference in the Final Prospectus (exclusive of any supplement thereto), there has been no material adverse effect on the condition (financial or otherwise), earnings, prospects, business or properties of the Company and its subsidiaries, taken as a whole, whether or not arising from transactions in the ordinary course of business, except as set forth in or contemplated in the Final Prospectus (exclusive of any supplement thereto).

(f) The Company shall have requested and caused PricewaterhouseCoopers LLP to have furnished to the Representatives, at the Execution Time and at the Closing Date, letters, dated respectively as of the Execution Time and as of the Closing Date, in form and substance satisfactory to the Representatives, confirming that they are independent accountants within the meaning of the Act and the Exchange Act and the respective applicable rules and regulations adopted by the Commission thereunder and that they have audited the consolidated financial statements of the Company for the years in the period ended December 31, 2000, December 31, 1999 and December 31, 1998 and as at December 31, 2000, December 31, 1999 and December 31, 1998, respectively, in accordance with generally accepted auditing standards, and stating in effect that:

(i) in their opinion the audited consolidated financial statements and financial statement schedules included or incorporated by reference in the Registration Statement and the Final Prospectus and reported on by them comply as to form in all material respects with the applicable accounting requirements of the Act and the Exchange Act and the related rules and regulations adopted by the Commission;

(ii) on the basis of a reading of the unaudited consolidated financial statements for January of both 2000 and 2001 made available by the Company and its subsidiaries, having been advised by officials of the Company that no financial statements as of any date or for any period subsequent to January 31, 2001 were available; carrying out certain specified procedures (but not an examination in accordance with generally accepted auditing standards) which would not necessarily reveal matters of significance with respect to the comments set forth in such letter; a reading

of the minutes of the meetings of the stockholders, directors and committees of the Company and the Subsidiaries; and inquiries of certain officials of the Company who have responsibility for financial and accounting matters of the Company and its subsidiaries as to transactions and events subsequent to December 31, 2000 and as to whether the unaudited consolidated financial statements for January of both 2000 and 2001 are stated on a basis substantially consistent with that of the audited consolidated financial statements in the Registration Statement, nothing came to their attention which caused them to believe that, with respect to the period subsequent to December 31, 2000, there were, at January 31, 2001, any increases in the long-term debt or total current liabilities of the Company and its subsidiaries or decreases in the stockholders' equity of the Company or decreases in total current assets or total assets of the Company and its subsidiaries as compared with the amounts shown on the December 31, 2000 consolidated balance sheet included or incorporated by reference in the

Registration Statement and the Final Prospectus, or for the period from January 1, 2001 to January 31, 2001 there were any decreases, as compared with the corresponding period in the previous year, in consolidated operating revenues or income before income taxes or net income of the Company and its subsidiaries, except in all instances for changes or decreases set forth in such letter, in which case the letter shall be accompanied by an explanation by the Company as to the significance thereof unless said explanation is not deemed necessary by the Representatives;

(iii) on the basis of a reading of the minutes of the meetings of the stockholders, directors and committees of the Company and the Subsidiaries; and inquiries of certain officials of the Company who have responsibility for financial and accounting matters of the Company and its subsidiaries as to transactions and events subsequent to December 31, 2000, nothing came to their attention which caused them to believe that, with respect to the period subsequent to January 31, 2001, there were, at a specified date not more than five days prior to the date of the letter, any increases in the long-term debt or total current liabilities of the Company and its subsidiaries or decreases in the stockholders' equity of the Company or decreases in total current assets or total assets of the Company and its subsidiaries as compared with the amounts shown on the December 31, 2000 consolidated balance sheet included or incorporated by reference in the Registration Statement and the Final Prospectus, or for the period from February 1, 2001 to such specified date there were any decreases, as compared with the corresponding period in the previous year, in consolidated operating revenues or income before income taxes or net income of the Company and its subsidiaries, except in all instances for changes or decreases set forth in such letter, in which case the letter shall be accompanied by an explanation by the Company as to the significance thereof unless said explanation is not deemed necessary by the Representatives;

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(iv) they have performed certain other specified procedures as a result of which they determined that certain information of an accounting, financial or statistical nature (which is limited to accounting, financial or statistical information derived from the general accounting records of the Company and its subsidiaries) set forth in the Registration Statement and the Final Prospectus, including the financial information set forth under the captions "Summary and Consolidated Financial and Operating Data", (i) certain information included or incorporated by reference in the Company's Annual Report on Form 10-K for the year ended December 31, 1999, incorporated by reference in the Registration Statement and the Final Prospectus, (ii) certain information included or incorporated by reference in the Company's Quarterly Reports on Form 10-Q, incorporated by reference in the Registration Statement and the Final Prospectus, and (iii) certain information included or incorporated by reference in the Company's Current Report on Form 8-K dated March 5, 2001, incorporated by reference in the Registration Statement and the Final Prospectus, agrees with the accounting records of the Company and its subsidiaries, excluding any questions of legal interpretation.

(g) Subsequent to the Execution Time or, if earlier, the

dates as of which information is given in the Registration Statement (exclusive of any amendment thereof) and the Final Prospectus (exclusive of any supplement thereto), there shall not have been (i) any change or decrease in the items specified in the letter or letters referred to in paragraph (e) of this Section 6 or (ii) any change, or any development involving a prospective change, in or affecting the condition (financial or otherwise), earnings, business or properties of the Company and its subsidiaries, taken as a whole, whether or not arising from transactions in the ordinary course of business, except as set forth in or contemplated in the Final Prospectus (exclusive of any supplement thereto) the effect of which, in any case referred to in clause (i) or (ii) above, is, in the sole judgment of the Representatives, so material and adverse as to make it impractical or inadvisable to proceed with the offering or delivery of the Securities as contemplated by the Registration Statement (exclusive of any amendment thereof) and the Final Prospectus (exclusive of any supplement thereto).

(h) Subsequent to the Execution Time, there shall not have been any decrease in the rating of any of the Company's debt securities by any "nationally recognized statistical rating organization" (as defined for purposes of Rule 436(g) under the Act) or any notice given of any intended or potential decrease in any such rating or of a possible change in any such rating that does not indicate the direction of the possible change.

(i) Prior to the Closing Date, the Company shall have furnished to the Representatives such further information, certificates and documents as the Representatives may reasonably request.

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(j) The Securities shall have been listed and admitted and authorized for trading, subject to official notice of issuance and evidence of satisfactory distribution, on the New York Stock Exchange, and satisfactory evidence of such actions shall have been provided to the Representatives.

(k) At the Execution Time, the Company shall have furnished to the Representatives a letter substantially in the form of Exhibit A hereto from each officer of the Company and from Xcel Energy Inc. addressed to the Representatives.

If any of the conditions specified in this Section 6 shall not have been fulfilled in all material respects when and as provided in this Agreement, or if any of the opinions and certificates mentioned above or elsewhere in this Agreement shall not be in all material respects reasonably satisfactory in form and substance to the Representatives and counsel for the Underwriters, this Agreement and all obligations of the Underwriters hereunder may be canceled at, or at any time prior to, the Closing Date by the Representatives. Notice of such cancellation shall be given to the Company in writing or by telephone or facsimile confirmed in writing.

The documents required to be delivered by this Section 6 shall be delivered at the office of the Company, 901 Marquette Avenue, Minneapolis, Minnesota, on the Closing Date.

7. Reimbursement of Underwriters' Expenses. If the sale of the Securities provided for herein is not consummated because any condition to the obligations of the Underwriters set forth in Section 6 hereof is not satisfied, because of any termination pursuant to Section 10 hereof or because of any refusal, inability or failure on the part of the Company to perform any agreement herein or comply with any provision hereof other than by reason of a default by any of the Underwriters, the Company will reimburse the Underwriters severally through Credit Suisse First Boston Corporation on demand for all

out-of-pocket expenses (including reasonable fees and disbursements of counsel) that shall have been incurred by them in connection with the proposed purchase and sale of the Securities.

8. Indemnification and Contribution.

(a) The Company agrees to indemnify and hold harmless each Underwriter, the directors, officers, employees and agents of each Underwriter and each person who controls any Underwriter within the meaning of either the Act or the Exchange Act against any and all losses, claims, damages or liabilities, joint or several, to which they or any of them may become subject under the Act, the Exchange Act or other Federal or state statutory law or regulation, at common law or otherwise, insofar as such losses, claims, damages or liabilities (or actions in respect thereof) arise out of or are based upon any untrue statement or alleged untrue statement of a material fact contained in the registration statement for the registration of the Securities as originally filed or in any amendment thereof, or in any Preliminary Final Prospectus or the Final Prospectus, or in any amendment thereof or supplement thereto, or arise out of or are based upon the omission or alleged omission to state therein a material fact required to be stated therein or necessary to make the statements therein not misleading, and

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agrees to reimburse each such indemnified party, as incurred, for any legal or other expenses reasonably incurred by them in connection with investigating or defending any such loss, claim, damage, liability or action; provided, however, that the Company will not be liable in any such case to the extent that any such loss, claim, damage or liability arises out of or is based upon any such untrue statement or alleged untrue statement or omission or alleged omission made therein in reliance upon and in conformity with written information furnished to the Company by or on behalf of any Underwriter through the Representatives specifically for inclusion therein; provided, further, that with respect to any untrue statement or omission of a material fact made in any Preliminary Final Prospectus, the indemnity agreement contained in this Section 8(a) shall not inure to the benefit of any Underwriter from whom the person asserting any such loss, claim, damage or liability purchased the Securities concerned, to the extent that any such loss, claim, damage or liability of such Underwriter occurs under the circumstance where it shall have been determined by a court of competent jurisdiction by final and nonappealable judgment that (w) the Company had previously furnished copies of the Final Prospectus to the Representatives, (x) delivery of the Final Prospectus was required to be made to such person, (y) the untrue statement or omission of a material fact contained in the Preliminary Final Prospectus was corrected in the Final Prospectus, and (z) there was not sent or given to such person, at or prior to the written confirmation of the sale of such Securities to such person, a copy of the Final Prospectus. This indemnity agreement will be in addition to any liability which the Company may otherwise have.

(b) Each Underwriter severally and not jointly agrees to indemnify and hold harmless the Company, each of its directors, each of its officers who signs the Registration Statement, and each person who controls the Company within the meaning of either the Act or the Exchange Act, to the same extent as the foregoing indemnity from the Company to each Underwriter, but only with reference to written information relating to such Underwriter furnished to the Company by or on behalf of such Underwriter through the Representatives specifically for inclusion in the documents referred to in the foregoing indemnity. This indemnity agreement will be in addition to any liability which any Underwriter may otherwise have. The Company acknowledges that the statements set forth in the last paragraph of the cover page regarding delivery of the Securities, and, under the heading "Underwriting", (i) the list of Underwriters and their

respective participation in the sale of the Securities, (ii) the sentences related to concessions and reallowances and (iii) the paragraph related to stabilization, syndicate covering transactions and penalty bids constitute the only information furnished in writing by or on behalf of the several Underwriters for inclusion in any Preliminary Final Prospectus or the Final Prospectus.

(c) Promptly after receipt by an indemnified party under this Section 8 of notice of the commencement of any action, such indemnified party will, if a claim in respect thereof is to be made against the indemnifying party under this Section 8, notify the indemnifying party in writing of the commencement thereof; but the failure so to notify the indemnifying party (i) will not relieve it from liability under paragraph (a) or (b) above unless and to the extent it did not otherwise learn of such action and such failure results in the forfeiture by the indemnifying party of substantial rights and defenses and (ii) will not, in any event,

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relieve the indemnifying party from any obligations to any indemnified party other than the indemnification obligation provided in paragraph (a) or (b) above. The indemnifying party shall be entitled to appoint counsel of the indemnifying party's choice at the indemnifying party's expense to represent the indemnified party in any action for which indemnification is sought (in which case the indemnifying party shall not thereafter be responsible for the fees and expenses of any separate counsel retained by the indemnified party or parties except as set forth below); provided, however, that such counsel shall be satisfactory to the indemnified party. Notwithstanding the indemnifying party's election to appoint counsel to represent the indemnified party in an action, the indemnified party shall have the right to employ separate counsel (including local counsel), and the indemnifying party shall bear the reasonable fees, costs and expenses of such separate counsel if (i) the use of counsel chosen by the indemnifying party to represent the indemnified party would present such counsel with a conflict of interest, (ii) the actual or potential defendants in, or targets of, any such action include both the indemnified party and the indemnifying party and the indemnified party shall have reasonably concluded that there may be legal defenses available to it and/or other indemnified parties which are different from or additional to those available to the indemnifying party, (iii) the indemnifying party shall not have employed counsel satisfactory to the indemnified party to represent the indemnified party within a reasonable time after notice of the institution of such action or (iv) the indemnifying party shall authorize the indemnified party to employ separate counsel at the expense of the indemnifying party. An indemnifying party will not, without the prior written consent of the indemnified parties, settle or compromise or consent to the entry of any judgment with respect to any pending or threatened claim, action, suit or proceeding in respect of which indemnification or contribution may be sought hereunder (whether or not the indemnified parties are actual or potential parties to such claim or action) unless such settlement, compromise or consent includes an unconditional release of each indemnified party from all liability arising out of such claim, action, suit or proceeding.

(d) In the event that the indemnity provided in paragraph (a) or (b) of this Section 8 is unavailable to or insufficient to hold harmless an indemnified party for any reason, the Company and the Underwriters severally agree to contribute to the aggregate losses, claims, damages and liabilities (including legal or other expenses reasonably incurred in connection with investigating or defending same) (collectively "Losses") to which the Company and one or more of the Underwriters may be subject in such proportion as is appropriate to reflect the relative benefits received by the Company on the one hand and by the Underwriters on the other from the offering of the Securities; provided, however, that in

no case shall any Underwriter (except as may be provided in any agreement among underwriters relating to the offering of the Securities) be responsible for any amount in excess of the underwriting discount or commission applicable to the Securities purchased by such Underwriter hereunder. If the allocation provided by the immediately preceding sentence is unavailable for any reason, the Company and the Underwriters severally shall contribute in such proportion as is appropriate to reflect not only such relative benefits but also the relative fault of the Company on the one hand and of the Underwriters on the other in connection with the statements or omissions which resulted in such Losses as well as any other relevant equitable considerations. Benefits received by the Company shall be deemed

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to be equal to the total net proceeds from the offering (before deducting expenses) received by it, and benefits received by the Underwriters shall be deemed to be equal to the total underwriting discounts and commissions, in each case as set forth on the cover page of the Final Prospectus. Relative fault shall be determined by reference to, among other things, whether any untrue or any alleged untrue statement of a material fact or the omission or alleged omission to state a material fact relates to information provided by the Company on the one hand or the Underwriters on the other. The Company and the Underwriters agree that it would not be just and equitable if contribution were determined by pro rata allocation or any other method of allocation which does not take account of the equitable considerations referred to above. Notwithstanding the provisions of this paragraph (d), no person guilty of fraudulent misrepresentation (within the meaning of Section 11(f) of the Act) shall be entitled to contribution from any person who was not guilty of such fraudulent misrepresentation. For purposes of this Section 8, each person who controls an Underwriter within the meaning of either the Act or the Exchange Act and each director, officer, employee and agent of an Underwriter shall have the same rights to contribution as such Underwriter, and each person who controls the Company within the meaning of either the Act or the Exchange Act, each officer of the Company who shall have signed the Registration Statement and each director of the Company shall have the same rights to contribution as the Company, subject in each case to the applicable terms and conditions of this paragraph (d).

9. Default by an Underwriter. If any one or more Underwriters shall fail to purchase and pay for any of the Securities agreed to be purchased by such Underwriter or Underwriters hereunder and such failure to purchase shall constitute a default in the performance of its or their obligations under this Agreement, the remaining Underwriters shall be obligated severally to take up and pay for (in the respective proportions which the amount of Securities set forth opposite their names in Schedule I hereto bears to the aggregate amount of Securities set forth opposite the names of all the remaining Underwriters) the Securities which the defaulting Underwriter or Underwriters agreed but failed to purchase; provided, however, that in the event that the aggregate amount of Securities which the defaulting Underwriter or Underwriters agreed but failed to purchase shall exceed 10% of the aggregate amount of Securities set forth in Schedule I hereto, the remaining Underwriters shall have the right to purchase all, but shall not be under any obligation to purchase any, of the Securities, and if such nondefaulting Underwriters do not purchase all the Securities, this Agreement will terminate without liability to any nondefaulting Underwriter or the Company. In the event of a default by any Underwriter as set forth in this Section 9, the Closing Date shall be postponed for such period, not exceeding five Business Days, as the Representatives shall determine in order that the required changes in the Registration Statement and the Final Prospectus or in any other documents or arrangements may be effected. Nothing contained in this Agreement shall relieve any defaulting Underwriter of its liability, if any, to the Company and any nondefaulting Underwriter for damages occasioned by its default hereunder.

10. Termination. This Agreement shall be subject to termination in the absolute discretion of the Representatives, by notice given to the Company prior to delivery of and payment for the Securities, if at any time prior to such time (i) trading in the Company's Common Stock shall have been suspended by the Commission or the New York Stock Exchange, trading of any securities

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of the Company shall have been suspended on any exchange or in any over-the-counter market or trading in securities generally on the New York Stock Exchange shall have been suspended or limited or minimum prices shall have been established on such Exchange, (ii) a banking moratorium shall have been declared either by Federal or New York State authorities, (iii) any downgrading in the rating of any debt securities of the Company by any "nationally recognized statistical rating organization" (as defined for purposes of Rule 436(g) under the Act), or any public announcement that any such organization has under surveillance or review its rating of any debt securities of the Company (other than an announcement with positive implications of a possible upgrading, and no implication of a possible downgrading, of such rating) shall have occurred, or (iv) there shall have occurred any outbreak or escalation of hostilities, declaration by the United States of a national emergency or war, or other calamity or crisis the effect of which on financial markets is such as to make it, in the reasonable judgment of the Representatives, impractical or inadvisable to proceed with the offering or delivery of the Securities as contemplated by the Final Prospectus (exclusive of any supplement thereto).

11. Representations and Indemnities to Survive. The respective agreements, representations, warranties, indemnities and other statements of the Company or its officers and of the Underwriters set forth in or made pursuant to this Agreement will remain in full force and effect, regardless of any investigation made by or on behalf of any Underwriter or the Company or any of the officers, directors, employees, agents or controlling persons referred to in Section 8 hereof, and will survive delivery of and payment for the Securities. The provisions of Sections 7 and 8 hereof shall survive the termination or cancellation of this Agreement.

12. Notices. All communications hereunder will be in writing and effective only on receipt, and, if sent to the Representatives, will be mailed, delivered or telefaxed to Credit Suisse First Boston Corporation, Transactions Advisory Group (fax no.: (212) 892-0679) and confirmed to the Transactions Advisory Group, Credit Suisse First Boston Corporation, at 11 Madison Avenue, New York, New York, 10010-3629, Attention: Transactions Advisory Group and Merrill Lynch, Pierce, Fenner & Smith Incorporated, Attention: Robert Craig (fax no.: (212) 449-7148) and confirmed to Merrill Lynch, Pierce, Fenner & Smith Incorporated, at 4 World Financial Center, North Tower, New York, New York, 10060, Attention: Robert Craig; or, if sent to the Company, will be mailed, delivered or telefaxed to James J. Bender, Vice President and General Counsel (fax no: (612) 373-5392) and confirmed to it at NRG Energy, Inc., 901 Marquette Avenue, Suite 2300, Minneapolis, Minnesota 55402-3265, Attention: General Counsel.

13. Successors. This Agreement will inure to the benefit of and be binding upon the parties hereto and their respective successors and the officers, directors, employees, agents and controlling persons referred to in Section 8 hereof, and no other person will have any right or obligation hereunder.

14. Applicable Law. This Agreement will be governed by and construed in accordance with the laws of the State of New York applicable to contracts made and to be performed within the State of New York.

15. Counterparts. This Agreement may be signed in one or more counterparts, each of which shall constitute an original and all of which together shall constitute one and the same agreement.

16. Headings. The section headings used herein are for convenience only and shall not affect the construction hereof.

17. Definitions. The terms which follow, when used in this Agreement, shall have the meanings indicated.

"Act" shall mean the Securities Act of 1933, as amended and the rules and regulations of the Commission promulgated thereunder.

"Basic Prospectus" shall mean the prospectus referred to in paragraph 1(a) above contained in the Registration Statement at the Effective Date including any Preliminary Final Prospectus.

"Business Day" shall mean any day other than a Saturday, a Sunday or a legal holiday or a day on which banking institutions or trust companies are authorized or obligated by law, executive order or regulation to close in New York City.

"Commission" shall mean the Securities and Exchange Commission.

"Effective Date" shall mean each date and time that the Registration Statement, any post-effective amendment or amendments thereto and any Rule 462(b) Registration Statement became or become effective.

"Exchange Act" shall mean the Securities Exchange Act of 1934, as amended, and the rules and regulations of the Commission promulgated thereunder.

"Execution Time" shall mean the date and time that this Agreement is executed and delivered by the parties hereto.

"Final Prospectus" shall mean the prospectus supplement relating to the Securities that was first filed pursuant to Rule 424(b) after the Execution Time, together with the Basic Prospectus.

"Preliminary Final Prospectus" shall mean any preliminary prospectus supplement to the Basic Prospectus which describes the Securities and the offering thereof and is used prior to filing of the Final Prospectus, together with the Basic Prospectus.

"Registration Statement" shall mean the registration statement referred to in paragraph 1(a) above, including exhibits and financial statements, as amended at the Execution Time (or, if not effective at the Execution Time, in the form in which it shall become effective) and, in the event any post-effective amendment thereto or any Rule 462(b)

Registration Statement becomes effective prior to the Closing Date, shall also mean such registration statement as so amended or such Rule 462(b) Registration Statement, as the case may be. Such term shall include any Rule 430A Information deemed to be included therein at the Effective Date as provided by Rule 430A.

"Rule 415", "Rule 424", "Rule 430A" and "Rule 462" refer to such rules under the Act.

"Rule 430A Information" shall mean information with respect to the Securities and the offering thereof permitted to be omitted from the Registration Statement when it becomes effective pursuant to Rule 430A.

"Rule 462(b) Registration Statement" shall mean a registration statement and any amendments thereto filed pursuant to Rule 462(b) relating to the offering covered by the registration statement referred to in Section 1(a) hereof.

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If the foregoing is in accordance with your understanding of our agreement, please sign and return to us the enclosed duplicate hereof, whereupon this letter and your acceptance shall represent a binding agreement among the Company and the several Underwriters.

Very truly yours,

NRG Energy, Inc.

By:

Name:

Title:

The foregoing Agreement is hereby confirmed and accepted as of the date first above written.

Credit Suisse First Boston Corporation
Merrill Lynch, Pierce, Fenner & Smith Incorporated
Goldman, Sachs & Co.
Salomon Smith Barney Inc.
ABN AMRO Rothschild LLC
Banc of America Securities LLC

By: Credit Suisse First Boston Corporation

By:

Name:

Title:

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SCHEDULE I

Underwriters -----	Number of Underwritten Securities to be Purchased -----
Credit Suisse First Boston Corporation.....	4,872,000
Merrill Lynch, Pierce, Fenner & Smith Incorporated.....	4,872,000
Goldman, Sachs & Co.....	1,392,000
Salomon Smith Barney Inc.....	1,392,000
ABN AMRO Rothschild LLC.....	696,000
Banc of America Securities LLC.....	696,000
CIBC World Markets Corp.....	160,000
Credit Lyonnaise Securities (USA) Inc.....	160,000
Dain Rauscher Incorporated.....	160,000
D.A. Davidson & Co.....	80,000
Dresdner Kleinwort Benson North America LLC.....	160,000
Gerard Klauer Mattison & Co., Inc.....	80,000
Invemed Associates LLC.....	160,000
Lazard Freres & Co. LLC.....	160,000
J.P. Morgan Securities Inc.....	160,000
Prudential Securities Incorporated.....	160,000
Ragen MacKenzie Incorporated.....	80,000
Raymond James & Associates, Inc.....	80,000
Sanders Morris Harris Inc.....	80,000
U.S. Bancorp Piper Jaffray Inc.....	160,000
UBS Warburg LLC.....	160,000
The Williams Capital Group, L.P.....	80,000
TOTAL.....	16,000,000

SCHEDULE II

Significant Subsidiaries

Arthur Kill Power LLC
 COBEE Holdings Inc.
 Devon Power LLC
 Flinders Coal Pty Ltd
 Granite Power Partners II, L.P.
 Huntley Power LLC
 Killingholme Generation Limited
 Killingholme Holdings Limited
 Killingholme Power Limited
 Lambique Beheer B.V.
 Louisiana Generating LLC
 Middletown Power LLC
 Montville Power LLC
 NEO Corporation
 NEO Landfill Gas Inc.
 Norwalk Power LLC
 NRG International, Inc.
 NRG Northeast Generating LLC
 NRG South Central Generating LLC
 NRG Thermal Corporation
 NRG West Coast Inc.
 NRGenerating Holdings (No. 15) B.V.
 NRGenerating Holdings (No. 4) B.V.
 NRGenerating International B.V.
 NRGenerating, Ltd.
 Sterling Luxembourg (No. 1) s.a.r.l.
 Sunshine State Power (No. 2) B.V.
 Sunshine State Power B.V.

SCHEDULE III

Changes in Percentage Ownership Interest

None

[FORM OF LOCK-UP AGREEMENT]

EXHIBIT A

[LETTERHEAD OF OFFICER OR MAJOR SHAREHOLDER OF
NRG ENERGY, INC.]

NRG Energy, Inc.
Public Offering of Common Stock

_____, 2001

Credit Suisse First Boston Corporation
Merrill Lynch, Pierce, Fenner & Smith Incorporated
Goldman, Sachs & Co.
Salomon Smith Barney, Inc.
ABN AMRO Rothschild LLC
Banc of America Securities LLC
As Representatives of the several Underwriters,
c/o Credit Suisse First Boston Corporation
11 Madison Avenue
New York, New York 10010-6230

Ladies and Gentlemen:

This letter is being delivered to you in connection with the proposed Underwriting Agreement (the "Underwriting Agreement"), between NRG Energy, Inc., a Delaware corporation (the "Company"), and each of you as representatives of a group of Underwriters named therein, relating to an underwritten public offering of Common Stock, \$.01 par value (the "Common Stock"), of the Company.

In order to induce you and the other Underwriters to enter into the Underwriting Agreement, the undersigned will not, without the prior written consent of Credit Suisse First Boston Corporation and Merrill Lynch, Pierce, Fenner & Smith Incorporated., offer, sell, contract to sell, pledge or otherwise dispose of, (or enter into any transaction which is designed to, or might reasonably be expected to, result in the disposition (whether by actual disposition or effective economic disposition due to cash settlement or otherwise) by the undersigned or any affiliate of the undersigned or any person in privity with the undersigned or any affiliate of the undersigned) directly or indirectly, including the filing (or participation in the filing of) a registration statement with the Securities and Exchange Commission in respect of, or establish or increase a put equivalent position or liquidate or decrease a call equivalent position within the meaning of Section 16 of the Securities Exchange Act of 1934, as amended, and the rules and regulations of the Securities and Exchange Commission promulgated thereunder with respect to, any shares of capital stock of the Company or any securities convertible into, or exercisable or exchangeable for such capital stock, or publicly announce an intention to effect any such transaction, for a period of 60 days after the date

of the Underwriting Agreement, other than shares of Common Stock disposed of as bona fide gifts.

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If for any reason the Underwriting Agreement shall be terminated prior to the Closing Date (as defined in the Underwriting Agreement), the agreement set forth above shall likewise be terminated.

Yours very truly,
[SIGNATURE OF OFFICER OR MAJOR STOCKHOLDER]

[NAME AND ADDRESS OF OFFICER OR MAJOR
STOCKHOLDER]

NRG Energy, Inc.

10,000,000 Equity Units(1)
(Initially consisting of 10,000,000 Corporate Units)

Underwriting Agreement

New York, New York
March 7, 2001

MERRILL LYNCH & CO.
Merrill Lynch, Pierce, Fenner & Smith
Incorporated
Credit Suisse First Boston Corporation
CIBC World Markets Corp.
J. P. Morgan Securities Inc.
Salomon Smith Barney Inc.
As Representatives of the several Underwriters,
c/o Merrill Lynch & Co.
Merrill Lynch, Pierce, Fenner & Smith Incorporated
World Financial Center
North Tower
New York, New York 10281-1209

Ladies and Gentlemen:

NRG Energy, Inc., a corporation organized under the laws of Delaware (the "Company"), proposes to sell to the several underwriters named in Schedule I hereto (the "Underwriters"), for whom you (the "Representatives") are acting as representatives, 10,000,000 Equity Units ("Equity Units") of the Company (such 10,000,000 Equity Units being referred to herein as the "Initial Securities"). The Equity Units will initially consist of 10,000,000 units (referred to as "Corporate

(1) Plus an option to purchase from the Company up to 1,500,000 additional Equity Units to cover over-allotments.

Units") with a stated amount, per Corporate Unit, of \$25 (the "Stated Amount"). The Corporate Units will initially consist of (a) a stock purchase contract (a "Purchase Contract") under which the holder will agree to purchase from the Company on May 18, 2004 (the "Purchase Contract Settlement Date"), for an amount of cash equal to the Stated Amount, a number of newly issued shares of common stock, \$.01 par value ("Common Stock"), of the Company equal to the Settlement Rate (as defined in the Purchase Contract Agreement referred to below) and (b) a \$25 aggregate principal amount 6.5% senior debenture due May 16, 2006 of the Company (a "Debenture") issued pursuant to the Indenture (as defined below).

The Company also proposes to grant to the Underwriters an option to purchase up to 1,500,000 additional Corporate Units to cover over-allotments (the "Option Securities"; the Option Securities, together with the Initial Securities, being hereinafter called the "Securities"). The Debentures that will initially constitute a component of the Corporate Units are hereinafter sometimes referred to as the "Underlying Debentures". In accordance with the

terms of the Purchase Contract Agreement, to be dated as of March 13, 2001 (the "Purchase Contract Agreement"), between the Company and The Bank of New York, as Purchase Contract Agent (the "Purchase Contract Agent"), the Underlying Debentures will be pledged by the Purchase Contract Agent, on behalf of the holders of the Securities, to The Chase Manhattan Bank, as Collateral Agent (the "Collateral Agent"), pursuant to the Pledge Agreement, to be dated as of March 13, 2001 (the "Pledge Agreement"), among the Company, the Purchase Contract Agent and the Collateral Agent, to secure the holders' obligations to purchase Common Stock under the Purchase Contracts. The shares of Common Stock issuable pursuant to the Purchase Contracts are hereinafter called the "Shares".

The Debentures will be issued pursuant to the Indenture, dated as of March 13, 2001 (the "Base Indenture"), between the Company and The Bank of New York, as trustee (the "Debt Trustee"), as amended and supplemented by the First Supplemental Indenture to be dated as of March 13, 2001 (the "First Supplemental Indenture"), between the Company and the Debt Trustee (the Base Indenture, as supplemented and amended by the First Supplemental Indenture, being referred to as the "Indenture").

Pursuant to a Remarketing Agreement (the "Remarketing Agreement") to be dated as of March 13, 2001, among the Company, the Purchase Contract Agent and Merrill Lynch, Pierce, Fenner & Smith Incorporated, the Debentures may be remarketed, subject to certain terms and conditions. The Remarketing Agreement contemplates that, in connection with any such remarketing, the Company and one or more remarketing agents will enter into a Supplemental Remarketing Agreement (the

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"Supplemental Remarketing Agreement") in substantially the form attached as Exhibit A to the Remarketing Agreement.

As used in this Agreement, the term "Operative Documents" means this Agreement, the Purchase Contract Agreement (including the Purchase Contracts), the Pledge Agreement, the Remarketing Agreement, the Debentures, the Indenture and the Corporate Units.

To the extent there are no additional Underwriters listed on Schedule I other than you, the term Representatives as used herein shall mean you, as Underwriters, and the terms Representatives and Underwriters shall mean either the singular or plural as the context requires. Any reference herein to the Registration Statement, the Basic Prospectus, any Preliminary Final Prospectus or the Final Prospectus shall be deemed to refer to and include the documents incorporated by reference therein pursuant to Item 12 of Form S-3 which were filed under the Exchange Act on or before the Effective Date of the Registration Statement or the issue date of the Basic Prospectus, any Preliminary Final Prospectus or the Final Prospectus, as the case may be; and any reference herein to the terms "amend", "amendment" or "supplement" with respect to the Registration Statement, the Basic Prospectus, any Preliminary Final Prospectus or the Final Prospectus shall be deemed to refer to and include the filing of any document under the Exchange Act after the Effective Date of the Registration Statement or the issue date of the Basic Prospectus, any Preliminary Final Prospectus or the Final Prospectus, as the case may be, deemed to be incorporated therein by reference. Certain terms used herein are defined in Section 17 hereof.

1. Representations and Warranties. The Company represents and warrants to, and agrees with, each Underwriter as set forth below in this Section 1.

(a) The Company meets the requirements for use of Form S-3 under the Act and has prepared and filed with the Commission a registration statement (Registration Statement No. 333-52508) on Form S-3, including a related basic prospectus, for registration under the Act of the offering and sale of the Securities. The Company may have filed one or more amendments thereto, including

a Preliminary Final Prospectus, each of which has previously been furnished to you. The Company will next file with the Commission the Final Prospectus in accordance with Rule 424(b). The Company has included in such registration statement, as amended at the Effective Date, all information (other than Rule 430A Information) required by the Act and the rules thereunder to be included in such registration statement and the Final Prospectus. As filed, such Final Prospectus shall contain all Rule 430A Information, together with all other such required information, and,

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except to the extent the Representatives shall agree in writing to a modification, shall be in all substantive respects in the form furnished to you prior to the Execution Time or, to the extent not completed at the Execution Time, shall contain only such specific additional information and other changes (beyond that contained in the Basic Prospectus and any Preliminary Final Prospectus) as the Company has advised you, prior to the Execution Time, will be included or made therein. The Registration Statement, at the Execution Time, meets the requirements set forth in Rule 415(a)(1)(x).

(b) On the Effective Date, the Registration Statement did or will, and when the Final Prospectus is first filed (if required) in accordance with Rule 424(b) and on the Closing Date (as defined herein) and on any date on which Option Securities are purchased, if such date is not the Closing Date (a "settlement date"), the Final Prospectus (and any supplement thereto) will, comply in all material respects with the applicable requirements of the Act, the Exchange Act and the Trust Indenture Act and the respective rules thereunder; on the Effective Date and at the Execution Time, the Registration Statement did not or will not contain any untrue statement of a material fact or omit to state any material fact required to be stated therein or necessary in order to make the statements therein not misleading; on the Closing Date the Indenture will comply in all material respects with the applicable requirements of the Trust Indenture Act and the rules thereunder; and, on the Effective Date, the Final Prospectus, if not filed pursuant to Rule 424(b), will not, and on the date of any filing pursuant to Rule 424(b) and on the Closing Date and any settlement date, the Final Prospectus (together with any supplement thereto) will not, include any untrue statement of a material fact or omit to state a material fact necessary in order to make the statements therein, in the light of the circumstances under which they were made, not misleading; provided, however, that the Company makes no representations or warranties as to (i) that part of the Registration Statement which shall constitute the Statement of Eligibility and Qualification (Form T-1) under the Trust Indenture Act of the Trustee or (ii) the information contained in or omitted from the Registration Statement, or the Final Prospectus (or any supplement thereto) in reliance upon and in conformity with information furnished in writing to the Company by or on behalf of any Underwriter through the Representatives specifically for inclusion in the Registration Statement or the Final Prospectus (or any supplement thereto).

