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PROPOSED AMENDMENT NO. 1 TO TU ELECTRIC'S
COMANCHE PEAK STEAM ELECTRIC STATION UNIT 2
APPLICATION FOR SPECIAL NUCLEAR MATERIAL LICENSE

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Page Number Date

1 1/29/88

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TEXAS UTILITIES ELECTRIC COMPANY

COMANCHE PEAK STEAM ELECTRIC STATION UNIT 2

APPLICATION FOR SPECIAL NUCLEAR MATERIAL LICENSE

This application is filed pursuant to Title 10, Chapter 1, Code Federal Regulations, Part 70 for authorization to receive, store, inspect, and package for transport unirradiated nuclear fuel assemblies for Unit 2 of the Comanche Peak Steam Electric Station (CPSES). The term of the Special Nuclear Material License requested is for the period beginning [date of issuance] until receipt of the permanent operating license.

The applicants are Texas Utilities Electric Company (TU Electric), Brazos Electric Power Cooperative, Inc. (BEPC), and Tex-La Electric Cooperative of Texas, Inc. (TEX-LA). TU Electric, BEPC and TEX-LA (collectively the "Owners") respectively own 94-1/30%, 3 4/5% and 2 1/6% interest in the station as tenants in common. Neither TU Electric nor the Owners are owned or controlled by an alien, foreign corporation, or foreign government.

TU Electric is the lead applicant and, as such, through its generating division, acts for the other Applicants for design, construction, and operation, as well as representation in licensing matters.

The location of the office and principal officers for TU Electric and Owners, Docket Nos. 50-445 and 50-446, for Operating Licenses (Class 103) for the Comanche Peak Steam Electric Station Units 1 and 2. Communications pursuant to this license application should be sent to:

Mr. W. G. Council
Executive Vice President
Texas Utilities Electric Company
Skyway Tower
400 N. Olive, L.B. 81
Dallas, Texas 75201

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AGREEMENT

between

TEXAS MUNICIPAL POWER AGENCY

TMPA

and

TEXAS UTILITIES ELECTRIC COMPANY

TU Electric

Dated as of February 12, 1988

29164

TABLE OF CONTENTS

	<u>PAGE</u>
DEFINITIONS	1
RECITALS	8
ARTICLE I, SALE AND PURCHASE	9
1.1 Properties and Assets Sold and Purchased	9
1.2 Closings	9
1.3 Transfer of Purchased Assets	9
1.4 Method of Payment	10
1.5 Payment of Total Payment	10
(a) Payment Upon Signing	10
(b) Payment at the Initial Closing	11
(c) Payments at Subsequent Closings	11
(d) Application of Payments	11
ARTICLE II, REPRESENTATIONS, WARRANTIES AND AGREEMENTS OF TMPA .	11
2.1 Legal Status	11
2.2 Authority for Agreement	11
2.3 Approvals	13
2.4 Liabilities	13
2.5 Nontaxable Status	14
2.6 Title to Real Property	14
2.7 Title to Personal Property	15
2.8 Litigation	15
2.9 Contracts	16
2.10 Exclusion of Implied Warranties	16
2.11 Accuracy of Representations and Warranties	16
ARTICLE III, REPRESENTATIONS, WARRANTIES AND AGREEMENTS OF TU ELECTRIC	16
3.1 Corporate Status	16
3.2 Authority for Agreement	17
3.3 Approvals	17
3.4 Authority for TUC Guaranty	18
3.5 Accuracy of Representations and Warranties	18
ARTICLE IV, TMPA'S PRE-CLOSING OBLIGATIONS	18
4.1 Representations, Warranties and Covenants	18
4.2 Abatement of Participation in Pending Litigation	19
4.3 Agreement to Obtain Approvals	23

ARTICLE V, CONDITIONS TO OBLIGATIONS TO CLOSE.	23
5.1 Conditions to Obligation of TMPA to Close	23
(a) Representations and Warranties	23
(b) Compliance With Agreement	23
(c) Receipt of Payment	24
(d) Receipt of Closing Documents	24
5.2 Conditions to Obligation of TU Electric to Close	24
(a) Representations and Warranties	24
(b) Compliance with Agreement	24
(c) Delivery of Pending Litigation Documentation	25
(d) Approval of the Cities	25
(e) Receipt of Closing Documents	26
5.3 Conditions to Obligation of Parties to Initially Close	26
(a) No Adverse Proceeding	26
(b) Waiver of Right of First Refusal	26
(c) Compliance with Statute	28
(d) Approval by PUC	28
(e) Approval by NRC	30
(f) Execution of Transmission Services Agreement	31
(g) Execution of Power Purchase Agreement	32
ARTICLE VI, CLOSING DOCUMENTS FROM TMPA	32
6.1 Deeds and Transfers, etc.	32
6.2 Lien Search	32
6.3 Cities Documents	32
6.4 Certificate of Secretarial Officer	33
6.5 Counsel Opinions	33
ARTICLE VII, CLOSING DOCUMENTS FROM TU ELECTRIC	33
7.1 Proof of Payment.	33
7.2 Other Instruments.	33
7.3 Certificate of Secretarial Officer	33
7.4 Counsel's Opinion	34
ARTICLE VIII, CLOSING AND INDEMNIFICATION	34
8.1 Indemnification by TMPA	34
8.2 Indemnification by TU Electric	35
8.3 Survival of Representation and Warranties	35
8.4 Notice of Opportunity to Participate in Defense	35
ARTICLE IX, SETTLEMENT OF PENDING LITIGATION	36
9.1 TMPA Release	36
9.2 Covenant Not to Sue	37
9.3 TU Electric Release	40
9.4 Assumption of Liabilities and Obligations and Indemnification	40
9.5 Covenant of Cooperation.	42
9.6 Termination of Participation	42
9.7 TU Electric Actions and Litigation Costs	44
9.8 Termination of Joint Ownership Agreement Relationship	44
9.9 Permission to be Sued	45
9.10 Releases, etc. from the Cities	45

ARTICLE X, TMPA PROGRESS PAYMENTS	45
10.1 Assumption of Payments	45
ARTICLE XI, TERMINATION OF AGREEMENT	45
11.1 Termination of Agreement by TU Electric	45
11.2 Termination of Agreement by TMPA.	46
11.3 Automatic Termination	47
ARTICLE XII, MISCELLANEOUS PROVISIONS	48
12.1 Bulk Sales Law Waiver	48
12.2 Further Assurance	48
12.3 No Third Party Beneficiaries	48
12.4 Default	49
12.5 Property and Transfer Taxes	49
(a) Property Taxes	49
(b) Transfer Taxes	50
12.6 Expenses.	50
12.7 Governing Law	50
12.8 Announcements.	50
12.9 Entire Agreement, Amendments	50
12.10 Assigns, etc.	50
12.11 Notices	51
12.12 Headings.	52
12.13 Execution and Counterparts	52
12.14 Interest on Past Due Payments	52
12.15 Use of Representations or Recitals	52
12.16 Separate Litigation	52
12.17 Construction of Comanche Peak	52
12.18 Severability	53

LIST OF EXHIBITS

		<u>PAGE</u>
Exhibit A	- Escrow Agreement	2
Exhibit B	- Guaranty	2
Exhibit C	- Special Warranty Deed and Bill of Sale	6
Exhibit D	- City Ordinance	25
Exhibit E	- City Release and Covenant Not to Sue	25
Exhibit F	- Notice of First Right of Refusal	26
Exhibit G	- Bailey, Fulbright & Jaworski and City Attorney Opinions	33
Exhibit H	- Worsham, Forsythe, Sampels & Wooldridge Opinion	34
Exhibit I	- TMPA Release	37
Exhibit J	- TMPA Covenant Not to Sue	39
Exhibit K	- TU Electric Release	40
Exhibit L	- TU Electric Assumption and Indemnity Agreement	41
Exhibit M	- TMPA Indemnity Agreement	42

THIS AGREEMENT is made and entered into this 12th day of February, 1988 by and between the following parties:

TEXAS MUNICIPAL POWER AGENCY, a Texas municipal corporation, a political subdivision of the State of Texas, and a body politic and corporate, having its principal office at two and one-half (2 1/2) miles on FM 244 north of Carlos, Grimes County, Texas ("TMPA"), and **TEXAS UTILITIES ELECTRIC COMPANY**, a Texas corporation, having its principal office at 2001 Bryan Street, Suite 1900, Dallas, Dallas County, Texas ("TU Electric", and where appropriate in the context of this Agreement, TU Electric may include TU Electric's corporate predecessors, Dallas Power & Light Company, Texas Electric Service Company and Texas Power & Light Company).

