

DOCKET NO.: A-125072
RESPONDENT OR APPLICANT: STRATEGIC ENERGY LLC
PARTY OR COMPLAINANT:

ENTRY TYPE	DATE	BUREAU	PERSONNEL
1 N	01/18/00	SEC	FAHNESTOCK
APP OF STRATEGIC ENERGY LLC AS SUPPLIER, BRK, MKT & AGGREGATOR NAT GAS			
2 N	01/26/00	SEC	FAHNESTOCK
SEC MEMO TO FUS ASSIGNING APPLICATION			
3 N	01/26/00	SEC	FAHNESTOCK
SEC LTR TO APPLICANT ACKNOWLEDGING RECEIPT OF APPLICATION			
4 N	02/02/00	SEC	HANCOCK
RECEIPT OF \$350.00 FILING FEE ISSUED			
5 N	02/07/00	SEC	BARBUSH
APPLICANT FILED DEPARTMENT OF STATE VERIFICATION FOR PENNSYLVANIA (COPY)			
6 N	02/07/00	SEC	BARBUSH
APPLICANT FILED PROOF OF SERVICE OF APP-TO TWO REMAINING UTIL FROM APP (COPY)			
7 N	02/07/00	SEC	BARBUSH
APPLICANT FILED PROOF OF PUBLICATION (3) (COPY)			
8 N	02/23/00	SEC	MOTTER
PROOFS OF PUBLICITN (3) W/LTR RE REV APPL & W/DRAWING FICTITOUS NAME FLD BY APP			
9 N	03/02/00	SEC	FRISCIA
ORDER SERVED TO PARTIES			
10 N	03/02/00	SEC	FRISCIA
LICENSE FOR NATURAL GAS SUPPLIER DATED 3/2/00 ISSUED			
11 N	03/02/00	SEC	PATRICK
RECOM ADOPTED-LICENSE APPLICATION APPROVED CONDITIONALLY			
12 N	04/26/00	SEC	FRISCIA
APPLI FILED LTR ADVISING BONDING REQUIREMENT OPTIONAL FOR NON-CHOICE MARKETER			
13 N	04/21/00	SEC	MOTTER
APPLI FILED STATUS OF BONDING REQUIREMNTS W/NATL GAS DISTRIBUTION CO-PG ENERGY			
14 N	10/30/02	SEC	FRISCIA
APPLICANT FILED QUARTERLY REPORT FOR QUARTER ENDING 9/30/02			
15 N	08/05/03	SEC	BENJAMIN
APPLICANT FILED QUARTERLY REPORT FOR 2ND QUARTER OF 2003 ENDING 7/31/03			

1. REPORT DATE: 00/00/00 :
2. BUREAU: FUS :
3. SECTION(S): :
5. APPROVED BY: : 4. PUBLIC MEETING DATE:
DIRECTOR: : 00/00/00
SUPERVISOR: :
6. PERSON IN CHARGE: : 7. DATE FILED: 01/18/00
8. DOCKET NO: A-125072 : 9. EFFECTIVE DATE: 00/00/00

PARTY/COMPLAINANT:

RESPONDENT/APPLICANT: STRATEGIC ENERGY LLC

COMP/APP COUNTY:

UTILITY CODE: 125072

ALLEGATION OR SUBJECT

APPLICATION OF STRATEGIC ENERGY L.L.C. FOR APPROVAL TO OFFER, RENDER, FURNISH, OR SUPPLY NATURAL GAS SERVICES AS A SUPPLIER, BROKER/MARKETER AND AGGREGATOR TO THE PUBLIC IN THE COMMONWEALTH OF PENNSYLVANIA, SPECIFICALLY IN THE SERVICE TERRITORIES OF NUI VALLEY CITIES GAS (NUI TRANSPORTATION SERVICES); NATIONAL FUEL GAS DISTRIBUTION CORP.; PENN FUEL (NORTH PENN GAS COMPANY & PENN FUEL GAS); THE PEOPLES NATURAL GAS COMPANY; T.W. PHILLIPS GAS AND OIL COMPANY; UGI; PG ENERGY; EQUITABLE GAS COMPANY; CARNEGIE NATURAL GAS COMPANY; COLUMBIA GAS OF PA, INC.; AND PECO.

DOCUMENT
FOLDER

DOCKETED
JAN 25 2000



ORIGINAL

STRATEGIC ENERGY LTD.

2 GATEWAY CENTER, PITTSBURGH, PENNSYLVANIA 15222
412-394-5600 FAX 412-394-6574 rfreund@sel.com www.sel.com

RONNA L. FREUND
REGULATORY AND LICENSING ANALYST
412-394-5697

VIA AIRBORNE EXPRESS

January 18, 2000

RECEIVED

JAN 18 2000

PA PUBLIC UTILITY COMMISSION
SECRETARY'S BUREAU

James McNulty, Secretary
Pennsylvania Public Utility Commission
Room B20
North Office Building
Commonwealth Avenue & North Street
Harrisburg, PA 17120

**Re: Strategic Energy L.L.C. Natural Gas Supplier Application
Docket # A-125072**

Dear Secretary McNulty:

Enclosed is an original and eight (8) copies of the Natural Gas Supplier Application for your review. I have also enclosed a version on a three and one half inch diskette.

Please contact me if there are any questions in reference to this matter.

Sincerely,

Ronna L. Freund

RLF/mw
Enclosures

cc: Certificate of Service

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Certificate of Service

I hereby certify that I have this day served a true and correct copy of the foregoing document upon the persons indicated below by Overnight Mail. Docket No. A-125072

Irwin A. Popowsky
Office of Consumer Advocate
Forum Place, 5th Floor
555 Walnut Street
Harrisburg, PA 17120-1921

Bernard A. Ryan, Jr.
Office of Small Business Advocate
Commerce Building, Suite 1102
300 North Second Street
Harrisburg, PA 17101

Office of the Attorney General
Bureau of Consumer Protection
Strawberry Square, 14th Floor
Harrisburg, PA 17120

Commonwealth of Pennsylvania
Department of Revenue
Bureau of Compliance
Harrisburg, PA 17128-0946

Mr. James E. Patterson
National Fuel Gas Distribution Corp
10 Lafayette Square
Buffalo, NY 14203

Mr. Jim Evans
Penn Fuel
2 North 9th Street
GENA94
Allentown, PA 18101

Mr. Joe Gregorini
The Peoples Natural Gas Company
625 Liberty Avenue
Pittsburgh, PA 15222

Mr. David Beaston
UGI
225 Morgantown Road
Reading, PA 15222

Mr. Richard Marshall
PG Energy
One PEI Center
Wilkes-Barre, PA 18711-0601

Ms. Antionette Litchy
Equitable Gas Company
200 Allegheny Center Mall
Pittsburgh, PA 15212-5352

Ms. Paula Frauen
Columbia Gas of PA, Inc.
650 Washington Road
Pittsburgh, PA 15228

Mr. Kevin Carrabine
PECO
300 Front Street, Bldg. 2
Conshohocken, PA 19428

Bob Bennett
Manager of Fixed Utility Services
Pennsylvania Public Utility Commission
North Office Building
Room 200
Harrisburg, PA 17120

JAN 18 2000

PA PUBLIC UTILITY COMMISSION
SECRETARY'S BUREAU

Date: January 18, 2000

Ronna L. Freund
Ronna Freund

BEFORE THE PENNSYLVANIA PUBLIC UTILITY COMMISSION

Application of **Strategic Energy L.L.C.**, d/b/a **Strategic Energy Ltd.**, for approval to offer, render, furnish, or as a(n) [as specified in item #8 below] to the public in the Commonwealth of Pennsylvania.

To the Pennsylvania Public Utility Commission:

A-125072

ORIGINAL

- 1. **IDENTITY OF THE APPLICANT:** The name, address, telephone number, and FAX number of the Applicant are:

Strategic Energy L.L.C.
Two Gateway Center, 9th Floor
Pittsburgh, PA 15222
Phone: (412) 394-5600
Fax: (412) 394-6576

Please identify any predecessor(s) of the Applicant and provide other names under which the Applicant has operated within the preceding five (5) years, including name, address, and telephone number.

Strategic Energy Ltd.
Two Gateway Center, 9th Floor
Pittsburgh, PA 15222
Phone: (412) 394-5600
Fax: (412) 394-6576

Strategic Energy Partners Ltd.
Two Gateway Center, 9th Floor
Pittsburgh, PA 15222
Phone: (412) 394-5600
Fax: (412) 394-6576

- 2. a. **CONTACT PERSON:** The name, title, address, telephone number, and FAX number of the person to whom questions about this Application should be addressed are:

Ronna L. Freund
Regulatory & Licensing Analyst
Two Gateway Center, 9th Floor
Pittsburgh, PA 15222
Phone: (412) 394-5697
Fax: (412) 394-6574

DOCUMENT
FOLDER

- b. **CONTACT PERSON-PENNSYLVANIA EMERGENCY MANAGEMENT AGENCY:** The name, title, address telephone number and FAX number of the person with whom contact should be made by PEMA:

Hans E. Rottmann
Portfolio Manager, Natural Gas
Two Gateway Center, 9th Floor
Pittsburgh, PA 15222
Phone: (412) 394-6406
Fax: (412) 394-6574

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JAN 18 2000

- 3. a. **ATTORNEY:** If applicable, the name, address, telephone number, and FAX number of the Applicant's attorney are:

Wanda M. Schiller
Two Gateway Center, 9th Floor
Pittsburgh, PA 15222
Phone: (412) 394-5618
Fax: (412) 394-6576

PA PUBLIC UTILITY COMMISSION
SECRETARY'S OFFICE

DOCKETED
JAN 25 2000

- b. **REGISTERED AGENT:** If the applicant does not maintain a principal office in the Commonwealth, the required name, address, telephone number and FAX number of the Applicant's Registered Agent in the Commonwealth are:

N/A

4. **FICTITIOUS NAME:** (select and complete appropriate statement)

The Applicant will be using a fictitious name or doing business as ("d/b/a"):

Strategic Energy Ltd.

Attach to the Application a copy of the Applicant's filing with the Commonwealth's Department of State pursuant to 54 Pa. C.S. §311, Form PA-953.

or

The Applicant will not be using a fictitious name.

5. **BUSINESS ENTITY AND DEPARTMENT OF STATE FILINGS:** (select and complete appropriate statement)

The Applicant is a sole proprietor. N/A

If the Applicant is located outside the Commonwealth, provide proof of compliance with 15 Pa. C.S. §4124 relating to Department of State filing requirements.

or

The Applicant is a: N/A

- domestic general partnership (*)
- domestic limited partnership (15 Pa. C.S. §8511)
- foreign general or limited partnership (15 Pa. C.S. §4124)
- domestic limited liability partnership (15 Pa. C.S. §8201)
- foreign limited liability general partnership (15 Pa. C.S. §8211)
- foreign limited liability limited partnership (15 Pa. C.S. §8211)

Provide proof of compliance with appropriate Department of State filing requirements as indicated above.

Give name, d/b/a, and address of partners. If any partner is not an individual, identify the business nature of the partner entity and identify its partners or officers.

* If a corporate partner in the Applicant's domestic partnership is not domiciled in Pennsylvania, attach a copy of the Applicant's Department of State filing pursuant to 15 Pa. C.S. §4124.

N/A

or

The Applicant is a :

- domestic corporation (none)
- foreign corporation (15 Pa. C.S. §4124)
- domestic limited liability company (15 Pa. C.S. §8913)
- foreign limited liability company (15 Pa. C.S. §8981)
- Other _____

Provide proof of compliance with appropriate Department of State filing requirements as indicated above. Additionally, provide a copy of the Applicant's Articles of Incorporation. (See Attachment 1)

Give name and address of officers.

Richard M. Zomnir, Two Gateway Center, Pittsburgh, PA 15222
Patrick J. Purdy, Two Gateway Center, Pittsburgh, PA 15222
Dennis M. Yates, Two Gateway Center, Pittsburgh, PA 15222

The Applicant is incorporated in the state of **Delaware**.

6. **AFFILIATES AND PREDECESSORS WITHIN PENNSYLVANIA:** (select and complete appropriate statement)

Affiliate(s) of the Applicant doing business in Pennsylvania are:

Give name and address of the affiliate(s) and state whether the affiliate(s) are jurisdictional public utilities.

Custom Energy LLC.
Two Gateway Center, 13th Floor
Pittsburgh, PA 15222

Custom Energy is not a jurisdictional public utility.

- Does the Applicant have any affiliation with or ownership interest in: **N/A**
- (a) any other Pennsylvania retail natural gas supplier licensee or licensee applicant,
 - (b) any other Pennsylvania retail licensed electric generation supplier or license applicant,
 - (c) any Pennsylvania natural gas producer and/or marketer,
 - (d) any natural gas wells or
 - (e) any local distribution companies (LDCs) in the Commonwealth

If the response to parts a, b, c, or d above is affirmative, provide a detailed description and explanation of the affiliation and/or ownership interest.

- Provide specific details concerning the affiliation and/or ownership interests involving:
- (a) any natural gas producer and/or marketers,
 - (b) any wholesale or retail supplier or marketer of natural gas, electricity, oil, propane or other energy sources.

- Provide the Pa PUC Docket Number if the applicant has ever applied:
(a) for a Pennsylvania Natural Gas Supplier license, or
(b) for a Pennsylvania Electric Generation Supplier license. **A-110025**

- If the Applicant or an affiliate has a predecessor who has done business within Pennsylvania, give name and address of the predecessor(s) and state whether the predecessor(s) were jurisdictional public utilities. **N/A**

or

- The Applicant has no affiliates doing business in Pennsylvania or predecessors which have done business in Pennsylvania.

7. **APPLICANT'S PRESENT OPERATIONS:** (select and complete the appropriate statement)

- The Applicant is presently doing business in Pennsylvania as a
- natural gas interstate pipeline.
 - municipal providing service outside its municipal limits.
 - local gas distribution company
 - retail supplier of natural gas services in the Commonwealth
 - a natural gas producer
 - Other. (Identify the nature of service being rendered.)
Electric Generation Supplier

or

- The Applicant is not presently doing business in Pennsylvania.

8. **APPLICANT'S PROPOSED OPERATIONS:** The Applicant proposes to operate as a:

- supplier of natural gas services.
- Municipal supplier of natural gas services.
- Cooperative supplier of natural gas services.
- Broker/Marketer engaged in the business of supplying natural gas services.
- Aggregator engaged in the business of supplying natural gas services.
- Other (Describe):

9. **PROPOSED SERVICES:** Generally describe the natural gas services which the Applicant proposes to offer.

(See Attachment 10)

10. **SERVICE AREA:** Generally describe the geographic area in which Applicant proposes to offer services.

Entire state of Pennsylvania

11. **CUSTOMERS:** Applicant proposes to initially provide services to:

- Residential Customers
- Commercial Customers - (Less than 6,000 Mcf annually)
- Commercial Customers - (6,000 Mcf or more annually)
- Industrial Customers
- Governmental Customers
- All of above
- Other (Describe):

12. **START DATE:** The Applicant proposes to begin delivering services in **1st Quarter 2000** (approximate date).

13. **NOTICE:** Pursuant to Section 14 of the Commission's Regulations, 52 Pa. Code §5.14, serve a copy of the signed and verified Application with attachments on the following:

Irwin A. Popowsky
Office of Consumer Advocate
5th Floor, Forum Place
555 Walnut Street
Harrisburg, PA 17120-1921

Office of the Attorney General
Bureau of Consumer Protection
Strawberry Square, 14th Floor
Harrisburg, PA 17120

Bernard A. Ryan, Jr.
Commerce Building, Suite 1102
Small Business Advocate
300 North Second Street
Harrisburg, PA 17101

Commonwealth of Pennsylvania
Department of Revenue
Bureau of Compliance
Harrisburg, PA 17128-0946

Any of the following Natural Gas Distribution Companies through whose transmission and distribution facilities the applicant intends to supply customers:

<p>NUI Valley Cities Gas (NUI Transportation Services) Mike Vogel PO Box 3175 Union, NJ 07083-1975 PH: 908.289.5000 ext. 5441 FAX: 908.2898.6444</p>	<p>National Fuel Gas Distribution Corp. – (Yes) James E. Patterson 10 Lafayette Square Buffalo, NY 14203 PH: 716.857.7130 FAX: 716.857-7823</p>
<p>Penn Fuel [North Penn Gas Company & Penn Fuel Gas] – (Yes) Jim Evans <u>or</u> Tom Olsen 2 North 9th Street GENA94 Allentown, PA 18101 PH: 610.774.7981 610.774.4975 FAX: 610.774.5694 610.774.4975 e-mail: jevans@papl.com <u>or</u> teolson@papl.com</p>	<p>The Peoples Natural Gas Company – (Yes) Joe Gregorini <u>or</u> Bill McKeown 625 Liberty Avenue Pittsburgh, PA 15222 e-mail: jgregorini@png.cng.com PH: 412.497.6851 <u>or</u> 412.497.6840 FAX: 412.497.6630</p>
<p>T. W. Phillips Gas and Oil Company Robert M. Hovanec 205 North Main Street Butler, PA 16001 PH: 724.287.2725 FAX: 724.287.5021 e-mail: rhovanec@twphillips.com</p>	<p>UGI – (Yes) David Beaston <u>or</u> Bob Krieger PO Box 12677 <u>or</u> 225 Morgantown Rd Reading, PA 15222 Reading, PA 15222 PH: 610.796.3425 PH: 610.796.3516 FAX: 610.796.3559</p>
<p>PG Energy – (Yes) Richard N. Marshall <u>or</u> Wendy K. Saxe One PEI Center Wilkes-Barre, PA 18711-0601 e-mail: marshall@pgenergy.com <u>or</u> saxe@pgenergy.com PH: 570.829.8795 FAX: 570.829.8652</p>	<p>Equitable Gas Company – (Yes) Antionette Litchy 200 Allegheny Center Mall Pittsburgh, PA 15212-5352 PH: 412.395.3117 FAX: 412.395.3156</p>
<p>Carnegie Natural Gas Company Donald A. Melzer 800 Regis Avenue Pittsburgh, PA 19236 PH: 412.655.8510 ext. 331 FAX: 412.655.0335</p>	<p>Columbia Gas of PA, Inc. – (Yes) Paula Frauen <u>or</u> Shirley Bardes-Hasson 650 Washington Road Pittsburgh, PA 15228 e-mail: pfrauen@columbiaenergygroup.com PH: 412.572.7131 FAX: 412.572.7161</p>
	<p>PECO – (Yes) Kevin Carrabine 300 Front Street Building 2 Conshohocken, PA 19428 PH: 610.832.6413</p>

Pursuant to Sections 1.57 and 1.58 of the Commission's Regulations, 52 Pa. Code §§1.57 and 1.58, attach Proof of Service of the Application and attachments upon the above named parties. Upon review of the Application, further notice may be required pursuant to Section 5.14 of the Commission's Regulations, 52 Pa. Code §5.14.

14. **TAXATION:** Complete the TAX CERTIFICATION STATEMENT attached as Appendix A to this application.

15. **COMPLIANCE:** State specifically whether the Applicant, an affiliate, a predecessor of either, or a person identified in this Application has been convicted of a crime involving fraud or similar activity. Identify all proceedings, by name, subject and citation, dealing with business operations, in the last five (5) years, whether before an administrative body or in a judicial forum, in which the Applicant, an affiliate, a predecessor of either, or a person identified herein has been a defendant or a respondent. Provide a statement as to the resolution or present status of any such proceedings.

Strategic Energy L.L.C. has no Applicant, an affiliate, a predecessor of either, or a person identified in this Application that has been convicted of a crime involving fraud or similar activity.

16. **STANDARDS, BILLING PRACTICES, TERMS AND CONDITIONS OF PROVIDING SERVICE AND CONSUMER EDUCATION:** All services should be priced in clearly stated terms to the extent possible. Common definitions should be used. All consumer contracts or sales agreements should be written in plain language with any exclusions, exceptions, add-ons, package offers, limited time offers or other deadlines prominently communicated. Penalties and procedures for ending contracts should be clearly communicated.

a. **Contacts for Consumer Service and Complaints:** Provide the name, title, address, telephone number and FAX number of the person and an alternate person responsible for addressing customer complaints. These persons will ordinarily be the initial point(s) of contact for resolving complaints filed with Applicant, the Distribution Company, the Pennsylvania Public Utility Commission or other agencies.

See Attachment 2

b. Provide a copy of all standard forms or contracts that you use, or propose to use, for service provided to residential customers.

N/A

c. If proposing to serve Residential and/or Small Commercial customers, provide a disclosure statement. A sample disclosure statement is provided as Appendix B to this Application.

See Attachment 3

17. **FINANCIAL FITNESS:**

A. Applicant shall provide sufficient information to demonstrate financial fitness commensurate with the service proposed to be provided. Examples of such information which may be submitted include the following:

- Actual (or proposed) organizational structure including parent, affiliated or subsidiary companies.
- Published parent company financial and credit information. **(See Attachment 6)**
- Applicant's balance sheet and income statement for the most recent fiscal year. Published financial information such as 10K's and 10Q's may be provided, if available.
- Evidence of Applicant's credit rating. Applicant may provide a copy of its Dun and Bradstreet Credit Report and Robert Morris and Associates financial form or other independent financial service reports. **(See Attachment 4)**
- A description of the types and amounts of insurance carried by Applicant which are specifically intended to provide for or support its financial fitness to perform its obligations as a licensee.
- Audited financial statements **(See Attachment 5)**

- Such other information that demonstrates Applicant's financial fitness.

B. Applicant must provide the following information:

- Identify Applicant's chief officers including names and their professional resumes. **(See Attachment 7)**
- Provide the name, title, address, telephone number and FAX number of Applicant's custodian for its accounting records.

Kenneth J. Kelly, Controller
Two Gateway Center, 9th Floor
Pittsburgh, PA 15222
Phone: (412) 394-6481
Fax: (412) 394-6576

18. **TECHNICAL FITNESS:** To ensure that the present quality and availability of service provided by natural gas utilities does not deteriorate, the Applicant shall provide sufficient information to demonstrate technical fitness commensurate with the service proposed to be provided. Examples of such information which may be submitted include the following:

- The identity of the Applicant's officers directly responsible for operations, including names and their professional resumes. **(See Attachment 7)**
- A copy of any Federal energy license currently held by the Applicant. **(See Attachment 9)**
- Proposed staffing and employee training commitments. **(See Attachment 8)**
- Business plans.

19. **TRANSFER OF LICENSE:** The Applicant understands that if it plans to transfer its license to another entity, it is required to request authority from the Commission for permission prior to transferring the license. See 66 Pa. C.S. Section 2208(D). Transferee will be required to file the appropriate licensing application.

20. **UNIFORM STANDARDS OF CONDUCT AND DISCLOSURE:** As a condition of receiving a license, Applicant agrees to conform to any Uniform Standards of Conduct and Disclosure as set forth by the Commission.

21. **REPORTING REQUIREMENTS:** Applicant agrees to provide the following information to the Commission or the Department of Revenue, as appropriate:

- a. **Reports of Gross Receipts:** Applicant shall report its Pennsylvania intrastate gross receipts to the Commission on an annual basis no later than 30 days following the end of the calendar year.

Applicant will be required to meet periodic reporting requirements as may be issued by the Commission to fulfill the Commission's duty under Chapter 22 pertaining to reliability and to inform the Governor and Legislature of the progress of the transition to a fully competitive natural gas market.

22. **FURTHER DEVELOPMENTS:** Applicant is under a continuing obligation to amend its application if substantial changes occur in the information upon which the Commission relied in approving the original filing.

23. **FALSIFICATION:** The Applicant understands that the making of false statement(s) herein may be grounds for denying the Application or, if later discovered, for revoking any authority granted pursuant to the Application. This Application is subject to 18 Pa. C.S. §§4903 and 4904, relating to perjury and falsification in official matters.
24. **FEE:** The Applicant has enclosed the required initial licensing fee of \$350.00 payable to the Commonwealth of Pennsylvania.

Applicant: Patrick J. Purdy

By: Patrick J. Purdy _____

Title: Chief Operating Officer _____

APPENDIX A

COMMONWEALTH OF PENNSYLVANIA
PUBLIC UTILITY COMMISSION

TAX CERTIFICATION STATEMENT

A completed Tax Certification Statement must accompany all applications for new licenses, renewals or transfers. Failure to provide the requested information and/or any outstanding state income, corporation, and sales (including failure to file or register) will cause your application to be rejected. If additional space is needed, please use white 8 1/2" x 11" paper. Type or print all information requested.