(c) The Company has been duly incorporated and is validly existing as a corporation in good standing under the laws of the State of Delaware with full corporate power and authority to own or lease, as the case may be, and to operate its properties and conduct its business as described in the Final Prospectus and to enter into and perform its obligations under this Agreement, and is duly qualified to do

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business as a foreign corporation and is in good standing under the laws of each jurisdiction which requires such qualification, except where the failure to be so qualified or in good standing is not reasonably likely to have a material adverse effect on the condition (financial or otherwise), prospects, earnings, business or properties of the Company and its Subsidiaries (as defined below)

taken as a whole (a "Material Adverse Effect"). Each of the significant subsidiaries of the Company, all of which are set forth in Schedule II (the "Subsidiaries"), has been duly organized and is validly existing in good standing under the laws of its jurisdiction of organization, with full corporate, limited partnership or limited liability company power and authority to own or lease, as the case may be, and to operate its properties and conduct its business, and is duly qualified to do business as a foreign corporation and is in good standing under the laws of each jurisdiction which requires such qualification, except where the failure to be so qualified or in good standing is not reasonably likely to have a Material Adverse Effect.

(d) The Company's authorized equity capitalization is as set forth in the Final Prospectus; the capital stock of the Company conforms in all material respects to the description thereof contained in the Final Prospectus; the outstanding shares of capital stock have been duly and validly authorized and issued and are fully paid and nonassessable; and, except as set forth in the Final Prospectus, no options, warrants or other rights to purchase, agreements or other obligations to issue, or rights to convert any obligations into or exchange any securities for, shares of capital stock of or ownership interests in the Company are outstanding; all of the outstanding shares of capital stock or other interests of the Subsidiaries held by the Company, directly or indirectly through other Subsidiaries, have been duly and validly authorized and issued and, if applicable, are fully paid and non-assessable, and are owned of record by the Company or a Subsidiary free and clear of any security interest, claim, lien or encumbrance, other than such liens or other security interests granted or created in connection with indebtedness of the projects owned by such Subsidiaries.

(e) There is no franchise, contract or other document of a character required to be described in the Registration Statement or Final Prospectus, or to be filed as an exhibit thereto, which is not described or filed as required.

(f) This Agreement has been duly authorized, executed and delivered by the Company and constitutes a valid and binding obligation of the Company enforceable in accordance with its terms.

(g) The Remarketing Agreement has been duly authorized by the Company and when executed and delivered by the Company will constitute the valid and binding obligation of the Company enforceable in accordance with its terms and

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will conform in all material respects to the description thereof in the Final Prospectus. The Supplemental Remarketing Agreement has been duly authorized by the Company and, at the date of the Supplemental Remarketing Agreement and at the Remarketing Closing Date (as defined in Schedule I to the Supplemental Remarketing Agreement), will have been duly executed and delivered by the Company.

(h) Each of the Purchase Contract Agreement, the Pledge Agreement, the Debentures and the Indenture has been duly authorized and when executed and delivered by the Company (in the case of the Debentures, in accordance with the Indenture) will constitute the valid and binding obligation of the Company enforceable in accordance with its terms, except to the extent that enforcement thereof may be limited by (i) bankruptcy, insolvency, reorganization, moratorium, fraudulent conveyance or other similar laws now or hereafter in effect relating to creditors' rights generally and (ii) general principles of equity (regardless of whether enforceability is considered in a proceeding at law or in equity), and will conform in all material respects to the description thereof in the Final Prospectus. The Debentures will be entitled to the benefits of the Indenture.

(i) The Corporate Units have been duly authorized and when

executed and delivered by the Company will constitute the valid and binding obligations of the Company enforceable in accordance with their terms, except to the extent that enforcement thereof may be limited by (i) bankruptcy, insolvency, reorganization, moratorium, fraudulent conveyance or other similar laws now or hereafter in effect relating to creditors' rights generally and (ii) general principles of equity (regardless of whether enforceability is considered in a proceeding at law or in equity), and will conform in all material respects to the description thereof in the Final Prospectus. The Corporate Units and the Shares have been duly registered under the Exchange Act and have been authorized for listing on the NYSE, subject to official notice of issuance; and the issuance of the Corporate Units is not subject to preemptive or other similar rights.

(j) The Shares issuable pursuant to the Purchase Contract Agreement have been duly authorized and reserved for issuance by the Company and, when issued and delivered in accordance with the provisions of the Purchase Contract Agreement, will be validly issued and fully paid and non-assessable; and the issuance of such Shares is not and will not be subject to preemptive or other similar rights.

(k) None of the Company and the Subsidiaries is or, after giving effect to the offering and sale of the Securities and the application of the proceeds thereof as described in the Final Prospectus, will be an "investment company" as defined in the

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Investment Company Act of 1940, as amended.

(l) No consent, approval, authorization, filing with or order of any court or governmental agency or body is required in connection with the transactions contemplated herein or in the other Operative Documents, except such as have been obtained under the Act, the Trust Indenture Act or otherwise and such as may be required under the blue sky laws of any jurisdiction in connection with the purchase and distribution of the Securities by the Underwriters in the manner contemplated herein and in the Final Prospectus.

(m) None of the issuance and sale of the Securities pursuant hereto, the issuance and sale of the Shares pursuant to the Purchase Contracts and the execution and delivery by the Company of, and performance by the Company of its obligations under, the Operative Documents will conflict with, result in a breach or violation or constitute a default under (i) the charter or by-laws (or other similar documents) of the Company or any Subsidiary, (ii) the terms of any indenture, contract, lease, mortgage, deed of trust, note agreement, loan agreement or other agreement, obligation, condition, covenant or instrument to which the Company or any Subsidiary is a party or is bound or to which their property is subject, or (iii) any statute, law, rule, regulation, judgment, order or decree applicable to the Company or any Subsidiary of any court, regulatory body, administrative agency, governmental body, arbitrator or other authority having jurisdiction over the Company or any Subsidiary or any of their properties, except in the cases of clauses (ii) and (iii) above for any such conflict, breach, violation or default that is not reasonably likely to have a Material Adverse Effect.

(n) No holders of securities of the Company have rights to the registration of such securities under the Registration Statement.

(o) The consolidated historical financial statements of the Company and its consolidated subsidiaries included in the Final Prospectus and the Registration Statement present fairly in all material respects the financial condition, results of operations and cash flows of the Company as of the dates and for the periods indicated, comply as to form with the applicable accounting requirements of the Act and have been prepared in conformity with generally accepted accounting principles applied on a consistent basis throughout the periods involved (except as otherwise noted therein).

(p) The Company has not paid or agreed to pay to any person any compensation for soliciting another to purchase any Securities (except as contemplated by this Agreement).

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(q) The Company and the Subsidiaries possess all licenses, certificates, permits and other authorizations issued by the appropriate federal, state or foreign regulatory authorities necessary to conduct their respective businesses now being operated by them, except where the failure to possess such licenses, certificates, permits or other authorizations is not reasonably likely to have a Material Adverse Effect, and neither the Company nor any Subsidiary has received any notice of proceedings relating to the revocation or modification of any such certificate, authorization or permit which, singly or in the aggregate, if the subject of an unfavorable decision, ruling or finding, would have a Material Adverse Effect; except in all cases as set forth in or contemplated in the Final Prospectus (exclusive of any supplement thereto).

(r) No action, suit or proceeding by or before any court or governmental agency, authority or body or any arbitrator involving the Company or any Subsidiary or its property is pending or, to the knowledge of the Company, threatened that (i) is reasonably likely to have a material adverse effect on the performance of this Agreement or any other Operative Document or the consummation of any of the transactions contemplated hereby or thereby or (ii) is reasonably likely to have a Material Adverse Effect, except as set forth in or contemplated in the Final Prospectus (exclusive of any supplement thereto).

(s) Except as set forth in the Final Prospectus (exclusive of any supplement thereto), neither the Company nor any Subsidiary is in violation or default of (i) any provision of its charter or bylaws (or other similar document), (ii) the terms of any indenture, contract, lease, mortgage, deed of trust, note agreement, loan agreement or other agreement, obligation, condition, covenant or instrument to which it is a party or bound or to which its property is subject, or (iii) any statute, law, rule, regulation, judgment, order or decree of any court, regulatory body, administrative agency, governmental body, arbitrator or other authority having jurisdiction over the Company or such Subsidiary or any of its properties, as applicable, except in the cases of clauses (ii) and (iii) above for any such violation or default that is not reasonably likely to have a Material Adverse Effect.

(t) PricewaterhouseCoopers LLP, who have certified certain financial statements of the Company and its consolidated subsidiaries and delivered their report with respect to the audited consolidated financial statements included in the Final Prospectus, are independent public accountants with respect to the Company within the meaning of the Act and the applicable published rules and regulations thereunder.

(u) No labor problem or dispute with the employees of the Company
or

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any Subsidiary exists or, to the Company's knowledge, is threatened that is reasonably likely to have a Material Adverse Effect, except as set forth in or contemplated in the Final Prospectus (exclusive of any supplement thereto).

(v) The Company and the Subsidiaries are insured by insurers of recognized financial responsibility against such losses and risks and in such amounts as the Company believes are customary in the businesses in which they

are engaged; all policies of insurance and fidelity or surety bonds insuring the Company or any Subsidiary or their respective businesses, assets, employees, officers and directors are in full force and effect; the Company and the Subsidiaries are in compliance with the terms of such policies and instruments in all material respects; and there are no claims by the Company or any Subsidiary under any such policy or instrument as to which any insurance company is denying liability or defending under a reservation of rights clause.

(w) The Company and each Subsidiary maintain a system of internal accounting controls sufficient to provide reasonable assurance that (i) transactions are executed in accordance with management's general or specific authorizations; (ii) transactions are recorded as necessary to permit preparation of financial statements in conformity with generally accepted accounting principles and to maintain asset accountability; (iii) access to assets is permitted only in accordance with management's general or specific authorization; and (iv) the recorded accountability for assets is compared with the existing assets at reasonable intervals and appropriate action is taken with respect to any differences.

(x) The Company has not taken, directly or indirectly, any action that has constituted or that was designed to or might reasonably be expected to cause or result in, under the Exchange Act or otherwise, the stabilization or manipulation of the price of any security of the Company to facilitate the sale or resale of the Securities.

(y) The Company and each Subsidiary are (i) in compliance with any and all applicable foreign, federal, state and local laws and regulations relating to the protection of human health and safety, the environment or hazardous or toxic substances or wastes, pollutants or contaminants ("Environmental Laws"), (ii) have received and are in compliance with all permits, licenses or other approvals required of them under applicable Environmental Laws to conduct their respective businesses and (iii) have not received notice of any actual or potential liability for the investigation or remediation of any disposal or release of hazardous or toxic substances or wastes, pollutants or contaminants, except where such non-compliance with Environmental Laws, failure to receive required permits, licenses or other approvals, or liability (A) would not, individually or in the aggregate, have a

Material Adverse Effect, or (B) is set forth in or contemplated in the Final Prospectus (exclusive of any supplement thereto). Except as set forth in the Final Prospectus, neither the Company nor any Subsidiary has been named as a "potentially responsible party" under the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended.

(z) Except as set forth in the Final Prospectus and except for (i) San Francisco Thermal, Limited Partnership, (ii) Pittsburgh Thermal, Limited Partnership, and (iii) RSD Power Partners, L.P. (each of which is subject to regulation by virtue of its steam sales), none of the Company or the Subsidiaries is subject to regulation as a "steam corporation", "electric utility", "electric utility company", "utility company" or "public utility company" (collectively, "Regulated Utilities") or any similar term by any federal, state, local or foreign public utility commission or regulatory body or under any applicable federal, state, local or foreign law as a Regulated Utility other than as public utilities that have been granted market-based rates under the Federal Power Act or any state regulation applicable to "exempt wholesale generators," as defined in Section 32 of the Public Utility Holding Company Act of 1935, as amended ("PUHCA").

(aa) None of the Company or the Subsidiaries is an "electric utility company", a "public utility company", a "holding company", a "subsidiary company" of any of the foregoing or an "affiliate" of any of the foregoing or an "affiliate" of a "subsidiary" of a "holding company" (except insofar as the Company is a subsidiary of a registered holding company), each as defined in

PUHCA.

(bb) The Company's percentage ownership interest in its facilities, operations or projects under construction as set forth in the Final Prospectus are true and accurate in all material respects as of the date presented and any changes in the Company's percentage ownership interest in its facilities, operations or projects under construction which have occurred between such date and the date of this Agreement are as set forth on Schedule III hereto.

Any certificate signed by any officer of the Company and delivered to the Representatives or counsel for the Underwriters in connection with the offering of the Securities shall be deemed a representation and warranty by the Company, as to matters covered thereby, to each Underwriter.

2. Purchase and Sale. (a) Subject to the terms and conditions and in reliance upon the representations and warranties herein set forth, the Company agrees to sell to each Underwriter, and each Underwriter agrees, severally and not jointly, to purchase from the Company, at a purchase price of \$24.25 per Equity Unit, the

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amount of the Initial Securities set forth opposite such Underwriter's name in Schedule I hereto.

(b) Subject to the terms and conditions and in reliance upon the representations and warranties herein set forth, the Company hereby grants an option to the several Underwriters to purchase, severally and not jointly, up to 1,500,000 Option Securities at the same purchase price per Equity Unit as the Underwriters shall pay for the Initial Securities. Said option may be exercised only to cover over-allotments in the sale of the Initial Securities by the Underwriters. Said option may be exercised in whole or in part at any time on or before the 30th day after the date of the Final Prospectus upon written or telegraphic notice by the Representatives to the Company setting forth the number of shares of the Option Securities as to which the several Underwriters are exercising the option and the settlement date. The number of Option Securities to be purchased by each Underwriter shall be the same percentage of the total number of shares of the Option Securities to be purchased by the several Underwriters as such Underwriter is purchasing of the Initial Securities, subject to such adjustments as you in your absolute discretion shall make to eliminate any fractional shares.

3. Delivery and Payment. (a) Delivery of and payment for the Initial Securities and the Option Securities (if the option provided for in Section 2(b) hereof shall have been exercised on or before the third Business Day prior to the Closing Date) shall be made at 10:00 AM, New York City time, on March 13, 2001, or at such time on such later date not more than three Business Days after the foregoing date as the Representatives shall designate, which date and time may be postponed by agreement between the Representatives and the Company or as provided in Section 9 hereof (such date and time of delivery and payment for the Securities being herein called the "Closing Date"). Delivery of the Securities shall be made to the Representatives for the respective accounts of the several Underwriters, against payment by the several Underwriters through the Representatives, of the purchase price thereof to or upon the order of the Company by wire transfer payable in same-day funds to an account specified by the Company. Delivery of the Initial Securities and the Option Securities shall be made through the facilities of The Depository Trust Company unless the Representatives shall otherwise instruct.

(b) If the option provided for in Section 2(b) hereof is exercised after the third Business Day prior to the Closing Date, the Company will deliver the Option Securities (at the expense of the Company) to the Representatives, at World Financial Center, North Tower, New York, New York, on the date specified by the Representatives (which shall be within three Business Days after exercise of said option) for the respective accounts of the several Underwriters, against

payment by

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the several Underwriters through the Representatives of the purchase price thereof to or upon the order of the Company by wire transfer payable in same-day funds to an account specified by the Company. If settlement for the Option Securities occurs after the Closing Date, the Company will deliver to the Representatives on the settlement date for the Option Securities, and the obligation of the Underwriters to purchase the Option Securities shall be conditioned upon receipt of, supplemental opinions, certificates and letters confirming as of such date the opinions, certificates and letters delivered on the Closing Date pursuant to Section 6 hereof.

4. Offering by Underwriters. It is understood that the several Underwriters propose to offer the Securities for sale to the public as set forth in the Final Prospectus.

5. Agreements. The Company agrees with the several Underwriters that:

(a) The Company will use its best efforts to cause the Registration Statement, if not effective at the Execution Time, and any amendment thereof, to become effective. Prior to the termination of the offering of the Securities, the Company will not file any amendment of the Registration Statement or supplement (including the Final Prospectus or any Preliminary Final Prospectus) to the Basic Prospectus or any Rule 462(b) Registration Statement unless the Company has furnished you a copy for your review prior to filing and will not file any such proposed amendment or supplement to which you reasonably object. Subject to the foregoing sentence, if the Registration Statement has become or becomes effective pursuant to Rule 430A, or filing of the Final Prospectus is otherwise required under Rule 424(b), the Company will cause the Final Prospectus, properly completed, and any supplement thereto to be filed with the Commission pursuant to the applicable paragraph of Rule 424(b) within the time period prescribed and will provide evidence satisfactory to the Representatives of such timely filing. The Company will promptly advise the Representatives (1) when the Registration Statement, if not effective at the Execution Time, shall have become effective, (2) when the Final Prospectus, and any supplement thereto, shall have been filed (if required) with the Commission pursuant to Rule 424(b) or when any Rule 462(b) Registration Statement shall have been filed with the Commission, (3) when, prior to termination of the offering of the Securities, any amendment to the Registration Statement shall have been filed or become effective, (4) of any request by the Commission or its staff for any amendment of the Registration Statement, or any Rule 462(b) Registration Statement, or for any supplement to the Final Prospectus or for any additional information, (5) of the issuance by the Commission of any stop order suspending the effectiveness of the Registration Statement or the institution or threatening of any

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proceeding for that purpose and (6) of the receipt by the Company of any notification with respect to the suspension of the qualification of the Securities for sale in any jurisdiction or the institution or threatening of any proceeding for such purpose. The Company will use its best efforts to prevent the issuance of any such stop order or the suspension of any such qualification and, if issued, to obtain as soon as possible the withdrawal thereof.

(b) If, at any time when a prospectus relating to the Securities is required to be delivered under the Act, any event occurs as a result of which the Final Prospectus as then supplemented would include any untrue statement of a material fact or omit to state any material fact necessary to make the

statements therein in the light of the circumstances under which they were made not misleading, or if it shall be necessary to amend the Registration Statement or supplement the Final Prospectus to comply with the Act or the rules thereunder, the Company promptly will (1) notify the Representatives of any such event, (2) prepare and file with the Commission, subject to the second sentence of paragraph (a) of this Section 5, an amendment or supplement which will correct such statement or omission or effect such compliance; and (3) supply any supplemented Final Prospectus to you in such quantities as you may reasonably request.

(c) As soon as practicable, the Company will make generally available to its security holders and to the Representatives an earnings statement or statements of the Company and its subsidiaries which will satisfy the provisions of Section 11(a) of the Act and Rule 158 under the Act.

(d) The Company will furnish to the Representatives and counsel for the Underwriters signed copies of the Registration Statement (including exhibits thereto) and to each other Underwriter a copy of the Registration Statement (without exhibits thereto) and, so long as delivery of a prospectus by an Underwriter or dealer may be required by the Act, as many copies of each Preliminary Final Prospectus and the Final Prospectus and any supplement thereto as the Representatives may reasonably request.

(e) The Company will arrange, if necessary, for the qualification of the Securities for sale under the laws of such jurisdictions as the Representatives may designate and will maintain such qualifications in effect so long as required for the distribution of the Securities; provided that in no event shall the Company be obligated to qualify to do business in any jurisdiction where it is not now so qualified or to take any action that would subject it to service of process in suits, other than those arising out of the offering or sale of the Securities, in any jurisdiction where it is not now so subject.

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(f) Except as contemplated by the Operative Documents and the Underwriting Agreement dated as of March 7, 2001 between the Company and the Underwriters named therein relating to the sale by the Company of shares of Common Stock, the Company will not, without the prior written consent of Merrill Lynch, Pierce, Fenner & Smith Incorporated and Credit Suisse First Boston Corporation, offer, sell, contract to sell, pledge, or otherwise dispose of, (or enter into any transaction which is designed to, or might reasonably be expected to, result in the disposition (whether by actual disposition or effective economic disposition due to cash settlement or otherwise) by the Company or any affiliate of the Company or any person in privity with the Company or any affiliate of the Company) directly or indirectly, including the filing (or participation in the filing) of a registration statement with the Commission in respect of, or establish or increase a put equivalent position or liquidate or decrease a call equivalent position within the meaning of Section 16 of the Exchange Act, any Equity Units, Purchase Contracts, or Common Stock or any securities substantially similar to Equity Units, Purchase Contracts, or Common Stock or any securities convertible into, or exercisable, or exchangeable for, any of the foregoing; or publicly announce an intention to effect any such transaction, for a period of ninety days after the date of the Underwriting Agreement, provided, however, that the Company may issue and sell Common Stock pursuant to any employee stock option plan, stock ownership plan or dividend reinvestment plan of the Company in effect at the Execution Time and the Company may issue Common Stock issuable upon the conversion of securities or the exercise of warrants outstanding at the Execution Time.

(g) The Company will not take, directly or indirectly, any action designed to or that would constitute or that might reasonably be expected to cause or result, under the Exchange Act or otherwise, in stabilization or manipulation of the price of any security of the Company to facilitate the sale or resale of the Securities.

(h) The Company agrees to pay the costs and expenses relating to the following matters: (i) the preparation, printing or reproduction and filing with the Commission of the Registration Statement (including financial statements and exhibits thereto), each Preliminary Final Prospectus, the Final Prospectus and each amendment or supplement to any of them; (ii) the printing (or reproduction) and delivery (including postage, air freight charges and charges for counting and packaging) of such copies of the Registration Statement, each Preliminary Final Prospectus, the Final Prospectus, and all amendments or supplements to any of them, as may, in each case, be reasonably requested for use in connection with the offering and sale of the Securities; (iii) the preparation, printing, authentication, issuance and delivery of certificates for the Securities, including any stamp or transfer taxes in connection with the original issuance and sale of the Securities; (iv) the printing (or

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reproduction) and delivery of this Agreement, any blue sky memorandum and all other agreements or documents printed (or reproduced) and delivered in connection with the offering of the Securities; (v) the registration of the Securities under the Exchange Act and the listing of the Securities on the New York Stock Exchange; (vi) any registration or qualification of the Securities for offer and sale under the securities or blue sky laws of the several states (including filing fees and the reasonable fees and expenses of counsel for the Underwriters relating to such registration and qualification); (vii) any filings required to be made with the National Association of Securities Dealers, Inc. (including filing fees and the reasonable fees and expenses of counsel for the Underwriters relating to such filings up to but not exceeding an aggregate of \$10,000 in the case of (vi) and (vii)); (viii) the transportation and other expenses incurred by or on behalf of Company representatives in connection with presentations to prospective purchasers of the Securities; (ix) the fees and expenses of the Company's accountants and the fees and expenses of counsel (including local and special counsel) for the Company; (x) the cost of printing the Indenture and certificates representing the Debentures, (xi) the cost and charges of the Debt Trustee, the Purchase Contract Agent, the Collateral Agent and any other fiduciary agents; (xii) any fees payable to rating agencies in connection with the rating of the Securities and (xiii) all other costs and expenses incident to the performance by the Company of its obligations hereunder.

(i) The Company will use its best efforts to effect the listing of the Corporate Units and the Shares on the New York Stock Exchange.

(j) The Company will reserve and keep available at all times, free of preemptive or other similar rights and liens and adverse claims, sufficient shares of Common Stock to satisfy its obligations to issue Shares upon settlement of the Purchase Contracts and shall take all actions necessary to keep effective the Registration Statement with respect to the Shares.

6. Conditions to the Obligations of the Underwriters. The obligations of the Underwriters to purchase the Initial Securities and the Option Securities, as the case may be, shall be subject to the accuracy of the representations and warranties on the part of the Company contained herein as of the Execution Time, the Closing Date and any settlement date pursuant to Section 3 hereof, to the accuracy of the statements of the Company made in any certificates pursuant to the provisions hereof, to the performance by the Company of its obligations hereunder and to the following additional conditions:

(a) If the Registration Statement has not become effective prior to the Execution Time, unless the Representatives agree in writing to a later time, the

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Registration Statement will become effective not later than (i) 6:00 PM New York City time on the date of determination of the public offering price, if such determination occurred at or prior to 3:00 PM New York City time on such date or (ii) 9:30 AM on the Business Day following the day on which the public offering price was determined, if such determination occurred after 3:00 PM New York City time on such date; if filing of the Final Prospectus, or any supplement thereto, is required pursuant to Rule 424(b), the Final Prospectus, and any such supplement, will be filed in the manner and within the time period required by Rule 424(b); and no stop order suspending the effectiveness of the Registration Statement shall have been issued and no proceedings for that purpose shall have been instituted or threatened.

(b) The Company shall have requested and caused Gibson, Dunn & Crutcher LLP, counsel for the Company, to have furnished to the Representatives their opinion, dated the Closing Date and addressed to the Representatives, to the effect that:

(i) this Agreement has been duly authorized, executed and delivered by the Company;

(ii) each of the Purchase Contract Agreement, the Remarketing Agreement, the Pledge Agreement and the Indenture has been duly authorized, executed and delivered by the Company, and constitutes a valid and binding obligation of the Company enforceable Company in accordance with its terms;

(iii) The Corporate Units (i) are entitled to the benefits of the Purchase Contract Agreement, (ii) have been duly authorized, executed and delivered by the Company, and (iii) when authenticated by the Purchase Contract Agent in the manner provided for in the Purchase Contract Agreement and delivered to the Underwriters against payment therefor as set forth in this Agreement and assuming the certificates evidencing the Corporate Units have been duly executed by the Purchase Contract Agent as attorney-in-fact of the holders thereof, will constitute valid and binding obligations of the Company, enforceable against the Company in accordance with their terms;

(iv) The Debentures (i) are entitled to the benefits of the Indenture, (ii) have been duly authorized, executed and delivered by the Company, and (iii) when authenticated by the Debt Trustee in the manner provided for in the Indenture and delivered to the Underwriters against payment therefor as set

forth in this Agreement, will constitute valid and binding obligations of the Company, enforceable against the Company in accordance with their terms;

(v) the Shares initially subject to the Purchase Contract Agreement have been duly authorized and reserved for issuance by the Company and, when issued by the Company in accordance with the provisions of the Purchase Contract Agreement and the Purchase Contracts, will be validly issued, fully paid and non-assessable; and the holders of outstanding shares of capital stock of the Company are not entitled to preemptive or other rights to subscribe for the Securities pursuant to the Company's Certificate of Incorporation or Delaware law;

(vi) the issuance of the Corporate Units is not subject to preemptive or other similar rights pursuant to the Company's Certificate of Incorporation or Delaware law;

(vii) the certificates for the Corporate Units are in the respective forms contemplated by the Purchase Contract Agreement, the certificates for the Debentures are in the forms contemplated by the Indenture and the certificates for the Shares comply with all applicable requirements of Delaware law and the applicable requirements of the New York Stock Exchange;

(viii) the Indenture has been qualified under the Trust Indenture Act;

(ix) the statements included in the Final Prospectus under the captions "Description of the Equity Units", "Description of the Purchase Contracts" (except under the heading "Book-Entry System"), "Certain Provisions of the Purchase Contract Agreement and the Pledge Agreement", "Description of the Debentures" and "Description of Debt Securities", to the extent they purport to summarize the provisions of the Purchase Contract Agreement, the Remarketing Agreement, the Pledge Agreement, the Indenture, the Debentures and the Corporate Units, fairly summarize such provisions;

(x) To the extent that the statements in the Final Prospectus under the heading "Material Federal Income Tax Consequences" purport to describe specific provisions of the Internal Revenue Code, such statements present, in all material respects, an accurate summary of such provisions.

(xi) Upon the occurrence of a Termination Event (as defined in the

Purchase Contract Agreement), Section 365(e)(1) of the Bankruptcy Code (11 U.S.C. ss. 101-1330, as amended) should not substantively limit the provisions of Sections 3.15 and 5.8 of the Purchase Contract Agreement and Section 4.3 of the Pledge Agreement that require termination of the Purchase Contracts and release of the Collateral Agent's security interest in the Debentures; provided, however, that procedural restrictions respecting relief from the automatic stay under Section 362 of the Code may affect the timing of the exercise of such rights and remedies.

(xii) the Registration Statement has become effective under the Act; any required filing of the Basic Prospectus, any Preliminary Final Prospectus and the Final Prospectus, and any supplements thereto, pursuant to Rule 424(b) have been made in the manner and within the time period required by Rule 424(b); to the knowledge of such counsel, no stop order suspending the effectiveness of the Registration Statement has been issued, no proceedings for that purpose have been instituted or threatened and the Registration Statement and the Final Prospectus (other than the financial statements and other financial information contained therein, as to which such counsel need express no opinion) comply as to form in all material respects with the applicable requirements of the Act, the Exchange Act, the Trust Indenture Act and the respective rules thereunder; and

(xiii) the Company is not and, after giving effect to the offering and sale of the Securities and the application of the proceeds thereof as described in the Final Prospectus, will not be, an "investment company" required to be registered under the Investment Company Act of 1940, as amended.

The foregoing opinions as to enforceability and the legal, valid and binding nature of obligations may be subject to (i) the effect of any bankruptcy, insolvency, reorganization, moratorium, arrangement or similar laws affecting the rights and remedies of creditors generally (including, without

limitation, the effect of statutory or other laws regarding fraudulent transfers or preferential transfers) and (ii) general principles of equity, including without limitation concepts of materiality, reasonableness, good faith and fair dealing and the possible unavailability of specific performance, injunctive relief or other equitable remedies regardless of whether enforceability is considered in a proceeding in equity or at law. The opinion of Gibson Dunn and Crutcher LLP may be subject to other customary exceptions, assumptions and qualifications.

In rendering such opinion, such counsel may rely (A) as to matters involving the application of laws of any jurisdiction other than the State of Delaware or the

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State of New York or the Federal laws of the United States, to the extent they deem proper and specified in such opinion, upon the opinion of other counsel reasonably satisfactory to counsel for the Underwriters and (B) as to matters of fact, to the extent they deem proper, on certificates of responsible officers of the Company and public officials. References to the Final Prospectus in this paragraph (b) include any supplements thereto at the Closing Date.

Furthermore, following the opinion paragraphs, such counsel shall state the following:

"We have participated in conferences with officers and other representatives of the Company, representatives of the independent auditors of the Company and your representatives and counsel at which the contents of the Registration Statement and/or Final Prospectus and related matters were discussed. Because the purpose of our professional engagement was not to establish or confirm factual matters and because the scope of our examination of the affairs of the Company did not permit us to verify the accuracy, completeness or fairness of the statements set forth in the Registration Statement and/or Final Prospectus, we are not passing upon and do not assume any responsibility for the accuracy, completeness or fairness of the statements contained in the Registration Statement and/or Final Prospectus, except to the extent set forth below in the last sentence of the immediately following paragraph.

On the basis of the foregoing, and except for the financial statements and schedules and other financial and statistical data included therein, as to which we express no opinion or belief, no facts have come to our attention that lead us to believe that the Registration Statement, on the Effective Date or on the date the Registration Statement was last deemed amended, contained any untrue statement of a material fact or omitted to state a material fact required to be stated therein or necessary to make the statements therein not misleading or that the Final Prospectus, as of its date and as of the Closing Date, contained or contains any untrue statement of a material fact or omitted or omits to state a material fact necessary to make the statements therein, in the light of the circumstances under which they were made, not misleading."

(c) The Company shall have furnished to the Representatives the opinion of James J. Bender, Esq., general counsel of the Company, dated the Closing Date and addressed to the Representatives, to the effect that:

(i) each of the Company and the Subsidiaries has been duly

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incorporated and is validly existing as a corporation in good standing under the laws of the jurisdiction in which it is chartered or organized, with full corporate power and authority to own or lease, as the case may be, and to operate its properties and conduct its business as described in the Final Prospectus and to enter into and perform its obligations under, and as contemplated under, the Operative Documents to which it is a party, and is duly qualified to do business as a foreign corporation and is in good standing under the laws of each jurisdiction which requires such qualification, except where the failure to be so qualified or in good standing is not reasonably likely to have a Material Adverse Effect;

(ii) all the outstanding shares of capital stock of the Company and each Subsidiary have been duly and validly authorized and issued and are fully paid and nonassessable, and, except as otherwise set forth in the Final Prospectus, all outstanding shares of capital stock of each of the Subsidiaries are owned of record by the Company either directly or through wholly owned Subsidiaries free and clear of any perfected security interest and, to the knowledge of such counsel, after due inquiry, any other security interest, claim, lien or encumbrance other than such liens or other security interests granted or created in connection with indebtedness of the projects owned by such Subsidiaries;

(iii) the Company's authorized equity capitalization is as set forth in the Final Prospectus; the capital stock of the Company conforms in all material respects to the description thereof contained in the Final Prospectus; and, except as set forth in the Final Prospectus, no options, warrants or other rights to purchase, agreements or other obligations to issue, or rights to convert any obligations into or exchange any securities for, shares of capital stock of or ownership interests in the Company are outstanding

(iv) there is no pending or, to the knowledge of such counsel, threatened action, suit or proceeding by or before any court or governmental agency, authority or body or any arbitrator involving the Company or any of its subsidiaries or its or their property of a character required to be disclosed in the Registration Statement which is not adequately disclosed in the Final Prospectus, and there is no franchise, contract or other document of a character required to be described in the Registration Statement or Final Prospectus, or to be filed as an exhibit thereto, which is not described or filed as required;

(v) no consent, approval, authorization, filing with or order of

any court or governmental agency or body is required in connection with the transactions contemplated herein and in the other Operative Documents, except such as have been obtained under the Act, the Trust Indenture Act or otherwise and such as may be required under the blue sky laws of any jurisdiction in connection with the purchase and distribution of the Securities by the Underwriters (about which such counsel need express no opinion) in the manner contemplated in this Agreement and in the Final Prospectus and such other approvals (specified in such opinion) as have been obtained;

(vi) none of the issuance and sale of the Securities pursuant hereto, the issuance and sale of the Shares pursuant to the Purchase Contracts and the execution and delivery by the Company of, and the performance by the Company of its obligations under, the Operative Documents will conflict with, result in a breach or violation of or constitute a default under, (i) the charter or by-laws of the

Company or its Subsidiaries, (ii) the terms of any indenture, contract, lease, mortgage, deed of trust, note agreement, loan agreement or other agreement, obligation, condition, covenant or instrument to which the Company or its Subsidiaries is a party or bound or to which its or their property is subject, or (iii) any statute, law, rule, regulation, judgment, order or decree applicable to the Company or its Subsidiaries of any court, regulatory body, administrative agency, governmental body, arbitrator or other authority having jurisdiction over the Company or its Subsidiaries or any of its or their properties, except in the cases of clauses (ii) and (iii) above, such conflict, breach, violation or default which is not reasonably likely to have a Material Adverse Effect

(vii) except as set forth in the Final Prospectus and except for (i) San Francisco Thermal, Limited Partnership, (ii) Pittsburgh Thermal, Limited Partnership, and (iii) RSD Power Partners, L.P., (each of which is subject to regulation by virtue of its steam sales) none of the Company or its Subsidiaries is subject to regulation as a Regulated Utility or any similar term by any federal law, law of the state of Minnesota or Minnesota public utility commission or federal regulatory body or under any such law as a Regulated Utility other than as public utilities that have been granted market-based rates under the Federal Power Act or any state regulation applicable to "exempt wholesale generators," as defined in Section 32 of PUHCA;

(viii) none of the Company or its Subsidiaries is an "electric utility company", a "public utility company", a "holding company", a "subsidiary company" of any of the foregoing, an "affiliate" of any of the foregoing, or an "affiliate" of a "subsidiary" of a "holding company" (except insofar as the

Company is a subsidiary of a registered holding company), each as defined in PUHCA;

(ix) except as set forth in the Final Prospectus, the Company and its Subsidiaries possess and are in compliance with all approvals, certificates, authorizations, licenses and permits issued by the appropriate state, Federal or foreign regulatory agencies or bodies necessary to conduct their business as described in the Final Prospectus, except where the failure to possess such approvals, certificates, authorizations, licenses and permits or be in compliance therewith would not be reasonably likely to have a Material Adverse Effect and, to the knowledge of such counsel, none of the Company or its Subsidiaries has received any notice of proceedings relating to the revocation or modification of any such approval, certificate, authorization, license or permit which, individually or in the aggregate, if it became the subject of an unfavorable decision, ruling or finding, would be reasonably likely to have a Material Adverse Effect; and

(x) no holders of securities of the Company have rights to the registration of such securities under the Registration Statement that have not been waived with respect to the offering of the Securities.