DEFINITIONS

As used in this Agreement and in the Exhibits attached hereto, unless otherwise specified therein, the following terms shall have the following meanings:

- (a) "Agreement" means this Agreement and the Schedule and all Exhibits attached to this Agreement.
- (b) "BEPC" means Brazos Electric Power Cooperative, Inc.
- (c) "Business Day" means a day on which banks in Dallas, Texas are open for regular banking business.
- (d) "Cities" means the Cities of Bryan, Denton, Garland and Greenville, Texas.
- (e) "Closing" means the Initial Closing or any Subsequent Closing hereunder.
- (f) "Closing Date" means the Initial Closing Date or any Subsequent Closing Date hereunder.
- (g) "Comanche Peak" means the nuclear-fueled electric generating facility under construction on certain lands situated in Hood and Somervell Counties, Texas, and consisting of two units having a nominal capacity of 1,150 megawatts each, and related properties, and is the aggregate and combination of the

Station, Fuel and Transmission Facilities, and all other rights and interests associated with or relating to all of the same.

- (h) "Concurrent Ordinances" means the concurrent ordinances adopted by the Cities in connection with the establishment of TMPA.
- (i) "Escrow Agent" means Texas Commerce Bank (Dallas).
- (j) "Escrow Agreement" means the form of Escrow Agreement attached hereto as Exhibit A.
- (k) "Fuel" means the Comanche Peak nuclear fuel, irrespective of chemical and/or physical form, and the rights and interests related thereto.
- (l) "Guaranty" means the form of Guaranty of TUC attached hereto as Exhibit B.
- (m) "Initial Closing" means the consummation, pursuant to this Agreement, of the initial sale of a portion of the Purchased Assets by TMPA to TU Electric and the purchase of such portion of the Purchased Assets by TU Electric, as described in Section 1.3 hereof.
- (n) "Initial Closing Date" means such date on or before September 22, 1988, as may be agreed upon by the parties for the Initial Closing, which date shall be within thirty (30) days after the last to occur of the NRC Affirmative Date or the PUC Affirmative Date.
- (o) "Initial Payment" means the amount equal to Fifty-One Million, Eight Hundred Seventy-Three Thousand Dollars (\$51,873,000) and (ii) an incremental amount equal to One Hundred Five Thousand, Six Hundred Nine Dollars and Eleven Cents (\$105,609.11) per day from and including the date of execution of this Agreement to the Initial Closing Date.
- (p) "Joint Ownership Agreement" means that certain instrument entitled on the cover page thereof "Joint Ownership Agreement Between Dallas Power & Light Company, Texas Electric Service Company, Texas Power & Light Company, Texas Utilities Generating Company, Texas Municipal Power Agency and Brazos Electric Power Cooperative, Inc. for Comanche Peak

Steam Electric Station," executed on January 2, 1979, together with and as modified by that certain instrument entitled on the cover page thereof "Modification of Joint Ownership Agreement Between Dallas Power & Light Company, Texas Electric Service Company, Texas Power & Light Company, Texas Utilities Generating Company, Texas Municipal Power Agency and Brazos Electric Power Cooperative, Inc. For Comanche Peak Steam Electric Station," executed on June 1, 1979, together with and as amended by (i) the Amendment of Joint Ownership Agreement, executed on December 9, 1980, between Dallas Power & Light Company, Texas Electric Service Company, Texas Power & Light Company, Texas Utilities Generating Company, TMPA, BEPC and Tex-La, together with and as amended by (ii) the Second Amendment of Joint Ownership Agreement, executed on February 12, 1982, between Dallas Power & Light Company, Texas Electric Service Company, Texas Power & Light Company, Texas Utilities Generating Company, TMPA, BEPC and Tex-La.

- (q) "New Lawsuit" means the lawsuit that, pursuant to Section 4.2(e) of this Agreement, may be filed by TMPA or TU Electric, and if filed will be filed in Dallas County, Texas, in the event that nonsuits are taken by TMPA and TU Electric in the Pending Dallas Suit pursuant to Section 4.2(d) of this Agreement or this Agreement is terminated under Article XI hereof.
- (r) "NRC" means the United States Nuclear Regulatory Commission.
- (s) "NRC Affirmative Date" shall have the meaning set out in Section 5.3(e) hereof.
- (t) "Owners" means collectively TMPA, TU Electric, Tex-La and BEPC, as owners of Comanche Peak in accordance with the terms of the Joint Ownership Agreement, or singularly any of such parties.
- (u) "Pending Austin Suit" means Cause No. 399,336 — Tex-La Electric Cooperative of Texas, Inc., and Texas Municipal Power Agency v. Texas

Utilities and Texas Utilities Electric Company, — in the District Court of Travis County, Texas, 98th Judicial District.

- (v) "Pending Dallas Suit" means Cause No. 86-6809-A — Texas Utilities Electric Company v. Tex-La Electric Cooperative of Texas, Inc., et al. — in the District Court of Dallas County, Texas, 14th Judicial District.
- (w) "Pending Houston Suit" means Cause No. 83-29889 — Charles A. Atchison, et al v. Brown & Root, Inc., et al. — in the District Court of Harris County, Texas, 215th Judicial District.
- (x) "Pending Litigation" means the Pending Dallas Suit and the Pending Austin Suit.
- (y) "Permitted Exceptions" means
 - Matters affecting TMPA's title to all or any part of the Purchased Assets existing immediately prior to the time the same were acquired by TMPA from or through TU Electric or TU Electric's predecessors-in-title;
 - Matters affecting TMPA's title to all or any part of the Purchased Assets created by the acts or omissions of (i) all parties owning interests in Comanche Peak at the time involved acting collectively, or (ii) the Project Manager or TU Electric or both;
 - The lien for unpaid taxes and assessments relating to taxes and assessments unpaid by parties other than TMPA or imposed with respect to the periods prior to which TMPA owned the property interest involved and after the Initial Closing;
 - The rights of third parties in and to the Purchased Assets created by the acts or omissions of parties other than TMPA and not arising by, through or under TMPA;
 - The Joint Ownership Agreement and all licenses, permits, leases, franchises and contracts relating to the Purchased Assets applied for,

obtained or created by the acts or omissions of (i) any Owner other than TMPA, (ii) all parties owning interests in Comanche Peak at the time involved acting collectively, or (iii) the Project Manager or TU Electric or both; and

- Liens (existing or inchoate) in favor of mechanics, materialmen, laborers and suppliers of materials, goods, services, equipment, inventory (of subcontractors) and labor to or for the Station, the Fuel or the Transmission Facilities created by the acts or omissions of (i) any Owner other than TMPA, (ii) all parties owning interests in Comanche Peak at the time involved acting collectively, or (iii) the Project Manager or TU Electric or both.

- (z) "Power Sales Contracts" means those certain Power Sales Contracts, dated as of September 1, 1976, by and between TMPA and each of the Cities.
- (aa) "Project Manager" means TU Electric designated and acting as such in accordance with the terms of the Joint Ownership Agreement.
- (bb) "PUC" means the Public Utility Commission of Texas.
- (cc) "PUC Affirmative Date" shall have the meaning set out in Section 5.3(d) hereof.
- (dd) "Purchased Assets" means the aggregate of all that part of Comanche Peak (as Comanche Peak exists and is constituted on each Closing Date) owned by TMPA or to which TMPA has a right, title or interest, including without limitation the following, to the extent of TMPA's ownership interest therein: all real property and rights appurtenant thereto, and improvements thereon and fixtures thereto; all personal property and rights therein, tangible or intangible, including all machinery, equipment, furniture and vehicles; all rights or claims with respect to charges, payments or prepaid items; all warranties and claims and proceeds therefrom; all rights under all agreements, permits, licences, franchises and authorizations; all intellectual

property rights; all computer hardware and software and related rights and interests; all books and records in the possession of the Project Manager or otherwise owned by all of the Owners in combination; the Fuel; the Transmission Facilities; and all other properties and assets pertaining to Comanche Peak; but excluding, however, any Subject Claim of TMPA arising out of or under this Agreement or the other documents delivered to TMPA pursuant hereto or contemplated herein.