1. CORPORATE OR APPLICANT NAME Strategic Energy L.L.C.	2. BUSINESS PHONE NO. (412) 394-5600 CONTACT PERSON(S) FOR TAX ACCOUNTS: Kenneth Kelly
---	--

3. TRADE/FICTITIOUS NAME (IF ANY) Strategic Energy Ltd.
--

4. LICENSED ADDRESS Two Gateway Center, 9 th Floor	(STREET, RURAL ROUTE, P.O. BOX NO.) Pittsburgh	(POST OFFICE) PA	STATE PA	(ZIP) 15222
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5. TYPE OF ENTITY	<input type="checkbox"/> SOLE PROPRIETOR	<input type="checkbox"/> PARTNERSHIP	<input checked="" type="checkbox"/> CORPORATION
-------------------	--	--------------------------------------	---

8. LIST OWNER(S), GENERAL PARTNERS, OR CORPORATE OFFICER(S)

NAME (PRINT)	SOCIAL SECURITY NUMBER (OPTIONAL)
Richard M. Zomnir	_ _ - _ _ - _ _ _ _ _
Patrick J. Purdy	_ _ - _ _ - _ _ _ _ _
Dennis M. Yates	_ _ - _ _ - _ _ _ _ _
NAME (PRINT)	SOCIAL SECURITY NUMBER (OPTIONAL)
NAME (PRINT)	SOCIAL SECURITY NUMBER (OPTIONAL)

9. LIST THE FOLLOWING STATE TAX IDENTIFICATION NUMBERS. (ALL ITEMS: A, B, AND C MUST BE COMPLETED).

A. SALES TAX LICENSE (8 DIGITS) APPLICATION PENDING N/A <table style="width:100%; border-collapse: collapse;"> <tr> <td style="border: 1px solid black; width: 20px; text-align: center;">8</td> <td style="border: 1px solid black; width: 20px; text-align: center;">1</td> <td style="border: 1px solid black; width: 20px; text-align: center;">-</td> <td style="border: 1px solid black; width: 20px; text-align: center;">2</td> <td style="border: 1px solid black; width: 20px; text-align: center;">2</td> <td style="border: 1px solid black; width: 20px; text-align: center;">1</td> <td style="border: 1px solid black; width: 20px; text-align: center;">9</td> <td style="border: 1px solid black; width: 20px; text-align: center;">5</td> <td style="border: 1px solid black; width: 20px; text-align: center;">-</td> <td style="border: 1px solid black; width: 20px; text-align: center;">4</td> <td style="width: 20px;"></td> <td style="text-align: center;"><input type="checkbox"/></td> <td style="text-align: center;"><input type="checkbox"/></td> </tr> </table>	8	1	-	2	2	1	9	5	-	4		<input type="checkbox"/>	<input type="checkbox"/>	C. CORPORATE BOX NUMBER (7 DIGITS) APPLICATION PENDING N/A <table style="width:100%; border-collapse: collapse;"> <tr> <td style="border: 1px solid black; width: 20px; text-align: center;">3</td> <td style="border: 1px solid black; width: 20px; text-align: center;">4</td> <td style="border: 1px solid black; width: 20px; text-align: center;">2</td> <td style="border: 1px solid black; width: 20px; text-align: center;">5</td> <td style="border: 1px solid black; width: 20px; text-align: center;">7</td> <td style="border: 1px solid black; width: 20px; text-align: center;">7</td> <td style="border: 1px solid black; width: 20px; text-align: center;">0</td> <td style="width: 20px;"></td> <td style="text-align: center;"><input type="checkbox"/></td> <td style="text-align: center;"><input type="checkbox"/></td> </tr> </table>	3	4	2	5	7	7	0		<input type="checkbox"/>	<input type="checkbox"/>
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10. Do you have PA employees either resident or non-resident?	<input checked="" type="checkbox"/> YES	<input type="checkbox"/> NO
11. Do you own any assets or have an office in PA?	<input checked="" type="checkbox"/> YES	<input type="checkbox"/> NO

NAME AND PHONE NUMBER OF PERSON(S) RESPONSIBLE FOR FILING TAX RETURNS

Kenneth Kelly PA SALES AND USE TAX (412) 394-6481	Kenneth Kelly EMPLOYER TAXES (412) 394-6481	Kenneth Kelly CORPORATE TAXES (412) 394-6481
PHONE	PHONE	PHONE

Telephone inquiries about this form may be directed to the Pennsylvania Department of Revenue at the following numbers:
(717) 772-2673, TDD# (717) 772-2252 (Hearing Impaired Only)

AFFIDAVIT

[Commonwealth/State] of Pennsylvania:

ss.

County of Allegheny:

Kenneth Kelly, Affiant, being duly [sworn/affirmed] according to law, deposes and says that: [He/she is the Controller (Office of Affiant) of Strategic Energy L.L.C.;

[That he/she is authorized to and does make this affidavit for said Applicant;]

That Strategic Energy L.L.C., the Applicant herein, acknowledges that [Applicant] may have obligations pursuant to this Application consistent with the Public Utility Code of the Commonwealth of Pennsylvania, Title 66 of the Pennsylvania Consolidated Statutes; or with other applicable statutes or regulations including Emergency Orders which may be issued verbally or in writing during any emergency situations that may unexpectedly develop from time to time in the course of doing business in Pennsylvania.

That Strategic Energy L.L.C., the Applicant herein, asserts that [he/she/it] possesses the requisite technical, managerial, and financial fitness to render natural gas supply service within the Commonwealth of Pennsylvania and that the Applicant will abide by all applicable federal and state laws and regulations and by the decisions of the Pennsylvania Public Utility Commission.

That Strategic Energy L.L.C., the Applicant herein, certifies to the Commission that it is subject to , will pay, and in the past has paid, the full amount of taxes imposed by Articles II and XI of the Act of March 4, 1971 (P.L. 6, No. 2), known as the Tax Reform Act of 1971 and any tax imposed by Chapter 22 of Title 66. The Applicant acknowledges that failure to pay such taxes or otherwise comply with the taxation requirements of, shall be cause for the Commission to revoke the license of the Applicant. The Applicant acknowledges that it shall report to the Commission its jurisdictional natural gas sales for ultimate consumption, for the previous year or as otherwise required by the Commission. The Applicant also acknowledges that it is subject to 66 Pa. C.S. §506 (relating to the inspection of facilities and records).

Applicant, by filing of this application waives confidentiality with respect to its state tax information in the possession of the Department of Revenue, regardless of the source of the information, and shall consent to the Department of Revenue providing that information to the Pennsylvania Public Utility Commission.

That Strategic Energy L.L.C., the Applicant herein, acknowledges that it has a statutory obligation to conform with 66 Pa. C.S. §506, and the standards and billing practices of 52 PA. Code Chapter 56.

That the Applicant agrees to provide all consumer education materials and information in a timely manner as requested by the Commission's Office of Communications or other Commission bureaus. Materials and information requested may be analyzed by the Commission to meet obligations under applicable sections of the law.

That the facts above set forth are true and correct/true and correct to the best of his/her knowledge, information, and belief.

Kenneth J Kelly
Signature of Affiant

Sworn and subscribed before me this 18th day of JANUARY, 182000

Marie A Hrapchak
Signature of official administering oath

My commission expires _____

Notarial Seal
Marie A. Hrapchak, Notary Public
Pittsburgh, Allegheny County
My Commission Expires Oct. 27, 2002
Member, Pennsylvania Association of Notaries

AFFIDAVIT

[Commonwealth/State] of Pennsylvania:

ss.

County of Allegheny:

Kenneth Kelly, Affiant, being duly [sworn/affirmed] according to law, deposes and says that: [He/she is the Controller (O Affiant) of Strategic Energy L.L.C.;]

[That he/she is authorized to and does make this affidavit for said Applicant;]

That Strategic Energy L.L.C., the Applicant herein certifies that it has caused the notice of the filing of its license applica published in the following newspapers on January 17, 2000:

Erie Daily Times
Patriot-News
Philadelphia Inquirer

Pittsburgh Post-Gazette
Scranton Times
Williamsport Sun Gazette

A copy of the notice as it appeared in each of the above newspapers is attached. Noted on each copy is the newspaper section (name, number or letter), if applicable, and the page number on which the notice appeared.

That Strategic Energy L.L.C., the Applicant will submit to the Commission the proof of publication from each newspaper in which notice of the application filing was published as soon as it is available.

That the facts above set forth are true and correct to the best of his/her knowledge, information, and belief, and that he/she expects said Applicant to be able to prove the same at hearing.

Kenneth Kelly
Signature of Affiant

Sworn and subscribed before me this 18th day of JANUARY, 19 2000

Marie A. Hrapchak
Signature of official administering oath

My commission expires _____

Notarial Seal
Marie A. Hrapchak, Notary Public
Pittsburgh, Allegheny County
My Commission Expires Oct. 27, 2002
Member, Pennsylvania Association of Notaries

AFFIDAVIT

[Commonwealth/State] of Pennsylvania:

ss.

County of Allegheny:

Kenneth Kelly, Affiant, being duly [sworn/affirmed] according to law, deposes and says that: [He/she is the Controller (O Affiant) of Strategic Energy L.L.C.;

[That he/she is authorized to and does make this affidavit for said Applicant;]

That the Applicant herein Strategic Energy L.L.C. has the burden of producing information and supporting documentation demonstrating its technical and financial fitness to be licensed as a natural gas supplier pursuant to 66 Pa. C.S. §2208(c)(1).

That the Applicant herein Strategic Energy L.L.C. has answered the questions on the application correctly, truthfully, and completely and provided supporting documentation as required.

That the Applicant herein Strategic Energy L.L.C. acknowledges that it is under a duty to update information provided in answer to questions on this application and contained in supporting documents.

That the Applicant herein Strategic Energy L.L.C. acknowledges that it is under a duty to supplement information provided in answer to questions on this application and contained in supporting documents as requested by the Commission.

That the facts above set forth are true and correct to the best of his/her knowledge, information, and belief, and that he/she expects said Applicant to be able to prove the same at hearing.

Kenneth Kelly
Signature of Affiant

Sworn and subscribed before me this 18th day of January, 2000

Marie A. Hrapchak
Signature of official administering oath

My commission expires _____

Notarial Seal
Marie A. Hrapchak, Notary Public
Pittsburgh, Allegheny County
My Commission Expires Oct. 27, 2002
Member, Pennsylvania Association of Notaries

LIMITED LIABILITY COMPANY AGREEMENT

OF

STRATEGIC ENERGY, L.L.C.

A

DELAWARE LIMITED LIABILITY COMPANY

DATED OCTOBER 22, 1998

SELLLC

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LIMITED LIABILITY COMPANY AGREEMENT

OF

STRATEGIC ENERGY, L.L.C.

THIS LIMITED LIABILITY COMPANY AGREEMENT ("LLC Agreement"), is made and entered into this ___ day of September, 1998, by SE Holdings, L.L.C., a Delaware limited liability company ("Holdings" or the "Member").

WHEREAS, the Member desires to organize a limited liability company governed by the Delaware Limited Liability Company Act (the "Delaware Act");

NOW, THEREFORE, in consideration of the mutual covenants and benefits set forth below, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Member agrees as follows:

ARTICLE I

THE LIMITED LIABILITY COMPANY

1.1 Formation of Limited Liability Company. The Certificate of Formation of Strategic Energy, L.L.C. (the "Company") was filed in the office of the Secretary of State of Delaware pursuant to the Delaware Act on the 24th day of September, 1998 and is hereby ratified by the Member.

1.2 Registered Office and Agent. The address of the Company's registered office in the State of Delaware is located at 1013 Centre Road, Wilmington, Delaware 19805, or any other or additional place or places as the Members may determine from time to time, and the registered agent at such office is The Corporation Service Company.

In the event the registered agent ceases to act as such for any reason or the registered office shall change, the Management Committee shall promptly designate a replacement registered agent or registered office as the case may be, and make the appropriate filings with the secretary of state. If the Management Committee shall fail to designate a replacement registered agent or registered office, as the case may be, then any one Member may designate a replacement registered agent or registered office and make the appropriate filings in the Office of the Secretary of State of Delaware.

1.3 Purpose. The purpose and business of the Company shall be (i) to engage in the business of designing and installing energy efficient lighting systems and equipment in existing facilities, including commercial, industrial, retail, health care, municipal, governmental or school district facilities, (ii) to provide energy management services and energy audits, including consulting, contracting for installation of equipment and/or energy efficient measures, energy control devices, maintenance of energy related equipment and energy usage monitoring services, (iii) to provide

power supply coordination services, direct power and gas, and competitive power purchasing strategies to commercial and industrial customers, and (iv) to invest in business ventures which undertake such activities, and to do all other things which are reasonably incidental to the foregoing. The Company may transact any or all other lawful business for which a limited liability company may be organized under the Delaware Act upon the affirmative vote or consent of all of the Members of the Company specifically authorizing any such other lawful business.

1.4 Principal Place of Business. The principal place of business of the Company shall be Two Gateway Center, Ninth Floor, Pittsburgh, Pennsylvania 15220, or at such other place or places within or without the State of Delaware as the Management Committee may designate from time to time.

1.5 Property. All assets, including real and personal property owned and held by the Company shall be owned by the Company in the name of the Company and no Member or Economic Interest Owner shall have any ownership interest in such property in its individual name or right. Each Member's or Economic Interest Owner's interest in the Company shall be personal property for all purposes. Any deed, bill of sale, mortgage, lease, contract of sale or other instrument purporting to convey or encumber any interest in the property of the Company shall be signed only as authorized by the affirmative vote or consent of all of the Members.

1.6 No State Law Partnership. The Members have formed the Company under the Delaware Act, and intend that the Company shall not be a partnership (including, without limitation, a limited partnership) or joint venture, that no Member shall be a partner of, or a joint venturer with, any other Member for any purpose, other than for United States federal and state tax purposes, and that this Agreement shall not be construed to suggest otherwise.

1.7 Limited Authority of Members. No Member shall have any authority to bind the Company as to any matter except as expressly provided herein.

ARTICLE 2 DEFINITIONS

2.1 Definitions. As used in this LLC Agreement:

(a) "Adjusted Capital Account Balance" means the balance (be it positive or negative) which would be obtained by adding to a Member's or Economic Interest Owner's Capital Account balance such Member's or Economic Interest Owner's share of the "Company Minimum Gain" and "Member Nonrecourse Debt Minimum Gain."

(b) "Affiliate" means, when used with reference to a specified Person, (i) any Person directly or indirectly controlling, controlled by or under common control with such specified Person, (ii) any Person owning or controlling 10 percent or more of the outstanding voting securities of such specified Person, and (iii) any officer, director or partner of such specified Person or of any Person specified in (i) or (ii) above. The term "Affiliate" shall not include any Person providing

legal, accounting or other professional services to the Company solely on account of providing such services.

(c) "Capital Account" means, with respect to any Member or Economic Interest Owner, the Capital Account maintained for such Person in accordance with the following provisions:

(i) To each Person's Capital Account there shall be credited such Member's or Economic Interest Owner's Capital Contributions, such Member's or Economic Interest Owner's distributive share of Net Profits and any items in the nature of income or gain which are specially allocated pursuant to Section 7 hereof, and the amount of any Company liabilities assumed by such Member or Economic Interest Owner or which are secured by any Property distributed to such Member or Economic Interest Owner.

(ii) To each Member's or Economic Interest Owner's Capital Account there shall be debited the amount of cash and the Gross Asset Value of any Property distributed to such Member or Economic Interest Owner pursuant to any provision of this LLC Agreement, such Member's or Economic Interest Owner's distributive share of Net Losses and any items in the nature of expenses or losses which are specially allocated pursuant to Section 7 hereof, and the amount of any liabilities of such Member or Economic Interest Owner assumed by the Company or which are secured by any property contributed by such Member or Economic Interest Owner to the Company.

(iii) In the event any interest in the Company is transferred in accordance with the terms of this LLC Agreement, the transferee shall succeed to the Capital Account of the transferor to the extent it relates to the transferred interest.

(iv) In determining the amount of any liability for purposes of Sections 2.1(c)(i) and 2.1(c)(ii) hereof, there shall be taken into account Code Section 752(c) and any other applicable provisions of the Code and Regulations.

The foregoing provisions and the other provisions of this LLC Agreement relating to the maintenance of Capital Accounts are intended to comply with Regulations Section 1.704-1(b), and shall be interpreted and applied in a manner consistent with such Regulations. In the event the Management Committee shall determine that it is prudent to modify the manner in which the Capital Accounts, or any debits or credits thereto (including, without limitation, debits or credits relating to liabilities which are secured by contributed or distributed property or which are assumed by the Company or the Members and Economic Interest Owners), are computed in order to comply with such Regulations, such modification shall be made, provided that is not likely to have a material effect on the amounts distributable to any Member or Economic Interest Owner. Adjustments and modifications also shall be made as are necessary or appropriate to maintain equality between the Capital Accounts of the Members and Economic Interest Owners and the amount of Company capital reflected on the Company's balance sheet, as computed for book purposes in accordance with Regulations Section 1.704-1(b)(2)(iv)(g).

(d) "Capital Contribution" or "Capital Contributions" means, with respect to any Member or Economic Interest Owner, the amount of money and the Gross Asset Value of any property (other than money) contributed to the Company with respect to the Percentage Interest held by such Member or Economic Interest Owner pursuant to the terms of this LLC Agreement. The initial Capital Contributions of the Members are set forth on Exhibit A hereto, which is incorporated herein by this reference.

(e) "Code" shall mean the Internal Revenue Code of 1986, as amended from time to time (or any corresponding provisions of succeeding law).

(f) "Company Minimum Gain" has the meaning set forth in Regulations Sections 1.704-2(b)(2) and 1.704-2(d).

(g) "Depreciation" means, for each fiscal year, an amount equal to the depreciation, amortization, or other cost recovery deduction allowable under the Code with respect to an asset for such fiscal year, except that (i) with respect to any asset whose Gross Asset Value differs from its adjusted tax basis for federal tax purposes and which difference is being eliminated by use of the "remedial method" defined by Section 1.704-3(d) of the Regulations, Depreciation for such fiscal year shall be the amount of book basis recovered for such fiscal year under the rules prescribed by Section 1.704-3(d)(2) of the Regulations, and (ii) with respect to any other asset whose Gross Asset Value differs from its adjusted tax basis for federal income tax purposes at the beginning of such fiscal year, Depreciation shall be an amount which bears the same ratio to such beginning Gross Asset Value as the federal income tax depreciation, amortization, or other cost recovery deduction for such fiscal year bears to such beginning adjusted tax basis; provided, however, that if the adjusted tax basis for federal income tax purposes of an asset at the beginning of such fiscal year is zero, Depreciation shall be determined with reference to such beginning Gross Asset Value using any reasonable method selected by the Management Committee.

(h) "Economic Interest" shall mean the ownership interest of a Person in the Company's Net Profits, Net Losses and the distribution of Net Profits and/or the Company's assets pursuant to this LLC Agreement and the Delaware Act, but shall not include any right to vote on, consent to or otherwise participate in any decision of the Members in the management of the Company, nor any right to appoint a representative of the Management Committee.

(i) "Economic Interest Owner" shall mean any Person who owns an Economic Interest, but is not a Member.

(j) "Gross Asset Value" means, with respect to any asset, the asset's adjusted basis for federal income tax purposes (reduced by the amount of any liabilities that are liens on such asset), except as follows:

(i) The initial Gross Asset Value of any asset contributed by a Member or Economic Interest Owner to the Company shall be the gross fair market value of such asset, as

determined by the contributing Member or Economic Interest Owner and all of the remaining Members;

(ii) The Gross Asset Values of all Company assets shall be adjusted to equal their respective gross fair market values, as determined by the Management Committee, as of the following times: (A) the acquisition of an additional interest in the Company by any new or existing Member or Economic Interest Owner in exchange for more than a de minimis Capital Contribution; (B) the distribution by the Company to a Member or Economic Interest Owner of more than a de minimis amount of property as consideration for an interest in the Company; and (c) the liquidation of the Company within the meaning of Regulations Section 1.704-1(b)(2)(ii)(g);

(iii) The Gross Asset Value of any Company asset distributed to any Member or Economic Interest Owner shall be adjusted to equal the gross fair market value of such asset on the date of distribution as determined by the distributee and the Management Committee;

(iv) The Gross Asset Values of Company assets shall be increased (or decreased) to reflect any adjustments to the adjusted basis of such assets pursuant to Code Section 734(b) or Code Section 743(b), but only to the extent that such adjustments are taken into account in determining Capital Accounts pursuant to Regulations Section 1.704-1(b)(2)(iv)(m) and Sections 2.1(g) and 7.3(e) hereof; provided, however, that Gross Asset Values shall not be adjusted pursuant to this Section 2.1(j)(iv) to the extent the Management Committee determine that an adjustment pursuant to Section 2.1(j)(ii) hereof is necessary or appropriate in connection with a transaction that would otherwise result in an adjustment pursuant to this Section 2.1(j)(iv).

If the Gross Asset Value of an asset has been determined or adjusted pursuant to Section 2.1(j)(i), Section 2.1(j)(ii), or Section 2.1(j)(iv) hereof, such Gross Asset Value shall thereafter be adjusted by the Depreciation taken into account with respect to such asset for purposes of computing Net Profits and Net Losses.

(k) "Internal Rate of Return" has the meaning set forth in Section 8.1.

(l) "Majority in Interest" shall mean fifty-one percent (51%) or more of the Percentage Interests held by the Members determined pursuant to an affirmative vote or consent of the Members at the time the Majority in Interest provision applies.

(m) "Management Committee" shall mean the committee of the Company, appointed by the Members and established pursuant to Article 3 of this LLC Agreement.

(n) "Member" shall mean any person executing this LLC Agreement from time to time and as otherwise admitted as a member of the Company as provided in Section 11.1 of this LLC Agreement.

(o) "Member Nonrecourse Debt" has the meaning set forth in Section 1.704-2(b)(4) of the Regulations.

(p) "Member Nonrecourse Debt Minimum Gain" means an amount, with respect to each Member Nonrecourse Debt, equal to the Company Minimum Gain that would result if such Member Nonrecourse Debt were treated as a Nonrecourse Liability, determined in accordance with Section 1.704-2(i)(3) of the Regulations.

(q) "Member Nonrecourse Deductions" has the meaning set forth in Sections 1.704-2(i)(1) and 1.704-2(i)(2) of the Regulations.

(r) "Net Profits" and "Net Losses" means, for each fiscal year, an amount equal to the Company's taxable income or loss for such fiscal year, determined in accordance with Code Section 703(a) (for these purposes, all items of income, gain, loss, or deduction required to be stated separately pursuant to Code Section 703(a)(1) shall be included in taxable income or loss), with the following adjustments:

(i) Any income of the Company that is exempt from federal income tax and not otherwise taken into account in computing Net Profits or Net Losses pursuant to this Section 2.1(u) shall be added to such taxable income or loss;

(ii) Any expenditures of the Company described in Code Section 705(a)(2)(B) or treated as Code Section 705(a)(2)(B) expenditures pursuant to Regulations Section 1.704-1(b)(2)(iv)(i), and not otherwise taken into account in computing Net Profits or Net Losses pursuant to this Section 2.1(u) shall be subtracted from such taxable income or loss;

(iii) In the event the Gross Asset Value of any Company asset is adjusted pursuant to Section 2.1(j)(ii) or Section 2.1(j)(iii) hereof, the amount of such adjustment shall be taken into account as gain or loss from the disposition of such asset for purposes of computing Net Profits or Net Losses;

(iv) Gain or loss resulting from any disposition of property with respect to which gain or loss is recognized for federal income tax purposes shall be computed by reference to the Gross Asset Value of the property disposed of, notwithstanding that the adjusted tax basis of such property differs from its Gross Asset Value;

(v) In lieu of the depreciation, amortization, and other cost recovery deductions taken into account in computing such taxable income or loss, there shall be taken into account Depreciation for such fiscal year, computed in accordance with Section 2.1(g) hereof;

(vi) To the extent an adjustment to the adjusted tax basis of any Company asset pursuant to Code Section 734(b) or Code Section 743(b) is required pursuant to Regulations Section 1.704-1(b)(2)(iv)(m)(4) to be taken into account in determining Capital Accounts as a result of a distribution other than in liquidation of a Member's or Economic Interest Owner's interest in the Company, the amount of such adjustment shall be treated as an item of gain (if the adjustment increases the basis of the asset) or loss (if the adjustment decreases the basis of the asset) from the disposition of the asset and shall be taken into account for purposes of computing Net Profits or Net Losses; and

(vii) Notwithstanding any other provision of this Section 2.1(c), any items which are specially allocated pursuant to Section 7 hereof shall not be taken into account in computing Net Profits or Net Losses.

The amounts of the items of Company income, gain, loss or deduction available to be specially allocated pursuant to Section 7 hereof shall be determined by applying rules analogous to those set forth in Sections 2.1(j)(i) through 2.1(j)(iv) above.

(s) "Nonrecourse Deductions" has the meaning set forth in Section 1.704-2(b)(1) of the Regulations.

(t) "Nonrecourse Liability" has the meaning set forth in Section 1.704-2(b)(3) of the Regulations.

(u) "Operating Costs" shall mean, with respect to any period, all cash expenditures incurred incident to the normal operation of the Company's business and any amounts determined by the Management Committee, from time to time, to be reasonably necessary to provide a reserve for the operations, expenses, debt payments, capital improvements, and contingencies of the Company.

