EXECUTION

MEMBERSHIP INTEREST PURCHASE AGREEMENT

dated as of
November 5, 2018

by and among

SOUTHERN POWER COMPANY

and

NORTHERN STATES POWER COMPANY

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EXHIBITS

Exhibit A Working Capital
Exhibit B Form of Interests Assignment

MEMBERSHIP INTEREST PURCHASE AGREEMENT

This MEMBERSHIP INTEREST PURCHASE AGREEMENT (this "**Agreement**"), dated as of November 5, 2018, by and among Southern Power Company, a Delaware corporation ("**Seller**"), and Northern States Power Company, a Minnesota corporation ("**Buyer**").

RECITALS

WHEREAS, Seller is the record and beneficial owner of (i) all of the outstanding membership interests of Mankato Energy Center, LLC, a Delaware limited liability company ("**Mankato I**"), and (ii) all of the outstanding membership interests of Mankato Energy Center II, LLC, a Delaware limited liability company ("**Mankato II**" and, together with Mankato I, the "**Companies**") (the membership interests in clause (i) and (ii), collectively, the "**Membership Interests**");

WHEREAS, Seller desires to sell the Membership Interests to Buyer, and Buyer desires to purchase the Membership Interests from Seller, upon the terms and subject to the conditions hereinafter set forth.

NOW, THEREFORE, in consideration of the mutual promises hereinafter set forth and for other good and valuable consideration, the receipt and adequacy of which are hereby acknowledged, and intending to be legally bound, Seller and Buyer hereby agree as follows:

ARTICLE 1 DEFINITIONS

Section 1.01. Definitions.

(a) As used herein, the following terms have the following meanings:

"**Accounting Policies**" means the accounting policies, principles, practices and methodologies, with consistent classifications, judgments, elections, inclusions, exclusions and valuation and estimation methodologies as were used in the preparation of the Balance Sheets in accordance with GAAP.

"**Action**" shall mean any claim, action, demand, suit, arbitration, litigation or proceeding by or before any Governmental Authority, whether civil, criminal, administrative, regulatory or otherwise, and whether at law or in equity.

"**Affiliate**" means, with respect to any Person, any other Person directly or indirectly controlling, controlled by, or under common control with such Person; *provided* that the Companies will not be considered Affiliates of Seller. For purposes of this definition, "**control**" when used with respect to any Person means the power to direct the management and policies of such Person, directly or indirectly, whether through the ownership of voting securities, by contract or otherwise, and the terms "**controlling**" and "**controlled**" have correlative meanings.

"**Applicable Law**" means, with respect to any Person, any foreign, federal, state or local law, ordinance, code, rule, regulation, order, injunction, judgment, decree, ruling or other similar

requirement enacted, adopted, promulgated or applied by a Governmental Authority that is binding upon or applicable to such Person, as amended unless expressly specified otherwise.

"**Books and Records**" means all files, documents, contracts (whether active or expired, terminated or completed), warranties, historical operating records of the Facilities, instruments, books, reports, records, drawings, tapes, microfilms, photographs, budgets, ledgers, journals, title policies, supplier lists, regulatory filings, operating data and plans, technical documentation (design specifications, functional requirements, operating instructions, logic manuals, flow charts, etc.), user documentation (installation guides, user manuals, training materials, release notes, working papers, etc.), internal and external correspondence (except for electronic correspondence that has been deleted by Seller's normal retention policies) and other documents relating to the design, development and operation of the Facilities (including correspondence with contractors, customers, suppliers, vendors and the like), and other similar materials that, in all such cases, are primarily related to the business and the assets and the operations of the Companies and in the possession of Seller, the Companies or its or their Affiliates, in whatever form (including information stored electronically whether or not stored on equipment and media located at the Facilities), but excluding Excluded Electronic Records and any Tax Returns of Seller.

"**Business Day**" means a day, other than Saturday, Sunday or any other day on which commercial banks in New York, New York are authorized or required by Applicable Law to close.

"**Business Employee**" means an employee of Seller or its Affiliates who is included on the list of Business Employees provided by Seller pursuant to Section 4.13(a), whose work responsibilities relate primarily to either of the Companies, [redacted]

"**Buyer Burdensome Condition**" means (a) any sale, divestiture, license or disposition of assets or businesses of the Companies; [redacted]

"**Charter Documents**" means with respect to any Person, the articles or certificate of incorporation or organization and bylaws, the limited partnership agreement, the partnership agreement, the operating or limited liability company agreement, and/or other organizational and governance documents of such Person, as applicable (but excluding any equityholder agreements).

"**City**" means The City of Mankato, Minnesota.

"**Closing Date**" means the date of the Closing.

"**Closing Indebtedness**" means the consolidated amount of the Indebtedness of the Companies outstanding, determined as of 11:59 p.m., Central Time, on the day prior to the Closing Date, calculated in accordance with the Accounting Policies.

"**Closing Working Capital Adjustment**" shall mean an amount, which may be positive or negative, equal to (a) the amount of Closing Working Capital *minus* (b) the Target Working Capital.

"**Closing Working Capital**" means the excess of Current Assets over Current Liabilities of the Companies, determined as of 11:59 p.m. Central Time, on the day prior to the Closing Date, in accordance with the Accounting Policies, but subject to such limitations and clarifications set forth in the example calculation in Exhibit A; *provided*, that in no event shall Closing Working Capital include the current portion of any Indebtedness that is otherwise captured in the Closing Indebtedness or any amounts for Taxes.

"**COBRA Continuation Coverage**" means the continuation of group health coverage required under sections 601 through 608 of ERISA, and Section 4980B of the Code and any comparable continuation of group health coverage required by Applicable Law.

"**COD Delay Adjustment**" means, in the event that the Closing has not occurred on or before June 1, 2019 and all of the conditions to Closing set forth in Article 7 (except for the condition set forth in Section 7.02(c) and those conditions that by their nature are to be satisfied at the Closing, and which conditions would be capable of being satisfied at the time of such failure to consummate the Closing) have been satisfied or waived, an amount equal to [redacted]

"**Code**" means the United States Internal Revenue Code of 1986.

"**Commercial Operation**" means the date that (a) each of the COD Conditions (as defined in the Mankato II PPA) specified in subsections (A), (B) and (C) of Section 4.3 of the Mankato II PPA has been satisfied and (b) each of the tests set forth on Schedule 1.01(a)(iv) has been successfully completed. For the avoidance of doubt, the parties agree that if all of the COD Conditions (as defined in the Mankato II PPA) specified in subsections (A), (B) and (C) of Section 4.3 of the Mankato II PPA have been satisfied but Buyer declines to accept a COD (as defined in the Mankato II PPA) earlier than June 1, 2019, Commercial Operation shall be deemed to occur for the purposes of this Agreement on such earlier date but COD under the Mankato II PPA shall not occur prior to June 1, 2019 without the consent of Buyer.

"**Company Benefit Plan**" shall mean each Seller Benefit Plan that is either (a) sponsored or maintained by either of the Companies, or (b) maintained by Seller or its Affiliates exclusively for the benefit of Business Employees.

"**Contract**" shall mean any legally binding lease, contract, license, arrangement, option, instrument, note, bond, mortgage, indenture, deed of trust, agreement, commitment or other obligation, whether written or oral.

"**Current Assets**" means the sum of the current assets of the Companies listed on Exhibit A; *provided* that, for the purpose of this definition, Current Assets shall include (a) the current and non-current portions of the Siemens Long Term Parts and Services Contract prepayment, and (b) the entire amount of the Siemens Credit and exclude (i) all prepaid insurance and (ii) all amounts owing to the Companies (whether or not then due and payable) by any Affiliates of the Companies. For the avoidance of doubt, as the value of the assets in the following clauses (x) and (y) are included in the Base Purchase Price, Current Assets shall not include any amounts for (x) the Steam Turbine L-0 Blades to be delivered to Buyer pursuant to Section 6.16 or (y) except as provided in Section 6.25, any prepaid water expense or other credits due to Mankato I pursuant to the Water Services Agreement.

"**Current Liabilities**" means the sum of the current liabilities of the Companies listed on Exhibit A; *provided* that, for the avoidance of doubt, Current Liabilities shall exclude (a) liabilities for Taxes and (b) all amounts owing (whether or not then due and payable) by the Companies to any of their Affiliates.

"**E&CS Scope of Work**" means that certain Scope of Work for the Unit 1 2x1 Combined Cycle Expansion Project at Plant Mankato, Unit 1 at Southern Power Company, revision 0, dated February 24, 2017 (as amended).

"**Environmental Laws**" means any Applicable Law pertaining to environmental, conservation or natural resource (including air, surface water, groundwater or land) protection, pollution prevention, or the release, use, generation, handling, storage, treatment, transportation, or disposal of Hazardous Substances, as of the date of this Agreement, whether imposed by statute or derived from common law including, but not limited to, the Toxic Substances Control Act (15 U.S.C. § 2601, et seq.), the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, (42 U.S.C. § 9601, et seq.), the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act (42 U.S.C. § 6901, et seq.), the Hazardous Material Transportation Act, (49 U.S.C. § 5101, et seq.), the Federal Water Pollution Control Act, (33 U.S.C. § 1251, et seq.), the Clean Air Act, (42 U.S.C. § 7401, et seq.), the Low-Level Radioactive Waste Policy Act (42 U.S.C. 2021b et seq.), the Endangered Species Act (16 U.S.C. § 1531, et seq.), the Migratory Bird Treaty Act (16 U.S.C. § 703 et seq.), and applicable state counterparts, and their implementing regulations, all as amended, and all other comparable federal, state or local environmental, conservation or natural resource protection or pollution prevention laws, rules or regulations.

"**Equity Interests**" means with respect to (a) any corporation, any share, or any depositary receipt or other certificate representing any share, of an equity ownership interest in that corporation, and (b) any other entity, any share, membership, partnership or other percentage interest, unit of participation or other equivalent (however designated) of an equity interest in such entity.

"**ERISA**" means the Employee Retirement Income Security Act of 1974.

"**Excluded Electronic Records**" means (a) materials relating to this transaction and market and similar forecast information, and (b) electronic correspondence and files stored on equipment and media which (i) are not located at the Facilities at the Closing and (ii) are not material to the operation and ownership of the Companies following the Closing.

"**Excluded Intellectual Property Rights**" means the Intellectual Property Rights set forth on Schedule 1.01(a)(i).

"**Existing Survey**" means that certain ALTA/NSPS Land Title Survey prepared by Bolton & Menk, Inc. dated August 15, 2016, and identified by Job Number M34.101414.

"**Facilities**" means the Mankato I Facility and the Mankato II Facility and all properties, assets and rights of any kind, whether tangible or intangible, real or personal, that are owned by Seller or the Companies and exclusively related to the Mankato I Facility and the Mankato II Facility.

"**FERC**" means the Federal Energy Regulatory Commission or any successor agency.

"**FERC Approval**" means an order issued by FERC under Section 203 of the Federal Power Act, 16 U.S.C. § 824b, approving the transactions contemplated hereby.

"**Final Order**" means a written Order, which has become legally effective, permitting the Closing.

"**GAAP**" means generally accepted accounting principles in the United States as of the date hereof, consistently applied.

"**Good Industry Practices**" means, with respect to the Facilities, any of the practices, methods and acts generally engaged in or approved by a significant portion of the electric power generation industry during the relevant time period that, in the exercise of reasonable judgment in light of the applicable manufacturer's recommendations and the facts known at the time the decision was made, would reasonably have been expected to accomplish the desired result at a reasonable cost consistent with good business practices, reliability, safety and expedition. Good Industry Practices are intended to consist of practices, methods or acts generally accepted in the region where the Facilities are located and are not intended to be limited to optimum practices, methods or acts to the exclusion of all others.

"**Governmental Authority**" means any domestic or foreign federal, state or local governmental, regulatory or administrative authority, department, court, agency or official, including any political subdivision thereof, and including any governmental, quasi–governmental or non-governmental body administering, regulating or having general oversight over gas, electricity, power or other markets, including MISO, NERC and MRO.

"**Hazardous Substance**" means any substance, pollutant, contaminant, chemical, material or waste that is regulated, listed or identified as hazardous, dangerous, toxic, radioactive, or words of similar import under any Environmental Laws, and shall include, without limitation, any flammable, explosive, or radioactive materials; hazardous materials; radioactive wastes; hazardous wastes; hazardous or toxic substances or related materials; polychlorinated biphenyls; petroleum products, fractions and by-products thereof; asbestos and asbestos-containing materials; medical waste, and any excavated soil, debris, or groundwater that is contaminated with such materials, and any other waste, material, substance, pollutant or contaminant that would reasonably be expected to subject Seller or Buyer to any Liabilities or Losses under any Environmental Law.

"**HSR Act**" means the Hart-Scott-Rodino Antitrust Improvements Act of 1976.

"**Indebtedness**" shall mean, with respect to a Person, (a) any and all liabilities and obligations of such Person (i) for borrowed money, whether current, short-term or long-term, secured or unsecured, including obligations evidenced by a note, bond, debenture or similar instruments, and any related accrued interest, fees and prepayment penalties related to the foregoing, (ii) under or related to any reimbursement obligation relating to a letter of credit, bankers' acceptance or note purchase facility, (iii) for the payment of money relating to a lease or instrument that is required to be classified as a capitalized/finance lease obligation in accordance with GAAP, (iv) for all or any part of the deferred purchase price of property or services (other than non-Affiliate trade payables) (including any "earn-out" or similar payments but excluding trade payables incurred in the ordinary course of business), (v) under or related to any agreement that is an interest rate swap agreement, basis swap, forward rate agreement, commodity swap, commodity option, equity or equity index swap or option, bond option, interest rate option, forward foreign exchange agreement, rate cap, collar or floor agreement, currency swap agreement, cross-currency rate swap agreement, currency option or other similar agreement (including any option to enter into any of the foregoing), and (vi) any and all fees and expenses (including all fees and expenses of counsel) incurred by (or otherwise payable by) the Companies in connection with, or related to, the authorization, preparation, negotiation, execution and performance of this Agreement and the transactions contemplated hereby, and (b) any and all liabilities and obligations of others described in the preceding clause (a) that such Person has guaranteed or that is recourse to such Person or any of its assets or that is otherwise its legal liability or that is secured in whole or in part by the assets of such Person; *provided*, that Indebtedness shall exclude any Current Liabilities included in the calculation of Closing Working Capital.

"**Independent Engineer**" means [redacted] or, if such firm is unable or unwilling to act as the Independent Engineer under this Agreement, a nationally recognized engineering firm that is mutually acceptable to Seller and Buyer.

"**Intellectual Property Right**" means any trademark, service mark, trade name, mask work, patent, trade secret, copyright, know-how, domain name or social media user names/accounts (including any registrations or applications for registration of any of the foregoing).

"**Knowledge of Seller**", "**Seller's Knowledge**" or any other similar knowledge qualification in this Agreement means, [redacted]

"**Liability**" means all Indebtedness, Liens, obligations and other liabilities of any nature, whether absolute, accrued, matured, contingent (or based upon any contingency), known or unknown, fixed or otherwise, or whether due or to become due whenever or however arising (including, whether arising out of any Contract or tort based on negligence, strict liability or otherwise).

"**Lien**" means, with respect to any property or asset, any mortgage, lien, pledge, charge, security interest or encumbrance in respect of such property or asset.

"**Loss**" or "**Losses**" shall mean any Liability, including, costs and expenses of any and all Actions, assessments, judgments, settlements or compromises relating thereto, reasonable attorneys' fees, reasonable disbursements, interest, penalties and all expenses incurred in investigating, preparing or defending against any Action commenced or threatened or any Order in connection therewith.

"**Mankato I Facility**" means the natural gas-fired combined-cycle facility owned by Mankato I that is currently operating in Mankato, Minnesota, under the Mankato I PPA, with a nominal rating of 375 MW.

"**Mankato I PPA**" means that certain Purchased Power Agreement between Mankato I and Buyer, dated as of March 11, 2004, as amended by that certain First Amendment to Purchased Power Agreement, dated as of August 22, 2015, between Buyer and Mankato I (as may be further amended from time to time).

"**Mankato II Facility**" means the natural gas-fired combined-cycle expansion facility owned by Mankato II that is currently under construction in Mankato, Minnesota, in connection with the Mankato II PPA, with a nominal rating of 345 MW.

"**Mankato II PPA**" means that certain Power Purchase Agreement between Buyer and Mankato II, dated as of April 28, 2015, as amended by that certain Amendment No. 1 to Power Purchase Agreement between Buyer and Mankato II, dated as of August 13, 2015 (as may be further amended from time to time).

"**Mankato PPAs**" means the Mankato I PPA and the Mankato II PPA.

"**Material Adverse Effect**" means any change, event or effect that, individually or in the aggregate, has had or may reasonably be expected to have a materially adverse effect on (a) the assets, operations, business, or properties of the Facilities or the Companies, taken as a whole or (b) the ability of the Companies to consummate the transactions contemplated by this Agreement, except for any such change, event or effect resulting from or arising out of (i) the announcement or execution of this Agreement or the pendency, pursuit or consummation of the transactions contemplated hereby, including any litigation resulting therefrom, (ii) any action required to be taken by the Companies pursuant to this Agreement or consented to in writing by the parties, (iii) any failure to meet any internal or published projections, forecasts, estimates or predictions in respect of recoveries, revenues, earnings or other financial or operating metrics for any period (*provided* that the underlying causes for such failure shall be taken into account), (iv) any change after the date hereof generally affecting the conditions in international, national or regional economies, financial markets, capital markets or commodities markets, including changes in interest rates or exchange rates, (v) any change after the date hereof in international, national, regional or local regulatory, political or legislative conditions generally, including the outbreak or escalation of hostilities or any acts of war, sabotage or terrorism, (vi) any change after the date hereof in Applicable Law, regulation or GAAP (or authoritative interpretation thereof), (vii) any effect arising after the date hereof affecting any industry in which the Companies operate, including the electric generating, transmission or distribution industries (including, in each case, any changes in the operations thereof), (viii) system-wide changes or developments in national, regional, state or local electric generation, transmission or distributions systems, (ix) any judgment,

order or decree, including but not limited to any judgment, order or decree relating to climate change, renewables or the environment and [redacted] *provided* further, that with respect to clauses (iv) through (ix), such effect shall not be excluded to the extent (and solely to the extent) it disproportionately affects the Companies, taken as a whole, as compared to other participants in the industry and region in which the Companies conduct their businesses.

"**MISO**" means the Midwest Independent Transmission System Operator, Inc. or its successors.

"**MRO**" means Midwest Reliability Organization and any successor.

"**NERC**" means North American Electric Reliability Corporation and any successor.

"**Order**" shall mean any charge, decree, ruling, determination, directive, award, order, judgment, writ, injunction or stipulation of a Governmental Authority.

"**Pension Participant**" [redacted]

"**Permit**" means any permit, license, franchise, variance, exemption, order or other authorization, consent or approval from a Governmental Authority; provided that "Permits" shall not include any Required Regulatory Approvals or State Approvals.

"**Permitted Equity Liens**" means (a) Liens that may arise by virtue of any actions taken by or on behalf of Buyer or its Affiliates or their successors or assigns, (b) except in the case of Section 2.02(c)(v), restrictions on transfer that are cancelled as of the Closing or (c) Liens that may arise pursuant to (i) this Agreement, but only those Liens in favor of Buyer, (ii) the Charter Documents of either Company or (iii) applicable securities Laws.

"**Person**" means an individual, corporation, partnership, limited liability company, association, trust or other entity or organization, including a Governmental Authority.

"**Post-Closing Period**" means any taxable period or portion thereof beginning after the Closing Date.

"**Pre-Closing Period**" means any taxable period or portion thereof that ends on or before the Closing Date.

"**Release**" means any spilling, leaking, pumping, pouring, emitting, emptying, discharging, injecting, escaping, leaching, seeping, migrating, dumping or disposing into the environment of any Hazardous Substance.

"**Securities Act**" means the Securities Act of 1933.

"**Seller Benefit Plan**" means all employee benefit plans (within the meaning of Section 3(3) of ERISA, whether or not subject to ERISA) and all bonus, stock option, stock purchase, restricted stock, incentive, deferred compensation, retiree health or life insurance, supplemental

retirement, superannuation, gratuity, jubilee, provident fund, employment, severance, retention, termination, change in control, welfare, post-employment, profit-sharing, disability, health, vacation, sick leave benefits, fringe benefits or other benefit plans, programs, agreements or arrangements, (a) that are sponsored, maintained, contributed to or required to be maintained or contributed to by Seller or any of its Affiliates, in each case providing benefits to any Business Employee, or (b) under which the Companies has any Liability or any obligation to contribute (whether actual or contingent).

"**Siemens Credit**" [redacted]

"**State Approvals**" means the filings and approvals identified as "State Approvals" on Schedule 1.01(a)(iii).

"**State Burdensome Condition**" means any terms, conditions or limitations requested or imposed by any Governmental Authority in connection with a Final Order with respect to any State Approval [redacted]

"**Straddle Period**" means any taxable period that begins on or before the Closing Date and ends after the Closing Date.

"**Support Obligations**" means the currently effective letters of credit, guarantees, refundable deposits and other credit support set forth on Schedule 7.03(d).