- (ee) "Refunded Payment" means the progress payments under the Joint Ownership Agreement that TU Electric received from TMPA for the period subsequent to November 30, 1987 in the amount of One Million, Four Hundred Fifty-Four Thousand Four Hundred Ten Dollars and Forty-Five Cents (\$1,454,410.45) which have heretofore been refunded by TU Electric to TMPA.
- (ff) "Signing Payment" means the amount of Fifty Eight Million, Six Hundred Eighty Thousand, Five Hundred Eighty Seven Dollars (\$58,680,587).
- (gg) "Site" means approximately 7,669 acres owned (in fee or other estate or interest) by the Owners, as tenants in common, and located in Hood and Somervell Counties, Texas, and more particularly described on the Schedule attached hereto.
- (hh) "Special Warranty Deed and Bill of Sale" means the form of Special Warranty Deed and Bill of Sale attached hereto as Exhibit C.
- (ii) "Station" means the Site, all improvements thereon (including Squaw Creek Lake and Park) and all fixtures and attachments thereto, as well as (i) all personal property thereon and associated therewith or related thereto and owned by the Owners, and (ii) all rights (tangible or intangible), and all easements and other interests of any nature associated therewith or related thereto and owned by the Owners, excluding, however, the Fuel and Transmission Facilities.

- (jj) "Subject Claims" means any and all claims, actions, controversies, causes of action, disputes, demands and complaints of whatsoever kind or nature and whether known or unknown.
- (kk) "Subsequent Closing" means in each case the consummation, pursuant to this Agreement, of each subsequent sale of a portion of the Purchased Assets by TMPA to TU Electric and the purchase of such portion of the Purchased Assets by TU Electric, as described in Section 1.3 hereof, pursuant to and in connection with the purchase of the Purchased Assets and settlement of the Pending Litigation as provided for in this Agreement.
- (ll) "Subsequent Closing Date" means in each respective case a date which is six (6) consecutive calendar months after the Initial Closing Date and each successive date that is six (6) consecutive calendar months thereafter during ten (10) successive six month periods following the Initial Closing Date so that the last such Subsequent Closing Date shall occur on a date which is five (5) years after the Initial Closing Date.
- (mm) "Subsequent Payment" means the amount of Forty Five Million Four Hundred Seventeen Thousand Six Hundred Thirty One Dollars and Seventy Five Cents (\$45,417,631.75).
- (nn) "Tex-La" means Tex-La Electric Cooperative of Texas, Inc.
- (oo) "Total Payment" means the amount to be paid by TU Electric to TMPA hereunder in connection with the purchase of the Purchased Assets and in connection with the settlement of the Pending Litigation; which shall be the total of (i) the Signing Payment, (ii) the Initial Payment and (iii) the aggregate of the Subsequent Payments.
- (pp) "Transmission Facilities" means the Comanche Peak — Parker Switching Station 345 kV electrical transmission line approximately 41 miles in length, and associated rights-of-way, equipment, fixtures and personal property.

(qq) "TUC" means Texas Utilities Company, a Texas corporation which is the corporate parent of TU Electric.

RECITALS

- A. TU Electric is an investor-owned utility which, pursuant to a statutory merger that occurred on January 1, 1984, succeeded to all the rights, title and interests and assumed and became liable for all obligations of Dallas Power & Light Company, Texas Electric Service Company, Texas Power & Light Company, and Texas Utilities Generating Company under the Joint Ownership Agreement, and is engaged in the generation, purchase, transmission, distribution and sale of electric energy within the State of Texas.
- B. TMPA is a joint powers agency, established pursuant to Tex. Rev. Civ. Stat. Ann. art. 1435a (Vernon 1980) by the Concurrent Ordinances, which is engaged in the generation, transmission and sale of electric energy within the State of Texas.
- C. TMPA and TU Electric have previously entered into the Joint Ownership Agreement.
- D. TMPA and TU Electric each own an undivided interest in Comanche Peak, which in the case of TMPA consists of such interest in the Station and Fuel (stated to be an undivided 6.2% interest in the conveyance involved) that was conveyed and transferred to TMPA by TU Electric (or its predecessors) and such interest in the Transmission Facilities (stated to be an undivided 20% interest in the relevant instrument but is subject to adjustment) that was conveyed and transferred or agreed to be conveyed and transferred to TMPA by TU Electric (or its predecessors).
- E. TMPA and TU Electric have been involved in the Pending Litigation and would like to settle their disputes involved in the Pending Litigation and otherwise relating to Comanche Peak and TMPA would like to sell its interest in Comanche Peak and be relieved of its obligations under the Joint Ownership Agreement and TU Electric would like to acquire such interest and is willing to relieve TMPA of such obligations under the Joint Ownership Agreement.

F. TMPA and TU Electric have concluded this Agreement in order to provide for the sale by TMPA and the purchase by TU Electric of all of TMPA's right, title and interest in Comanche Peak and the settlement of all Subject Claims between TMPA, the Cities and TU Electric and between TMPA, the Cities and TU Electric's affiliates pertaining to Comanche Peak, the Pending Litigation, and all matters in connection therewith, upon and subject to the terms and conditions set out herein.

ARTICLE I

SALE AND PURCHASE

1.1 Properties and Assets Sold and Purchased. Subject to the terms and conditions of this Agreement, TMPA hereby agrees to sell, transfer, assign, convey and deliver to TU Electric and TU Electric hereby agrees to purchase from TMPA, and pay TMPA for, the Purchased Assets in the manner and at the times hereinafter described.

1.2 Closings. The Initial Closing will occur at 10:00 a.m., Dallas, Texas time, on the Initial Closing Date. Each Subsequent Closing will occur at 10:00 a.m., Dallas, Texas time, on each Subsequent Closing Date. The Initial Closing and each Subsequent Closing will be held at the offices of Worsham, Forsythe, Sampels & Wooldridge, 2001 Bryan Street, Suite 3200, Dallas, Dallas County, Texas or at such other address at which such firm shall then be located. The fact that any Closing is or was intended to be held in Dallas County shall not be used by TU Electric as evidence for venue purposes in any proceeding related to a Subject Claim arising out of or under this Agreement.

1.3 Transfers of Purchased Assets. At the Initial Closing, TMPA will sell, convey, assign and transfer to TU Electric, and TU Electric will purchase, under and pursuant to a form of the Special Warranty Deed and Bill of Sale, an undivided interest in and to the Purchased Assets which shall be a percentage of the Purchased Assets equal to the percentage of the Total Payment which shall have been paid by TU Electric at such time. At each Subsequent Closing, TMPA will sell, convey, assign and transfer to TU Electric, and TU Electric will purchase, under and pursuant to a form of the Special Warranty Deed and Bill of Sale, an undivided ten percent (10%) interest in and to the

remainder of the Purchased Assets. It is understood and agreed that upon payment of the Initial Payment by TU Electric to TMPA at the Initial Closing, the absolute right to acquire all of the Purchased Assets shall vest in TU Electric, unless and until TU Electric shall default at any Subsequent Closing in the making of any Subsequent Payment hereunder. In such connection, the parties agree that the obligation hereunder to make the series of transfers provided for herein shall not be construed to create a mortgage or security interest, but shall be an absolute commitment for the conveyance of property in the manner, to the extent and upon the terms set forth herein. Accordingly, in order to facilitate each Subsequent Closing, TMPA agrees that at the Initial Closing, it will deliver to the Escrow Agent the Special Warranty Deeds and Bills of Sale for each Subsequent Closing to be held in escrow thereafter by the Escrow Agent in accordance with the terms of the Escrow Agreement and delivered by the Escrow Agent to TU Electric at each Subsequent Closing upon acknowledgement to the Escrow Agent of the making by TU Electric of each Subsequent Payment and the exchange of the closing documents referred to in Articles VI and VII.

1.4 Method of Payment. All payments made by TU Electric to TMPA under this Agreement shall be made by wire transfer of immediately available funds through the federal reserve system to TMPA's bank designated in writing to TU Electric. If the due date of any payment under this Agreement falls on a day that is not a Business Day, such payment shall be paid on the first Business Day following the date on which such payment is due and the Subsequent Closing shall be held on such date.