(v) "Percentage Interest" shall mean, with respect to any Member or Economic Interest Owner, such Person's percentage interest of the Economic Interests in the Company and, in the case of a Member, in the voting rights in the Company (including, without limitation, the right to appoint representatives to the Management Committee as herein provided), each as adjusted from time to time: (i) pursuant to this LLC Agreement; or (ii) as a result of any Transfer (as defined in Section 10.1 below) by a Member or Economic Interest Owner of all or a portion of its Economic Interest. The initial Percentage Interests of the Members are as designated in Section 6.1 of this LLC Agreement.

(w) "Person" shall include any individual, trust, estate, corporation, partnership, limited liability company, association or other entity.

(x) "Preference Contribution Account" has the meaning set forth in Section 6.3 of this LLC Agreement.

(y) "Proceeds" shall mean, with respect to any period, gross receipts received by the Company from all sources during such period, including, without limitation, all sales, other dispositions, and refinancing of the Company's property, but does not include Capital Contributions as provided for in Article 6 of this LLC Agreement.

(z) "Regulations" means the Income Tax Regulations, including Temporary Regulations, promulgated under the Code, as such regulations may be amended from time to time (including corresponding provisions of succeeding Regulations).

(aa) "Residual Capital Account Balance" means the excess (if any) of the amount of a Member's or Economic Interest Owner's positive Adjusted Capital Account Balance over the amount of such Member's or Economic Interest Owner's Preference Contributions Account balance.

(bb) "Unit" shall mean a fraction of an Economic Interest or a Percentage Interest, as the case may be, the numerator of which shall be one (1), and the denominator of which shall be the total number of issued and outstanding Units of the Company.

ARTICLE 3 MANAGEMENT

3.1 Management Committee. The business and affairs of the Company shall be controlled and managed by a Management Committee which, subject to the provisions and limitations contained in this LLC Agreement and any applicable law, shall have the power and authority to take, or cause to be taken, any and all actions necessary and proper to conduct the business affairs of the Company and carry out its duties as described in this LLC Agreement.

(a) If Custom Energy, L.L.C., a Delaware limited liability company ("Custom Energy"), is the sole Member of the Company, the Management Committee shall be the management committee of Custom Energy;

(b) In all other cases, the Management Committee shall consist of five (5) representatives, to be appointed by Holdings, except as provided in Section 3.1(c);

(c) In the event that Holdings has elected to exercise its Rescission Right (as defined in Section 10.3(a)) and Holdings is not the sole Member of the Company, Holdings shall appoint three (3) representatives. The Member, other than Holdings, holding the greatest Percentage Interest in the Company shall appoint two (2) representatives.

In the event of the resignation or death of a representative, the vacancy shall be promptly filled by a nominee of the Member who appointed the departing representative. The appointment of each representative on the Management Committee shall be evidenced by an appointment, and acceptance of appointment, in a writing delivered to the Company by the Member entitled to appoint such representative. Each representative will serve on the Management Committee at the pleasure of the Member appointing him or her. In the event that Holdings has elected to exercise its Rescission Right (as defined in Section 10.3(a)), immediately upon the Rescission Closing (as defined in that certain Rescission Agreement dated approximately February, 1999, by and between Holdings and Custom Energy), the representatives then serving on the Management Committee will resign as representatives of the Management Committee and a new Management Committee shall be appointed pursuant to this Section 3.1.

If a Member transfers all of its Economic Interests and the transferee thereof is admitted as a Member of the Company as provided in Section 11.1 of this LLC Agreement, then the transferee of such Economic Interest shall succeed to such Member's rights to appoint representatives to the Management Committee as provided in this Section 3.1.

3.2 Transactions with Members and Affiliates. The Company may enter into agreements with one or more Members or Affiliates of a Member to provide financing, leasing, management, legal, accounting, architectural, brokerage, development, or other services or to buy, sell, or lease assets to or from the Company ("Affiliate Transactions") with a value of less than five thousand dollars (\$5,000), provided that any such agreements and transactions shall be disclosed to the Management Committee and be at rates at least as favorable to the Company as those available from unaffiliated parties. Affiliate Transactions with a value of five thousand dollars (\$5,000) or more shall require the express written consent of the Chief Executive Officer, or, if the Chief Executive Officer is an Affiliate in the Affiliate Transaction, the consent required shall be that of the next highest unaffiliated officer. The validity of any transaction, agreement, or payment involving the Company and any Member or Affiliate of a Member otherwise permitted hereunder shall not be affected by reason of the relationship between such Person and the Company or any of its Members.

3.3 Chairman and Other Officers. A representative on the Management Committee shall serve as the Chairman of the Management Committee and as Chief Executive Officer of the Company. The initial Chairman of the Management Committee and Chief Executive Officer of the Company shall be Richard M. Zomnir. The Chief Executive Officer shall have those duties and responsibilities as are outlined in Section 3.14 hereof. The Company shall have such other officers as may be appointed by the Management Committee, or in the absence of such appointment, as designated by the Chairman of the Management Committee. The Chairman of the Management Committee shall preside at all meetings of the Management Committee, and shall have such other duties and responsibilities as may be assigned by the Management Committee from time to time.

3.4 Meetings. The Management Committee shall have quarterly meetings within eight weeks after the end of each fiscal quarter. Meetings of the Management Committee may be called by either the Chairman of the Management Committee, or by another representative on the Management Committee, by written notice designating the time and place of the meeting sent to each representative not fewer than five (5) nor more than ten (10) days before the date of the meeting to the address of the Member appointing such representative. If no place is designated, then the meeting shall be held at the Company's principal place of business. If all of the representatives to the Management Committee meet at any time and place, the meeting shall be valid without call or notice and any lawful action may be taken at such meeting.

3.5 Quorum. The presence of three (3) representatives of the Management Committee shall constitute a quorum at any duly called meeting of the Management Committee.

3.6 Voting. Each representative on the Management Committee shall be entitled to one vote upon each matter submitted or required to be submitted to a vote at a meeting of the

Management Committee. A majority of the quorum shall be required to approve the action to be taken by the Management Committee.

3.7 Action Without A Meeting. Any action which is required or permitted to be taken at a meeting of the Management Committee may be taken without a meeting, without prior notice and without a vote, if a consent in writing, setting forth the actions so taken, is signed by each of the representatives to the Management Committee and filed with the Company.

3.8 Telephone Meetings. Representatives of the Management Committee may participate in a meeting of the Management Committee by means of conference telephone or other similar communication equipment whereby all persons participating in the meeting can hear each other. Participation in the meeting in this manner constitutes presence in person at the meeting.

3.9 Waiver of Notice. Whenever any notice is required to be given to any representative to the Management Committee, a waiver of the notice in writing signed by the person entitled to the notice, whether before, at or after the time stated therein, and delivered to the Company for inclusion in the minutes or filing with the Company's records, shall be deemed equivalent to the giving of such notice.

3.10 Salary and Expenses. Representatives serving on the Management Committee, as such, shall not receive any stated salary for their services on the Management Committee, but by resolution of the Management Committee may receive reimbursement of expenses of attendance at each meeting of the Management Committee.

3.11 Operating Budgets. No later than sixty (60) days prior to the end of the then current fiscal year, the Management Committee shall review and adopt annual operating budgets for the Company. No action or failure to act which would constitute a material change from any general and administrative expense or capital item in the budget shall be made or caused by the Company without the prior affirmative vote or consent of the Management Committee. Each budget shall include the following:

- (a) A narrative description of any activities proposed to be undertaken during the period subject of such budget;
- (b) A projected annual income statement (accrual basis) for such period;
- (c) A projected balance sheet as of the end of the period;
- (d) A schedule of projected cash flow (including itemized operating revenues, costs, and expenses) for such period; and
- (e) A description of any proposed investments and capital expenditures, including projected dates for commencement and completion of the foregoing, as well as the description of any contemplated or existing financing activities for such period.

3.12 Powers of Members. The Members shall have the sole and exclusive power to approve the following, upon the unanimous consent of all Members:

(a) Require additional Capital Contributions or modify a Member's or Economic Interest Owner's obligation to make a Capital Contribution;

(b) Assume, incur, or guarantee or become liable for any indebtedness or borrowed money on behalf of the Company if such indebtedness or borrowed money is recourse to any of the Members; or

(c) Take those other actions specified in this LLC Agreement as requiring the unanimous consent of the Members.

3.13 Actions Requiring Unanimous Consent of the Management Committee. Except as set forth in Section 3.12 above, the following actions shall require the unanimous consent of the Management Committee:

(a) Amend this LLC Agreement;

(b) Take any action or fail to take any action in contravention of this LLC Agreement;

(c) Merge or consolidate or agree to merge or consolidate the Company with or into any other entity;

(d) Sell, exchange, lease, mortgage, pledge or otherwise dispose of all or a substantial portion of the property and assets of the Company in a single transaction or series of related transactions;

(e) Make any distributions to the Members or Economic Interest Owners, except as otherwise provided in this LLC Agreement;

(f) File any registration statement (other than a Form S-8) or any amendments thereto with the Securities and Exchange Commission ("SEC") registering any of the Percentage Interests, Economic Interests or other securities of the Company or file or prepare a prospectus in accordance with Rule 424(b) as promulgated by the SEC;

(g) Make or cause the Company to become a party to any contract or commitment, or renew, extend, amend or modify any contract or commitment, with a Member or an Affiliate of a Member, except as expressly permitted by this LLC Agreement;

(h) Transact any business other than that which is consistent with the purpose and business of the Company as described in Section 1.3 above;

(i) Dissolve, wind up the business or liquidate the Company or the taking of any corporate or other action by or on behalf of the Company in furtherance of the foregoing;

(j) The partition of any assets of the Company or any distribution of any assets of the Company;

(k) Assume, incur or guarantee or become liable for any indebtedness or borrowed money on behalf of the Company in an amount in excess of fifty percent (50%) of the Net Worth of the Company ("Net Worth" shall be defined as the Company's total assets less the Company's total liabilities calculated in accordance with GAAP);

(l) Admit any substitute or additional Members or Economic Interest Owners (except as provided in Section 3.13(g) of this LLC Agreement or pursuant to Article 10 hereof);

(m) The sale, assignment or transfer of a Percentage Interest or Economic Interest, except as otherwise expressly permitted by this LLC Agreement;

(n) Make an acquisition of, or investment in, any interest in any business enterprise or venture in an amount in excess of one million dollars (\$1,000,000);

(o) Approve any non-budgeted expenditure of the Company in an amount in excess of five hundred thousand dollars (\$500,000); or

(p) Take such other actions specified in this LLC Agreement as requiring the consent or approval of the Management Committee.

3.14 Powers of the Management Committee. Except as set forth in Section 3.12 and 3.13 above, the Management Committee shall have the power to do the following by majority vote, without the consent of the Members:

(a) Approve any non-budgeted expenditure in an amount up to five hundred thousand dollars (\$500,000);

(b) Make an acquisition of, or investment in, any business enterprise or venture in an amount up to one million dollars (\$1,000,000);

(c) Assume, incur or guarantee or become liable for any indebtedness or borrowed money on behalf of the Company in an amount up to fifty percent (50%) of the Net Worth of the Company;

(d) Review and adopt all operating and other budgets of the Company;

3.15 Duties of Chief Executive Officer. The Chief Executive Officer shall be responsible for the management of the day to day business and affairs of the Company in accordance with the annual budgets adopted by the Management Committee and as otherwise directed by the Management Committee from time to time. Any decision or act of the Chief Executive Officer within the scope of the Chief Executive Officer's authority granted hereunder shall control and bind the Company. The Chief Executive Officer may, at his sole discretion, delegate his duties and responsibilities hereunder to other officers of the Company. Except as set forth in Sections 3.12, 3.13 and 3.14 above, the Chief Executive Officer shall have the power to do the following, without the consent of the Members or the Management Committee:

- (a) Control of the day-to-day operations of the Company;
- (b) Carrying out and affecting all directions of the Management Committee;
- (c) Providing for the accounting function for the Company;
- (d) Applying for and obtaining all appropriate insurance coverage;
- (e) Temporary investment of the Company's funds and short-term investments providing for appropriate safety of principal;
- (f) Engaging in any kind of activity and performing and carrying out all contracts of any kind necessary to, in connection with or incidental to the accomplishment of the purposes and business of the Company, so long as said activities and contracts are in the ordinary course of business;
- (g) Negotiate, execute and perform all agreements, and exercise all rights and remedies of the Company in connection with the foregoing; and
- (h) Providing quarterly and annual budgets, and operating and financial reports to the Management Committee.

3.16 Removal or Resignation of Chief Executive Officer. The Management Committee, by a majority vote thereof, may remove the Chief Executive Officer, in its sole and absolute discretion if, at any time or from time to time, it becomes dissatisfied with the Chief Executive Officer's performance under this Agreement (regardless of whether such dissatisfaction shall constitute legal "cause" for termination). A Person who has been removed as Chief Executive Officer shall continue to be a Member or Economic Interest Owner for all other purposes of this Agreement, if the Chief Executive Officer is also a Member or Economic Interest Owner in the Company.

The Chief Executive Officer of the Company may resign at any time by giving sixty (60) days advance written notice to each of the representatives to the Management Committee. The resignation of a Chief Executive Officer shall take effect sixty (60) days from the date of the notice

or at such later time as shall be specified in the notice and, unless otherwise specified in the notice, the acceptance of the resignation shall not be necessary to make it effective. The resignation of a Chief Executive Officer who is also a Member or Economic Interest Owner shall not affect the Chief Executive Officer's rights as a Member or Economic Interest Owner and shall not constitute a withdrawal of the Member or Economic Interest Owner from the Company.

Within thirty (30) days after the removal or resignation of the Chief Executive Officer, the Management Committee, by unanimous vote, shall elect a successor Chief Executive Officer. In the event that the Management Committee shall not unanimously elect a successor Chief Executive Officer within the allotted thirty (30) day period, such successor Chief Executive Officer shall be elected by a majority vote of the Management Committee.

3.17 Compensation of Chief Executive Officer. The compensation of the Chief Executive Officer shall be fixed from time to time by the Management Committee, and no Chief Executive Officer shall be prevented from receiving any such compensation because the Chief Executive Officer is also a Member or Economic Interest Owner of the Company.

3.18 Restrictions on the Members. No Member or Economic Interest Owner individually shall have the authority to do any binding act on behalf of the Company without the approval of the Members as provided in this LLC Agreement.

ARTICLE 4 RIGHTS AND OBLIGATIONS OF MEMBERS

4.1 Limitation of Liability. Each Member's and Economic Interest Owner's liability shall be limited as set forth in this LLC Agreement, the Delaware Act and other applicable law.

4.2 Company Liabilities. A Member or Economic Interest Owner will not be personally liable for any debts or losses of the Company beyond the Member's or Economic Interest Owner's respective capital contributions and any obligation of the Members and Economic Interest Owners to make additional Capital Contributions as provided in this LLC Agreement, except as required by law.

4.3 Priority and Return of Capital. Except as otherwise expressly provided in this LLC Agreement, no Member or Economic Interest Owner shall have priority over any other Member or Economic Interest Owner, either for the return of Capital Contributions or for Net Profits, Net Losses or distributions; provided that this Section shall not apply to loans (as distinguished from Capital Contributions) which a Member has made to the Company.

4.4 Liability of a Member or Economic Interest Owner to the Company. A Member or Economic Interest Owner who rightfully receives a return in whole or in part of its Capital Contribution is liable to the Company only to the extent now or hereafter provided by the Delaware Act.

4.5 Independent Activities. Except as may otherwise be agreed upon in writing between the Company and a Member or Economic Interest Owner, each Member or Economic Interest Owner shall be required to devote only such time to the affairs of the Company as such Member or Economic Interest Owner determines in its sole discretion, and each such Member or Economic Interest Owner shall be free to serve any other Person in any capacity that it may deem appropriate in its discretion; provided, however, that no Member or Economic Interest Owner shall either directly or indirectly engage in any activities which in any way concern or are related to the license, sale, provision, use or marketing of products, services or activities which are licensed, sold, provided, used or marketed by the Company, or which activities otherwise are competitive with the Company or otherwise, without first acquiring the written approval of each of the representatives of the Management Committee not appointed by the Member or Economic Interest Owner requesting or requiring such approval.

ARTICLE 5 MEETINGS OF MEMBERS

5.1 Annual Meeting. The annual meeting of the Members shall be held on the second Tuesday in April or at such other time as shall be determined by the Members for the purpose of the transaction of such business as may come before the meeting.

5.2 Special Meetings. Special meetings of the Members, for any purpose or purposes, unless otherwise prescribed by statute, may be called by any Member or Members holding at least one-fifth (1/5) of all Percentage Interests held by the Members.

5.3 Place of Meetings. The Members may designate any place, either within or outside the state of Delaware, as the place of meeting for any meetings of the Members. If no designation is made, or if a special meeting be otherwise called, the place of meeting shall be the principal place of business of the Company.

5.4 Notice of Meetings. Except as provided in Section 5.5 below, for any annual meeting held at such time as provided in Section 5.1 above, and for all special meetings, written notice stating the place, day, and hours of the meeting and the purpose or purposes for which the meeting is called shall be delivered not fewer than ten (10) nor more than sixty (60) days before the date of the meeting, either personally or by mail, by or at the direction of the Members calling the meeting, to each Member entitled to vote at the meeting. If mailed, the notice shall be deemed to be delivered two (2) calendar days after being deposited in the United States mail, addressed to the Member at the Member's address as it appears on the books of the Company, with postage thereon prepaid.

5.5 Meeting of all Members. If all of the Members shall meet at any time and place, either within or outside of the state of Delaware, and consent to the holding of a meeting at that time and place, the meeting shall be valid without call or notice, and at the meeting lawful action may be taken.

5.6 Record Date. For the purpose of determining Members entitled to notice of or to vote at any meeting of Members or any adjourned meeting, the date on which notice of the meeting is mailed shall be the record date for the determination of Members. When a determination of Members entitled to vote at any meeting of Members has been made as provided in this Section, the determination shall apply to any adjourned meeting.

5.7 Quorum. Members holding at least two-thirds ($\frac{2}{3}$) of the Percentage Interests held by the Members, represented in person or by proxy, shall constitute a quorum at any meeting of Members. *In the absence of a quorum at any meeting of Members, the Members holding all of the Percentage Interests so represented may adjourn the meeting from time to time for a period not to exceed sixty (60) days without further notice. However, if the adjournment is for more than sixty (60) days, or if after the adjournment a new record date is fixed for the adjourned meeting, a notice of the adjourned meeting shall be given to each Member of record entitled to vote at the meeting.* At any adjourned meeting at which a quorum shall be present or represented, any business may be transacted which might have been transacted at the meeting as originally noticed.

5.8 Voting. If a quorum is present, the affirmative vote of the Members holding a Majority in Interest shall be the act of the Members, unless the vote of a greater proportion or number is required by this LLC Agreement, the Company's Certificate of Formation or the Delaware Act. Unless otherwise expressly provided in this LLC Agreement or required under applicable law, Members who have an interest (economic or otherwise) in the outcome of any particular matter upon which the Members vote or consent, their Percentage Interests shall be counted in the determination of whether the requisite matter was approved by the Members.

5.9 Proxies. At all meetings of Members a Member may vote in person or by proxy executed in writing by the Member or a duly authorized attorney-in-fact. The proxy shall be delivered to any one (1) or more of the remaining Members before or at the time of the meeting. No proxy shall be valid after three (3) years from the date of its execution, unless otherwise provided in the proxy.

5.10 Action by Members without a Meeting. Any action required or permitted to be taken at a meeting of Members may be taken without a meeting if the action is evidenced by one or more counterparts of a written consent describing the action taken and signed by each Member entitled to vote, which consent shall be included in the minutes or filed with the Company records. Action taken under this Section is effective when all Members entitled to vote have signed the consent, unless the consent specifies a different effective date. The record date for determining Members entitled to take action without a meeting shall be the date the first Member signs a written consent.

5.11 Waiver of Notice. When any notice is required to be given to any Member, a waiver of the notice in writing signed by the person entitled to the notice, whether before, at, or after the given time stated therein, and delivered to the Company for inclusion in the minutes or filing with the Company records, shall be equivalent to the giving of the notice. A Member's attendance at any meeting shall constitute a waiver: (i) to lack of notice or defective notice of the meeting, unless the Member at the beginning of the meeting objects to the holding of the meeting or transacting business

at the meeting; and (ii) to consideration of a particular matter at the meeting that is not within the purpose or purposes described in the meeting notice, unless such person objects to considering the matter when it is presented.

5.12 Chairperson of Meeting; Designation of Authorized Representatives. Each meeting of Members shall be conducted by the Chairman or such other Person as the Chairman may appoint pursuant to such rules for the conduct of the meeting as the Chairman or such other Person deems appropriate. Each Member shall designate to the Chairman, in writing, one (1) authorized representative of the Member who will vote or consent on all matters under this LLC Agreement for such Member. Such designation will continue until revoked in writing. Within thirty (30) days of the execution of this Agreement, the Members shall designate their initial authorized representative.

ARTICLE 6 CAPITAL CONTRIBUTIONS

6.1 Initial Capital Contributions. A Capital Account shall be maintained for each Member as provided in Section 2.1(c) above, which shall include the initial Capital Contribution of each Member as set forth on Exhibit A, attached hereto. The number of Units of Percentage Interest of each Member shall be as also set forth in Exhibit A. No Member shall have any interest or rights in the capital contributed by any other Member.

6.2 Additional Capital Contributions. The Members and Economic Interest Owners recognize that the Company may require additional capital from time to time in order to accomplish the purposes and the business for which the Company is formed. If by an affirmative vote or consent all of the Members determine in good faith that additional Capital Contributions are necessary for the operation of the Company, each Member and Economic Interest Owner shall within thirty (30) days of such vote or consent contribute their respective share of the additional contribution to the capital of the Company as determined by all of the Members pursuant to such affirmative vote or consent, which share shall be determined on a pro rata basis with reference to the relationship of each respective Member's or Economic Interest Owner's Percentage Interest to the total of the Percentage Interests of all of the Members and Economic Interest Owners. The Chairman shall make such determination and provide notice to each Member and Economic Interest Owner within ten (10) days of such vote or consent of the call for such additional contribution, the amount to be contributed by such person, and the date on which such contribution is due. Unless otherwise agreed to by the affirmative vote or consent of all of the Members, all such additional Capital Contributions shall be made in cash. No voluntary contributions to capital shall be made by any Member or Economic Interest Owner absent the affirmative vote or consent of all of the Members.

6.3 Preference Contributions.

(a) If any Member or Economic Interest Owner (a "Non-Contributing Person") fails to contribute its portion of the amount of the additional Capital Contribution called by the Members in accordance with Section 6.2 above, and such failure continues for a period of thirty (30) days from the date of the Members' vote or consent determining the necessity of such additional

contribution, then the following shall occur: (i) the Company shall have the right to obtain the additional Capital Contribution not made by the Non-Contributing Person from the other Members and Economic Interest Owners; (ii) the Non-Contributing Person shall relinquish all voting rights, if any, associated with its Percentage Interest unless and until it has made its Cure Contribution (as defined below) in full; and (iii) the Company and the other Members and Economic Interest Owners shall have all other rights set forth in this Section 6.3.

Thereupon, the other Members and Economic Interest Owners shall have the right, but not the obligation, to contribute on a pro rata basis determined with reference to the relationship of each respective other Member's or Economic Interest Owner's Percentage Interest to the total Percentage Interests of all of such other Members and Economic Interest Owners, unless a different allocation is agreed upon among them, any portion of the additional Capital Contribution not contributed by the Non-Contributing Person, and each such Member or Economic Interest Owner shall deliver to the Company such amount not later than ten (10) days following the expiration of the thirty (30) day period referenced above. All such Capital Contributions made by Members and Economic Interest Owners pursuant to this Section 6.3, shall be credited to the Capital Account of the Member or Economic Interest Owner making the Capital Contribution.

A Member or Economic Interest Holder who was not a Non-Contributing Person with respect to any such capital call shall not be deemed a Non-Contributing Person (and shall not relinquish any voting rights) by reason of such Member or Economic Interest Owner choosing not to participate in additional contributions to make up for the share not contributed by the Non-Contributing Person; provided, however, that if the Members or Economic Interest Owners which elect to contribute the funds not contributed by the Non-Contributing Person do not contribute the entire amount of such funds not contributed by the Non-Contributing Person, then the Members may initiate a new capital call on all of the Members and Economic Interest Owners pursuant to the terms of Section 6.2 above for the additional capital required by the Company, and any Member or Economic Interest Owner who fails to fund its share of that new capital call (in accordance with its Percentage Interest) shall be deemed a Non-Contributing Person with respect to such new capital call for purposes hereof.