"**Target Working Capital**" means [redacted]

"**Tax**" means any tax, including any net income, gross income, gross receipts, sales, use, ad valorem, transfer, franchise, profits, license, withholding, payroll, employment, social security, unemployment, excise, estimated, severance, stamp, occupation, property or other taxes, levies, customs duties, assessments or charges in the nature of a tax, including all interest and penalties thereon, and additions to tax or additional amounts imposed by any Governmental Entity.

"**Taxing Authority**" means any Governmental Authority responsible for the imposition of any Tax.

"**Tax Return**" means any return, declaration, statement, election or other similar document, including any amendment, form or schedule thereto, filed or required to be filed with any Taxing Authority in respect of any Tax.

"**Title Company**" means Fidelity National Title Insurance Company or any other title company reasonably satisfactory to Buyer and Seller.

"**Transferring Employee**" shall mean [redacted]

"**Updated Survey**" means a current update of the Existing Survey which (a) is completed in accordance with the "Minimum Standard Detail Requirements for ALTA/NSPS Land Title Surveys", as jointly established and adopted by ALTA/NSPS in 2016, including Items 1, 3, 4, 6, 7b(1), 8, 9, 11, 13, 14, 16, 17 and 19 of Table A thereof, (b) will meet the Accuracy Standards (as adopted by ALTA/NSPS and in effect on the date of certification), (c) will contain the complete and correct legal description of Owned Real Property, (d) will be certified to Buyer, and (e) has been updated to show the location(s) of the as-built foundations of, and all improvements to, the Mankato II Facility following the completion of construction of the Mankato II Facility.

"**Water Services Agreement**" means that certain Water Services Agreement by and between Mankato I and the City, dated as of November 10, 2004, as amended by that Consent and Agreement among the City, Mankato I and Calyon New York Branch dated as of February 25, 2005.

(b) Each of the following terms is defined in the Section set forth opposite such term:

Term	**Section**
Acquired Leases	4.10(e)
Acquisition Proposal	6.21
Agreement	Preamble
Allocation Schedule	2.08
Antitrust Division	6.08(b)
Balance Sheets	4.04
Base Purchase Price	2.01
Buyer	Preamble
Buyer Indemnified Parties	8.02(a)
Buyer Termination Fee	9.03
Buyer's 401(k) Plan	6.07(c)(i)
Buyer's Pension Plan	6.07(c)(i)
Cap	8.02(b)(ii)
Closing	2.02(a)
Companies	Recitals
Confidentiality Agreement	6.04
Continuation Period	6.07(c)(i)
Current Representation	10.02(a)
De Minimis Amount	8.02(b)(i)
Designated Person	10.02(a)
Direct Loss	8.04(e)
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Environmental Representations	8.01(a)
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Section 1.02. Other Definitional and Interpretative Provisions. The words "hereof", "herein" and "hereunder" and words of like import used in this Agreement will refer to this Agreement as a whole and not to any particular provision of this Agreement. The captions herein are included for convenience of reference only and will be ignored in the construction or interpretation hereof. References to Articles, Sections, Exhibits and Schedules are to Articles, Sections, Exhibits and Schedules of this Agreement unless otherwise specified. All Exhibits and Schedules annexed hereto or referred to herein are hereby incorporated in and made a part of this Agreement as if set forth in full herein. Any capitalized terms used in any Exhibit or Schedule but not otherwise defined therein, will have the meaning as defined in this Agreement. Any singular term in this Agreement will be deemed to include the plural, and any plural term the singular. Whenever the words "include", "includes" or "including" are used in this Agreement, they will be deemed to be followed by the words "without limitation", whether or not they are in fact followed by those words or words of like import. "Writing", "written" and comparable terms refer to printing, typing and other means of reproducing words (including electronic media) in a visible form. References to any statute will be deemed to refer to such statute as amended from time to time and to any rules or regulations promulgated thereunder. References to Accounting Policies and calculations hereunder shall be pursuant to GAAP in effect as of the date hereof unless modified pursuant to this Agreement. References to any agreement or contract are to that agreement or contract as amended, modified or supplemented from time to time in accordance with the terms hereof and thereof; *provided* that with respect to any agreement or contract listed on any schedules hereto, all such amendments, modifications or supplements must also be listed in the appropriate schedule. References to any Person include the successors and permitted assigns of that Person. References from or through any date mean, unless otherwise specified, from and including or through and including, respectively. References to "law", "laws" or to a particular statute or law will be deemed also to include any and all Applicable Law. For the purposes of this Agreement, any document that is described as being "delivered", "furnished" or "made available"

will be treated as such if copies of such documents have been put in the data room prepared by the Companies or otherwise provided to Buyer in electronic or hard copy format.

ARTICLE 2 PURCHASE AND SALE

Section 2.01. Purchase and Sale. Upon the terms and subject to the conditions of this Agreement, at the Closing, Seller agrees to sell to Buyer, and Buyer agrees to purchase from Seller, the Membership Interests. The aggregate amount to be paid hereunder for the Membership Interests is an amount in cash (the "**Purchase Price**") equal to [redacted]

Section 2.02. Closing.

(a) The closing (the "**Closing**") of the purchase and sale of the Membership Interests hereunder will take place at the offices of [redacted] or remotely by the electronic exchange of documents in .pdf format, on the third Business Day after the satisfaction or, to the extent permissible, waiver by the party or parties entitled to the benefit of the conditions set forth in Article 7 (other than conditions that by their nature are to be satisfied at the Closing, but subject to the satisfaction or, to the extent permissible, waiver of those conditions at the Closing) occurs, or at such other time or place as Buyer and Seller may agree. The Closing shall be deemed to be effective at 11:59 p.m. Eastern time on the Closing Date.

(b) At the Closing, Buyer will deliver, or cause to be delivered, to Seller:

(i) an amount in cash equal to the Estimated Purchase Price, in immediately available funds by wire transfer to an account designated by Seller in the Estimated Closing Statement;

(ii) original or replacement certificates representing the Membership Interests and assignments separate from the certificates transferring the Membership Interests to Buyer, substantially in the form attached hereto as Exhibit B (the "**Interests Assignment**"), duly executed by Buyer;

(iii) a certificate signed by a duly authorized representative of Buyer, certifying that the conditions set forth in Section 7.03(a) and Section 7.03(b) have been satisfied;

(iv) a fully executed and acknowledged original, recordable satisfaction and release of that certain (unrecorded) Subordinated Mortgage, Assignment of Leases and Rents, Security Agreement and Financing Statement [redacted]

(v) an original counterpart, executed and acknowledged by Buyer, in its capacity as Mortgagee, of a release and termination of that certain Consent and Agreement Concerning Subordinated Mortgage, Assignment of Leases and Rents, Security Agreement and Financing Statement by and among Mankato I, as Mortgagor, Buyer, as Mortgagee,

and [redacted] (the "**Tri-Party Consent**").

(c) At the Closing, Seller will deliver, or cause to be delivered, to Buyer:

(i) the Interests Assignment, duly executed by Seller;

(ii) a certificate signed by a duly authorized representative of Seller, certifying that the conditions set forth in Section 7.02(a) and Section 7.02(b) have been satisfied;

(iii) a duly completed and executed certification of non-foreign status of Seller prepared in accordance with Section 1.1445-2(b)(2) of the Treasury regulations;

(iv) Books and Records of the Companies (at Closing or as soon as reasonably practical thereafter, but in any event within 30 days);

(v) appropriate termination statements under the Uniform Commercial Code, and such other documents and instruments (including consents and waivers and payoff letters with respect to Closing Indebtedness) as may be reasonably requested by Buyer, evidencing, or when filed will evidence, (A) the repayment, release and otherwise satisfaction of all Closing Indebtedness and (B) the extinguishment or termination of all Liens (other than Permitted Equity Liens and Permitted Liens) in the Membership Interests and the Facilities;

(vi) such instruments executed by Seller or its Affiliates, reasonably acceptable to Buyer, necessary to terminate the Mankato PPAs effective as of the Closing Date;

(vii) all of the consents required under Contracts set forth on Schedule 2.02(c)(vii);

(viii) evidence of the settlement or termination of all intercompany arrangements pursuant to Section 6.11;

(ix) the Updated Survey of the Facilities, in form and substance reasonably satisfactory to Buyer;

(x) original counterparts, executed and acknowledged by Mankato I, in its capacity as Mortgagor, of a release and termination of the Tri-Party Consent;

(xi) original amendment to that certain easement dated April 22, 1958, recorded as Document No. 242936 in favor of Minnesota Valley Natural Gas Company confining the easement granted therein in accordance with Minn. Stat. § 301B.03;

(xii) an original document to be recorded in the Office of the County Recorder in and for Blue Earth County, Minnesota and in the Office of the Registrar of Titles in and for Blue Earth County, Minnesota, to certain easements reflected in the Existing Title and

Survey Materials and in the Updated Title Evidence to prevent the merger thereof, such document to be in form and content reasonably satisfactory to Seller and Buyer; and

(xiii) evidence of the resignations of all officers and directors of the Companies required pursuant to Section 6.03.

(d) At Closing, Buyer shall pay, by wire transfers of immediately available funds, the Estimated Closing Indebtedness in accordance with the payoff letters provided by Seller with respect to the Estimated Closing Indebtedness at least five Business Days prior to the Closing Date.

Section 2.03. Closing Payment Adjustments.

(a) Not less than five Business Days prior to the anticipated Closing Date, Seller shall provide Buyer with (i) a statement (the "**Estimated Closing Statement**") with a written estimate of each of (A) Closing Working Capital, (B) Closing Indebtedness (the "**Estimated Closing Indebtedness**"), and (C) Seller's determination of the Purchase Price based on such estimates [redacted] (the "**Estimated Purchase Price**"), (ii) a list of the bank account or accounts to which Buyer shall transfer the Purchase Price pursuant to Section 2.02 and (iii) an updated Inventory List showing all spare parts held for use in the operation of the Facility and located at the Facility as of the Closing Date.

(b) The Estimated Closing Statement shall be prepared in accordance with the Accounting Policies and the applicable defined terms set forth herein. It is understood and agreed that Exhibit A sets forth the example calculation of the Closing Working Capital.

(c) From and after the delivery of the Estimated Closing Statement until the Business Day prior to the Closing Date, Seller shall, and shall cause the Companies to, (i) reasonably assist Buyer and its representatives in Buyer's review of the Estimated Closing Statement and (ii) make available Seller's representatives responsible for preparing the Estimated Closing Statement to discuss the Estimated Closing Statement with Buyer. Seller shall consider in good faith any comments on the Estimated Closing Statement submitted by Buyer.

Section 2.04. Post-Closing Statement.

(a) Within 60 days after the Closing Date, Seller shall prepare in good faith and deliver to Buyer statements of (i) Closing Working Capital, (ii) Closing Indebtedness, and (iii) the resulting calculation of the Purchase Price [redacted] (collectively, the "**Initial Closing Statement**"). The Initial Closing Statement shall be prepared in accordance with the Accounting Policies and the applicable defined terms set forth herein.

(b) Following the Closing through the date that the Final Closing Statement becomes final and binding, each party and its Affiliates and representatives shall be permitted to access and review the books, records and work papers of the other party relating to the Companies in its possession, and such party shall, and shall cause its Affiliates and its and their respective employees, accountants and other representatives to, cooperate with and assist the reviewing party

and its Affiliates and representatives in connection with such review, including by providing access to such books, records and work papers and making available personnel to the extent reasonably requested; *provided*, that, with respect to any books, records or work papers not in possession of either party or their Affiliates and solely in the possession of the accountants of either party or its Affiliates, such accountants shall not be obligated to make such books, records or work papers available to the other party and its Affiliates except in accordance with such accountants' normal disclosure procedures and then only after such other party or its Affiliates, as applicable, has signed a customary agreement relating to such access to books, records and work papers.

(c) Each party agrees that, following the Closing through the date that the Final Closing Statement becomes final and binding, it will not take or permit to be taken any actions with respect to any accounting books, records, policies or procedures on which the Financial Statements or the Initial Closing Statement is based, or on which the Final Closing Statement is to be based, that would impede or delay the determination of the amount of Closing Working Capital or Closing Indebtedness or the preparation of any Notice of Disagreement or the Final Closing Statement in the manner and utilizing the methods provided by this Agreement.

Section 2.05. Reconciliation of Post-Closing Statement.

(a) Buyer shall notify Seller in writing no later than 30 days after Buyer's receipt of the Initial Closing Statement if Buyer disagrees with the Initial Closing Statement, which notice shall describe the basis for such disagreement (the "**Notice of Disagreement**"). If no Notice of Disagreement is delivered to Seller by such time, then the Initial Closing Statement shall become final and binding upon the parties in accordance with Section 2.05(c).

(b) During the 30 days immediately following the delivery of a Notice of Disagreement (the "**Resolution Period**"), Seller and Buyer shall seek to resolve any differences that they may have with respect to the matters specified in the Notice of Disagreement.

(c) If, at the end of the Resolution Period, Seller and Buyer have been unable to resolve any differences that they may have with respect to the matters specified in the Notice of Disagreement, Seller and Buyer shall submit all matters that remain in dispute with respect to the Notice of Disagreement to [redacted] or another nationally recognized accounting firm that is not the principal accounting firm of either Buyer or Seller, as agreed to between the parties hereto (the "**Independent Accounting Firm**"). Within 30 days after submission of such matters to the Independent Accounting Firm, the Independent Accounting Firm shall make a final determination in accordance with the Accounting Policies and the terms and definitions of this Agreement and based solely on the written submissions of the parties, binding on the parties, of the appropriate amount of each of the matters that remain in dispute as indicated in the Notice of Disagreement that Seller and Buyer have submitted to the Independent Accounting Firm. With respect to each disputed matter, such determination, if not in accordance with the position of either Seller or Buyer, shall not be in excess of the higher, or less than the lower, of the amounts advocated by Buyer in the Notice of Disagreement or by Seller in the Initial Closing Statement with respect to such disputed matter. The Independent Accounting Firm shall not review or make any determination with respect to any matter other than the matters that remain in dispute as indicated in the Notice of Disagreement. The statements of (i) Closing Working Capital and (ii) Closing Indebtedness that are final and binding on the parties, as determined either through

agreement of the parties pursuant to Section 2.05(a) or Section 2.05(b) or through the action of the Independent Accounting Firm pursuant to this Section 2.05(c), are referred to as the "**Final Closing Statement**."

(d) The Independent Accounting Firm shall also determine, as part of such dispute resolution, the respective liability of Buyer and Seller as to payment of the costs and expenses of such Independent Accounting Firm. [redacted]

(e) During the review by the Independent Accounting Firm, each of Buyer and Seller shall, and shall cause its respective Affiliates (including, in the case of Buyer, the Companies) and its and their respective employees, accountants and other representatives to, each make available to the Independent Accounting Firm interviews with such personnel, and such information, books and records and work papers, as may be reasonably requested by the Independent Accounting Firm to fulfill its obligations under Section 2.05(c); *provided*, that, with respect to any books, records or work papers not in possession of either party or their Affiliates and solely in the possession of the accountants of Buyer or Seller, such accounts shall not be obligated to make such books, records or work papers available to the Independent Accounting Firm except in accordance with such accountants' normal disclosure procedures and then only after such Independent Accounting Firm has signed a customary agreement relating to such access to work papers. In acting under this Agreement, the Independent Accounting Firm shall act as an expert and not an arbitrator.

(f) The process set forth in Section 2.04 and this Section 2.05 shall be the sole and exclusive remedy of any of the parties and their respective Affiliates for any disputes related to Closing Working Capital and Closing Indebtedness and the calculations and amounts on which they are based or set forth in the related statements and notices delivered in connection therewith. After the determination of the Final Closing Statement, neither party shall have the right to make any claim based upon the calculation of Closing Working Capital (even if subsequent events or subsequently discovered facts would have affected the calculation of Closing Working Capital had such subsequent events or subsequently discovered facts been known at the time of the determination of the Final Closing Statement); *provided*, that nothing set forth in this Section 2.05(f) shall be deemed to limit Buyer's right to indemnification arising from a breach of Seller's representations and warranties set forth in Section 4.04 with respect to any item not addressed in the Final Closing Statement.

Section 2.06. Post-Closing Adjustment. The "**Post-Closing Adjustment**" shall be equal to the Purchase Price determined based on the Final Closing Statement *minus* the Estimated Purchase Price. If the Post-Closing Adjustment is a positive amount, then Buyer shall pay in cash to Seller (or one or more Affiliates designated by Seller) the amount of the Post-Closing

Adjustment. If the Post-Closing Adjustment is a negative amount, then Seller (or an Affiliate designated by Seller) shall pay in cash to Buyer the absolute value of the amount of the Post-Closing Adjustment. Any such payment pursuant to this Section 2.06 shall be made promptly (but in any event within ten Business Days) after the determination of the Final Closing Statement by wire transfer of immediately available funds.

Section 2.07. [redacted]

Section 2.08. Purchase Price Allocation. The Purchase Price, plus the amount of the Companies' liabilities included in the amount realized on the sale of the Companies' assets for federal income Tax purposes, shall be allocated among the assets of the Companies in accordance with Section 1060 of the Code and the applicable Treasury Regulations promulgated thereunder. Buyer shall prepare and deliver to Seller an allocation schedule setting forth Buyer's determination of the allocation of the Purchase Price plus the amount of the Companies' liabilities included in the amount realized on the sale of the Companies' assets for federal income Tax purposes (the "**Allocation Schedule**") within 90 days after the Closing Date. Seller shall have 30 days to review the Allocation Schedule and either notify Buyer that it is in agreement with such Allocation Schedule or deliver, in writing, any objections that it may have with respect thereto. If Seller notifies Buyer that it disagrees with any aspect of the Allocation Schedule, Buyer and Seller shall work together in good faith to resolve any such disagreement. If any dispute regarding the Allocation Schedule remains unresolved after 60 days following Buyer's delivery of such Allocation Schedule to Seller, then such disagreement shall be immediately submitted to the Independent Accounting Firm, which shall be instructed to resolve such disagreement within 30 days after such disagreement is submitted to it for resolution and shall notify Buyer and Seller in writing of its resolution. The Independent Accounting Firm's resolution of the disagreement shall be final and binding on Buyer and Seller. Buyer and Seller shall file all Tax Returns (including IRS Form 8594) in a manner consistent with the agreed upon or final Allocation Schedule and neither Buyer nor Seller shall take any position (whether in Tax Claims, on Tax Returns, or otherwise) that is inconsistent with such Allocation Schedule except as may be adjusted by subsequent agreement following an audit by the Internal Revenue Service or by court decision. In the event the Purchase Price is adjusted pursuant to Section 2.03 or Article 8, Buyer shall promptly prepare and deliver to Seller an updated Allocation Schedule reflecting such adjustment, and any disagreement by Seller with such adjustment shall be resolved in the same manner as a

disagreement over the original Allocation Schedule. If incurred, any fees and expenses of the Independent Accounting Firm shall be borne 50% by Buyer and 50% by Seller.

Section 2.09. Mankato PPAs Consent. Buyer hereby consents for itself and its Affiliates with respect to the transactions contemplated by this Agreement pursuant to Section 19.1 of each of the Mankato PPAs.

ARTICLE 3 REPRESENTATIONS AND WARRANTIES OF SELLER

Except as set forth in the disclosure schedules delivered by Seller to Buyer on the date hereof (the "**Seller Disclosure Schedules**"), Seller represents and warrants to Buyer as of the Closing, that:

Section 3.01. Corporate Existence and Power. Seller is a corporation duly incorporated, validly existing and in good standing under the laws of the State of Delaware and has all corporate powers and all Permits required to carry on its business as now conducted, except for those Permits the absence of which would not reasonably be expected to have a Material Adverse Effect. Seller is duly qualified or licensed as a foreign corporation and is in good standing under the Laws of each other jurisdiction where the actions required to be performed by it under this Agreement makes such qualification or licensing necessary, except in those jurisdictions where the failure to be so qualified or licensed would not have a Material Adverse Effect.

Section 3.02. Corporate Authorization. The execution, delivery and performance by Seller of this Agreement and the consummation of the transactions contemplated hereby are within its corporate powers and have been duly authorized by all necessary corporate action. This Agreement constitutes a valid and binding agreement of Seller, enforceable against Seller in accordance with its terms, except as such enforceability may be limited by bankruptcy, insolvency, moratorium or other similar laws affecting or relating to the enforcement of creditors' rights generally and the application of general principles of equity (regardless of whether that enforceability is considered in an Action at law or in equity) (the "**Enforceability Exceptions**").

Section 3.03. Governmental Authorization. The execution, delivery and performance by Seller of this Agreement and the consummation of the transactions contemplated hereby require no material action by or in respect of, or material filing with, any Governmental Authority other than (a) compliance with any applicable requirements of the HSR Act, (b) the FERC Approval, and (c) the other filings and approvals set forth on Schedule 3.03 (collectively, the "**Required Regulatory Approvals**").