1.5 Payment of Total Payment. TU Electric shall pay to TMPA the Total Payment as follows:

- (a) Payment Upon Signing. On the date of execution of this Agreement, TU Electric will pay to TMPA the Signing Payment. The Signing Payment shall be held in a separately segregated fund by TMPA, but which TMPA may invest in its sole discretion, until the Initial Closing. The Signing Payment will be subject to refund prior to the Initial Closing as provided in Article XI

of this Agreement. Upon the Initial Closing, the Signing Payment will be deemed a part of the Total Payment.

- (b) Payment at the Initial Closing. At the Initial Closing, TU Electric will pay to TMPA the Initial Payment.
- (c) Payments at Subsequent Closings. At each Subsequent Closing, TU Electric will pay to TMPA a Subsequent Payment.
- (d) Application of Payments. The proper application of all payments to be received from TU Electric by TMPA pursuant to this Agreement shall be the sole responsibility of TMPA, and TU Electric shall have no right to direct the disposition of any of such payments after receipt by TMPA, except as provided in Section 1.5(a) hereof.

ARTICLE II

REPRESENTATIONS, WARRANTIES AND AGREEMENTS OF TMPA

TMPA represents and warrants to, and agrees with, TU Electric as follows:

2.1 Legal Status. TMPA is a municipal corporation, a political subdivision of the State of Texas, and a body politic and corporate, duly organized, validly existing and in good standing under the laws of the State of Texas as a joint powers agency under Tex. Rev. Civ. Stat. Ann. art. 1435a (Vernon 1980) established by the Concurrent Ordinances. TMPA has full, requisite power and authority to carry on its business as now conducted and to own, sell and transfer the Purchased Assets as provided for in this Agreement. The only customers of TMPA are the Cities, except to the extent TU Electric may be considered to become a customer incident to the transactions provided for or referenced herein.

2.2 Authority for Agreement. TMPA has full, requisite power and authority to execute, deliver and perform this Agreement, each Special Warranty Deed and Bill of Sale and each other agreement and instrument to be executed and delivered in connection with this Agreement, and to carry out its obligations hereunder and thereunder. Each of the Cities has (i) duly and validly approved a Concurrent Ordinance creating TMPA and such

ordinance has not been amended or repealed by any of the Cities, and (ii) duly and validly given its approval of Comanche Peak as a Project pursuant to Section 13 of the Power Sales Contracts, and such approval has not been amended or repealed by any of the Cities. Neither TMPA nor any of the Cities is currently in default under the provisions of the Power Sales Contracts nor has any event occurred nor does any condition exist which with the giving of notice or passage of time (or both) may constitute a default thereunder, which in either event would either adversely affect the Purchased Assets or prevent the consummation of any of the transactions provided for herein. TMPA has full, requisite power and authority to act for itself and the other persons or entities, private and governmental, acting by, through and under TMPA, in connection with this Agreement, each Special Warranty Deed and Bill of Sale and the other agreements and instruments to be executed and delivered by it pursuant hereto. This Agreement has been, and at the time of deposit into escrow and at each Closing, each Special Warranty Deed and Bill of Sale and such other agreements and instruments as are delivered by TMPA will have been, duly authorized, executed and delivered, subject to the terms and conditions of the Escrow Agreement, by TMPA and this Agreement does, and at the time of deposit into escrow and at each Closing, each Special Warranty Deed and Bill of Sale and such other agreements and instruments as are delivered by TMPA will, constitute valid and legally binding obligations of TMPA and the other persons or entities, private and governmental, acting by, through and under TMPA, enforceable against such parties in accordance with their respective terms. The execution, delivery and performance of this Agreement, each Special Warranty Deed and Bill of Sale and such other agreements and instruments will not conflict with or result in any violation of, or constitute a default under, (i) the organizational or governing documents or by-laws of TMPA, or (ii) any material provision of any mortgage, indenture, lease, agreement or other instrument, including any revenue or other bonds or other obligation or other evidence of indebtedness, to which TMPA, or any of TMPA's properties or assets, is subject or a party, or (iii) any permit, concession, grant, franchise, license, judgment, order, decree, statute, law, ordinance, rule or

regulation applicable to TMPA or any of its property, including the Purchased Assets; or with the passage of time or the giving of notice or the taking of any action by any third party, have any of the effects described herein, except no representation is made with respect to any instrument, permit, concession, grant, franchise or license (and the laws and regulations with respect thereto) made or obtained by TU Electric or the Project Manager on behalf of the Owners.

2.3 Approvals. TMPA has obtained all necessary consents, approvals, orders and authorizations of, and made all necessary registrations, declarations and filings with, each governmental authority required in connection with the execution, delivery, and performance by TMPA of this Agreement, the ~~Special~~ Warranty Deeds and Bills of Sale and the other agreements and instruments to be executed and delivered by TMPA hereunder, except (i) for any such required to be obtained by the Project Manager, (ii) with respect to the rights of first refusal referred to in Section 5.3(b) hereof, (iii) with respect to compliance with the provisions of V.T.C.A., Local Government Code Section 272.001 referred to in Section 5.3(c) hereof, and (iv) to the extent TMPA may be affected by the filings with the PUC and NRC referenced in Sections 5.3(d) and (e) hereof. No other filing or registration with, and no other consent, approval, authorization, permit, certificate or order of any court, tribunal or governmental agency or authority, Federal, state, county or municipal, is or will be required by any applicable statute or other law or by any judgment, order or decree or any rule or regulation of any court, tribunal or governmental agency or authority, Federal, state, county or municipal, to permit TMPA to execute, deliver and perform this Agreement, each Special Warranty Deed and Bill of Sale or any agreement or instrument required hereby to be executed and delivered by it at any Closing.

2.4 Liabilities. There are no obligations or liabilities, including with respect to any revenue or other bonds or other obligation or other evidence of indebtedness, of TMPA, whether accrued, absolute, contingent or otherwise, which TU Electric may become liable for or is assuming as a result of the purchase of assets provided for herein

or which may apply with respect to the Purchased Assets, except such as currently exist with respect to Comanche Peak and which were entered into or incurred by (i) all parties owning interests in Comanche Peak at the time involved acting collectively, or (ii) the Project Manager or TU Electric or both.

2.5 Nontaxable Status. TMPA is generally exempt from tax liabilities with respect to the Purchased Assets and TMPA owes no taxes with respect, or the nonpayment of which would apply, to the Purchased Assets to any taxing authority. Further, no tax charge, tax expense or tax claim against the Purchased Assets originating with or caused by the action or inaction of TMPA individually or in combination with any of the Owners other than TU Electric or the Project Manager will attach to or affect any portion of the Purchased Assets conveyed after the Closing with respect thereto, except to the extent provided for in Section 12.5 hereof.

2.6 Title to Real Property. TMPA has such title in and to the Site and all real property interests therein and the real property interests included in the Transmission Facilities as was conveyed to TMPA by or through TU Electric or by TU Electric's predecessors-in-title. Except in combination with, or in conjunction with action by, all of the Owners of the Site and the real property interests included in the Transmission Facilities acting collectively either directly or through the Project Manager, TMPA has not encumbered the Site or any of the real property interests therein or the real property interests included in the Transmission Facilities with any mortgages, liens, claims, charges, security interests or encumbrances.

TMPA, separately or in combination with any or all of the Owners other than TU Electric or the Project Manager, has not taken any action which would result in the structures, improvements and fixtures on such real property constituting a part of the Site not being in conformity with all applicable Federal, state and local zoning, building, health, safety and environmental laws, ordinances, rules or regulations. No notice from any governmental body, which has not otherwise been disclosed to TU Electric or the Project Manager in writing, has been served upon TMPA claiming any violation of any

such law, ordinance, rule or regulation or requiring any work, repairs, construction, alterations or installation on or in connection with such real property or the buildings, structures, fixtures or improvements thereon, nor to TMPA's knowledge has any such violation, which has not otherwise been disclosed to TU Electric or the Project Manager in writing, been claimed or action with respect thereto threatened.