(b) For purposes hereof, in the event of a capital call in which there is at least one Non-Contributing Person, all of the Capital Contributions made by Members or Economic Interest Owners pursuant to such capital call (including their initial shares of the capital call and any additional capital contributed by reason of the failure of a Non-Contributing Person to make a Capital Contribution) shall be deemed "Preference Contributions". A "Preference Contribution Account," which shall be a memorandum account, shall be maintained for each Member and Economic Interest Owner. Each Member's and Economic Interest Owner's Preference Contribution Account shall be increased by (i) an amount equal to each Preference Contribution made by such Member or Economic Interest Owner (as of the time of such Preference Contribution), (ii) an amount equal to each Cure Contribution made by such Member or Economic Interest Owner, and (iii) an amount equal to a return on the balance of such Preference Contribution Account balance, from time to time, at the rate of eight percent (8%) per annum (the daily portion of which shall be deemed added to the Preference Contribution Account on a daily basis); and decreased (but not below zero)

by each distribution made to such Member or Economic Interest Owner pursuant to Sections 6.3(c), 8.1 or 12.7(d) hereof (in each case, as of the time of such distribution).

(c) The Preference Contribution Account of Holdings shall have an initial balance of zero.

(d) A Non-Contributing Person shall have the right, at any time, to cure its failure in the making of a required Capital Contribution by making a cash Capital Contribution ("Cure Contribution") to the Company in the amount ("Cure Contribution Amount") equal to each additional Capital Contribution which it has failed to make plus, in each case, an amount equal to a return from the date of such failure at eight percent (8%) per annum on the amount of the balance of each Member's and Economic Interest Owner's Preference Contribution Account balance attributable to the required Capital Contribution being cured. Upon its receipt of the Cure Contribution, the Company shall immediately distribute that portion of the Cure Contribution among the Members and Economic Interest Owners in such relative amounts as are necessary in order to cause the balances of the Preference Contribution Accounts of the Members and Economic Interest Owners to be in, or as close as possible to, the same ratio as their relative Percentage Interests. For purposes hereof, a Cure Contribution shall be treated as a Preference Contribution by the Non-Contributing Person. Only the amount of the required Capital Contribution (and not the amount of the Preference Contribution) shall be credited to the Capital Account of the Non-Contributing Person.

(e) None of the terms, covenants, obligations or rights contained in Section 6.2 and this Section 6.3 are or shall be deemed to be for the benefit of any Person or entity other than the Members, Economic Interest Owners, and the Company, and no such third person shall under any circumstances have any right to compel any actions or payments by the Members or Economic Interest Owners.

(f) Any breach or violation by a Member (including a Member possessing only voting rights as provided for under this LLC Agreement) of any indemnity obligations contained in this LLC Agreement will result in such Member or Economic Interest Owner being deemed a Non-Contributing Person by reason of the failure to make an additional Capital Contribution in the amount of the losses, damages, costs and expenses (including reasonable attorneys' fees) incurred by the Company or the non-breaching Members by reason of such breach or violation. If the deemed Non-Contributing Person fails to cure such breach or violation to the satisfaction of the Management Committee and the non-breaching Members within thirty (30) days after its receipt of notice of such breach or violation from the Management Committee (which notice shall be sent pursuant to a unanimous vote of the Management Committee determined in good faith, except that any representative of the Non-Contributing Person in the Management Committee shall not be permitted to vote on such action), the deemed Non-Contributing Person shall relinquish all voting rights associated with its Percentage Interest, and the Preference Contribution Accounts of the remaining Members and Economic Interest Owners will be increased (on a pro rata basis with reference to the relationship of each respective Member's or Economic Interest Owner's Percentage Interest to the total of all such Members and Economic Interest Owner's Percentage Interests) by (i) an amount equal to the value of such damages as determined by the Management Committee; and (ii) an amount

equal to a return thereon at the rate of eight percent (8%) per annum (the daily portion of which shall be deemed added to the Preference Contribution Account on a daily basis). Thereafter, the deemed Non-Contributing Person may cure such breach or violation by making a Cure Contribution, the amount and disposition of which shall be governed by Section 6.3(d) above; provided, however, that should it ultimately be determined by the affirmative vote or consent of a Majority in Interest or by a court of competent jurisdiction that any such damages were not attributable to a breach or violation of this LLC Agreement by such deemed Non-Contributing Person, such deemed Non-Contributing Person shall immediately be reinvested with any and all voting rights lost on account the operation of this subparagraph (e) and any economic consequences of the tentative operation of this subparagraph (e) on the Non-Contributing Person (such as a loss of distributions or payment by such Non-Contributing Person of any Cure Contribution or other payment in respect of such alleged breach or violation) shall be properly cured and reversed.

6.4 Capital Accounts of Members. The amount of any additional Capital Contribution made by any Member or Economic Interest Owner shall be added to the Capital Account of such contributing Member or Economic Interest Owner as of the date of expiration of the thirty (30) day periods and/or ten (10) day period, as the case may be, set out in Sections 6.2 and 6.3 above. Any increase in a Member's or Economic Interest Owner's Preference Contribution Account pursuant to Section 6.3(b) shall not be added to such Member's or Economic Interest Owner's Capital Account.

6.5 Adjustment of Percentage Interests. If additional Capital Contributions are made in accordance with Sections 6.2 and 6.3 above, or in conjunction with the admission of a new Member pursuant to Article 11 of this LLC Agreement, the Percentage Interests of each Member and Economic Interest Owner shall be adjusted to reflect such additional contributions in accordance with the following formula:

(a) Each Member's and Economic Interest Owner's Percentage Interest shall be adjusted to the same ratio as the Member's or Economic Interest Owner's total Adjusted Capital Account bears to the total Adjusted Capital Accounts of all the Members and Economic Interest Owners as of the adjustment date. The adjustment date shall be the date of the expiration of the thirty (30) day period and/or ten (10) day period, as the case may be, set out in Sections 6.2 and 6.3 above or the date a new Member is admitted, as the case may be.

(b) This Percentage Interest adjustment shall be made after every additional Capital Contribution, whether such additional Capital Contribution is the result of the admission of a new Member or a call for additional contributions. In the event that there is any transfer in whole or in part, of a Member's or Economic Interest Owner's Percentage Interest in the Company, then the transferee of such Member or Economic Interest Owner shall stand in the same position as the Member or Economic Interest Owner whose interest they have acquired, unless all of the Members have agreed otherwise.

6.6 Interest and Other Amounts. No Member or Economic Interest Owner shall receive any interest, salary, or drawing with respect to its Capital Contributions or its Capital Account or for services rendered to or on behalf of the Company or otherwise in its capacity as a Member or

Economic Interest Owner, except as otherwise provided in this LLC Agreement or other agreement approved and ratified by all of the Members between the Company and such Member or Economic Interest Owner.

6.7 Amendment of Documents. Except as provided above or pursuant to a Member's or Economic Interest Owner's acquisition of an additional Economic Interest as permitted under this LLC Agreement, any adjustments in Percentage Interests shall be effectuated by amending this LLC Agreement and the execution and filing of any other documents required by the Delaware Act.

6.8 Withdrawal of Capital Contribution. Except as otherwise provided in this LLC Agreement, the affirmative vote or consent of all of the Members shall be required to modify, compromise or release the amount and/or character of a Member's or Economic Interest Owner's Capital Contribution, or any promise made by a Member as consideration for the acquisition of an interest in the Company. Under circumstances requiring the return of any Capital Contribution, no Member or Economic Interest Owner shall have the right to receive any property of the Company, other than cash, except as may be specifically provided herein.

6.9 Loans of Members. A Member or Economic Interest Owner may loan cash or other property to the Company, should additional funds be required, upon such terms as all of the Members shall agree by affirmative vote or consent. Loans by any Member or Economic Interest Owner to the Company shall not be considered as contributions to the capital of the Company. Except as otherwise provided in this LLC Agreement, none of the Members or Economic Interest Owners shall be obligated to make any loan or advance to the Company.

ARTICLE 7 ALLOCATIONS

7.1 Net Profits. After giving effect to the special allocations set forth in this Article 7, Net Profits for any fiscal year shall be allocated among the Members and Economic Interest Owners as follows and in the following order of priority:

(a) First, to the Members and Economic Interest Owners with negative Adjusted Capital Account Balances (if any), in the ratio of such negative Adjusted Capital Account Balances, up to the amount necessary to restore all such Adjusted Capital Account Balances to zero;

(b) Next, to the Members and Economic Interest Owners with positive Preference Contributions Account balances, in the ratio of their respective Preference Contributions Account balances, up to the aggregate amount (if any) necessary so that each such Member or Economic Interest Owner will have a positive Adjusted Capital Account Balance in an amount which is not less than its Preference Contributions Account balance;

(c) Next, to the Members and Economic Interest Owners in the relative amounts, and up to the aggregate amount (if any), necessary so that the Residual Capital Account Balances

of the Members and Economic Interest Owners will be in the ratio of their respective Percentage Interests; and

(d) Then, any additional Net Profits shall be allocated among the Members and Economic Interest Owners in proportion to their Percentage Interests.

7.2 Net Losses. Net Losses for any fiscal year shall be allocated among the Members and Economic Interest Owners as follows and in the following order of priority:

(a) First, to the Members and Economic Interest Owners, in the relative amounts, and up to the aggregate amount (if any), necessary so that their Residual Capital Account Balances (if any) will be in the ratio of their respective Percentage Interests;

(b) Next, to the Members and Economic Interest Owners, in the ratio of their Residual Capital Account Balances, up to the aggregate amount (if any) necessary to reduce such Residual Capital Account Balances to zero;

(c) Next, to the Members and Economic Interest Owners with positive Adjusted Capital Account Balances, up to the aggregate amount (if any) necessary to reduce such Adjusted Capital Account Balances to zero; and

(d) Then, any remaining Losses shall be allocated among the Members and Economic Interest Owners in proportion to their Percentage Interests.

7.3 Special Allocations. The following special allocations shall be made in the following order:

(a) Except as otherwise provided in Section 1.704-2(f) of the Regulations, notwithstanding any other provision of this Article 7, if there is a net decrease in Company Minimum Gain during any Company fiscal year, each Member or Economic Interest Owner shall be specially allocated items of Company income and gain for such Fiscal year (and, if necessary, subsequent Fiscal years) in an amount equal to such Member's or Economic Interest Owner's share of the net decrease in Company Minimum Gain, determined in accordance with Regulations Section 1.704-2(g). Allocations pursuant to the previous sentence shall be made in proportion to the respective amounts required to be allocated to each Member or Economic Interest Owner pursuant thereto. The items to be so allocated shall be determined in accordance with Sections 1.704-2(f)(6) and 1.704-2(j)(2) of the Regulations. This Section 7.3(a) is intended to comply with the minimum gain chargeback requirement in Section 1.704-1(f) of the Regulations and shall be interpreted consistently therewith.

(b) Except as otherwise provided in Section 1.704-1(i)(4) of the Regulations, notwithstanding any other provision of this Article 7, if there is a net decrease in Member Nonrecourse Debt Minimum Gain attributable to a Member Nonrecourse Debt during any Company fiscal year, each Member or Economic Interest Owner who has a share of the Member Nonrecourse

Debt Minimum Gain attributable to such Member Nonrecourse Debt, determined in accordance with Section 1.704-2(i)(5) of the Regulations, shall be specially allocated items of Company income and gain for such fiscal year (and, if necessary, subsequent fiscal years) in an amount equal to such Member's or Economic Interest Owner's share of the net decrease in Member Nonrecourse Debt Minimum Gain attributable to such Member Nonrecourse Debt, determined in accordance with Regulations Section 1.704-2(i)(4). Allocations pursuant to the previous sentence shall be made in proportion to the respective amounts required to be allocated to each Member or Economic Interest Owner pursuant thereto. The items to be so allocated shall be determined in accordance with Sections 1.704-2(i)(4) and 1.704-2(j)(2) of the Regulations. This Section 7.3(b) is intended to comply with the minimum gain chargeback requirement in Section 1.704-2(i)(4) of the Regulations and shall be interpreted consistently therewith.

(c) Nonrecourse Deductions for any Fiscal year shall be specially allocated among the Members and Economic Interest Owners in proportion to their Percentage Interests.

(d) Any Member Nonrecourse Deductions for any Fiscal year shall be specially allocated to the Member or Economic Interest Owner who bears the economic risk of loss with respect to the Member Nonrecourse Debt to which such Member Nonrecourse Deductions are attributable in accordance with Regulations Section 1.704-2(i)(1).

(e) To the extent an adjustment to the adjusted tax basis of any Company asset pursuant to Code Section 734(b) or Code Section 743(b) is required, pursuant to Regulations Section 1.704-1(b)(2)(iv)(m)(2) or Regulations Section 1.704-1(b)(2)(iv)(m)(4), to be taken into account in determining Capital Accounts as the result of a distribution to a Member or Economic Interest Owner in complete liquidation of its interest in the Company, the amount of such adjustment to the Capital Accounts shall be treated as an item of gain (if the adjustment increases the basis of the asset) or loss (if the adjustment decreases such basis) and such gain or loss shall be specially allocated to the Member or Economic Interest Owners in accordance with their interests in the Company in the event Regulations Section 1.704-1(b)(2)(iv)(m)(2) applies, or to the Members and Economic Interest Owners to whom such distribution was made in the event Regulations Section 1.704-1(b)(2)(iv)(m)(4) applies.

(f) In the event any Member unexpectedly receives any adjustments, allocations or distributions described in Regulations Section 1.704-1(b)(2)(ii)(d)(4), (5) or (6) resulting in a Capital Account deficit for such Member in excess of the sum of (i) the amount such Member is obligated to restore pursuant to any provision of this Agreement or pursuant to Regulations Section 1.704-1(b)(2)(ii)(c) and (ii) the amount such Member is deemed to be obligated to restore pursuant to the penultimate sentences of Regulations Sections 1.704-2(g)(1) and 1.704-2(i)(5), items of income and gain shall be specially allocated to such Member in any amount and manner sufficient to eliminate, to the extent required by the Regulations, such a Capital Account deficit as quickly as possible. The items to be allocated will be determined in accordance with Regulations Section 1.704-1(b)(2)(ii)(d)(6). This Section 7.3(f) is intended to comply with Regulations Section 1.704-1(b)(2)(ii)(d) and will be applied and interpreted in accordance with such regulation; provided, that an allocation pursuant to this Section 7.3(f) shall be made only if and to the extent that such Member

would have a Capital Account deficit after all other allocations provided for in this Article 7 have been tentatively made as if this Section 7.3(f) were not in the Agreement.

(g) In the event any Member has a deficit Capital Account at the end of any LLC taxable year in excess of the sum of (i) the amount such Member is obligated to restore pursuant to any provision of this Agreement or pursuant to Regulations Section 1.704-1(b)(2)(ii)(c) and (ii) the amount such Member is deemed to be obligated to restore pursuant to the penultimate sentences of Regulations Sections 1.704-2(g)(1) and 1.704-2(i)(5), each such Member shall be specially allocated items of LLC income and gain (consisting of a pro rata portion of each item of LLC income and gain) as quickly as possible to eliminate such excess Capital Account deficit, provided, that an allocation pursuant to this Section 7.3(g) will be made if and only to the extent that such Member would have such a Capital Account deficit in excess of such sum after all other allocations provided for in this Article 7 have been tentatively made as if Section 7.3(g) and this Section 7.3(g) were not in the Agreement.

(h) No items of loss or deduction will be allocated to any Member to the extent that any such allocation would cause the Member to have a, or increase the amount of an existing, Capital Account deficit in excess of the sum of (i) the amount such Member is obligated to restore pursuant to any provision of this Agreement or pursuant to Regulations Section 1.704-1(b)(2)(ii)(c) and (ii) the amount such Member is deemed to be obligated to restore pursuant to the penultimate sentences of Regulations Sections 1.704-2(g)(1) and 1.704-2(i)(5) at the end of any LLC taxable year. All items of loss or deduction in excess of the limitation set forth in this Section 7.3(h) shall be allocated among such other Members, which do not have such deficit Capital Account balances, pro rata, in proportion to their Percentage Interests, until no Member may be allocated any such items of loss or deduction without having or increasing such a deficit Capital Account balance. Thereafter, any remaining items of loss or deduction shall be allocated to the Members, pro rata, in proportion to their relative aggregate Percentage Interests.

(i) The allocations set forth in Sections 7.3(a), (b), (c), (d), (e), (f), (g), (h) and (i) hereof (the "Regulatory Allocations") are intended to comply with certain requirements of Regulations Sections 1.704-1(b) and 1.704-2. Notwithstanding any other provisions of this Article 7 (other than the Regulatory Allocations), the Regulatory Allocations shall be taken into account in allocating other items of income, gain, loss and deduction among the Members so that, to the extent possible, the net amount of such allocations of such other items and the Regulatory Allocations to each Member shall be equal to the net amount that would have been allocated to each such Member in each LLC taxable year if the Regulatory Allocations had not occurred. Notwithstanding the preceding sentence, Regulatory Allocations relating to (i) Nonrecourse Deductions shall not be taken into account except to the extent that there has been a decrease in Partnership Minimum Gain, and (ii) Partner Nonrecourse Deductions shall not be taken into account except to the extent that there has been a decrease in Partner Minimum Gain. Allocations pursuant to this Section 7.3(i) shall only be made with respect to Regulatory Allocations to the extent the Management Committee determines that such allocations shall otherwise be inconsistent with the economic agreement among the Members. Further, allocations pursuant to this Section 7.3(i) shall be deferred with respect to

allocations pursuant to (i) and (ii) above to the extent the Management Committee determines that such allocations are likely to be offset by subsequent Regulatory Allocations.

7.4 Other Allocation Rules.

(a) The Members and Economic Interest Owners are aware of the income tax consequences of the allocations made by this Article 7 and hereby agree to be bound by the provisions of this Article 7 in reporting their shares of Company income and loss for income tax purposes.

(b) For purposes of determining the Net Profits, Net Losses, or any other items allocable to any period, Net Profits, Net Losses, and any such other items shall be determined on a daily, monthly, or other basis, as determined by a Majority in Interest using any permissible method under Code Section 706 and the Regulations thereunder.

(c) Solely for purposes of determining a Member's or Economic Interest Owner's proportionate share of the "excess nonrecourse liabilities" of the Company, within the meaning of Regulations Section 1.752-3(a)(3), the Members' and Economic Interest Owners' interests in Company Net Profits are in proportion to their Percentage Interests.

(d) To the extent permitted by Section 1.704-2(h)(3) of the Regulations, the Members shall endeavor not to treat distributions of Net Profits as having been made from the proceeds of a Nonrecourse Liability or a Member Nonrecourse Debt.

7.5 Tax Allocations: Code Section 704(c). In accordance with Code Section 704(c) and the Regulations thereunder, income, gain, loss, and deduction with respect to any property contributed to the capital of the Company shall, solely for tax purposes, be allocated among the Members and Economic Interest Owners so as to take account of any variation between the adjusted basis of such property to the Company for federal income tax purposes and its initial Gross Asset Value (computed in accordance with Section 2.1(j)(i) hereof). The Members and Economic Interest Owners hereby agree that the "traditional method" described in Regulation Section 1.704-3(d) shall be used for allocating the disparity between the fair market value of a contributed asset and that asset's adjusted tax basis.

In the event the Gross Asset Value of any Company asset is adjusted pursuant to Section 2.1(i)(ii) hereof, subsequent allocations of income, gain, loss, and deduction with respect to such asset shall take account of any variation between the adjusted basis of such asset for federal income tax purposes and its Gross Asset Value in the same manner as under Code Section 704(c) and the Regulations thereunder. The Members and Economic Interest Owners agree that the remedial allocation method described in Regulation Section 1.704-3(d) shall be used for allocating the disparity between the fair market value and adjusted tax basis.

Other than the mandatory use of the remedial and traditional allocation method as specified above in this Section 7.5, any elections or other decisions relating to such allocations shall be made by the Management Committee in any manner that reasonably reflects the purpose and intention of

this LLC Agreement. Allocations pursuant to this Section 7.5 are solely for purposes of federal, state, and local taxes and shall not affect, or in any way be taken into account in computing, any Person's Capital Account or share of Net Profits, Net Losses, other items, or distributions pursuant to any provisions of this LLC Agreement.

ARTICLE 8
ACCOUNTING, DISTRIBUTIONS AND TAXES

8.1 Distribution of Net Profits. Within thirty (30) days after the close of the second and fourth quarters of each fiscal year, or more frequently upon the affirmative vote or consent of all of the Management Committee, forty-five percent (45%) of the Net Profits of the Company (or such greater amount as may be determined upon the affirmative vote or consent of all of the Management Committee or required to pay any "Accrued Flow-Through Tax Liability" attributed to the Members from the Company) shall be distributed to the Members and Economic Interest Owners (including holders of Units issued pursuant to Section 3.13(g) of this LLC Agreement) as follows:

(a) First, to the Members and Economic Interest Owners with positive Preference Contribution Account balances (if any) in proportion to their respective Preference Contribution Account balances, up to the amount necessary to reduce all such Preference Contribution Account balances to zero;

(b) Next, to the Members and Economic Interest Owners in the relative amounts, and up to the aggregate amount (if any), necessary so that the Residual Capital Account Balances of the Members and Economic Interest Owners will be in the ratio of their respective Percentage Interests; and

(c) The balance, if any, to the Members and Economic Interest Owners in proportion to their Percentage Interests.

Further, notwithstanding the foregoing, no distributions shall be made unless, after distribution is made, the assets of the Company are in excess of its liabilities, except amounts payable to Members or Economic Interest Owners on account of Capital Contributions.

For purposes of this Section 8.1, the term "Accrued Flow-Through Tax Liability" shall mean any federal or state tax liability assessed against the Members by virtue of any Net Profits of the Company.

8.2 Accounting. The fiscal and tax year of the Company shall be the calendar year. For tax purposes, the records of the Company shall be maintained on an accrual method of accounting. The books of account of the Company shall be kept and maintained at all times at the principal place of business of the Company or such other location as determined by the Management Committee. Each Member shall have the right at all reasonable times during usual business hours to audit, examine and make copies of or extracts from the books of account of the Company, and a list of the names and addresses of all of the Members and Economic Interest Owners. Such right may be

exercised through any agent of such Member. Each Member shall bear all expenses incurred in any examination made for its account.

As soon as reasonably practicable after the end of each calendar month, the Chief Executive Officer shall furnish each Member and Economic Interest Owner with an interim unaudited balance sheet of the Company as of the last day of such calendar month, an unaudited statement of profit or loss of the Company for such calendar month, and an unaudited statement of cash receipts and disbursements for such calendar month, each prepared in accordance with generally accepted accounting principles. As soon as reasonably practicable after the end of each fiscal and tax year, the Chief Executive Officer shall furnish each Member and Economic Interest Owner with: (i) a balance sheet of the Company as of the last day of such fiscal or tax year, a statement of profit or loss of the Company for such year, and a statement of cash receipts and disbursements, each prepared in accordance with generally accepted accounting principles and audited by the Company's independent certified public accountants; (ii) a statement showing the amounts allocated to or allocated against each Member and Economic Interest Owner pursuant to Article 7 of this LLC Agreement during or in respect of such year, and any items of income, deduction, credit, or loss allocated to them; and (iii) a copy of the federal income tax return of the Company.

8.3 Tax Elections. Upon the affirmative vote or consent of a Majority in Interest, the Tax Matters Member shall make any tax election for the Company allowed under the Internal Revenue Code of 1986, as amended; provided, however, that upon the request of a transferring or distributing Member (of LLC property), the Tax Matters Member shall make an election to cause the basis of Company property to be adjusted for federal income tax purposes as provided by Section 734 and 743 of the Internal Revenue Code of 1986, as amended, pursuant to such transfer of an Economic Interest or the death of or distribution of property to such Member or Economic Interest Owner, provided further however, that the requesting Member shall reimburse the Company for all incremental reporting costs associated therewith.

8.4 Tax Matters Member. Holdings is hereby designated as the Tax Matters Member of the Company pursuant to applicable provisions of the Internal Revenue Code of 1986, as amended, and the regulations thereunder. If Holdings ceases to be a Member, its status as Tax Matters Member shall cease, and a successor Tax Matters Member shall be as chosen by the affirmative vote or consent of all of the Members.

ARTICLE 9 REPRESENTATIONS AND WARRANTIES

9.1 In General. As of the date hereof, each Member (each a "Representing Party") makes each of the following representations and warranties applicable to such Member:

(a If such Representing Party is a corporation, partnership, trust, limited liability company, limited liability partnership or any other legal entity, it is duly organized or duly formed, validly existing, and in good standing under the laws of the jurisdiction of its incorporation or formation and has the power and authority as an entity to own its property and carry on its business

as owned and carried on at the date hereof and as contemplated hereby. Such Representing Party is duly licensed or qualified to do business and in good standing in each of the jurisdictions in which the failure to be so licensed or qualified would have a material adverse effect on its financial condition or its ability to perform its obligations hereunder. Such Representing Party has the power and authority as an entity to execute and deliver this LLC Agreement and to perform its obligations hereunder and the execution, delivery, and performance of this LLC Agreement has been duly authorized by all necessary actions of the Representing Party entity. This LLC Agreement constitutes the legal, valid, and binding obligation of such Representing Party.