(d) The Representatives shall have received from Skadden, Arps, Slate, Meagher & Flom LLP, counsel for the Underwriters, such opinion or opinions, dated the Closing Date and addressed to the Representatives, with respect to the issuance and sale of the Securities, the Registration Statement, the Final Prospectus (together with any supplement thereto), the Operative Documents and other related matters as the Representatives may reasonably require, and the Company shall have furnished to such counsel such documents as they request for the purpose of enabling them to pass upon such matters.

(e) The Representatives shall have received from counsel for The Bank of New York, as Purchase Contract Agent, such opinion or opinions, dated the Closing Date and addressed to the Representatives to the effect that:

(i) The Bank of New York is duly incorporated and is validly existing as a banking corporation with trust powers under the laws of the United States with all necessary power and authority to execute, deliver and perform its obligations under the Purchase Contract Agreement and the Pledge Agreement.

(ii) The execution, delivery and performance by the Purchase

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Contract Agent of the Purchase Contract Agreement and the Pledge Agreement, and the authentication and delivery of the Securities have been duly authorized by all necessary corporate action on the part of the Purchase Contract Agent. The Purchase Contract Agreement and the Pledge Agreement have been duly executed and delivered by the Purchase Contract Agent, and constitute the legal, valid and binding obligations of the Purchase Contract Agent, enforceable against the Purchase Contract Agent in accordance with its terms, except to the extent that enforcement thereof may be limited by (i) bankruptcy, insolvency, reorganization, moratorium, fraudulent conveyance or other similar laws now or hereafter in effect relating to creditors' rights generally and (ii) general principles of equity (regardless of whether enforceability is considered in a proceeding at law or in equity).

(iii) the execution, delivery and performance of the Purchase Contract Agreement and the Pledge Agreement by the Purchase Contract Agent does not conflict with or constitute a breach of the charter or by-laws of the Purchase Contract Agent.

(iv) No consent, approval or authorization of, or registration with or notice to, any New York or federal governmental authority or agency is required for the execution, delivery or performance by the Purchase Contract Agent of the Purchase Contract Agreement and the Pledge Agreement.

(f) The Company shall have furnished to the Representatives a certificate of the Company, signed by the Chairman of the Board or the President and the principal financial or accounting officer of the Company, dated the Closing Date, to the effect that the signers of such certificate have carefully examined the Registration Statement, the Final Prospectus, any supplements to the Final Prospectus and this Agreement and that:

(i) the representations and warranties of the Company in this Agreement are true and correct on and as of the Closing Date with the same effect as if made on the Closing Date and the Company has complied with all the agreements and satisfied all the conditions on its part to be performed or satisfied at or prior to the Closing Date;

(ii) no stop order suspending the effectiveness of the Registration Statement has been issued and no proceedings for that purpose have been instituted or, to the Company's knowledge, threatened; and

(iii) since the date of the most recent financial statements included

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or incorporated by reference in the Final Prospectus (exclusive of any supplement thereto), there has been no material adverse effect on the condition (financial or otherwise), earnings, prospects, business or properties of the Company and its subsidiaries, taken as a whole, whether or not arising from transactions in the ordinary course of business, except as set forth in or contemplated in the Final Prospectus (exclusive of any supplement thereto).

(g) The Company shall have requested and caused PricewaterhouseCoopers LLP to have furnished to the Representatives, at the Execution Time and at the Closing Date, letters, dated respectively as of the Execution Time and as of the Closing Date, in form and substance satisfactory to the Representatives, confirming that they are independent accountants within the meaning of the Act and the Exchange Act and the respective applicable rules and regulations adopted by the Commission thereunder and that they have audited the consolidated financial statements of the Company for the years in the period ended December 31, 2000, December 31, 1999 and December 31, 1998 and as at December 31, 2000, December 31, 1999 and December 31, 1998, respectively, in accordance with generally accepted auditing standards, and stating in effect that:

(i) in their opinion the audited consolidated financial statements and financial statement schedules included or incorporated by reference in the Registration Statement and the Final Prospectus and reported on by them comply as to form in all material respects with the applicable accounting requirements of the Act and the Exchange Act and the related rules and regulations adopted by the Commission;

(ii) on the basis of a reading of the unaudited consolidated financial statements for January of both 2000 and 2001 made available by the Company and its subsidiaries, having been advised by officials of the Company that no financial statements as of any date or for any period subsequent to January 31, 2001 were available; carrying out certain specified procedures (but not an examination in accordance with generally accepted auditing standards) which would not necessarily reveal matters of significance with respect to the comments set forth in such letter; a reading of the minutes of the meetings of the stockholders, directors and committees of the Company and the Subsidiaries; and inquiries of certain officials of the Company who have responsibility for financial and accounting matters of the Company and its subsidiaries as to transactions and events subsequent to December 31, 2000 and as to whether the unaudited consolidated financial statements for January of both 2000 and 2001 are stated on a basis substantially consistent with that of the audited consolidated financial

statements in the Registration Statement, nothing came to their attention which caused them to believe that, with respect to the period subsequent to December 31, 2000, there were, at January 31, 2001, any increases in the long-term debt or total current liabilities of the Company and its subsidiaries or decreases in the stockholders' equity of the Company or decreases in total current assets or total assets of the Company and its subsidiaries as compared with the amounts shown on the December 31, 2000 consolidated balance sheet included or incorporated by reference in the Registration Statement and the Final Prospectus, or for the period from January 1, 2001 to January 31, 2001 there were any decreases, as compared with the corresponding period in the previous year, in consolidated operating revenues or income before income taxes or net income of the Company and its subsidiaries, except in all instances for changes or decreases set forth in such letter, in which case the letter shall be accompanied by an explanation by the

Company as to the significance thereof unless said explanation is not deemed necessary by the Representatives;

(iii) on the basis of a reading of the minutes of the meetings of the stockholders, directors and committees of the Company and the Subsidiaries; and inquiries of certain officials of the Company who have responsibility for financial and accounting matters of the Company and its subsidiaries as to transactions and events subsequent to December 31, 2000, nothing came to their attention which caused them to believe that, with respect to the period subsequent to January 31, 2001, there were, at a specified date not more than five days prior to the date of the letter, any increases in the long-term debt or total current liabilities of the Company and its subsidiaries or decreases in the stockholders' equity of the Company or decreases in total current assets or total assets of the Company and its subsidiaries as compared with the amounts shown on the December 31, 2000 consolidated balance sheet included or incorporated by reference in the Registration Statement and the Final Prospectus, or for the period from February 1, 2001 to such specified date there were any decreases, as compared with the corresponding period in the previous year, in consolidated operating revenues or income before income taxes or net income of the Company and its subsidiaries, except in all instances for changes or decreases set forth in such letter, in which case the letter shall be accompanied by an explanation by the Company as to the significance thereof unless said explanation is not deemed necessary by the Representatives;

(iv) they have performed certain other specified procedures as a result of which they determined that certain information of an accounting,

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financial or statistical nature (which is limited to accounting, financial or statistical information derived from the general accounting records of the Company and its subsidiaries) set forth in the Registration Statement and the Final Prospectus, including the financial information set forth under the captions "Summary and Consolidated Financial and Operating Data", (i) certain information included or incorporated by reference in the Company's Annual Report on Form 10-K for the year ended December 31, 1999, incorporated by reference in the Registration Statement and the Final Prospectus, (ii) certain information included or incorporated by reference in the Company's Quarterly Reports on Form 10-Q, incorporated by reference in the Registration Statement and the Final Prospectus, and (iii) certain information included or incorporated by reference in the Company's Current Report on Form 8-K dated March 5, 2001, incorporated by reference in the Registration Statement and the Final Prospectus, agrees with the accounting records of the Company and its subsidiaries, excluding any questions of legal interpretation.

(h) Subsequent to the Execution Time or, if earlier, the dates as of which information is given in the Registration Statement (exclusive of any amendment thereof) and the Final Prospectus (exclusive of any supplement thereto), there shall not have been (i) any change or decrease in the items specified in the letter or letters referred to in paragraph (e) of this Section 6 or (ii) any change, or any development involving a prospective change, in or affecting the condition (financial or otherwise), earnings, business or properties of the Company and its subsidiaries taken as a whole, whether or not arising from transactions in the ordinary course of business, except as set forth in or contemplated in the Final Prospectus (exclusive of any supplement thereto) the effect of which, in any case referred to in clause (i) or (ii) above, is, in the sole judgment of the Representatives, so material and adverse as to make it impractical or inadvisable to proceed with the offering or delivery of the Securities as contemplated by the Registration Statement

(exclusive of any amendment thereof) and the Final Prospectus (exclusive of any supplement thereto).

(i) Prior to the Closing Date, the Company shall have furnished to the Representatives such further information, certificates and documents as the Representatives may reasonably request.

(j) Subsequent to the Execution Time, there shall not have been any decrease in the rating of any of the Company's debt securities by any "nationally recognized statistical rating organization" (as defined for purposes of Rule 436(g) under the Act) or any notice given of any intended or potential decrease in any such rating or of a possible change in any such rating that does not indicate the direction

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of the possible change.

(k) At the date of this Agreement, the Corporate Units and the Shares shall have been approved for listing, subject to official notice of issuance and evidence of satisfactory distribution, on the New York Stock Exchange, and satisfactory evidence of such actions shall have been provided to the Representatives.

If any of the conditions specified in this Section 6 shall not have been fulfilled in all material respects when and as provided in this Agreement, or if any of the opinions and certificates mentioned above or elsewhere in this Agreement shall not be in all material respects reasonably satisfactory in form and substance to the Representatives and counsel for the Underwriters, this Agreement and all obligations of the Underwriters hereunder may be canceled at, or at any time prior to, the Closing Date by the Representatives. Notice of such cancellation shall be given to the Company in writing or by telephone or facsimile confirmed in writing.

The documents required to be delivered by this Section 6 shall be delivered at the office of the Company, 901 Marquette Avenue, Suite 2300, Minneapolis, Minnesota, on the Closing Date.

7. Reimbursement of Underwriters' Expenses. If the sale of the Securities provided for herein is not consummated because any condition to the obligations of the Underwriters set forth in Section 6 hereof is not satisfied, because of any termination pursuant to Section 10 hereof or because of any refusal, inability or failure on the part of the Company to perform any agreement herein or comply with any provision hereof other than by reason of a default by any of the Underwriters, the Company will reimburse the Underwriters severally through Merrill Lynch, Pierce, Fenner & Smith Incorporated on demand for all out-of-pocket expenses (including reasonable fees and disbursements of counsel) that shall have been incurred by them in connection with the proposed purchase and sale of the Securities.

8. Indemnification and Contribution. (a) The Company agrees to indemnify and hold harmless each Underwriter, the directors, officers, employees and agents of each Underwriter and each person who controls any Underwriter within the meaning of either the Act or the Exchange Act against any and all losses, claims, damages or liabilities, joint or several, to which they or any of them may become subject under the Act, the Exchange Act or other Federal or state statutory law or regulation, at common law or otherwise, insofar as such losses, claims, damages or liabilities (or actions in respect thereof) arise out of or are based upon any untrue statement or alleged untrue statement of a material fact contained in the registration statement for the registration of the Securities as originally filed or in any

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amendment thereof, or in any Preliminary Final Prospectus or the Final Prospectus, or in any amendment thereof or supplement thereto, or arise out of or are based upon the omission or alleged omission to state therein a material fact required to be stated therein or necessary to make the statements therein not misleading, and agrees to reimburse each such indemnified party, as incurred, for any legal or other expenses reasonably incurred by them in connection with investigating or defending any such loss, claim, damage, liability or action; provided, however, that the Company will not be liable in any such case to the extent that any such loss, claim, damage or liability arises out of or is based upon any such untrue statement or alleged untrue statement or omission or alleged omission made therein in reliance upon and in conformity with written information furnished to the Company by or on behalf of any Underwriter through the Representatives specifically for inclusion therein; provided, further, that with respect to any untrue statement or omission of a material fact made in any Preliminary Final Prospectus, the indemnity agreement contained in this Section 8(a) shall not inure to the benefit of any Underwriter from whom the person asserting any such loss, claim, damage or liability purchased the Securities concerned, to the extent that any such loss, claim, damage or liability of such Underwriter occurs under the circumstance where it shall have been determined by a court of competent jurisdiction by final and nonappealable judgment that (w) the Company had previously furnished copies of the Final Prospectus to the Representatives, (x) delivery of the Final Prospectus was required to be made to such person, (y) the untrue statement or omission of a material fact contained in the Preliminary Final Prospectus was corrected in the Final Prospectus, and (z) there was not sent or given to such person, at or prior to the written confirmation of the sale of such Securities to such person, a copy of the Final Prospectus. This indemnity agreement will be in addition to any liability which the Company may otherwise have.

(b) Each Underwriter severally and not jointly agrees to indemnify and hold harmless the Company, each of its directors, each of its officers who signs the Registration Statement, and each person who controls the Company within the meaning of either the Act or the Exchange Act, to the same extent as the foregoing indemnity from the Company to each Underwriter, but only with reference to written information relating to such Underwriter furnished to the Company by or on behalf of such Underwriter through the Representatives specifically for inclusion in the documents referred to in the foregoing indemnity. This indemnity agreement will be in addition to any liability which any Underwriter may otherwise have. The Company acknowledges that the statements set forth in the last paragraph of the cover page regarding delivery of the Securities and, under the heading "Underwriting" (i) the list of Underwriters and their respective participation in the sale of the Securities, (ii) the sentences related to concessions and reallowances, and

(iii) the paragraphs related to stabilization, syndicate covering transactions and penalty bids constitute the only information furnished in writing by or on behalf of the several Underwriters for inclusion in any Preliminary Final Prospectus or the Final Prospectus.

(c) Promptly after receipt by an indemnified party under this Section 8 of notice of the commencement of any action, such indemnified party will, if a claim in respect thereof is to be made against the indemnifying party under this Section 8, notify the indemnifying party in writing of the commencement thereof; but the failure so to notify the indemnifying party (i) will not relieve it from liability under paragraph (a) or (b) above unless and to the extent it did not otherwise learn of such action and such failure results in the forfeiture by the indemnifying party of substantial rights and defenses and (ii) will not, in any event, relieve the indemnifying party from any obligations to any indemnified party other than the indemnification obligation provided in paragraph (a) or (b) above. The indemnifying party shall be entitled to appoint counsel of the indemnifying party's choice at the indemnifying

party's expense to represent the indemnified party in any action for which indemnification is sought (in which case the indemnifying party shall not thereafter be responsible for the fees and expenses of any separate counsel retained by the indemnified party or parties except as set forth below); provided, however, that such counsel shall be satisfactory to the indemnified party. Notwithstanding the indemnifying party's election to appoint counsel to represent the indemnified party in an action, the indemnified party shall have the right to employ separate counsel (including local counsel), and the indemnifying party shall bear the reasonable fees, costs and expenses of such separate counsel if (i) the use of counsel chosen by the indemnifying party to represent the indemnified party would present such counsel with a conflict of interest, (ii) the actual or potential defendants in, or targets of, any such action include both the indemnified party and the indemnifying party and the indemnified party shall have reasonably concluded that there may be legal defenses available to it and/or other indemnified parties which are different from or additional to those available to the indemnifying party, (iii) the indemnifying party shall not have employed counsel satisfactory to the indemnified party to represent the indemnified party within a reasonable time after notice of the institution of such action or (iv) the indemnifying party shall authorize the indemnified party to employ separate counsel at the expense of the indemnifying party. An indemnifying party will not, without the prior written consent of the indemnified parties, settle or compromise or consent to the entry of any judgment with respect to any pending or threatened claim, action, suit or proceeding in respect of which indemnification or contribution may be sought hereunder (whether or not the indemnified parties are actual or potential parties to such claim or action) unless such settlement, compromise or consent includes an unconditional release of each indemnified party

from all liability arising out of such claim, action, suit or proceeding.

(d) In the event that the indemnity provided in paragraph (a) or (b) of this Section 8 is unavailable to or insufficient to hold harmless an indemnified party for any reason, the Company and the Underwriters severally agree to contribute to the aggregate losses, claims, damages and liabilities (including legal or other expenses reasonably incurred in connection with investigating or defending same) (collectively "Losses") to which the Company and one or more of the Underwriters may be subject in such proportion as is appropriate to reflect the relative benefits received by the Company on the one hand and by the Underwriters on the other from the offering of the Securities; provided, however, that in no case shall any Underwriter (except as may be provided in any agreement among underwriters relating to the offering of the Securities) be responsible for any amount in excess of the underwriting discount or commission applicable to the Securities purchased by such Underwriter hereunder. If the allocation provided by the immediately preceding sentence is unavailable for any reason, the Company and the Underwriters severally shall contribute in such proportion as is appropriate to reflect not only such relative benefits but also the relative fault of the Company on the one hand and of the Underwriters on the other in connection with the statements or omissions which resulted in such Losses as well as any other relevant equitable considerations. Benefits received by the Company shall be deemed to be equal to the total net proceeds from the offering (before deducting expenses) received by it, and benefits received by the Underwriters shall be deemed to be equal to the total underwriting discounts and commissions, in each case as set forth on the cover page of the Final Prospectus. Relative fault shall be determined by reference to, among other things, whether any untrue or any alleged untrue statement of a material fact or the omission or alleged omission to state a material fact relates to information provided by the Company on the one hand or the Underwriters on the other. The Company and the Underwriters agree that it would not be just and equitable if contribution were determined by pro rata allocation or any other method of allocation which does not take account of the equitable considerations referred to above. Notwithstanding the provisions of this paragraph (d), no person guilty of fraudulent misrepresentation (within the meaning of Section 11(f) of the Act) shall be entitled to contribution from any

person who was not guilty of such fraudulent misrepresentation. For purposes of this Section 8, each person who controls an Underwriter within the meaning of either the Act or the Exchange Act and each director, officer, employee and agent of an Underwriter shall have the same rights to contribution as such Underwriter, and each person who controls the Company within the meaning of either the Act or the Exchange Act, each officer of the Company who shall have signed the Registration Statement and each director of the Company shall have the same rights to contribution as the Company, subject in each case to the applicable terms and conditions of this paragraph (d).

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9. Default by an Underwriter. If any one or more Underwriters shall fail to purchase and pay for any of the Securities agreed to be purchased by such Underwriter or Underwriters hereunder and such failure to purchase shall constitute a default in the performance of its or their obligations under this Agreement, the remaining Underwriters shall be obligated severally to take up and pay for (in the respective proportions which the amount of Securities set forth opposite their names in Schedule I hereto bears to the aggregate amount of Securities set forth opposite the names of all the remaining Underwriters) the Securities which the defaulting Underwriter or Underwriters agreed but failed to purchase; provided, however, that in the event that the aggregate amount of Securities which the defaulting Underwriter or Underwriters agreed but failed to purchase shall exceed 10% of the aggregate amount of Securities set forth in Schedule I hereto, the remaining Underwriters shall have the right to purchase all, but shall not be under any obligation to purchase any, of the Securities, and if such nondefaulting Underwriters do not purchase all the Securities, this Agreement will terminate without liability to any nondefaulting Underwriter or the Company. In the event of a default by any Underwriter as set forth in this Section 9, the Closing Date shall be postponed for such period, not exceeding five Business Days, as the Representatives shall determine in order that the required changes in the Registration Statement and the Final Prospectus or in any other documents or arrangements may be effected. Nothing contained in this Agreement shall relieve any defaulting Underwriter of its liability, if any, to the Company and any nondefaulting Underwriter for damages occasioned by its default hereunder.

10. Termination. This Agreement shall be subject to termination in the absolute discretion of the Representatives, by notice given to the Company prior to delivery of and payment for the Securities, if at any time prior to such time (i) trading in the Company's Common Stock shall have been suspended by the Commission or the New York Stock Exchange, trading of any securities of the Company shall have been suspended on any exchange or in any over-the-counter market or trading in securities generally on the New York Stock Exchange shall have been suspended or limited or minimum prices shall have been established on such Exchange, (ii) a banking moratorium shall have been declared either by Federal or New York State authorities, (iii) any downgrading in the rating of any debt securities of the Company by any "nationally recognized statistical rating organization" (as defined for purposes of Rule 436(g) under the Act), or any public announcement that any such organization has under surveillance or review its rating of any debt securities of the Company (other than an announcement with positive implications of a possible upgrading, and no implication of a possible downgrading, of such rating) shall have occurred, or (iv) there shall have occurred any outbreak or escalation of hostilities, declaration by the United States of a national emergency or war, or other calamity or

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crisis the effect of which on financial markets is such as to make it, in the reasonable judgment of the Representatives, impractical or inadvisable to proceed with the offering or delivery of the Securities as contemplated by the

Final Prospectus (exclusive of any supplement thereto).

11. Representations and Indemnities to Survive. The respective agreements, representations, warranties, indemnities and other statements of the Company or its officers and of the Underwriters set forth in or made pursuant to this Agreement will remain in full force and effect, regardless of any investigation made by or on behalf of any Underwriter or the Company or any of the officers, directors, employees, agents or controlling persons referred to in Section 8 hereof, and will survive delivery of and payment for the Securities. The provisions of Sections 7 and 8 hereof shall survive the termination or cancellation of this Agreement.

12. Notices. All communications hereunder will be in writing and effective only on receipt, and, if sent to the Representatives, will be mailed, delivered or telefaxed to Merrill Lynch, Pierce, Fenner & Smith Incorporated, Attention: Robert Craig (fax no.: (212) 449-7148) and confirmed to Merrill Lynch, Pierce, Fenner & Smith Incorporated, at 4 World Financial Center, North Tower, New York, New York, 10291-1209, Attention: Robert Craig and Credit Suisse First Boston Corporation, Transactions Advisory Group (fax no.: (212) 892-0679) and confirmed to the Transactions Advisory Group, Credit Suisse First Boston Corporation, at 11 Madison Avenue, New York, New York, 10010-3629, Attention: Transactions Advisory Group; or, if sent to the Company, will be mailed, delivered or telefaxed to James J. Bender, Vice President and General Counsel (fax no: (612) 373-5392) and confirmed to it at NRG Energy, Inc., 901 Marquette Avenue, Suite 2300, Minneapolis, Minnesota 55402-3265, Attention: General Counsel.

13. Successors. This Agreement will inure to the benefit of and be binding upon the parties hereto and their respective successors and the officers, directors, employees, agents and controlling persons referred to in Section 8 hereof, and no other person will have any right or obligation hereunder.

14. Applicable Law. This Agreement will be governed by and construed in accordance with the laws of the State of New York applicable to contracts made and to be performed within the State of New York.

15. Counterparts. This Agreement may be signed in one or more counterparts, each of which shall constitute an original and all of which together shall constitute one and the same agreement.

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16. Headings. The section headings used herein are for convenience only and shall not affect the construction hereof.

17. Definitions. The terms which follow, when used in this Agreement, shall have the meanings indicated.

"Act" shall mean the Securities Act of 1933, as amended, and the rules and regulations of the Commission promulgated thereunder.

"Basic Prospectus" shall mean the prospectus referred to in paragraph 1(a) above contained in the Registration Statement at the Effective Date including any Preliminary Final Prospectus.

"Business Day" shall mean any day other than a Saturday, a Sunday or a legal holiday or a day on which banking institutions or trust companies are authorized or obligated by law, executive order or regulation to close in New York City.

"Commission" shall mean the Securities and Exchange Commission.

"Effective Date" shall mean each date and time that the Registration Statement, any post-effective amendment or amendments thereto and any Rule

462(b) Registration Statement became or become effective.

"Exchange Act" shall mean the Securities Exchange Act of 1934, as amended, and the rules and regulations of the Commission promulgated thereunder.

"Execution Time" shall mean the date and time that this Agreement is executed and delivered by the parties hereto.

"Final Prospectus" shall mean the prospectus supplement relating to the Securities that is first filed pursuant to Rule 424(b) after the Execution Time, together with the Basic Prospectus.

"Preliminary Final Prospectus" shall mean any preliminary prospectus supplement to the Basic Prospectus which describes the Securities and the offering thereof and is used prior to filing of the Final Prospectus, together with the Basic Prospectus.

"Registration Statement" shall mean the registration statement referred to in paragraph 1(a) above, including exhibits and financial statements, as amended at the Execution Time (or, if not effective at the Execution Time, in the form in which it

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shall become effective) and, in the event any post-effective amendment thereto or any Rule 462(b) Registration Statement becomes effective prior to the Closing Date, shall also mean such registration statement as so amended or such Rule 462(b) Registration Statement, as the case may be. Such term shall include any Rule 430A Information deemed to be included therein at the Effective Date as provided by Rule 430A.

"Rule 415", "Rule 424", "Rule 430A" and "Rule 462" refer to such rules under the Act.

"Rule 430A Information" shall mean information with respect to the Securities and the offering thereof permitted to be omitted from the Registration Statement when it becomes effective pursuant to Rule 430A.

"Rule 462(b) Registration Statement" shall mean a registration statement and any amendments thereto filed pursuant to Rule 462(b) relating to the offering covered by the registration statement referred to in Section 1(a) hereof.

"Trust Indenture Act" shall mean the Trust Indenture Act of 1939, as amended and the rules and regulations of the Commission promulgated thereunder.

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If the foregoing is in accordance with your understanding of our agreement, please sign and return to us the enclosed duplicate hereof, whereupon this letter and your acceptance shall represent a binding agreement among the Company and the several Underwriters.

Very truly yours,

NRG ENERGY, INC.

By:

Name:

Title:

The foregoing Agreement is hereby confirmed and accepted as of the date first above written.

MERRILL LYNCH & CO.
Merrill Lynch, Pierce, Fenner & Smith
Incorporated
Credit Suisse First Boston Corporation
CIBC World Markets Corp.
J. P. Morgan Securities Inc.
Salomon Smith Barney Inc.

By: Merrill Lynch, Pierce, Fenner & Smith Incorporated

By:

Name: Robert Craig
Title: Director

For themselves and the other several Underwriters named in Schedule I to the foregoing Agreement.

SCHEDULE I

UNDERWRITERS -----	NUMBER OF INITIAL SECURITIES TO BE PURCHASED -----
Merrill Lynch, Pierce, Fenner & Smith Incorporated.....	4,000,001
Credit Suisse First Boston Corporation.....	4,000,001
CIBC World Markets Corp.....	666,666
J. P. Morgan Securities Inc.....	666,666
Salomon Smith Barney Inc.....	666,666
TOTAL.....	10,000,000

SCHEDULE II

Significant Subsidiaries

Arthur Kill Power LLC
COBEE Holdings Inc.
Devon Power LLC
Flinders Coal Pty Ltd
Granite Power Partners II, L.P.
Huntley Power LLC
Killingholme Generation Limited
Killingholme Holdings Limited
Killingholme Power Limited

Lambique Beheer B.V.
Louisiana Generating LLC
Middletown Power LLC
Montville Power LLC
NEO Corporation
NEO Landfill Gas Inc.
Norwalk Power LLC
NRG International, Inc.
NRG Northeast Generating LLC
NRG South Central Generating LLC
NRG Thermal Corporation NRG West Coast Inc.
NRGenerating Holdings (No. 15) B.V.
NRGenerating Holdings (No. 4) B.V.
NRGenerating International B.V.
NRGenerating, Ltd.
Sterling Luxembourg (No. 1) s.a.r.l.
Sunshine State Power (No. 2) B.V.
Sunshine State Power B.V.
Tosli Investments N.V.

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SCHEDULE III

Changes in Percentage Ownership Interest

None

NRG ENERGY, INC.

and

THE BANK OF NEW YORK

as Trustee

SENIOR DEBT SECURITIES
INDENTURE

Dated as of March 13, 2001

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Trust Indenture Act Section -----	Indenture Section -----
Section 310 (a) (1)	5.8
(a) (2)	5.8
(a) (3)	N/A
(a) (4)	N/A
(a) (5)	5.8
(b)	5.9
(c)	N/A
Section 311 (a)	5.5
(b)	N/A
(c)	N/A
Section 312 (a)	3.4
(b)	N/A
(c)	N/A
Section 313 (a)	N/A
(b)	N/A
(c)	N/A
(d)	N/A
Section 314 (a)	3.7
(b) (1)	N/A
(b) (2)	N/A
(c) (1)	10.5
(c) (2)	10.5
(c) (3)	N/A
(d)	N/A
(e)	10.5
(f)	N/A
Section 315 (a)	5.1 (a) (i); 5.1 (a) (ii)
(b)	N/A
(c)	5.1
(d) (1)	5.1 (a) (i); 5.1 (a) (ii)
(d) (2)	5.1 (b)
(d) (3)	5.1 (c)

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(e)	4.5
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(a) (1) (B)	4.9
(a) (2)	N/A
(b)	4.10
(c)	4.2(g)
Section 317(a) (1)	4.2
(a) (2)	4.2(a)
(b)	10.2
Section 318	7.1(e)

INDENTURE, dated as of March 13, 2001, between NRG ENERGY, INC., a Delaware corporation (herein called the "Issuer"), and THE BANK OF NEW YORK, a New York banking corporation, as trustee (herein called the "Trustee").

W I T N E S S E T H:

WHEREAS, the Issuer has duly authorized the execution and delivery of this Indenture to provide for the issuance from time to time of its debentures, notes, bonds and other evidences of indebtedness (herein called the "Securities"); and

WHEREAS, all things necessary have been done to make this Indenture a valid agreement of the Issuer, in accordance with its terms.

NOW, THEREFORE:

In consideration of the premises and the purchases of the Securities of any Series (as defined herein) created and issued on or after the date hereof by the Holders (as defined herein) thereof, the Issuer and the Trustee mutually covenant and agree for the equal and proportionate benefit of the respective Holders from time to time of the Securities of any Series, as follows:

ARTICLE I
DEFINITIONS

Section 1.1 Certain Terms Defined.

To the extent terms defined herein differ from any Authorizing Resolution (as defined herein) or supplemental indenture pertaining to any Series of Securities, the definitions in such Authorizing Resolution or supplemental indenture will govern with respect to such Series. All accounting terms used herein and not expressly defined shall have the meanings given to them in accordance with GAAP (as defined herein). The words "herein," "hereof" and "hereunder" and other words of similar import refer to this Indenture as a whole and not to any particular Article, Section or other subdivision. The terms defined in this Article include the plural as well as the singular.

"Agent Members" has the meaning set forth in Section 2.4(b).

"Authorizing Resolution" means a resolution adopted by the Board of Directors or a committee of the Board of Directors or by an Officer or committee of Officers pursuant to Board of Directors delegation authorizing a Series of Securities.

"Board of Directors" means either the Board of Directors of the Issuer or any committee of such Board of Directors duly authorized to act on behalf of

such Board of Directors.

"Business Day" means a day which is neither a legal holiday nor a day on which banking institutions (including, without limitation, the Federal Reserve System) are authorized or required by law or regulation to close in The City of New York.

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"Capital Stock" means, with respect, to any Person, any and all outstanding shares, interests, participations or other equivalents (however designated, whether voting or non-voting) of, or interests in (however designated), the equity of such Person including, without limitation, all Common Stock and Preferred Stock and partnership and joint venture interests of such Person.

"Change of Control" means the occurrence of one or more of the following events: (i) a Person or group (as that term is used in Section 13(d)(3) of the Exchange Act) of Persons (other than Xcel) shall have become the beneficial owner directly or indirectly, or shall have acquired the absolute power to direct the vote, of more than 35% of the outstanding Voting Stock of the Issuer or (ii) during any twelve-month period, individuals who at the beginning of such period constitute the Board of Directors (together with any new directors whose election or nomination was approved by a majority of the directors then in office who were either directors at the beginning of such period or who were previously so approved) shall cease for any reason to constitute a majority of the Board of Directors. Notwithstanding the foregoing, a Change of Control shall be deemed not to have occurred with respect to a Series of Securities if one or more of the above events occurs or circumstances exist and, after giving effect thereto, the Securities of such Series are rated Investment Grade.

"Change of Control Offer" has the meaning set forth in Section 3.9(b).

"Clearstream" has the meaning set forth in Section 2.4(b).

"Commission" means the Securities and Exchange Commission, as from time to time constituted, created under the Exchange Act, or, if at any time after the execution of this Indenture such Commission is not existing and performing the duties now assigned to it under the Trust Indenture Act, then the body (if any) performing such duties at such time.

"Common Stock" means, with respect to any Person, Capital Stock of such Person that does not rank prior, as to the payment of dividends or as to the distribution of assets upon any voluntary or involuntary liquidation, dissolution or winding up of such Person, to shares of any other class of Capital Stock of such Person.

"Consolidated Current Assets" and "Consolidated Current Liabilities" mean such assets and liabilities of the Issuer on a consolidated basis as shall be determined in accordance with GAAP to constitute current assets and current liabilities, respectively, provided that inventory shall be valued at the lower of cost (using the average life method) or market.

"Consolidated Net Tangible Assets" means, as of the date of determination thereof, the total amount of all Issuer's assets determined on a consolidated basis in accordance with GAAP as of such date less the sum of (a) Issuer's consolidated current liabilities determined in accordance with GAAP and (b) assets properly classified as intangible assets, in accordance with GAAP.

"Consolidated Total Assets" means, as of the date of any determination thereof, the total amount of all assets of the Issuer determined on a consolidated basis in accordance with GAAP.

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"Corporate Trust Office" means the principal office of the Trustee at which the corporate trust business of the Trustee shall, at any particular time, be principally administered, which office is, at the date as of which this Indenture is dated, located at 101 Barclay Street, Floor 21W, New York, New York 10286.

"Euroclear" has the meaning set forth in Section 2.4(b).

"Event of Default" means, with respect to a particular Series of Securities, any event or condition specified as such in Section 4.1 hereof that shall have continued for the period of time, if any, therein designated.

"Exchange Act" means the Securities Exchange Act of 1934, as amended.

"GAAP" means generally accepted accounting principles in the U.S. applied on a basis consistent with the principles, methods, procedures and practices employed in the preparation of the Issuer's audited financial statements, including, without limitation, those set forth in the opinions and pronouncements of the Accounting Principles Board of the American Institute of Certified Public Accountants and statements and pronouncements of the Financial Accounting Standards Board or in such other statements by such other entity as approved by a significant segment of the accounting profession.

"Global Security" has the meaning set forth in Section 2.4(b).

"Holder," "Holder of Securities," "Securityholder" and other similar terms mean the registered holder of any Security.

"Indebtedness" has the meaning set forth in Section 3.8.

"Indenture" means this Indenture as amended or supplemented from time to time, including pursuant to any Authorizing Resolution or supplemental indenture pertaining to any Series.

"Intangible Assets" means, as of the date of determination thereof, all assets of the Issuer properly classified as intangible assets determined on a consolidated basis in accordance with GAAP.

"Interest Payment Date" means, with respect to any Security, the Stated Maturity of an installment of interest on such Security.