Section 3.04. Non-Contravention. Except as set forth on Schedule 3.04, the execution, delivery and performance by Seller of this Agreement and the consummation of the transactions contemplated hereby, including the Pre-Closing Asset Transfer, do not and will not (a) violate its Charter Documents or those of the Companies, (b) assuming compliance with the matters referred to in Section 3.03 and this Section 3.04 violate any Applicable Law, or (c) require any consent or other action by any Person under, constitute a default under, or give rise to any right of termination, cancellation or acceleration of any right or obligation of Seller, the Companies or any of their Affiliates or to a loss of any benefit to which Seller, either Company or any Affiliate is entitled under any provision of any Contract to which either Company is a party or which otherwise relates

to the development, construction, operation and maintenance of the Facilities, or (d) result in the creation or imposition of any Lien on the Facilities, except for any Permitted Liens with such exceptions, in the case of each of clauses (b), (c) and (d), as would not reasonably be expected have a Material Adverse Effect.

Section 3.05. Title to Interests. Seller is the record and beneficial owner of the Membership Interests, free and clear of all Liens, other than Permitted Equity Liens, and will transfer and deliver to Buyer at the Closing valid title to such Membership Interests free and clear of any Lien, other than Permitted Equity Liens.

Section 3.06. Litigation. There is no Action pending against [redacted] Seller before any arbitrator or any Governmental Authority which in any manner challenges or seeks to prevent, enjoin, alter or materially delay the transactions contemplated by this Agreement. Seller is not subject to [redacted] any Order, except to the extent any such Order would not reasonably be expected to materially affect Seller's ability to perform its obligations under this Agreement or to consummate the transactions contemplated hereby.

Section 3.07. Broker Fees. Except for [redacted] whose fees and expenses will be paid by Seller, there is no investment banker, broker, finder or other intermediary which has been retained by or is authorized to act on behalf of Seller or the Companies who might be entitled to any fee or commission in connection with the transactions contemplated by this Agreement.

ARTICLE 4 REPRESENTATIONS AND WARRANTIES REGARDING THE COMPANIES

Except as set forth in the Seller Disclosure Schedules, Seller represents and warrants to Buyer that:

Section 4.01. Existence and Power. Each Company is a limited liability company duly organized, validly existing and in good standing under the laws of the State of Delaware and is duly licensed or qualified as a foreign limited liability company to transact business and is in good standing in each jurisdiction in which the properties owned, leased or operated by it or the nature of the business conducted by it makes such licensing or qualification necessary, unless the failure to be so qualified would not have a Material Adverse Effect. The Charter Documents of each Company, copies of which have previously been made available to Buyer prior to the date hereof, are true and correct copies of such documents as in effect as of the date hereof, and each Company is not in material default under or in violation of any provision of such Charter Documents.

Section 4.02. Capital Structure.

(a) Seller is the record and beneficial owner of all of the Membership Interests. The Membership Interests represent all of the outstanding Equity Interests of the Companies. Other than pursuant to the Charter Documents of each Company and Buyer's rights under this Agreement, (i) there are no outstanding rights to acquire from either Company, or any obligations of such Company to issue, any Equity Interests in such Company, and there are no outstanding obligations

of such Company to repurchase, redeem or otherwise acquire any Equity Interests in such Company and (ii) neither Company is a party to any agreement restricting the purchase or transfer of, relating to the voting of, requiring the registration of, or granting any preemptive or antidilutive rights with respect to, any Equity Interests in such Company.

(b) The Membership Interests are duly authorized, validly issued, fully paid and non-assessable, and (i) are free and clear of all Liens and are not subject to any agreements or understandings among any Persons with respect to the voting or transfer thereof and (ii) are not subject to any outstanding subscriptions, options, convertible securities, warrants, calls or other securities granting rights to purchase or otherwise acquire any of the Membership Interests or any commitments or agreements of any character obligating Seller to transfer any of the Membership Interests, other than, in each case, Permitted Equity Liens.

Section 4.03. Subsidiaries; No Other Business. Neither Company owns, directly or indirectly, any Equity Interests in any Person. Neither Company has conducted any business other than activities incidental to the ownership and operation of the Mankato I Facility and the development, construction and operation of the Mankato II Facility.

Section 4.04. Financial Statements. Schedule 4.04 sets forth the following financial statements relating to the two Companies in the aggregate (a) an unaudited balance sheet as of December 31, 2017 (the "**Year End Balance Sheet**") and the related unaudited statement of income for the fiscal year ended December 31, 2017 and (b) an unaudited balance sheet as of September 30, 2018 (the "**Interim Balance Sheet**" and, together with the Year End Balance Sheet, the "**Balance Sheets**") and the related unaudited statements of income for the period ended September 30, 2018 (collectively, the "**Financial Statements**"). The Financial Statements fairly present, in all material respects in conformity with GAAP (except for the absence of footnotes thereto), the financial position of the two Companies as of the dates thereof and its results of operations for the periods then ended.

Section 4.05. Absence of Certain Changes. Since [redacted] the business of Mankato I has been conducted in the ordinary course consistent with past practices (except as expressly contemplated by this Agreement) and there has not been any event, occurrence or development that has had or would reasonably be expected to have a [redacted].

Section 4.06. No Undisclosed Material Liabilities. There are no Liabilities of the Companies, other than:

(a) liabilities provided for in the Interim Balance Sheet or disclosed in the notes thereto;

(b) liabilities not required under GAAP to be shown on the Interim Balance Sheet;

(c) liabilities disclosed on Schedule 4.06(c);

(d) liabilities arising out of express contractual obligations contained in the contracts entered into by each Company in the ordinary course of business, or such other liabilities disclosed in or arising under any agreements, instruments or other matters expressly disclosed in this Agreement or any Schedule to this Article 4, other than any liabilities resulting from any breach or default by the Company thereunder;

(e) obligations owed to Buyer as set forth in this Agreement;

(f) liabilities incurred in the ordinary course of business since September 30, 2018; and

(g) Permitted Liens.

Section 4.07. Material Contracts.

(a) Schedule 4.07(a), sets forth a list of all of the following Contracts to which the applicable Company is a party or which otherwise relate to the development, construction, operation and maintenance of the Facilities:

(i) any Acquired Leases;

(ii) any lease of personal property providing for (A) annual payments by such Company of [redacted] or more or (B) payments by such Company which in the aggregate exceed [redacted] in each case, that cannot be terminated on less than 90 days' notice without payment by such Company of any penalty;

(iii) any agreement (other than agreements to the extent related to the construction of the Mankato II Facility (the "**Mankato II Construction Contracts**")) for the purchase of materials, supplies, goods, services, equipment or other assets providing for (A) annual payments by such Company of [redacted] or more or (B) payments by such Company which in the aggregate exceed [redacted] in each case, that cannot be terminated on less than 90 days' notice without payment by such Company of any penalty;

(iv) any partnership, joint venture or other similar agreement or arrangement;

(v) any Contract requiring the applicable Company to purchase or sell a stated portion of the requirements or outputs of the business or that contain "take or pay" provisions;

(vi) any Contract with any Governmental Entity;

(vii) any Contract for the employment of any individual on a full-time, part-time, consulting or other basis providing annual compensation in excess of [redacted] or providing severance benefits;

(viii) any agreement relating to the acquisition or disposition of any material business (whether by merger, sale of stock, sale of assets or otherwise) pursuant to which it has material ongoing obligations;

(ix) any Contract granting to any Person rights to purchase any of the assets, Membership Interests or business of the applicable Company (other than this Agreement);

(x) any Contract terminable by the other party upon a change of control of the applicable Company;

(xi) any Contract under which it has advanced or loaned any amount to any Person (including its directors, officers and employees outside the Ordinary Course);

any Contract granting any power of attorney with respect to the affairs of the applicable Company;

any Contract relating to Indebtedness (in any case, whether incurred, assumed, guaranteed or secured by any asset);

any Contract containing exclusivity, noncompetition or nonsolicitation provisions or that would otherwise prohibit or restrict the ability of either Company to compete in any line of business or with any Person or in any area or prohibit or limit the solicitation of the employees or contractors of any other Person; or

any Contract with Seller or any of its Affiliates or any director or officer of Seller or any of its Affiliates.

(b) Seller has provided Buyer with copies of, or access to, true and complete copies of all Contracts required to be disclosed pursuant to Section 4.07(a) (collectively, the "**Material Contracts**") (as amended to date). Each Material Contract is a valid and binding agreement of the Company that is party thereto and is in full force and effect. None the Companies, Seller or any Affiliate that is a party to any Material Contract, as applicable, nor, to the Knowledge of Seller, any other party thereto is in default or breach in any respect under the terms of any such agreement, contract, plan, lease, arrangement or commitment.

(c) Schedule 4.07(c) sets forth a list of the Contracts to which Seller or any of its Affiliates is a party that are not primarily related to either Facility but are necessary to enable the operation of the Mankato I Facility and the development, construction and operation of the Mankato II Facility (collectively the "**Shared Contracts**").

Section 4.08. Litigation. Except as set forth on Schedule 4.08, there are no material Actions pending or, [redacted] threatened in writing, against Seller (to the extent related to the Facilities) or either Company or otherwise affecting the Facilities before any arbitrator or any Governmental Authority. Except as set forth on Schedule 4.08, there are no outstanding material Orders to which Seller (solely to the extent related to the Facilities) or either of the Companies is subject or affecting the Facilities, [redacted] or by which Seller (solely to the extent related to the Facilities), either of the Companies or the Facilities (or any assets of either of the Companies) are bound.

Section 4.09. Compliance with Laws and Court Orders; Permits.

(a) Except as disclosed on Schedule 4.09(a), neither Company is in material violation of any Applicable Law or order of any Governmental Authority, and the Facilities are now in compliance and [redacted] have complied in all material respects with Applicable Laws.

(b) Schedule 4.09(b)(i) sets forth a list of (i) all material Permits held by Mankato I or which relate to the operation or maintenance of the Mankato I Facility as currently operated and

maintained, and the holder thereof, and (ii) applications for material Permits which have been filed by or for benefit of Mankato I. Except as set forth on Schedule 4.09(b)(ii), Mankato I holds, and is in compliance in all material respects with, or, if not yet required, has applied for, all Permits that are necessary to be held by Mankato I under Applicable Law for the operation of the Mankato I Facility as currently operated. Mankato I is not in material violation of the terms of any such Permits, and there is no pending governmental Action or [redacted] any threat by any Governmental Authority to cancel, modify, or fail to renew any such Permit.

(c) Schedule 4.09(c)(ii) sets forth a list of (i) all material Permits held by Mankato II or which relate to the development, construction, operation and maintenance of the Mankato II Facility as currently contemplated by Seller, and the holder thereof, and (ii) applications for material Permits which have been filed by or for the benefit of Mankato II. Except as set forth on Schedule 4.09(c)(ii), Mankato II holds, and is in compliance in all material respects with, or, if not yet required, has applied for, all Permits that are necessary to be held by Mankato II under Applicable Law for the development, construction, operation and maintenance of the Mankato II Facility. Mankato II is not in material violation of the terms of any such Permits, and there is no pending governmental Action or [redacted] any threat by any Governmental Authority to cancel, modify, or fail to renew any such Permit.

(d) The Companies have registered and are in material compliance with NERC Operating and Planning ("**O&P**") and Critical Infrastructure Protection ("**CIP**") standards applicable to Generation Owners and Generation Operators of Bulk Electric Systems and applicable to the Facilities.

Section 4.10. Title to Properties; Assets.

(a) Schedule 4.10(a) describes all real property owned in whole or in part by the Companies, including the Mankato I Facility, Mankato II Facility (collectively, the "**Owned Real Property**"), any easements, licenses or similar interests benefitting the Owned Real Property. The Companies have good and marketable title to the Owned Real Property, subject to the Permitted Liens. Neither Mankato I or Mankato II has received any written notice of default from any of the applicable easement grantors under the four (4) Pipeline Easement Agreements identified as "Potentially Terminable Easements" on Schedule 4.10(a).

(b) Schedule 4.10(b) describes all real property leased in whole or in part by the Companies (collectively, the "**Leased Property**"). The Companies have valid leasehold interests in the Leased Property, subject to the Permitted Liens and there are no other real property leases, subleases, licenses or similar agreements to which Mankato I or Mankato II are a party.

(c) None of the Owned Real Property or Leased Property is subject to any Lien, except:

(i) Liens disclosed on Schedule 4.10(c)(i);

(ii) Liens for Taxes that are not yet due and payable or are being contested in good faith through appropriate proceedings;

(iii) mechanic's, materialman's, carrier's, repairer's and other similar Liens arising or incurred in the ordinary course of business or that are not yet due and payable or

are being contested in good faith through appropriate proceedings or arising or incurred in connection with the ongoing construction of the Mankato II Facility;

(iv) in the case of the Leased Property, any and all Liens to which the interest or title of the applicable lessor, sublessor or licensor may be subject;

(v) defects, exceptions, restrictions, easements, rights of way and encumbrances and other matters disclosed in that certain Owner's Policy of Title Insurance dated October 26, 2016 issued to Mankato I having Policy Number 238625 and/or the Existing Survey ("**Existing Title and Survey Materials**"), copies of which have been delivered to or made available for review by Buyer prior to the date hereof (provided, however, the foregoing shall not limit Seller's obligation to deliver the title related materials specifically identified in Section 2.02(c) hereof);

(vi) zoning, entitlement and other land use and environmental regulations by any Governmental Authority having jurisdiction over the Owned Real Property and Leased Property which are not violated in any material respect (paragraphs (i)-(vi) of this Section 4.10(a) are, collectively, the "**Permitted Liens**").

(d) Except as listed on Schedule 4.10(d) or as set forth in the Existing Title and Survey Materials, with respect to each parcel of the Owned Real Property:

(i) neither Mankato I or Mankato II has received written notice of any condemnation proceedings, any lawsuits or administrative actions or violations of any federal, state, or local laws, rules or regulations relating to the Owned Real Property;

(ii) neither Mankato I or Mankato II has granted any options or rights of first refusal to purchase all or any portion of the Owned Real Property (other than pursuant to this Agreement);

(iii) neither Mankato I or Mankato II has leased or granted any third party any occupancy rights with respect to the Owned Real Property; and

(iv) neither Mankato I or Mankato II has received written notice of actual or threatened special assessments or reassessments of the Owned Real Property.

(e) Except as listed on Schedule 4.10(e), with respect to the Leased Property, complete copies of all leases, licenses, subleases and any amendments, supplements, extensions, assignments, subleases, modifications and other agreements with respect the Leased Property have been delivered to or made available for review by Buyer prior to the date hereof (the "**Acquired Leases**"). The Acquired Leases have not been further modified and are in full force and effect, and, except as listed on Schedule 4.10(e), there are no other agreements for the use and occupancy by the Companies of the real property or improvements, as applicable, leased under the Acquired Leases. Except as disclosed on Schedule 4.10(e), neither the Companies nor, to the Knowledge of Seller, any landlord is in material default under the Acquired Leases, and neither Seller nor its Affiliates have received any notice of a default or alleged default under any of the Acquired Leases.

(f) The Owned Real Property and the Leased Property constitute all of the tangible property and assets used or held for use in connection with the business of the Companies as of the date hereof and are sufficient to conduct such business in all material respects as conducted as of the date hereof.

(g) Schedule 4.10(g) sets forth a list, as of September 30, 2018, of all spare parts held for use in the operation of the Facilities, including the dollar value of each (the "**Inventory List**").

(h) As of the Closing, (i) the Companies will own, or have rights by Contract (with applicable third parties and not Seller or its Affiliates) to use, all assets which are necessary to operate the Facilities as required by the Mankato PPAs, and (ii) Seller or its Affiliates will have assigned, conveyed and transferred to the applicable Company all of their right, title and interest in and to all of the assets owned by Seller or its Affiliates, or in which they have any interest, that are necessary to operate the Facilities (other than Shared Contracts).

Section 4.11. Information Security.

(a) Each of the Companies or one of their respective Affiliates has taken commercially reasonable steps to protect the material information technology systems currently used in the conduct of the businesses of the Companies (the "**IT Systems**"). Each of the Companies or one of their respective Affiliates has in place commercially reasonable disaster recovery plans, procedures and facilities for the IT Systems and have taken commercially reasonable steps to safeguard the security of the IT Systems. To the Knowledge of Seller, there have been no unauthorized intrusions or breaches of the security of the IT Systems since December 31, 2015 that, pursuant to any applicable Law, would require either of the Companies to notify customers or employees of the Companies of such breach or intrusion.

(b) Notwithstanding anything to the contrary herein, except as set forth in this Section 4.11, no representations or warranties are being made in this Agreement with respect to any IT Systems or intellectual property matters.

Section 4.12. Insurance Coverage. Seller has made available to Buyer prior to the date hereof a list of, and true and complete copies of, all material insurance policies and fidelity bonds relating to the assets, business, operations, employees, officers or directors of the Companies (the "**Insurance Policies**"). There are no material claims by either Company pending under any of the Insurance Policies as to which coverage has been questioned, denied or disputed by the underwriters of the Insurance Policies or in respect of which such underwriters have reserved their rights. All premiums due on such Insurance Policies have either been paid or, if not yet due, accrued. All such Insurance Policies (i) are in full force and effect and enforceable in accordance with their terms; (ii) are provided by carriers who are financially solvent; and (iii) have not been subject to any lapse in coverage. Neither Company is in default under, or has otherwise failed to comply with, in any material respect, any provision contained in any such Insurance Policy. The Insurance Policies are of the type and in the amounts sufficient for compliance with the insurance requirements of the Mankato PPAs. Seller has timely filed all claims under the Insurance Policies with respect to any events and circumstances related to the Facilities that occurred prior to the Closing Date and of which Seller has knowledge, and, following the Closing, the Companies shall

have the right to benefit from any such insurance claims for losses that have not been repaired or otherwise corrected by Seller or the Companies prior to Closing.

Section 4.13. Employees.

(a) Seller has made available to Buyer prior to the date hereof a true and complete list [redacted] of all Business Employees.

(b) The Companies are in compliance with all Applicable Laws relating to employment, employment practices and terms and conditions of employment, wages and hours, and occupational safety and health, except in each case as would not reasonably be expected to have a Material Adverse Effect.

(c) Neither Company is a party to or bound by any labor or collective bargaining agreement and, to the Knowledge of Seller, there are no organizational campaigns, petitions or other unionization activities seeking recognition of a collective bargaining unit with respect to, or otherwise attempting to represent, any of the employees of either Company. There is not presently existing any and, to the Knowledge of Seller, there is no threatened, strike, slowdown, picketing, or work stoppage involving either Company or any of its employees.

Section 4.14. Employee Benefit Plans.

(a) Schedule 4.14(a) sets forth a list, as of the date hereof, of each material Seller Benefit Plan and of each Company Benefit Plan.

(b) With respect to each material Seller Benefit Plan and each Company Benefit Plan (whether or not material), Seller has made available to Buyer prior to the date hereof, to the extent applicable, (i) the written document(s) evidencing such plan or, with respect to any such plan that is not in writing, a written description of the material terms thereof, and all amendments or material supplements thereto, (ii) the summary plan description, together with each summary of material modifications, or, for a plan to which no summary plan description is available, any other communication describing the material elements of such plan, (iii) the annual report (Form 5500, including schedules and attachments) filed with the IRS for the last plan year, and the most recently received IRS determination letter, (iv) any related trust agreements, insurance contracts or documents of any other funding arrangements, and (v) the most recently prepared actuarial report or financial statement.

(c) All material contributions or premiums required to be made by the Companies, Seller or any of its Affiliates to any Seller Benefit Plan have been timely made or accrued.

(d) No Seller Benefit Plan is a "multiemployer plan" within the meaning of Section 3(37) of ERISA or a plan that has two or more contributing sponsors at least two of whom are not under common control, within the meaning of Section 4063 of ERISA and Section 414(b) and (c) of the Code, and, there are no circumstances or events that could result in any material Liability to either of the Companies with respect to such a plan or a "pension plan" within the meaning of Section 3(2) of ERISA. No Seller Benefit Plan is a "multiple employer plan" – a plan in which multiple

employers participate – including a "multiple employer welfare arrangement" within the meaning of Section 3(40) of ERISA or a plan that has two or more participating employers at least two of whom are not under common control, within the meaning of Section 4063 of ERISA and Section 414(b) and (c) of the Code, and, there are no circumstances or events that could result in any Liability to either of the Companies with respect to such a plan or a "pension plan" (within the meaning of Section 3(2) of ERISA).

(e) With respect to the Seller Pension Plan: (i) there does not exist any failure to meet the "minimum funding standard" of Section 412 of the Code or 302 of ERISA (whether or not waived); (ii) such plan is not in "at-risk" status for purposes of Section 430 of the Code; (iii) the most recent actuarial report prepared by such plan's actuary was based upon reasonable actuarial assumptions and was accurate in all material respects as of the valuation date of such report, and there has not been a material change in the present value of accrued benefits under such plan or the fair market value of the assets allocable to such accrued benefits since the most recent valuation date; (iv) no reportable event within the meaning of Section 4043(c) of ERISA has occurred; (v) all premiums to the Pension Benefit Guaranty Corporation (the "**PBGC**") have been timely paid in full; (vi) no Liability under Title IV of ERISA related to plan termination has been or is expected to be incurred by Seller or any of its Affiliates; and (vii) the PBGC has not instituted proceedings to terminate any such plan (nor has any material correspondence been received from a Governmental Entity) and, to the Knowledge of Seller, no circumstances exist which could serve as a basis for the institution of such proceedings.