(b) Neither the execution, delivery, and performance of this LLC Agreement nor the consummation by such Representing Party of the transactions contemplated hereby (i) will conflict with, violate, or result in a breach of any of the terms, conditions, or provisions of any law, regulation, order, writ, injunction, decree, determination, or award of any court, any governmental department, board, agency, or instrumentality, domestic or foreign, or any arbitrator, applicable to such Representing Party, (ii) will conflict with, violate, result in a breach of, or constitute a default under any of the terms, conditions, or provisions of the articles of incorporation, bylaws, partnership agreement, certificate of formation, articles of organization, or other formation and operating documents of such Representing Party, or of any material agreement or instrument to which such Representing Party is a party or by which such Representing Party is or may be bound or to which any of its material properties or assets is subject, (iii) will conflict with, violate, result in a breach of, constitute a default under (whether with notice or lapse of time or both), accelerate or permit the acceleration of the performance required by, give to others any material interests or rights, or require any consent, authorization or approval under any indenture, mortgage, lease agreement, or instrument to which such Representing Party is a party or by which such Representing Party is or may be bound, or (iv) will result in the creation or imposition of any lien upon any of the material properties or assets of such Representing Party.

(c) Any registration, declaration or filing with, or consent, approval, license, permit or other authorization or order by, any governmental or regulatory authority, domestic or foreign, that is required in connection with the valid execution, delivery, acceptance and performance by such Representing Party under this LLC Agreement or the consummation by such Representing Party of any transaction contemplated hereby has been completed, made or obtained on or before the effective date of this LLC Agreement.

(d) There are no actions, suits, proceedings or investigations pending or, to the knowledge of such Representing Party, threatened against or affecting such Representing Party or any of their properties, assets, or businesses in any court or before or by any governmental department, board, agency, or instrumentality, domestic or foreign, or any arbitrator which could, if adversely determined (or, in the case of an investigation could lead to any action, suit, or proceeding, which if adversely determined could) reasonably be expected to materially impair such Representing Party's ability to perform its obligations under this LLC Agreement or to have a material adverse effect on the consolidated financial condition of such Representing Party; and such Representing Party has not received any currently effective notice of any default, and such Representing Party is not in default, under any applicable order, writ, injunction, decree, permit,

determination, or award of any court; any governmental department, board, agency or instrumentality, domestic or foreign, or any arbitrator which could reasonably be expected to materially impair such Representing Party's ability to perform its obligations under this LLC Agreement or to have a material adverse effect on the consolidated financial condition of such Representing Party.

(e) Such Member is acquiring its interest in the Company based upon its own investigation, and the exercise by such Member of its rights and the performance of its obligations under this LLC Agreement will be based upon its own investigation, analysis and expertise. Such Member's acquisition of its interest in the Company is being made for its own account for investment, and not with a view to the sale or distribution thereof.

ARTICLE 10 TRANSFERABILITY

10.1 General.

(a) Except as otherwise specifically provided in this LLC Agreement, neither a Member nor an Economic Interest Owner shall have the right without the unanimous consent of the Management Committee to sell, assign, encumber, pledge, hypothecate, transfer, exchange, distribute or otherwise transfer for consideration, gift, bequeath, distribute or otherwise transfer for no consideration (whether or not by operation of law, except in the case of bankruptcy) (each such action a "Transfer") all or part of its interest in the Company. The transfer of the Economic Interest of a Bankrupt Member or Economic Interest Owner shall be governed by Sections 12.4 and 12.5 below. Any purported Transfer of any interest in the Company in contravention of this LLC Agreement shall be null and void and of no force or effect.

(b) Subject to the provisions of Section 10.1(a) above, all Transfers shall also be subject to the following rules and conditions: (i) the Transfer shall be in compliance with all applicable federal and state securities laws; (ii) the Transfer shall not result in any materially adverse tax consequence to the Company or any remaining Member; (iii) the Transfer shall not result in the Company being required to register as an investment company under the Investment Company Act of 1940, as amended, or any regulations promulgated thereunder;

10.2 Transferee Not Member in Absence of Consent. Notwithstanding anything contained in this LLC Agreement to the contrary, and except for those transfers permitted under Section 10.1 and 10.3 hereof, if all of the remaining Members do not by affirmative vote or consent approve of the proposed Transfer of a Member's or Economic Interest Owner's Economic Interest in the Company to a transferee or donee who is not a Member immediately before the Transfer and the admission of such transferee as a Member as provided in Article 11 below, the proposed transferee or donee shall have no right to participate in the management of the business and affairs of the Company, including, without limitation, any rights to appoint representatives to the Management Committee, or to become a Member. Subject to the satisfaction of the requirements of Section 10.1 above, the transferee or donee shall be merely an Economic Interest Owner. Furthermore, except as agreed upon by all of the remaining Members or as otherwise provided in this LLC Agreement

or the Delaware Act, upon a Member's transfer of its Economic Interest, such Member's rights to participate in the management and affairs of the Company, including, without limitation, its voting rights, and any rights to appoint representatives to the Management Committee, shall cease.

10.3 Rescission Agreement.

(a) Notwithstanding anything contained in this LLC Agreement to the contrary, Holdings shall be expressly permitted to rescind (the "Rescission Right") certain transactions contemplated by that certain Exchange Agreement by and among the Company, Holdings and Custom Energy dated as of the date hereof, and to exercise its rights to acquire all of the Percentage Interests and/or Economic Interests of the Company, under the Rescission Agreement. If Holdings exercises the Rescission Right, it shall become a Member with all of the rights and powers of a Member set forth in this LLC Agreement.

(b) Notwithstanding anything contained in this LLC Agreement to the contrary, if Holdings exercises its Rescission Right, Custom Energy shall have the right to acquire a 37.5% Economic Interest of the Company.

ARTICLE 11
ADMISSION OF SUCCESSOR MEMBERS OR NEW MEMBERS

11.1 Admission of Successor Members or New Members. A Person, including a transferee or donee of a Member or other Person owning an Economic Interest, shall be deemed admitted as a Member of the Company only upon the satisfactory completion of the following:

(a) All of the Members, or remaining Members, as the case may be, shall have consented to the admission of the Person as a Member of the Company and, in the case of a new Member, all of the Members shall have consented to the amount and character of the proposed Capital Contribution of such new Member.

(b) The Person shall have accepted and agreed to be bound by the terms and provisions of this LLC Agreement and such other documents or instruments as the Management Committee may require.

(c) The Person shall have executed a counterpart of this LLC Agreement to evidence the consents and agreements above, and any changes in the Certificate of Formation of the Company and this LLC Agreement shall have been executed and filed as deemed necessary by the Management Committee.

(d) If the Person is a corporation, partnership, limited liability company, trust, association or other entity, the Person shall have provided the Management Committee with evidence satisfactory to counsel for the Company of its authority to become a Member under the terms and provisions of this LLC Agreement.

(e) If required by the Management Committee, counsel for the Company or a qualified counsel for the transferee or donee or new Member, which counsel shall have been approved of by the Members, shall have rendered an opinion to the Members that the admission of the Person as a Member is in conformity with the Delaware Act and that none of the actions in connection with the admission will cause the termination or dissolution of the Company or will adversely affect its classification as a partnership for federal and state income tax purposes.

(f) The Person, as required by the Management Committee, shall have paid all reasonable legal fees of the Company and the Members and filing costs in connection with its admission as a Member.

11.2 Financial Adjustments. No new Members shall be entitled to any retroactive allocation of losses, income, or expense deductions incurred by the Company. The Company shall, at its option, at the time a Member is admitted, do one of the following (i) close the Company's books (as though the Company's tax year had ended) or (ii) make pro rata allocations of loss, income, and expense deductions to a new Member for that portion of the Company's tax year in which a Member was admitted in accordance with the provisions of Section 706 of the Internal Revenue Code of 1986, as amended, and the Treasury Regulations promulgated thereunder.

ARTICLE 12 TERM, TERMINATION, AND DISTRIBUTION UPON LIQUIDATION

12.1 Term. The term of the Company shall commence on the date the Certificate of Formation for the Company is filed in the Office of the Delaware Secretary of State in accordance with the Delaware Act and shall continue until January __, 2049, unless earlier dissolved by the unanimous written consent of all of the Members, or the provisions of the Certificate of Formation, this LLC Agreement or the Delaware Act.

12.2 Withdrawal of a Member. A Member may withdraw, retire or resign from the Company at any time upon giving ninety (90) days prior written notice of such withdrawal to the remaining Members; provided, however, that absent the approval of such withdrawal by the affirmative vote or consent of all of the remaining Members within such ninety (90) day notice period, such a withdrawal shall be deemed a breach of this LLC Agreement allowing the Company to recover from the withdrawing Member damages for such breach as reasonably determined by the remaining Members, including, without limitation, attorneys' fees, and offset such damages against the amounts otherwise distributable to the withdrawing Member.

Subject to the remaining provisions of this LLC Agreement, upon the withdrawal of a Member, the withdrawing Member shall be entitled to the "net asset value" of its Economic Interest, which amount shall be the value of the Company's assets, net of the Company's debts, liabilities and obligations; less any deficit balance in the withdrawing Member's Capital Account, such consideration which the Company shall pay in cash at the closing, which closing shall be within thirty (30) days of the date such purchase price is determined at such time and place as designated by the Company. For purposes of this determination, the value of the Company's assets, other than

cash, certificates of deposit and other instruments the value of which are readily ascertainable, shall be determined with reference to the fair market value of such assets as determined by the Company's regularly employed independent certified public accountant, which determination shall be final, binding and conclusive upon all parties.

Notwithstanding the foregoing, if such withdrawal is deemed to be a breach of this LLC Agreement as provided above, then the amount to which the withdrawing Member is entitled for its Economic Interest shall not include any amount attributable to the goodwill of the Company and shall be reduced by an amount equal to any damages attributable to such breach as described above.

12.3 Events of Dissolution. Unless the continuation of the Company's business is approved by the affirmative vote or consent of all of the remaining Members within ninety (90) days of an event of withdrawal, the Company shall immediately dissolve upon an event of withdrawal. An event of withdrawal shall include:

(a) The withdrawal, retirement or resignation of a Member absent the approval of the remaining Members and the failure to purchase a withdrawing Member's Economic Interest as provided in Section 12.2 above;

(b) In the case of a Member that is a natural person, the death or insanity of such Member or the entry by a court of competent jurisdiction adjudicating such Member incompetent to manage his person or his estate;

(c) A Member becoming a Bankrupt Member (as defined in Section 12.4 below);

(d) In the case of a Member that is a trust, the termination of the trust or the distribution of such trust's entire interest in the Company, but not merely the substitution of a new trustee;

(e) In the case of a Member that is a general or limited partnership, the dissolution and commencement of winding up of such partnership or a distribution of its entire interest in the Company;

(f) In the case of a Member that is a corporation, the filing of articles of dissolution, or their equivalent, for the corporation or revocation of its charter or its distribution of its entire interest in the Company;

(g) In the case of a Member that is an estate, the distribution by the fiduciary of the estate's entire interest in the Company;

(h) In the case of a Member that is a limited liability company, the filing of a certificate of cancellation or articles of dissolution or termination, or their equivalent, for the limited liability company or a distribution of its entire interest in the Company;

(i) The ___ day of January, 2049;

(j) The affirmative vote or consent by all of the Members to dissolve, wind up and liquidate the Company;

(k) The happening of any other event that makes it unlawful or impossible to carry on the business of the Company.

Except as otherwise provided in this LLC Agreement or the Delaware Act, upon the occurrence of an event of withdrawal as described in subsection (a) through (h) above, the Member subject of such an event shall cease to be a Member and shall thereafter be an Economic Interest Owner. An event of withdrawal shall not include a Transfer of a Member's interest pursuant to Article 10 above.

12.4 Bankruptcy of a Member. A "Bankrupt Member" shall mean any Member or Economic Interest who:

(a) makes an assignment for the benefit of its creditors;

(b) files a voluntary petition in bankruptcy;

(c) files a petition or answer seeking for itself any reorganization, arrangement, composition, readjustment, liquidation, dissolution or similar relief under any statute, law or regulation or files an answer or other pleading admitting or failing to contest the material allegations of a petition filed against it in any proceeding of such nature;

(d) seeks, consents or acquiesces in the appointment of a trustee, receiver or liquidator of the Member or Economic Interest Owner or of all or any substantial part of its property; or

(e) is the subject of any proceeding seeking reorganization, arrangement, composition, readjustment, liquidation, dissolution or similar relief under any statute, law or regulation, and one hundred twenty (120) days after commencement of such proceeding, the proceeding has not been dismissed; or without the Members' or Economic Interest Owners' consent or acquiescence has had a trustee, receiver or liquidator appointed for itself or for a substantial part of its property and the appointment is not vacated or stayed, or within ninety (90) days after the expiration of any such stay, the appointment is not vacated.

12.5 Option to Purchase. The remaining Members shall have the option to purchase the Economic Interest of a Bankrupt Member for the purchase price determined and paid in accordance with the methodology, terms and conditions provided in Section 12.2 above for the purchase of a withdrawing Member's interest; provided, however, that no discounts shall be made to the purchase price for any deemed breach of the LLC Agreement. If the remaining Members do not elect to acquire all of the Bankrupt Member's interest, the interest shall be transferred in accordance with

Article 10 above, or if not transferred, retained by the Bankrupt Member. If the remaining Members exercise their option hereunder and the Bankrupt Member fails to assign its interest in the Company at the time and place fixed for closing, then the remaining Members may enforce the obligation of the Bankrupt Member by an action for specific performance.

12.6 Cessation of Business. In the event of the occurrence of any event effecting the dissolution of the Company, the Company shall cease to carry on its business, except insofar as may be necessary for the winding up of its business, but its separate existence shall continue until the Chairman has filed a certificate of cancellation in the office of Delaware Secretary of State or until a decree terminating the Company has been entered by a court of competent jurisdiction.

12.7 Winding Up, Liquidation, and Distribution of Assets. Upon dissolution, an accounting shall be made of the accounts of the Company and of the Company's assets, liabilities and operations, from the date of the last previous accounting until the date of dissolution and the Chairman shall immediately proceed to wind up the affairs of the Company. If the Company is dissolved and its affairs are to be wound up, the Chairman shall:

(a) Collect and sell or otherwise liquidate all of the Company's assets as promptly as practicable (except to the extent a Majority in Interest may determine to distribute any assets to the Members and Economic Interest Owners in kind);

(b) Allocate any Net Profits or Net Losses resulting from such sale or other disposition of the Company's assets to the Members' and Economic Interest Owners' Capital Accounts in accordance with Section 2.1(c) above;

(c) Discharge all debts, liabilities and obligations of the Company, including those to Members and Economic Interest Owners who are creditors, to the extent otherwise permitted by law, other than debts, liabilities and obligations to Members and Economic Interest Owners for distributions, and establish such reserves as the Management Committee may deem reasonably necessary to provide for contingencies or liabilities of the Company (for purposes of determining the Capital Accounts of the Members and Economic Interest Owners, the amounts of such reserves shall be deemed to be an expense of the Company);

(d) Distribute the remaining assets to the Members and Economic Interest Owners either in cash or in kind, with any assets distributed in kind being valued for this purpose at their fair market value, as follows and in the following order of priority:

(i) First, to the Members and Economic Interest Owners with positive Preference Contribution Account balances, in proportion to their respective Preference Contribution Account balances, up to the amount necessary to reduce all such Preference Contribution Account balances to zero;

(ii) Next, to the Members and Economic Interest Owners in the relative amounts, and up to the aggregate amount (if any), necessary so that the Residual Capital Account

Balances of the Members and Economic Interest Owners will be in the ratio of their respective Percentage Interests; and

(iii) The balance, if any, to the Members and Economic Interest Owners in proportion to their Percentage Interests.

If any assets of the Company are to be distributed in kind, the fair market value of those assets as of the date of dissolution, other than cash, certificates of deposit and other instruments the value of which are readily ascertainable, shall be as determined as provided in Section 12.2 above. Those assets shall be deemed to have been sold as of the date of dissolution for their fair market value, and the Capital Accounts of the Members and Economic Interest Owners shall be adjusted pursuant to the provisions of this LLC Agreement to reflect such deemed sale;

(e) Upon completion of the winding up, liquidation and distribution of the assets, the Company shall be deemed terminated; and

(f) The remaining Members shall comply with any applicable requirements of the Delaware Act pertaining to the winding up of the affairs of the Company and the final distribution of its assets.

12.8 Certificate of Cancellation. When all debts, liabilities, and obligations have been paid and discharged or adequate provisions have been made therefor and all of the remaining assets have been distributed to the Members and Economic Interest Owners, the Chairman shall execute a certificate of cancellation setting forth the information required by the Delaware Act and shall be delivered to the Delaware Secretary of State.

12.9 Return of Contribution Nonrecourse to Other Members. Except as provided by law or as expressly provided in this LLC Agreement, upon dissolution, each Member and Economic Interest Owner shall look solely to the assets of the Company for the return of its Capital Contributions. If the Company assets remaining after the payment or discharge of the debts and liabilities of the Company is insufficient to return the Capital Contributions of the Members and Economic Interest Owners, the Members and Economic Interest Owners shall have no recourse against any other Member or Economic Interest Owner.

ARTICLE 13 MISCELLANEOUS PROVISIONS

13.1 Waiver of Right of Partition. It is specifically agreed that no Member or Economic Interest Owner shall have the right to ask for partition of the assets owned or hereafter acquired by the Company, nor shall any such Member or Economic Interest Owner have the right to any specific assets of the Company on the liquidation or winding up of the Company, except upon the affirmative vote or consent of all Members.

13.2 Notices. Except as otherwise provided in this LLC Agreement, any notice required or permitted herein shall be in writing and shall be deemed to have been delivered, whether actually received or not, two (2) calendar days after being deposited in the United States mail, by registered mail, return receipt requested, postage prepaid, addressed to the party entitled thereto at the last address of such party provided by such party to the Company. Any notice to the Company shall be sent to the Company's principal place of business.

13.3. Governing Law. This LLC Agreement has been made and executed in accordance with the Delaware Act and is to be construed, enforced, and governed in accordance therewith and with the laws of the State of Delaware. The parties agree that all actions or proceedings arising directly or indirectly from this LLC Agreement shall be commenced and litigated only in the District Court of Johnson County, Kansas, or the United States District Court for the District of Kansas, located in Kansas City, Kansas. The parties hereby consent to the jurisdiction over them of the District Court of Johnson County, Kansas, or the United States District Court for the District of Kansas, in all actions or proceedings arising directly or indirectly from this LLC Agreement.

13.4 Entire Agreement. Except as otherwise provided herein, this LLC Agreement together with the recitals and Exhibits hereto, each of which are incorporated herein by this reference, constitutes the entire agreement among the Members on the subject matter hereof and may not be changed, modified, amended, or supplemented except in writing, signed by all of the Members. All other oral or written agreements, promises, and arrangements in relation to the subject matter of this LLC Agreement are hereby rescinded.

13.5 Binding Agreement. Subject to the restrictions and encumbrances set forth herein, the terms and provisions of this LLC Agreement shall be binding upon, be enforceable by and inure to the benefit of the Members, Economic Interest Owners and their respective heirs, executors, administrators, personal representatives, successors, and assigns.

13.6 Interpretation. The descriptive headings contained in this LLC Agreement are for convenience only and are not intended to define the subject matter of the provisions of this LLC Agreement and shall not be resorted to for interpretation thereof.

13.7 Severability. If any provision of this LLC Agreement or the application thereof to any individual or entity or circumstance shall be invalid or unenforceable to any extent, the remainder of this LLC Agreement and the application of such provisions to other individuals or entities or circumstances shall not be affected thereby and shall be enforced to the greatest extent permitted by law.

13.8 Waiver. No consent or waiver, express or implied, by any Member or Economic Interest Owner to or of any breach or default by any other Member or Economic Interest Owner in the performance by such other Member or Economic Interest Owner of its obligations under this LLC Agreement shall be deemed or construed to be a consent or waiver to or of any other breach or default in the performance by such other Member or Economic Interest Owner of the same or any other obligations hereunder. The failure on the part of any Member or Economic Interest Owner to

complain of any act or failure to act of any of the other Members or Economic Interest Owners or to declare any of the other Members or Economic Interest Owners in default, irrespective of how long such failure continues, shall not constitute a waiver by such Member or Economic Interest Owner of its rights under this LLC Agreement.

13.9 Equitable Remedies. The rights and remedies of any of the Members or Economic Interest Owners hereunder shall not be mutually exclusive. Each of the Members and Economic Interest Owners confirms that damages at law may be an inadequate remedy for a breach or threatened breach of this LLC Agreement and agrees that in the event of a breach or threatened breach of any provision hereof, the respective rights and obligations hereunder shall be enforceable by specific performance, injunction or other equitable remedy, but nothing herein contained is intended to, nor shall it, limit or affect any right or rights at law or by statute or otherwise of a Member or Economic Interest Owners aggrieved as against a party for a breach or threatened breach of any provision hereof; it being the intention hereof to make clear the agreement of the Members and Economic Interest Owners that the respective rights and obligations of the Members and Economic Interest Owners hereunder shall be enforceable in equity as well as at law or otherwise.

13.10 Attorney's Fees. In the event of a default by a Member or Economic Interest Owner under this LLC Agreement, the non-defaulting Members and Economic Interest Owners shall be entitled to recover all costs and expenses, including attorney's fees, incurred as a result of said default or in connection with the enforcement of this LLC Agreement.

13.11 Counterparts. This LLC Agreement may be executed in two (2) or more counterparts, all of which taken together shall constitute one (1) instrument.

13.12 Gender. Whenever in this LLC Agreement, words, including pronouns, are used in masculine or neuter, they shall be read and construed in the masculine, feminine or neuter, as the case may be, wherever they would so apply, and wherever in this LLC Agreement, words, including pronouns, are used in the singular or plural, they shall be read and construed in the plural or singular, respectively, wherever they would so apply.

13.13 Saving Clause. In the event any provision of this LLC Agreement shall be, or shall be found to be, contrary to the Delaware Act, such provision shall be deemed amended so as to conform with such Act.

13.14 Further Documentation. Each of the parties hereto agrees in good faith to execute such further or additional documents as may be necessary or appropriate to fully carry out the intent and purpose of this LLC Agreement.

13.15 Incorporation of Recitals. The preamble and recitals to this LLC Agreement are hereby incorporated by reference and made an integral part hereof.

13.16 Indemnification. The Company shall indemnify any Member, representative on the Management Committee, Chairman or officer of the Company (each referred to as an "Indemnified

Party") who was or is a party or is threatened to be made a party to any threatened, pending or completed action, arbitration, suit or proceeding, whether civil, criminal, administrative or investigative, other than an action by or in the right of the Company, by reason of the fact that such Indemnified Party is or was a Member, representative on the Management Committee, Chairman or officer of the Company or is or was serving at the request of the Company as a director or officer of another corporation, partnership, joint venture, trust, or other enterprise, against liability incurred in connection with such action, arbitration, suit or proceeding, including attorneys' fees, judgments, fines and amounts paid in settlement actually and reasonably incurred by such Indemnified Party in connection with such action, arbitration, suit or proceeding, including any appeal thereof, if such Indemnified Party acted in good faith and in a manner such Indemnified Party reasonably believed to be in or not opposed to the best interests of the Company and, with respect to any criminal action or proceeding, had no reasonable cause to believe such Indemnified Party's conduct was unlawful, except that no indemnification shall be made in respect of any claim, issue or matter as to which such Indemnified Party shall have been adjudged to be liable for gross negligence or gross misconduct in the performance of such Indemnified Party's duty to the Company unless and only to the extent that the court or arbitration in which the action, arbitration or suit was brought determines upon application that, despite the adjudication of liability and in view of all the circumstances of the case, such Indemnified Party is fairly and reasonably entitled to indemnity for such expenses which the court or arbitration shall deem proper. The termination of any action, arbitration, suit, or proceeding by judgment, order, settlement, conviction, or upon a plea of nolo contendere or its equivalent, shall not, of itself, create a presumption that the Indemnified Party did not act in good faith and in a manner which such Indemnified Party reasonably believed to be in or not opposed to the best interests of the Company and, with respect to any criminal action or proceeding, had reasonable cause to believe that such Indemnified Party's conduct was unlawful.

[END OF PAGE]
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IN WITNESS WHEREOF, the parties hereto have signed this LLC Agreement to be effective on the date first above written.

SE HOLDINGS, L.L.C.,
a Delaware limited liability company

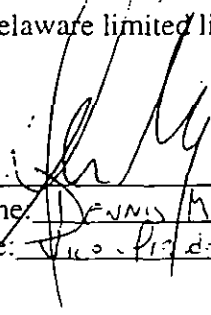
By: 
Name: DENNIS M. YALBY
Title: Vice-President

EXHIBIT A

LIMITED LIABILITY COMPANY AGREEMENT OF STRATEGIC ENERGY, L.L.C.