2.7 Title to Personal Property. TMPA has the title to such interest as was conveyed to TMPA by or through TU Electric or TU Electric's predecessor-in-title in all of the equipment, vehicles, fixtures, machinery and other items of personal property, tangible and intangible, to the extent the same are parts of the Purchased Assets to be conveyed at any particular Closing. Except in combination or in conjunction with action by TU Electric, the Project Manager or all of the Owners acting collectively, TMPA has not encumbered the equipment, vehicles, fixtures, machinery and other items of personal property, tangible and intangible, which are part of the Purchased Assets, with any mortgages, liens, claims, charges, security interests, encumbrances or other restrictions or limitations, assuming payment by TU Electric of any and all property and transfer taxes that may become due on account of the transfer of the Purchased Assets contemplated by this Agreement and except for the liens for ad valorem taxes not yet due and payable.

2.8 Litigation. There are no Subject Claims, suits or proceedings, administrative or otherwise, pending (i.e. TMPA having been served with process with respect thereto or otherwise having knowledge thereof) against TMPA or, to the best of TMPA's knowledge, threatened against TMPA affecting the Purchased Assets, whether such be at law, in equity or in arbitration, or before or by any governmental department, commission, board, bureau, agency or instrumentality which, if adversely determined against TMPA, would affect TMPA's ability to perform its obligations under this Agreement, except the Pending Litigation, the licensing proceedings to which TU Electric is a party and the Pending Houston Suit; and TMPA, separately and apart from the Owners in combination or in conjunction with action by all of the Owners acting collectively either directly or through

the Project Manager (but without acknowledgment that such exists with reference to the Owners), is not in default with respect to any order, writ, injunction or decree of any court, arbitrator or governmental department, commission, board, bureau, agency or instrumentality affecting the Purchased Assets.

2.9 Contracts. There is not in effect any executory contract, agreement, order or commitment to which TMPA is subject or a party, and to which TU Electric or the Project Manager is not a party, which would bind TU Electric after any particular Closing with respect to the portion of the Purchased Assets conveyed at such Closing and which would adversely affect the value of such portion of the Purchased Assets after such Closing.

2.10 Exclusion of Implied Warranties. THE PURCHASED ASSETS ARE BEING SOLD "AS-IS". TMPA MAKES NO WARRANTIES CONCERNING THE MERCHANTABILITY OR CONDITION OF THE PURCHASED ASSETS OR OF THEIR FITNESS FOR ANY PARTICULAR PURPOSE, EXCEPT TO THE EXTENT OTHERWISE EXPRESSLY SET FORTH HEREIN.

2.11 Accuracy of Representations and Warranties. All representations and warranties of TMPA contained herein are, and will be at the time of each Closing, accurate and complete in all material respects and all documents delivered by TMPA to TU Electric incident hereto are, and will be at such times, valid and authentic in all respects.

ARTICLE III

REPRESENTATIONS, WARRANTIES AND AGREEMENTS OF TU ELECTRIC

TU Electric represents and warrants to, and agrees with, TMPA as follows:

3.1 Corporate Status. TU Electric is a corporation duly organized, validly existing and in good standing under the laws of the State of Texas with full, requisite corporate power and authority to carry on its business as now conducted and to own and operate its properties as and in the places where such business is now conducted and such properties are now owned and operated.

3.2 Authority for Agreement. TU Electric has full, requisite corporate power and authority to execute, deliver and perform this Agreement and each other agreement and instrument to be executed and delivered by TU Electric in connection with this Agreement, and to carry out its obligations hereunder and thereunder. This Agreement has been, and at the Closing at which they are delivered such other agreements and instruments will have been, duly authorized, executed and delivered by TU Electric, and this Agreement constitutes, and at the Closing at which they are delivered such other agreements and instruments will constitute, valid and legally binding obligations of TU Electric enforceable against it in accordance with their respective terms. The execution, delivery and performance of this Agreement and such other agreements and instruments will not conflict with or result in any violation of, or constitute a default under, (i) the Articles of Incorporation or by-laws of TU Electric, or (ii) any material provision of any mortgage, indenture, lease, agreement or other instrument to which TU Electric is subject or a party, or (iii) any permit, concession, grant, franchise, license, judgment, order, decree, statute, law, ordinance, rule or regulation applicable to TU Electric or any of its property; or with the passage of time or the giving of notice or the taking of any action by any third party, have any of the effects described herein.

3.3 Approvals. TU Electric has obtained all necessary consents, approvals, orders and authorizations of, and has made all necessary registrations, declarations and filings with, each governmental authority required in connection with the execution, delivery, and performance by TU Electric of this Agreement and the other agreements and instruments to be executed and delivered by TU Electric hereunder, except (i) with respect to the rights of first refusal referred to in Section 5.3(b) and (ii) for the filings with the PUC and NRC referenced in Sections 5.3(d) and (e) of this Agreement. No other filing or registration with, and no other consent, approval, authorization, permit, certificate or order of any court, tribunal or governmental agency or authority, Federal, state, county or municipal, is or will be required by any applicable statute or other law or by any judgment, order or decree or any rule or regulation of any court, tribunal or

governmental agency or authority, Federal, state, county or municipal, to permit TU Electric to execute, deliver or perform this Agreement or any agreement or instrument required hereby to be executed and delivered by it at any Closing, except as referred to above.

3.4 Authority for TUC Guaranty. TUC has full, requisite corporate power and authority to execute, deliver and perform the Guaranty and to carry out its obligations thereunder. At the Initial Closing, the Guaranty will have been duly authorized, executed and delivered by TUC, and will constitute the valid and legally binding obligation of TUC enforceable against it in accordance with its terms. The execution, delivery and performance of the Guaranty will not conflict with or result in any violation of, or constitute a default under, (i) the Articles of Incorporation or by-laws of TUC, or (ii) any material provision of any mortgage, indenture, lease, agreement or other instrument to which TUC is subject or a party, or (iii) any permit, concession, grant, franchise, license, judgment, order, decree, statute, law, ordinance, rule or regulation applicable to TUC or any of its property; or with the passage of time or the giving of notice or the taking of any action by any third party, have any of the effects described herein.

3.5 Accuracy of Representations and Warranties. All representations and warranties of TU Electric contained herein are, and will be at the time of each Closing, accurate and complete in all material respects and all documents delivered by TU Electric to TMPA incident hereto are, and will be at such times, valid and authentic in all respects.

ARTICLE IV

PRE-CLOSING OBLIGATIONS

TMPA and TU Electric, as appropriate, covenant that between the date of this Agreement and any Closing Date:

4.1 Representations, Warranties and Covenants. TMPA shall not take any action which would result in the representations and warranties set forth in Article II hereof being inaccurate, incorrect or incomplete to the extent applicable as of such Closing Date

and TMPA shall take all such action as may be necessary to insure that all covenants and agreements of TMPA set forth in this Agreement which are required to be performed by it at or prior to such Closing Date will have been so performed.

TU Electric shall not take any action which would result in the representations and warranties set forth in Article III hereof being inaccurate, incorrect or incomplete to the extent applicable as of such Closing Date and TU Electric shall take all such action as may be necessary to insure that all covenants and agreements of TU Electric set forth in this Agreement which are required to be performed by it at or prior to such Closing Date will have been so performed.

4.2 Abatement of Participation in Pending Litigation. For purposes of this Section 4.2, the term "TU Electric" shall include not only TU Electric but TUC and its subsidiaries, Texas Utilities Mining Company and Texas Utilities Services Inc., all of which are parties to the Pending Litigation.