(f) Each Seller Benefit Plan that is intended to be qualified under Section 401(a) of the Code has received from the IRS a favorable determination letter (or in the case of a master or prototype plan, a favorable opinion letter or in the case of a volume submitter plan, a favorable advisory letter) as to its qualification under Section 401(a) of the Code, and nothing has occurred that would be reasonably expected to adversely affect the qualified or exempt status of such Seller Benefit Plan or trust, nor is the consummation of the transactions provided for by this Agreement reasonably expected to have any such effect.

(g) Each Seller Benefit Plan is being, and has been, operated and administered in accordance with ERISA, the Code and all other applicable Laws and regulations thereunder and in accordance with its terms, except as would not reasonably be expected to materially and adversely affect Buyer's operation of the business of the Companies.

(h) Except as set forth in Schedule 4.14(h), neither the execution of this Agreement nor the consummation of the transactions contemplated by this Agreement (whether alone or in connection with other events) will (i) entitle any Business Employee to compensation or benefits or any increase in compensation or benefits, (ii) accelerate the time of any payment or vesting or result in any payment or funding (through a grantor trust or otherwise) of compensation or benefits under, increase the amount payable under or result in any other obligation pursuant to, any Seller Benefit Plan, or (iii) constitute an event described in Section 280G(b)(2)(A)(i) of the Code.

(i) Notwithstanding anything to the contrary herein, except as set forth in Section 4.13 and this Section 4.14, no representations or warranties are being made in this Agreement with respect to any employee or employee benefit matters, including such matters arising under ERISA or the Code.]

Section 4.15. Environmental Matters.

(a) Except as disclosed on Schedule 4.15:

(i) (A) [redacted] no unresolved written notice, Order, request for information, complaint or penalty under Environmental Laws has been received by either Company, and (B) there are no judicial, administrative or other actions, suits, litigation or proceedings pending or [redacted] threatened which allege a material violation of, or material Liability under, any Environmental Law against the Company, nor has either Company retained or assumed by contract or operation of law, any Liability or assumed responsibility for acts of a third party with respect to any claims or conditions relating to Hazardous Substances or Environmental Law that could, in each case, be reasonably expected to result in a material Liability to the Company;

(ii) each Company is and [redacted] has been in possession of all material Permits necessary for the operations, or proposed operations, of each Company's business required under any Environmental Law, and each Company is, and [redacted] has been in material compliance with the terms of such Permits and with all other Environmental Laws and Schedule 4.15(a)(ii) sets forth a list of material Permits required under Environmental Laws currently held by the Company;

(iii) Seller has delivered to Buyer prior to the date hereof true and complete copies of all material, environmental audit reports, inspection reports, or site assessments generated within the last [redacted] years and possessed by Seller pertaining to either Company or the Facilities;

(iv) [redacted]

(v) [redacted]

(vi) Schedule 4.15(a)(vi) contains a complete list of the location of any underground storage tanks at any property currently owned, leased, or operated by either Company.

(b) Notwithstanding anything to the contrary herein, except as set forth in Section 4.15(a), no representations or warranties are being made in this Agreement with respect to any environmental matters or matters arising under or relating to any Environmental Law.

Section 4.16. Tax.

(a) Except as set forth in the Balance Sheets (including the notes thereto) or on Schedule 4.16: (i) all material Tax Returns that are required to be filed with any Taxing Authority on or before the Closing Date by either Company have been or will be timely filed (taking into account applicable extensions); (ii) each Company has paid or will pay (taking into account applicable extensions) all material Taxes shown as due and payable on such Tax Returns that are required to be paid on or before the Closing Date; (iii) to Seller's Knowledge, all Tax Returns that have been filed are true, correct and complete in all material respects; and (iv) there is no material action, suit, proceeding, investigation, audit or claim pending or that has been proposed in writing by any Taxing Authority against either Company in respect of Taxes.

(b) At all times since its formation, each of the Companies has been properly characterized as a disregarded entity for United States federal and applicable state income Tax purposes.

(c) Notwithstanding anything to the contrary herein, except as set forth in Section 4.05(h), Section 4.10(c)(ii) and this Section 4.16, no representations or warranties are being made in this Agreement with respect to any matters relating to Taxes.

Section 4.17. [redacted]

(a) [redacted]

(b) [redacted]

ARTICLE 5 REPRESENTATIONS AND WARRANTIES OF BUYER

Buyer represents and warrants to Seller that:

Section 5.01. Corporate Existence and Power. Buyer is a corporation duly incorporated, validly existing and in good standing under the laws of its jurisdiction of incorporation and has all corporate powers and all material Permits required to carry on its business as now conducted,

except for those Permits the absence of which would not reasonably be expected to have a material adverse effect on Buyer's ability to perform its obligations hereunder.

Section 5.02. Corporate Authorization. The execution, delivery and performance by Buyer of this Agreement and the consummation of the transactions contemplated hereby are within the corporate powers of Buyer and have been duly authorized by all necessary corporate action. This Agreement constitutes a valid and binding agreement of Buyer, enforceable against Buyer in accordance with its terms, subject to the Enforceability Exceptions.

Section 5.03. Governmental Authorization. The execution, delivery and performance by Buyer of this Agreement and the consummation of the transactions contemplated hereby require no material action by or in respect of, or material filing with, any Governmental Authority other than (a) compliance with any applicable requirements of the HSR Act, (b) the FERC Approval, and (c) the State Approvals.

Section 5.04. Non-Contravention. The execution, delivery and performance by Buyer of this Agreement and the consummation of the transactions contemplated hereby do not and will not (a) violate the Charter Documents of Buyer, (b) assuming compliance with the matters referred to in Section 5.03, violate any Applicable Law, or (c) require any consent or other action by any Person under, constitute a default under, or give rise to any right of termination, cancellation or acceleration of any right or obligation of Buyer or to a loss of any benefit to which Buyer is entitled under any provision of any agreement or other instrument binding upon Buyer, except, in each case of (a), (b) or (c) which would not, in the aggregate, have a material adverse effect on Buyer's ability to perform its obligations hereunder.

Section 5.05. Financial Capability and Solvency. Buyer (a) has sufficient internal funds available or sources of sufficient funding capacity available to pay the payments contemplated hereby and any expenses incurred by Buyer in connection with the transactions contemplated hereby and to perform its obligations hereunder and (b) has not incurred any obligation, commitment, restriction or liability of any kind, which would materially impair or materially adversely affect such funding capacity.

Section 5.06. Purchase for Investment; Accredited Investor. Buyer is purchasing the Membership Interests for investment for its own account and not with a view to, or for sale in connection with, any distribution thereof. Buyer (either alone or together with its advisors) has sufficient knowledge and experience in financial and business matters so as to be capable of evaluating the merits and risks of its investment in the Membership Interests and is capable of bearing the economic risks of such investment. Buyer acknowledges that the sale of the Membership Interests hereunder has not been registered under the Securities Act or any state securities laws, and that the Membership Interests may not be sold, transferred, offered for sale, pledged, hypothecated, or otherwise disposed of without registration under the Securities Act, pursuant to an exemption from the Securities Act or in a transaction not subject thereto. Buyer represents that it is an "Accredited Investor" as that term is defined in Rule 501 of Regulation D of the Securities Act.

Section 5.07. Litigation. There is no Action pending against, or to the knowledge of Buyer, threatened in writing against, Buyer before any arbitrator or any Governmental Authority

which in any manner challenges or seeks to prevent, enjoin, alter or materially delay the transactions contemplated by this Agreement. Buyer is not subject to any Order, except to the extent any such Order would not reasonably be expected to materially affect Buyer's ability to perform its obligations under this Agreement or to consummate the transactions contemplated hereby.

Section 5.08. Broker Fees. There is no investment banker, broker, finder or other intermediary that has been retained by or is authorized to act on behalf of Buyer who might be entitled to any fee or commission in connection with the transactions contemplated by this Agreement.

Section 5.09. Inspections; No Other Representations.

(a) Buyer is an informed and sophisticated purchaser, and has engaged expert advisors, experienced in the evaluation and purchase of companies such as the Companies as contemplated hereunder. Buyer has undertaken such investigation and has been provided with and has evaluated such documents and information as it has deemed necessary to enable it to make an informed and intelligent decision with respect to the execution, delivery and performance of this Agreement. [redacted]

(b) Buyer acknowledges that, except for the representations and warranties expressly set forth in Articles 3 and 4, none of Seller, the Companies, or any of their respective Affiliates or representatives has made or is making any express or implied representation or warranty of any nature to Buyer, its Affiliates or any of their representatives, at law or in equity, with respect to Seller, the Companies or any of their respective Affiliates or any other matter related to the transactions contemplated hereby, [redacted]

ARTICLE 6 COVENANTS

Section 6.01. Conduct of the Company. From the date hereof until the Closing Date, Seller will cause the Companies to: (1) conduct their businesses in the ordinary course consistent with Good Industry Practices and in compliance in all material respects with Applicable Laws, (2) use commercially reasonable efforts to preserve intact their business organizations and relationships with third parties and to keep available the services of their present officers, employees and independent contractors, (3) develop and complete construction of the Mankato II Facility consistent with the terms and conditions of the Mankato II PPA, and (4) promptly notify Buyer of any emergency regarding the Companies or the Facilities and any complaints, investigations or hearings (or communications indicating that the same may be contemplated of any Governmental Authority) regarding the Facilities. Without limiting the generality of the foregoing, from the date hereof until the Closing Date, except as (i) disclosed on Schedule 6.01, (ii) required under the Mankato PPAs, (iii) required in connection with any Contract relating to the construction of the Mankato II Facility or in connection with any other aspect of the construction of the Mankato II Facility pursuant to the Mankato II PPA and the Mankato II Construction Contracts, (iv) necessary to respond to operational emergencies, failures or outages (provided that Seller promptly notify Buyer), (v) otherwise required by Applicable Law, (vi) otherwise contemplated by this Agreement, or (vii) consented to by Buyer (which consent will not be unreasonably withheld, delayed or conditioned), Seller will cause each Company not to:

(a) sell, lease (as lessor), transfer, convey, pledge, encumber or otherwise dispose of any of the real or non-real estate assets of the Companies, other than (i) the use or sale of inventory in the ordinary course of business consistent with past practice on an arm's-length basis, (ii) the disposal of obsolete assets in the ordinary course of business consistent with past practice on an arm's-length basis, (iii) pursuant to Contracts in effect on the date of this Agreement or (iv) the disposal of assets of the Companies having an aggregate value of less than [redacted] on an arm's-length basis;

(b) grant any encumbrance, easement, right-of-way agreement, license, lease, sublease, occupancy agreement, or like instrument burdening any portion of, or interest in, the Owned Real Property;

(c) enter into any Contract that would, if in effect on the date hereof, be a Material Contract or terminate, cancel, assign, relinquish any material rights under, or amend or modify any of the Material Contracts or Acquired Leases (other than (i) any Contract necessary for the completion of the construction of the Mankato II Facility, (ii) any Contract that will not impose any post-Closing Liabilities on the Companies, or (iii) terminations of Intercompany Arrangements pursuant to Section 6.11);

(d) fail to apply for, renew, or obtain any material Permit necessary for the development, construction or operation of the Facilities or, for those Permits that by their nature require a certain time period to become effective, fail to take such reasonable action necessary to ensure that such Permits can be obtained by Buyer following the Closing Date;

(e) [redacted]

(f) [redacted]

(g) amend or propose to amend the Charter Documents of either of the Companies, (ii) adjust, split, reverse split, combine, subdivide, reclassify, redeem, repurchase or otherwise acquire any equity interests of either of the Companies, or (iii) declare, set aside or pay any non-cash dividend or non-cash distribution to any Person with respect to either of the Companies;

(h) engage in any business other than the ownership, operation and maintenance of the Mankato I Facility and the development, construction and operation of the Mankato II Facility;

(i) except for inventory fluctuations related to scheduled maintenance and reallocations resulting from the construction of the Mankato II Facility, make any material change in the levels of inventory maintained at the Mankato I Facility for the applicable time of year, except for such changes as are necessary to operate the Facility consistent with Good Industry Practices;

(j) create, incur, assume or guarantee Indebtedness with respect to the Companies except for any Indebtedness (or any guarantees in respect of any Indebtedness) that will be repaid, discharged or otherwise satisfied in full prior to the Closing;

(k) make any loans or advances to any Person, except for expenses incurred in the ordinary course or such loans or advances that will be repaid prior to Closing;

(l) issue, sell, pledge or dispose of, or agree to issue, sell, pledge or dispose of, any equity or voting securities or interests of either of the Companies, including the Membership Interests, or any options, warrants, convertible securities or other rights of any kind to acquire any equity or voting securities or interests of either of the Companies, including the Membership Interests;

(m) purchase any equity or voting securities or interests of any Person;

(n) make any change in financial accounting methods, principles or practices with respect to the Companies, except (i) as required by a change in GAAP (or any interpretation thereof) or (ii) any change required to be made under GAAP or applicable Law to the consolidated financial accounting methods, principles or practices of Seller and its Affiliates as a whole;

(o) other than such actions as are otherwise required by applicable Tax Law or required under guidance issued by a Governmental Authority subsequent to the date hereof, (i) make, change or revoke any material Tax election, (ii) change any Tax accounting period, (iii) adopt or change any material method of Tax accounting, (iv) settle or compromise any audit, Action or assessment in respect of a material amount of Taxes, (v) apply for any Tax ruling or (vi) amend any Tax return, in each case, except for actions that would not have any adverse effect on the Companies' tax position after the Closing;

(p) fail to make capital expenditures substantially consistent with the capital expenditure plan set forth in Schedule 6.01(p);

(q) fail to maintain its existence or merge or consolidate with any other Person;

(r) create any subsidiary;

(s) dissolve, adopt a plan of complete or partial liquidation, effect a restructuring or recapitalization with respect to either of the Companies;

(t) other than with respect to any LD Claim, institute or settle or compromise any material Action, or enter into any material Order, consent decree or settlement agreement with any Governmental Authority, to which either of the Companies is a party;

(u) other than as contemplated in clauses (d) and (l) of this Section 6.01, make any investment in or acquisition of any assets, properties or businesses, other than purchases of inventory and supplies or other property or assets in the ordinary course of business consistent with past practice;

(v) enter into any transaction with any Affiliate by which such Company would be bound following the Closing or for which Buyer would have any liability, other than supply chain contracts entered into by Affiliates on behalf of the Companies in the ordinary course of business consistent with past practices;

(w) subject any material asset of the Companies to any Lien, other than Permitted Liens or Liens that will be released at or prior to the Closing; or

(x) agree or commit to do or take any action described in this Section 6.01;

provided, however, that in the event that either Company would be prohibited from taking any action by reason of this Section 6.01 without the prior written consent of Buyer, such action may nevertheless be taken without such consent if (i) such Company is required to take such action by Applicable Law or (ii) such Company requests Buyer's written consent and Buyer fails to respond in writing to such request within ten Business Days after the date of such request. For the avoidance of doubt, the Companies will be entitled to pay cash dividends or otherwise to make cash distributions to its equityholders at any time prior to the Closing.

Section 6.02. Notification of Status; Access to Company Information.

(a) Seller shall regularly communicate and consult with Buyer regarding the continuing development and construction of the Mankato II Facility, and Seller shall in good faith consider Buyer's input and comment with respect to any matters that may arise in respect of such continued development. Without limiting the generality of the foregoing, Seller shall keep Buyer reasonably apprised with respect to the status of the Mankato II Facility, including (i) providing Buyer with access to monthly reports prepared by the Independent Engineer, and (ii) participating in a weekly Project status call with Buyer and its representatives at times that are mutually approved by Seller and Buyer. In addition, Seller shall, and shall cause the Companies to, during ordinary business hours, upon reasonable notice and on the basis reasonably agreed by the parties hereto: (w) give Buyer and its representatives reasonable access to the Mankato II Facility, (x) permit Buyer and its representatives to make such reasonable inspections thereof as Buyer may reasonably request, and (y) permit Buyer and its representatives to observe all testing, including all testing conducted pursuant to Schedule 1.01(a)(iv), and (z) such further access as set forth in Schedule 6.02(a); *provided, however*, that (A) any such inspection will be conducted in such a manner as not to materially interfere with the construction or other operations of the Mankato II Facility or any other Person, (B) Buyer and its representatives agree, at Seller's sole discretion, to be accompanied by a representative of Seller at all times, (C) Buyer and its representatives agree to comply with all safety or other rules of Seller and its Affiliates while present on any premises to which Buyer is granted access hereunder, and (D) Buyer shall indemnify and hold harmless Seller from and against any Losses incurred by Seller, its Affiliates or its or their representatives by any negligent or wrongful action of Buyer or its representatives while present on any premises to which Buyer is granted access hereunder.

(b) Without limiting the generality of the foregoing Section 6.02(a), from the date hereof until the Closing Date, Seller will cause each Company to give Buyer, its counsel, financial advisors, auditors and other authorized representatives reasonable access, on reasonable notice and during regular business hours, to the offices, properties, the Owned Real Property, books and records of such Company and appropriate officers and employees of such Company; *provided* that such access will not, in any case, include any invasive sampling or testing; *provided further* that any requests for such access will be directed to Seller or such other Person as Seller may designate in writing from time to time. Any access provided pursuant to this Section 6.02 will be conducted in such manner as not to interfere unreasonably with the conduct of the business of either Company. No access will be permitted to the extent it would require either Company to violate attorney/client privilege.

(c) Notwithstanding the foregoing, Buyer will not have access to personnel records of either Company relating to individual performance or evaluation records, medical histories or other information which in Seller's good faith opinion would violate Applicable Law. None of the Companies or Seller makes any representation or warranty as to the accuracy or completeness of any information (if any) provided pursuant to this Section 6.02, except as set forth in Seller's representations and warranties regarding the Companies set forth in Article 4.

Section 6.03. Resignations. Seller will cause the Companies to deliver to Buyer the resignations of all officers and directors of the Companies who will be officers, directors or

employees of Seller or any Affiliate of Seller after the Closing Date from their positions with the Companies at or prior to the Closing Date.

Section 6.04. Confidentiality.

(a) Buyer acknowledges that the information made available to it in connection with this Agreement and the transactions contemplated hereby is subject to the terms of the letter agreement covering confidentiality and nondisclosure, dated August 31, 2018, between Seller and Buyer (the "**Confidentiality Agreement**"), which will remain in full force and effect in accordance with its terms, except as expressly provided herein. The terms of the Confidentiality Agreement are hereby incorporated by reference and shall continue in full force and effect until the Closing, at which time such Confidentiality Agreement shall terminate. The Confidentiality Agreement will survive any termination of this Agreement if this Agreement is, for any reason, terminated prior to the Closing. Notwithstanding the foregoing, any actions required to be taken by the parties hereto under Section 6.08 with respect to the Required Regulatory Approvals and the State Approvals shall not be deemed to be a breach of the terms of the Confidentiality Agreement, including any preliminary discussions between Buyer and any Governmental Authority with respect to the State Approvals so long as Buyer advises such Governmental Authority that such information is confidential.

(b) For [redacted] years after Closing, Buyer and its Affiliates shall not disclose or use, directly or indirectly, any information, whether disclosed through documents, work papers or other materials, orally, or electronically, that is of a confidential or proprietary nature related to Seller (including any information obtained in connection with the entering into of this Agreement) and shall maintain the confidentiality of all such information; *provided*, *however*, that Buyer may disclose any such information (i) that is or becomes generally available to the public other than as a result of disclosure by Buyer or its Affiliates, (ii) that is or becomes available to Buyer on a non-confidential basis from a source that is not bound by a confidentiality obligation to Seller, or (iii) with the prior written approval of Seller; *provided*, *further*, that, to the extent that Buyer or its Affiliates may become legally compelled to disclose any such information by any Governmental Authority or if Buyer or its Affiliates receives written advice of outside counsel that disclosure is required in order to avoid violating Applicable Laws, Buyer or its Affiliates may disclose such information; but only after, if applicable or relevant, they have used all commercially reasonable efforts to afford Seller, at its sole cost and expense, the opportunity to obtain an appropriate protective order, or other satisfactory assurance of confidential treatment, for the information required to be disclosed; provided, further, that Buyer may disclose only that portion of such information as is necessary to comply with Applicable Law or regulation, or to enforce its obligations under this Agreement; and provided, further, that this Section 6.04(b) shall not prohibit or restrict or otherwise limit the use or disclosure by Buyer and its Affiliates of any documents, work papers or other materials or information related to the Companies or the Facilities.

(c) For [redacted] years after Closing, Seller shall not disclose or use, directly or indirectly, any information, whether disclosed through documents, work papers or other materials, orally, or electronically, that is of a confidential or proprietary nature related to Buyer or the Companies and shall maintain the confidentiality of all such information; provided, however, that Seller may disclose any such information (i) that is or becomes generally available to the public other than as a result of disclosure by any Seller, (ii) that is or becomes available to Seller on a non-confidential

basis from a source that is not bound by a confidentiality obligation to Buyer or (iii) with the prior written approval of Buyer; *provided*, *further*, that, to the extent that Seller may become legally compelled to disclose any such information by any Governmental Authority or if Seller receives written advice of outside counsel that disclosure is required in order to avoid violating Applicable Laws, Seller may disclose such information; but only after, if applicable or relevant, it has used all commercially reasonable efforts to afford Buyer, at its sole cost and expense, the opportunity to obtain an appropriate protective order, or other satisfactory assurance of confidential treatment, for the information required to be disclosed; and provided, further, that Seller may disclose only that portion of such information as is necessary to comply with Applicable Law or regulation, in connection with any required Tax disclosures or to enforce its obligations under this Agreement.