<u>Name</u>	<u>Description and Fair Market Value of Initial Capital Contribution</u>	<u>Number of Units of Percentage Interests</u>
SE Holdings, L.L.C.		100
Total		100

Attachment 2

Strategic Energy Ltd.
Customer Relations Department
Customer Inquiry Process

1. Strategic Energy Ltd.'s trained Customer Relation's Representatives are available Monday through Friday, 8 a.m. - 5 p.m. to answer customer inquiries regarding SEL's bills, account balances, payment information, consolidated billing, billing address or contact name changes.
2. SEL's Customer Relation's Representatives can be reached by calling 1-800-830-5923 or 412-394-5600 or through our feedback form at www.sel.com.
3. Customer inquiries are responded to quickly and courteously by SEL's trained Customer Relation's Representatives who record and classify inquiries into SEL's customer database.
4. SEL's Customer Relation's Representatives attempt to resolve customer inquiries on first contact.
5. If the customer needs additional assistance, SEL's Customer Relation's Representatives will inform the Senior Coordinator of Customer Relations who will assist with the customer inquiry.
6. SEL's Customer Relation's Representatives will then follow-up with the customer either by phone or fax within 24 hours of the initial inquiry.
7. The Senior Coordinator of Customer Relations tracks customer inquiries on a weekly basis.

NATURAL GAS SUPPLY AGREEMENT
Small Commercial Customer

This is an agreement for natural gas services between Strategic Energy L.L.C. ("SEL") and

Customer's Name: _____
 Billing Address: _____

- This agreement applies to the customer's natural gas service location at _____ under natural gas distribution company account number _____.
- See attached Schedule A for a list of multiple service locations.

Background

- SEL is licensed by the Pennsylvania Public Utility Commission ("PAPUC") to offer and supply electric supply natural gas services in Pennsylvania. Our PAPUC license number is A-125072.
- SEL sets the natural gas supply prices and charges that you pay. The PAPUC regulates distribution or delivery prices and services. The Federal Energy Regulatory Commission regulates interstate pipeline prices and services.
- If you specifically ask, SEL will bill you directly for our service.
- Right of Recision. You may cancel this agreement at any time before midnight of the third business day after signing this agreement.

Definitions

- Interstate Pipeline Charge – Charges for moving natural gas to the distribution lines of a natural gas distribution company.

Terms of Service

1. Basic Service Prices:

The rate that you will pay for the natural gas commodity will be fixed at \$_____ per (Mcf/Dth/ccf). This rate will include any applicable interstate pipeline charges and taxes.

2. Length of Agreement:

You will buy your natural gas services for the service location(s) from SEL beginning on _____. This agreement will remain in effect until _____ unless cancelled under the Cancellation Provisions in Item 10.

- 3. You agree to have your natural gas distribution company release your natural gas usage, demand history, and rate class information to SEL.**

4. Your natural gas distribution company will read your meter monthly and SEL will use this information to send you a bill each month.

5. Bill payments are due to SEL within fifteen (15) calendar days after the bill transmittal date. You may choose one of the following payment options:

You will forward to SEL your bill payment using personal check or money order.

You will enter into an electronic fund transfer payment agreement with SEL.

6. Consolidated Billing:

SEL will provide consolidated billing for a customer with multiple service locations covered under one agreement. If you do not want to receive one bill for a multiple number of locations check the box below:

I do not want consolidated billing.

7. LATE PAYMENT FEE:

PAYMENTS ARE CONSIDERED LATE IF RECEIVED BY SEL MORE THAN 15 DAYS AFTER THE BILL TRANSMITTAL DATE. IF LATE, INTEREST IS ASSESSED AT A RATE OF 1.5% PER MONTH.

8. Agreement Expiration/Change in Terms:

If your fixed term agreement with SEL is approaching the expiration date or if SEL proposes to change our terms of service, we will send you written notice in each of your last three bills or in separate mailings before either the expiration date or the effective date of changes. We will explain your options in these three advance notices.

9. Renewal Provision:

SEL and you may agree to continue this agreement under the same terms and conditions from month to month after the initial expiration date.

10. Cancellation Provision:

This agreement may be cancelled at any time by the following actions:

- Customer may cancel agreement by providing SEL with written notification ninety (90) days in advance of cancellation of agreement.
- SEL may cancel agreement by providing Customer with written notification ninety (90) days in advance of cancellation of agreement.
- If Customer does not pay their bill on time, SEL will give Customer 15 days written notification of cancellation of the agreement for nonpayment.

In the event of cancellation all further obligations of the parties to the other under the agreement shall cease without further liability, except for the payment of any sums due to SEL for services rendered prior to the cancellation date.

11. Dispute Procedures:

You should contact SEL with any questions concerning our terms of service. You may call the PAPUC if you are not satisfied after discussing your concerns with SEL.

12. Contact Information

Strategic Energy L.L.C.
Two Gateway Center, 9th Floor
Pittsburgh, PA 15222-1425
(412) 394-5600
www.sel.com

Natural Gas Distribution Company/Provider of Last Resort
Address
Phone Number

Public Utility Commission (PAPUC)
P.O. Box 3265
Harrisburg, PA 17105-3265
1-888-XXX-XXXX

Universal Service Program-use attached information to obtain
Program Name:
Phone Number:

AGREEMENT ACCEPTED

STRATEGIC ENERGY L.L.C.

PURCHASER:

By: _____

By: _____

Title: _____

Title: _____

Print Name: _____

Print Name: _____

Date: _____

Date: _____



STRATEGIC ENERGY L.L.C.
2 GATEWAY CENTER
PITTSBURGH, PA 15222
(412) 394-5600
(888) 448-5559
(412) 394-6576 Fax

SCHEDULE A
Listing of Multiple Service Locations

Customer's Name: _____

Customer's Billing Address: _____

Customer's Telephone Number: _____

The following service locations will be served by Strategic Energy Ltd. under the Natural Gas Supply Agreement.

Service Location	Natural Gas Distribution Co.	Natural Gas Distribution Co. Account #

Universal Service Program Contact List

NGDC	Program Name	Telephone Number
Columbia Gas of PA, Inc.	Customer Choice	1-888-460-4332
Equitable Gas Company	Intelligent Choice	1-800-249-6064
National Fuel Gas Distribution Co.	Customer choice	1-800-595-7510
PECO		
Penn Fuel	Monthly Aggregation Balancing (MAB)	1-800-652-0550
PG Energy	Customer Choice	Will offer in Spring 2000
The Peoples Natural Gas Company	Energy Choice	1-800-764-0111
UGI	Customer Choice	Will offer in Summer 2000

Rank(R) 1 of 1

Database
DUNBR

As current as D&B

R

DUNS: 80-077-0810
STRATEGIC ENERGY LTD

DATE PRINTED
OCT 06 1999

SUMMARY
RATING 1R2

TWO GATEWAY CENTER 8TH FLOOR
AND BRANCH(ES) OR DIVISION(S)
PITTSBURGH PA 15222
TEL: 412 394-5600

ENERGY CONSULTANT
SIC NO.
87 48

STARTED 1996
SALES \$5-10,000,000
EMPLOYS 45(43 HERE)
HISTORY CLEAR

CHIEF EXECUTIVE: RICHARD M ZOMNIR, PRES

SPECIAL EVENTS

11/06/98 ANNOUNCED CONTROL CHANGE: According to published reports, Strategic Energy Ltd (Pittsburgh, PA) and Custom Energy LLC (Shawnee Mission, KS) announced a merger agreement. Terms of the agreement were not disclosed. Custom Energy will serve as the parent company. Both companies will retain their indentities as part of the merger.

* * * CUSTOMER SERVICE * * *

If you have questions about this report, please call our Customer Service Center at 1-800-234-3867 from anywhere within the U.S. If you are outside the U.S., contact your local D&B office.

*** Additional Decision Support Available ***

Additional D&B products, credit recommendations and specialized investigations are available to help you evaluate this company or its industry. Call Dun & Bradstreet's Solution Center at 1-800-362-3425 from anywhere within the U.S.

* * * SUMMARY ANALYSIS * * *

The Summary Analysis section reflects information in D&B's file as of October 4, 1999.

RATING SUMMARY

The '1R' portion of the Rating (the Rating Classification) indicates business size of 10 or more employees for this company. The '2' on the right (Composite Credit Appraisal) indicates an overall 'good' credit appraisal. This credit appraisal was assigned because of D&B's overall assessment of the company's payment and history information.

Below is an overview of the company's D&B Rating(s) since 07/03/97:

Copr. (C) West 1999 No Claim to Orig. U.S. Govt. Works



RATING	DATE APPLIED
1R2	02/26/98
1R3	02/06/98
1R2	07/03/97

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* * * PAYMENT SUMMARY * * *

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The Payment Summary section reflects payment information in D&B's file as of the date of this report.

The PAYDEX for this company is 70.

This PAYDEX score indicates that payments to suppliers average 15 days beyond terms, weighted by dollar amounts. When dollar amounts are not considered, approximately 70% of the company's payments are within terms.

Below is an overview of the company's dollar-weighted payments, segmented by its suppliers' primary industries:

	TOTAL RCV'D	TOTAL DOLLAR AMOUNTS	LARGEST HIGH CREDIT	% W/IN TERMS	DAYS SLOW			
	#	\$	\$	%	<31	31-60	61-90	91+
					%	%	%	%
Total in D&B's file	12	58,450	25,000					
Top 10 Industries:								
1 Mfg misc office eqpt	1	25,000	25,000	100	-	-	-	-
2 Newspaper-print/publ	1	15,000	15,000	-	100	-	-	-
3 Short-trm busn credit	1	10,000	10,000	100	-	-	-	-
4 Air courier service	1	2,500	2,500	-	50	50	-	-
5 Petroleum refining	1	2,500	2,500	100	-	-	-	-
6 Telephone communictns	1	1,000	1,000	100	-	-	-	-
7 Whol computers/softwr	1	1,000	1,000	-	-	-	-	100
8 Misc business service	1	250	250	100	-	-	-	-
9 Nonclassified	1	100	100	100	-	-	-	-
10 Electric services	1	0	0	-	-	-	-	-

Other Payment Categories:

Cash experiences	0	0	0	
Payment record unknown	2	1,100	1,000	
Unfavorable comments	0	0	0	
Placed for collection				
with D&B	0	0		
other	0	N/A		

The highest 'Now Owes' on file is \$2,500

The highest 'Past Due' on file is \$500

The aggregate dollar amount of the 12 payment experiences in D&B's file equals 14.0% of this company's average monthly sales. In Dun & Bradstreet's opinion, payment experiences exceeding 10% of a company's average monthly sales can be considered representative of payment performance.

=====

PAYMENTS (Amounts may be rounded to nearest figure in prescribed ranges)

Antic - Anticipated (Payments received prior to date of invoice)
 Disc - Discounted (Payments received within trade discount period)
 Ppt - Prompt (Payments received within terms granted)

REPORTED	PAYING RECORD	HIGH CREDIT	NOW OWES	PAST DUE	SELLING TERMS	LAST SALE WITHIN
09/99	(001)	100	-0-	-0-	N30	6-12 Mos
08/99	Ppt	10000	2500	-0-		1 Mo
	Ppt	2500	-0-	-0-		4-5 Mos
	Ppt	250	-0-	-0-		6-12 Mos
	Ppt		-0-	-0-		1 Mo
	Slow 30	15000	-0-	-0-	N30	6-12 Mos
	(007)	1000	1000	-0-	N30	1 Mo
07/99	Ppt	100	-0-	-0-		1 Mo
06/99	Ppt	1000	-0-	-0-		4-5 Mos
	Slow 30-60	2500	1000	500		1 Mo
05/99	Slow 130	1000	-0-	-0-	N30	6-12 Mos
03/99	Ppt	25000				

* Payment experiences reflect how bills are met in relation to the terms granted. In some instances payment beyond terms can be the result of disputes over merchandise, skipped invoices etc.

* Each experience shown represents a separate account reported by a supplier. Updated trade experiences replace those previously reported.

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FINANCE

08/12/98 On AUG 12 1998 Dennis M Yates, v pres-fin & adm, deferred financial information.

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PUBLIC FILINGS

The following data is for information purposes only and is not the official record. Certified copies can only be obtained from the official source.

* * * UCC FILING(S) * * *

 COLLATERAL: Inventory including proceeds and products - Account(s) including
 proceeds and products - Fixtures including proceeds and products -
 Equipment including proceeds and products - and OTHERS
 FILING NO: 29791448 DATE FILED: 01/13/1999
 TYPE: Original LATEST INFO RECEIVED: 02/16/1999
 SEC. PARTY: PNC BANK NA, PITTSBURGH, PA FILED WITH: SECRETARY OF
 DEBTOR: STRATEGIC ENERGY LLC STATE/UCC DIVISION,
 PA

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 FILING NO: 30421428 DATE FILED: 06/28/1999
 TYPE: Termination LATEST INFO RECEIVED: 07/02/1999
 SEC. PARTY: PNC BANK NA, PITTSBURGH, PA ORIG. UCC FILED: 01/13/1999
 DEBTOR: STRATEGIC ENERGY LLC ORIG. FILING NO: 29791448
 FILED WITH: SECRETARY OF
 STATE/UCC DIVISION,
 PA

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 Certified copies may be obtained from the Pennsylvania Department of State.

 COLLATERAL: Inventory and proceeds - Accounts receivable and proceeds -
 Account(s) and proceeds - Vehicles and proceeds - and OTHERS
 FILING NO: 29970583 DATE FILED: 03/02/1999
 TYPE: Original LATEST INFO RECEIVED: 04/05/1999
 SEC. PARTY: CUSTOM ENERGY LLC, OVERLAND PARK KS FILED WITH: SECRETARY OF
 DEBTOR: STRATEGIC ENERGY LLC STATE/UCC DIVISION,
 PA

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 COLLATERAL: Inventory and proceeds - Accounts receivable and proceeds -
 Account(s) and proceeds - General intangibles(s) and proceeds - and
 OTHERS
 FILING NO: 29970580 DATE FILED: 03/02/1999
 TYPE: Original LATEST INFO RECEIVED: 04/05/1999
 SEC. PARTY: CUSTOM ENERGY LLC, OVERLAND PARK KS FILED WITH: SECRETARY OF
 DEBTOR: STRATEGIC ENERGY LLC STATE/UCC DIVISION,
 PA

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 Certified copies may be obtained from the Pennsylvania Department of State.

 COLLATERAL: All Account(s) and proceeds - All Chattel paper and proceeds - All
 Contract rights and proceeds
 FILING NO: 23580246 DATE FILED: 10/04/1994
 TYPE: Original LATEST INFO RECEIVED: 10/07/1994

SEC. PARTY: PNC BANK NA, PITTSBURGH, PA
DEBTOR: STRATEGIC ENERGY LTD

FILED WITH: SECRETARY OF
STATE/UCC DIVISION,
PA

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FILING NO: 30421427
TYPE: Termination
SEC. PARTY: PNC BANK NA, PITTSBURGH, PA
DEBTOR: STRATEGIC ENERGY LTD

DATE FILED: 06/28/1999
LATEST INFO RECEIVED: 07/02/1999
ORIG. UCC FILED: 10/04/1994
ORIG. FILING NO: 23580246
FILED WITH: SECRETARY OF
STATE/UCC DIVISION,
PA

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COLLATERAL: Computer equipment including proceeds and products - Equipment
including proceeds and products - Fixtures including proceeds and
products - General intangibles(s) including proceeds and products

FILING NO: 29791446
TYPE: Original
SEC. PARTY: PNC BANK NA, PITTSBURGH, PA
DEBTOR: STRATEGIC ENERGY LLC

DATE FILED: 01/13/1999
LATEST INFO RECEIVED: 02/16/1999
FILED WITH: SECRETARY OF
STATE/UCC DIVISION,
PA

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COLLATERAL: Fixtures including proceeds and products - General intangibles(s)
including proceeds and products - Equipment including proceeds and
products

FILING NO: 25990922
TYPE: Original
SEC. PARTY: PNC BANK NA, PITTSBURGH, PA
DEBTOR: STRATEGIC ENERGY PARTNERS INC

DATE FILED: 10/24/1996
LATEST INFO RECEIVED: 11/12/1996
FILED WITH: SECRETARY OF
STATE/UCC DIVISION,
PA

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COLLATERAL: Computer equipment - Fixtures

FILING NO: 26360089
TYPE: Amendment
SEC. PARTY: PNC BANK NA, PITTSBURGH, PA
DEBTOR: STRATEGIC ENERGY PARTNERS INC

DATE FILED: 02/10/1997
LATEST INFO RECEIVED: 03/21/1997
ORIG. UCC FILED: 10/24/1996
ORIG. FILING NO: 25990922
FILED WITH: SECRETARY OF
STATE/UCC DIVISION,
PA

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FILING NO:	30421429	DATE FILED:	06/28/1999
TYPE:	Termination	LATEST INFO RECEIVED:	07/02/1999
SEC. PARTY:	PNC BANK NA, PITTSBURGH, PA	ORIG. UCC FILED:	10/24/1996
DEBTOR:	STRATEGIC ENERGY PARTNERS INC	ORIG. FILING NO:	25990922
		FILED WITH:	SECRETARY OF STATE/UCC DIVISION, PA

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The public record items contained in this report may have been paid, terminated, vacated or released prior to the date this report was printed.

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HISTORY

08/12/98

RICHARD M ZOMNIR, PRES

DENNIS M YATES, V PRES-FIN AND
ADM

PATRICK J PURDY, V PRES-
OPERATIONS

DIRECTOR(S): THE OFFICER(S)

CORPORATE AND BUSINESS REGISTRATIONS REPORTED BY THE SECRETARY
OF STATE OR OTHER OFFICIAL SOURCE AS OF 09/17/1999:

The following data is for informational purposes only and is not an
official record. Certified copies may be obtained from the
Pennsylvania Department of State.

BUSINESS TYPE: Corporation -
Profit

DATE INCORPORATED: 08/12/1991
STATE OF INCORP: Pennsylvania

Present control succeeded Jan 1996.

GENERAL PARTNER: Strategic Energy Inc, Pittsburgh, PA.

RICHARD M ZOMNIR born 1948. Graduated from University of
Pittsburgh in 1973. 1973-85 active as an attorney under his own name,
Pittsburgh, PA. Discontinued satisfactorily. 1986-91 active with
Babst, Calland, Zomnir PC, Pittsburgh, PA. 1991-present active here.

DENNIS M YATES born 1949. Graduate of Point Park College,
Pittsburgh, PA. He is a certified public accountant. 1990 to present
active here. 1985-90 employed General Chemical Company. 1975-85
employed Deloitte & Touche, Pittsburgh, PA.

PATRICK J PURDY born 1951. Graduate of Indiana Institute of
Technology with a BS degree in Civil Engineering and St Francis
College with a MS degree in Business Administration. 1989 to present
active here. 1979-88 employed Central Soya Company Inc.

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Westlaw.

Westlaw.

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OPERATION

08/12/98

Operates as an objective energy consultant for natural gas, cogeneration and electricity. Terms are net 30 days. Sells to industrial and commercial concerns. Territory : North America and Europe. Nonseasonal.

EMPLOYEES: 45 which includes officer(s). 43 employed here.

FACILITIES: Rents premises in a multi story steel building.

LOCATION: Central business section on main street.

BRANCHES: The Company maintains branches in San Jose, CA and Charlotte, NC.

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STRATEGIC ENERGY PARTNERS, L.P.

Financial Statements

December 31, 1998

(With Independent Auditors' Report Thereon)



1000 Walnut, Suite 1600
P.O. Box 13127
Kansas City, MO 64199

Independent Auditors' Report

The Board of Directors
Strategic Energy Partners, L.P.:

We have audited the accompanying balance sheet of Strategic Energy Partners, L.P. as of December 31, 1998 and the related statements of operations, changes in partners' capital, and cash flows for the year then ended. These financial statements are the responsibility of the Partnership's management. Our responsibility is to express an opinion on these financial statements based on our audit.

We conducted our audit in accordance with generally accepted auditing standards. Those standards require that we plan and perform the audit to obtain reasonable assurance about whether the financial statements are free of material misstatement. An audit includes examining, on a test basis, evidence supporting the amounts and disclosures in the financial statements. An audit also includes assessing the accounting principles used and significant estimates made by management, as well as evaluating the overall financial statement presentation. We believe that our audit provides a reasonable basis for our opinion.

In our opinion, the financial statements referred to above present fairly, in all material respects, the financial position of Strategic Energy Partners, L.P. as of December 31, 1998 and the results of its operations and its cash flows for the year then ended, in conformity with generally accepted accounting principles.

KPMG LLP

October 20, 1999

STRATEGIC ENERGY PARTNERS, L.P.

Balance Sheet

December 31, 1998

Assets

Current assets:

Cash and cash equivalents	\$ 15,795
Accounts receivable (less allowance for doubtful accounts of \$125,000)	796,282
Prepaid expenses and other assets	10,135

Total current assets 822,212

Property and equipment, at cost:

Office equipment	113,868
Furniture and fixtures	162,176
Computer system	401,135
Leasehold improvements	253,828

931,007

Less accumulated depreciation 378,979

Net property and equipment 552,028

Total assets \$ 1,374,240

Liabilities and Partners' Capital

Current liabilities:

Accounts payable	151,904
Other current liabilities	256,163
Current portion of long-term debt (note 4)	1,669,915

Total current liabilities 2,077,982

Notes payable (note 4) 1,800,000

Total liabilities 3,877,982

Partners' capital (deficit) (2,503,742)

Commitments and contingencies (note 5) _____

Total liabilities and partners' capital \$ 1,374,240

See accompanying notes to financial statements.

STRATEGIC ENERGY PARTNERS, L.P.

Statement of Operations

Year ended December 31, 1998

Revenues:	
Energy sales	\$ 2,428,683
Fees from professional services	<u>4,357,740</u>
	<u>6,786,423</u>
Cost of operations:	
Cost of energy sales	2,548,393
Salaries and benefits expense for professional services	<u>3,728,476</u>
	<u>6,276,869</u>
Gross margin	509,554
General and administrative expenses	2,729,069
Interest expense	177,221
Research and development	<u>459,714</u>
Net loss	<u><u>\$ (2,856,450)</u></u>

See accompanying notes to financial statements.

STRATEGIC ENERGY PARTNERS, L.P.

Statement of Changes in Partners' Capital

Year ended December 31, 1998

Balance at beginning of year	\$ 343,428
Capital contributions	9,280
Net loss	<u>(2,856,450)</u>
Balance at end of year	<u>\$ (2,503,742)</u>

See accompanying notes to financial statements.

STRATEGIC ENERGY PARTNERS, L.P.

Statement of Cash Flows

Year ended December 31, 1998

Cash flows from operating activities:	
Net loss	\$ (2,856,450)
Depreciation and amortization	164,922
Changes in assets and liabilities:	
Trade accounts receivable	357,606
Prepaid expenses and other assets	20,553
Accounts payable	108,141
Other current liabilities	44,665
	<u> </u>
Net cash used in operating activities	<u>(2,160,563)</u>
Cash flows for investing activities – capital expenditures	<u>(48,652)</u>
Cash flows from financing activities:	
Repayment of long-term obligations	(566,412)
Proceeds from notes payable	2,777,281
Capital contributions	9,280
	<u> </u>
Net cash provided by financing activities	<u>2,220,149</u>
Net increase in cash and cash equivalents	10,934
Cash and cash equivalents at beginning of year	<u>4,861</u>
Cash and cash equivalents at end of year	<u>\$ 15,795</u>
Cash paid for interest	<u>\$ 177,221</u>

See accompanying notes to financial statements.

STRATEGIC ENERGY PARTNERS, L.P.

Notes to Financial Statements

December 31, 1998

(1) Description of the Business and Summary of Significant Accounting Policies

Effective January 1, 1996, Strategic Energy Partners, L.P. (d/b/a Strategic Energy, Ltd.) was formed as a Pennsylvania limited partnership. The Partnership provides strategic planning and consulting services in the natural gas and electricity markets as well as power supply coordination services, purchasing electricity and reselling it to retail end users.

Strategic Energy Partners, L.P. (the Partnership) was capitalized with \$904,332 of net assets contributed from Strategic Energy, Ltd. (a corporation), which received special interests in the Partnership in exchange for the contribution of net assets.

(a) *Revenue Recognition*

Revenues are recorded when earned. Accounts receivable include unbilled revenue for professional services which is recorded at the estimated billing value of unbilled hours incurred on client work. Total unbilled revenue included in accounts receivable was approximately \$282,000 at December 31, 1998.

(b) *Use of Estimates*

Management has made a number of estimates and assumptions relating to the reporting of assets and liabilities and the disclosure of contingent assets and liabilities to prepare these financial statements in conformity with generally accepted accounting principles. Actual results could differ from those estimates.

(c) *Property and Equipment*

Property and equipment are stated at cost. Depreciation on property and equipment is calculated on the straight-line method over the estimated useful lives of the assets, generally five to seven years.

(d) *Income Taxes*

The Partnership does not provide for income taxes because the results of operations are included in the tax returns of the individual partners.

(e) *Research and Development*

Costs incurred in the creation of new products or in changing existing products are charged to expense as incurred.