Immediately after the execution hereof and to the fullest extent that would not violate court orders in effect in the Pending Dallas Suit, TMPA shall abate all of its voluntary activities in connection with the Pending Litigation, including cessation of the furnishing of any assistance, financial or otherwise, to any party to such litigation and the retention and furnishing of advice or direction to any attorneys of or consultants to any party to such litigation, and any other activity adverse to TU Electric pertaining thereto. In such regard, TMPA agrees that it will immediately direct any attorneys and consultants retained solely by it in connection with the Pending Litigation to abate their work, and, consistent with any agreements TMPA may have with BEPC or Tex-La and consistent with any agreements TMPA may have with consultants hired jointly with BEPC or Tex-La (all of which agreements are terminable and will be abated by TMPA immediately after the date hereof and terminated by TMPA upon the Initial Closing), TMPA will as soon as possible withdraw its authorization to any other attorney or consultant employed jointly by it and any of the other parties to the Pending Litigation to incur fees or expenses

chargeable to TMPA. Specifically with regard to the Pending Litigation, TMPA (and TU Electric to the extent specified herein) agrees to take the following actions:

- (a) TMPA agrees to the continued abatement of the Pending Austin Suit and agrees not to revive such action during the pendency of this Agreement and to take any action necessary to oppose such revival. In the event the Pending Dallas Suit is nonsuited in accordance with paragraphs (d) and (e) hereof, TMPA shall not claim that such nonsuit entitles TMPA to revive the Pending Austin Suit;
- (b) TMPA and TU Electric agree to file within three (3) days after the date hereof and diligently pursue a joint motion to sever each of their respective Subject Claims against each other in the Pending Dallas Suit;
- (c) TMPA and TU Electric agree as part of the joint motion required by paragraph (b) hereof to request jointly that the Court in the Pending Dallas Suit approve a standstill agreement with respect to the severed Subject Claims whereby the current scheduling order is withdrawn with respect to the severed Subject Claims and no new scheduling order or trial setting is made, and no discovery or any other steps to advance the litigation between TMPA and TU Electric shall be taken unless this Agreement is terminated or the transactions contemplated hereunder to be consummated prior thereto are not consummated on or prior to the Initial Closing Date, provided, however, any costs incurred and assessed against TMPA by the Court in the Pending Dallas Suit after approval of such standstill agreement shall be paid by TU Electric until such time as this Agreement is terminated or the transactions contemplated hereunder to be consummated prior thereto are not consummated on or prior to the Initial Closing Date;
- (d) If for any reason the Court in the Pending Dallas Suit refuses to grant the severance or refuses to approve the standstill agreement referenced above prior to the end of three (3) weeks after the date hereof, TMPA and

TU Electric agree to immediately nonsuit each of their respective Subject Claims against each other filed in the Pending Dallas Suit on such date which shall be three (3) weeks after the date hereof (or the next day the Court is open for business if such date is a holiday), provided that, as specified in Section 9.7 of this Agreement, TU Electric shall have the right to retain TMPA as a party to the Pending Dallas Suit but only for the purposes specified in said Section 9.7;

- (e) If it is necessary for TMPA and TU Electric to nonsuit the Subject Claims filed against each other in the Pending Dallas Suit, TMPA and TU Electric agree that such nonsuits will not operate to prejudice either party's position with respect to the Subject Claims they have made and legal positions they have taken in the Pending Litigation. In the event this Agreement is terminated or the transactions contemplated hereunder to be consummated prior thereto are not consummated on or prior to the Initial Closing Date, TMPA and TU Electric agree that their Subject Claims in the Pending Dallas Suit shall be refiled in Dallas County in the New Lawsuit in the 14th Judicial District Court (and if such suit is not assigned initially to such Court, TMPA and TU Electric agree to thereafter file a Joint Motion to transfer such suit to such Court), within five (5) Business Days after such termination of this Agreement or failure to close hereunder on the Initial Closing Date, with TU Electric as the plaintiff and TMPA as defendant and counter-plaintiff, and that TMPA will not oppose venue in Dallas County, Texas except to the extent that TMPA could on the date of this Agreement contest venue in Dallas County, Texas in the Pending Dallas Suit. In the event this Agreement is terminated or the transactions contemplated hereunder to be consummated prior thereto are not consummated on or prior to the Initial Closing Date, TMPA will retain, without limitation, any and all rights TMPA may now have to appeal the order of the Court in the Pending Dallas Suit dated

September 19, 1986. For all purposes, including, without limitation, (i) any statute of limitations claim, (ii) any claim concerning \$16.069 of the Texas Civil Practice and Remedies Code, and (iii) any claim asserted in the Pending Austin Suit (including without limitation, any Subject Claim concerning which suit was first filed), the New Lawsuit will be considered as having been filed by TU Electric on May 29, 1986, and TMPA's counterclaim in the New Lawsuit will be considered as having been filed by TMPA on July 18, 1986. All discovery, including documents produced and depositions taken, which had been conducted in the Pending Dallas Suit up to the execution of this Agreement, shall be for all purposes considered as having been taken in the New Lawsuit, and all orders issued by the Court in the Pending Dallas Suit up to the execution of this Agreement (except the scheduling order) shall have the same force and effect as if they had been issued in the New Lawsuit;

- (f) No efforts made or cooperation given by TMPA's employees, agents, consultants, experts or attorneys (including, without limitation, Fulbright & Jaworski) pursuant to or under any provision of this Agreement shall create any conflict of interest which would prevent any such employees, agents, consultants or attorneys from participating adversely to TU Electric in any legal proceeding brought by TMPA against TU Electric should this Agreement be terminated or should the transactions contemplated under this Agreement to be consummated prior thereto not be consummated on or before the Initial Closing Date. TU Electric hereby waives any such conflict of interest which might otherwise exist because of any such effort or cooperation; and
- (g) If it is necessary to nonsuit the current Subject Claims, as set forth in paragraphs (d) and (e) above, then in such event upon or at any time after the Initial Closing, if TU Electric requests, TMPA and TU Electric agree that their Subject Claims in the Pending Dallas Suit shall be refiled in the New

Lawsuit in Dallas County and that the New LawsUIT and all such Subject Claims shall then immediately be dismissed with prejudice.

4.3 Agreement to Obtain Approvals. TMPA shall use all reasonable efforts to obtain with respect to TMPA and TU Electric shall use all reasonable efforts to obtain with respect to TU Electric all necessary consents, approvals, authorizations, permits, certificates or orders of any court, tribunal or governmental agency or authority, Federal, state, county or municipal, which are required by any applicable statute or other law or by any judgment, order or decree or any rule or regulation of any court, tribunal or governmental agency or authority, Federal, state, county or municipal, to permit each of them, respectively, to execute, deliver or perform this Agreement and any agreement or instrument required hereby to be executed and delivered by either of them at any Closing.

ARTICLE V

CONDITIONS TO OBLIGATIONS TO CLOSE

5.1 Conditions to Obligation of TMPA to Close. The obligation of TMPA to consummate and close the transactions contemplated by this Agreement at each and every Closing is subject to the satisfaction of each of the following conditions at or prior to each such Closing:

- (a) Representations and Warranties. The representations and warranties of TU Electric contained in this Agreement shall have been true and correct on and as of the date hereof and shall be true and correct on and as of each Closing Date in all material respects as though such representations and warranties had been made on and as of such Closing Date, and TU Electric shall have delivered to TMPA a certificate, dated as of each Closing Date, of its Chairman of the Board, a Division President or a Vice President to the foregoing effect;
- (b) Compliance With Agreement. TU Electric shall have fully performed and complied with all of the covenants, agreements and conditions to be performed or complied with by it at or prior to the particular Closing

(including without limitation its assumption obligations with respect to the Joint Ownership Agreement), and TU Electric shall have delivered to TMPA a certificate, dated as of such Closing Date, of its Chairman of the Board, a Division President or a Vice President to the foregoing effect;

- (c) Receipt of Payment. TU Electric shall have delivered to TMPA the payments referenced in paragraphs (a) and (b) of Section 1.5 hereof in the case of the Initial Closing and the payment referenced in Section 1.5(c) hereof in the case of each Subsequent Closing; and
- (d) Receipt of Closing Documents. TMPA shall have received the fully executed Closing documents described in Article VII hereof to be delivered at that particular Closing.