"Investment Banker" means an independent investment banking institution of national standing selected by the Issuer.

"Investment Grade" means, with respect to a Series of Securities, a rating of "Baa3" or higher by Moody's Investors Service, Inc., and a rating of "BBB-" or higher by Standard and Poor's Ratings Group (or, if either or both of the foregoing rating agencies ceases to rate a Series of Securities for reasons beyond the control of the Issuer, equivalent ratings by one or two (as the case may be) other nationally recognized statistical rating organizations (as such term is defined in Rule 15c3-1(c)(2)(vi)(F) under the Exchange Act)); provided that if either of the foregoing

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rating agencies shall change its ratings designations while a Series of Securities is Outstanding, "Investment Grade" shall mean the lowest ratings designation signifying "investment grade" issued by such agencies (or higher).

"Issuer" means NRG Energy, Inc., a Delaware corporation, and, subject to Article 8 hereof, its successors and assigns.

"Make Whole Amount" means, with respect to a Security of a particular Series at any time, the sum of the present values of the Remaining Scheduled Payments discounted, on a semiannual basis (assuming a 360 day year consisting of twelve 30-day months), at a rate equal to the Treasury Rate plus 25 basis points. The Make Whole Amount shall be computed as of the third Business Day prior to the applicable redemption date, and certified, by an Investment Banker.

"Officer" means the Chairman of the Board of Directors, the President, any Vice President, the Chief Financial Officer, the Treasurer, any Assistant Treasurer, the Controller, the Secretary or any Assistant Secretary of the Issuer.

"Officers' Certificate" means a certificate signed on behalf of the Issuer by the Chairman of the Board of Directors or the President or any Vice President and by the Chief Financial Officer or the Secretary or any Assistant Secretary or the Treasurer or any Assistant Treasurer of the Issuer and delivered to the Trustee. Each such certificate shall include the statements provided for in Section 10.5 hereof, if and to the extent required thereby.

"Opinion of Counsel" means an opinion in writing signed by legal counsel satisfactory to the Trustee, who may be an employee of or counsel to the Issuer. Each such opinion shall include the statements provided for in Section 10.5 hereof, if and to the extent required thereby.

"Original Issue Date" of any Security (or portion thereof) means the earlier of (a) the date of such Security or (b) the date of any Security (or portion thereof) in exchange for which such Security was issued (directly or indirectly) on registration of transfer, exchange or substitution.

"Outstanding", when used with reference to Securities, shall, subject to the provisions of Section 6.4 hereof, mean, as of any particular time, all Securities authenticated and delivered by the Trustee under this Indenture, except:

1. Securities theretofore canceled by the Trustee or delivered to the Trustee for cancellation, or which shall have been paid pursuant to Section 2.7 hereof (other than any such Securities in respect of which there shall have been presented to the Trustee proof satisfactory to it that such Securities are held by a bona fide purchaser in whose hands the Securities are valid obligations of the Issuer); and

2. Securities, or portions thereof, for the payment or redemption of which moneys or direct obligations of the United States of America backed by its full faith and credit in the necessary amount shall have been deposited in trust with the Trustee or with any paying agent (other than the Issuer) or shall have been set aside, segregated and held in trust by the Issuer (if the Issuer shall act as its own paying agent), provided that if such

Securities are to be redeemed prior to the maturity thereof, notice of such redemption shall have been herein provided, or provision satisfactory to the Trustee shall have been given as herein provided, or provision satisfactory to the Trustee shall have been made for giving such notice.

"Person" means an individual, a corporation, a partnership, a limited liability company, an association, a trust or any other entity or organization, including a government or political subdivision or an agency or instrumentality thereof.

"Preferred Stock" means, with respect to any Person, any and all shares, interests, participation or other equivalents (however designated,

whether voting or non-voting) of preferred or preference Capital Stock of such Person that is outstanding or issued on or after the date of this Indenture.

"Remaining Scheduled Payments" means the remaining scheduled payments of the principal and interest that would be due if such Security were not redeemed. However, if the redemption date is not a scheduled interest payment date, the amount of the next succeeding scheduled interest payment on such debt security will be reduced by the amount of interest accrued on such Security to such redemption date.

"Repurchase Date" has the meaning set forth in Section 3.9(b).

"Responsible Officer", when used with respect to the Trustee, means any officer within the corporate trust department of the Trustee, including any vice president, assistant vice president, assistant secretary, assistant treasurer, trust officer or any other officer of the Trustee who customarily performs functions similar to those performed by the Persons who at the time shall be such officers, respectively, or to whom any corporate trust matter is referred because of such person's knowledge of and familiarity with the particular subject and who shall have direct responsibility for the administration of this Indenture.

"Securities Act" means the Securities Act of 1933, as amended.

"Security" or "Securities" has the meaning set forth in the recitals above.

"Securities Register" and "Security Registrar" have the respective meanings specified in Section 2.6.

"Series" means a series of Securities established under this Indenture.

"Stated Maturity" means, with respect to any Security or any installment of interest thereon, the date specified in such Security as the fixed date on which any principal of such Security or any such installment of interest is due and payable.

"Treasury Rate" means an annual rate equal to the semiannual equivalent yield to maturity of the Comparable Treasury Issue (as defined below), assuming a price for the Comparable Treasury Issue (expressed as a percentage of its principal amount) equal to the Comparable Treasury Price (as defined below) for the redemption date. The semiannual equivalent yield to

maturity will be computed as of the third Business day immediately preceding the redemption date. "Comparable Treasury Issue" means the United States Treasury security selected by Salomon Smith Barney or an affiliate as having a maturity comparable to the remaining term of the notes that would be utilized, at the time of selection and in accordance with customary financial practice, in pricing new issues of corporate notes of comparable maturity to the remaining term of the notes. "Comparable Treasury Price" means the average of three Reference Treasury Dealer Quotations (as defined below) obtained by the trustee for the redemption date. "Reference Treasury Dealers" means Salomon Smith Barney (so long as it continues to be a primary U.S. Government securities dealer) and any two other primary U.S. Government securities dealers chosen by the Issuer. If Salomon Smith Barney ceases to be a primary U.S. Government securities dealer, the Issuer will appoint in its place another nationally recognized investment banking firm that is a primary U.S. Government securities dealer. "Reference Treasury Dealer Quotation" means the average, as determined by the Trustee, of the bid and asked prices for the Comparable Treasury Issue (expressed in each case as a percentage of its principal amount) quoted in writing to the Trustee by a Reference Treasury Dealer at 3:30 p.m., New York City time, on the third Business day preceding the redemption date.

"Trust Indenture Act" means the Trust Indenture Act of 1939, as amended.

"Trustee" means the entity identified as "Trustee" in the first paragraph hereof until the appointment of a successor trustee pursuant to Article 5, after which "Trustee" shall mean such successor trustee.

"U.S. Depository" means The Depository Trust Company.

"U.S. Government Obligations" means securities that are (i) direct and unconditional obligations of the United States of America for the payment of which its full faith and credit is pledged or (ii) obligations of a Person controlled or supervised by, and acting as an agency or instrumentality of, the United States of America, the payment of which is unconditionally guaranteed as a full faith and credit obligation by the United States of America, which, in either case, are not callable or redeemable at the option of the issuer thereof, and shall also include a depository receipt issued by a bank or trust company subject to federal or state supervision or examination with a combined capital and surplus of at least \$100,000,000, as custodian with respect to any such U.S. Government Obligations or a specific payment of interest on or principal of any such U.S. Government Obligation held by such custodian for the account of the holder of a depository receipt, provided that (except as required by law) such custodian is not authorized to make any deduction from the amount payable to the holder of such depository receipt from any amount received by the custodian in respect of the U.S. Government Obligation or the specific payment of interest on or principal of the U.S. Government Obligation evidenced by such depository receipt.

"Voting Stock" means, with respect to any Person, Capital Stock of any class or kind ordinarily having the power to vote for the election of directors (or persons fulfilling similar responsibilities) of such Person.

"Xcel" means Xcel Energy Inc., a Minnesota corporation.

ARTICLE II
ISSUE, EXECUTION, FORM AND REGISTRATION OF SECURITIES

Section 2.1 Form and Dating of Securities.

The aggregate principal amount of Securities that may be issued under this Indenture is unlimited. The Securities may be issued from time to time in one or more Series. Each Series shall be created by an Authorizing Resolution or a supplemental indenture that establishes the terms of the Series, which may include the following:

- (1) the title of the Series;
- (2) the aggregate principal amount (or any limit on the aggregate principal amount) of the Series and, if any Securities of a Series are to be issued at a discount from their face amount, the method of computing the accretion of such discount;
- (3) the interest rate or method of calculation of the interest rate;
- (4) the date from which interest will accrue;
- (5) the record dates for interest payable on Securities of the Series;
- (6) the dates when, places where and manner in which principal and interest are payable;

- (7) the Securities Registrar;
- (8) the terms of any mandatory (including any sinking fund requirements) or optional redemption by the Company;
- (9) the terms of any repurchase or remarketing rights of third parties;
- (10) the terms of any redemption at the option of Holders;
- (11) the denominations in which Securities are issuable;
- (12) whether Securities will be issued in registered or bearer form and the terms of any such forms of Securities;
- (13) whether any Securities will be represented by a Global Security and the terms of any such Global Security;
- (14) the currency or currencies (including any composite currency) in which principal or interest or both may be paid;

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- (15) if payments of principal or interest may be made in a currency other than that in which Securities are denominated, the manner for determining such payments;
- (16) provisions for electronic issuance of Securities or issuance of Securities in uncertificated form;
- (17) any Events of Default, covenants and/or defined terms in addition to or in lieu of those set forth in this Indenture;
- (18) whether and upon what terms Securities may be defeased if different from the provisions set forth in this Indenture;
- (19) the form of the Securities, which, unless the Authorizing Resolution or supplemental indenture otherwise provides, shall be in the form of Exhibit A;
- (20) any terms that may be required by or advisable under applicable law;
- (21) the percentage of the principal amount of the Securities which is payable if the maturity of the Securities is accelerated in the case of Securities issued at a discount from their face amount;
- (22) whether any Securities will have guarantees; and
- (23) any other terms in addition to or different from those contained in this Indenture.

All Securities of one Series need not be issued at the same time and, unless otherwise provided, a Series may be reopened for issuances of additional Securities of such Series pursuant to an Authorizing Resolution, an Officers' Certificate or in any indenture supplemental hereto. The creation and issuance of a Series and the authentication and delivery thereof are not subject to any conditions precedent.

The Securities shall be direct, unconditional obligations of the Issuer and shall rank pari passu without preference among themselves and equally in priority of payment with all other present and future unsubordinated, unsecured indebtedness of the Issuer.

The Securities shall be signed on behalf of the Issuer by both (a) its Chairman of the Board of Directors or any Vice Chairman of the Board of Directors or its President or any Vice President and (b) by its Chief Financial Officer or its Secretary or its Assistant Secretary or its Treasurer or any Assistant Treasurer, under its corporate seal which may, but need not, be attested. Such signatures may be the manual or facsimile signatures of the present or any future such officers. The seal of the Issuer may be in the form of a facsimile thereof and may be impressed, affixed, imprinted or otherwise reproduced on the Securities. Typographical and other minor errors or defects in any such reproduction of the seal or any such signature shall not

affect the validity or enforceability of any Security that has been duly authenticated and delivered by the Trustee.

In case any officer of the Issuer who shall have signed any of the Securities shall cease to be such officer before the Security so signed shall be authenticated and delivered by the Trustee or disposed of by the Issuer, such Security nevertheless may be authenticated and delivered or disposed of as though the Person who signed such Security had not ceased to be such officer of the Issuer; and any Security may be signed on behalf of the Issuer by such Persons as, at the actual date of the execution of such Security, shall be the proper officers of the Issuer, although at the date of the execution and delivery of this Indenture any such Person was not such officer. The Securities shall be delivered to the Trustee for authentication, and the Trustee shall thereupon authenticate and deliver said Securities to or upon the written order of the Issuer, signed by both (a) its Chairman of the Board of Directors, or any Vice Chairman of the Board of Directors, or its President or any Vice President and (b) by its Chief Financial Officer, or its Secretary or any Assistant Secretary, or its Treasurer or any Assistant Treasurer without any further action by the Issuer.

In authenticating such Securities, and accepting the additional responsibilities under this Indenture in relation to such Securities, the Trustee shall be entitled to receive, and, subject to Section 5.1, shall be fully protected in relying upon:

(a) A copy of the resolution or resolutions of the Board of Directors in or pursuant to which the terms and form of the Securities were established, certified by the Secretary or an Assistant Secretary of the Issuer to have been duly adopted by the Board of Directors and to be in full force and effect as of the date of such certificate, and if the terms and form of such Securities are established by an Officers' Certificate pursuant to general authorization of the Board of Directors, such Officers' Certificate;

(b) an executed supplemental indenture, if any;

(c) an Officers' Certificate delivered in accordance with Section 10.5; and

(d) an Opinion of Counsel which shall state:

(1) that the form of such Securities has been established by a supplemental indenture or by or pursuant to a resolution of the Board of Directors in accordance with Sections 2.1 and 2.2 and in conformity with the provisions of this Indenture;

(2) that the terms of such Securities have been established in accordance with Section 2.1 and in conformity with the other provisions of this Indenture;

(3) that such Securities, when authenticated and delivered by the Trustee and issued by the Issuer in the manner and subject to any conditions specified in such Opinion of Counsel, will constitute valid and legally binding obligations of the Issuer, enforceable in accordance with their terms, subject to bankruptcy, insolvency, reorganization and other laws of general applicability relating to or affecting the enforcement of creditors' rights and to general equity principles; and

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(4) that all laws and requirements in respect of the execution and delivery by the Issuer of such Securities have been complied with.

The Trustee shall have the right to decline to authenticate and deliver any Securities under this Section if the Trustee, being advised by counsel, determines that such action may not lawfully be taken or if the Trustee in good faith shall determine that such action would expose the Trustee to personal liability to existing Holders.

Section 2.3 Certificate of Authentication.

Only such Securities as shall bear thereon a certificate of authentication substantially in the form recited in the form of Security attached as Exhibit A hereto, executed by that Trustee by manual signature of one of its authorized signatories, shall be entitled to the benefits of this Indenture or be valid or obligatory for any purpose. Such certificate by the Trustee upon any Security executed by the Issuer shall be conclusive evidence that the Security so authenticated has been duly authenticated and delivered hereunder and that the Holder is entitled to the benefits of this Indenture.

Section 2.4 Form, Denomination and Date of Securities; Payments of Interest.

(a) Any of the Securities may be issued with appropriate insertions, omissions, substitutions and variations and may have imprinted or otherwise reproduced thereon such legend or legends, not inconsistent with the provisions of this Indenture, as may be required to comply with any law or with any rules or regulations pursuant thereto, or with the rules of any securities market in which the Securities are admitted to trading, or to conform to general usage.

(b) (i) This Section 2.4(b) (i) shall apply only to Securities in global form ("Global Securities") deposited with the U.S. Depositary.

The Issuer shall execute and the Trustee shall, in accordance with this Section 2.4(b) (i), authenticate and deliver initially Global Securities that (a) shall be registered in the name of the U.S. Depositary for such Global Securities or the nominee of such U.S. Depositary, (b) shall be deposited on behalf of Agent Members (as defined herein) with the Trustee as custodian for the U.S. Depositary and (c) shall bear legends substantially to the following effect:

"UNLESS THIS CERTIFICATE IS PRESENTED BY AN AUTHORIZED REPRESENTATIVE OF [INSERT NAME AND ADDRESS OF U.S. DEPOSITARY] TO THE ISSUER OR ITS AGENT FOR REGISTRATION OF TRANSFER, EXCHANGE OR PAYMENT, AND ANY CERTIFICATE ISSUED IN EXCHANGE FOR THIS CERTIFICATE OR ANY PORTION HEREOF IS REGISTERED IN THE NAME OF [INSERT NAME OF U.S. NOMINEE OF DEPOSITARY], OR TO SUCH OTHER ENTITY AS IS REQUESTED BY AN AUTHORIZED REPRESENTATIVE OF [INSERT NAME OF U.S. DEPOSITARY], OR SUCH OTHER NAME AS IS REQUESTED BY AN AUTHORIZED REPRESENTATIVE OF [INSERT NAME OF U.S. DEPOSITARY] (AND ANY PAYMENT HEREON IS MADE TO [INSERT NAME OF NOMINEE OF U.S. DEPOSITARY]), ANY TRANSFER, PLEDGE OR OTHER USE

HEREOF FOR VALUE OR OTHERWISE BY OR TO ANY PERSON OTHER THAN [INSERT NAME OF U.S. DEPOSITARY OR A NOMINEE THEREOF] IS WRONGFUL INASMUCH AS THE REGISTERED OWNER HEREOF, [INSERT NAME OF NOMINEE OF U.S. DEPOSITARY] HAS AN INTEREST HEREIN".

"TRANSFERS OF THIS GLOBAL SECURITY SHALL BE LIMITED TO TRANSFERS IN WHOLE, BUT NOT IN PART, TO NOMINEES OF [INSERT NAME OF U.S. DEPOSITARY] OR TO A SUCCESSOR THEREOF OR SUCH SUCCESSOR'S NOMINEE AND TRANSFERS OF PORTIONS OF THIS GLOBAL SECURITY SHALL BE LIMITED TO TRANSFERS MADE IN ACCORDANCE WITH THE RESTRICTIONS SET FORTH IN SECTION 2.6 OF THE INDENTURE REFERRED TO ON THE REVERSE HEREOF".

Members of, or participants in, a U.S. Depository ("Agent Members") shall have no rights under this Indenture with respect to any Global Security held on their behalf by the U.S. Depository or under any Global Security, and the U.S. Depository may be treated by the Issuer, the Trustee, and any agent of the Issuer or the Trustee as the absolute owner of such Global Security for all purposes whatsoever. Notwithstanding the foregoing, nothing herein shall prevent the Issuer, the Trustee or any agent of the Issuer or the Trustee from giving effect to any written certification, proxy or other authorization furnished by the U.S. Depository or impair, as between the U.S. Depository and its Agent Members, the operation of customary practices governing the exercise of the rights of a holder of any security.

(ii) This Section 2.4(b)(ii) shall apply only to the Global Security deposited on behalf of the purchasers of the Securities represented thereby with the Trustee as custodian for the U.S. Depository for credit to their respective accounts (or to such other accounts as they may direct) at Euroclear System ("Euroclear") or Clearstream Banking, societe anonyme ("Clearstream") insofar as interests in the Global Security are held by the Agent Members for Euroclear or Clearstream.

The provisions of the "Operating Procedures of the Euroclear System" and the "Terms and Conditions Governing Use of Euroclear" and the "Management Regulations" and "Instructions to Participants" of Clearstream, respectively, shall be applicable to such Global Security insofar as interests therein are held by the Agent Members for Euroclear and Clearstream. Account holders or participants in Euroclear and Clearstream shall have no rights under this Indenture with respect to the Global Security, and the nominee of the U.S. Depository may be treated by the Issuer and the Trustee and any agent of the Issuer or the Trustee as the owner of the Global Security for all purposes whatsoever. Notwithstanding the foregoing, nothing herein shall prevent the Issuer, the Trustee or any agent of the Issuer or the Trustee from giving effect to any written certification, proxy or other authorization furnished by the U.S. Depository or impair, as between the U.S. Depository and its Agent Members, the operation of customary practices governing the exercise of the rights of a holder of any security.

(c) Each Security shall be dated the date of its authentication and shall bear interest from the applicable date, and shall be payable on the dates specified on the face of the form of Security attached as Exhibit A hereto.

(d) The Person in whose name any Security is registered at the close of business on the record date specified in the Securities with respect to any Interest Payment Date shall be entitled to receive the interest, if any, payable on such Interest Payment Date notwithstanding any transfer or exchange

of such Security subsequent to the record date and prior to such Interest Payment Date, except if and to the extent the Issuer shall default in the payment of the interest due on such Interest Payment Date, in which case such defaulted interest shall be paid to the Persons in whose names Outstanding Securities are registered at the close of business on a subsequent special record date, to be established (together with the related payment date) by the Issuer with the consent of the Trustee. Such special record date shall not be more than 15 nor less than 10 Business Days prior to the payment date. Not more than 15 days prior to the special record date, the Issuer (or the Trustee, in the name of and at the expense of the Issuer) shall mail to Holders a notice that states the special record date, the related payment date and the amount of interest to be paid. Notice of the proposed payment of such defaulted interest and the special record date therefor having been mailed as aforesaid, such defaulted interest shall be paid to the Persons in whose names the Securities are registered on such special record date.

Section 2.5 Global Securities.

(a) Portions of a Global Security deposited with the U.S. Depository pursuant to Section 2.4 shall be transferred in certificated form to the beneficial owners thereof only if such transfer complies with Section 2.6 of this Indenture and (i) the U.S. Depository notifies the Issuer that it is unwilling or unable to continue as U.S. Depository for such Global Security or if at any time such U.S. Depository ceases to be a "clearing agency" registered under the Exchange Act and a successor depository is not appointed by the Issuer within 90 days of such notice, or (ii) an Event of Default has occurred and is continuing with respect to the Securities and payment of principal thereof and interest thereon has been accelerated.

(b) Portions of any Global Security that are transferable to the beneficial owners thereof pursuant to this Section 2.5 shall be surrendered by the U.S. Depository to the Trustee at its New York office for registration of transfer, in whole or from time to time in part, without charge and the Trustee shall authenticate and deliver, upon such registration of transfer of each portion of such Global Security, an equal aggregate principal amount of Securities of authorized denominations. Any portion of a Global Security whose registration is transferred pursuant to this Section 2.5 shall be executed, authenticated and delivered only in the denominations specified in the form of Security attached as Exhibit A hereto and registered in such names as the U.S. Depository shall direct.

(c) Subject to the provisions of Section 2.4(b) above, the registered Holder of any Global Security may grant proxies and otherwise authorize any person, including Agent Members and persons that may hold interests through Agent Members, to take any action which a Holder is entitled to take under this Indenture or the Securities.

(d) In the event of the occurrence of any of the events specified in paragraph (a) of this Section 2.5, the Issuer shall promptly make available to the Trustee a reasonable supply of certificated Securities in definitive, fully registered form without interest coupons.

Section 2.6 Registration, Registration of Transfer and Exchange.

(a) The Issuer shall keep at each office or agency to be maintained for the purpose as provided in Section 3.2 hereof a register or registers (collectively referred to as the "Securities Register") in which, subject to such reasonable regulations as it may prescribe, it will register or cause to be registered, the transfer of Securities as provided in this Article. The Trustee is hereby appointed "Security Registrar" for the purpose of registering Securities and transfers of Securities as herein provided. If at any time the Trustee shall not be serving as Security Registrar, at all reasonable times such Securities Register shall be open for inspection by the Trustee.

Upon due presentation for registration of transfer of any Security at each such office or agency, the Issuer shall execute and the Trustee shall authenticate and deliver in the name of the transferee or transferees a new Security or Securities in authorized denominations for a like aggregate principal amount.

Any Security or Securities of a particular Series may be exchanged for a Security or Securities of such particular Series in other authorized denominations, in an equal aggregate principal amount. Securities to be exchanged shall be surrendered at each office or agency to be maintained by the Issuer for the purpose as provided in Section 3.2 hereof, and the Issuer shall execute and the Trustee shall authenticate and deliver in exchange therefor the Security or Securities which the Securityholder making the exchange shall be entitled to receive, bearing numbers not contemporaneously outstanding.

All Securities presented for registration of transfer, exchange, redemption or payment shall (if so required by the Issuer or the Trustee) be duly endorsed by, or be accompanied by a written instrument or instruments of transfer in form satisfactory to the Issuer and the Trustee duly executed by, the Holder or its attorney duly authorized in writing.

The Issuer or Trustee shall not be required to exchange or register a transfer of (a) any Securities for a period of 15 days next preceding the first mailing of notice of redemption of Securities to be redeemed or (b) any Securities selected, called or being called for redemption except, in the case of any Security where public notice has been given that such Security is to be redeemed in part, the portion thereof not so to be redeemed.

All Securities issued upon any registration of transfer or exchange of Securities shall be valid obligations of the Issuer, evidencing the same debt, and entitled to the same benefits under this Indenture, as the Securities surrendered upon such registration of transfer or exchange.

(b) Notwithstanding any provision to the contrary herein, so long as a Global Security remains outstanding and is held by or on behalf of the U.S. Depository, transfers of a Global Security, in whole or in part, shall only be made (x) in the case of transfers of portions of a Global Security, to beneficial owners thereof in certificated form, in accordance with Section 2.5, and (y) in all other cases, in accordance with this Section 2.6(b).

(c) Successive registrations and registrations of transfers and exchanges as aforesaid may be made from time to time as desired, and each such registration shall be noted on the

Security Register. No service charge shall be made for any registration of transfer or exchange of the Securities, but the Trustee may require payment of a sum sufficient to cover any tax or other governmental charge payable in connection therewith and any other amounts required to be paid by the provisions of the Securities.

(d) The Trustee shall have no obligation or duty to monitor, determine or inquire as to compliance with any restrictions on transfer imposed under this Indenture or under applicable law with respect to any transfer of any interest in any Security (including any transfers between or among Agent Members or beneficial owners of interests in any Global Security) other than to require delivery of such certificates and other documentation or evidence as are expressly required by, and to do so if and when expressly required by the terms of, this Indenture, and to examine the same to determine substantial compliance as to form with the express requirements hereof.

Section 2.7 Mutilated, Defaced, Destroyed, Lost and Stolen Securities.

In case any temporary or definitive Security shall become mutilated, defaced or be apparently destroyed, lost or stolen, the Issuer in its discretion may execute, and upon the written request any officer of the Issuer, the Trustee shall authenticate and deliver a new Security, bearing a number not contemporaneously outstanding, in exchange and substitution for the mutilated or defaced Security, or in lieu of and substitution for Security so apparently destroyed, lost or stolen. In every case the applicant for a substitute Security shall furnish to the Issuer and to the Trustee and any agent of the Issuer or the Trustee such security or indemnity as may be required by them to indemnify and defend and to save each of them harmless and, in every case of destruction, loss or theft, evidence to their satisfaction of the apparent destruction, loss or theft of such Security and of the ownership thereof.

Upon the issuance of a substitute Security, the Issuer may require the payment of a sum sufficient to cover any tax or other governmental charge that may be imposed in relation thereto and any other expenses (including the fees and expenses of the Trustee) connected therewith. In case any Security which has matured or is about to mature, or has been called for redemption in full, shall become mutilated or defaced or be apparently destroyed, lost or stolen. the Issuer may, instead of issuing a substitute Security, pay or authorize the payment of the same (without surrender thereof except in the case of a mutilated or defaced Security), if the applicant for such payment shall furnish to the Issuer and to the Trustee and any agent of the Issuer or the Trustee such security or indemnity as any of them may require to save each of them harmless from all risks, however remote, and, in every case of apparent destruction, loss or theft, the applicant shall also furnish to the Issuer and the Trustee and any agent of the Issuer or the Trustee evidence to their satisfaction of the apparent destruction, loss or theft of such Security and of the ownership thereof.

Every substitute Security issued pursuant to the provisions of this Section by virtue of the fact that any Security is apparently destroyed, lost or stolen shall constitute an additional contractual obligation of the Issuer, whether or not the apparently destroyed, lost or stolen Security shall be at any time enforceable by anyone and shall be entitled to all the benefits of (but shall be subject to all the limitations of rights set forth in) this Indenture equally and proportionately with any and all other Securities duly authenticated and delivered hereunder. All

Securities shall be held and owned upon the express condition that, to the extent permitted by law, the foregoing provisions are exclusive with respect to the replacement or payment of mutilated, defaced, or apparently destroyed, lost or stolen Securities and shall preclude any and all other rights or remedies notwithstanding any law or statute existing or hereafter enacted to the contrary with respect to the replacement or payment of negotiable instruments or other securities without their surrender.

Section 2.8 Cancellation of Securities; Disposition Thereof.

All Securities surrendered for payment, redemption, registration of transfer or exchange, if surrendered to the Issuer or any agent of the Issuer or the Trustee, shall be delivered to the Trustee for cancellation or, if surrendered to the Trustee, shall be canceled by it provided all conditions regarding such cancellation have been met; and no Securities shall be issued in lieu thereof except as expressly permitted by any of the provisions of this Indenture. The Trustee shall cancel and dispose of all Securities surrendered for registration of transfer, exchange, payment or cancellation in accordance with the Trustee's policy of disposal. If the Issuer shall acquire any of the Securities, such acquisition shall not operate as a redemption or satisfaction of the indebtedness represented by such Securities unless and until the same are delivered to the Trustee for cancellation.

Section 2.9 Temporary Securities.

Pending the preparation of definitive Securities, the Issuer may execute and the Trustee shall authenticate and deliver temporary Securities (printed, lithographed, typewritten or otherwise reproduced, in each case in form satisfactory to the Trustee). Temporary Securities shall be issuable as registered Securities without coupons, of any authorized denomination, and substantially in the form of the definitive Securities but with such omissions, insertions and variations as may be appropriate for temporary Securities, all as may be determined by the Issuer with the concurrence of the Trustee. Temporary Securities may contain such reference to any provisions of this Indenture as may be appropriate. Every temporary Security shall be executed by the Issuer and be authenticated by the Trustee upon the same conditions and in substantially the same manner, and with like effect, as the definitive Securities. Without unreasonable delay the Issuer shall execute and shall furnish definitive Securities and thereupon temporary Securities may be surrendered in exchange therefor without charge at each office or agency to be maintained by the Issuer for the purpose pursuant to Section 3.2 hereof, and the Trustee shall authenticate and deliver in exchange for such temporary Securities a like aggregate principal amount of definitive Securities of authorized denominations. Until so exchanged the temporary Securities shall be entitled to the same benefits under this Indenture as definitive Securities.

Section 2.10 Computation of Interest.

Interest on the Securities shall be computed on the basis of a 360-day year of twelve 30-day months.

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ARTICLE III
COVENANTS OF THE ISSUER

To the extent that an Authorizing Resolution or supplemental indenture pertaining to any Series provides for different provisions relating to the subject matter of this Article Three, the provisions in such Authorizing Resolution or supplemental indenture shall govern for purposes of such Series.

Section 3.1 Payment of Principal and Interest.

The Issuer covenants and agrees that it will duly and punctually pay or cause to be paid the principal and Change of Control purchase price of, and premium, if any, and interest on, each of the Securities at the place or places, at the respective times and in the manner provided in the Securities. Payment of principal and the Change of Control purchase price of, and premium and interest on the Securities shall be paid by mailing a check to or upon the written order of the registered Holders of Securities entitled thereto at their last address as it appears on the Securities Register or, upon written application to the Trustee by a Holder of \$1,000,000 or more in aggregate principal amount of Securities, by wire transfer of immediately available funds to an account maintained by such Holder with a bank or other financial institution; provided, however, that (subject to the provisions of Section 2.7 hereof) payment of principal and the Change of Control Price of, and premium, if any, on, any Security may be conditioned upon presentation for payment of the certificate representing such Security.

Section 3.2 Offices for Payments, etc.

So long as any of the Securities remain Outstanding, the Issuer shall maintain in the Borough of Manhattan, The City of New York, the following: (a) an office or agency where the Securities may be presented for payment, (b) an office or agency where the Securities may be presented for registration of transfer and for exchange as in this Indenture provided and (c) an office or agency where notices and demands to or upon the Issuer in respect of the Securities or of this Indenture may be served. The Issuer shall give to the

Trustee written notice of the location of any such office or agency and of any change of location thereof. The Issuer hereby initially designates the Trustee's New York office as such office or agency. In case the Issuer shall fail to maintain any such office or agency or shall fail to give such notice of the location or of any change in the location thereof, presentations and demands may be made and notices may be served at the Corporate Trust Office.

Section 3.3 Appointment to Fill Vacancy in Office of Trustee.

The Issuer, whenever necessary to avoid or fill a vacancy in the office of Trustee, shall appoint, in the manner provided in Section 5.9 hereof, a Trustee, so that there shall at all times be a Trustee hereunder.

Section 3.4 Paying Agents.

The Trustee shall be the principal paying agent for the Securities. Whenever the Issuer shall appoint a paying agent other than the Trustee, it shall cause such paying agent to execute

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and deliver to the Trustee an instrument in which such agent shall agree with the Trustee, subject to the provisions of this Section,

(a) that it will hold all sums received by it as such agent for the payment of the principal or Change of Control purchase price of, or premium or interest on, the Securities (whether such sums have been paid to it by the Issuer or by any other obligor on the Securities) in trust for the benefit of the Holders of the Securities or of the Trustee,

(b) that it will give the Trustee written notice of any failure by the Issuer (or by any other obligor on the Securities) to make any payment of the principal or Change of Control purchase price of, or premium or interest on, the Securities when the same shall be due and payable and

(c) pay any such sums so held in trust by it to the Trustee upon the Trustee's written request at any time during the continuance of the failure referred to in clause (b) above.

The Issuer shall, prior to each due date of the principal or Change of Control purchase price of, and premium, if any, or interest on the Securities, deposit with the paying agent a sum sufficient to pay such principal, Change of Control purchase price, premium or interest, and (unless such paying agent is the Trustee) the Issuer shall promptly notify the Trustee of any failure to take such action.

Anything in this Section 3.4 to the contrary notwithstanding, the Issuer may at any time, for the purpose of obtaining satisfaction and discharge of this Indenture or for any other reason, pay or cause to be paid to the Trustee all sums held in trust by any paying agent hereunder, as required by this Section 3.4, such sums to be held by the Trustee upon the trusts herein contained.

Anything in this Section to the contrary notwithstanding, the agreement to hold sums in trust as provided in this Section 3.4 is subject to the provisions of Section 9.3 and Section 9.1 hereof.

Section 3.5 Certificate to Trustee; Statement by Officers as to Default.

Issuer shall furnish to the Trustee on or before March 31 in each year (beginning with March 31, 2001) a brief certificate from the principal executive, financial or accounting officer of this Issuer as to his or her knowledge of the Issuer's compliance with all covenants under this Indenture and any supplemental indenture hereto (such compliance to be determined without

regard to any period of grace or requirement of notice provided under this Indenture) and if the Issuer shall not be in compliance, specifying such non-compliance and the nature and status thereof of which such signer may have knowledge.

The Issuer shall deliver to the Trustee, as soon as possible and in any event within five days after the Issuer becomes aware of the occurrence of any Event of Default or an event which, with notice or the lapse of time or both, would constitute an Event of Default, an Officers' Certificate setting forth the details of such Event of Default or default and the action which the Issuer proposes to take with respect thereto.

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Section 3.6 Securityholder's Lists.

The Issuer shall furnish or cause to be furnished to the Trustee a list in such form as the Trustee may reasonably require of the names and addresses of the Holders of the Securities (a) semiannually not more than 15 days after each record date for the payment of semi-annual interest on the Securities, as of such record date and (b) at other times as the Trustee may request in writing, within thirty days after receipt by the Issuer of any such request as of a date not more than 15 days prior to the time such information is furnished.

Section 3.7 Reports by the Issuer.

The Issuer shall file with the Trustee and provide Securityholders, within 15 days after it files them with the Commission, copies of its annual reports and of the information, documents and other reports (or copies of such portions of any of the foregoing as the Commission may by rules and regulations prescribe) that the Issuer is required to file with the Commission pursuant to Section 13 or 15(d) of Exchange Act. Delivery of such reports, information and documents to the Trustee is for informational purposes only and the Trustee's receipt of such shall not constitute constructive notice of any information contained therein or determinable from information contained therein, including the Issuer's compliance with any of its covenants hereunder (as to which the Trustee is entitled to rely exclusively on Officers' Certificates).