(f) *Reimbursable Client Expense Advances*

Reimbursable client expense advances are recorded as assets when paid by the Partnership. Subsequently, such expenses are billed to the respective clients.

STRATEGIC ENERGY PARTNERS, L.P.

Notes to Financial Statements

December 31, 1998

(g) Cash and Cash Equivalents

Cash and cash equivalents for purposes of the statement of cash flows include all short-term investments with original maturities of three months or less.

(2) Related Party

The Partnership is an affiliate of Babst, Calland, Clements & Zomnir, P.C., (BCCZ). The Partnership has related party transactions with BCCZ for rent expense totaling \$287,000 for the year ended December 31, 1998. In addition, BCCZ did not charge the Partnership for service fees related to management assistance, accounting, human resources, marketing, and legal assistance.

(3) Employee Benefit Plan

The Partnership has a defined contribution profit sharing plan which covers substantially all of its employees. Contributions are based on a percentage of earnings as determined annually by the Board of Directors. The profit sharing plan also has a 401(k) provision whereby the Partnership matches 50% of employee contributions up to the first 4% of the employee's salary or wages. Pension expense was approximately \$60,843 for the year ended December 31, 1998.

(4) Notes Payable

A summary of long-term debt is as follows:

PNC Bank, N.A. line of credit	\$ 1,239,915
PNC Bank, N.A. convertible line of credit	130,000
Unsecured demand note payable	300,000
Custom Energy, L.L.C. note payable	<u>1,800,000</u>
Total long-term debt	3,469,915
Less current portion	<u>1,669,915</u>
	<u>\$ 1,800,000</u>

PNC Bank, N.A. Line of Credit and Convertible Line of Credit

The Partnership has a \$1,300,000 committed line of credit with PNC Bank, N.A. which bears interest at the bank's prime rate (7.75% at December 31, 1998) and expires June 30, 1999. At December 31, 1998, \$1,239,915 was outstanding under the agreement.

The Partnership also had a \$600,000 convertible line of credit with PNC Bank, N.A. which bore interest at the bank's prime rate. At the conversion date, June 30, 1997, the loan converted to a term loan, payable monthly over sixty months, and bearing interest at 7.75% at December 31, 1998. Principal payments of \$10,000 are due monthly until July 31, 1999 when the principal payment amount is reduced to \$2,000 monthly through May 31, 2000. A final payment of all outstanding principal and interest is due on June 30, 2002.

STRATEGIC ENERGY PARTNERS, L.P.

Notes to Financial Statements

December 31, 1998

Both the PNC Bank, N.A. line of credit and convertible line of credit contain, among other things, covenants relating to: maintenance of certain minimum levels of earnings and maintenance of a ratio of minimum funds operations to the total of current maturities, plus unfunded capital expenditures, plus dividends of at least 1.0 to 1.

Both the PNC Bank, N.A. line of credit and convertible line of credit are secured by all Partnership assets and are personally guaranteed by the general partner.

Demand Note Payable

The Partnership also had a \$300,000 unsecured demand note payable to Strategic Energy, Inc., a related party, which bears interest at 7.94%.

Custom Energy, L.L.C. Note Payable

Custom Energy, L.L.C. has agreed to provide the Partnership an extended note which is limited to \$3,500,000 through January 31, 2003. The terms of the agreement allow the Partnership to borrow and repay Custom Energy, L.L.C. as often as necessary with all borrowed funds due on or before January 31, 2003. As of December 31, 1998, the Partnership had an outstanding balance of \$1,800,000. Outstanding borrowings bear interest at the prime rate of PNC Bank, N.A. plus 1% (8.75% at December 31, 1998). The note payable was extended to the Partnership based on transactions of February 24, 1999, which are described in note 6.

Subsequent to December 31, 1998, all outstanding PNC Bank, N.A. obligations and the unsecured demand note payable were retired with the proceeds of borrowings from a second Custom Energy, L.L.C. note payable, which bears interest at prime and is due in full on May 30, 2000.

Maturities

Debt maturities after giving effect to the additional borrowing described above are as follows:

<u>Year</u>	<u>Amount</u>
1999	\$ —
2000	1,800,000
2001	—
2002	—
2003	<u>1,800,000</u>
	<u>\$ 3,600,000</u>

STRATEGIC ENERGY PARTNERS, L.P.

Notes to Financial Statements

December 31, 1998

(5) **Commitments and Contingencies**

(a) *Commitments*

The Partnership leases its office space (from a related party) and certain equipment under operating leases. Rental expense under the leases for the year ended December 31, 1998 was \$298,600. Leases are expected to be renewed or replaced as leases expire. Future minimum lease payments under noncancelable operating leases as of December 31, 1998 are as follows:

<u>Year</u>	<u>Amount</u>
1999	\$ 343,018
2000	406,655
2001	420,622
2002	414,152
2003	405,652
2004 and thereafter	<u>2,081,526</u>
Total	<u>\$ 4,071,625</u>

The Partnership has entered into certain agreements with members of management which guarantee these members minimum fixed levels of compensation at various rates for each individual in return for providing services to the Partnership. All of the agreements extend through December 31, 2002. The aggregate commitments related to these agreements are \$525,000 annually.

The Partnership has entered into an agreement with Allegheny Power to purchase a minimum of 262,800 MWh of electricity at rates of \$22.00/MWh, \$22.50/MWh, and \$23.00/MWh for the years 1999, 2000, and 2001, respectively.

The Partnership has entered into an agreement to buy options which give the Partnership the right to purchase specified amounts of electricity at fixed rates ranging from \$20.50/MWh to \$21.00/MWh. The cost of the options total \$4,966,920, \$7,095,600, and \$7,095,600 for the years 1999, 2000, and 2001, respectively.

(b) *Contingencies*

The Partnership is involved in various claims and legal actions arising in the ordinary course of business. In the opinion of management, the ultimate disposition of these matters will not have a material impact on the Partnership's financial position or results of operations.

(6) **Subsequent Events**

On February 24, 1999, the Partnership and all of its interest were acquired by Custom Energy, L.L.C.

STRATEGIC ENERGY, LTD.
Pittsburgh, Pennsylvania

Report on Reviews of Financial Statements
For the years ended December 31, 1997 and 1996

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To the Partners
Strategic Energy, Ltd.
Pittsburgh, Pennsylvania

We have reviewed the accompanying balance sheets of Strategic Energy, Ltd. (a limited partnership) as of December 31, 1997 and 1996, and the related statements of operations, changes in partners' capital and cash flows for the years then ended, in accordance with Statements on Standards for Accounting and Review Services issued by the American Institute of Certified Public Accountants. All information included in these statements is the representation of the management of the Partnership.

A review consists principally of inquiries of Partnership personnel and analytical procedures applied to financial data. It is substantially less in scope than an audit in accordance with generally accepted auditing standards, the objective of which is the expression of an opinion regarding the financial statements taken as a whole. Accordingly, we do not express such an opinion.

Based on our reviews, we are not aware of any material modifications that should be made to the accompanying financial statements in order for them to be in conformity with generally accepted accounting principles.



Pittsburgh, Pennsylvania
March 7, 1998

STRATEGIC ENERGY, LTD.

BALANCE SHEETS

ASSETS

	December 31	
	<u>1997</u>	<u>1996</u>
CURRENT ASSETS		
Cash and cash equivalents	\$ 4,860	\$ 9,687
Accounts receivable:		
Fee revenue, net of allowance for doubtful accounts of \$118,000 in 1997 and \$150,000 in 1996	1,080,409	1,097,025
Client cost advances	66,112	53,633
Other	47,117	64,871
	<u>1,193,638</u>	<u>1,215,529</u>
Prepaid expenses	<u>30,688</u>	<u>19,195</u>
 Total Current Assets	 1,229,186	 1,244,411
 EQUIPMENT AND LEASEHOLD IMPROVEMENTS - AT COST		
Office equipment	466,801	154,841
Leasehold improvements	253,379	164,368
Furniture and fixtures	162,176	95,202
	<u>882,356</u>	<u>414,411</u>
Less - Accumulated depreciation and amortization	214,057	79,567
	<u>668,299</u>	<u>334,844</u>
	<u>\$ 1,897,485</u>	<u>\$ 1,579,255</u>

The accompanying notes and accountants' review report should be read with these financial statements.

LIABILITIES AND PARTNERS' CAPITAL

	December 31	
	1997	1996
CURRENT LIABILITIES		
Notes payable	\$ 1,129,046	\$ 517,978
Accounts payable:		
Trade	43,763	131,011
Other	95,231	37,008
	<u>138,994</u>	<u>168,019</u>
Accrued liabilities	<u>116,267</u>	<u>97,861</u>
Total Current Liabilities	1,384,307	783,858
 LONG-TERM DEBT	 130,000	 -
 PARTNERS' CAPITAL	 383,178	 795,397
	 <u>\$ 1,897,485</u>	 <u>\$ 1,579,255</u>

STRATEGIC ENERGY, LTD.

STATEMENTS OF OPERATIONS
FOR THE YEARS ENDED DECEMBER 31, 1997 AND 1996

	Amount		Percent of Revenue	
	1997	1996	1997	1996
FEE REVENUE	\$ 4,299,359	\$ 4,286,710	100.0 %	100.0 %
SALARIES AND RELATED EXPENSES	3,318,437	2,863,047	77.2	66.8
GENERAL AND ADMINISTRATIVE EXPENSES	1,389,100	1,588,848	32.3	37.1
	<u>4,707,537</u>	<u>4,451,895</u>	<u>109.5</u>	<u>103.9</u>
Net Loss	<u>\$ (408,178)</u>	<u>\$ (165,185)</u>	<u>(9.5) %</u>	<u>(3.9) %</u>

The accompanying notes and accountants' review report should be read with these financial statements.

STRATEGIC ENERGY, LTD.

STATEMENTS OF CHANGES IN PARTNERS' CAPITAL
FOR THE YEARS ENDED DECEMBER 31, 1997 AND 1996

	<u>1997</u>	<u>1996</u>
BALANCE, January 1	\$ 795,397	-
Capital contributions:		
Net value of assets transferred	-	\$ 904,332
Other	-	56,250
	<u>795,397</u>	<u>960,582</u>
Capital distributions	(4,041)	-
Net loss	<u>(408,178)</u>	<u>(165,185)</u>
BALANCE, December 31	<u>\$ 383,178</u>	<u>\$ 795,397</u>

The accompanying notes and accountants' review report should be read with these financial statements.

STRATEGIC ENERGY, LTD.

STATEMENTS OF CASH FLOWS
FOR THE YEARS ENDED DECEMBER 31, 1997 AND 1996

	<u>1997</u>	<u>1996</u>
CASH FLOWS FROM OPERATING ACTIVITIES		
Net loss	\$ (408,178)	\$ (165,185)
Adjustments to reconcile net income to net cash provided by operating activities:		
Depreciation and amortization	134,490	49,908
(Decrease) increase in allowance for bad debts	(32,000)	150,000
Changes in assets and liabilities:		
Accounts receivable	43,533	(464,905)
Prepaid expenses	(11,493)	(3,959)
Accounts payable	(29,025)	161,758
Accrued liabilities	18,406	54,869
	<u>(284,267)</u>	<u>(217,514)</u>
Net Cash Used In Operating Activities		
CASH FLOWS FROM INVESTING ACTIVITIES		
Purchase of equipment and leasehold improvements	(467,945)	(301,289)
CASH FLOWS FROM FINANCING ACTIVITIES		
Net borrowings on notes payable	741,068	517,978
Partners' capital contributions	10,358	6,142
Partners' capital distributions	(4,041)	-
Cash received with contribution of net assets	-	4,370
	<u>747,385</u>	<u>528,490</u>
Net Cash Provided By Financing Activities		
(Decrease) increase in Cash and Cash Equivalents	(4,827)	9,687
CASH AND CASH EQUIVALENTS - Beginning of Year	<u>9,687</u>	<u>-</u>
CASH AND CASH EQUIVALENTS - End of Year	<u>\$ 4,860</u>	<u>\$ 9,687</u>

The accompanying notes and accountants' review report should be read with these financial statements.

STRATEGIC ENERGY, LTD.

STATEMENTS OF CASH FLOWS
FOR THE YEARS ENDED DECEMBER 31, 1997 AND 1996

(Continued)

	<u>1997</u>	<u>1996</u>
SUPPLEMENTAL DISCLOSURE OF CASH FLOW INFORMATION		
Cash paid during the year for:		
- Interest	<u>\$ 60,378</u>	<u>\$ 8,856</u>

SUPPLEMENTAL SCHEDULE OF NONCASH INVESTING AND FINANCING ACTIVITIES

Partners' contribution of net assets on January 1, 1996 as follows:

Accounts receivable	\$ 791,402
Costs advanced	59,114
Prepaid expenses	15,236
Fixed assets, net	<u>83,463</u>
	949,215
Accounts payable	(6,261)
Accrued liabilities	<u>(42,992)</u>
	899,962
Cash	<u>4,370</u>
Total	<u>\$ 904,332</u>

Partners' initial capital contributions amounted to \$56,250 of which \$39,750 and \$50,108 is included in accounts receivable - other at December 31, 1997 and 1996, respectively.

The accompanying notes and accountants' review report should be read with these financial statements.

STRATEGIC ENERGY, LTD.

NOTES TO FINANCIAL STATEMENTS
DECEMBER 31, 1997 AND 1996

NOTE 1 - ORGANIZATION

Effective January 1, 1996, Strategic Energy Partners, L.P. (d/b/a Strategic Energy, Ltd.), was formed as a Pennsylvania limited partnership. The Partnership provides strategic planning and consulting services in the natural gas and electricity markets.

Strategic Energy Partners, L.P. was capitalized with \$904,332 of net assets contributed from Strategic Energy, Ltd. (a corporation), which received special interests in the Partnership in exchange for the contribution of net assets. Capital contributions of \$56,250 were also received from the general partner and other limited partners.

For 1997, revenues from the three largest clients approximated 41% of total revenues. Accounts receivable outstanding from this concentration approximated 11% at December 31, 1997.

NOTE 2 - SUMMARY OF SIGNIFICANT ACCOUNTING POLICIES

A summary of significant accounting policies applied by management in the preparation of the accompanying financial statements follows.

Management Estimates - The preparation of financial statements in conformity with generally accepted accounting principles requires management to make estimates and assumptions that affect the reported amounts of assets and liabilities and disclosure of contingent assets and liabilities at the date of the financial statements and the reported amounts of revenues and expenses during the reporting period. Actual results could differ from those estimates.

Cash and Cash Equivalents - The Partnership considers highly liquid investments purchased with a maturity of three months or less to be cash equivalents. The Partnership maintains at a financial institution cash and cash equivalents which may exceed federally insured amounts at times.

Equipment and Leasehold Improvements - Depreciation and amortization are provided on the straight-line and accelerated methods over the estimated useful lives of the assets. Repairs and maintenance which do not extend the lives of the applicable assets are charged to expense as incurred.

Revenues - Revenues are recorded when earned. Accounts receivable includes unbilled work-in-process which is the billing value of unbilled hours at year-end incurred on client work. Total unbilled work-in-process included in accounts receivable was approximately \$380,000 and \$369,000 at December 31, 1997 and 1996, respectively.

Income Taxes - The Partnership is not subject to federal or state income taxes. The taxable income or loss of the Partnership is included in the tax returns of the individual partners.

Reclassifications - Certain reclassifications have been made to the financial statements for the year ended December 31, 1996 to conform to the current year's presentation.

STRATEGIC ENERGY, LTD.

NOTES TO FINANCIAL STATEMENTS
DECEMBER 31, 1997 AND 1996

NOTE 3 - RELATED PARTY

During 1997 and 1996, the Partnership shared certain expenses with a related party.

NOTE 4 - NOTES PAYABLE

Notes payable consist of the following at December 31:

	<u>1997</u>	<u>1996</u>
The Partnership has a \$1,100,000 committed line of credit with PNC Bank, N.A. which bears interest at the bank's prime rate (8.5% at December 31, 1997) and expires June 30, 1998.	\$ 709,046	\$ 285,000
The Partnership also had a \$600,000 convertible line of credit with PNC Bank, N.A. which bore interest at the bank's prime rate. At the conversion date, June 30, 1997, the loan converted to a term loan, payable monthly over 60 months bearing interest at 7.91% at December 31, 1997. Principal payments of \$10,000 are due monthly until July 31, 1999 when the principal amount is reduced to \$2,000 monthly through May 31, 2002. A final payment of all outstanding principal and interest is due on June 30, 2002.	250,000	232,978
The Partnership also has a \$300,000 unsecured demand note payable to Strategic Energy, Inc., a related party, which bears interest at 7.94%.	300,000	-
	<u>1,259,046</u>	<u>517,978</u>
Less - payments due within one year	<u>1,129,046</u>	<u>517,978</u>
	<u>\$ 130,000</u>	<u>-</u>

The above lines of credit are collateralized by all assets of the Partnership and are personally guaranteed by the general partner.

STRATEGIC ENERGY, LTD.

NOTES TO FINANCIAL STATEMENTS
DECEMBER 31, 1997 AND 1996

NOTE 5 - PROFIT SHARING 401(k) PLAN

The Partnership has a profit sharing 401(k) plan covering substantially all employees. Under the Plan, each participant may contribute to the Plan a percentage of their compensation up to 20%. The firm's required matching contribution is equal to 50% of the participants contribution not to exceed 4% of their compensation. The Partnership may make an additional discretionary contribution on behalf of the participants. The Partnership contributed approximately \$48,000 and \$37,000 of matching contributions to the Plan for the years ended December 31, 1997 and 1996, respectively.

NOTE 6 - LEASE COMMITMENTS

The Partnership leases its office space and certain equipment under operating leases through December 2002. Total rent expense for the years ended December 31, 1997 and 1996 approximated \$225,000 and \$215,000, respectively. The future minimum lease payments required under operating leases that have initial or remaining noncancelable lease terms in excess of one year as of December 31, 1997 are as follows:

<u>Year Ending</u> <u>December 31</u>	<u>Minimum</u> <u>Lease</u> <u>Payments</u>
1998	\$ 236,000
1999	277,000
2000	270,000
2001	264,000
2002	262,000
	<u>\$ 1,309,000</u>



CUSTOM ENERGY, L.L.C.

Combined Financial Statements

December 31, 1998 and 1997

(With Independent Auditors' Report Thereon)



1000 Walnut, Suite 1600
P.O. Box 13127
Kansas City, MO 64199

Independent Auditors' Report

The Board of Directors
Custom Energy, L.L.C.:

We have audited the accompanying combined balance sheets of Custom Energy, L.L.C. as of December 31, 1998 and 1997 and the related combined statements of operations, members' equity, and cash flows for the years then ended. These combined financial statements are the responsibility of the Company's management. Our responsibility is to express an opinion on these combined financial statements based on our audits.

We conducted our audits in accordance with generally accepted auditing standards. Those standards require that we plan and perform the audit to obtain reasonable assurance about whether the combined financial statements are free of material misstatement. An audit includes examining, on a test basis, evidence supporting the amounts and disclosures in the combined financial statements. An audit also includes assessing the accounting principles used and significant estimates made by management, as well as evaluating the overall combined financial statement presentation. We believe that our audits provide a reasonable basis for our opinion.

In our opinion, the combined financial statements referred to above present fairly, in all material respects, the financial position of Custom Energy, L.L.C. as of December 31, 1998 and 1997 and the results of its operations and its cash flows for the years then ended, in conformity with generally accepted accounting principles.

KPMG LLP

February 24, 1999



CUSTOM ENERGY, L.L.C.

Combined Balance Sheets

December 31, 1998 and 1997

Assets	1998	1997
Current assets:		
Cash and cash equivalents	\$ 94,205	3,486,442
Accounts receivable (less allowance for doubtful accounts of \$90,980 in 1998 and \$78,000 in 1997)	5,864,365	3,803,209
Energy demand side management (DSM) contracts receivable (note 4)	883,684	371,171
Costs and estimated earnings in excess of billings on uncompleted contracts (note 3)	1,630,483	2,403,579
Inventory (note 2)	499,677	300,235
Net investments in sales-type leases	—	35,354
Notes receivable	154,998	173,255
Other receivables (note 4)	—	1,793,706
Prepaid expenses and other assets	203,206	271,464
	<u>9,330,618</u>	<u>12,638,415</u>
Property and equipment, at cost:		
Automobiles	17,353	17,353
Furniture and fixtures	239,851	234,163
Equipment and computer software	797,881	623,582
Leasehold improvements	160,577	162,881
	<u>1,215,662</u>	<u>1,037,979</u>
Less accumulated depreciation	572,804	325,333
	<u>642,858</u>	<u>712,646</u>
DSM contracts receivable (note 4)	2,481,817	1,843,000
Notes receivable (note 5)	2,455,910	811,706
Noncomplete agreement, net of accumulated amortization	—	83,334
Other assets	1,254,808	1,318,743
	<u>16,166,011</u>	<u>17,407,844</u>
	\$	\$
Liabilities and Members' Equity		
Current liabilities:		
Notes payable (note 5)	\$ —	19,827
Accounts payable	2,038,187	2,338,479
Accrued expenses	193,203	470,791
Billings in excess of costs and estimated earnings on uncompleted contracts (note 3)	957,319	499,055
Other current liabilities	211,391	189,982
	<u>3,400,100</u>	<u>3,518,134</u>
Total current liabilities		
Notes payable (note 5)	1,775,000	—
Deferred revenue	3,485,607	2,884,608
Commissions payable and other liabilities	704,896	948,836
Monitoring costs	1,182,005	956,822
	<u>10,547,608</u>	<u>8,308,450</u>
Members' equity - 10,000,000 units (note 10)	5,618,403	9,099,394
Commitments and contingencies (note 9)		
	<u>16,166,011</u>	<u>17,407,844</u>
	\$	\$

See accompanying notes to combined financial statements.

CUSTOM ENERGY, L.L.C.

· Combined Statements of Operations

Years ended December 31, 1998 and 1997

	<u>1998</u>	<u>1997</u>
Revenues:		
Contract revenues earned (note 4)	\$ 20,738,757	27,528,954
Other	<u>67,695</u>	<u>432,167</u>
	<u>20,806,452</u>	<u>27,961,121</u>
 Cost of revenues earned:		
Contract revenues (note 9)	16,520,659	20,140,379
Other	<u>38,047</u>	<u>247,689</u>
	<u>16,558,706</u>	<u>20,388,068</u>
Gross margin	4,247,746	7,573,053
 General and administrative expenses	<u>5,124,607</u>	<u>5,458,083</u>
	(876,861)	2,114,970
 Other income (expense):		
Interest and other income	428,560	729,720
Interest expense (note 9)	<u>(248,659)</u>	<u>(444,089)</u>
Net (loss) income	<u>\$ (696,960)</u>	<u>2,400,601</u>

See accompanying notes to combined financial statements.

CUSTOM ENERGY, L.L.C.

Combined Statements of Members' Equity

Years ended December 31, 1998 and 1997

	<u>1998</u>	<u>1997</u>
Balance at beginning of year	\$ 9,099,394	7,895,685
Capital contributions	2,329,275	932,384
Capital distributions	(5,113,306)	(2,129,276)
Net (loss) income	<u>(696,960)</u>	<u>2,400,601</u>
Balance at end of year	\$ <u>5,618,403</u>	<u>9,099,394</u>

See accompanying notes to combined financial statements.

CUSTOM ENERGY, L.L.C.

Combined Statements of Cash Flows

Years ended December 31, 1998 and 1997

	<u>1998</u>	<u>1997</u>
Cash flows from operating activities:		
Net (loss) income	\$ (696,960)	2,400,601
Adjustments to reconcile net (loss) income to net cash (used in) provided by operating activities:		
Depreciation and amortization	330,805	230,232
Changes in assets and liabilities:		
Receivables	(267,450)	2,421,970
Energy DSM contracts receivable	(1,151,330)	6,797,163
Net costs and estimated earnings in excess of billings on uncompleted contracts	1,231,360	(492,643)
Notes receivable	(1,625,947)	(134,232)
Inventory	(199,442)	67,509
Prepaid expenses and other assets	132,193	(415,377)
Accounts payable	(300,292)	(3,552,563)
Accrued expenses	(277,588)	(62,689)
Deferred revenue	600,999	1,772,633
Commissions payable and other liabilities	2,602	12,414
	<u>(2,221,050)</u>	<u>9,045,018</u>
Net cash (used in) provided by operating activities		
Cash flows from investing activities:		
Capital expenditures, net	(177,683)	(479,279)
Decrease in net investments in sales-type lease	35,354	60,128
	<u>(142,329)</u>	<u>(419,151)</u>
Net cash used in investing activities		
Cash flows from financing activities:		
Repayment of long-term obligations	—	(2,202,970)
Proceeds from issuance of notes payable to KLT Energy Services, Inc.	3,775,000	1,175,000
Repayment of notes payable to KLT Energy Services, Inc.	(2,019,827)	(2,175,000)
Repayment of note payable to bank under revolving line of credit	—	(876,147)
Capital contributions	2,329,275	932,384
Capital distributions	(5,113,306)	(2,129,276)
	<u>(1,028,858)</u>	<u>(5,276,009)</u>
Net cash used in financing activities		
	<u>(3,392,237)</u>	<u>3,349,858</u>
Net (decrease) increase in cash and cash equivalents		
Cash and cash equivalents at beginning of year	<u>3,486,442</u>	<u>136,584</u>
Cash and cash equivalents at end of year	<u>\$ 94,205</u>	<u>\$ 3,486,442</u>
Cash paid for interest	<u>\$ 248,661</u>	<u>397,977</u>

See accompanying notes to combined financial statements.