5.2 Conditions to Obligation of TU Electric to Close. The obligation of TU Electric to consummate the transactions contemplated by this Agreement at each and every Closing is subject to the satisfaction of each of the following conditions at or prior to each such Closing:

- (a) Representations and Warranties. The representations and warranties of TMPA contained in this Agreement shall have been true and correct on and as of the date hereof and shall be true and correct on and as of each Closing Date in all material respects as though such representations and warranties had been made on and as of such Closing Date, and TMPA shall have delivered to TU Electric a certificate, dated as of each Closing Date, of its President or Vice President of its Board of Directors to the foregoing effect;
- (b) Compliance with Agreement. TMPA shall have fully performed and complied with all of the covenants, agreements and conditions to be performed or complied with by it at or prior to the particular Closing, and TMPA shall have delivered to TU Electric a certificate, dated as of such Closing Date, of its President or Vice President of its Board of Directors to the foregoing effect;

- (c) Delivery of Pending Litigation Documentation. At the Initial Closing, TMPA shall have delivered to TU Electric the originals and all copies of all documents and other written material in its custody, control or possession (including without limitation those held by TMPA's agents, attorneys and consultants) pertaining to or involving Comanche Peak or the Pending Litigation, except those which are privileged or which may be the product of TMPA's attorney's or consultant's joint defense activities, if any, prepared in connection with the Pending Litigation. Such documents or other written material which are essential to the conduct of TMPA's on-going business activities may be retained by TMPA except for one copy which will have been delivered to TU Electric prior to the Initial Closing. As concerns privileged or joint defense documents or written material, TMPA shall, to the full extent permitted by law, exercise such privileges and claims of confidentiality as may be available to prevent disclosure thereof to any person or entity, private or governmental;
- (d) Approval of the Cities. Prior to the Initial Closing, the various city councils or other governing and approving bodies or authorities of each of the Cities shall have duly and validly adopted and approved (i) the ordinance in the form attached hereto as Exhibit D and (ii) the release and covenant not to sue in the form attached hereto as Exhibit E; any variances from the form of ordinance set forth in Exhibit D or any variances from the form of release and covenant not to sue set forth in Exhibit E shall be subject to TU Electric's reasonable satisfaction and acceptance, provided, however, TU Electric shall notify TMPA of any such variances which are not satisfactory to TU Electric within three (3) Business Days of TU Electric's receipt of said ordinances and releases and covenants not to sue, provided that TU Electric receives same at least three (3) Business Days prior to the Initial Closing Date; and

- (e) Receipt of Closing Documents. TU Electric shall have received the Closing documents described in Article VI hereof to be delivered at that particular Closing.

5.3 Conditions to Obligation of Parties to Initially Close. The obligation of the parties to consummate the transactions contemplated by this Agreement at the Initial Closing Date is subject to the satisfaction of each of the following conditions at or prior to the Initial Closing Date:

- (a) No Adverse Proceeding. There shall not be pending any suit, action or other proceeding by any person before any court or arbitrator or any governmental department, commission, board, bureau, agency or instrumentality in which it is sought to restrain or prohibit any of the transactions contemplated by this Agreement.
- (b) Waiver of Right of First Refusal. Immediately upon execution of this Agreement, TMPA will notify BEPC and Tex-La of the execution of this Agreement by means of the notice attached hereto as Exhibit P. By the Initial Closing Date, BEPC and Tex-La will have executed an irrevocable waiver or other sufficient relinquishment of any rights of first refusal or consent to sale that BEPC and Tex-La may have under the Joint Ownership Agreement (it being agreed that failure to exercise such right in accordance with the terms of the Joint Ownership Agreement by BEPC or Tex-La in response to the notice from TMPA within the time period specified in the Joint Ownership Agreement will constitute sufficient relinquishment of the rights of first refusal of BEPC or Tex-La as the case may be) with respect to any transaction provided for herein or such rights shall have been validly exercised, in whole or in part, by either or both of BEPC and Tex-La and the purchase which arises as a result of such exercise fully consummated. In the event that either or both of BEPC and Tex-La shall have exercised any such rights of first refusal to the extent that BEPC and/or Tex-La acquire all of

TMPA's interest in the Purchased Assets, TMPA shall promptly refund to TU Electric the full amount of the Signing Payment less Twenty-Five Million Dollars (\$25,000,000) and TMPA shall, in consideration therefor, perform its obligations pursuant to Article IV, Sections 5.2(c) and (d), Section 8.1, Section 9.1, Section 9.2, Section 9.4, Section 9.5, Section 9.6 and Section 9.9 hereof, and shall refund to TU Electric the Refunded Payment and otherwise within ninety (90) days of the consummation of the sale to BEPC and/or Tex-La, bring all of TMPA's progress payments under the Joint Ownership Agreement fully current up to the date of transfer from TMPA to BEPC and/or Tex-La.

In the event that BEPC and/or Tex-La exercise any such rights of first refusal to the extent that all of TMPA's interest in the Purchased Assets have not been acquired by BEPC and/or Tex-La, after consummation of the sale to BEPC and/or Tex-La, TMPA shall promptly refund to TU Electric a proportional amount of the Signing Payment (calculated after deducting Twenty-Five Million Dollars [\$25,000,000]) equivalent to the proportion of the Purchased Assets which BEPC and/or Tex-La has elected to acquire. TMPA shall be entitled to retain the Twenty-Five Million Dollars (\$25,000,000), together with the balance of the Signing Payment not refunded to TU Electric. TMPA and TU Electric agree to perform this Agreement with respect to the portion of the Purchased Assets not acquired by BEPC and/or Tex-La in the manner set forth herein, with appropriate proportional modifications to the payment obligations of TU Electric herein, and to the obligations of TMPA herein to deliver all of the Purchased Assets. In addition, TMPA shall refund to TU Electric a proportional amount of the Refunded Payment equivalent to the proportion of the Purchased Assets being acquired by BEPC and/or Tex-La, and TMPA shall, within ninety (90) days of the consummation of the sale to BEPC and/or Tex-La, bring its progress payments under the Joint Ownership Agreement fully current

through the date of the sale to BEPC and/or Tex-La, but only with respect to that portion of the Purchased Assets acquired by BEPC and/or Tex-La.

- (c) Compliance with Statute. TMPA shall have taken all such action as may be necessary or appropriate in order to comply with V.T.C.A., Local Government Code Section 272.001 (the "Statute"). In order for TMPA to comply with the Statute, TU Electric shall provide to TMPA, within thirty (30) days of the execution of this Agreement, a description of the Site and the real property associated with the Transmission Facilities. Within the time period specified in the invitation to bid to be published by TMPA pursuant to the Statute, TU Electric shall submit a bid to purchase the Purchased Assets, which bid shall be identical to this Agreement. In the event a bid or offer from another person is received by TMPA which precludes TMPA from selling the Purchased Assets to TU Electric, TMPA shall promptly refund to TU Electric the full amount of the Signing Payment less Twenty-Five Million Dollars (\$25,000,000) and TMPA shall, in consideration therefor, perform its obligations pursuant to Article IV, Sections 5.2(c) and (d), Section 8.1, Section 9.1, Section 9.2, Section 9.4, Section 9.5, Section 9.6 and Section 9.9 hereof, and shall refund to TU Electric the Refunded Payment and otherwise bring all of TMPA's progress payments under the Joint Ownership Agreement fully current.

- (d) Approval by PUC. By final action subject to no further appeal, the PUC shall have approved the amendment of TU Electric's certificate of convenience and necessity with respect to the Station and the Transmission Facilities permitting TU Electric's acquisition and ownership of TMPA's ownership interest in the Station and the Transmission Facilities in accordance with the terms hereof. In such connection, it is understood and agreed that TU Electric will file within fifteen (15) Business Days of the date of this Agreement and prosecute to the best of its ability an application for such

certificate of convenience and necessity rights and such other applications or filings with the PUC as shall, in its judgment, be necessary and essential in connection with the transactions contemplated under this Agreement. TU Electric will deliver promptly to TMPA copies of all such applications and filings and will advise TMPA on a current basis with respect to the status of any such proceeding. In connection with all such proceedings, TMPA will, at TMPA's reasonable cost and expense, at the request of TU Electric, render all such assistance as may be appropriate under the circumstances, including without limitation, providing such of its personnel as may be appropriate to testify and otherwise participate in any such proceedings in support of this Agreement.

Upon the issuance by the PUC of any order or other document purporting to give the approval contemplated under this Agreement with or without conditions, TU Electric will promptly deliver to TMPA a reproduced legible copy of such order or other document, and the parties, with their respective attorneys and other consultants, shall promptly confer and endeavor in good faith to determine if such order or other document evidences the final approval contemplated by this Agreement without any condition that is deemed by either party to be inconsistent with the provisions of this Agreement. If such determination is affirmative the parties shall promptly execute a stipulation dated currently to such effect. If such determination is negative, TU Electric, with the assistance of TMPA, which shall be at TMPA's reasonable cost and expense, will undertake to cause the PUC to issue such further order or document evidencing its approval as contemplated by this Agreement, including the elimination of any such condition that was deemed by either party to be inconsistent with this Agreement and upon the issuance of any further order or other document by the PUC in such proceedings the same procedures will be followed by the parties as provided

in the case of the order or other document first issued by the PUC in such proceedings, including the execution of a stipulation dated currently evidencing the affirmative action by the parties in respect of the order or other document issued by the PUC. The date of any stipulation executed by the parties under this paragraph is referred to as the "PUC Affirmative Date." The provisions of this paragraph shall not affect or detract from the rights of TMPA or TU Electric under Sections 11.1 or 11.2 hereof.