Section 6.05. Post-Closing Access. On and after the Closing Date, Buyer will cause the Companies to afford promptly to Seller (and its agents), reasonable access to the properties, Books and Records (including accountant's work papers), information, employees and auditors of the Companies and the Facilities, and shall afford Seller the right (at its own expense) to take extracts therefrom and to make copies thereof, to the extent necessary or useful for Seller in connection with any audit, investigation, dispute or litigation or any other reasonable business purpose relating to the Companies, including in connection with any claim for indemnification made by Buyer pursuant to this Agreement; *provided* that any such access by Seller will not unreasonably interfere with the conduct of the business of the Companies. For a period of 24 months after the Closing Date, Seller shall use commercially reasonable efforts to furnish promptly Buyer with such Excluded Electronic Records as Buyer may reasonably request from time to time in connection with any audit, investigation, dispute or litigation or any other reasonable business purpose relating to the Companies.

Section 6.06. Contact with Customers and Suppliers. Prior to the Closing, Buyer and Buyer's representatives will contact and communicate with the employees, customers, resellers, vendors, suppliers and other business relations (other than potential financing sources) of the Companies in connection with the transactions contemplated by this Agreement only to the extent permitted by Applicable Law and only with the prior written consent of Seller (which consent will not be unreasonably withheld, delayed or conditioned); *provided*, that the foregoing is not intended to prohibit Buyer from contacting those Governmental Authorities from whom it must obtain regulatory approval regarding the transactions contemplated by this Agreement so long as Buyer advises such Governmental Authorities that such information is confidential.

Section 6.07. Employee Benefits.

(a) Employee Information Updates. [redacted]

[redacted]

(b) [redacted]

[redacted]

(c) [redacted]

(i) [redacted]

(ii) [redacted]

(d) [redacted]

(i) [redacted]

Transferring Employees under Buyer's medical, life or disability benefits, to the extent that such limitations to allow transferring employees to participate immediately after the Closing Date.

(ii) *Buyer's Medical Plan*. For the period commencing on the Closing Date and expiring at the end of the plan year for Buyer's health and dental plans (the "**Welfare Plan Period**"), Buyer will use reasonable efforts to have taken into account under Buyer's medical plan deductible or out-of-pocket amounts Transferring Employees and their eligible dependents incurred under any Seller medical plan (to the extent Seller provides such information to Buyer).

(iii) [redacted]

(iv) [redacted]

(v) [redacted]

[redacted]

(vi) [redacted]

(e) [redacted]

(i) [redacted]

(ii) [redacted]

(iii) [redacted]

(iv) [redacted]

[redacted]

(v) [redacted]

(vi) [redacted]

(vii) [redacted]

(f) [redacted]

(g) No Third-Party Beneficiaries. The provisions of this Section 6.07 are solely for the benefit of the parties to this Agreement, and no current or former employee, director or independent contractor or any other individual associated therewith shall be regarded for any purpose as a third-party beneficiary of the Agreement, and nothing herein shall be construed as an amendment to any employee benefit plan (sponsored by Seller or Buyer) for any purpose. Nothing in this Section 6.07 shall be construed to (i) limit the right of Seller, Buyer or any of their respective Affiliates to amend or terminate any employee plan, to the extent such amendment or termination is permitted by the terms of the applicable plan, or (ii) require Buyer or any of its Affiliates to retain the employment of any particular Transferring Employee for any fixed period of time following the Closing Date.

Section 6.08. Reasonable Best Efforts; Further Assurances; Regulatory Approvals

(a) Except as otherwise provided in this Agreement, Buyer and Seller will, and will cause their respective Affiliates to, use their reasonable best efforts to take, or cause to be taken, all actions and to do, or cause to be done, all things necessary or desirable under Applicable Law and this Agreement to consummate the transactions contemplated by this Agreement, including seeking the Required Regulatory Approvals and the State Approvals. Seller and Buyer agree that Seller, prior to the Closing, and Buyer, after the Closing, will cause the Companies to, execute and deliver such other documents, certificates, agreements and other writings and to take such other actions as may be necessary or desirable in order to consummate or implement expeditiously the transactions contemplated by this Agreement.

(b) In furtherance and not in limitation of the foregoing, each of Buyer and Seller will make an appropriate filing of a Notification and Report Form pursuant to the HSR Act with respect to the transactions contemplated hereby with the United States Federal Trade Commission (the "**FTC**") and the Antitrust Division of the United States Department of Justice (the "**Antitrust Division**") within 30 days of the date hereof or at such later date as the parties may agree. Each of Buyer and Seller will (i) respond as promptly as practicable to any inquiries received from the FTC or the Antitrust Division for additional information or documentation and to all inquiries and requests received from any state attorney general or other Governmental Authority in connection with antitrust matters, and (ii) not extend any waiting period under the HSR Act or enter into any agreement with the FTC or the Antitrust Division not to consummate the transactions contemplated by this Agreement, except with the prior written consent of Seller.

(c) In furtherance and not in limitation of the foregoing, each of Buyer and Seller shall, and will cause their relevant Affiliates to, coordinate and cooperate to assemble and submit to the FERC a joint application for the FERC Approval as promptly as practicable, and in any event prior to December 15, 2018. Such application, including any amendments or supplements thereto, shall be subject to the review and comment of the parties, and the approval of the parties, which approval shall not be unreasonably withheld, conditioned or delayed. All communications with FERC or its staff will be subject to Section 6.08(f).

(d) Subject to Section 6.08(g), Buyer will offer to take (and if such offer is accepted, commit to take) with respect to itself and the Companies all actions necessary to avoid or eliminate impediments under any antitrust, competition, or other regulatory law that may be asserted by the FERC, the FTC, the Antitrust Division, any state attorney general or any other Governmental Authority with respect to the transactions contemplated by this Agreement (including the State Approvals) so as to enable the consummation thereof as promptly as reasonably practicable.

(e) In furtherance and not in limitation of the foregoing, Buyer shall submit applications and/or filings for the State Approvals as promptly as practicable, and in any event before December 1, 2018. Buyer and Seller shall cooperate with respect to the State Approvals, and Seller shall provide, and shall cause the Companies to provide, such assistance to Buyer as it may reasonably request in connection with obtaining such State Approvals. Buyer shall provide Seller with an opportunity to review and comment on the applications and/or filings for the State Approvals prior to their submission, it being understood that any such cooperation and consultation with Seller shall not constitute, or be construed as constituting, the undertaking of an obligation to solicit or obtain the consent or approval of Seller.

(f) Other than with respect to the State Approvals, each party will (i) promptly notify the other party of any communications, oral or written, relating to the transactions contemplated by this Agreement to that party from the FERC, the FTC, the Antitrust Division, any state attorney general or any other Governmental Authority and, subject to Applicable Law, permit the other party to review in advance, and consult with and consider in good faith the views of such other party in connection with, any proposed written communication relating to the transactions contemplated by this Agreement to any of the foregoing; (ii) to the extent practicable, not agree to participate in any substantive meeting or discussion with any Governmental Authority in respect of any filings, investigation or inquiry concerning any competition or antitrust matters in connection with the transactions contemplated by this Agreement unless it consults with the other party in advance and, to the extent permitted by such Governmental Authority, gives the other party the opportunity to attend and participate thereat; and (iii) furnish the other party as promptly as practicable with copies of all correspondence, filings, and communications (and memoranda setting forth the substance thereof) between them and their Affiliates and their respective representatives on the one hand, and any government or regulatory authority or members or their respective staffs on the other hand, with respect to any competition or antitrust matters in connection with the transactions contemplated by this Agreement. [redacted] Buyer shall (A) determine timing and strategy and be solely responsible for the final content of any substantive oral or written communications with any applicable Governmental Authority, and (B) lead all proceedings and coordinate all activities with respect to seeking any actions, consents, approvals or waivers of any Governmental Authority under any Applicable Law; *provided*, that Buyer shall in good faith consult with Seller and consider all views and input provided by Seller [redacted] in a manner consistent with seeking the approvals set forth on Schedule 1.01(a)(iii).

(g) Notwithstanding anything in this Section 6.08 to the contrary, nothing in this Section 6.08 will require, or be deemed to require, Buyer, Seller, the Companies or any of their respective Affiliates to propose, negotiate, offer to commit, effect or agree to [redacted]

Section 6.09. Certain Filings. Seller and Buyer will cooperate with one another (a) in determining whether any action by or in respect of, or filing with, any Governmental Authority is required, or any actions, consents, approvals or waivers are required to be obtained from parties to any material contracts, in connection with the consummation of the transactions contemplated by

this Agreement and (b) in taking such actions or making any such filings, furnishing information required in connection therewith and seeking timely to obtain any such actions, consents, approvals or waivers.

Section 6.10. Public Announcements. No party hereto will issue, or permit any of its Affiliates or representatives to issue, any press release or otherwise make any public statements or announcements regarding this Agreement or the transactions contemplated hereby without the prior written consent (which consent will not be unreasonably withheld, conditioned or delayed) of the other party, except as otherwise determined to be necessary or appropriate to comply with Applicable Law or any rules or regulations of any supervisory, regulatory or other Governmental Authority having jurisdiction over it or any of its Affiliates (including the Securities and Exchange Commission and the New York Stock Exchange), in which case the party required to issue such press release or public announcement will use reasonable efforts to provide the other party a reasonable opportunity to comment on such press release or public announcement in advance of such publication. Prior to the Closing, the parties hereto will consult with each other concerning the means by which the employees, customers, and suppliers of the Companies and others having dealings with the Companies will be informed of the transactions contemplated by this Agreement. Notwithstanding the foregoing, nothing contained in this Agreement will limit either party's (or either party's respective Affiliates') rights to disclose the existence of this Agreement and the general nature of the transaction described herein on any earnings call or in similar discussions with financial media or analysts, stockholders and other members of the investment community.

Section 6.11. Intercompany Arrangements.

(a) All intercompany accounts between Seller or its Affiliates, on the one hand, and the Companies, on the other hand, will be fully paid and discharged or otherwise terminated prior to the Closing (irrespective of the terms of payment of such intercompany accounts).

(b) Except (i) as set forth on Schedule 6.11(b) and (ii) those contracts contemplated by this Agreement, each contract between the Companies, on the one hand, and Seller or any of its Affiliates, on the other hand, will be terminated at or before the Closing.

Section 6.12. Tax Matters.

(a) Seller Liability for Taxes. Seller shall indemnify and hold harmless the Buyer Indemnified Parties from and against any and all Losses incurred or suffered by any of the Buyer Indemnified Parties arising out of or related to (i) Taxes (or the non-payment thereof) of or relating to the Companies for Pre-Closing Periods and (ii) Seller's portion of the Transfer Taxes pursuant to Section 6.12(f). Notwithstanding anything in this Agreement to the contrary, Seller shall have no liability to any Buyer Indemnified Party for (A) the loss or reduction of any credit, loss or other Tax attribute relating to a Company because any such credit, loss or other Tax attribute is adjusted for a Pre-Closing Period, (B) Taxes arising from actions taken by Buyer on the Closing Date outside of the ordinary course of business unless expressly contemplated by this Agreement and (C) Taxes resulting from a breach by Buyer of the covenants in Section 6.12(c)(iii) or Section 6.12(m).

(b) Buyer Liability for Taxes. Buyer shall indemnify and hold harmless the Buyer Indemnified Parties from and against any and all Losses incurred or suffered by any of the Buyer Indemnified Parties arising out of or related to (i) Taxes (or the non-payment thereof) of or relating to the Companies for Post-Closing Periods, or for other taxable periods to the extent arising from actions taken on the Closing Date after the Closing outside of the ordinary course of business unless expressly contemplated by this Agreement and (ii) Buyer's portion of the Transfer Taxes pursuant to Section 6.12(f).

(c) Preparation and Filing of Pre-Closing and Post-Closing Period Tax Returns. Except as otherwise provided in Section 6.12(f):

(i) Tax Returns Due on or Before the Closing Date. Seller shall prepare, or cause to be prepared, and timely file, or cause to be timely filed, all Tax Returns related to the Companies and their assets and business operations, if any, that are due on or prior to the Closing Date. Seller shall provide a copy of such Tax Returns to Buyer within five (5) Business Days of filing such Tax Returns. Seller shall timely remit, or cause to be timely remitted, all Taxes due in respect of such Tax Returns.

(ii) Tax Returns Due After the Closing Date. Buyer shall prepare, or cause to be prepared, and timely file, or cause to be timely filed, all Tax Returns of the Companies, if any, that are due after the Closing Date. Buyer shall permit Seller a reasonable time to review and comment on each such Tax Return in the event the Tax Return includes any Pre-Closing Period and shall consider Seller's comments in good faith. With respect to any Tax Return for a Pre-Closing Period, each such Tax Return shall be prepared in a manner consistent with past practice unless otherwise required by Applicable Law. Buyer shall timely remit, or cause to be timely remitted, all Taxes due in respect of such Tax Returns. Seller shall pay to Buyer (except to the extent Seller or a Company has already made a payment in respect of such Tax), within five (5) days following any written demand by Buyer (which demand shall include a computation of the amount owed by Seller), with respect to each such Tax Return, an amount equal to the portion of the Taxes due in respect of such Tax Return which relates to the portion of such taxable period ending on the Closing Date (as determined pursuant to Section 6.12(e)).

(iii) No Amendments of Pre-Closing Period Tax Returns. Buyer shall not amend, refile or otherwise modify, or cause or permit to be amended, refiled or otherwise modified, any Tax Return filed by any Company for any taxable period beginning on or before the Closing Date without the prior written consent of Seller.

(d) Cooperation in Filing Tax Returns. Buyer and Seller shall, and shall each cause its Affiliates to, provide to the other Party such cooperation and information, as and to the extent reasonably requested and reasonably necessary, in connection with (i) preparing, reviewing or filing any Tax Return, amended Tax Return or claim for refund; (ii) determining Liabilities for Taxes or a right to refund of Taxes; or (iii) conducting any audit or other Action with respect to Taxes, in the case of clauses (i) through (iii), with respect to the Companies.

(e) Allocation of Certain Taxes. For purposes of this Agreement:

(i) if a Company is permitted but not required under applicable federal, state, local or foreign income Tax laws to treat the Closing Date as the last day of a taxable period, then the Parties shall treat that day as the last day of a taxable period.

(ii) in the case of Taxes for a Straddle Period, except as provided in Section 6.12(e)(ii), the allocation of such Taxes between the Pre-Closing Period and the Post-Closing Period shall be made on the basis of an interim closing of the books as of the end of the Closing Date.

(iii) in the case of any Taxes imposed on a periodic basis (such as real property or personal property Taxes) that are payable for a Straddle Period, the portion of such Tax which relates to the Pre-Closing Period shall be deemed to be only the amount of such Tax for the entire taxable period multiplied by a fraction, the numerator of which is the number of days in the portion of the taxable period ending on (and including) the Closing Date and the denominator of which is the number of days in the entire taxable period. However, in the event that such Taxes are attributable to any property which is revalued or re-assessed on or after the Closing Date, the portion of such Tax allocated to the Pre-Closing Period pursuant to the prior sentence shall be determined without taking into account such revaluation or reassessment. Furthermore, any such Taxes attributable to any property that was owned by a Company at some point in the Pre-Closing Period, but is not owned as of or after the Closing Date shall be allocated entirely to the Pre-Closing Period, and any such Taxes attributable to any property that was not owned by a Company at any point in the Pre-Closing Period shall be allocated entirely to the Post-Closing Period.

(f) Payment of Transfer Taxes. All transfer, documentary, sales, use, stamp, registration and other similar Taxes and fees, however denominated, incurred in connection with transactions contemplated by this Agreement, including any direct or indirect real property transfer Tax (together with any interest, penalties or additions thereto, "**Transfer Taxes**"), if any, arising out of, or in connection with, the sale of the Class A Membership Interests to Buyer pursuant to this Agreement shall be borne one-half by Seller and one-half by Buyer. Buyer shall file when due all necessary documentation and Tax Returns with respect to such Transfer Taxes and Seller shall provide such cooperation in connection with the preparation and filing of such documentation and Tax Returns as may be reasonably requested by Buyer.

(g) Carryovers, Refunds, and Related Matters.

(i) Any refund, rebate, abatement, reduction or other recovery (whether direct or indirect through a right of set-off or credit) of Taxes (including any interest thereon) (a "Tax Refund"), that relates to a Company that is attributable to a Pre-Closing Period shall be the property of Seller and shall be retained by Seller (or promptly paid by such Company or Buyer to Seller if any such Tax Refund is received by such Company or Buyer or any of their Subsidiaries or Affiliates).

(ii) In applying Section 6.12(g), any Tax Refund for a Straddle Period shall be allocated between the Pre-Closing Period and the Post-Closing Period in accordance with the principles of Section 6.12(e).

(iii) Following the Closing Date, Buyer shall, and shall cause each Company to, waive the right to carryback to any Pre-Closing Period any income tax losses, credits or similar items attributable to such Company.

(h) Audits. After the Closing Date, Buyer and Seller shall notify the other in writing within ten (10) Business Days of the receipt of written notice of any inquiries, claims, assessments, audits or similar events with respect to Taxes or Tax attributes of any of the Companies, which, if determined adversely to the taxpayer or after the lapse of time would be grounds for indemnification under this Agreement by the other party (a "**Tax Indemnitor**"). Such notice shall contain factual information describing any asserted Tax liability in reasonable detail and shall include copies of any notice or other document received from any Taxing Authority in respect of any such asserted Tax liability. If either Buyer or Seller fails to give the other party prompt notice of an asserted Tax liability as required under this Agreement, then (i) if the Tax Indemnitor is precluded by the failure to give prompt notice from contesting the asserted Tax liability in any administrative or judicial forum, then such party shall not have any obligation to indemnify the other party for any losses arising out of such asserted Tax liability and (ii) if the Tax Indemnitor is not so precluded from contesting, if such failure to give prompt notice results in a detriment to the Tax Indemnitor, then any amount which the Tax Indemnitor is otherwise required to pay pursuant to this Agreement with respect to such liability shall be reduced by the amount of such detriment.

(i) Control of Contests Involving Pre-Closing Periods. In the case of an audit or administrative or judicial proceeding involving any Taxes or Tax attributes of any Company relating to any Pre-Closing Period, Seller shall have the right, at its expense, to control the conduct of such audit or proceeding; provided, however, that if such audit or proceeding would be reasonably expected to result in a material increase in Tax liability of such Company for which Buyer would be liable under this Agreement, Buyer may participate in the conduct of such audit or proceeding at its own expense, and Seller shall not settle any such audit or proceeding without the consent of Buyer, which consent shall not be unreasonably withheld, conditioned or delayed.

(j) Control of Contests Involving Straddle Periods. In the case of an audit or administrative or judicial proceeding involving any Taxes or Tax attributes of any Company relating to any Straddle Period, Buyer shall have the right, at its expense, to control the conduct of such audit or proceeding; provided, however, that if such audit or proceeding would be reasonably expected to result in a material increase in Tax liability of such Company for which Seller would be liable under this Agreement, Seller may participate in the conduct of such audit or proceeding at its own expense and Buyer shall not settle any such audit or proceeding without the consent of Seller, which consent shall not be unreasonably withheld, conditioned or delayed.

(k) Access to Books and Records. Buyer agrees to retain or cause to be retained all books and records pertinent to the Companies (including Tax Returns) until the applicable period for assessment under Applicable Law (giving effect to any applicable extensions or waivers) has expired, and to abide by or cause such abidance with all record retention agreements entered into with any Taxing Authority. Buyer agrees to give (or cause to be given to) Seller reasonable notice prior to transferring, discarding or destroying any such books and records relating to Tax matters and, if Seller so requests, the Companies will allow Seller to take possession of such books and records. Seller and Buyer will cooperate as reasonably requested by the other party in the

preparation and filing of Tax Returns and responding to and resolving inquiries, audits, claims, actions or similar proceedings by any Taxing Authority (a "**Tax Claim**") in each case relating to Pre-Closing Period Taxes of the Companies, including the furnishing or making available during normal business hours of records, personnel (as reasonably required), books of account, powers of attorney and other reasonably necessary materials. Buyer agrees to promptly provide any notices or written inquiries received from a Taxing Authority that pertain to an income Tax Return of Seller or any Affiliate of Seller.

(l) Seller's Tax Returns and Tax Information. Notwithstanding anything in this Agreement to the contrary, in no event will Buyer or any Affiliate of Buyer have any rights or access to any Tax Return or other Tax information of Seller and its Affiliates that does not relate exclusively to the Companies, including, for the avoidance of doubt, any income Tax Return of Seller or any Affiliate of Seller. Seller will control all proceedings and make all decisions taken in connection with any Tax Claim relating to any income Tax Return of Seller of any Affiliate of Seller, and Buyer will have no right to participate.