CUSTOM ENERGY, L.L.C.

Notes to Combined Financial Statements

December 31, 1998 and 1997

(1) Description of the Business and Summary of Significant Accounting Policies

The combined financial statements include the financial statements of Environmental Lighting Concepts, Inc. (ELC) and Power System Solutions, L.L.C. (PSS). A series of transactions occurred between January 1, 1997 and June 16, 1997 which ultimately resulted in the combination of the operations of the two companies into one company, Custom Energy, L.L.C., a Delaware limited liability company (the Company). The combined financial statements have been prepared to give effect to these transactions effective January 1, 1997.

On January 1, 1997, ELC formed a subsidiary, CE – Missouri, L.L.C. (CEMO), a Missouri limited liability company, and transferred a majority of its assets to this entity. On January 1, 1997, ELC sold a 70% interest in CEMO to KLT Energy Services (KLT). On June 16, 1997, MTB Energy, Inc. (MTB), a 50% owner of PSS, sold 10% of its interest in PSS to KLT, resulting in KLT owning 60% of PSS. On June 16, 1997, MTB, KLT, and ELC formed the Company, to which the assets and liabilities of PSS and CEMO were contributed.

The resulting ownership of the Company is 63% owned by KLT, a second tier subsidiary of Kansas City Power & Light Company, 29% owned by MTB, and 8% owned by ELC.

Subsequent to transactions disclosed in note 11, the resulting ownership of the Company is 47% owned by KLT, 22% owned by MTB, 6% owned by ELC, and 25% owned by SE Holdings L.L.C.

The Company is organized as a Delaware limited liability company and shall dissolve on December 31, 2046.

The Company is engaged in (i) the business of designing and installing efficient lighting systems and other equipment in existing facilities, including commercial, industrial, retail, health care, municipal, governmental, or school district facilities; (ii) the provision of energy management services and energy audits, including consulting, contracting for installation of equipment, and/or energy efficient measures, energy control devices, maintenance of energy-related equipment, and energy usage monitoring services; and (iii) the provision of power supply coordination services, direct power, and gas and competitive power purchasing strategies to commercial and industrial customers.

No member shall be personally liable for the expense, liabilities, or obligations of the Company, except as agreed to by that member.

(a) Principles of Combination

In combination, all significant intercompany accounts and transactions have been eliminated.

CUSTOM ENERGY, L.L.C.

Notes to Combined Financial Statements

December 31, 1998 and 1997

(b) Revenue Recognition

Construction contracts and energy demand side management (DSM) contracts are accounted for generally under the percentage-of-completion method, wherein contract revenues are recognized in the proportion that contract costs incurred (which measures actual contract performance) bear to the estimates of total contract costs. Revenue on energy DSM contracts is recognized when (1) contracts between the Company, the utility company, and the utility customer have been executed, (2) the cash flow stream of payments has been quantified and fixed, and (3) as the equipment is being installed. Interest on the financing portion of the contracts is recognized as earned at rates established at the outset of the financing.

Contract costs include direct materials, direct labor, and fringe benefits. Indirect expenses and selling and administrative costs are charged to expense as incurred. Contract losses are recognized in full at such time as current estimates of total costs indicate that a loss will result upon completion.

For contracts that extend over more than one year, adjustments to cost and profit estimates during the course of the work are reflected in the accounting period in which facts which require the revision become known. Costs and estimated earnings in excess of billings and billings in excess of costs and current estimated earnings related to contracts in progress are included in the accompanying combined balance sheets as current assets and current liabilities, respectively, as they will be liquidated in the normal course of contract completion although completion may require more than one year.

(c) Use of Estimates

Management has made a number of estimates and assumptions relating to the reporting of assets and liabilities and the disclosure of contingent assets and liabilities to prepare these combined financial statements in conformity with generally accepted accounting principles. Actual results could differ from those estimates.

(d) Inventories

Inventories consist of new and used equipment and spare parts and are stated at the lower of cost or market. Cost is determined using the first-in, first-out method.

(e) Property and Equipment

Property and equipment is stated at cost. Depreciation on property and equipment is calculated on the straight-line method over the estimated useful lives of the assets, generally five to seven years.

(f) Income Taxes

The Company does not provide for income taxes because the results of operations are included in the taxable income of the members.

CUSTOM ENERGY, L.L.C.

Notes to Combined Financial Statements

December 31, 1998 and 1997

(g) Allocation of Earnings/Losses

Allocation of earnings/losses of the Company is made in the same proportion as the members' ownership interests except for certain income and expenses which are allocated according to the operating agreement.

(h) Noncompete Agreement

A noncompete agreement was amortized on a straight-line basis over six years and became fully amortized in 1998.

(i) Cash and Cash Equivalents

Cash and cash equivalents for purposes of the combined statements of cash flows include all short-term investments with original maturities of three months or less.

(j) Option Plan

The Company applies Accounting Principles Board (APB) Opinion No. 25, *Accounting for Stock Issued to Employees*, and related interpretations in accounting for its option plan and, accordingly, no compensation cost has been recognized for options granted in the combined financial statements. The pro forma disclosures of the impact on net income if fair values had been used to recognize compensation expense under Statement of Financial Accounting Standards (SFAS) No. 123, *Accounting for Stock Based Compensation*, have not been provided, as the impact would not be material to the Company's results of operations.

(k) Other Assets

Other assets consist principally of escrowed deposits and acquired contract rights. The escrowed deposits, aggregating \$559,225, were required to be made by the Company to ensure compliance with its service and maintenance obligations pursuant to a guaranteed savings energy management agreement. Amounts are distributed from escrow on a quarterly basis with any remaining amount distributable on September 30, 2006.

The contract rights were purchased in 1997 at a cost of \$719,058 and give the Company the exclusive right to market and install DSM measures at approved customer locations of an electric utility company. The contract rights are being amortized over future periods.

(l) Deferred Revenue

Deferred revenue represents amounts received under maintenance service contracts obtained in connection with sales of lighting systems and other equipment. These contracts are normally for a ten to fifteen-year period with revenue being recognized over the term of the contract.

(m) Reclassifications

Certain prior year amounts have been reclassified to conform with the current year presentation.

CUSTOM ENERGY, L.L.C.

Notes to Combined Financial Statements

December 31, 1998 and 1997

(2) Inventories

Inventories at December 31, 1998 and 1997 consisted of the following:

	<u>1998</u>	<u>1997</u>
Equipment	\$ 25,064	7,738
Spare parts	95,108	126,605
Lighting equipment	<u>379,505</u>	<u>165,892</u>
	\$ <u>499,677</u>	<u>300,235</u>

(3) Costs and Estimated Earnings on Uncompleted Contracts

Information about uncompleted contracts at December 31, 1998 and 1997 is as follows:

	<u>1998</u>	<u>1997</u>
Costs incurred on uncompleted contracts	\$ 14,585,684	7,216,568
Estimated earnings	<u>3,307,462</u>	<u>1,674,361</u>
	17,893,146	8,890,929
Less billings	<u>17,219,982</u>	<u>6,986,405</u>
	\$ <u>673,164</u>	<u>1,904,524</u>
Included in accompanying combined balance sheets under the following captions:		
Costs and estimated earnings in excess of billings on uncompleted contracts	\$ 1,630,483	2,403,579
Billings in excess of costs and estimated earnings on uncompleted contracts	<u>(957,319)</u>	<u>(499,055)</u>
	\$ <u>673,164</u>	<u>1,904,524</u>

Balances billed, but not paid by customers, under retainage provisions in contracts amounted to approximately \$456,000 and \$325,000 at December 31, 1998 and 1997, respectively.

(4) Energy DSM Contracts

The Company has contracts with an electric utility company whereby the Company will receive payments from the utility over ten to fifteen-year periods, based upon the measured energy savings of projects performed for customers of the utility, for which the Company is the project sponsor with the utility. In addition, these projects usually require some level of payments direct from the customer.

CUSTOM ENERGY, L.L.C.

Notes to Combined Financial Statements

December 31, 1998 and 1997

Energy DSM contracts receivable represent the net present value as of December 31, 1998 of the estimated payments to be received from the utility for the measured energy savings and for payments due from the customer. These estimated payments are discounted at 12%. The customer contract requires the customer to maintain levels of utilization as designated in the contract or pay termination penalties.

In 1997, the Company sold certain DSM contracts receivable with an approximate carrying value of \$10,400,000 for approximately \$11,634,000, of which \$1,793,706 was uncollected as of December 31, 1997 and is reflected as other receivables in the combined balance sheet. The gain on these sales amounted to approximately \$1,234,000 and is recorded as contract revenues earned in the 1997 combined statement of operations.

In 1997, the Company entered into an agreement to settle a commission payable liability which was originally established in connection with an energy DSM contract and payable from the rebates received over the term of the related contract. The liability had a carrying value of \$1,108,000 and was settled for \$800,000. This settlement resulted in a gain of \$308,000 which is recorded as other income in the 1997 combined statement of operations.

(5) Notes Payable

KLT has agreed to provide the Company an extended note which is limited to \$3,500,000 through January 31, 2003. The terms of the agreement allow the Company to borrow and repay KLT as often as necessary with all borrowed funds due on or before January 31, 2003. As of December 31, 1998, the Company had an outstanding balance of \$1,775,000. The Company borrowed funds from KLT and, in turn, lent the funds to Strategic Energy LLC (SEL) in contemplation of the transaction outlined in note 11. The same terms of the note payable are extended to SEL for the \$1,800,000 note receivable. Based on transactions of February 24, 1999, which are described in note 11, the Company merged with SEL, thus eliminating the note receivable.

(6) Line of Credit

The Company has a revolving line of credit with KLT of \$2,000,000 against which there are no outstanding borrowings at December 31, 1998. This revolving line of credit agreement expires on February 28, 1999 with interest due quarterly based on the prime rate.

(7) Deferred Compensation Plan

The Company sponsors a deferred compensation plan in accordance with Internal Revenue Code 401 covering all full-time employees. Employees must generally complete ninety days of service to be eligible. The Company will contribute an amount equal to 50% of the first 6% of an employee's compensation contributed. Deferred compensation expense was approximately \$83,000 and \$61,000 for the years ended December 31, 1998 and 1997, respectively.

CUSTOM ENERGY, L.L.C.

Notes to Combined Financial Statements

December 31, 1998 and 1997

(8) Related Party Transactions

During 1998, the Company paid approximately \$1,301,000 for construction services performed by affiliated entities, and incurred approximately \$120,000 for interest and fees on the line of credit with KLT and guarantees or collateral provided by KLT.

(9) Commitments and Contingencies

(a) Commitments

The Company has operating leases for administrative offices. Rental expense under the leases for the years ended December 31, 1998 and 1997 was \$297,000 and \$295,000, respectively. Leases are expected to be renewed or replaced as leases expire. Future minimum lease payments under noncancelable operating leases as of December 31, 1998 are as follows:

<u>Year</u>	<u>Amount</u>
1999	\$ 208,960
2000	154,325
2001	129,099
2002	<u>71,295</u>
	\$ <u>563,679</u>

The Company has guaranteed energy savings under certain contracts and is required to pay the customers for any shortfalls in actual savings. The Company was not required to pay under any guaranteed energy savings agreements during 1998 and 1997. The amounts of future guaranteed savings at December 31, 1998 were as follows:

1999	\$ 3,713,000
2000	3,588,000
2001	3,034,000
2002	3,034,000
2003	3,034,000
Thereafter	<u>10,630,000</u>
	\$ <u>27,033,000</u>

The Company is required under certain contracts with customers to maintain either a letter of credit or performance bond to collateralize performance under the contract. These contingent obligations will only be drawn by the customer if the Company fails to perform under the construction contract. The amount of the outstanding performance bond as of December 31, 1998 was approximately \$649,000. The Company is also required to maintain letters of credit to collateralize performance on energy DSM contracts (see note 4) in process. As of December 31, 1998, the Company had two letters of credit totaling \$1,200,000 for energy DSM contracts. As of December 31, 1998, management is not aware of any potential drawings under the letter of credit or claims made to the surety under the performance bond.

CUSTOM ENERGY, L.L.C.

Notes to Combined Financial Statements

December 31, 1998 and 1997

(b) Contingencies

The Company is involved in various claims and legal actions arising in the ordinary course of business. In the opinion of management, the ultimate disposition of these matters will not have a material impact on the Company's financial position or results of operations.

(10) Option Plan

In 1997, the Company adopted an option plan (the Plan) pursuant to which the Management Committee, as defined in the Plan, may grant options to employees. The Plan authorizes grants of options for up to 1,000,000 units of economic interest in the Company. Options are granted with an exercise price equal to six times EBITDA, as defined, in the year immediately preceding the year in which the option is granted, but not less than \$2 per unit. All options have ten-year terms and vest over a five-year period.

At December 31, 1998, there were 716,600 options available for future grant under the Plan. During 1998, the Company extended 184,500 options at an exercise price of \$2.00 per unit. Options relating to 27,400 units were either forfeited or not accepted and options relating to 283,400 units were outstanding at December 31, 1998.

(11) Subsequent Events

On February 24, 1999, the Company issued 3,333,334 units of economic interests, representing 25% of the total outstanding economic interests in the Company, after giving effect to the transaction, in exchange for the assignment and transfer to the Company of all the issued and outstanding limited liability company interests of Strategic Energy LLC, a Delaware limited liability company (SEL). SEL provides objective energy consulting and management services to end users of natural gas and electricity, and through its Power Supply Coordination service, it objectively manages the electricity needs of customers. The units have been valued at \$5,000,000. The acquisition will be accounted for as a purchase with the estimated excess of acquisition cost over the fair value of SEL's net tangible assets of \$7,250,000 allocated to goodwill and amortized over ten years. Under the terms of a Rescission Agreement, the former owner of SEL has the option to rescind the transaction in the event the aggregate EBITDA of the Company, excluding the results of SEL, does not exceed \$6,000,000 for the two-year period following the closing date. The Company would retain an option to purchase a 37.5% interest in SEL for \$3,000,000 after the rescission.

CUSTOM ENERGY, L.L.C.

Notes to Combined Financial Statements

December 31, 1998 and 1997

The unaudited pro forma information below presents combined results of operations as if the acquisition had occurred at the beginning of the respective periods presented. The pro forma results give effect to certain purchase accounting adjustments, including additional amortization expense from goodwill.

	Pro forma results (unaudited) years ended December 31,	
	<u>1998</u>	<u>1997</u>
Revenues	\$ 27,264,375	32,260,480
Net income (loss)	<u>(4,278,410)</u>	<u>1,267,423</u>

This pro forma financial information is presented for comparative purposes only and is not necessarily indicative of the operating results that actually would have occurred had the SEL acquisition been consummated on January 1, 1997. In addition, these results are not necessarily indicative of future results.

STRATEGIC ENERGY L.L.C.
CHIEF OFFICERS

Richard M. Zomnir, President & Chief Executive Officer
Patrick J. Purdy, Chief Operating Officer
Dennis M. Yates, Chief Financial Officer



RICHARD M. ZOMNIR

Mr. Zomnir is the President and Chief Executive Officer of Strategic Energy Ltd. which provides **objective** energy consulting and management services to end-users of natural gas and electricity throughout the U.S. and Canada. In 1970 Mr. Zomnir received his B.A. degree in Economics from the University of Pittsburgh, where he graduated cum laude. In 1973 Mr. Zomnir received his J.D. from the University of Pittsburgh, where he was Editor-in-Chief of the University of Pittsburgh Law Review and a member of the Order of the Coif.

Mr. Zomnir has worked in the natural gas and electricity markets for 27 years as an objective energy manager and consultant. He founded SEL to help end-users to reliably

maximize their supply side cost reduction opportunities in the natural gas and electricity markets.

SEL has over 100 full-time employees who work with end-users in 48 states, 5 Canadian provinces and South America. SEL operates a 24-hour, 365 day Energy Management Center which accesses real-time natural gas and electricity market and operational information so that SEL can procure and manage the lowest cost natural gas and electricity for its customers. No other objective entity has an around-the-clock Energy Management Center to help end-users maximize their leverage in the natural gas and electricity markets.

SEL energy professionals are experts at aggregating natural gas and electricity loads and extracting the maximum savings from the marketplace through real-time management at the Energy Management Center. SEL procures and manages over \$1.5 billion of natural gas and electricity each year for commercial and manufacturing customers.

SEL offers a full range of objective energy management and consulting services including, but not limited to, Power Supply Coordination services, Generation Asset Optimization services, Electricity and Natural Gas Consulting services, Integrated Energy Management services, and Daily Gas Management services and Energy Price Forecasting services.

SEL has participated in the emerging competitive electricity marketplace by helping to shape the state and federal regulatory framework as well as procuring and managing electricity for commercial and manufacturing customers.



PATRICK J. PURDY

Mr. Purdy joined Strategic Energy Ltd., an objective energy consulting and management firm, in 1989 and he currently holds the position of Chief Operating Officer, where he is responsible for all natural gas and electricity management and consulting services, as well as developing the firm's business. He has developed optimization strategies for many of the firm's clients that have resulted in substantial cost savings. Mr. Purdy has also worked with industrial and commercial groups in developing regulatory and legislative policies in energy issues. Recently, Mr. Purdy has been working with Strategic Energy Ltd.'s Power Supply

Coordination Services to implement retail access programs in Pennsylvania and other states. Mr. Purdy has performed strategic planning and fuel management services for Strategic Energy Ltd.'s clients in forty-eight states, Canada, Mexico, Central America and the Carribean.

In 1979 Mr. Purdy joined Central Soya Company, Inc., one of the world's largest processors of soybeans, as Senior Project Engineer. In 1985 Mr. Purdy was promoted to Facilities Manager of the company's largest production plant, where he was responsible for engineering, maintenance, energy and environmental services. This assignment included managing a cogeneration facility. He was later promoted to Corporate Energy Manager with responsibility for nine major facilities. In that capacity, Mr. Purdy managed all of the electricity and natural gas purchasing for the company.

Mr. Purdy received his B.S. in civil engineering from Indiana Institute of Technology, and his M.S. in business administration from St. Francis College in Indiana. Mr. Purdy began his career with Gilbert/Commonwealth Associates, Inc., where he eventually served as the firm's project manager during construction of a large coal-fired generating plant in Western Pennsylvania.



DAVID A. BOGER

David Boger is Manager of Commercial Accounts for Strategic Energy Ltd., an objective energy consulting and management firm. Mr. Boger is responsible for developing strategic planning and supply procurement services for commercial and small industrial clients. Mr. Boger also holds the position of Senior Energy Consultant. This position involves overseeing the daily and monthly natural gas purchasing and strategic planning requirements for several of the firm's corporate clients. Specific responsibilities involve negotiating natural gas purchasing transportation and storage contracts, developing long-term natural gas procurement and budgeting strategies, implementing inventory management and accounting services and advising clients on state and Federal regulatory matters that impact plant operations.

Mr. Boger has also held the position of Natural Gas Consultant and Senior Natural Gas Consultant for the law firm of Babst, Calland, Clements and Zomnir, P.C. and Strategic Energy, Ltd. This position involved working with senior management to develop new natural gas management accounts and develop procedures for managing the new client accounts.

Prior to joining Babst, Calland, Clements and Zomnir, P.C. and Strategic Energy Ltd., Mr. Boger worked for Industrial Energy Services Company (IESCO) in Pittsburgh as a Marketing Representative. His role was focused on developing and maintaining a customer base behind pipeline systems in Pennsylvania, New York and West Virginia. Mr. Boger was involved with negotiating short and long-term contracts with natural gas producers in Pennsylvania, New York, West Virginia and Ohio and reselling the supplies to industrial clients. Mr. Boger also managed the company's transportation contracts on several interstate pipeline systems.

Mr. Boger received his B.S. in Geology from Allegheny College in 1984 and his M.S. in Mineral Economics from The Pennsylvania State University in 1986.

HANS E. ROTTMANN

Hans Rottmann joined Strategic Energy Ltd. in January 2000 as Portfolio Manager, Natural Gas. Mr. Rottmann will be participating in the development of the retail natural gas aggregation program. He will also apply his energy experience to strategic and tactical issues relating to both natural gas and electricity.

Most recently, Mr. Rottmann worked at Columbia Energy Services as an Asset Manager. He was responsible for optimizing the energy assets of fuel management customers and was also the project leader over industrial fuel management accounts. Prior to working at Columbia Energy Services, he was a natural gas trader at CNG Energy. He initially traded northeast physical supplies and, later, was responsible for trading CNG Energy's long-term gulf coast physical and financial positions. Mr. Rottmann began his career at National Fuel Gas Company as a pipeline gas accountant and advanced to Manager of Hub Services, administering the Ellisburg-Leidy Northeast Hub Company, a market area hub.

Mr. Rottmann earned a Bachelors of Science Degree in Accounting and Management Information Systems from the State University of New York at Buffalo. While working at National Fuel, he also earned a Masters in Business Administration from the State University of New York at Buffalo.



JEANNE MURPHY RUDICK

Ms. Rudick is Director of Fuel Management Services with Strategic Energy Ltd., where she has been employed since 1993. In this position, Ms. Rudick is responsible for overseeing the gas management activities for all of SEL's fuel management clients. In this position, Ms. Rudick is experienced at performing all the daily gas management functions and directs the efforts of fifteen energy professionals who purchase gas supplies, nominate on pipelines, balance daily accounts, implementing risk management strategies and maximize the use of supply, transportation and storage resources. In addition, Ms. Rudick is

responsible for marketing SEL's services to potential fuel management clients.

Ms. Rudick brings to Strategic Energy Ltd. an extensive business background. Prior to joining SEL, she was employed as a Treasury Analyst in the Corporate Finance Department of Duquesne Light Company ("DLC"), a wholly owned subsidiary of DQE. In this capacity, Ms. Rudick was primarily responsible for completing multi-million dollar refinancing of the utility's long-term debt. Prior to joining DLC, Ms. Rudick was a member of the Corporate Banking Division of Mellon Bank, N.A. where she was responsible for developing and maintaining business in the food and beverage industries. Ms. Rudick also held several senior analytical positions with Mellon Bank in the Credit Review and Corporate Finance Departments. Ms. Rudick began her career with Ernst & Young where she was a Senior Auditor.

Ms. Rudick earned a B.S. in Business Administration from Bowling Green State University with a double major in Finance and Accounting. Ms. Rudick is a Certified Public Accountant and has also completed Mellon Bank's formal Credit Training Program. Ms. Rudick is a member of the Pennsylvania Institute of Certified Public Accountants.

PENNSYLVANIA PUBLIC UTILITY COMMISSION

IN THE MATTER OF THE APPLICATION OF: A-110025

Application of Strategic Energy Partners Ltd. for the right to offer, render, furnish or supply electric generation supplier services to the public in the Commonwealth of Pennsylvania.

The Pennsylvania Public Utility Commission hereby certifies that after an investigation and/or hearing, it has, by its report and order made and entered, found and determined that the granting of the application is necessary or proper for the service, accommodation, convenience and safety of the public and hereby issues, evidencing the Commission's approval, to the applicant this;

LICENSE FOR ELECTRIC GENERATION SUPPLIER.

In Witness Whereof, The PENNSYLVANIA PUBLIC UTILITY COMMISSION has caused these presents to be signed and sealed, and duly attested by its Secretary at its office in the city of Harrisburg this 1st day of January 1999.

James G. McNulty

Secretary



SEL NATURAL GAS SUPPLY SERVICES SUMMARY

Detailed below are the services SEL offers to its commercial, industrial and institutional customer classes.

SEL's natural gas supply service entails providing the customer's full requirements for natural gas through a customer pool which SEL will manage. Also included in SEL's service offering are functions necessary to ensure reliable and cost-effective delivery of natural gas to the customer pool via direct supply purchases or through the procurement of firm transportation capacity on the interstate pipelines that deliver natural gas to the utility system. Unless otherwise arranged with the customers in the aggregated pool, all natural gas supplies will be delivered on a "firm" basis and can not be interrupted for any reason other than a failure of the upstream pipeline's or utility's equipment or a system emergency.

SEL proposes three pricing options for this service:

- Market price option – Customer pays a pre – established market index price of natural gas as procured by SEL on either a month – to – month, seasonal or annual basis. This offers the potential for the lowest possible price since the customer assumes all price volatility risk. In addition, the customer pays SEL a management fee that is established with the customer up - front.
- Market price with cap – Customer pays the market price up to a specified cap. Customer also pays a small premium to cover the provision of a price cap and SEL's management fee.
- Fixed price option – Customer pays SEL a fixed price for a pre – established contract term.