Section 3.8 Limitation on Liens.

So long as any of the Securities are Outstanding, the Issuer shall not pledge, mortgage or hypothecate, or permit to exist, any mortgage, pledge or other lien upon any property at any time directly owned by the Issuer to secure any indebtedness for money borrowed that is incurred, issued, assumed or guaranteed by the Issuer ("Indebtedness"), without making effective provisions whereby the Securities shall be equally and ratably secured with any and all such Indebtedness and with any other Indebtedness similarly entitled to be equally and ratably secured; provided, however, that with respect to any Series of Securities this restriction shall not apply to or prevent the creation or existence of (i) liens existing at the Original Issuance Date of such Series of Securities, (ii) purchase money liens that do not exceed the cost or value of the purchased property, (iii) other liens not to exceed 10% of Consolidated Net Tangible Assets, and (iv) liens granted in connection with extending, renewing, replacing or refinancing, in whole or in part, the Indebtedness (including, without limitation, increasing the principal amount of such Indebtedness) secured by liens described in the foregoing clauses (i) through (iii).

In the event that the Issuer shall propose to pledge, mortgage or hypothecate any property at any time directly owned by it to secure any Indebtedness, other than as permitted by clauses (i) through (iv) of the previous paragraph, the Issuer shall (prior thereto) give written notice thereof to the Trustee, who shall give notice to the Holders, and the Issuer shall, prior to or simultaneously with such pledge, mortgage or hypothecation, effectively secure all the Securities equally and ratably with such Indebtedness.

Section 3.9 Repurchase of Securities Upon a Change of Control.

(a) Upon a Change of Control, each Holder of Securities of a Series to which the Change of Control applies shall have the right to require that the Issuer repurchase such Holder's Securities at a repurchase price in cash equal to 101% of the principal amount thereof plus accrued interest, if any, to the date of repurchase, in accordance with the terms set forth in subsection (b) below.

(b) Within 30 days following any Change of Control with respect to Securities of a Series, the Issuer shall mail a notice to each Holder of such Series (with a copy to the Trustee) stating:

(i) that a Change of Control has occurred and that such Holder has the right to require the Issuer to repurchase such Holder's Securities at a repurchase price in cash equal to 101% of the principal amount thereof plus accrued interest, if any, to the date of repurchase (the "Change of Control Offer");

(ii) the circumstances and relevant facts regarding such Change of Control (including information with respect to pro forma historical income, cash flow and capitalization of the Issuer after giving effect to such Change of Control);

(iii) the repurchase date (which shall be a Business Day and be not earlier than 30 days or later than 60 days from the date such notice is mailed) (the "Repurchase Date");

(iv) that any Security not tendered for purchase will continue to accrue interest;

(v) that interest on any Security accepted for payment pursuant to the Change of Control Offer shall cease to accrue after the repurchase of such Security on the Repurchase Date;

(vi) that Holders electing to have a Security purchased pursuant to a Change of Control Offer will be required to surrender the Security, with the form entitled "Option of Holder to Elect Purchase" on the reverse of the Security completed, to the paying agent at the address specified in the notice prior to the close of business on the third Business Day prior to the Repurchase Date;

(vii) that Holders will be entitled to withdraw their election if the paying agent receives, not later than the close of business on the third Business Day (or such shorter periods as may be required by applicable law) preceding the Repurchase Date, a telegram, telex, facsimile transmission or letter setting forth the name of the Holder, the principal amount of Securities the Holder delivered for purchase, and a statement that such Holder is withdrawing its election to have such Securities purchased; and

(viii) that Holders that elect to have their Securities purchased only in part will be issued new Securities in a principal amount equal to then unpurchased portion of the Securities surrendered.

(c) Notwithstanding the foregoing, for so long as the Securities are in the form of Global Securities, the Issuer shall deliver to the U.S. Depository within the time periods specified above, for retransmittal to its

Agent Members, a notice substantially to the effect specified in clauses (1) through (5) and (7) above, which notice shall also specify the required procedures (furnished by the U.S. Depository) for holders of interests in the Global Securities to tender and receive payment of the purchase price for such interests (including the U.S. Depository's "Repayment Option Procedures," to the extent applicable), all in accordance with the U.S. Depository's rules, regulations and practices.

(d) On the Repurchase Date, the Issuer shall (i) accept for payment Securities or portions thereof tendered pursuant to the Change of Control Offer, (ii) deposit with the Trustee money sufficient without reinvestment to pay the purchase price of all Securities or portions thereof so tendered and (iii) deliver or cause to be delivered to the Trustee Securities or portions thereof tendered to the Issuer. The Trustee shall promptly pay to the Holders of the Securities so accepted an amount equal to the purchase price, and promptly authenticate and mail to such Holders a new Security in a principal amount equal to any unpurchased portion of the Security surrendered. The Issuer will publicly announce the results of the Change of Control Offer on or as soon as practicable after the Repurchase Date.

(e) The Issuer shall comply with Rule 14e-1 under the Exchange Act and any other applicable laws and regulations in the event that a Change of Control occurs and the Issuer is required to make a Change of Control Offer.

ARTICLE IV
REMEDIES OF THE TRUSTEE AND
SECURITYHOLDERS ON EVENT OF DEFAULT

Section 4.1 Event of Default Defined; Acceleration of Maturity;
Waiver of Default.

In case of one or more of the following Events of Default with respect to a Series of Securities (whatever the reason for such Event of Default and whether it shall be voluntary or involuntary or be effected by operation of law or pursuant to any judgment, decree or order of any court or any order, rule or regulation of any administrative or governmental body) shall have occurred and be continuing, that is to say:

(a) default in the payment of all or any part of the principal or Change of Control purchase price of, or premium, if any, on, any of the Securities of such Series as and when the same shall become due and payable either at maturity, upon any redemption or required repurchase, by declaration of acceleration or otherwise;

(b) default in the payment of any installment of interest upon any of the Securities of such Series as and when the same shall become due and payable, and continuance of such default for a period of 30 days;

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(c) an event of default, as defined in any instrument of the Issuer under which there may be issued, or by which there may be secured or evidenced, any Indebtedness of the Issuer that has resulted in the acceleration of such Indebtedness, or any default occurring in payment of any such Indebtedness at final maturity (and after the expiration of any applicable grace periods), other than such Indebtedness (i) which is payable solely out of the property or assets of a partnership, joint venture or similar entity of which the Issuer is a participant, or which is secured by a lien on the property or assets owned or held by such entity, without further recourse to or liability of the Issuer, or (ii) the principal of, and interest on, which, when added to the principal of and interest on all other such Indebtedness (exclusive of Indebtedness under clause (i) above), does not exceed \$50,000,000; or

(d) failure on the part of the Issuer duly to observe or perform

any other of the covenants or agreements on the part of the Issuer in the Securities of such Series or in this Indenture and such failure continues for a period of 30 days after the date on which written notice specifying such failure, stating that such notice is a "Notice of Default" hereunder and demanding that the Issuer remedy the same, shall have been given to the Issuer by the Trustee, or to the Issuer and the Trustee by the Holders of at least 25% in aggregate principal amount of such Series of Securities at the time Outstanding; or

(e) a court having jurisdiction in the premises shall enter a decree or order for relief in respect of the Issuer in an involuntary case or proceeding under any applicable bankruptcy, insolvency, reorganization or other similar law now or hereafter in effect, or a decree or order adjudging the Issuer a bankrupt or insolvent, or approving as properly filed a petition seeking reorganization, arrangement, adjustment, or composition of or in respect of the Issuer under any applicable federal or state law, or appointing a receiver, liquidator, assignee, custodian, trustee, sequestrator or similar official of the Issuer or for any substantial part of its property or ordering the winding up or liquidation of its affairs, shall have been entered, and such decree or order shall remain unstayed and in effect for a period of 90 consecutive days; or

(f) the Issuer shall commence a voluntary case or proceeding under any applicable federal or state bankruptcy, insolvency, reorganization or other similar law now or hereafter in effect or of any other case or proceeding to be adjudicated a bankrupt or insolvent, or consent to the entry of a decree or order for relief in an involuntary case or proceeding under any such law, or to the commencement of any bankruptcy or insolvency case or proceeding against the Issuer, or the filing by the Issuer of a petition or answer or consent seeking reorganization or relief under any such applicable federal or state law, or the consent by the Issuer to the filing of such petition or to the appointment of or the taking possession by a custodian, receiver, liquidator, assignee, trustee, sequestrator or other similar official of the Issuer or of any substantial part of its property, or the making by the Issuer of an assignment for the benefit of creditors, or the taking of action by the Issuer in furtherance of any such action;

then and in each and every such case (other than an Event of Default with respect to the Issuer specified in 4.1(e) or 4.1(f) hereof), unless the principal of all of the Securities shall have already become due and payable, either the Trustee or the Holders of not less than 25% in aggregate principal amount of a particular Series of Securities then Outstanding hereunder, by notice in writing to the Issuer (and to the Trustee if given by Securityholders), may declare the

entire principal of all the Securities of such Series and the interest accrued thereon to be due and payable immediately, and upon any such declaration the same shall become immediately due and payable. This provision, however, is subject to the condition that if, at any time after the principal of the Securities of such Series shall have been so declared due and payable, and before any judgment or decree for the payment of the moneys due shall have been obtained or entered as hereinafter provided, the Issuer shall pay or shall deposit with the Trustee a sum sufficient to pay all matured installments of interest upon all the Securities of such Series and the principal or Change of Control purchase price and premium, if any, of any and all Series of Securities that shall have become due otherwise than by acceleration (with interest upon such principal and Change of Control purchase price and premium, if any, and, to the extent that payment of such interest is enforceable under applicable law, on overdue installments of interest, at the rate of interest specified in the Series of Securities, to the date of such payment or deposit) and such amount as shall be sufficient to cover reasonable compensation to the Trustee and each predecessor Trustee, their respective agents, attorneys and counsel, and all other reasonable expenses and liabilities incurred and all reasonable advances

made, by the Trustee and each predecessor Trustee except as a result of gross negligence or willful misconduct, and if any and all Events of Default under the Indenture, other than the non-payment of the principal that shall have become due by acceleration, shall have been cured, waived or otherwise remedied as provided herein, then and in every such case the Holders of a majority in aggregate principal amount of the Securities of such Series then Outstanding, by written notice to the Issuer and to a Responsible Officer of the Trustee, may waive all defaults (except, unless theretofore cured, a default in payment of principal of, or Change of Control purchase price or premium, if any, or interest on, the Securities of such Series) and rescind and annul such declaration and its consequences, but no such waiver or rescission and annulment shall extend to or shall affect any subsequent default or shall impair any right consequent thereon.

If an Event of Default specified in Section 4.1(e) or 4.1(f) hereof occurs with respect to the Issuer, the principal of and accrued interest on the Securities shall become and be immediately due and payable without any declaration or other act on the part of the Trustee or any Securityholder.

Section 4.2 Collection of Indebtedness by Trustee; Trustee May Prove Debt.

The Issuer covenants that (a) in case default shall be made in the payment of any installment of interest on any of the Securities when such interest shall have become due and payable, and such default shall have continued for a period of 30 days or (b) in case default shall be made in the payment of all or any part of the principal or Change of Control purchase price of, or premium, if any, on, any of the Securities when the same shall have become due and payable, whether upon maturity or upon any redemption or by declaration or acceleration or otherwise, then upon demand of the Trustee, the Issuer shall pay to the Trustee for the benefit of the Holders of the Securities the whole amount that then shall have become due and payable on all such Securities of principal. Change of Control purchase price, premium or interest, as the case may be (with interest to the date of such payment upon the overdue principal, Change of Control purchase price or premium and, to the extent that payment of such interest is enforceable under applicable law, on overdue installments of interest at the rate of interest specified in the Securities); and in addition thereto, such further amount as shall be sufficient to cover the costs and

expenses of collection, including reasonable compensation to the Trustee and each predecessor Trustee, their respective agents, attorneys and counsel, and any reasonable expenses and liabilities incurred, and all reasonable advances made, by the Trustee and each predecessor Trustee except as a result of its gross negligence or willful misconduct.

Until such demand is made by the Trustee, the Issuer may pay the principal and Change of Control purchase price of and premium and interest on the Securities to the registered Holders, whether or not the Securities be overdue.

In case the Issuer shall fail forthwith to pay such amounts upon such demand, the Trustee, in its own name and as trustee of an express trust, shall be entitled and empowered to institute any action or proceedings at law or in equity for the collection of the sums so due and unpaid, and may prosecute any such action or proceedings to judgment or final decree, and may enforce any such judgment or final decree against the Issuer or other obligor upon the Securities and collect in the manner provided by law out of the property of the Issuer or other obligor upon the Securities, wherever situated, the moneys adjudged or decreed to be payable.

In case there shall be pending proceedings relative to the Issuer or any other obligor upon the Securities under Title 11 of the United States Code

or any other applicable federal or state bankruptcy, insolvency or other similar law, or in case a receiver, assignee or trustee in bankruptcy or reorganization, liquidator, custodian, sequestrator or similar official shall have been appointed for or taken possession of the Issuer or its property or such other obligor, or in case of any other comparable judicial proceedings relative to the Issuer or other obligor upon the Securities, or to the creditors or property of the Issuer or such other obligor, the Trustee, irrespective of whether the principal of the Securities shall then be due and payable as therein expressed or by declaration or otherwise and irrespective of whether the Trustee shall have made any demand pursuant to the provisions of this Section 4.2, shall be entitled and empowered, by intervention in such proceedings or otherwise:

(a) to file and prove a claim or claims for the whole amount of principal, Change of Control purchase price, premium and interest owing and unpaid in respect of the Securities, and to file such other papers or documents as may be necessary or advisable in order to have the claims of the Trustee (including any claim for reasonable compensation to the Trustee and each predecessor Trustee, and their respective agents, attorneys and counsel, and for reimbursement of all reasonable expenses and liabilities incurred, and all reasonable advances made, by the Trustee and each predecessor Trustee, except as a result of gross negligence or willful misconduct) and of the Securityholders, allowed in any judicial proceedings relative to the Issuer or other obligor upon the Securities, or to the creditors or property of the Issuer or such other obligor;

(b) unless prohibited by applicable law and regulations, to vote on behalf of the Holders of the Securities in any election of a trustee or a standby trustee in arrangement, reorganization, liquidation or other bankruptcy or insolvency proceedings or person performing similar functions in comparable proceedings; and

(c) to collect and receive any moneys or other property payable or deliverable on any such claims, and to distribute all amounts received with respect to the claims of the Securityholders and of the Trustee on their behalf; and any trustee, receiver, or liquidator,

custodian or other similar official is hereby authorized by each of the Securityholders to make payments to the Trustee, and, in the event that the Trustee shall consent to the making of payments directly to the Securityholders, to pay to the Trustee such amounts as shall be sufficient to cover reasonable compensation to the Trustee, each predecessor Trustee and their respective agents, attorneys and counsel, and all other reasonable expenses and liabilities incurred, and all reasonable advances made, by the Trustee and each predecessor Trustee except as a result of gross negligence or willful misconduct.

Nothing herein contained shall be deemed to authorize the Trustee to authorize or consent to or vote for or accept or adopt on behalf of any Securityholders any plan or reorganization, arrangement, adjustment or composition affecting the Securities or the rights of any Holder thereof, or to authorize the Trustee to vote in respect of the claim of any Securityholder in any such proceeding except, as aforesaid, to vote for the election of a trustee in bankruptcy or similar person.

All rights of action and of asserting claims under this Indenture, or under any of the Securities, may be enforced by the Trustee without the possession of any of the Securities or the production thereof at any trial or other proceedings relative thereto, and any such action or proceedings instituted by the Trustee shall be brought in its own name as trustee of an express trust, and any recovery of judgment, subject to the payment of the expenses, disbursements and compensation of the Trustee, each predecessor Trustee and their respective agents and attorneys, shall be for the ratable benefit of the Holders of the Securities.

In any proceedings brought by the Trustee (and also any proceedings involving the interpretation of any provision of this Indenture to which the Trustee shall be a party) the Trustee shall be held to represent all the Holders of the Securities, and it shall not be necessary to make any Holders of the Securities parties to any such proceedings.

Section 4.3 Application of Proceeds.

Any moneys collected by the Trustee pursuant to this Article shall be applied in the following order at the date or dates fixed by the Trustee and, in case of the distribution of such moneys on account of principal or interest, upon presentation of the several Securities and stamping (or otherwise noting) thereon the payment, or issuing Securities in reduced principal amounts in exchange for the presented Securities if only partially paid, or upon surrender thereof if fully paid:

FIRST: To the payment of costs and expenses, including reasonable compensation to the Trustee and each predecessor Trustee and their respective agents and attorneys and of all reasonable expenses and liabilities incurred, and all reasonable advances made, by the Trustee and each predecessor Trustee except as a result of gross negligence or willful misconduct and all other amounts due under Section 5.6 hereof;

SECOND: In case the principal and the Change of Control purchase price and premium, if any, of the Securities shall not have become and be then due and payable, to the payment of interest in default in the order of the maturity of the installments of such interest, with interest (to the extent that such interest has been collected by the Trustee) upon the overdue installments of

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interest at the rate of interest specified in the Securities, such payments to be made ratably to the persons entitled thereto, without discrimination or preference;

THIRD: In case the principal or the Change of Control purchase price of the Securities shall have become and shall be then due and payable, to the payment of the whole amount then owing and unpaid upon all the Securities for principal, Change of Control purchase price, premium, and interest, with interest upon the overdue principal, Change of Control purchase price, premium, if any, and (to the extent that such interest has been collected by the Trustee) upon overdue installments of interest at the rate of interest specified in the Securities, and in case such moneys shall be insufficient to pay in full the whole amount so due and unpaid upon the Securities, then to the payment of such principal, Change of Control purchase price, premium and interest, without preference or priority of principal, Change of Control purchase price or premium over interest, or of interest over principal or Change of Control purchase price or premium, or of any installment of interest over any other installment of interest, or of any Security over any other Security, ratably to the aggregate of such principal and accrued and unpaid interest; and

FOURTH: To the payment of the remainder, if any, to the Issuer or any other Person lawfully entitled thereto.

The Trustee may fix a record date and payment date for any payment to Securityholders pursuant to this Section 4.3.

Section 4.4 Suits for Enforcement.

In case an Event of Default has occurred, has not been waived and is continuing, the Trustee may in its discretion proceed to protect and enforce the rights vested in it by this Indenture by such appropriate judicial proceedings as the Trustee shall deem most effectual to protect and enforce any of such rights, either at law or in equity or in bankruptcy or otherwise, whether for the specific enforcement of any covenant or agreement contained in this

Indenture or in aid of the exercise of any power granted in this Indenture or to enforce any other legal or equitable right vested in the Trustee by this Indenture or by law.

Section 4.5 Restoration of Rights on Abandonment of Proceedings.

In case the Trustee shall have proceeded to enforce any right under this Indenture and such proceedings shall have been discontinued or abandoned for any reason, or shall have been determined adversely to the Trustee, then and in every such case the Issuer and the Trustee shall be restored respectively to their former positions and rights hereunder, and all rights, remedies and powers of the Issuer, the Trustee and the Securityholders shall continue as though no such proceedings had been taken.

Section 4.6 Limitations of Suits by Securityholders.

No Holder of any Security of a Series shall have any right by virtue or by availing of any provision of this Indenture to institute any action or proceeding at law or in equity or in bankruptcy or otherwise upon or under or with respect to this Indenture or the Series, or for the

appointment of a trustee, receiver, liquidator, custodian or other similar official or for any other remedy hereunder, unless such Holder previously shall have given to a responsible Officer of the Trustee written notice of default and of the continuance thereof, as hereinbefore provided, and unless also the Holders of not less than 25% in aggregate principal amount of the Securities of the Holder's Series then Outstanding shall have made written request upon the Trustee to institute such action or proceedings in its own name as trustee hereunder and shall have offered to the Trustee such indemnity as it may reasonably require against the costs, expenses and liabilities to be incurred therein or thereby and the Trustee for 30 days after its receipt of such notice, request and offer of indemnity shall have failed to institute any such action or proceedings and no direction inconsistent with such written request shall have been given to the Trustee pursuant to Section 4.8 hereof; it being understood and intended, and being expressly covenanted by the taker and Holder of every Security with every other taker and Holder and the Trustee, that no one or more Holders of Securities shall have any right in any manner whatever by virtue or by availing of any provision of this Indenture to affect, disturb or prejudice the rights of any other Holder of Securities, or to obtain or seek to obtain priority over or preference to any other such Holder or to enforce any right under this indenture, except in the manner herein provided and for the equal, ratable and common benefit of all Holders of Securities. For the protection and enforcement of the provisions of this Section 4.6 each and every Securityholder and the Trustee shall be entitled to such relief as can be given either at law or in equity.

Section 4.7 Powers and Remedies Cumulative, Delay or Omission Not Waiver of Default

Except as provided in Section 2.7 hereof, no right or remedy herein conferred upon or reserved to the Trustee or to the Securityholders is intended to be exclusive of any other right or remedy, and every right and remedy shall, to the extent permitted by law, be cumulative and in addition to every other right and remedy given hereunder or now or hereafter existing at law or in equity or otherwise. The assertion or employment of any right or remedy hereunder, or otherwise, shall not prevent the concurrent assertion or employment of any other appropriate right or remedy.

No delay or omission of the Trustee or of any Holder of any of the Securities to exercise as aforesaid any such right or power accruing upon any

Event of Default occurring and continuing as aforesaid shall impair any such right or power or shall be construed to be a waiver of any such Event of Default or an acquiescence therein; and, subject to Section 4.6 hereof, every power and remedy given by this Indenture or by law to the Trustee or to the Securityholders may be exercised from time to time, and as often as shall be deemed expedient, by the Trustee or by the Securityholders.

Section 4.8 Control by Securityholders.

The Holders of a majority in aggregate principal amount of the Securities of a Series at the time Outstanding shall have the right to direct the time, method and place of conducting any proceeding for any remedy available to the Trustee, or exercising any trust or power conferred on the Trustee by this Indenture; provided that such direction shall not be otherwise than in accordance with law and the provisions of this Indenture; and provided further that (subject to the provisions of Section 5.1 hereof) the Trustee shall have the right to decline to follow any

such direction if the Trustee, being advised by counsel, shall determine that the action or proceeding so directed may not lawfully be taken or if the Trustee in good faith by its board of directors, the executive committee, or a trust committee of directors or Responsible Officers of the Trustee shall determine that the action or proceedings so directed would involve the Trustee in personal liability or if the Trustee in good faith shall so determine that the actions or forbearances specified in or pursuant to such direction shall be unduly prejudicial to the interests of Holders of the Securities of a Series not joining in the giving of said direction, it being understood that (subject to Section 5.1 hereof) the Trustee shall have no duty to ascertain whether or not such actions or forbearances are unduly prejudicial to such Holders.

Nothing in this Indenture shall impair the right of the Trustee to take any action deemed proper by the Trustee and which is not inconsistent with such direction by Securityholders.

Section 4.9 Waiver of Past Defaults.

Prior to the declaration of the maturity of the Securities of a Series as provided in Section 4.1 hereof, the Holders of a majority in aggregate principal amount of the Securities of such Series at the time Outstanding may on behalf of the Holders of all the Securities of such Series waive any past default or Event of Default hereunder and its consequences, except a default (a) in the payment of principal or Change of Control purchase price of, premium, if any, or interest on any of the Securities or (b) in respect of a covenant or provision hereof that cannot be modified or amended without the consent of the Holder of each Security affected. In the case of any such waiver, the Issuer, the Trustee and the Holders of the Securities of such Series shall be restored to their former positions and rights hereunder, respectively; but no such waiver shall extend to any subsequent or other default or impair any right consequent thereon.

Upon any such waiver, such default shall cease to exist and be deemed to have been cured and not to have occurred, and any Event of Default arising therefrom shall be deemed to have been cured, and not to have occurred for every purpose of this Indenture; but no such waiver shall extend to any subsequent or other default or Event of Default or impair any right consequent thereon.

Section 4.10 Rights of Holders to Receive Payment.

Notwithstanding any other provision of this Indenture (including, without limitation, Section 4.6 hereof), the right of any Holder to receive, and to institute suit to enforce, payment of the principal and Change of Control

purchase price of, and premium, if any, and interest on the Securities on or after the respective due dates expressed in such Securities (including upon redemption and acceleration of the maturity of the principal of and premium, if any, and interest on the Securities), shall not be affected or impaired, and shall be absolute and unconditional.

ARTICLE V
CONCERNING THE TRUSTEE

Section 5.1 Duties and Responsibilities of the Trustee; During Default; Prior to Default.

The Trustee, prior to the occurrence of an Event of Default and after the curing or waiving of all Events of Default that may have occurred, undertakes to perform only such duties as are specifically set forth in this Indenture. In case an Event of Default has occurred (which has not been cured or waived) the Trustee shall exercise such of the rights and powers vested in it by this Indenture, and use the same degree of care and skill in their exercise, as a prudent person would exercise or use under the circumstances in the conduct of his or her own affairs.

No provision of this Indenture shall be construed to relieve the Trustee from liability for its own grossly negligent action, its own grossly negligent failure to act or its own willful misconduct, except that

(a) prior to the occurrence of an Event of Default and after the curing or waiving of all such Events of Default that may have occurred:

(i) the duties and obligations of the Trustee shall be determined solely by the express provisions of this Indenture, and the Trustee shall not be liable except for the performance of such duties and obligations as are specifically set forth in this Indenture, and no implied covenants or obligations shall be read into this Indenture against the Trustee; and

(ii) in the absence of bad faith on the part of the Trustee, the Trustee may conclusively rely, as to the truth of the statements and the correctness of the opinions expressed therein, upon any statements, certificates or opinions furnished to the Trustee and conforming to the requirements of this Indenture; but in the case of any such statements, certificates or opinions which by any provision hereof are specifically required to be furnished to the Trustee, the Trustee shall be under a duty to examine the same to determine whether or not they conform to the requirements of this Indenture (but need not confirm or investigate the accuracy of mathematical calculations or other facts stated therein);

(b) the Trustee shall not be liable for any error of judgment made in good faith by a Responsible Officer or Responsible Officers of the Trustee, unless it shall be proved that the Trustee was negligent in ascertaining the pertinent facts;

(c) the Trustee shall not be liable with respect to any action taken or omitted to be taken by it in good faith in accordance with the direction received by it pursuant to Section 4.8 hereof; and

(d) Whether or not therein expressly so provided, every provision of this Indenture relating to the conduct or affecting the liability of or affording protection to the Trustee shall be subject to the provisions of this Section.

None of the provisions contained in this Indenture shall require the Trustee to expend or risk its own funds or otherwise incur personal financial liability in the performance of any of its duties or in the exercise of any of its rights or powers, if there shall be reasonable ground for believing that the repayment of such funds or adequate indemnity against such liability is not reasonably assured to it.

Section 5.2 Certain Rights of the Trustee.

Subject to Section 5.1 hereof:

(a) the Trustee may conclusively rely and shall be protected in acting or refraining from acting upon any resolution, Officers' Certificate or any other certificate (including, without limitation, any certificate provided to the Trustee pursuant to Section 3.5 hereof), statement, instrument, opinion, report, notice, request, consent, order, bond, debenture, note, coupon, security or other paper document believed by it to be genuine and to have been signed or presented by the proper party or parties;

(b) any request, direction, order or demand of the Issuer mentioned herein shall be sufficiently evidenced by an Officers' Certificate (unless other evidence in respect thereof be herein specifically prescribed) and any resolution of the Board of Directors may be evidenced to the Trustee by a copy thereof certified by the Secretary or an Assistant Secretary of the Issuer;

(c) the Trustee may consult with counsel of its selection and any advice or Opinion of Counsel shall be full and complete authorization and protection in respect of any action taken, suffered or omitted to be taken by it hereunder in good faith and in accordance with such advice or Opinion of Counsel;

(d) the Trustee shall be under no obligation to exercise any of the trusts or powers vested in it by this Indenture at the request, order or direction of any of the Securityholders pursuant to the provisions of this Indenture, unless such Securityholders shall have offered to the Trustee security or indemnity reasonably satisfactory to it against the costs, expenses and liabilities that might be incurred therein or thereby;

(e) the Trustee shall not be liable for any action taken or omitted by it in good faith and believed by it to be authorized or within the discretion, rights or powers conferred upon it by this Indenture;

(f) the Trustee shall not be bound to make any investigation into the facts or matters stated in any resolution, certificate, statement, instrument, opinion, report, notice, request, consent, order, approval, appraisal, bond, debenture, note, coupon, security, or other paper or document, in each case relating to a Series of Securities, unless requested in writing so to do by the Holders of not less than a majority in aggregate principal amount of the Securities of such Series then Outstanding; provided that, if the payment within a reasonable time to the Trustee of the costs, expenses or liabilities likely to be incurred by it in the making of such investigation is, in the opinion of the Trustee, not reasonably assured by the security afforded to it by the terms of this Indenture, the Trustee may require reasonable indemnity against such expenses or liabilities

as a condition to proceeding; the reasonable expenses of every such examination shall be paid by the Issuer, or by the Trustee or any predecessor Trustee and repaid by the Issuer upon demand;

(g) the Trustee shall not be bound to make any investigation into the facts or matters stated in any resolution, certificate, statement, instrument, opinion, report, notice, request, direction, consent, order, bond, debenture, note, other evidence of indebtedness or other paper or document, but the Trustee, in its discretion, may make such further inquiry or investigation into such facts or matters as it may see fit, and, if the Trustee shall determine to make such further inquiry or investigation, it shall be entitled to examine the books, records and premises of the Issuer, personally or by agent or attorney at the sole cost of the Issuer and shall incur no liability or additional liability of any kind by reason of such inquiry or investigation;

(h) the Trustee may execute any of the trusts or powers hereunder or perform any duties hereunder either directly or by or through agents or attorneys and the Trustee shall not be responsible for any misconduct or negligence on the part of any agent or attorney appointed with due care by it hereunder;

(i) the Trustee shall not be deemed to have notice of any Default or Event of Default unless a Responsible Officer of the Trustee has actual knowledge thereof or unless written notice of any event which is in fact such a default is received by the Trustee at the Corporate Trust Office of the Trustee, and such notice references the Securities and this Indenture;

(j) the rights, privileges, protections, immunities and benefits given to the Trustee, including, without limitation, its right to be indemnified, are extended to, and shall be enforceable by, the Trustee in each of its capacities hereunder, and each agent, custodian and other Person employed to act hereunder; and

(k) the Trustee may request that the Company deliver an Officers' Certificate setting forth the names of individuals and/or titles of officers authorized at such time to take specified actions pursuant to this Indenture, which Officers' Certificate may be signed by any person authorized to sign an Officers' Certificate, including any person specified as so authorized in any such certificate previously delivered and not superseded.

Section 5.3 Trustee Not Responsible for Recitals, Disposition of Securities or Application of Proceeds Thereof.

The recitals contained herein and in the Securities, except the Trustee's certificate of authentication, shall be taken as the statements of the Issuer, and the Trustee assumes no responsibility for the correctness of the same. The Trustee makes no representation as to the validity or sufficiency of this Indenture or of the Securities. The Trustee shall not be accountable for the use or application by the Issuer or any of the Securities or of the proceeds thereof.

Section 5.4 Trustee and Agents May Hold Securities; Collections, etc.

The Trustee or any agent of the Issuer or the Trustee, in its individual or any other capacity, may become the owner or pledgee of Securities with the same rights it would have if it were not the Trustee or such agent and may otherwise deal with the Issuer and receive, collect,

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hold and retain collections from the Issuer with the same rights it would have if it were not the Trustee or such agent.

Section 5.5 Moneys Held by Trustee.

Subject to the provisions of Section 9.4 hereof, all moneys received by the Trustee shall, until used or applied as herein provided, be held in trust

for the purposes for which they were received, but need not be segregated from other funds except to the extent required by mandatory provisions of law. Neither the Trustee nor any agent of the Issuer or the Trustee shall be under any liability for interest on any moneys received by it hereunder, except as the Issuer and the Trustee otherwise may agree.

Section 5.6 Compensation and Indemnification of Trustee and Its Prior Claim.

The Issuer covenants and agrees to pay to the Trustee from time to time as shall be agreed upon between the Issuer and the Trustee in writing from time to time, and the Trustee shall be entitled to compensation (which shall not be limited by any provision of law relating to the compensation of a trustee of an express trust), and the Issuer covenants and agrees to pay or reimburse the Trustee and each predecessor Trustee and their agents upon its request for all reasonable expenses, disbursements and advances incurred or made by or on behalf of it in accordance with any of the provisions of this Indenture (including the reasonable compensation and expenses and disbursements of its counsel and of all agents and other persons not regularly in its employ), except to the extent any such expense, disbursement or advance may arise from the Trustee's gross negligence or willful misconduct. The Issuer also covenants to indemnify the Trustee and each predecessor Trustee and their agents for, and to hold it harmless against, any and all loss, liability, damage, claims or expense arising out of or in connection with the acceptance or administration of this Indenture or the trusts hereunder and its duties hereunder and the performance of its duties hereunder, including the costs and expenses of defending and investigating any claim of liability in the premises, except to the extent any such loss, liability or expense is due to its own gross negligence or willful misconduct. The obligations of the Issuer under this Section 5.6 to compensate and indemnify the Trustee and each predecessor Trustee and to pay or reimburse the Trustee and each predecessor Trustee for expenses, disbursements and advances shall constitute additional indebtedness hereunder and shall survive the satisfaction and discharge of this Indenture.

The Trustee shall have a lien prior to the Securities as to all property and funds held by it hereunder for any amount owing it or any predecessor Trustee pursuant to this Section 5.6, except with respect to funds held in trust for the benefit of the Holders of particular Securities.

When the Trustee incurs expenses or renders services in connection with an Event of Default, the expenses (including the reasonable charges and expenses of its counsel) and the compensation for the services are intended to constitute expenses of administration under any applicable federal or state bankruptcy, insolvency or other similar law.

The provisions of this Section shall survive the termination of this Indenture.

Section 5.7 Right of Trustee to Rely on Officers' Certificate, etc.

Subject to Section 5.1 and Section 5.2 hereof, whenever in the administration of the trusts of this Indenture the Trustee shall deem it necessary or desirable that a matter be proved or established prior to taking or suffering or omitting any action hereunder, such matter (unless other evidence in respect thereof be herein specifically prescribed) may, in the absence of negligence or bad faith on the part of the Trustee, be deemed to be conclusively proved and established by an Officers' Certificate delivered to the Trustee.

Section 5.8 Persons Eligible for Appointment as Trustee.

The Trustee hereunder shall at all times be a corporation organized and

doing business under the laws of the United States or of a state thereof, having a combined capital and surplus of at least \$50,000,000, and which is authorized under such laws to exercise corporate trust powers and subject to supervision or examination by federal or state authority. If such corporation publishes reports of condition at least annually, pursuant to law or to the requirements of a federal, state or District of Columbia supervising or examining authority, then for the purposes of this Section 5.8, the combined capital and surplus of such corporation shall be deemed to be its combined capital and surplus as set forth in its most recent report of condition so published. No obligor on the Securities or Person directly or indirectly controlling, controlled by or under common control with such obligor shall serve as Trustee.

Section 5.9 Resignation and Removal; Appointment of Successor Trustee.