(m) Buyer's Actions and Elections. Neither Buyer nor any Affiliate of Buyer will (i) take any action (including following Closing on the Closing Date), (ii) make, revoke or modify any Tax election or (iii) make or initiate any voluntary discussion, examination or contract with a Governmental Entity (including any voluntary disclosure agreement or similar process) with respect to the Companies that, in each case, would be effective on or before the day after the Closing Date or would reasonably be expected to adversely affect Seller or its Affiliates.

(n) Tax Treatment. The Parties acknowledge and agree that the purchase and sale of the Membership Interests will be treated as the purchase and sale of the assets of Mankato I and Mankato II for United States federal income Tax purposes.

Section 6.13. No Control of the Companies. Nothing contained in this Agreement is intended to give Buyer, directly or indirectly, the right to control or direct either Company's operations prior to the Closing. Prior to the Closing, each Company will exercise, consistent with the terms and conditions of this Agreement, complete control and supervision over its operations.

Section 6.14. Use of Name; Phase Out. Within 90 days following the Closing, Buyer will, and will cause the Companies to, cease using the Excluded Intellectual Property Rights including removing the Excluded Intellectual Property Rights from any properties or assets relating to the Companies, and Buyer will not, and will cause the Companies not to, use the Excluded Intellectual Property Rights, and Buyer shall have a limited license to continue to use such Excluded Intellectual Property Rights during such 90-day period; *provided*, that Buyer acknowledges that it and its Affiliates have no ownership rights whatsoever to use the Excluded Intellectual Property Rights. Notwithstanding Buyer's right to use the Excluded Intellectual Property Rights for the time period set forth above, Buyer agrees that (a) neither Buyer nor any of its Affiliates will be deemed an agent, representative or joint venture partner of Seller, (b) Seller and its Affiliates will retain sole and exclusive ownership of the Excluded Intellectual Property Rights, and all goodwill and rights related thereto, and (c) Buyer and its Affiliates will not knowingly take any action in respect of the Excluded Intellectual Property Rights that would adversely affect Seller or its Affiliates, or the interest of Seller or its Affiliates in the Excluded Intellectual Property Rights.

Section 6.15. Supplements to Seller Disclosure Schedules. From time to time prior to the Closing, Seller may, by written notice to Buyer, disclose any matters arising after the date hereof to the extent it (a) would render Seller unable to satisfy its condition precedent under Section 7.03 without amending the Seller Disclosure Schedules, (b) relates to matters in the ordinary course of business or (c) relates to activities that the Companies may take without Buyer's consent under Section 6.01 of this Agreement (each such disclosure, a "**Supplemental Disclosure**"); *provided*, that each such Supplemental Disclosure must be delivered no later than the date that is ten days prior to the Closing Date, other than with respect to any matter that occurs after such date. In the event that Seller provides written notice to Buyer prior to Closing of a Supplemental Disclosure pursuant to clause (a) above (and Buyer does not terminate this Agreement pursuant to Section 9.01(d)), or pursuant to clauses (b) or (c) above, Seller shall be permitted to update the Seller Disclosure Schedules to properly reflect the matter and such Supplemental Disclosure shall be deemed to have been disclosed as of the date hereof for the purposes of determining whether or not the conditions to Closing set forth in Section 7.03 have been satisfied; *provided, however*, if the Closing occurs, any Supplemental Disclosures shall not be deemed to have cured any breach of any representation or warranty made by Seller relating to the matters set forth in the Supplemental Disclosure for the purposes of indemnification pursuant to Article 8, unless such Supplemental Disclosure relates to matters in the ordinary course of business or related to activities that the Companies may take without Buyer's consent under Section 6.01 of this Agreement.

Section 6.16. [redacted]

Section 6.17. Release.

(a) Effective as of the Closing and except as otherwise expressly set forth in this Agreement (including Section 6.17(c)), Seller, on behalf of itself and each of its respective Affiliates and each of their respective successors and assigns, hereby irrevocably, unconditionally and completely waives and releases and forever discharges the Companies, Buyer and each of their respective Affiliates, and each of their respective heirs, executors, administrators, successors and assigns (such released Persons, the "**Releasees**"), of and from all debts, demands, Actions, causes of action, suits, accounts, covenants, contracts, agreements, damages, claims and other Liabilities whatsoever of every name and nature, both in law and in equity, arising out of or in connection with (i) Seller's capacity as a member of each of the Companies prior to the Closing Date and (ii) any Liability with respect to the Mankato PPAs (other than Liabilities relating to any time prior to the Closing Date that remain unpaid). Seller shall not make, and Seller shall not permit any of its Affiliates or their respective representatives to make, any claim or demand, or commence any Action asserting any claim or demand, including any claim of contribution or any indemnification, against any of Buyer's or its Affiliates' or any of their Releasees with respect to any Liabilities or other matters released pursuant to this Section 6.17.

(b) Effective as of the Closing and except as otherwise expressly set forth in this Agreement (including Section 6.17(c)), Buyer, on behalf of themselves and each of their respective Affiliates (including the Companies following the Closing) and each of their respective successors and assigns, hereby irrevocably, unconditionally and completely waives and releases and forever discharges Seller and each of its respective Affiliates, and each of their respective Releasees, of

and from all debts, demands, Actions, causes of action, suits, accounts, covenants, contracts, agreements, damages, claims and other Liabilities whatsoever of every name and nature, both in law and in equity, arising out of or in connection with (i) any breach by Seller or any director or officer of either of the Companies of any fiduciary duty in their capacity as an equityholder, director or officer of such entity that existed, occurred, happened, arose or transpired from the beginning of time through the Closing Date and (ii) any Liability with respect to the Mankato PPAs (other than Liabilities under such agreements relating to any time prior to the Closing Date that remain unpaid). Buyer shall not make, and Buyer shall not permit any of its Affiliates or their respective representatives to make, any claim or demand, or commence any Action asserting any claim or demand, including any claim of contribution or any indemnification, against any of Seller or its Affiliates or any of their Releasees with respect to any Liabilities or other matters released pursuant to this Section 6.17.

(c) Notwithstanding the foregoing, Section 6.17(a) and Section 6.17(b) shall not constitute a release from, waiver of, or otherwise apply to the terms of this Agreement or any Liability or Contract expressly contemplated by this Agreement to be in effect after the Closing, or any enforcement thereof.

Section 6.18. Asset Transfer. Prior to the Closing, Seller shall, and shall cause its Affiliates to, (a) assign, convey and transfer to the applicable Company, free and clear of all Liens other than Permitted Liens, all of Seller's or its Affiliates' right, title and interest in and to any assets owned by Seller or such Affiliates, or in which they have any interest in, that are primarily related to the Facilities and are necessary to operate the Facilities and (b) cooperate with Buyer to allow Buyer to replicate and/or continue to receive the benefit of any Shared Contracts; *provided*, that to the extent that the assignment, conveyance or transfer or attempted assignment, conveyance or transfer to either Company of any Shared Contract in accordance with this Section 6.18(b) is prohibited by any Applicable Law or would result in a violation or breach of such Shared Contract, or would require the consent of any Governmental Authority or third party authorizations, approvals, consents or waivers, and such authorizations, approvals, consents or waivers have not been obtained, or such violation or breach has not been cured, prior to the Closing, cooperate with Buyer to enter into in any mutually agreeable, reasonable and lawful arrangements designed to provide (x) to Buyer or the applicable Company the benefits of use of such Shared Contracts and (y) to Seller or its Subsidiaries the benefits that it would have obtained had such Shared Contracts been conveyed at the Closing (collectively, the "**Pre-Closing Asset Transfer**"). All costs and expenses incurred in connection with such transfer shall be borne by Seller; *provided, however*, that neither Buyer nor Seller shall have any obligation to pay any costs or expenses to any third party in connection with the transfer of Shared Contracts, if any; *provided further* that any Transfer Taxes incurred in connection with the transfer of Shared Contracts, if any, shall be borne one-half by Seller and one-half by Buyer.

Section 6.19. Litigation Support; Liquidated Damage Claims.

(a) If and for so long as Seller, Buyer, the Companies or any of their respective Affiliates are prosecuting, contesting or defending any Action by a third party in connection with (i) any transactions contemplated under this Agreement or (ii) any fact, situation, circumstance, status, condition, activity, practice, plan, occurrence, event, incident, action, failure to act, or transaction relating to, in connection with, or arising from this Agreement or the Companies, Seller and Buyer,

as the case may be, shall, and shall cause its Affiliates, including the Companies, if applicable (and its and their officers and employees) to, cooperate with the other party and its Affiliates and their respective counsel (at the expense of the requesting party) in such prosecution, contest or defense, including making available its personnel and providing such testimony and access to its books and records as shall be reasonably necessary in connection with such prosecution, contest or defense.

(b) Buyer acknowledges that (i) Seller and the Companies may have claims against third parties for liquidated damages and other matters that arise in connection with the engineering, procurement and/or construction of the Mankato II Facility ("**LD Claims**") that accrue to the Companies in connection with the engineering, procurement and/or construction of the Mankato II Facility that may arise before the Closing Date, (ii) any and all LD Claims will be for the account of Seller, (iii) Seller shall (A) have sole right to enforce any LD Claim, (B) have sole discretion with respect to whether to bring any LD Claims and (C) determine all aspects of the prosecution of any such claims, (iv) any LD Claims shall be prosecuted solely at Seller's expense and shall be for Seller's benefit and (v) Buyer shall have no right in respect of any LD Claim. Buyer agrees to reasonably cooperate, at Seller's sole cost and expense, in the prosecution of any LD Claim as specified in Section 6.19(a) above. For the avoidance of doubt, LD Claims shall not include any warranty or similar claims against third parties ("**Third Party Warranty Claims**") that may accrue to the Companies in connection with the Mankato II Construction Contracts. The intention of Buyer and Seller is that all Third Party Warranty Claims shall be for the benefit of Buyer and shall be transferred to Buyer, directly or indirectly through the acquisition of the Companies, as of Closing. Notwithstanding anything set forth in this Section 6.19(b) to the contrary, Seller shall not settle any LD Claims in a manner that would limit or restrict any warranties set forth in the Mankato II Construction Contracts.

Section 6.20. Title Commitment Cooperation. Seller and the Companies shall provide the Updated Survey and use their commercially reasonable efforts to provide, and shall use their commercially reasonable efforts to cause their respective representatives to provide, to Buyer and its Affiliates all cooperation reasonably requested by Buyer in connection with Buyer obtaining a new title report, new title commitment and/or new title policy for the Owned Real Property, all at Buyer's sole discretion, cost and expense (collectively, the "**Updated Title Evidence**"). Notwithstanding the foregoing, such requested cooperation shall not unreasonably interfere with the ongoing operations or development of the Companies or the Owned Real Property, and the Companies shall not be required to make any payment or incur any cost, expense, liability or obligation in connection with Buyer's efforts to obtain a new title commitment and/or new title policies; *provided*, that, if Buyer elects to obtain a new title report or new title policy, Seller, the Companies or their Affiliates shall deliver to the Title Company a standard owner's affidavit (with such commercially reasonable modifications as Seller may require), copies of organizational documents and authorizing resolutions, and other documents reasonably required by the Title Company to issue such new title policy. Buyer shall, promptly upon request of Seller, reimburse Seller, the Companies (prior to the Closing) or their Affiliates, as the case may be, for all out-of-pocket costs and expenses incurred by Seller, the Companies (prior to Closing) or their Affiliates (including those of its accountants, consultants, legal counsel, agents and other representatives) in connection with the cooperation required by this Section 6.20. If any Updated Title Evidence shows any new title exceptions, documents or other matters which are not Permitted Liens and that could reasonably be expected to materially and adversely affect Buyer's ability to operate the Facilities consistent with the Mankato PPAs ("**New Title and Survey Matters**"), then Buyer shall

have the right to approve or disapprove any such New Title and Survey Matters by written notice to Seller (the "**Title Objections**"). Seller shall use commercially reasonable efforts to cure such Title Objections.

Section 6.21. No Shop.

(a) Prior to the Closing, and unless and until this Agreement has been earlier terminated pursuant to the terms hereof, Seller shall not, and it shall not permit the Companies or any of its and their Affiliates or any of its or their respective representatives to:

(i) initiate, solicit or seek, directly or indirectly, any inquiries or the making of any proposal with respect to the direct or indirect acquisition of the Purchased Interests or the Facilities (whether alone, in combination with or as part of a transaction involving other assets of, or the membership or other equity interests in, Seller) by any Person other than Buyer (including by means of a merger, acquisition, consolidation, recapitalization, liquidation, dissolution, equity investment, transaction involving the assignment or transfer of the contractual relationships of Purchased Interests or similar transaction) (any such proposal or offer being herein referred to as an "**Acquisition Proposal**");

(ii) engage in any negotiations or discussions with, or provide any confidential information or data to, any Person other than Buyer (or their representatives) relating to an Acquisition Proposal, or otherwise facilitate any effort or attempt by a person other than Buyer to make or implement an Acquisition Proposal; or

(iii) enter into or consummate any agreement or understanding with any Person relating to an Acquisition Proposal.

(b) Seller shall be responsible for any intentional breach of the provisions of this Section 6.21 by Seller, the Companies, or any of its or their Affiliates or any of its or their respective representatives.

(c) For the avoidance of doubt, nothing in this Section 6.21 is intended to restrict or limit Seller or any of Seller's Affiliates (other than the Companies) from entering into, engaging in or consummating any transaction not involving the Companies or which would involve the transfer of Seller or its Affiliates that does not modify the terms of this Agreement.

Section 6.22. Insurance. Buyer shall be solely responsible from and after the Closing for providing insurance to the Companies and the Facilities for events or occurrences occurring after the Closing. Buyer acknowledges that all insurance arrangements maintained by the Companies and its Affiliates for the benefit of the Companies prior to the Closing shall be terminated as of the Closing and no future business interruption, property or liability shall be covered under any such insurance arrangements. Notwithstanding anything set forth in Section 6.22 to the contrary, following the Closing, the Companies shall continue to have, and Seller shall take all actions necessary to cause the Companies to have, the right to benefit from any claims made under the Insurance Policies for losses that have not been repaired or otherwise corrected by Seller or the Companies prior to the Closing.

Section 6.23. Commercial Operations Cooperation. Buyer will take all actions reasonably requested by Seller to assist in ensuring that Commercial Operations is achieved and shall not take any action for the purpose of causing a delay of Commercial Operations pursuant to this Agreement; *provided*, for the avoidance of doubt, that nothing in this Section 6.23 shall require Buyer to incur any cost or expense or to waive any right it may have under this Agreement or in the Mankato PPAs.

Section 6.24. NERC. From the date hereof until the Closing Date, Seller shall reasonably cooperate with Buyer in providing information necessary for Buyer to register and maintain compliance with any NERC O&P and CIP standards applicable to Buyer as a result of Closing.

Section 6.25. Water Agreement. Buyer acknowledges that prior to entering into this Agreement, Seller was in discussions with the City regarding an amendment to the Water Services Agreement. [redacted]

ARTICLE 7 CONDITIONS TO CLOSING

Section 7.01. Mutual Conditions. The obligations of Buyer and Seller to consummate the Closing are subject to the satisfaction of the following conditions:

(a) Any applicable waiting period (and any extension thereof) under the HSR Act relating to the transactions contemplated hereby shall have expired or been terminated.

(b) No Order, decision or injunction of any Governmental Authority preventing or otherwise restraining or prohibiting the consummation of the Closing shall be in effect (each party agreeing to use its reasonable commercial efforts, including appeals to higher courts, to have any Order, decision or injunction lifted), and no Applicable Law shall have been enacted, entered, promulgated or enforced by any Governmental Authority that prohibits or makes illegal the consummation of the Closing.

(c) All of the Required Regulatory Approvals shall have been obtained pursuant to a Final Order.

Section 7.02. Conditions to Obligation of Buyer. The obligation of Buyer to consummate the Closing is subject to the satisfaction of the following further conditions:

(a) The representations and warranties (other than the Fundamental Representations) of the Companies and Seller contained in this Agreement shall, disregarding all qualifications as to materiality and Material Adverse Effect, be true at and as of the Closing Date, as if made at and as of such date (except to the extent such representations and warranties expressly relate to a specific date, in which case as of such date) with only such exceptions as would not in the aggregate

reasonably be expected to have a Material Adverse Effect and (ii) the Fundamental Representations shall be true and correct at and as of the Closing Date (except to the extent such representations and warranties expressly relate to a specific date, in which case as of such date) in all respects, except for *de minimis* inaccuracies.

(b) Seller shall have performed, or caused each Company to perform, in all material respects all of its respective obligations hereunder required to be performed by such Company or Seller on or prior to the Closing Date.

(c) The Mankato II Facility shall have achieved Commercial Operation [redacted]

(d) All of the State Approvals shall have been obtained [redacted].

(e) Buyer shall have received all the closing deliverables referenced in Section 2.02(c).

(f) No Material Adverse Effect shall have occurred since the date hereof.

Section 7.03. Conditions to Obligation of Seller. The obligation of Seller to consummate the Closing is subject to the satisfaction of the following further conditions:

(a) The representations and warranties of Buyer contained in this Agreement, disregarding all qualifications as to materiality and material adverse effect, shall be true and correct at and as of the Closing Date, as if made at and as of such date (except to the extent such representations and warranties expressly relate to a specific date, in which case as of such date) with only such exceptions as would not in the aggregate reasonably be expected to have a material adverse effect on Buyer's ability to perform its obligations hereunder.

(b) Buyer shall have performed in all material respects all of its obligations hereunder required to be performed by it at or prior to the Closing Date.

(c) Seller shall have received all the closing deliverables referenced in Section 2.02(b).

(d) Seller and its Affiliates shall have been fully released from their obligations (if any) to provide the Support Obligations set forth in Schedule 7.03(d) (which schedule may be updated by Seller no later than five Business Days prior to the Closing Date) (and from any Liens granted in connection with such underlying Support Obligations) and such Support Obligations shall have been returned to Seller.

Section 7.04. Frustration of Closing Conditions. Neither Seller nor Buyer may rely on the failure of any condition set forth in Section 7.01, Section 7.02 or Section 7.03, as the case may be, if such failure was caused by such party's failure to comply with any provision of this Agreement.

ARTICLE 8 SURVIVAL; INDEMNIFICATION

Section 8.01. Survival.

(a) The parties, intending to modify any applicable statute of limitations, agree that (i) the representations and warranties in this Agreement and in any certificate or other writing delivered pursuant hereto (other than the Fundamental Representations, the Tax Representations, the Environmental Representations and the Seller Warranty) shall survive until the date that is [redacted] after the Closing Date, and thereafter there will be no liability on the part of, nor will any claim be made by, any party or any of their respective Affiliates in respect thereof, (ii) the representations and warranties set forth in Section [redacted] (collectively, the "**Fundamental Representations**") shall survive until the expiration of the applicable statute of limitations period plus 30 days, (iii) the representations and warranties set forth in Section 4.16 (the "**Tax Representations**") shall not survive the Closing, and thereafter there will be no liability on the part of, nor will any claim be made by, any party or any of their respective Affiliates in respect thereof, (iv) the representations and warranties set forth in Section 4.15 (the "**Environmental Representations**") shall survive until [redacted] after the Closing Date, and thereafter there will be no liability on the part of, nor will any claim be made by, any party or any of their respective Affiliates in respect thereof, (v) [redacted] after the Closing, there will be no liability on the part of, nor will any claim be made by, any party or any of their respective Affiliates in respect of any covenant or agreement to be performed prior to the Closing, and (vii) the covenants in this Agreement to be performed at or following the Closing will survive the Closing in accordance with their respective terms only for such period as will be required for the party required to perform under such covenant to complete the performance required thereby.

(b) Notwithstanding the foregoing, any claims asserted in connection with this Agreement in good faith with reasonable specificity (to the extent known at such time) and in writing by notice from the non-breaching party to the breaching party prior to the expiration date of the applicable survival period shall not thereafter be barred by the expiration of the relevant covenant, agreement, representation or warranty and such claims shall survive until finally resolved.

Section 8.02. Indemnification by Seller.

(a) Subject to the provisions of this Article 8 and the requirements related to indemnification for Taxes set forth in Section 6.12, effective as of and after the Closing, Seller shall indemnify and hold harmless Buyer and its Affiliates, and each of their respective directors, officers, employees, agents and representatives (collectively, the "**Buyer Indemnified Parties**"), from and against any and all Losses incurred or suffered by any of the Buyer Indemnified Parties arising out of or related to:

(i) any breach of any representations and warranties by Seller contained in this Agreement;

(ii) any breach of any covenant or agreement of Seller contained in this Agreement;

(iii) any mechanics' or materialmans' liens arising prior to Closing from the construction of the Mankato II Facility; and

(iv) any unpaid costs and expenses with respect to the construction of the Mankato II Facility, except for items included in Closing Working Capital set forth in the Final Closing Statement, the Punch List Amount or any other adjustment to the Purchase Price.