(a) The Trustee may at any time resign by giving written notice of resignation to the Issuer and by mailing notice thereof by first-class mail to Holders of Securities at their last addresses as they shall appear on the Securities Register. Upon receiving such notice of resignation, the Issuer shall promptly appoint a successor trustee by written instrument in duplicate, executed by authority of the Board of Directors, one copy of which instrument shall be delivered to the resigning Trustee and one copy to the successor Trustee. If no such successor trustee shall have been so appointed and have accepted appointment within 30 days after the mailing of such notice of resignation, the resigning Trustee may petition any court of competent jurisdiction for the appointment of a successor trustee, or any Securityholder who has been a bona fide Holder of a Security or Securities for at least six months may, on behalf of himself and all others similarly situated, petition any such court for the appointment of a successor trustee. Such court may thereupon, after such notice, if any, as it may deem proper and prescribe, appoint a successor trustee.

(b) In case at any time any of the following shall occur:

(i) the Trustee shall fail to comply with the provisions of Section 310(b) of the Trustee Indenture Act, after written request thereafter by the Issuer or by any Securityholder who has been a bona fide Holder of a Security or Securities for at least six months;

(ii) the Trustee shall cease to be eligible in accordance with the provisions of Section 5.8 hereof and shall fail to resign after written request therefor by the Issuer or by any such Securityholder; or

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(iii) the Trustee shall become incapable of acting, or shall be adjudged a bankrupt or insolvent, or a receiver or liquidator of the Trustee or of its property shall be appointed, or any public officer shall take charge or control of the Trustee or of its property or affairs for the purpose of rehabilitation, conservation or liquidation;

then, in any such case, the Issuer may remove the Trustee and appoint a successor trustee by written instrument, in duplicate, executed by order of the Board of Directors of the Issuer, one copy of which instrument shall be delivered to the Trustee so removed and one copy of which shall be delivered to the successor trustee, or, any Securityholder who has been a bona fide Holder of a Security or Securities for at least six months may on behalf of himself and all others similarly situated, petition any court of competent jurisdiction for the removal of the Trustee and the appointment of a successor trustee. Such court may thereupon, after such notice, if any, as it may deem proper and prescribe, remove the Trustee and appoint a successor trustee.

(c) The Holders of a majority in aggregated principal amount of the Securities at the time Outstanding may at any time remove the Trustee and

appoint a successor trustee by delivering to the Trustee so removed, to the successor trustee so appointed and to the Issuer the evidence provided for in Section 6.1 hereof of the action in that regard taken by the Securityholders.

(d) Any resignation or removal of the Trustee and any appointment of a successor trustee pursuant to any of the provisions of this Section 5.9 shall become effective only upon acceptance of appointment by the successor trustee as provided in Section 5.10 hereof.

Section 5.10 Acceptance of Appointment by Successor Trustee.

Any successor trustee appointed as provided in Section 5.9 hereof shall execute and deliver to the Issuer and to its predecessor Trustee an instrument accepting such appointment hereunder, and thereupon the resignation or removal of the predecessor Trustee shall become effective and such successor trustee, without any further act, deed or conveyance, shall become vested with all rights, powers, duties and obligations of its predecessor hereunder, with like effect as if originally named as trustee herein; but, nevertheless, on the written request of the Issuer or of the successor trustee, upon payment of its charges then unpaid, the Trustee ceasing to act shall, subject to Section 9.4 hereof, pay over the successor trustee all moneys at the time held by it hereunder and shall execute and deliver an instrument transferring to such successor trustee all such rights, powers, duties and obligations. Upon request of any such successor trustee, the Issuer shall execute appropriate instruments in writing for more fully and certainly vesting in and confirming to such successor such rights and powers. Any Trustee ceasing to act shall, nevertheless, retain a prior claim upon all property or funds held or collected by such Trustee to secure any amounts then due it pursuant to the provisions of Section 5.6 hereof.

Upon acceptance of appointment by a successor trustee as provided in this Section 5.10, the Issuer shall mail notice thereof by first-class mail to the Holders of Securities at their last addresses as they shall appear in the Securities Register. If the acceptance of appointment is substantially contemporaneous with the resignation then the notice called for by the preceding sentence may be combined with the notice called for by Section 5.9 hereof. If the Issuer fails to

mail such notice within 10 days after acceptance of appointment by the successor trustee, the successor trustee shall cause such notice to be mailed at the expense of the Issuer.

Notwithstanding replacement of the Trustee pursuant to this Section 5.10, the Issuer's obligations under Section 5.6 hereof shall continue for the benefit of the retiring Trustee.

Section 5.11 Merger, Conversion, Consolidation or Succession to Business of Trustee.

Any corporation into which the Trustee may be merged or converted or with which it may be consolidated, or any corporation resulting from any merger, conversion or consolidation to which the Trustee shall be a party, or any corporation succeeding to all or substantially all of the corporate trust business of the Trustee, shall be the successor of the Trustee hereunder, provided that such corporation shall be eligible under the provisions of Section 5.8 hereof, without the execution or filing of any paper or any further act on the part of any of the parties hereto, anything herein to the contrary notwithstanding.

In case at the time such successor to the Trustee shall succeed to the trusts created by this Indenture, any of the Securities shall have been authenticated but not delivered, any such successor to the Trustee may adopt the

certificate of authentication of any predecessor Trustee and deliver such Securities so authenticated and, in case at that time any of the Securities shall not have been authenticated, any successor to the Trustee may authenticate such Securities either in the name of any predecessor hereunder or in the name of the successor trustee, and in such cases such certificate shall have the full force which it is anywhere in the Securities or in this Indenture provided that the certificate of the Trustee shall have; provided, that the right to adopt the certificate of authentication of any predecessor Trustee or to authenticate Securities in the name of any predecessor Trustee shall apply only to its successor or successors by merger, conversion or consolidation.

ARTICLE VI
CONCERNING THE SECURITYHOLDERS

Section 6.1 Evidence of Action Taken by Securityholders.

Any request, demand, authorization, direction, notice, consent, waiver or other action provided by this Indenture to be given or taken by Securityholders may be embodied in and evidenced by one or more instruments of substantially similar tenor signed by such Securityholders, in person or by agent duly appointed in writing; and, except as herein otherwise expressly provided, such action shall become effective when such instrument or instruments are received by a Responsible Officer of the Trustee. Proof of execution of any instrument or of a writing appointing any such agent shall be sufficient for any purpose of this Indenture and (subject to Section 5.1 and Section 5.2 hereof) conclusive in favor of the Trustee and the Issuer, if made in the manner provided in this Article.

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Section 6.2 Proof of Execution of Instruments and of Holding of Securities Record Date.

Subject to Section 5.1 and Section 5.2 hereof, the execution of any instrument by a Securityholder or his agent or proxy may be provided in accordance with such reasonable rules and regulations as may be prescribed by the Trustee or in such manner as shall be satisfactory to the Trustee. The holding of Securities shall be provided by the Securities Register or by a certificate of the Security Registrar thereof. The Issuer may set a record date for purposes of determining the identity of Holders of Securities entitled to vote or consent to any action referred to in Section 6.1 hereof, which record date may be set at any time or from time to time by written notice to the Trustee for any date or dates (in the case of any adjournment or resolicitation) not more than 60 days nor less than five days prior to the proposed date of such vote or consent, and thereafter, notwithstanding any other provisions hereof, only Holders of Securities of record on such record date shall be entitled to so vote or give such consent or to withdraw such vote or consent.

Section 6.3 Holders to be Treated as Owners.

The Issuer, the Trustee and any agent of the Issuer or the Trustee may deem and treat the Person in whose name any Security shall be registered upon the Securities Register as the absolute owner of such Security (whether or not such Security shall be overdue and notwithstanding any notation of ownership or other writing thereon) for the purpose of receiving payment of or on account of the principal and Change of Control purchase price of, and premium, if any, on and, subject to the provisions of this Indenture, interest on such Security and for all other purposes; and neither the Issuer nor the Trustee nor any agent of the Issuer or the Trustee shall be affected by any notice to the contrary. All such payments so made to any such Person, or upon his order, shall be valid and to the extent of the sum or sums so paid, effectual to satisfy and discharge the liability for moneys payable upon any such Security.

Section 6.4 Securities Owned by Issuer Deemed Not Outstanding.

In determining whether the Holders of the requisite aggregate principal amount of Securities have concurred in any direction, consent or waiver under this Indenture, Securities that are owned by the Issuer or any other obligor on the Securities or by any Person directly or indirectly controlling or controlled by or under direct or indirect common control with the obligor on the Securities shall be disregarded and deemed not to be Outstanding for the purpose of any such determination, except that for the purpose of determining whether the Trustee shall be protected in relying on any such direction, consent or waiver only Securities that a Responsible Officer of the Trustee actually knows are so owned shall be so disregarded. Securities so owned that have been pledged in good faith may be regarded as Outstanding if the pledgee establishes to the satisfaction of the Trustee the pledgee's right so to act with respect to such Securities and that the pledgee is not the Issuer or any other obligor upon the Securities or any Person directly or indirectly controlling or controlled by or under direct or indirect common control with the Issuer or any other obligor on the Securities. In case of a dispute as to such right, the advice of counsel shall be full protection in respect of any decision made by the Trustee in accordance with such advice. Upon request of the Trustee, the Issuer shall furnish to the Trustee promptly an Officers' Certificate listing and identifying all Securities, if any, known by

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the Issuer to be owned or held by or for the account of any of the above-described Persons; and, subject to Section 5.1 and Section 5.2 hereof, the Trustee shall be entitled to accept such Officers' Certificate as conclusive evidence of the facts therein set forth and of the facts therein set forth and of the fact that all Securities not listed therein are Outstanding for the purpose of any such determination.

Section 6.5 Right of Revocation of Action Taken.

At any time prior to (but not after) the evidencing to the Trustee, as provided in Section 6.1 hereof, of the taking of any action by the Holders of the percentage in aggregate principal amount of the Securities of a Series specified in this Indenture in connection with such action, any Holder of a Security the serial number of which is shown by the evidence to be included among the serial numbers of the Securities, the Holders of which have consented to such action may, by filing written notice at the Corporate Trust Office and upon proof of holding as provided in this Article, revoke such action so far as concerns such Security. Except as aforesaid any such action taken by the Holder of any Security shall be conclusive and binding upon such Holder and upon all future Holders and owners of such Security and of any Securities issued in exchange or substitution therefor, irrespective of whether or not any notation in regard thereto is made upon any such Security. Any action taken by the Holders of the percentage in aggregate principal amount of the Securities of a Series specified in this Indenture in connection with such action shall be conclusively binding upon the Issuer, the Trustee and the Holders of all such Securities.

ARTICLE VII
SUPPLEMENTAL INDENTURES

Section 7.1 Supplemental Indentures Without Consent of Securityholders.

The Issuer, when authorized by a resolution of its Board of Directors, and the Trustee may from time to time and at any time enter into an indenture or indentures supplemental hereto for one or more of the following purposes:

- (a) to convey, transfer, assign, mortgage or pledge to the Trustee as

security for the Securities any property or assets;

(b) to evidence the succession of another corporation to the Issuer, or successive successions, and the assumption by the successor corporation of the covenants, agreements and obligations of the Issuer pursuant to Article Eight hereof;

(c) to add to the covenants of the Issuer such further covenants, restrictions, conditions or provisions as the Board of Directors shall consider to be for the protection of the Holders of Securities, and to make the occurrence, or the occurrence and continuance of a default in any such additional covenants, restrictions, conditions or provisions an Event of Default permitting the enforcement of all or any of the several remedies provided in this Indenture as herein set forth; provided, that in respect of any such additional covenant, restriction, condition or provision such supplemental indenture may provide for a particular period of grace after default (which period may be shorter or longer than that allowed in the case of other defaults) or

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may provide for immediate enforcement upon such an Event of Default or may limit the remedies available to the Trustee due solely to such an Event of Default or may limit the right of the Holders of a majority in aggregate principal amount of the Securities to waive such an Event of Default;

(d) to cure any ambiguity, omission, defect or inconsistency contained herein or in the Securities, or to make such other provisions in regard to matters or questions arising under this Indenture or under any supplemental indenture as the Board of Directors may deem necessary or desirable; provided, however, that the Trustee and the Issuer shall determine such cure or other provisions shall not adversely affect the interests of the Holders of the Securities of any Series then Outstanding in any material respect;

(e) to make any other change that does not adversely affect the interests of the Holders of the Securities of any Series then Outstanding in any material respect;

(f) to provide for uncertificated Securities in addition to or in place of certificated Securities;

(g) to modify or supplement this Indenture or any indenture supplemental hereto in such manner as to permit the qualification thereof under the Trust Indenture Act of any other similar federal statute hereafter in effect;

(h) to establish the form or terms of a Series of Securities as permitted by Section 2.01; and

(i) to provide that specific provisions of this Indenture shall not apply to a Series of Securities not previously issued.

The Trustee is hereby authorized to join in the execution of any such supplemental Indenture, to make any further appropriate agreements and stipulations that may be therein continued and to accept the conveyance, transfer, assignment, mortgage or pledge of any property thereunder, but the Trustee shall not be obligated to enter into any such supplemental indenture that affects the Trustee's own rights, duties or immunities under this Indenture or otherwise.

Any supplemental indenture authorized by the provisions of this Section 7.1 may be executed without the consent of the Holders of any of the Securities at the time Outstanding, notwithstanding any of the provisions of Section 7.2 hereof.

Section 7.2 Supplemental Indentures With Consent of Securityholders.

With the consent (evidenced as provided in Article Six hereof) of the Holders of not less than a majority in aggregate principal amount of the Securities of each Series affected by a proposed amendment at the time Outstanding, the Issuer, when authorized by a resolution of its Board of Directors, and the Trustee may, from time to time and at any time, modify this Indenture or any indentures supplemental hereto or the rights of the Holders of the Securities of each such Series; provided, that no such supplemental indenture shall (a) change the Stated

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Maturity of the principal of, or any installment of principal of or interest on, any Security, or reduce the principal amount thereof, or reduce the rate or extend the time of payment of interest thereon, or reduce any amount payable on redemption thereof or upon a Change of Control or impair or affect the right of any Securityholder to institute suit for the payment thereof or make any change to Section 3.9 hereof that adversely affects the rights of the Holders of the Securities, in each case without the consent of the Holder of each Security so affected, or (b) without the consent of the Holders of all Securities of each affected Series then Outstanding, (i) reduce the aforesaid percentage of Securities, the consent of the Holders of which is required for any such modification, or the percentage of Securities, the consent of the Holders of which is required for any waiver provided for in this Indenture, (ii) change any obligation of the Issuer to maintain an office or agency in the places and for the purposes specified in Section 3.2 or (iii) make any change in Section 4.9 or this Section 7.2, except to increase any percentages or to provide that certain other provisions of this Indenture cannot be modified or waived without the consent of the Holders of each Outstanding Security affected thereby.

Upon the request of the Issuer, accompanied by a copy of a resolution of the Board of Directors certified by the Secretary or an Assistant Secretary of the Issuer authorizing the execution of any such supplemental indenture, and upon the filing with the Trustee of evidence of the consent of Securityholders and other documents, if any, required by Section 6.1 hereof the Trustee shall join with the Issuer in the execution of such supplemental indenture unless such supplemental indenture affects the Trustee's own rights, duties or immunities under this Indenture or otherwise, in which case the Trustee may in its discretion, but shall not be obligated to enter into such supplemental indenture.

It shall not be necessary for the consent of the Securityholders under this Section 7.2 to approve the particular form of any proposed supplemental indenture, but it shall be sufficient if such consent shall approve the substance thereof.

Promptly after the execution by the Issuer and the Trustee of any supplemental indenture pursuant to the provisions of this Section 7.2, the Issuer shall mail a notice thereof by first-class mail to the Holders of Securities at their addresses as they shall appear on the Securities Register, setting forth in general terms the substance of such supplemental indenture. Any failure of the Issuer to mail such notice, or any defect therein, shall not, however, in any way impair or affect the validity of any such supplemental indenture.

Section 7.3 Effect of Supplemental Indenture

Upon the execution of any supplemental indenture pursuant to the provisions hereof, this Indenture shall be and be deemed to be modified and amended in accordance therewith and the respective rights, limitations of

rights, obligations, duties and immunities under this Indenture of the Trustee, the Issuer and the Holders of Securities shall thereafter be determined, exercised and enforced hereunder subject in all respects to such modifications and amendments, and all the terms and conditions of any such supplemental indenture shall be and be deemed to be part of the terms and conditions of this Indenture for any and all purposes.

Section 7.4 Documents to be Given to Trustee.

The Trustee, subject to the provisions of Section 5.1 and Section 5.2 hereof, shall be entitled to receive and shall be fully protected in relying upon an Officers' Certificate and an Opinion of Counsel as conclusive evidence that any such supplemental indenture complies with the applicable provisions of this Indenture.

Section 7.5 Notation of Securities in Respect of Supplemental Indentures.

Securities authenticated and delivered after the execution of any supplemental indenture pursuant to the provisions of this Article Seven may bear a notation in form approved by the Trustee as to any matters provided for by such supplemental indenture or as to any action taken at any such meeting by the Issuer or the Trustee shall so determine, new Securities so modified as to conform, in the opinion of the Issuer and the Board of Directors, to any modification of this Indenture contained in any such supplemental indenture may be prepared by the Issuer, authenticated by the Trustee and delivered in exchange for the Securities then Outstanding.

ARTICLE VIII
CONSOLIDATE, MERGER, SALE OR CONVEYANCE

Section 8.1 Covenant Not to Merge, Consolidate, Sell or Transfer Assets Except Under Certain Conditions.

(a) The Issuer shall not consolidate with or merge into any other Person, or sell, convey, transfer or lease its properties and assets substantially as an entirety to any Person, and Issuer shall not permit any Person to consolidate with or merge into the Issuer, unless: (i) immediately prior to and immediately following such consolidation, merger, sale or lease, no Event of Default shall have occurred and be continuing and (ii) the Issuer is the surviving or continuing corporation, or the surviving or continuing corporation or corporation that acquires by sale, conveyance, transfer or lease is incorporated in the United States of America or Canada and expressly assumes the payment and performance of all obligations of the Issuer under the Indenture and the Securities.

(b) Except for the sale of the properties and assets of the Issuer substantially as an entirety pursuant to subsection (a) above, and other than assets required to be sold to conform with governmental regulations, the Issuer shall not sell or otherwise dispose of any assets (other than short-term, readily marketable investments purchased for cash management purposes with funds not representing the proceeds of other asset sales) if on a pro forma basis, the aggregate net book value of all such sales during the most recent 12-month period would exceed 10 percent of Consolidated Net Tangible Assets computed as of the end of the most recent fiscal quarter preceding such sale; provided, however, that any such sales shall be disregarded for purposes of this 10 percent limitation if the proceeds are invested in assets in similar or related lines of business of the Issuer and, provided further, that the Issuer may sell or otherwise dispose of assets in excess of such 10 percent if the proceeds from such sales or dispositions, which are not reinvested as provided above, are retained by the Issuer as cash or cash equivalents or are used by the Issuer to

purchase Securities of any Series that are then delivered to the Trustee for

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cancellation or are used to reduce or retire Indebtedness ranking pari passu in right of payment to the Securities.

Section 8.2 Successor Corporation Substituted.

In case of any such consolidation, merger, sale or transfer, and following such an assumption by the successor corporation, such successor corporation shall succeed to and be substituted for the Issuer, with the same effect as if it had been named herein.

Such successor corporation may cause to be signed, and may issue either in its own name or in the name of the Issuer prior to such succession any or all of the Securities issuable hereunder that theretofore shall not have been signed by the Issuer and delivered to the Trustee; and, upon the order of such successor corporation, instead of the Issuer, and subject to all the terms, conditions and limitations in this Indenture prescribed, the Trustee shall authenticate and shall deliver any Securities that previously shall have been signed and delivered by the officers of the Issuer to the Trustee for authentication and any Securities that such successor corporation thereafter shall cause to be signed and delivered to the Trustee for that purpose. All of the Securities so issued shall in all respects have the same legal rank and benefit under this Indenture as the Securities theretofore or thereafter issued in accordance with the terms of this Indenture as though all of such Securities had been issued at the date of the execution hereof.

In case of any such consolidation, merger, sale or transfer such changes in phraseology and form (but not in substance) may be made in the Securities thereafter to be issued as may be appropriate.

In the event of any such sale or transfer (other than a transfer by way of lease) the Issuer or any successor corporation which shall theretofore have become such in the manner described in this Article 8 shall be discharged from all obligations and covenants under this Indenture and the Securities and may be liquidated and dissolved.

Section 8.3 Opinion of Counsel to Trustee; Officers' Certificate.

The Trustee, subject to the provisions of Section 5.1 and Section 5.2 hereof, shall receive an Officers' Certificate and an Opinion of Counsel as conclusive evidence that any such consolidation, merger, sale or transfer, and any such assumption, and any such liquidation or dissolution, complies with the applicable provisions of this Indenture.

ARTICLE IX
SATISFACTION AND DISCHARGE
OF INDENTURE; UNCLAIMED MONEYS

Section 9.1 Satisfaction and Discharge of Indenture.

If at any time (a) the Issuer shall have paid or caused to be paid the principal and Change of Control purchase price of and premium, if any, and interest on all the Securities Outstanding hereunder, as and when the same shall have become due and payable, or (b) the Issuer shall have delivered to the Trustee for cancellation of all Securities theretofore authenticated (other than

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any Securities which shall have been destroyed, lost or stolen and which shall have been replaced or paid as provided in Section 2.7 hereof) or (c) (i) all such Securities not theretofore delivered to the Trustee for cancellation shall have become due and payable, or are by their terms to become due and payable within one year or are to be called for redemption under arrangements satisfactory to the Trustee for the giving of notice of redemption, and (ii) the Issuer shall have irrevocably deposited or caused to be deposited with the Trustee as trust funds the entire amount in cash (other than moneys repaid by the Trustee or any paying agent to the Issuer in accordance with Section 9.4 hereof) or U.S. Government Obligations, maturing as to principal, premium, if any, and interest in such amounts and at such times as will insure (without reinvestment) the liability of cash sufficient, in the opinion of a nationally recognized firm of independent public accountants expressed in a written certification thereof delivered to the Trustee, to pay at maturity all such Securities not theretofore delivered to the Trustee for cancellation, including principal, premium, if any, and interest due or to become due to such date of maturity as the case may be, and if, in any such case, the Issuer shall also pay or cause to be paid all other sums payable hereunder by the Issuer, then this Indenture shall cease to be of further effect (except as to (i) rights of registration of transfer and exchange, and the Issuer's right to optional redemption, (ii) substitution of apparently mutilated, defaced, destroyed, lost or stolen Securities, (iii) rights of Holders to receive payments of principal thereof (including any Change of Control purchase price previously accrued) and premium, if any, and interest thereon, upon the original stated due dates therefor (but not upon acceleration), (iv) the rights and obligations and immunities of the Trustee hereunder and (v) the rights of the Securityholders as beneficiaries hereof with respect to the property so deposited with the Trustee payable to all or any of them), and the Trustee, on demand of the Issuer accompanied by an Officers' Certificate and an Opinion of Counsel and at the cost and expense of the Issuer, shall execute proper instruments acknowledging such satisfaction of and discharging this Indenture; provided that the rights of Holders of the Securities to receive amounts in respect of principal of and premium, if any, and interest on the Securities held by them shall not be delayed longer than required by then applicable mandatory rules or policies of any securities exchange upon which the Securities are listed.

The Issuer agrees to reimburse the Trustee for any costs or expenses thereafter reasonably and properly incurred and to compensate the Trustee for any services thereafter reasonably and properly rendered by the Trustee in connection with this Indenture or the Securities.

Section 9.2 Application by Trustee of Funds Deposited for Payment of Securities.

Subject to Section 9.4 hereof, all moneys deposited with the Trustee pursuant to Section 9.1 hereof shall be held in trust and applied, by it to the payment, either directly or through any paying agent (including the Issuer acting as its own paying agent), to the Holders of the particular Securities for the payment or redemption of which such moneys have been deposited with the Trustee, of all sums due and to become due thereon for principal and Change of Control purchase price, premium, if any, and interest; but such money need not be segregated from other funds except to the extent required by law.

Section 9.3 Repayment of Moneys Held by Paying Agent.

In connection with the satisfaction and discharge of this Indenture all moneys then held by any paying agent under the provisions of this Indenture shall, upon written demand of the Issuer, be repaid to it or paid to the Trustee and thereupon such paying agent shall be released from all further liability with respect to such moneys.

Section 9.4 Return of Moneys Held by Trustee and Paying Agent
Unclaimed for Two Years.

Any moneys deposited with or paid to the Trustee or any paying agent for the payment of the principal or Change of Control purchase price of or premium or interest on any Security and not applied but remaining unclaimed for two years after the date upon which such principal, Change of Control purchase price, premium or interest shall have become due and payable shall, upon the written request of the Issuer, be repaid to the Issuer by the Trustee or such paying agent, and the Holder of such Security shall, unless otherwise required by mandatory provisions of applicable escheat or abandoned or unclaimed property laws, thereafter look only to the issuer for any payment which such Holder may be entitled to collect, and all liability of the Trustee or any paying agent with respect to such moneys shall thereupon cease.

Section 9.5 Defeasance and Discharge of Indenture

The Issuer will be deemed to have paid and will be discharged from any and all obligations in respect of the Securities, on the 123rd day after the deposit referred to in subparagraph (A) hereof has been made, and the provisions of this Indenture will no longer be in effect with respect to the Securities (and the Trustee, at the expense of the Issuer, shall execute proper instruments acknowledging the same), except as to:

(a) rights of registration of transfer and exchange, and the Issuer's right of optional redemption, (b) substitution of apparently mutilated, defaced, destroyed, lost or stolen securities, (c) rights of Holders to receive payments of principal (including rights to receive any Change of Control purchase price previously accrued) thereof and premium, if any, and interest thereon, (d) the rights, obligations and immunities of the Trust hereunder, (e) the rights of the Securityholders as beneficiaries hereof with respect to the property so deposited with the Trustee payable to all or any of them and (f) the obligations of the Issuer to maintain a place of payment for the Securities under Section 3.1 hereof; provided that the following conditions shall have been satisfied:

(i) with reference to this Section 9.5 the Issuer has irrevocably deposited or caused to be irrevocably deposited with the Trustee (or another trustee satisfying the requirements of Section 5.8 hereof) as trust funds in trust, specifically pledged as security for, and dedicated solely to, the benefit of the Holders of the Securities, (i) money in an amount, or (ii) U.S. Government Obligations which through the payment of interest and principal in respect thereof in accordance with their terms (without reinvestment) will provide not later than one day before the due date of any payment referred to in clause (x) or (y) of this subparagraph (A) money in an amount, or (iii) a combination thereof, sufficient, in the opinion of a nationally recognized firm of independent public accountants expressed in a written certification thereof

delivered to the Trustee, to pay and discharge, after payment of all federal, state and local taxes or other charges and assessments in respect thereof payable by the Trustee, (x) the principal and Change of Control purchase price of, premium, if any, and each installment of principal and interest on the Outstanding Securities at the maturity date of such principal or installment of principal or interest and (y) any mandatory sinking fund payments or analogous payments applicable to the Securities on the day on which such payments are due and payable in accordance with the terms of this Indenture and the Securities;

(ii) the Issuer has delivered to the Trustee (i) an Opinion of Counsel to the effect that Holders will not recognize income, gain or loss for federal income tax purposes as a result of the Issuer's exercise of its option under this Section 9.5 and will be subject to federal income tax on the same

amount and in the same manner and at the same times as would have been the case if such deposit, defeasance and discharge had not occurred, which Opinion of Counsel must be based on (x) a change in applicable federal income tax law or related Treasury Regulations after the date of this Indenture or (y) a ruling received by the Issuer from the Internal Revenue Service to the same effect and (ii) an Opinion of Counsel to the effect that the defeasance trust does not constitute an "investment company" under the Investment Company Act of 1940, as amended, and after the passage of 123 days following the deposit, the trust fund will not be subject to the effect of Section 547 of the U.S. Bankruptcy Code or Section 15 of the New York Debtor and Creditor Law;

(iii) immediately after giving effect to such deposit on a pro forma basis, no Event of Default, or event that after the giving of notice or lapse of time or both would become an Event of Default, shall have occurred or be continuing on the date of such deposit or during the period ending on the 123rd day after the date of such deposit, and such deposit shall not result in a breach or violation of, or constitute a default under, any other agreement or instrument to which the Issuer is a party or by which the Issuer is bound; and

(iv) if at such time the Securities are listed on a national securities exchange, the Issuer has delivered to the Trustee an Opinion of Counsel to the effect that the Securities will not be delisted as a result of such deposit, defeasance and discharge.

Section 9.6 Defeasance of Certain Obligations.

The Issuer may omit to comply with any term, provision, or condition set forth in this Indenture in Sections 3.8 and Section 3.9, and Section 4.1(d) (with respect to Sections 3.8 and 3.9) and Section 4.1(c) shall be deemed not to be an Event of Default on the 123rd day after the deposit referred to in subparagraph (A) hereof if:

(A) with reference to this Section 9.6, the Issuer has irrevocably deposited or caused to be irrevocably deposited with the Trustee (or another trustee satisfying the requirements of Section 5.6 hereof) as trust funds in trust, specifically pledged as security for, and dedicated solely to, the benefit of the Holders of the Securities, (i) money in an amount, or (ii) U.S. Government Obligations which bought the payment of interest and principal in respect thereof in accordance with their terms (without reinvestment) will provide not later than one day before the due date of any payment referred to in clauses (x) or (y) of this Section 9.6, money in an amount, or (iii) a combination thereof, sufficient, in the opinion of a nationally recognized firm of

independent public accountants expressed in a certification thereof delivered to the Trustee, to pay and discharge, after payment of all federal, state and local taxes or other charges and assessments in respect thereof payable by the Trustee, (x) the principal and Change of Control purchase price of, premium, if any, and each installment of principal and interest on the Outstanding Securities at the maturity date of such principal or installment of principal or interest and (y) any mandatory sinking fund payments or analogous payments applicable to the Securities on the day on which such payments are due and payable in accordance with the terms of this Indenture and the Securities;

(B) the Issuer has delivered to the Trustee (i) an Opinion of Counsel to the effect that Holders will not recognize income, gain or loss for federal income tax purposes as a result of the Issuer's exercise of its option under this Section 9.6 and will be subject to federal income tax on the same amount and in the same manner and at the same times as would have been the case if such deposit, defeasance and discharge had not occurred, and (ii) an Opinion of Counsel to the effect that the defeasance trust does not constitute an

"investment company" under the Investment Company Act of 1940, as amended, and after the passage of 123 days following the deposit, the trust fund will not be subject to the effect of Section 547 of the U.S. Bankruptcy Code or Section 15 of the New York Debtor and Creditor Law;

(C) immediately after giving effect to such deposit on a pro forma basis, no Event of Default, or event that after the giving of notice or lapse of time or both would become an Event of Default, shall have occurred and be continuing on the date of such deposit or during the period ending on the 123rd day after the date of such deposit, and such deposit shall not result in a breach or violation of or constitute a default under any other agreement or instrument to which the Issuer is a party or by which the Issuer is bound; and

(D) if at such time the Securities are listed on a national securities exchange, the Issuer has delivered to the Trustee an Opinion of Counsel to the effect that the Securities will not be delisted as a result of such deposit, defeasance and discharge.

The Issuer shall pay and indemnify the Trustee against any tax, fee or other charge imposed on or assessed against the U.S. Government Obligations deposited pursuant to Section 9.5 or this Section 9.6 or the principal and interest received in respect thereof other than any such tax, fee or other charge which by law is for the account of the Holders of Outstanding Securities.

ARTICLE X MISCELLANEOUS PROVISIONS

Section 10.1 Incorporators, Shareholders, Officers and Directors of Issuer Exempt from Individual Liability.

No recourse under or upon any obligation, covenant or agreement contained in this Indenture, or in any Security, or because of any indebtedness evidenced thereby, shall be had against any incorporator, as such, or against any past, present or future shareholder, officer or director, as such, of the Issuer or of any successor, either directly or through the Issuer or any successor, under any rule of law, statute or constitutional provision or by the enforcement of any

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assessment or by any legal or equitable proceeding or otherwise, all such liability being expressly waived and released by the acceptance of the Securities by the Holders thereof and as part of the consideration for the issue of the Securities.

Section 10.2 Provisions of the Indenture for the Sole Benefit of Parties and Securityholders.

Nothing in this Indenture or in the Securities, expressed or implied, shall give or be construed to give to any Person, other than the parties hereto and their successors and the Holders (and, where expressly set forth herein, owners of interests in any Global Security), any legal or equitable right, remedy or claim under this Indenture or under any covenant or provision herein contained, all such covenants and provisions being for the sole benefit of the parties hereto and their successors and the Holders (and, where expressly set forth herein, owners of interests in any Global Security).

Section 10.3 Successors and Assigns of Issuer Bound by Indenture.

All the covenants, stipulations, promises and agreements in this Indenture contained by or in behalf of the Issuer shall bind its successors and assigns, whether so expressed or not.

Section 10.4 Notices and Demands on Issuer, Trustee and Securityholders.

Any notice or demand which by any provision of this Indenture is required or permitted to be given or served by the Trustee or by the Holders to or on the Issuer may be given or served by being deposited postage prepaid, first-class mail (except as otherwise specifically provided herein) addressed (until another address of the Issuer is filed by the Issuer with the Trustee) to NRG Energy, Inc., 901 Marquette Avenue, Suite 2300, Minneapolis, Minnesota 55402, Attention: Chief Financial Officer. Any notice, direction, request or demand by the Issuer or any Securityholder to or upon the Trustee shall be in writing and shall be deemed to have been sufficiently given or made, for all purposes, if given or made in person or by first-class mail, telecopier or overnight air courier guaranteeing next day delivery at the Corporate Trust Office or such office or agency designated for such purpose in Section 3.2 hereof.

Where this Indenture provides for notice to Holders, such notice shall be sufficiently given (unless otherwise herein expressly provided) if in writing and mailed, first-class postage prepaid, to each Holder entitled thereto, at his last address as it appears in the Securities Register. In any case where notice to Holders is given by mail, neither the failure to mail such notice, nor any defect in any notice so mailed, to any particular Holder shall affect the sufficiency of such notice with respect to other Holders. Where this Indenture provides for notice in any manner, such notice may be waived in writing by the Person entitled to receive such notice, either before or after the event, and such waiver shall be the equivalent of such notice. Waivers of notice by Holders shall be filed with the Trustee, but such filing shall not be a condition precedent to the validity of any action taken in reliance upon such waiver.

In case, by reason of the suspension of or irregularities in regular mail service, it shall be impracticable to mail notice to the Issuer and Securityholders when such notice is required to be

given pursuant to any provision of this Indenture, then any manner of giving such notice as shall be satisfactory to the Trustee shall be deemed to be a sufficient giving of such notice.

Section 10.5 Officers' Certificates and Opinions of Counsel,
Statements to be Contained Therein.

Upon any application or demand by the Issuer to the Trustee to take any action under any of the provisions of this Indenture, the Issuer shall furnish to the Trustee an Officers' Certificate stating that all conditions precedent provided for in this Indenture relating to the proposed action have been complied with and an Opinion of Counsel stating that in the opinion of such counsel all such conditions precedent have been complied with, except that in the case of any such application or demand as to which the furnishing of such documents is specifically required by any provision of this Indenture relating to such particular application or demand, no additional certificate or opinion need be furnished.

Each certificate or opinion provided for in this Indenture and delivered to the Trustee with respect to compliance with a condition or covenant provided for in this Indenture shall include (a) a statement that the Person making such certificate or opinion has read such covenant or condition, (b) a brief statement as to the nature and scope of the examination or investigation upon which the statements or opinions contained in such certificate or opinion are based, (c) a statement that, in the opinion of such Person, he has made such examination or investigation as is necessary to enable him to express an informed opinion as to whether or not such covenant or condition has been complied with and (d) a statement as to whether or not, in the opinion of such Person, such condition or covenant has been complied with.

Any certificate, statement or opinion of an officer of the Issuer may be based, insofar as it relates to legal matters, upon a certificate or opinion of or representations by counsel, unless such officer knows that the certificate or opinion or representations with respect to the matters upon which his certificate, statement or opinion may be based as aforesaid are erroneous, or in the exercise of reasonable care should know that the same are erroneous. Any certificate, statement or Opinion of Counsel may be based, insofar as it relates to factual matters (information with respect to which is in the possession of the Issuer) upon the certificate, statement or opinion of or representations by an officer or officers of the Issuer, unless such counsel knows that the certificate, statement or opinion or representations with respect to the matters upon which his certificate, statement or opinion may be based as aforesaid are erroneous, or in the exercise of reasonable care should know that the same are erroneous.

Any certificate, statement or opinion of an officer of the Issuer or of counsel may be based, insofar as it relates to accounting matters, upon a certificate or opinion of or representations by an accountant or firm of accountants in the employ of the Issuer, unless such officer or counsel, as the case may be, knows that the certificate or opinion or representations with respect to the accounting matters upon which his certificate, statement or opinion may be based as aforesaid are erroneous, or in the exercise of reasonable care should know that the same are erroneous.

Any certificate or opinion of any independent firm of public accountants or Investment Banker filed with the Trustee shall contain a statement that such firm is independent.

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Section 10.6 Payments Due on Saturdays, Sundays and Holidays

If the date of maturity of interest on or principal, Change of Control purchase price, or premium, if any, of the Securities or the date fixed for redemption of any Security shall not be a Business Day, then payment of interest, principal, Change of Control purchase price or premium need not be made on such date, but may be made on the next succeeding Business Day with the same force and effect as if made on the date of maturity or the date fixed for redemption, and no interest shall accrue for the period after such date.

Section 10.7 New York Law to Govern.

THIS INDENTURE SHALL, PURSUANT TO SECTION 5-1401 OF THE NEW YORK GENERAL OBLIGATIONS LAW, BE GOVERNED BY THE LAW OF THE STATE OF NEW YORK, WITHOUT REFERENCE TO THE CHOICE OF LAW PROVISIONS THEREOF (OTHER THAN SUCH SECTION 5-1401).

Section 10.8 Counterparts.

This Indenture may be executed in any number of counterparts, each of which shall be an original, but such counterparts shall together constitute but one and the same agreement.

Section 10.9 Effect of Headings.

The Article and Section Headings herein and the Table of Contents are for convenience only and shall not affect the construction hereof.

ARTICLE XI
REDEMPTION OF SECURITIES

Section 11.1 Right of Optional Redemption Price.

The Issuer at its option may, at any time, redeem the Securities of a Series, in whole or in part, upon payment of a redemption price equal to the

greater of (i) the principal amount of the Securities of such Series to be redeemed plus accrued and unpaid interest thereon, if any, to the date of redemption, or (ii) the Make Whole Amount plus accrued and unpaid interest, if any, from the last payment date to the redemption date.

Section 11.2 Notice of Redemption.

Notice of redemption to the Holders of Securities to be redeemed shall be given by the Issuer by mailing notice of such redemption by first class mail, postage prepaid, at least 30 days and not more than 60 days prior to the date fixed for redemption to such Holders of Securities at their last addresses as they shall appear in the Securities Register. Failure to give notice by mail, or any defect in the notice to the Holder of any Security designated for redemption as a whole or in part shall not affect the validity of the proceedings for the redemption of any other Security.

The notice of redemption to each Holder shall specify that the Securities are being redeemed pursuant to this Article 11, the date fixed for redemption, the place or places of

payment, the CUSIP and ISIN numbers (as applicable), that payment will be made upon presentation and surrender of the Securities, that interest accrued to the date fixed for redemption will be paid as specified in this Article and that, on and after said date interest thereon or on the portions thereof to be redeemed will cease to accrue.

The notice of redemption of Securities to be redeemed at the option of the Issuer shall be given by the Issuer or, at the Issuer's request, by the Trustee in the name and at the expense of the Issuer, provided that the Issuer makes such request at least 15 days (unless a shorter period shall be acceptable to the Trustee) prior to the date such notice of redemption must be mailed.

At least one Business Day prior to the redemption date specified in the notice of redemption given as provided in this Section 11.2, the Issuer shall deposit with the Trustee or with one or more paying agents (or, if the Issuer is acting as its own paying agent, set aside, segregate and hold in trust as provided in Section 3.4 hereof) an amount of money sufficient to redeem on the redemption date all the Securities so called for redemption.

Section 11.3 Payment of Securities Called for Redemption.

If notice of redemption has been given as above provided, the Securities to be redeemed shall become due and payable on the date and at the place stated in such notice at the redemption price, and on and after said date (unless the Issuer shall default in the payment of such Securities at the redemption price) interest on the Securities or portions of Securities so called for redemption shall cease to accrue and, except as provided in Section 5.5 and Section 9.4 hereof, such Securities shall cease from and after the date fixed for redemption to be entitled to any benefit or security under this Indenture, and the Holders thereof shall have no right in respect of such Securities except the right to receive the redemption price thereof. On presentation and surrender of such Securities at a place of payment specified in said notice, said Securities shall be paid and redeemed by the Issuer at the redemption price; provided, that any semiannual payment of interest becoming due on the date fixed for redemption shall be payable to the Holders of such Securities registered as such on the relevant record date subject to the terms and provisions of Section 2.4 hereof.

If any Security called for redemption shall not be so paid, upon surrender thereof for redemption, the principal shall, until paid or duly

provided for, bear interest from the date fixed for redemption at the rate borne by the Security.

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IN WITNESS WHEREOF, the parties hereto have caused this Indenture to be duly executed all as of the date set forth above.

NRG ENERGY, INC., as Issuer

By:

Name: Leonard A. Bluhm
Title: Executive Vice President and
Chief Financial Officer

THE BANK OF NEW YORK, as Trustee

By:

Name:
Title:

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EXHIBIT A

FORM OF SECURITY

UNLESS THIS CERTIFICATE IS PRESENTED BY AN AUTHORIZED REPRESENTATIVE OF THE DEPOSITORY TRUST COMPANY, TO THE ISSUER OR ITS AGENT FOR REGISTRATION OF TRANSFER, EXCHANGE OR PAYMENT, AND ANY CERTIFICATE ISSUED IN EXCHANGE FOR THIS CERTIFICATE OR ANY PORTION HEREOF IS REGISTERED IN THE NAME OF CEDE & CO. OR IN SUCH OTHER NAME AS IS REQUESTED BY AN AUTHORIZED REPRESENTATIVE OF THE DEPOSITORY TRUST COMPANY OR SUCH OTHER REPRESENTATIVE OF THE DEPOSITORY TRUST COMPANY OR SUCH OTHER NAME AS IS REQUESTED BY AN AUTHORIZED REPRESENTATIVE OF THE DEPOSITORY TRUST COMPANY (AND ANY PAYMENT HEREON IS MADE TO CEDE & CO.), ANY TRANSFER, PLEDGE OR OTHER USE HEREOF FOR VALUE OR OTHERWISE BY OR TO ANY PERSON OTHER THAN THE DEPOSITORY TRUST COMPANY OR CEDE & CO. IS WRONGFUL INASMUCH AS THE REGISTERED OWNER HEREOF, CEDE & CO., HAS AN INTEREST HEREIN.

TRANSFERS OF THIS GLOBAL SECURITY SHALL BE LIMITED TO TRANSFERS IN WHOLE, BUT NOT IN PART, TO NOMINEES OF THE DEPOSITORY TRUST COMPANY OR TO A SUCCESSOR THEREOF OR SUCH SUCCESSOR'S NOMINEE AND TRANSFERS OF PORTIONS OF THIS GLOBAL SECURITY SHALL BE LIMITED TO TRANSFERS MADE IN ACCORDANCE WITH THE RESTRICTIONS SET FORTH IN SECTION 2.6 OF THE INDENTURE REFERRED TO ON THE REVERSE HEREOF.

CUSIP _____

No. []

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NRG ENERGY, INC.

[Title of Security]

NRG Energy, Inc. (the "Issuer"), for value received hereby promises to pay to Cede & Co. or registered assigns the principal sum of [] Dollars at the Issuer's office or agency for said purpose initially at the Corporate Trust Office of _____ (herein called the "Trustee") at _____ and at the office or agency of the Issuer for said purpose in the Borough of Manhattan, The City of New York, on _____ in such coin or currency of the United States of America as at the time of payment shall be legal tender for the payment of public and private debts, and to pay interest, semi-annually in arrears on _____ and _____ of each year, commencing _____, on said principal sum in like coin or currency at the rate per _____ set forth above at said offices or agencies from the most recent interest payment date to which interest on the Securities has been paid or duly provided for, unless the date hereof is a date to which interest on the Securities has been paid or duly provided for, in which case from the date of this Security, or unless no interest has been paid or duly provided for on the Securities, in which case from _____, until payment of said principal sum has been made or duly provided for. Notwithstanding the foregoing, if the date hereof is after _____ or _____, as the case may be, and before the following _____ or _____, this Security shall bear interest from such _____ or _____; provided, that if the Issuer shall default in the payment of interest due on such _____ or _____, then this Security shall bear interest from the immediately preceding _____ or _____ to which interest on the Securities has been paid or duly provided for, or, if no interest has been paid or duly provided for on the Securities, from _____.

The interest so payable on any _____ or _____ will, except as otherwise provided in the Indenture referred to on the reverse hereof, be paid to the Person in whose name this Security is registered at the close of business on the _____ day of _____ or the _____ day of _____ preceding such _____ or _____, whether or not such day is a Business Day; provided, that principal, premium, if any, and interest shall be paid by mailing a check for such to or upon the written order of the registered Holders of Securities entitled thereto at their last address as it appears on the Securities Register or, upon written application to the Trustee by a Holder of \$1,000,000 or more in aggregate principal amount of Securities, by wire transfer of immediately available funds to an account maintained by such Holder with a bank or other financial institution. Interest on this Security shall be computed on the basis of a 360-day year of twelve 30-day months.

Interest on overdue principal and (to the extent permitted by applicable law) on overdue installments of interest (including without limitation during the 30-day period referred to in Section 4.1(b)) shall accrue at the rate per annum set forth above.

Reference is made to the further provisions set forth on the reverse hereof. Such further provisions shall for all purposes have the same effect as though fully set forth at this place.

This Security shall not be entitled to any benefit under the Indenture, or be valid or obligatory, until the certificate of authentication hereof shall have been duly signed by the Trustee acting under the Indenture.

IN WITNESS WHEREOF, the Issuer has caused this instrument to be duly executed under its corporate seal.

NRG ENERGY, INC.

[Seal]

By: _____
Name:
Title:

By: _____
Name:
Title:

ATTEST:

By: _____
Name:
Title:

TRUSTEE'S CERTIFICATE OF AUTHENTICATION

Dated:

This is one of the Securities referred to in the within-mentioned Indenture.

_____, as Trustee

Authorized Signatory

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REVERSE OF SECURITY

NRG ENERGY, INC.

[Title of Security]

This Security is one of a duly authorized issue of debt securities of the Issuer issued or to be issued pursuant to an Indenture dated as of _____ (the "Indenture") (including those terms set forth in the

Authorizing Resolution or supplemental indenture pertaining to the Securities of the Series of which this Security is a part), duly executed and delivered by the Issuer to the Trustee. Reference is hereby made to the Indenture and the Authorizing Resolution or indentures supplemental thereto for a description of the rights, limitations of rights, obligations, duties and immunities thereunder of the Trustee, the Issuer and the Holders (the words "Holders" or "Holder" meaning the registered holders or registered holder) of the Securities. Capitalized terms used herein, but not otherwise defined herein, shall have the meanings assigned to them in the Indenture.

In case an Event of Default shall have occurred and be continuing, the principal of all the Securities may be declared due and payable, in the manner and with the effect, and subject to the conditions, provided in the Indenture. The Indenture provides that in certain events such declaration and its consequences may be waived by the Holders of a majority in aggregate principal amount of the Securities then Outstanding and that, prior to any such declaration, such Holders may waive any past default under the Indenture and its consequences except a default in the payment of principal of or premium, if any, or interest on any of the Securities. Any such consent or waiver by the Holder of this Security (unless revoked as provided in the Indenture) shall be conclusive and binding upon such Holder and upon all future Holders and owners of this Security and any Security which may be issued in exchange or substitution hereof, whether or not any notation thereof is made upon this Security or such other Securities.

The Indenture permits the Issuer and the Trustee, with the consent of the Holders of not less than a majority in aggregate principal amount of the Securities at the time Outstanding, evidenced as in the Indenture provided, to modify the Indenture or any supplemental indentures or the rights of the Holders of the Securities; provided that no such modification shall (a) change the Stated Maturity of the principal of, or any installment of principal of or interest on, any Security, or reduce the principal amount thereof, or reduce the rate or extend the time of payment of interest thereon, or reduce any amount payable on the redemption thereof or impair or affect the rights of any Securityholder to institute suit for the payment thereof or make any change in Section 3.9 of the Indenture (which relates to the obligation of the Issuer to offer to purchase the Securities upon a Change of Control, as described below) which adversely affects the rights of the Holders of the Securities without the consent of the Holder of each Security so affected; (b) reduce the aforesaid percentage of Securities, the consent of the Holders of which is required for any such modification or the percentage of Securities, the consent of Holders of which is required for any waiver provided for in the Indenture; (c) change any obligation of the Issuer to maintain an office

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or agency for payment of and transfer and exchange of the Securities; or (d) make certain changes to provisions relating to waiver or to the provision for supplementing the Indenture; in each case without consent of the Holders of all Securities then Outstanding.

No reference herein to the Indenture and no provision of this Security or of the Indenture shall alter or impair the obligation of the Issuer, which is absolute and unconditional, to pay the principal of and premium, if any, and interest on this Security at the place, times, and rate, and in the currency, herein prescribed.

At the office or agency of the Issuer referred to on the face hereof and in the manner subject to the limitations provided in the Indenture, Securities may be presented for exchange for a like aggregate principal amount of Securities of other authorized denominations.

Upon due presentment for registration of transfer of this Security at the above-mentioned office or agency of the Issuer, a new Security or Securities of authorized denominations, for a like aggregate principal amount, will be issued to the transferee as provided in the Indenture. No service charge shall be made for any such transfer, but the Issuer may require payment of a sum sufficient to cover any tax or other governmental charge that may be imposed in relation thereto.

The Securities may be redeemed in whole or in part (if in part, by lot or by such other method as the Trustee shall deem fair or appropriate) prior to Stated Maturity at the option of the Issuer, on any date, upon mailing a notice of such redemption not less than 30 nor more than 60 days prior to the date fixed for redemption to the Holders of Securities, all as provided in the Indenture, at a redemption price equal to the greater of (i) the principal amount thereof plus accrued and unpaid interest thereon, if any, to the date of redemption, or (ii) the Make Whole Amount plus accrued and unpaid interest, if any, from the last payment date to the redemption date. The Make Whole Amount shall be computed by an independent investment banking institution of national standing selected by the Issuer and shall equal the sum of the present values of the Remaining Scheduled Payments discounted, on a semiannual basis (assuming a 360 day year consisting of twelve 30-day months), at a rate equal to the Treasury Rate plus 25 basis points.

In the event of a Change of Control (as defined in the Indenture), the Issuer has the obligation, subject to certain conditions, to offer to purchase the Securities at 101% of the principal amount thereof plus accrued interest to the date of purchase in accordance with the procedures set forth in the Indenture. As further described in the Indenture, a Change of Control will not be deemed to have occurred if, after giving effect thereto, the Securities are rated Investment Grade (as defined in the Indenture).

Subject to payment by the Issuer of a sum sufficient to pay the amount due on redemption, interest on this Security shall cease to accrue upon the date duly fixed for redemption of this Security.

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The Issuer, the Trustee, and any authorized agent of the Issuer or the Trustee, may deem and treat the registered Holder hereof as the absolute owner of this Security (whether or not this Security shall be overdue and notwithstanding any notation of ownership or other writing hereon made by anyone other than the Issuer or the Trustee or any authorized agent of the Issuer or the Trustee), for the purpose of receiving payment of, or on account of, the principal hereof and premium, if any, and, subject to the provisions on the face hereof, interest hereon and for all other purposes, and neither the Issuer nor the Trustee nor any authorized agent of the Issuer or the Trustee shall be affected by any notice to the contrary.

No recourse shall be had for the payment of the principal of, or premium, if any, of the interest on this Security, for any claim based hereon, or otherwise in respect hereof, or based on or in respect of the Indenture or any indenture supplemental thereto, against any incorporator, shareholder, officer or director, as such, past, present or future, of the Issuer or of any successor corporation, either directly or through the Issuer or any successor corporation, whether by virtue of any constitution, statute or rule of law or by the enforcement of any assessment or penalty or otherwise, all such liability being, by the acceptance hereof and as part of the consideration for the issue hereof, expressly waived and released.

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FORM OF ASSIGNMENT

I or we assign and transfer this Security to:

(Insert assignee's social security or tax I.D. number)

(Print or type name, address and zip code of assignee)

and irrevocably appoint:

Agent to transfer this Security on the books of the Issuer. The Agent may substitute another to act for him.

Date: _____

Your Signature:
(Sign exactly as your name appears exactly on the other side of this Security)

*Signature Guarantee:

*Signatures must be guaranteed by an "eligible guarantor institution" meeting the requirements of the Registrar, which requirements include membership or participation in STAMP or such other "signature guarantee program" as may be determined by the Registrar in addition to, or in substitution for, STAMP, all in accordance with the Securities Exchange Act of 1934.

FORM OF OPTION OF HOLDER TO ELECT PURCHASE

If you wish to have this Security purchased by the Issuer pursuant to Section 3.9 of the Indenture, check the Box: [insert #].

If you wish to have a portion of this Security purchased by the Issuer pursuant to Section 3.9 of the Indenture, state the amount (in original principal amount):

\$ _____

Date:

Your Signature:

(Sign exactly as your name appears exactly on the other side of this Security)

Signature Guarantee:

FIRST SUPPLEMENTAL INDENTURE

DATED AS OF MARCH 13, 2001

BETWEEN

NRG ENERGY, INC.

AS ISSUER

AND

THE BANK OF NEW YORK

AS TRUSTEE

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FIRST SUPPLEMENTAL INDENTURE, dated as of March 13, 2001 (the "First Supplemental Indenture"), between NRG Energy, Inc., a corporation duly organized and existing under the laws of the State of Delaware (the "Company"), and The Bank of New York, a New York banking corporation, as trustee (the "Trustee").

WHEREAS, the Company executed and delivered the Indenture dated as of the date hereof (the "Base Indenture") to the Trustee to provide for the issuance of the Company's debentures, notes, bonds or other evidence of indebtedness (the "Securities"), to be issued from time to time in one or more series as might be determined by the Company under the Base Indenture; and

WHEREAS, pursuant to the terms of the Base Indenture, the Company desires to provide for the establishment of a new series of its Securities to be known as its 6.50% Senior Debentures due 2006 (the "Debentures"), the form and terms of such Debentures and the terms, provisions and conditions thereof to be set forth as provided in the Base Indenture and this First Supplemental Indenture (together, the "Indenture"); and

WHEREAS, the Company has requested that the Trustee execute and deliver this First Supplemental Indenture and all requirements necessary to make this First Supplemental Indenture a valid, binding and enforceable instrument in accordance with its terms, and to make the Debentures, when executed, authenticated and delivered by the Company, the valid, binding and enforceable obligations of the Company, have been done and performed, and the execution and delivery of this First Supplemental Indenture has been duly authorized in all respects.

NOW THEREFORE, in consideration of the purchase and acceptance of the Debentures by the Holders thereof, and for the purpose of setting forth, as

provided in the Base Indenture, the form and terms of the Debentures, the Company covenants and agrees with the Company as follows:

ARTICLE I
DEFINITIONS

Section 1.1 Definition of Terms.

Unless the context otherwise requires:

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(a) a term defined in the Base Indenture has the same meaning when used in this First Supplemental Indenture;

(b) a term defined anywhere in this First Supplemental Indenture has the same meaning throughout;

(c) the singular includes the plural and vice versa;

(d) headings are for convenience of reference only and do not affect interpretation;

(e) the following terms have the meanings given to them in the Purchase Contract Agreement (i) Applicable Principal Amount; (ii) Authorized Newspaper; (iii) Cash Settlement; (iv) Clearing Agency; (v) Clearing Agency Participant; (vi) Corporate Units; (vii) Initial Remarketing; (viii) Initial Remarketing Date; (ix) Purchase Contract Agent; (x) Quotation Agent; (xi) Redemption Price; (xii) Reset Agent; (xiii) Reset Announcement Date; (xiv) Reset Rate; (xv) Reset Spread; (xvi) Secondary Remarketing; (xvii) Secondary Remarketing Date; (xviii) Tax Event; (xix) Treasury Portfolio; (xx) Treasury Portfolio Purchase Price; (xxi) Treasury Units; (xxii) Two-Year Benchmark Treasury; (xxiii) Two and One-Quarter Year Benchmark Treasury; and (xxiv) Underwriting Agreement;

(f) the following terms have the meanings given to them in this Section 1.1(f):

"Coupon Rate" shall have the meaning set forth in Section 2.5.

"Custodial Agent" shall have the meaning set forth in the Pledge Agreement.

"Debentures" shall have the meaning specified in the Recitals.

"Debenture Repayment Price" shall have the meaning set forth in Section 3.4.

"Failed Initial Remarketing" shall have the meaning set forth in Section 9.1(g).

"Failed Secondary Remarketing" shall have the meaning set forth in Section 9.2(h).

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"Global Debentures" shall have the meaning set forth in Section 2.4.

"Maturity Date" shall have the meaning specified in Section 2.2.

"Pledge Agreement" means the Pledge Agreement dated as of March 13, 2001 among the Company, The Chase Manhattan Bank, as collateral agent (the "Collateral Agent"), custodial agent and securities intermediary and The Bank of New York, as purchase contract agent and attorney-in-fact.

"Purchase Contract" shall have the meaning set forth in the Purchase Contract Agreement.

"Purchase Contract Agreement" means the Purchase Contract Agreement dated as of March 13, 2001, among the Company and The Bank of New York, as purchase contract agent.

"Purchase Contract Settlement Date" means May 18, 2004.

"Put-Option" shall have the meaning set forth in Section 3.4.

"Put-Option Exercise Date" shall have the meaning set forth in Section 3.4.

"Regular Record Date" means, with respect to any Interest Payment Date for the Debentures, the close of business on the first day of the month in which such Interest Payment Date falls.

"Remarketing Agent" means Merrill, Lynch & Co., Merrill, Lynch, Pierce, Fenner & Smith Incorporated or any successor thereto or replacement Remarketing Agent under the Remarketing Agreement.

"Remarketing Agreement" means the Remarketing Agreement, dated as of March 13, 2001, among the Company, Merrill, Lynch & Co., Merrill, Lynch, Pierce, Fenner & Smith Incorporated as remarketing agent and The Bank of New York, as purchase contract agent and attorney-in-fact.

"Reset Effective Date" means (i) February 17, 2004 in case the interest rate is reset on the Initial Remarketing Date, or (ii) the Purchase Contract Settlement Date, in case the interest rate is reset on the Secondary Remarketing Date.

The terms "First Supplemental Indenture," "Base Indenture," and "Debentures" shall have the respective meanings set forth in the recitals to this First Supplemental Indenture and the paragraph preceding such recitals.

ARTICLE II
GENERAL TERMS AND CONDITIONS OF THE DEBENTURES

Section 2.1 Designation and Principal Amount.

There is hereby authorized a series of Securities designated the 6.50% Senior Debentures due 2006, (the "Debentures") limited (except as otherwise provided in Article II of the Indenture) in aggregate principal amount to \$250,000,000 (or, \$287,500,000, if the Underwriters' over-allotment option is exercised in full). The Debentures may be issued from time to time upon written order of the Company for the authentication and delivery of Debentures pursuant to Section 2.2 of the Base Indenture.

Section 2.2 Maturity.

The date upon which the Debentures shall become due and payable at final maturity, together with any accrued and unpaid interest, is May 16, 2006 (the "Maturity Date").

Section 2.3 Form, Payment and Appointment.

Except as provided in Section 2.4, the Debentures shall be issued in fully registered certificated form without interest coupons, bearing identical terms. Principal of and premium, if any, and interest on the Debentures will be payable, the transfer of such Debentures will be registrable and such Debentures will be exchangeable for Debentures bearing identical terms and provisions at the office or agency of the Company maintained for such purpose as described below; provided, however, that payment of interest may be made at the option of the Company by check mailed to the Holder at such address as shall appear in the Securities Register or by wire transfer to an account appropriately designated by the Holder entitled to payment.

The Company hereby designates the Borough of Manhattan, The City of New York as the place of payment ("Place of Payment") for the Debentures, and the office or agency maintained by the Company in such Place of Payment for the purposes

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contemplated by this Section 2.3 shall initially be the Corporate Trust Office of the Trustee located at 101 Barclay Street, Floor 21W, New York, New York 10286.

The Security Registrar, transfer agent and Paying Agent for the Debentures shall be The Chase Manhattan Bank.

The Debentures shall be issuable in denominations of \$25 and integral multiples of \$25 in excess thereof.

The Debentures may be issued, in whole or in part, in permanent global form and, if issued in permanent global form, the U.S. Depository shall be The Depository Trust Company or such other depository as any officer of the Company may from time to time designate.

Section 2.4 Global Debentures.

(a) Unless and until it is exchanged for the Debentures in registered form, one or more global Debentures in principal amount equal to the aggregate principal amount of all outstanding Debentures ("Global Debentures") may be transferred, in whole but not in part, only to the Clearing Agency or a nominee of the Clearing Agency, or to a successor Clearing Agency selected or approved by the Company or to a nominee of such successor Clearing Agency.

(b) If at any (i) time the Clearing Agency notifies the Company that it is unwilling or unable to continue as a Clearing Agency for the Global Debentures and no successor Clearing Agency shall have been appointed within 90 days after such notification, (ii) the Clearing Agency at any time ceases to be a clearing agency registered under the Securities Exchange Act of 1934 at any time the Clearing Agency is required to be so registered to act as such Clearing Agency and no successor Clearing Agency shall have been appointed within 90 days after the Company becoming aware of the Clearing Agency's ceasing to be so registered, (iii) the Company, in its sole discretion, determines that the Global Debentures shall be so exchangeable or (iv) there shall have occurred and be continuing an Event of Default, the Company will execute, and subject to Article II of the Base Indenture, the Trustee, upon written notice from the Company, will authenticate and deliver the Debentures in definitive registered form without coupons, in authorized denominations, and in an aggregate principal amount equal to the principal amount of the Global Debenture in exchange for such Global Debenture.

Upon exchange of the Global Debenture for such Debentures in definitive registered form without coupons, in authorized denominations, the Global Debenture shall be cancelled by the Trustee. Such Debentures in definitive registered form issued in exchange for the Global Debenture shall be registered in such names and in such authorized denominations as the Clearing Agency, pursuant to instructions from its direct or indirect participants or otherwise, shall instruct the Trustee. The Trustee shall deliver such Securities to the Clearing Agency for delivery to the Persons in whose names such Securities are so registered.

Section 2.5 Interest.

(a) Each Debenture will bear interest initially at the rate of 6.50% per annum (the "Coupon Rate") from the original date of issuance through and including the day immediately preceding the Reset Effective Date and at the Reset Rate thereafter until the principal thereof is paid or duly made available for payment and shall bear interest, to the extent permitted by law, compounded quarterly, on any overdue principal and premium, if any, and on any overdue installment of interest at the Coupon Rate through and including the day immediately preceding the Reset Effective Date and at the Reset Rate thereafter, payable quarterly in arrears on February 16, May 16, August 16 and November 16 of each year (each, an "Interest Payment Date") commencing on May 16, 2001, to the Person in whose name such Debenture, or any predecessor Debenture, is registered at the close of business on the Regular Record Date for such interest installment.

(b) The interest rate on the Debentures will be reset on the Initial Remarketing Date to the applicable Reset Rate (which Reset Rate will be effective on and after February 17, 2004) except in the event of a Failed Initial Remarketing. In the event of a Failed Initial Remarketing, the interest rate on the Debentures will be reset on the Secondary Remarketing Date, if any, to the applicable Reset Rate (which Reset Rate will be effective on and after the Purchase Contract Settlement Date). On the applicable Reset Announcement Date, the applicable Reset Spread and the Two-Year Benchmark Treasury or Two and One-Quarter Year Benchmark Treasury, as applicable, will be announced by the Company. On the Business Day immediately following such Reset Announcement Date, the Holders of Debentures will be notified of such Reset Spread and Two-Year Benchmark Treasury or Two and One-Quarter Year Benchmark Treasury, as applicable,

by the Company. Such notice shall be sufficiently given to such Holders of Debentures if published in an Authorized Newspaper.

(c) Not later than seven calendar days nor more than 15 calendar days immediately preceding the applicable Reset Announcement Date, the Company will request that the Clearing Agency or its nominee (or any successor Clearing Agency or its nominee) notify the Holders of Debentures of such Reset Announcement Date and, in the case of a Secondary Remarketing, the procedures to be followed by such holders of Debentures wishing to settle the related Purchase Contracts with separate cash on the Business Day immediately preceding the Purchase Contract Settlement Date.

(d) The amount of interest payable for any period will be computed on the basis of a 360-day year consisting of twelve 30-day months. Except as provided in the following sentence, the amount of interest payable for any period other than a full quarterly period for which interest is computed, will be computed on the basis of the actual number of days elapsed in such a 90-day period. In the event that any date on which interest is payable on the Debentures is not a Business Day, then payment of interest payable on such date will be made on the next succeeding day which is a Business Day (and without any interest or other payment in respect of any such delay), except that, if such Business Day is in the next succeeding calendar year, such payment shall be made on the immediately preceding Business Day, in each case with the same force and effect as if made on such date.

ARTICLE III
REDEMPTION OF THE DEBENTURES

Section 3.1 Tax Event Redemption.

If a Tax Event shall occur and be continuing, the Company may, at its option, redeem the Debentures in whole (but not in part) at any time at a price per Debenture equal to the Redemption Price. Installments of interest on Debentures which are due and payable on or prior to the date of redemption (the "Tax Event Redemption Date") will be payable to the Holders of the Debentures registered as such at the close of business on the Regular Record Date. If, following the occurrence of a Tax Event prior to the Purchase Contract Settlement Date, the Company exercises its option to redeem the Debentures, the Company shall appoint the Quotation Agent to assemble the Treasury Portfolio in consultation with the Company. Notice of any redemption will be mailed at least 30 days but not more than 60 days before the Tax

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Event Redemption Date to each registered Holder of the Debentures to be repaid at its registered address. Unless the Company defaults in payment of the Redemption Price, on and after the Tax Event Redemption Date interest shall cease to accrue on the Debentures.

Section 3.2 Redemption Procedures for Debentures.

Payment of the Redemption Price to each Holder of Debentures shall be made by the Company, no later than 12:00 noon, New York City time, on the Tax Event Redemption Date, by check or wire transfer in immediately available funds at such place and to such account as may be designated by each such Holder of Debentures, including the Trustee or the Collateral Agent, as the case maybe. If the Trustee holds immediately available funds sufficient to pay the Redemption Price of the Debentures, then, on such Tax Event Redemption Date, such Debentures will cease to be outstanding and interest thereon will cease to accrue, whether or not such Debentures have been received by the Company, and all other rights of the Holder in respect of the Debentures shall terminate and lapse (other than the right to receive the Redemption Price upon delivery of such Debentures but without interest on such Redemption Price).

Section 3.3 No Sinking Fund.

The Debentures are not entitled to the benefit of any sinking fund.

Section 3.4 Option to Put Debentures upon Failed Secondary Remarketing.

If a Failed Secondary Remarketing (as described in Section 5.4(b) of the Purchase Contract Agreement and incorporated herein by reference) has occurred, each holder of Debentures who holds such Debentures on the day

immediately following the Purchase Contract Settlement Date shall have the right (the "Put Option") on the Business Day immediately following the Purchase Contract Settlement Date, to put such Debentures to the Company on June 30, 2004 (the "Put Option Exercise Date"), upon at least three Business Days prior notice, at a repayment price equal to the principal amount of such Debentures plus an amount equal to the accrued and unpaid interest thereon to the date of payment (the "Debenture Repayment Price").

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Section 3.5 Repurchase Procedure for Debentures.

(a) In order for the Debentures to be repurchased on the Put Option Exercise Date, the Trustee must receive on or prior to 5:00 p.m. New York City time on the third Business Day immediately preceding the Put Option Exercise Date, at its Corporate Trust Office or at an office or agency maintained by the Company in the Borough of Manhattan, The City of New York as contemplated by Section 2.3 hereof, the Debentures to be repurchased with the form entitled "Option to Elect Repayment" on the reverse of or otherwise accompanying such Debentures duly completed. Any such notice received by the Trustee shall be irrevocable. All questions as to the validity, eligibility (including time of receipt) and acceptance of the Debentures for repayment shall be determined by the Company, whose determination shall be final and binding.

(b) Payment of the Debenture Repayment Price shall be made through the Trustee, subject to the Trustee's receipt of payment from the Company in accordance with the terms of the Indenture, no later than 10:00 a.m., New York City time, on the Put Option Exercise Date, and to such account as may be designated. If the Trustee holds immediately available funds sufficient to pay the Debenture Repayment Price of Debentures presented for repayment, then, immediately prior to the close of business on the Put Option Exercise Date, such Debentures will cease to be outstanding and Interest thereon will cease to accrue, whether or not such Debentures have been received by the Company, and all other rights of the Holder in respect of the Debentures, including the Holder's right to require the Company to repay such Debentures, shall terminate and lapse (other than the right to receive the Debenture Repayment Price upon delivery of such Debentures but without interest on such Debenture Repayment Price). Neither the Trustee nor the Company will be required to register or cause to be registered the transfer of any Debenture for which repayment has been elected.

ARTICLE IV
EXPENSES

Section 4.1 Payment of Expenses.

In connection with the offering, sale and issuance of the Debentures to the Holders, the Company, in its capacity as borrower with respect to the Debentures shall pay all costs and expenses relating to the offering, sale and issuance of the

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Debentures, including compensation of the Trustee under the Indenture in accordance with the provisions of Section 5.6 of the Base Indenture.

ARTICLE V

NOTICE

Section 5.1 Notice by the Company.

The Company shall give prompt written notice to a Responsible Officer of the Trustee of any fact known to the Company that would prohibit the making of any payment of monies to or by the Trustee in respect of the Debentures. Notwithstanding any of the provisions of the Base Indenture and this First Supplemental Indenture, the Trustee shall not be charged with knowledge of the existence of any facts that would prohibit the making of any payment of monies to or by the Trustee in respect of the Debentures; provided, however, that if the Trustee shall not have received the notice provided for in this Article V at least two Business Days prior to the date upon which by the terms hereof any money may become payable for any purpose (including, without limitation, the payment of the principal of (or premium, if any) or interest on any Debenture), then, anything herein contained to the contrary notwithstanding, the Trustee shall have full power and authority to receive such money and to apply the same to the purposes for which they were received, and shall not be affected by any notice to the contrary that may be received by it within two Business Days prior to such date.

ARTICLE VI
FORM OF DEBENTURE

Section 6.1 Form of Debenture.