(b) Notwithstanding any other provision to the contrary:

(i) Seller shall not be required to indemnify or hold harmless any Buyer Indemnified Party against, or reimburse any Buyer Indemnified Party for, any Losses: (A) to the extent the related Liabilities were reflected in the calculation of the Closing Working Capital and Closing Indebtedness set forth in the Final Closing Statement; (B) pursuant to Section 8.02(a)(i) or Section 8.02(a)(ii), for any claim unless such claim or series of related claims involve Losses in excess of [redacted] (the "**De Minimis Amount**") and if such Losses do not exceed the De Minimis Amount, such Losses shall not be applied to or considered for purposes of calculating the aggregate amount of the Buyer Indemnified Parties' Loss under Section 8.02(b)(i)(C); or (C) pursuant to Section 8.02(a)(i) (other than as a result of a breach of any Fundamental Representations by Seller) or Section 8.02(a)(ii), until the aggregate amount of the Buyer Indemnified Parties' Losses under Section 8.02(a)(i) or Section 8.02(a)(ii) exceeds [redacted] (the "**Threshold**"), after which Seller shall be obligated for the Buyer Indemnified Parties' Losses under Section 8.02(a) for the amount of such Losses that exceeds the Threshold; and

(ii) the cumulative indemnification obligations of Seller under Section 8.02(a)(i) (other than as a result of a breach of any Fundamental Representations by Seller) and Section 8.02(a)(ii) shall in no event exceed, in aggregate, [redacted] (the "**Cap**"); and

(iii) the cumulative indemnification obligations of Seller under Section 8.02(a) shall in no event exceed, in aggregate, the Base Purchase Price.

(c) Notwithstanding anything to the contrary in this Agreement, for purposes of determining whether there has been a breach of a representation and warranty of Seller contained in this Agreement and determining the amount of any Losses incurred or suffered by any of the Buyer Indemnified Parties, each representation and warranty in this Agreement will be read without regard and without giving effect to the term "material", "materiality", "Material Adverse Effect" or similar phrases contained in such representation or warranty (as if such words were deleted from such representation and warranty).

(d) Notwithstanding anything to the contrary in this Agreement, in the event that a Buyer Indemnified Party makes a claim against Seller pursuant to the Seller Warranty, Buyer agrees to (i) provide written notice of any such claim within ten (10) Business Days after discovery of any condition giving rise to such claim, (ii) provide Seller with a reasonable opportunity to inspect the alleged defective work before performing any remedial work, with the exception of emergency remedial work necessary to protect against imminent personal injury or property damage, (iii) provide Seller with access to the Mankato II Facility, operational history of the Mankato II Facility,

and such other information as may be reasonably requested by Buyer to respond to such claim, and (iv) Buyer and Seller shall work together to develop a plan with respect to the performance of any required remedial work consistent with Good Industry Practices and, if Buyer and Seller cannot agree, Buyer may, in its sole discretion, cause the performance of such remedial work. Any such remedial work shall be performed at Seller's expense; *provided* that if Buyer and Seller could not agree on the plan for performance of such remedial work, Seller's obligation to pay for such remedial work shall not exceed the cost of Seller's proposed plan.

Section 8.03. Indemnification by Buyer.

(a) Subject to the provisions of this Article 8 and except with respect to the requirements related to indemnification for Taxes set forth in Section 6.12, effective as of and after the Closing, Buyer shall indemnify and hold harmless Seller and its Affiliates, and each of their respective directors, officers, employees, agents and representatives (collectively, the "**Seller Indemnified Parties**"), from and against any and all Losses incurred or suffered by any of the Seller Indemnified Parties arising out of or related to:

(i) any breach of any representations and warranties by Buyer contained in this Agreement; and

(ii) any breach of any covenant or agreement of Buyer contained in this Agreement.

(b) Notwithstanding any other provision to the contrary:

(i) Buyer shall not be required to indemnify or hold harmless any Seller Indemnified Party against, or reimburse any Seller Indemnified Party for, any Losses (A) pursuant to Section 8.03(a)(i) (other than as a result of a breach of any Fundamental Representations by Buyer), until the aggregate amount of the Seller Indemnified Parties' Losses under Section 8.03(a)(i) or Section 8.03(a)(ii) exceeds the Threshold, after which Buyer shall be obligated for the Seller Indemnified Parties' Losses under Section 8.03(a)(i) for the amount of such Losses that exceeds the Threshold or (B) pursuant to Section 8.03(b)(i) or Section 8.03(b)(ii), for any claim unless such claim or series of related claims involve Losses in excess of the De Minimis Amount and if such Losses do not exceed the De Minimis Amount, such Losses shall not be applied to or considered for purposes of calculating the aggregate amount of the Seller Indemnified Parties' Loss under Section8.03(b)(i)(A); and

(ii) the cumulative indemnification obligations of Buyer under Section 8.03(a)(i) (other than as a result of a breach of any Fundamental Representations by Buyer) shall in no event exceed the Cap; and

(iii) the cumulative indemnification obligations of Buyer under Section 8.03(a) shall in no event exceed, in aggregate, the [redacted].

(c) Notwithstanding anything to the contrary in this Agreement, for purposes of determining whether there has been a breach of a representation and warranty of Buyer contained in this Agreement and determining the amount of any Losses incurred or suffered by any of the

Seller Indemnified Parties, each representation and warranty in this Agreement will be read without regard and without giving effect to the term "material", "materiality", "material adverse effect" or similar phrases contained in such representation or warranty (as if such words were deleted from such representation and warranty).

Section 8.04. Indemnification Procedures.

(a) Third Party Claims. If any Person entitled to receive indemnification under this Agreement (an "**Indemnitee**") receives notice of any demand or claim by any Person who is neither a party hereto nor an Affiliate of a party hereto (a "**Third Party Claim**") which has or could reasonably give rise to a right of indemnification hereunder, or for which the Indemnitee may claim a right to indemnification hereunder from the other party hereto (the "**Indemnifying Party**"), the Indemnitee will promptly give written notice (a "**Third Party Claim Notice**") of such Third Party Claim to the Indemnifying Party. Any such Third Party Claim Notice shall (i) describe the nature, facts and circumstances of the Third Party Claim in reasonable detail, (ii) state the estimated amount of the indemnifiable Loss that has been or may be sustained by the Indemnitee, if practicable, (iii) state the method and computation thereof, and (iv) contain specific reference to the provision or provisions of this Agreement in respect of which such right of indemnification is claimed or arises. The Indemnitee shall provide the Indemnifying Party with such other information known to it or in its possession with respect to the Third Party Claim as the Indemnifying Party may reasonably request.

(b) The Indemnifying Party, at its sole cost and expense, will have the right, upon written notice to the Indemnitee within 30 days (or such earlier time as may be required by the nature of the Third Party Claim) of receiving a Third Party Claim Notice, to assume the defense of the Third Party Claim through counsel reasonably satisfactory to the Indemnitee; *provided*, that the Indemnitee shall be entitled to retain its own counsel, at its expense, and the Indemnitee may assume control of the defense of the Third Party Claim at the Indemnifying Party's expense if (i) upon the advice of Indemnitee's counsel, a conflict of interest exists (or would reasonably be expected to arise) that would make it inappropriate for the same counsel to represent both the Indemnifying Party and Indemnitee in connection with a Third Party Claim, (ii) the Indemnifying Party fails to diligently prosecute the defense of the Third Party Claim, or (iii) such Third Party Claim (A) seeks non-monetary relief or (B) involves criminal or quasi criminal allegations, and, *provided* further, that if the aggregate dollar amount of the Third Party Claim, together with all other Third Party Claims of which the Indemnifying Party is aware or has received Third Party Claim Notices, and all costs and expenses reasonably estimated to be incurred in connection with the defense thereof, would exceed the aggregate amount of Losses recoverable from the Indemnifying Party in accordance with this Article 8, the Indemnitee may, at its option, and to the extent in excess of such amount at its sole cost and expense, assume the defense of the Third Party Claim with counsel of its choice upon written notice to the Indemnifying Party within 15 days of receiving a Third Party Claim Notice.

(c) Defense of Third Party Claims. If the Indemnifying Party assumes the defense of a Third Party Claim pursuant to Section 8.04(b), the Indemnifying Party will diligently pursue such defense, and will keep the Indemnitee reasonably informed with respect to such defense. The Indemnitee shall, and shall cause its Affiliates to, cooperate with the Indemnifying Party and its counsel, including making available to the Indemnifying Party all witnesses, pertinent records,

materials and information in the Indemnitee's possession or under the Indemnitee's control relating thereto as is reasonably required by the Indemnifying Party for purposes of defending the Third Party Claim. The Indemnitee will have the right to participate in such defense, including appointing separate counsel, but the costs of such participation shall be borne solely by the Indemnitee. Subject to Section 8.04(b), the Indemnifying Party will, in consultation with the Indemnitee, make all decisions and determine all actions to be taken with respect to the defense and settlement of the Third Party Claim; *provided*, however, that the Indemnifying Party shall not pay, compromise, settle, or otherwise dispose of such Third Party Claim without the prior written consent of the Indemnitee, which consent shall not be unreasonably withheld, conditioned or delayed, *provided* that it will not be deemed to be unreasonable for an Indemnitee to withhold its consent if (i) such payment, compromise, settlement or disposition does not involve solely the payment of money, (ii) such payment, compromise, settlement or disposition involves a finding or admission of violation of any Applicable Law, Order or permit or rights of any Person by the Indemnitee or its Affiliates or (iii) such payment, compromise, settlement or disposition does not contain an unconditional release of the Indemnitee from the subject matter of such payment, compromise, settlement or disposition. In no event will the Indemnifying Party have authority to agree, without the consent of the Indemnitee, to any relief binding on the Indemnitee other than the payment of money damages by the Indemnifying Party without recourse to the Indemnitee.

(d) Failure to Assume Defense. If (i) the Indemnifying Party elects not to defend such Third Party Claim, fails to timely notify the Indemnitee in writing of its election to defend, or fails to diligently prosecute the defense of such Third Party Claim, (ii) upon the advice of Indemnitee's counsel, a conflict of interest exists (or would reasonably be expected to arise) that would make it inappropriate for the same counsel to represent both the Indemnifying Party and Indemnitee in connection with a Third Party Claim, or (iii) such Third Party Claim (A) seeks non-monetary relief or (B) involves criminal or quasi criminal allegations, then the Indemnitee may defend such Third Party Claim and seek indemnification for any and all indemnifiable Losses based upon, arising from or relating to such Third Party Claim; *provided*, however, that the Indemnitee shall not pay, compromise, settle, or otherwise dispose of such Third Party Claim without the prior written consent of the Indemnifying Party (which consent shall not be unreasonably withheld, conditioned or delayed).

(e) Direct Losses. Any claim by an Indemnitee on account of an indemnifiable Loss that does not result from a Third Party Claim (a "**Direct Loss**") will be asserted by giving the Indemnifying Party prompt written notice thereof, (i) describing the nature, facts and circumstances of such indemnifiable Loss in reasonable detail, (ii) stating the amount of the indemnifiable Loss that has been or may be sustained by the Indemnitee, if practicable, (iii) stating the method and computation thereof and (iv) containing specific reference to the provision or provisions of this Agreement in respect of which such right of indemnification is claimed or arises. The Indemnitee shall provide the Indemnifying Party with such other information with respect to the Direct Loss as the Indemnifying Party may reasonably request and shall cooperate with the Indemnifying Party and its counsel, including permitting reasonable access to books, records, and personnel, including the Books and Records, in connection with determining the validity of any claim for indemnification by the Indemnitee and in otherwise resolving such matters. The Indemnifying Party will have a period of 30 Business Days within which to respond to such claim of a Direct Loss. If the Indemnifying Party rejects such claim, or does not respond within such period, the Indemnitee may seek enforcement of its rights to indemnification under this Agreement.

(f) Delay. A failure to give timely notice as provided in this Section 8.04 will affect the rights or obligations of a party hereunder only to the extent that, as a result of such failure, the party entitled to receive such notice was actually prejudiced as a result of such failure. Notwithstanding the foregoing, no claim for indemnification first made after the expiration of the applicable survival period with respect to the representation, warranty or covenant on which such claim is based set forth in Section 8.01 will be valid and any such claim shall be deemed time-barred.

Section 8.05. Exclusive Remedy. Except with respect to (a) the matters covered by Section 2.03, Section 2.04, Section 2.05 and Section 2.06 (which shall be exclusively governed by such Sections, except in the case of a breach of a representation not addressed in the Final Closing Statement) or, with respect to the remedies related to Taxes set forth in Section 6.12 and (b) the parties' right to seek and obtain any equitable relief pursuant to Section 10.13, the parties (hereto) acknowledge and agree that, following the Closing, the indemnification provisions of Article 8 shall be the sole and exclusive remedies of the parties for any Liabilities or Losses (including any Liabilities or Losses from claims for breach of contract, warranty, tortious conduct (including negligence) or otherwise and whether predicated on common law, statute, strict liability, or otherwise) that each party may at any time suffer or incur, or become subject to, as a result of, or in connection with the transactions contemplated hereby, including any breach of any representation or warranty in this Agreement by any party, or any failure by any party to perform or comply with any covenant or agreement that, by its terms, was to have been performed, or complied with, under this Agreement. In furtherance of the foregoing, except for the remedies set forth in the immediately preceding sentence, Seller and Buyer hereby waive, on behalf of themselves and the other Seller Indemnified Parties and Buyer Indemnified Parties, respectively, to the fullest extent permitted by Applicable Law, any and all other rights, claims and causes of action (including rights of contribution, rights of recovery arising out of or relating to any Environmental Laws, claims for breach of contract, breach of representation or warranty, negligent misrepresentation and all other claims for breach of duty) that may be based upon, arise out of, or relate to the Companies, this Agreement, the negotiation, execution or performance of this Agreement (including any tort or breach of contract claim or cause of action based upon, arising out of, or related to any representation or warranty made in or in connection with this Agreement or as an inducement to enter into this Agreement), or the transactions contemplated hereby, known or unknown, foreseen or unforeseen, which exist or may arise in the future, that it may have against the other arising under or based upon any Applicable Law, common law, or otherwise.

Section 8.06. Additional Indemnification Provisions. With respect to each indemnification obligation contained in this Article 8, all Losses shall be net of indemnity proceeds that have been recovered by the Indemnitee in connection with the facts giving rise to the right of indemnification pursuant to this Article 8.

Section 8.07. Limitation on Consequential Damages. Notwithstanding anything to the contrary elsewhere in this Agreement or provided for under any Applicable Law, no party will be liable to the other party, either in contract or in tort, for any consequential, incidental, indirect, special, or punitive damages of the other party, including business interruption, loss of future revenue, profits or income, diminution in value or loss of business reputation or opportunity, relating to the breach or alleged breach hereof or otherwise, whether or not the possibility of such damages has been disclosed to the other party in advance or could have been reasonably foreseen

by such other party, and, in particular, no "multiple of profits," "multiple of cash flow," "multiple of assets" or similar valuation methodology shall be used in calculating the amount of any indemnifiable Losses. The exclusion of consequential, incidental, indirect, special, and punitive damages as set forth in the preceding sentence does not apply to any such damages actually paid to a third party by Buyer or Seller, as the case may be, in connection with Losses that may be indemnified pursuant to this Article 8 after Closing.

Section 8.08. Mitigation.

(a) Each of the parties agrees to use its commercially reasonable efforts to mitigate its respective Losses upon and after becoming aware of any event or condition that would reasonably be expected to give rise to any Losses that are indemnifiable hereunder, and no Indemnifying Party shall be liable for any Losses to the extent they arise out of or result from the Indemnitee's failure to use commercially reasonable efforts to mitigate such Losses.

(b) The amount of any indemnifiable Loss will be reduced to the extent of any insurance proceeds, rate recovery or other payments actually received from an insurer or other third party with respect to an indemnifiable Loss, or any Tax benefit actually realized in cash or a reduction in Taxes otherwise payable as a result of such Loss prior to the date such indemnity payment is made, in each case, net of all costs of recovery. If the amount of any indemnifiable Loss, at any time subsequent to the making of an indemnity payment in respect thereof, is reduced by any insurance proceed, rate recovery or other payment actually received from an insurer or other third party, the amount of such reduction (net of all costs of recovery), will be repaid by the Indemnitee to the Indemnifying Party reasonably promptly following actual receipt or credit of such amounts.

(c) Upon making any indemnity payment, the Indemnifying Party will, to the extent of such indemnity payment, be subrogated to all rights of the Indemnitee against any third party in respect of the indemnifiable Loss to which the indemnity payment relates.

ARTICLE 9 TERMINATION

Section 9.01. Grounds for Termination.

(a) This Agreement may be terminated at any time prior to the Closing by mutual written agreement of Seller and Buyer.

(b) [redacted]

(c) This Agreement may be terminated at any time prior to the Closing by either Seller or Buyer if consummation of the transactions contemplated hereby would violate any nonappealable final Order of any Governmental Authority having competent jurisdiction.

(d) This Agreement may be terminated at any time prior to the Closing by Buyer (i) if (A) there has been a breach by Seller of any representation, warranty, covenant or agreement contained in this Agreement which would result in a failure of a condition set forth in Section 7.02(a) or Section 7.02(b), as applicable and (B) it cannot be cured within thirty (30) days of notice thereof, (ii) within ten (10) days after receipt of any Supplemental Disclosure which shows that there has been a Material Adverse Effect that (1) was not caused by Buyer's breach of any provision of this Agreement and (2) cannot be cured within thirty (30) days of notice thereof or (iii) if Seller or either Company files any insolvency, bankruptcy, reorganization or other similar proceeding relating to itself.

(e) This Agreement may be terminated at any time prior to the Closing by Seller if (i) there has been a breach by Buyer of any representation, warranty, covenant or agreement contained in this Agreement which (1) would result in a failure of a condition set forth in Section 7.03(a) or Section 7.03(b), as applicable, and (2) cannot be cured within thirty (30) days of notice thereof, or (ii) if Buyer files any insolvency, bankruptcy, reorganization or other similar proceeding relating to itself.

Section 9.02. Notice of Termination. In the event of termination of this Agreement by either or both of Seller and Buyer pursuant to Section 9.01, written notice of such termination shall be given by the terminating party to the other.

Section 9.03. [redacted]

Section 9.04. Effect of Termination. If this Agreement is terminated as permitted by Section 9.01, such termination will be without liability of any party (or any stockholder, director,

officer, employee, agent, consultant or other representative of such party) to the other parties to this Agreement, [redacted] *provided* that such termination shall not relieve any party from liability for Willful Breach. For purposes hereof, "Willful Breach" shall mean a breach that is a consequence of a deliberate act or deliberate failure to act undertaken by the breaching party with the knowledge that the taking of or failure to take, such act would cause or constitute a material breach of any covenants or agreements contained in this Agreement; *provided* that, without limiting the meaning of Willful Breach, the parties acknowledge and agree that any failure by any party to consummate the transactions contemplated by this Agreement after the applicable conditions to the Closing set forth in Article 7 have been satisfied or waived (except for those conditions that by their nature are to be satisfied at the Closing, and which conditions would be capable of being satisfied at the time of such failure to consummate the Closing) shall constitute a Willful Breach of this Agreement by such party. For the avoidance of doubt, (a) in the event that all applicable conditions to the Closing set forth in Article 7 have been satisfied or waived (except for those conditions that by their nature are to be satisfied at the Closing, and which conditions would be capable of being satisfied at the time of such failure to consummate the transactions contemplated by this Agreement), but Buyer fails to close for any reason, such failure to close shall be considered a Willful Breach by Buyer and (b) the availability or unavailability of financing for the transactions contemplated by this Agreement shall have no effect on Buyer's obligations hereunder. The provisions of Section 6.04, 10.04, 10.06, 10.07 and 10.08 will survive any termination hereof pursuant to Section 9.01.

ARTICLE 10 MISCELLANEOUS

Section 10.01. Notices. All notices, requests and other communications to any party hereunder will be in writing (including electronic mail ("**e-mail**") transmission, so long as a receipt of such e-mail is requested and received) and will be deemed to have been duly given (a) when sent, if sent by e-mail, and (b) one Business Day following sending by overnight delivery by a reputable overnight delivery service. All other notices, requests and other communications will be deemed received on the date of receipt by the recipient thereof if received prior to 5:00 p.m. Eastern Time in the place of receipt and such day is a Business Day in the place of receipt. Otherwise, any such notice, request or communication will be deemed not to have been received until the next succeeding Business Day in the place of receipt. All notices, requests and other communications are to be sent to the following addresses or such other address as a party may hereafter specify for the purpose by notice to the other parties hereto:

if to Buyer, to:

Northern States Power Company
414 Nicollet Mall
Minneapolis, MN 55401
[redacted]

with a copy (which will not constitute notice to Buyer) to:

[redacted]

if to Seller, to:

Southern Power Company
30 Ivan Allen Blvd NW
Atlanta, GA 30308
[redacted]

with copies (which will not constitute notice to Seller) to:

Southern Power Company
30 Ivan Allen Blvd NW
Atlanta, GA 30308
[redacted]

[redacted]

or such other address as such party may hereafter specify for the purpose by notice to the other parties hereto.

Section 10.02. Waiver of Conflicts Regarding Representation; Nonassertion of Attorney-Client Privilege.