The Debentures and the Trustee's Certificate of Authentication to be endorsed thereon are to be substantially in the following forms, with such changes therein as the officers of the Company executing the Debentures (by manual or facsimile signature) may approve, such approval to be conclusively evidenced by their execution thereof:

(FORM OF FACE OF DEBENTURE)

IF THE DEBENTURE IS TO BE A GLOBAL DEBENTURE, INSERT - THIS DEBENTURE IS A GLOBAL DEBENTURE WITHIN THE MEANING OF THE INDENTURE HEREINAFTER REFERRED TO AND IS REGISTERED IN THE

NAME OF THE CLEARING AGENCY OR A NOMINEE OF THE CLEARING AGENCY. THIS DEBENTURE IS EXCHANGEABLE FOR DEBENTURES REGISTERED IN THE NAME OF A PERSON OTHER THAN THE CLEARING AGENCY OR ITS NOMINEE ONLY IN THE LIMITED CIRCUMSTANCES DESCRIBED IN THE INDENTURE, AND NO TRANSFER OF THIS DEBENTURE (OTHER THAN A TRANSFER OF THIS DEBENTURE AS A WHOLE BY THE CLEARING AGENCY TO A NOMINEE OF THE CLEARING AGENCY OR BY A NOMINEE OF THE CLEARING AGENCY TO THE CLEARING AGENCY OR ANOTHER NOMINEE OF THE CLEARING AGENCY OR TO A SUCCESSOR CLEARING AGENCY OR TO A NOMINEE OF SUCH SUCCESSOR) MAY BE REGISTERED EXCEPT IN LIMITED CIRCUMSTANCES.

UNLESS THIS DEBENTURE IS PRESENTED BY AN AUTHORIZED REPRESENTATIVE OF THE DEPOSITORY TRUST COMPANY (55 WATER STREET, NEW YORK, NEW YORK) TO THE ISSUER OR ITS AGENT FOR REGISTRATION OF TRANSFER, EXCHANGE OR PAYMENT AND ANY DEBENTURE ISSUED IS REGISTERED IN THE NAME OF CEDE & CO. OR SUCH OTHER NAME AS REQUESTED BY AN AUTHORIZED REPRESENTATIVE OF THE DEPOSITORY TRUST COMPANY AND ANY PAYMENT HEREON IS MADE TO CEDE & CO., ANY TRANSFER, PLEDGE OR OTHER USE HEREOF FOR VALUE OR OTHERWISE BY A PERSON IS WRONGFUL SINCE THE REGISTERED OWNER HEREOF, CEDE & CO., HAS AN INTEREST HEREIN.

CUSIP No. _____

\$ _____

No. _____

NRG ENERGY, INC.
6.50% SENIOR DEBENTURE
DUE May 16, 2006

NRG ENERGY, INC., a Delaware corporation (the "Company", which term includes any successor corporation under the Indenture hereinafter referred to), for value received, hereby promises to pay to _____ or registered assigns, the principal sum of _____ (\$ _____) on May 16, 2006 (such

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date is hereinafter referred to as the "Maturity Date"), and to pay interest on said principal sum from March 13, 2001 or from the next recent date to which interest has been paid or duly provided for, quarterly in arrears on February 16, May 16, August 16 and November 16 of each year (each such date, an "Interest Payment Date"), commencing on May 16, 2001 initially at the rate of 6.50% per annum through and including the day immediately preceding the Reset Effective Date and at the Reset Rate thereafter until the principal hereof shall have been paid or duly made available for payment and, to the extent permitted by law, to pay interest, compounded quarterly, on any overdue principal and premium, if any, and on any overdue installment of interest at the rate per annum of 6.50% through and including the day immediately preceding the Reset Effective Date and at the Reset Rate thereafter. The amount of interest payable on any Interest Payment Date shall be computed on the basis of a 360-day year consisting of twelve 30-day months and, except as provided in the Indenture (as defined below), the amount of interest payable for any period shorter than a full quarterly period for which interest is computed will be computed on the basis of the actual number of days elapsed in such 90-day period. In the event that any date on which interest is payable on this Debenture is not a Business Day, then payment of interest payable on such date will be made on the next succeeding day that is a Business Day (and without any interest or other payment in respect of any such delay), except that, if such Business Day is in the next succeeding calendar year, such payment shall be made on the immediately preceding Business Day, in each case with the same force and effect as if made on such Interest Payment Date. The interest installment so payable, and punctually paid or duly provided for, on any Interest Payment Date will, as provided in the Indenture, be paid to the person in whose name this Debenture (or one or more predecessor Securities) is registered at the close of business on the Regular Record Date for such interest installment which shall be the close of business on the first day of the month in which such Interest Payment Date falls. Any such interest installment not punctually paid or duly provided for on any Interest Payment Date shall forthwith cease to be payable to the registered Holders at the close of business on such Regular Record Date and may be paid to the Person in whose name this Debenture (or one or more predecessor Securities) is registered at the close of business on a special record date to be fixed by the Trustee for the payment of such defaulted interest, notice whereof shall be given to the registered Holders of this series of Debentures not less than 10 days prior to such special record date, or may be paid at any time in any other lawful manner not inconsistent with the requirements of any securities exchange on which the Debentures may be listed, and upon such notice as may be required by such exchange, all as more fully provided in the Indenture. The principal of (and premium, if any) and the interest on this

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Debenture shall be payable at the office or agency of the Company maintained for

that purpose in the Borough of Manhattan, The City of New York in any coin or currency of the United States of America that at the time of payment is legal tender for payment of public and private debts; provided, however, that payment of interest may be made at the option of the Company by check mailed to the registered Holder at such address as shall appear in the Security Register or by wire transfer to an account appropriately designated by the Holder entitled thereto.

The indebtedness evidenced by this Debenture is, to the extent provided in the Indenture, senior and unsecured and will rank in right of payment on parity with all other senior unsecured obligations of the Company.

This Debenture shall not be entitled to any benefit under the Indenture hereinafter referred to or be valid or obligatory for any purpose until the Certificate of Authentication shall have been signed by or on behalf of the Trustee.

The provisions of this Debenture are continued on the reverse side hereof and such continued provisions shall for all purposes have the same effect as though fully set forth at this place.

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IN WITNESS WHEREOF, the Company has caused this instrument to be executed.

Dated: March 13, 2001

NRG ENERGY, INC., as Issuer

By: _____
Name:
Title:

Attest:

By: _____
Name:
Title:

CERTIFICATE OF AUTHENTICATION

This is one of the Debentures of the series of Debentures described in the within-mentioned Indenture.

Dated _____

The Bank of New York,
as Trustee

By _____
Authorized Signatory

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(FORM OF REVERSE OF DEBENTURE)

This Debenture is one of a duly authorized series of Securities of the Company (herein sometimes referred to as the "Debentures"), issued and to be issued in one or more series under and pursuant to an Indenture dated as of March 13, 2001 (the "Base Indenture") between the Company and The Bank of New York, as Trustee (the "Trustee," which term includes any successor trustee under the Indenture), as supplemented by a First Supplemental Indenture, dated as of March 13, 2001 (the "First Supplemental Indenture") between the Company and the Trustee (the Base Indenture as so supplemented, the "Indenture"), to which Indenture and all indentures supplemental thereto reference is hereby made for a description of the rights, limitations of rights, obligations, duties and immunities thereunder of the Trustee, the Company and the Holders of the Debentures. By the terms of the Indenture, the Securities are issuable in series that may vary as to amount, date of maturity, rate of interest and in other respects as provided in the Indenture. This series of Securities is limited in aggregate principal amount as specified in said First Supplemental Indenture.

If a Tax Event shall occur and be continuing, the Company may, at its option, redeem the Debentures in whole (but not in part) at any time at a price per Debenture equal to the Redemption Price. The Redemption Price shall be paid to each Holder of the Debentures by the Company, no later than 12:00 noon, New York City time, on the Tax Event Redemption Date, by check or wire transfer in immediately available funds, at such place and to such account as may be designated by each such Holder.

The Debentures are not entitled to the benefit of any sinking fund.

If a Failed Secondary Remarketing (as described in Section 5.4(b) of the Purchase Contract Agreement and incorporated herein by reference) has occurred, each holder of Debentures who holds such Debentures on the day immediately following the Purchase Contract Settlement Date shall have the right (the "Put Option") on the Business Day immediately following the Purchase Contract Settlement Date, to put such Debentures to the Company, on June 30, 2004 (the "Put Option Exercise Date"), upon at least three Business Days prior notice), at a repayment price equal to the principal amount of this Debenture plus an amount equal to the accrued and unpaid interest thereon to the date of payment (the "Debenture Repayment Price").

In order for the Debentures to be so repurchased, the Trustee must receive, on or prior to 5:00 p.m. New York City Time on the third Business Day immediately preceding the Put Option Exercise Date, at its Corporate Trust Office, or at an office or agency maintained by the Company in the Borough of Manhattan, The City of New York as contemplated by Section 2.3 of the First Supplemental Indenture, the Debentures to be repurchased with the form entitled "Option to Elect Repayment" on the reverse of or otherwise accompanying such Debentures duly completed. Any such notice received by the Trustee shall be irrevocable. All questions as to the validity, eligibility (including time of receipt) and acceptance of the Debentures for repayment shall be determined by the Company, whose determination shall be final and binding. The payment of the Debenture Repayment Price in respect of such Debentures shall be made no later than 12:00 noon, New York City time, on the Put Option Exercise Date.

In case an Event of Default, as defined in the Indenture, shall have occurred and be continuing, the principal of all of the Debentures may be declared, and upon such declaration shall become, due and payable (or, in certain circumstances shall ipso facto become due and payable), in the manner,

with the effect and subject to the conditions provided in the Indenture.

The Indenture contains provisions permitting, with certain exceptions therein provided, the Company and the Trustee, with the consent of the Holders of not less than a majority in aggregate principal amount of the Outstanding Securities of each series affected to execute supplemental indentures for the purpose of, among other things, adding any provisions to or changing or eliminating any of the provisions of the Indenture or of any supplemental indenture or of modifying the rights of the Holders of the Securities. The Indenture also contains provisions permitting the Holders of a majority in aggregate principal amount of the Securities of any series at the time Outstanding, on behalf of all of the Holders of all Securities of such series, to waive a Default or Event of Default with respect to such series and its consequences, except a Default or Event of Default in the payment of the principal of or premium, if any, or interest on any of the Securities of such series or in respect of a covenant or other provision which, under the terms of the Indenture, cannot be modified or amended without the consent of the Holder of each Outstanding Security of such series affected. Any such consent or waiver by the registered Holder of this Debenture (unless revoked as provided in the Indenture) shall be conclusive and binding upon such Holder and upon all future Holders of this Debenture and of any Debenture issued in exchange for or in place hereof (whether by registration of

transfer or otherwise), irrespective of whether or not any notation of such consent or waiver is made upon this Debenture.

No reference herein to the Indenture and no provision of this Debenture or of the Indenture shall alter or impair the obligation of the Company, which is absolute and unconditional, to pay the principal of and premium, if any, and interest on this Debenture at the time and place and at the rate and in the money herein prescribed.

As provided in the Indenture and subject to certain limitations therein set forth, this Debenture is transferable by the registered Holder hereof on the Security Register of the Company, upon surrender of this Debenture for registration of transfer at the office or agency of the Company maintained for such purpose in the Borough of Manhattan, The City of New York, accompanied by a written instrument or instruments of transfer in form satisfactory to the Company or the Trustee duly executed by the registered Holder hereof or his attorney duly authorized in writing, and thereupon one or more new Debentures of authorized denominations and for the same aggregate principal amount will be issued to the designated transferee or transferees. No service charge will be made for any such transfer, but the Company may require payment of a sum sufficient to cover any transfer tax or similar governmental charge payable in relation thereto.

Prior to due presentment for registration of transfer of this Debenture, the Company, the Trustee, any Paying Agent and the Security Registrar may deem and treat the registered Holder hereof as the absolute owner hereof (whether or not this Debenture shall be overdue and notwithstanding any notice of ownership or writing hereon made by anyone other than the Security Registrar) for the purpose of receiving payment of or on account of the principal hereof and premium, if any, and interest due hereon and for all other purposes, and neither the Company nor the Trustee nor any Paying Agent nor any Security Registrar shall be affected by any notice to the contrary.

No recourse shall be had for the payment of the principal of or the interest on this Debenture, or for any claim based hereon, or otherwise in respect hereof, or based on or in respect of the Indenture, against any incorporator, shareholder, officer or director, past, present or future, as

such, of the Company or of any predecessor or successor corporation, whether by virtue of any constitution, statute or rule of law, or by the enforcement of any assessment or penalty or otherwise, all such liability being, by the acceptance hereof and as part of the consideration for the issuance hereof, expressly waived and released.

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The Indenture imposes certain limitations on the ability of the Company to, among other things, merge or consolidate with any other Person or sell, assign, transfer or lease all or substantially all of its properties or assets, and requires that the Company comply with certain further covenants. All such covenants and limitations are subject to a number of important qualifications and exceptions. The Company must report periodically to the Trustee on compliance with the covenants in the Indenture.

The Debentures of this series are issuable only in registered form without coupons in denominations of \$25 and any integral multiple thereof. As provided in the Indenture and subject to certain limitations therein set forth, Debentures are exchangeable for a like aggregate principal amount of Debentures of a different authorized denomination, as requested by the Holder surrendering the same.

All terms used in this Debenture that are defined in the Indenture shall have the meanings assigned to them in the Indenture.

The Debentures are subject to defeasance and covenant defeasance upon the terms and subject to the conditions set forth in the Indenture.

This Debenture shall be governed by and construed in accordance with the internal laws of the State of New York.

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OPTION TO ELECT REPAYMENT

The undersigned hereby irrevocably requests and instructs the Company to repay \$_____ principal amount of the within Debenture, pursuant to its terms, on the "Put Option Exercise Date," together with any interest thereon accrued but unpaid to the date of repayment, to the undersigned at:

(Please print or type name and address of the undersigned)

and to issue to the undersigned, pursuant to the terms of the Indenture, a new Debenture or Debentures representing the remaining aggregate principal amount of this Debenture.

For this Option to Elect Repayment to be effective, this Debenture with the Option to Elect Repayment duly completed must be received by the Trustee at its Corporate Trust Office, no later than 5:00 p.m. on the third Business Day immediately preceding June 30, 2004.

Dated: _____ Signature: _____

Signature Guarantee: _____

Note: The signature to this Option to Elect Repayment must correspond with the name as written upon the face of the within Debenture without alteration or enlargement or any change whatsoever.

SIGNATURE GUARANTEE

Signatures must be guaranteed by an "eligible guarantor institution" meeting the requirements of the Registrar, which requirements include membership or participation in the Security Transfer Agent Medallion Program ("STAMP") or such other "signature guarantee program" as may be determined by the Registrar in addition to, or in substitution for, STAMP, all in accordance with the Securities Exchange Act of 1934, as amended.

ASSIGNMENT

FOR VALUE RECEIVED, the undersigned assigns and transfers this Debenture to:

(Insert assignee's social security or tax identification number)

(Insert address and zip code of assignee)

and irrevocably appoints

agent to transfer this Debenture on the books of the Company. The agent may substitute another to act for him or her.

Date: _____

Signature: _____ Signature

Guarantee: _____

(Sign exactly as your name appears on the other side of this Debenture)

SIGNATURE GUARANTEE

Signatures must be guaranteed by an "eligible guarantor institution" meeting the requirements of the Registrar, which requirements include membership or participation in the Security Transfer Agent Medallion Program ("STAMP") or such

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other "signature guarantee program" as may be determined by the Registrar in addition to, or in substitution for, STAMP, all in accordance with the Securities Exchange Act of 1934, as amended.

ARTICLE VII
ORIGINAL ISSUE OF DEBENTURES

Section 7.1 Original Issue of Debentures.

Debentures in the aggregate principal amount of \$250,000,000 (or, \$287,500,000, if the Underwriters' over-allotment option is exercised in full) may from time to time, upon execution of this First Supplemental Indenture, be executed by the Company and delivered to the Trustee for authentication, and the Trustee shall thereupon authenticate and deliver said Debentures to or upon the written order of the Company pursuant to Section 2.2 of the Base Indenture without any further action by the Company.

The Company shall file with the Trustee promptly at the end of each calendar year (i) a written notice specifying the amount of original issue discount (including daily rates and accrual periods) accrued on Outstanding Debentures as of the end of the year and (ii) such other specific information relating to such original issue discount as may then be relevant under the Internal Revenue Code of 1986, as amended from time to time.

ARTICLE VIII MISCELLANEOUS

Section 8.1 Ratification of Indenture.

The Indenture as supplemented by this First Supplemental Indenture, is in all respects ratified and confirmed, and this First Supplemental Indenture shall be deemed part of the Indenture in the manner and to the extent herein and therein provided.

Section 8.2 Trustee Not Responsible for Recitals.

The recitals herein contained are made by the Company and not by the Trustee, and the Trustee assumes no responsibility for the correctness thereof. The Trustee makes no representation as to the validity or sufficiency of this First Supplemental Indenture.

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Section 8.3 New York Law to Govern.

THIS FIRST SUPPLEMENTAL INDENTURE AND EACH DEBENTURE SHALL, PURSUANT TO SECTION 5-1401 OF THE NEW YORK GENERAL OBLIGATIONS LAW, BE GOVERNED BY THE LAW OF THE STATE OF NEW YORK, WITHOUT REFERENCE TO THE CHOICE OF LAW PROVISIONS THEREOF (OTHER THAN SUCH SECTION 5-1401).

Section 8.4 Separability.

In case any one or more of the provisions contained in this First Supplemental Indenture or in the Debentures shall for any reason be held to be invalid, illegal or unenforceable in any respect, then, to the extent permitted by law, such invalidity, illegality or unenforceability shall not affect any other provisions of this First Supplemental Indenture or of the Debentures, but this First Supplemental Indenture and the Debentures shall be construed as if such invalid or illegal or unenforceable provision had never been contained herein or therein.

Section 8.5 Counterparts.

This First Supplemental Indenture may be executed in any number of counterparts each of which shall be an original, but such counterparts shall together constitute but one and the same instrument.

Section 8.6 Provisions of Base Indenture Not Applicable.

The provisions of Section 3.9 and Article XI of the Base Indenture shall not apply to the Debentures.

ARTICLE IX
REMARKETING

Section 9.1 Initial Remarketing Procedures.

(a) The Company will request, not later than seven nor more than 15 calendar days prior to the Initial Remarketing Date that the Clearing Agency notify the Holders of the Debentures and the Holders of Corporate Units and Treasury Units of the Initial Remarketing.

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(b) Not later than 5:00 P.M., New York City time, on the second Business Day immediately preceding the Initial Remarketing Date, each Holder of the Debentures not constituting components of Corporate Units may elect to have Debentures held by such Holder remarketed. Holders of Debentures that are not a component of Corporate Units shall give notice of their election to have such Debentures remarketed to the Custodial Agent pursuant to the Pledge Agreement. Any such notice shall be irrevocable after 5:00 P.M., New York City time, on the second Business Day immediately preceding the Initial Remarketing Date and may not be conditioned upon the level at which the Reset Rate is established. Promptly after 5:30 P.M., New York City time, on such second Business Day, the Trustee, based on the notices received by it prior to such time (including notices from the Purchase Contract Agent as to Purchase Contracts for which Cash Settlement has been elected), shall notify the Company and the Remarketing Agent of the number of Debentures to be tendered for remarketing. Under Section 5.3 of the Purchase Contract Agreement, Debentures that constitute components of Corporate Units will be remarketed as provided therein and in this Section 9.1. The Debentures constituting components of Corporate Units shall be deemed tendered, notwithstanding any failure by the Holder of such Corporate Units to deliver or properly deliver such Debentures to the Remarketing Agent for purchase.

(c) The right of each Holder to have Debentures tendered for purchase shall be limited to the extent that (i) the Remarketing Agent conducts a remarketing pursuant to the terms of the Remarketing Agreement, (ii) Debentures tendered have not been called for redemption, (iii) the Remarketing Agent is able to find a purchaser or purchasers for tendered Debentures at a price per Debenture such that

the aggregate price for the Applicable Principal Amount of Debentures is not less than 100% of the Treasury Portfolio Purchase Price, and (iv) such purchaser or purchasers deliver the purchase price therefor to the Remarketing Agent as and when required.

(d) On the Initial Remarketing Date, the Remarketing Agent shall use reasonable efforts to remarket, at a price per Debenture such that the aggregate price for the Applicable Principal Amount of Debentures is equal to approximately 100.5% of the Treasury Portfolio Purchase Price, Debentures tendered or deemed tendered for purchase.

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(e) If there are no Corporate Units outstanding and none of the Holders elect to have Debentures held by them remarketed, the Reset Rate shall be the rate determined by the Reset Agent, subject to the terms of the Remarketing Agreement, as the rate that would have been established had a remarketing been held on the Initial Remarketing Date.

(f) If the Remarketing Agent has determined that it will be able to remarket all Debentures tendered or deemed tendered prior to 4:00 P.M., New York City time, on the Initial Remarketing Date, the Reset Agent, subject to the terms of the Remarketing Agreement, shall determine the Reset Rate.

(g) If, by 4:00 P.M., New York City time, on the Initial Remarketing Date, the Remarketing Agent is unable to remarket all Debentures tendered or deemed tendered for purchase or if the Initial Remarketing shall not have occurred because a condition precedent to the Remarketing shall not have been fulfilled, a failed remarketing ("Failed Initial Remarketing") shall be deemed to have occurred and the Remarketing Agent shall so advise by telephone the Collateral Agent, Company, Trustee, Purchase Contract Agent and Clearing Agency.

(h) By approximately 4:30 P.M., New York City time, on the Initial Remarketing Date, provided that there has not been a Failed Initial Remarketing, the Remarketing Agent shall advise, by telephone (i) the Collateral Agent, the Company, Trustee, Purchase Contract Agent and Clearing Agency of the Reset Rate determined in the Initial Remarketing and the aggregate principal amount of Debentures sold in the Initial Remarketing, (ii) each purchaser (or the Clearing Agency Participant thereof) of the Reset Rate and the aggregate principal amount of Debentures such purchaser is to purchase and (iii) each purchaser to give instructions to its Clearing Agency Participant to pay the purchase price on February 17, 2004 in same day funds against delivery of the Debentures purchased through the facilities of the Clearing Agency.

(i) In accordance with the Clearing Agency's normal procedures, on February 17, 2004, the transactions described above with respect to each Debenture tendered for purchase and sold in the Initial Remarketing shall be executed through the Clearing Agency, and the accounts of the respective Clearing Agency Participants shall be debited and credited and such Debentures delivered by book entry as necessary to effect purchases and sales

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of such Debentures. The Clearing Agency shall make payment in accordance with its normal procedures.

(j) If any Holder selling Debentures in the Initial Remarketing fails to deliver such Debentures, the Clearing Agency Participant of such selling Holder and of any other Person that was to have purchased Debentures in the Initial Remarketing may deliver to any such other Person an aggregate principal amount of Debentures that is less than the aggregate principal amount of Debentures that otherwise was to be purchased by such Person. In such event, the aggregate principal amount of Debentures to be so delivered shall be determined by such Clearing Agency Participant, and delivery of such lesser aggregate principal amount of Debentures shall constitute good delivery.

(k) The Remarketing Agent is not obligated to purchase any Debentures in the Initial Remarketing or otherwise. Neither the Trustee, the Company nor the Remarketing Agent shall be obligated in any case to provide funds to make payment upon tender of Debentures for remarketing.

(l) The tender and settlement procedures set in this Section 9.1, including provisions for payment by purchasers of Debentures in the Initial Remarketing, shall be subject to modification, notwithstanding any provision to the contrary set forth herein, to the extent required by the Clearing Agency or if the book-entry system is no longer available for the Debentures at the time of the Initial Remarketing, to facilitate the tendering and remarketing of Debentures in certificated form. In addition, the Remarketing Agent may, notwithstanding any provision to the contrary set forth herein, modify the settlement procedures set forth herein in order to facilitate the settlement process.

(m) Anything herein to the contrary notwithstanding, the Reset Rate shall in no event exceed the maximum rate permitted by applicable law and, as provided in the Remarketing Agreement, neither the Remarketing Agent nor the Reset Agent shall have any obligation to determine whether there is any limitation under applicable law on the Reset Rate or, if there is any such limitation, the maximum permissible Reset Rate on the Debentures and they shall rely solely upon written notice from the Company (which the Company agrees to provide prior to the 10th Business Day before February 17, 2004) as to whether or not there is any such limitation and, if so, the maximum permissible Reset Rate.

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Section 9.2 Secondary Remarketing Procedures.

(a) If a Failed Initial Remarketing has occurred, the Company will request, not later than seven nor more than 15 calendar days prior to the Secondary Remarketing Date that the Clearing Agency notify the Holders of the Debentures and the Holders of Corporate Units and Treasury Units of the Secondary Remarketing and of the procedures that must be followed if a Holder of Debentures wishes to exercise such Holder's rights with respect to the Put Option if there is a Failed Secondary Remarketing.

(b) Not later than 5:00 P.M., New York City time, on the second Business Day immediately preceding the Secondary Remarketing Date, each Holder of the Debentures may elect to have Debentures held by such Holder remarketed. Under Section 5.4 of the Purchase Contract Agreement, Holders of Corporate Units that do not give notice of

intention to make a Cash Settlement of their related Purchase Contracts shall be deemed to have consented to the disposition of the Debentures constituting a component of such Corporate Units. Holders of Debentures that are not a component of Corporate Units shall give notice of their election to have such Debentures remarketed to the Custodial Agent pursuant to the Pledge Agreement. Any such notice shall be irrevocable after 5:00 P.M., New York City time, on the second Business Day immediately preceding the Secondary Remarketing Date and may not be conditioned upon the level at which the Reset Rate is established. Promptly after 5:30 P.M., New York City time, on such second Business Day, the Trustee, based on the notices received by it prior to such time (including notices from the Purchase Contract Agent as to Purchase Contracts for which Cash Settlement has been elected), shall notify the Company and the Remarketing Agent of the number of Debentures to be tendered for remarketing.

(c) If any Holder of Corporate Units does not give a notice of its intention to make a Cash Settlement or gives a notice of election to tender Debentures as described in Section 9.2(b), the Debentures of such Holder shall be deemed tendered, notwithstanding any failure by such Holder to deliver or properly deliver such Debentures to the Remarketing Agent for purchase.

(d) The right of each Holder to have Debentures tendered for purchase shall be limited to the extent that (i) the Remarketing Agent conducts a remarketing pursuant to the terms of the Remarketing Agreement, (ii)

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Debentures tendered have not been called for redemption, (iii) the Remarketing Agent is able to find a purchaser or purchasers for tendered Debentures at a price of not less than 100% of the principal amount thereof, and (iv) such purchaser or purchasers deliver the purchase price therefor to the Remarketing Agent as and when required.

(e) If a Failed Initial Remarketing has occurred, on the Secondary Remarketing Date, the Remarketing Agent shall use reasonable efforts to remarket, at a price equal to approximately 100.5% of the aggregate principal amount thereof, Debentures tendered or deemed tendered for purchase.

(f) If none of the Holders elect or are deemed to have elected to have Debentures held by them remarketed, the Reset Rate shall be the rate determined by the Reset Agent, subject to the terms of the Remarketing Agreement, as the rate that would have been established had a remarketing been held on the Secondary Remarketing Date.

(g) If the Remarketing Agent has determined that it will be able to remarket all Debentures tendered or deemed tendered prior to 4:00 P.M., New York City time, on the Secondary Remarketing Date, the Reset Agent shall, subject to the terms of the Remarketing Agreement, determine the Reset Rate.

(h) If, by 4:00 P.M., New York City time, on the Secondary Remarketing Date, the Remarketing Agent is unable to remarket all Debentures tendered or deemed tendered for purchase or if the Secondary Remarketing shall not have occurred because a condition precedent to the Secondary Remarketing shall not have been fulfilled, a failed remarketing ("Failed Secondary Remarketing") shall be deemed to have occurred and the Remarketing Agent shall so advise by telephone the Collateral Agent, Company, Trustee, Purchase Contract Agent and Clearing Agency.

(i) By approximately 4:30 P.M., New York City time, on the Secondary Remarketing Date, provided that there has not been a Failed Secondary Remarketing, the Remarketing Agent shall advise, by telephone (i) the Collateral Agent, the Company, Trustee, and Clearing Agency of the Reset Rate determined in the Secondary Remarketing and the aggregate principal amount of Debentures sold in the Secondary Remarketing, (ii) each purchaser (or the Clearing Agency Participant thereof) of the Reset Rate and the aggregate principal amount of Debentures such purchaser is to purchase

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and (iii) each purchaser to give instructions to its Clearing Agency Participant to pay the purchase price on the Purchase Contract Settlement Date in same day funds against delivery of the Debentures purchased through the facilities of the Clearing Agency.

(j) In accordance with the Clearing Agency's normal procedures, on the Purchase Contract Settlement Date, the transactions described above with respect to each Debenture tendered for purchase and sold in the Secondary Remarketing shall be executed through the Clearing Agency, and the accounts of the respective Clearing Agency Participants shall be debited and credited and such Debentures delivered by book entry as necessary to effect purchases and sales of such Debentures. The Clearing Agency shall make payment in accordance with its normal procedures.

(k) If any Holder selling Debentures in the Secondary Remarketing fails to deliver such Debentures, the Clearing Agency Participant of such selling Holder and of any other Person that was to have purchased Debentures in the Secondary Remarketing may deliver to any such other Person an aggregate principal amount of Debentures that is less than the aggregate principal amount of Debentures that otherwise was to be purchased by such Person. In such event, the aggregate principal amount of Debentures to be so delivered shall be determined by such Clearing Agency Participant, and delivery of such lesser aggregate principal amount of Debentures shall constitute good delivery.

(l) The Remarketing Agent is not obligated to purchase any Debentures in the Secondary Remarketing or otherwise. Neither the Trust, any Trustee, the Company nor the Remarketing Agent shall be obligated in any case to provide funds to make payment upon tender of Debentures for remarketing.

(m) The tender and settlement procedures set in this Section 9.2, including provisions for payment by purchasers of Debentures in the Secondary Remarketing, shall be subject to modification, notwithstanding any provision to the contrary set forth herein, to the extent required by the Clearing Agency or if the book-entry system is no longer available for the Debentures at the time of the Secondary Remarketing, to facilitate the tendering and remarketing of Debentures in certificated form. In addition, the Remarketing Agent may, notwithstanding any provision to the contrary set forth herein, modify the settlement procedures set forth herein in order to facilitate the settlement process.

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(n) Anything herein to the contrary notwithstanding, the Reset Rate shall in no event exceed the maximum rate permitted by applicable law and, as provided in the Remarketing Agreement, neither the Remarketing Agent nor the Reset Agent shall have any obligation to determine whether there is any limitation under applicable law on the Reset Rate or, if there is any such limitation, the maximum permissible Reset Rate on the Debentures and they shall rely solely upon written notice from the Company (which the Company agrees to provide prior to the 10th Business Day before the Purchase Contract Settlement Date) as to whether or not there is any such limitation and, if so, the maximum permissible Reset Rate.

IN WITNESS WHEREOF, the parties hereto have caused this First Supplemental Indenture to be duly executed by their respective officers thereunto duly authorized, on the date or dates indicated in the acknowledgments and as of the day and year first above written.

NRG ENERGY, INC., as Issuer

By:

Name: David H. Peterson
Title: Chairman of the Board,
President and Chief
Executive Officer

Attest:

By:

Name: Leonard A. Bluhm
Title: Executive Vice President
and Chief Financial Officer

THE BANK OF NEW YORK,
as Trustee

By:

Name:
Title:

March 13, 2001

(212) 351-4000

C 66241-00039

NRG Energy, Inc.
901 Marquette Avenue, Suite 2300
Minneapolis, Minnesota 55402

Re: Offering of Equity Units
(Registration Statement No. 333-52508)

Ladies and Gentlemen:

We have acted as tax counsel to NRG Energy, Inc., a Delaware corporation (the "Company"), in connection with the issuance of the Company's equity units (the "Equity Units"), consisting of units (referred to as "Corporate Units") initially comprised of stock purchase contracts (the "Purchase Contracts") and five year debentures (the "Debentures") issued by the Company.

In formulating our opinion, we have reviewed such documents as we deemed necessary or appropriate, including (i) the above-captioned Registration Statement on Form S-3 dated December 22, 2000, filed with the U.S. Securities and Exchange Commission (the "Commission") pursuant to the Securities Act of 1933, and as amended January 26, 2001 (the "Registration Statement"); (ii) the Prospectus of the Company that was included in the Registration Statement on Form S-3, as declared effective by the Commission on January 29, 2001 (the "Prospectus"); (iii) the Indenture, dated March 13, 2001, between the Company and The Bank of New York, a New York banking corporation, as trustee (the "Trustee"); (iv) the First Supplemental Indenture, dated March 13, 2001, between the Company and the Trustee; and (v) the Purchase Contract Agreement, dated March 13, 2001, between the Company and The Bank of New York as purchase contract agent (the "Purchase Contract Agent").

NRG Energy, Inc.
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We have also participated in the preparation of the Supplement to the Prospectus for the Equity Units, dated March 7, 2001 and forming a part of the Registration Statement (the "Prospectus Supplement"). In addition, we have made such other factual and legal inquiries as we have considered necessary or appropriate.

Our opinion set forth below assumes (i) the initial and continuing accuracy of the statements and facts concerning the Equity Units set forth in

the Registration Statement, the Prospectus and the Prospectus Supplement and certain other documents; (ii) the conformity of the Equity Units to the terms set forth in the Registration Statement, the Prospectus and the Prospectus Supplement; and (iii) the genuineness of all signatures, the legal capacity of natural persons, the authenticity of all documents submitted to us as originals, and the conformity to original documents of all documents submitted to us as photocopies. We also have assumed that the transactions related to the issuance of the Equity Units will be consummated in the manner contemplated by the Registration Statement, the Prospectus and the Prospectus Supplement.

Based upon the foregoing and in reliance thereon, and subject to the qualifications, exceptions, assumptions and limitations herein contained, we are of the opinion that:

(1) the discussion in the Prospectus Supplement under the heading "Certain Federal Income Tax Consequences" constitutes, in all material respects, a fair and accurate summary of the matters addressed therein, based on the assumptions stated or referred to therein; and

(2) the Debentures will be treated as indebtedness of the Company for U.S. federal income tax purposes.

We express no opinion concerning any tax consequences associated with the Equity Units other than those specifically set forth herein.

Our opinion is based on current provisions of the Internal Revenue Code of 1986, as amended, Treasury Regulations promulgated thereunder, published pronouncements of the Internal Revenue Service, and case law, any of which may be changed at any time with retroactive effect. Any change in applicable law or the facts and circumstances surrounding the Equity Units, or any inaccuracy in the statements, facts, assumptions, and representations on which we relied, may affect the continuing validity of the opinion set forth herein. We assume no responsibility to inform you of any such changes or inaccuracy that may occur or come to our attention.

This opinion is furnished to you solely for your benefit in connection with the offering of the Equity Units and is not to be used, circulated, quoted or otherwise referred to for any other purpose or relied upon by any other person without our prior written consent. We consent to the use of our name under the heading "Certain Federal Income Tax Consequences" in the Prospectus Supplement. We hereby consent to the filing of this opinion with the Commission as Exhibit 8.1 to the Registration Statement. In giving this consent, we do not thereby admit that we are within the category of persons whose consent is required under Section 7 of the Securities Act of 1933, as amended, or the rules and regulations of the Commission promulgated thereunder.

Very truly yours,