(a) Buyer waives and will not assert, and agrees to cause either Company to waive and not to assert, any conflict of interest arising out of or relating to the representation, after the Closing (the "**Post-Closing Representation**"), of Seller or any shareholder, officer, employee or director of either Company (any such Person, a "**Designated Person**") in any matter involving this Agreement or any other agreements or transactions contemplated thereby, by any legal counsel currently representing either Company in connection with this Agreement or any other agreements or transactions contemplated thereby, including Baker Botts L.L.P. (the "**Current Representation**").

(b) Buyer waives and will not assert, and agrees to cause each Company to waive and to not assert, any attorney-client privilege with respect to any communication between any legal counsel and any Designated Person occurring during the Current Representation in connection with any Post-Closing Representation, including in connection with a dispute with Buyer, and following the Closing, with the Companies, it being the intention of the parties hereto that all such rights to such attorney-client privilege and to control such attorney-client privilege will be retained by such Designated Person.

Section 10.03. Amendments and Waivers.

(a) Any provision of this Agreement may be (i) amended, if such amendment is in writing and is signed by Buyer and Seller, and (ii) waived, if such waiver is in writing and is signed by the waiving parties.

(b) No failure or delay by any party in exercising any right, power or privilege hereunder will operate as a waiver thereof nor will any single or partial exercise thereof preclude any other or further exercise thereof or the exercise of any other right, power or privilege. Except as set forth in Section 8.05, the rights and remedies herein provided will be cumulative and not exclusive of any rights or remedies provided by law.

Section 10.04. Expenses. Except as otherwise provided herein, all costs and expenses incurred in connection with this Agreement will be paid by the party incurring such cost or expense; *provided* that Buyer and Seller will be equally responsible for (a) all filing and other similar fees payable in connection with any filings or submissions under the HSR Act and (b) all filing and other similar fees payable in connection with any other filing or submission made in respect of a consent, authorization or approval from a Governmental Authority in connection with the transactions contemplated by this Agreement; *provided further* that Buyer will be responsible for all filing and other similar fees payable in connection with any State Approvals.

Section 10.05. Successors and Assigns. The provisions of this Agreement will be binding upon and inure to the benefit of the parties hereto and their respective successors and assigns; *provided* that no party may assign, delegate or otherwise transfer any of its rights or obligations under this Agreement without the consent of each other party hereto. Notwithstanding the foregoing, Buyer may, without the prior written consent of Seller, assign all or any portion of its rights under this Agreement to one or more of its Affiliates; *provided* that any such assignment shall not relieve Buyer from its obligations hereunder.

Section 10.06. Governing Law. This Agreement and all questions, claims or causes of action (whether in contract, tort or statute) that may be based upon, arise out of or relate to this Agreement, or the negotiation, execution, performance, interpretation or enforcement of this Agreement will be governed by and construed and enforced in accordance with the laws of the State of Delaware without regard to the laws of the State of Delaware or any other jurisdiction that would call for the application of the substantive or procedural laws of any jurisdiction other than Delaware.

Section 10.07. Jurisdiction. Each party hereby irrevocably and unconditionally, for itself and its property, submits to the exclusive jurisdiction in the Delaware Court of Chancery (and if

jurisdiction in the Delaware Court of Chancery is unavailable, in the Superior Court in the City of Wilmington, New Castle County, Delaware, and if jurisdiction in the Superior Court in the City of Wilmington, New Castle County, Delaware is unavailable, in the federal courts of the United States sitting in the State of Delaware), and any appellate court from any thereof (such courts in such jurisdictional priority, the "**Forum**"), in any suit, action or proceeding arising out of or relating to this Agreement or any transaction contemplated hereby, and agrees that all claims in respect of such suit, action or proceeding may be heard and determined in the Forum, and each of the parties hereby irrevocably and unconditionally (a) agrees not to commence any such suit, action or proceeding except in the Forum, (b) agrees that any claim in respect of any such suit, action or proceeding may be heard and determined in the Forum, (c) waives, to the fullest extent it may legally and effectively do so, any objection that it may now or hereafter have to the laying of venue of any such suit, action or proceeding in the Forum, and (d) waives, to the fullest extent it may legally and effectively do so, the defense of an inconvenient forum to the maintenance of such suit, action or proceeding in the Forum. Each party hereby agrees that service of summons, complaint or other process in connection with any suit, action or proceeding contemplated hereby may be made by registered or certified mail addressed to such party at the address specified pursuant to Section 10.01, and that service so made will be effective as if personally made in the State of Delaware.

Section 10.08. WAIVER OF JURY TRIAL. EACH PARTY HEREBY WAIVES TO THE FULLEST EXTENT PERMITTED BY LAW ANY RIGHT IT MAY HAVE TO TRIAL BY JURY IN RESPECT OF ANY CLAIM, DEMAND, ACTION OR CAUSE OF ACTION BASED ON, OR ARISING OUT OF, UNDER OR IN CONNECTION WITH THIS AGREEMENT OR THE CONTEMPLATED TRANSACTIONS, OR ANY COURSE OF CONDUCT, COURSE OF DEALING, VERBAL OR WRITTEN STATEMENT OR ACTION OF ANY PARTY, IN EACH CASE WHETHER NOW EXISTING OR HEREAFTER ARISING, AND WHETHER IN CONTRACT, TORT, EQUITY OR OTHERWISE.

Section 10.09. Counterparts; Effectiveness; Third Party Beneficiaries. This Agreement may be signed in any number of counterparts, each of which will be an original, with the same effect as if the signatures thereto and hereto were upon the same instrument. This Agreement will become effective when each party hereto will have received a counterpart hereof signed by the other party hereto. Until and unless each party has received a counterpart hereof signed by the other party hereto, this Agreement will have no effect and no party will have any right or obligation hereunder (whether by virtue of any other oral or written agreement or other communication). No provision of this Agreement is intended to confer any rights, benefits, remedies, obligations, or liabilities hereunder upon any Person other than the parties hereto and their respective successors and assigns.

Section 10.10. Entire Agreement. This Agreement and the Confidentiality Agreement constitute the entire agreement between the parties with respect to the subject matter of this Agreement and supersedes all prior agreements and understandings, both oral and written, between the parties with respect to the subject matter of this Agreement. For the avoidance of doubt, nothing contained in this Agreement is intended, or shall be construed to, modify the terms and conditions set forth in the Mankato PPAs prior to Closing. Following Closing, neither Seller nor Buyer shall have any further rights or obligations under the Mankato PPAs except to the extent such rights or obligations arose prior to Closing.

Section 10.11. Severability. If any term, provision, covenant or restriction of this Agreement is held by a court of competent jurisdiction or other Governmental Authority to be invalid, void or unenforceable, the remainder of the terms, provisions, covenants and restrictions of this Agreement will remain in full force and effect and will in no way be affected, impaired or invalidated so long as the economic or legal substance of the transactions contemplated hereby is not affected in any manner materially adverse to any party. Upon such a determination, the parties will negotiate in good faith to modify this Agreement so as to effect the original intent of the parties as closely as possible in an acceptable manner in order that the transactions contemplated hereby be consummated as originally contemplated to the fullest extent possible.

Section 10.12. Disclosure Schedules. Seller has set forth information on the Seller Disclosure Schedules in a section thereof that corresponds to the section of this Agreement to which it relates. A matter set forth in one section of the Seller Disclosure Schedules shall be deemed to be set forth in any other section to the extent its relevance to such other section of the Seller Disclosure Schedules or section of the Agreement is reasonably apparent on the face of the information disclosed therein to the Person to which such disclosure is being made. The parties acknowledge and agree that (a) the Seller Disclosure Schedules may include certain items and information solely for informational purposes for the convenience of Buyer and (b) the disclosure by Seller of any matter in the Seller Disclosure Schedules will not be deemed to constitute an acknowledgment by Seller that the matter is required to be disclosed by the terms of this Agreement or that the matter is material.

Section 10.13. Specific Performance. The parties hereto agree that irreparable damage would occur if any provision of this Agreement were not performed in accordance with the terms hereof. The parties acknowledge and agree that (a) Buyer will be entitled to seek an injunction or injunctions to prevent breaches of this Agreement by Seller or to enforce specifically the performance of the terms and provisions hereof by and (b) Seller will be entitled to seek an injunction or injunctions to prevent breaches of this Agreement by Buyer or to enforce specifically the performance of the terms and provisions hereof by Buyer, in each case, in the United States District Court of Delaware or any Delaware State court, in addition to any other remedy to which such parties are entitled at law or in equity.

[*Signature page to follow*]

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be duly executed by their respective authorized officers as of the day and year first above written.

SELLER:

SOUTHERN POWER COMPANY

By: _____
Name: William C. Grantham
Title: Senior Vice President, Chief Financial Officer, and Treasurer

BUYER:

NORTHERN STATES POWER COMPANY

By: _____
Name: Robert C. Frenzel
Title: Executive Vice President, Chief Financial Officer

[*Signature Page to Membership Interest Purchase Agreement*]

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be duly executed by their respective authorized officers as of the day and year first above written.

SELLER:

SOUTHERN POWER COMPANY

By: _____

Name: William C. Grantham
Title: Senior Vice President, Chief Financial Officer, and Treasurer

BUYER:

NORTHERN STATES POWER COMPANY

By: _____

Name: Robert C. Frenzel
Title: Executive Vice President, Chief Financial Officer

[*Signature Page to Membership Interest Purchase Agreement*]

Exhibit A

Working Capital Methodology

Estimated Working Capital Calculation

Exhibit A - Working Capital

The following Working Capital uses September 30, 2018 balances for illustrative purposes, except for Accounts Payable, which excludes Mankato II capital related payables.

[redacted]

Examples of Closing Working Capital Adjustment

Closing Working Capital exceeds Target Working Capital		
Closing Working Capital	$	3,000,000
Target Working Capital (for illustrative purposes only)	$	1,000,000
Closing Working Capital Adjustment	$	2,000,000
Closing Working Capital is less than Target Working Capital		
Closing Working Capital	$	500,000
Target Working Capital (for illustrative purposes only)	$	1,000,000
Closing Working Capital Adjustment	$	(500,000)

Exhibit B

Form of Interests Assignment

Exhibit B

Form of Interests Assignment Agreement

INTERESTS ASSIGNMENT AGREEMENT

This INTERESTS ASSIGNMENT AGREEMENT (this "**Assignment**"), effective as of 11:59 p.m. Eastern time on [●], is entered into by and between Southern Power Company, a Delaware corporation ("**Assignor**"), and Northern States Power Company, a Minnesota corporation ("**Assignee**"). Assignor and Assignee may be referred to individually as a "**Party**" or collectively as the "**Parties**."

RECITALS

WHEREAS, pursuant to the terms of a Membership Interest Purchase Agreement (the "**Purchase Agreement**," with capitalized terms used but not defined herein having the respective meanings set forth in the Purchase Agreement), dated November 5, 2018, by and between Assignor and Assignee, Assignor has agreed to transfer to Assignee all of the issued and outstanding membership interests, which are represented by the Certificates attached hereto (such interests, the "**Membership Interests**"), in each of Mankato Energy Center, LLC, a Delaware limited liability company, and Mankato Energy Center II, LLC, a Delaware limited liability company (together, the "**Companies**"), and Assignee will be admitted as an Additional Member (as defined in the LLC Agreements (as defined below)) of each of the Companies.

NOW THEREFORE, for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties agree as follows:

AGREEMENT

1.1. Assignment of the Subject Interest. Upon the terms and subject to the conditions of the Purchase Agreement, (i) Assignor hereby assigns, transfers and conveys the Membership Interests to Assignee, and Assignee hereby accepts the assignment, transfer and conveyance of the Membership Interests and accepts and agrees to abide by all of the terms and conditions of the Amended and Restated Limited Liability Company Operating Agreement of Mankato Energy Center, LLC, dated as of October 26, 2016, and the Amended and Restated Limited Liability Company Operating Agreement of Mankato Energy Center II, LLC, dated as of October 26, 2016 (together, the "**LLC Agreements**"); (ii) Assignee hereby accepts admission as, and is hereby admitted as, an Additional Member (as defined in the LLC Agreements) of each of the Companies; (iii) Assignor simultaneously ceases to be a member of each of the Companies; and (iv) the Companies are hereby continued without dissolution.

1.2. Purchase Agreement. This Assignment is subject to, in all respects, the terms and conditions of the Purchase Agreement, and nothing contained herein is meant to enlarge, diminish, supersede or otherwise alter the terms and conditions of the Purchase Agreement or the Parties' duties, obligations, agreements, covenants, representations or warranties contained therein, which shall remain in full force and effect to the full extent provided by the Purchase Agreement. To the extent there is a conflict between this Assignment and the Purchase Agreement, the terms of the Purchase Agreement will control.

1.3. Binding Effect. This Assignment shall be binding upon and inure to the benefit of the Parties and their respective heirs, successors and permitted assigns.

1.4. Governing Law.

(a) This Assignment and all questions, claims or causes of action (whether in contract, tort or statute) that may be based upon, arise out of or relate to this Assignment, or the negotiation, execution, performance, interpretation or enforcement of this Assignment will be governed by and construed and enforced in accordance with the laws of the State of Delaware without regard to the laws of the State of Delaware or any other jurisdiction that would call for the application of the substantive or procedural laws of any jurisdiction other than Delaware.

(b) Each Party hereby irrevocably and unconditionally, for itself and its property, submits to the exclusive jurisdiction in the Delaware Court of Chancery (and if jurisdiction in the Delaware Court of Chancery is unavailable, in the Superior Court in the City of Wilmington, New Castle County, Delaware, and if jurisdiction in the Superior Court in the City of Wilmington, New Castle County, Delaware is unavailable, in the federal courts of the United States sitting in the State of Delaware), and any appellate court from any thereof (such courts in such jurisdictional priority, the "**Forum**"), in any suit, action or proceeding arising out of or relating to this Assignment or any transaction contemplated hereby, and agrees that all claims in respect of such suit, action or proceeding may be heard and determined in the Forum, and each of the parties hereby irrevocably and unconditionally (i) agrees not to commence any such suit, action or proceeding except in the Forum, (ii) agrees that any claim in respect of any such suit, action or proceeding may be heard and determined in the Forum, (iii) waives, to the fullest extent it may legally and effectively do so, any objection that it may now or hereafter have to the laying of venue of any such suit, action or proceeding in the Forum, and (iv) waives, to the fullest extent it may legally and effectively do so, the defense of an inconvenient forum to the maintenance of such suit, action or proceeding in the Forum. Each party hereby agrees that service of summons, complaint or other process in connection with any suit, action or proceeding contemplated hereby may be made by registered or certified mail addressed to such party at the address specified pursuant to Section 10.01 of the Purchase Agreement, and that service so made will be effective as if personally made in the State of Delaware.

1.5. Cooperation. The Parties agrees to cooperate at all times from and after the date hereof with respect to all of the matters described herein, and to execute such further documents as may be reasonably requested by any other party hereto to give effect to, or evidence or give notice of, the transactions contemplated by this Assignment.

1.6. Negotiated Transaction. All provisions of this Assignment were negotiated by the Parties and this Assignment shall be deemed to have been drafted by each of the Parties.

1.7. Counterparts. This Assignment may be executed in several original counterparts. Each such counterpart hereof shall be deemed to be an original instrument, but all such counterparts shall constitute one and the same instrument. This Assignment may be executed by facsimile, portable document format (.pdf) or similar technology signature, and such signature shall constitute an original for all purposes.

[*Signature Page Follows*]

IN WITNESS WHEREOF, the Parties have executed this Assignment as of the date first written above.

ASSIGNOR:

SOUTHERN POWER COMPANY

By:_____
Name:
Title:

ASSIGNEE:

NORTHERN STATES POWER COMPANY

By:_____
Name:
Title:

[*Signature Page to Interests Assignment Agreement*]

EXECUTION

SELLER DISCLOSURE SCHEDULES

These disclosure schedules (these "Seller Disclosure Schedules") are being delivered by Southern Power Company, a Delaware corporation ("Seller"), pursuant to the Membership Interest Purchase Agreement (the "Agreement") dated as of November 5, 2018, by and among Seller and Northern States Power Company, a Minnesota corporation ("Buyer") for the purchase and sale of all of the outstanding membership interests of Mankato Energy Center, LLC, a Delaware limited liability company ("Mankato I"), and Mankato Energy Center II, LLC, a Delaware limited liability company ("Mankato II" and, together with Mankato I, the "Companies"). Unless the context otherwise requires, all capitalized terms used in these Disclosure Schedules and not otherwise defined herein shall have the respective meanings assigned to them in the Agreement. The information set forth in these Disclosure Schedules, which relates to the representations, warranties, covenants and agreements of Seller, is subject to the following qualifications:

1. The division of these Disclosure Schedules into Sections, and other subdivisions, and the insertion of headings are for convenience of reference only and do not affect, and will not be utilized in construing or interpreting, these Disclosure Schedules. All references in these Disclosure Schedules to any "Section" are to the corresponding Section of these Disclosure Schedules unless otherwise specified. The word "including" or any variation thereof means "including, without limitation" and does not limit any general statement that it follows to the specific or similar items or matters immediately following it. The word "or" shall be disjunctive but not exclusive. Whenever the context requires, the gender of all words used in these Disclosure Schedules includes the masculine, feminine and neuter, and the singular includes the plural, and the plural includes the singular. These Disclosure Schedules are deemed part of the Agreement and included in any reference to the Agreement. The representations and warranties of Seller in the Agreement are made and given, and the covenants are agreed to, subject to the disclosures and exceptions set forth in these Disclosure Schedules as set forth in the next paragraph. The heading to each Section of these Disclosure Schedules shall to no extent affect the disclosures contained herein or create a different standard for disclosure than the language set forth in the Agreement. All attachments to these Disclosure Schedules are incorporated by reference into the Disclosure Schedules in which they are referenced. The fact that any item of information is disclosed in these Disclosure Schedules shall not be construed to mean that such information is required to be disclosed by the Agreement. Notwithstanding anything in the Agreement to the contrary, the mere inclusion of an item herein as an exception to a representation or warranty will not be deemed an admission that such item represents a material exception or material fact, event or circumstance or that such item has had or would, individually or in the aggregate, have a Material Adverse Effect.

2. Notwithstanding anything to the contrary contained in these Disclosure Schedules or in the Agreement, the information and disclosures contained in any of the Disclosure Schedules shall be deemed to be disclosed and incorporated by reference with respect to any other representation or warranty of Seller for which applicability of such information and disclosure is reasonably apparent on its face.

3. Disclosure in these Disclosure Schedules of any allegations with respect to any alleged failure to perform, or breach or default of, a contractual or other duty or obligation is not an admission that such has in fact occurred.

4. The information contained in these Disclosure Schedules is in all events subject to the Confidentiality Agreement.

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SCHEDULE 1.01(a)(i)
Excluded Intellectual Property Rights

[redacted]

SCHEDULE 1.01(a)(ii)
Knowledge of Seller

[redacted]

SCHEDULE 1.01(a)(iii)
State Approvals

[redacted]

SCHEDULE 1.01(a)(iv)
Testing

[redacted]

[redacted]

[redacted]

[redacted]

SCHEDULE 2.02(c)(vii)
Consents

[redacted]

SCHEDULE 3.03
Required Regulatory Approvals

[redacted]

SCHEDULE 3.04
Non-Contravention

[redacted]

SCHEDULE 4.04
Financial Statements

[redacted]

SCHEDULE 4.06(c)
Material Liabilities

[redacted]

SCHEDULE 4.07(a)
Material Contracts

[redacted]

[redacted]

[redacted]

[redacted]

[redacted]

SCHEDULE 4.07(c)
Shared Contracts

[redacted]

[redacted]

[redacted]

[redacted]

[redacted]

[redacted]

[redacted]

[redacted]

[redacted]

[redacted]

[redacted]

[redacted]

SCHEDULE 4.08
Litigation

[redacted]

SCHEDULE 4.09(a)
Violations of Laws and Orders

[redacted]

SCHEDULE 4.09(b)
Mankato I Permits

[redacted]

[redacted]

SCHEDULE 4.09(c)
Mankato II Permits

[redacted]

SCHEDULE 4.10(a)
Real Property

[redacted]

[redacted]

SCHEDULE 4.10(b)
Leased Property

[redacted]

SCHEDULE 4.10(c)(i)
Liens

[redacted]

SCHEDULE 4.10(d)
Other Real Property Items

[redacted]

SCHEDULE 4.10(e)
Acquired Leases

[redacted]

SCHEDULE 4.10(g)
Inventory List

[redacted]

SCHEDULE 4.13(a)
Business Employees[1]

[redacted]

SCHEDULE 4.14
Employee Benefits

[redacted]

[redacted]

SCHEDULE 4.15
Environmental Matters

[redacted]

SCHEDULE 4.16
Tax

[redacted]

SCHEDULE 6.01
Conduct of the Company

[redacted]

[redacted]

[redacted]

SCHEDULE 6.01(p)
Capital Expenditure Plan

[redacted]

SCHEDULE 6.02(a)
Access to Company Information

[redacted]

SCHEDULE 6.07(b)
Severance and Termination Benefits

[redacted]

[redacted]

SCHEDULE 6.11(b)
Intercompany Arrangements

[redacted]

SCHEDULE 6.16
Steam Turbine L-0 Blade Delivery

[redacted]

SCHEDULE 7.03(d)
Support Obligations

[redacted]