- (e) Approval by NRC. The NRC shall have granted all necessary and essential approvals and consents with respect to the transactions provided for herein, including without limitation the entry of a final non-appealable order approving the sale of TMPA's right, title and interest in the Station and Fuel to TU Electric in accordance with the terms hereof. In such connection, it is understood and agreed that TU Electric will file within fifteen (15) Business Days of the date of this Agreement and prosecute to the best of its ability all applications or filings with the NRC as shall, in its judgment, be necessary and essential in connection with the transactions contemplated under this Agreement. TU Electric will deliver promptly to TMPA copies of all such applications and filings and will advise TMPA on a current basis with respect to the status of any such proceeding. In connection with all such proceedings, TMPA will, at TMPA's reasonable cost and expense, at the request of TU Electric, render all such assistance as may be appropriate under the circumstances, including without limitation, providing such of its personnel as may be appropriate to testify and otherwise participate in any such proceedings in support of this Agreement.

Upon the issuance by the NRC of any order or other document purporting to approve the transactions contemplated under this Agreement with or without conditions, TU Electric will promptly deliver to TMPA a reproduced legible copy of such order or other document, and the parties,

with their respective attorneys and other consultants, shall promptly confer and endeavor in good faith to determine if such order or other document evidences the final approval of the NRC of such transactions contemplated by this Agreement without any condition that is deemed by either party to be inconsistent with the provisions of this Agreement. If such determination is affirmative the parties shall promptly execute a stipulation dated currently to such effect. If such determination is negative, TU Electric, with the assistance of TMPA, which shall be at TMPA's reasonable cost and expense, will undertake to cause the NRC to issue such further order or document evidencing its approval of such transactions including the elimination of any such condition that was deemed by either party to be inconsistent with this Agreement and upon the issuance of any further order or other document by the NRC in such proceedings the same procedures will be followed by the parties as provided in the case of the order or other document first issued by the NRC in such proceedings, including the execution of a stipulation dated currently evidencing the affirmative action by the parties in respect to the order or other document issued by the NRC. The date of any stipulation executed by the parties under this paragraph is referred to as the "NRC Affirmative Date." The provisions of this paragraph shall not affect or detract from the rights of TMPA or TU Electric under Sections 11.1 or 11.2 hereof.

- (f) Execution of Transmission Services Agreement. TMPA and TU Electric shall have executed an appropriate amendment of the Transmission Agreement between TMPA and TU Electric's corporate predecessors dated January 2, 1979, as amended, only to reflect TMPA's sale of the Transmission Facilities to TU Electric and to reflect a minimum credit of \$250,000 per year during the billing years 1987 through 1994 for certain facilities constructed by

TMPA at TU Electric's Twin Oak Steam Electric Station in Robertson County, Texas.

- (g) Execution of Power Purchase Agreement. TMPA and TU Electric shall have executed a Power Purchase Agreement in form and content satisfactory to each of them.

ARTICLE VI

CLOSING DOCUMENTS FROM TMPA

As a condition of Closing, TMPA, the Cities, the Escrow Agent on behalf of TMPA and the referenced attorneys, in each case as appropriate, will deliver to TU Electric on the particular Closing Date referenced hereafter the following:

6.1 Deeds and Transfers, etc. (i) At each Closing executed and acknowledged Special Warranty Deeds and Bills of Sale; (ii) at the Initial Closing, duplicate counterparts of the amendments contemplated under Section 5.3(f) hereof; and (iii) at the Initial Closing, the Releases, Covenants Not to Sue and Indemnities specified in Sections 9.1, 9.2, 9.4 and 9.10 hereof.

6.2 Lien Search. At the Initial Closing, real property search certificates from a reputable title company and a UCC search certificate from the Secretary of State of Texas disclosing no security interests, judgments or other liens outstanding against TMPA's ownership interest in the Purchased Assets, other than the Permitted Exceptions and the various resolutions or other instruments relating to the financing of obligations of TMPA filed under Chapter 35 of the Texas Uniform Commercial Code.

6.3 Cities Documents. At the Initial Closing, certified copies of the ordinances and the executed releases and covenants not to sue of each of the Cities in the form attached hereto as Exhibit D and Exhibit E, respectively, or with such changes therein as may be approved by the TU Electric. At the Initial Closing, certificates of the City Secretaries of each of the Cities dated the Initial Closing Date with respect to (i) the incumbency of their respective City officials and their signatures, and (ii) the due

adoption of their respective ordinances referred to above with copies of the executed releases and covenants not to sue attached thereto.

6.4 Certificate of Secretarial Officer. At the Initial Closing, a certificate of the Secretary or an Assistant Secretary of the Board of Directors of TMPA, dated the Initial Closing Date, with respect to the incumbency of officers and their signatures, the existence and good standing of TMPA, and the due adoption of resolutions of the Board of Directors of TMPA authorizing the execution, delivery and performance of this Agreement and the other agreements and instruments to be delivered to TU Electric and the Escrow Agent pursuant hereto at the Initial Closing.

6.5 Counsel Opinions. At the Initial Closing, opinions of the General Counsel of TMPA, the City Attorneys of each of the Cities and Fulbright & Jaworski, special counsel for TMPA, dated the Initial Closing Date and addressed to the TU Electric, substantially in the forms set forth collectively in Exhibit G attached hereto.

ARTICLE VII

CLOSING DOCUMENTS FROM TU ELECTRIC

As a condition of Closing, TU Electric and the referenced attorneys, in each case as appropriate, will deliver to TMPA on the particular Closing Date referenced the following:

7.1 Proof of Payment. Proof of the payment to TMPA pursuant to Section 1.5(b) hereof in the case of the Initial Closing, excepting the Signing Payment, and proof of the payment to TMPA pursuant to Section 1.5(c) in the case of each Subsequent Closing.

7.2 Other Instruments. At the Initial Closing, duplicate counterparts of the amendments contemplated under Section 5.3(f) hereof, the Release, Assumption and Indemnity Agreement specified in Sections 9.3 and 9.4 hereof and the Guaranty.

7.3 Certificate of Secretarial Officer. At the Initial Closing, a certificate of the Secretary or an Assistant Secretary of TU Electric, dated the Initial Closing Date, with respect to the incumbency of officers and their signatures, corporate existence and good standing, and the due adoption of resolutions of the Board of Directors of

TU Electric authorizing the execution, delivery and performance of this Agreement and the other agreements and instruments to be delivered to TMPA pursuant hereto at the Initial Closing.

7.4 Counsel's Opinion. At the Initial Closing, an opinion of Worsham, Forsythe, Sampels & Wooldridge, counsel for TU Electric, dated the Initial Closing Date and addressed to TMPA in the form set forth in Exhibit H attached hereto.

ARTICLE VIII

CLOSING AND INDEMNIFICATION

8.1 Indemnification by TMPA.

- (a) TMPA agrees to indemnify, hold harmless and defend TU Electric and anyone related to or affiliated with TU Electric, including its parent, subsidiaries and affiliates, from and against any and all claims, demands, liabilities, losses, costs and expenses, including reasonable attorneys' fees, which TU Electric or anyone related to or affiliated with TU Electric, including its parent, subsidiaries and affiliates, may sustain and which arise out of or are based upon or relate to the inaccuracy or falsity of any representation or warranty made by TMPA set forth in this Agreement or in any other agreement or instrument delivered pursuant hereto or the breach or nonperformance by TMPA of any covenant or agreement with TU Electric or anyone related to or affiliated with TU Electric, including its parent, subsidiaries and affiliates, made by TMPA set forth in this Agreement or in any other agreement or instrument delivered pursuant hereto.
- (b) Any indemnification obligation assumed by TMPA under this Agreement is not and shall not be a pledge of any revenues of TMPA. TMPA covenants that the amount, if any, which TMPA may hereafter become obligated to pay to TU Electric hereunder, if not paid from other sources, shall be paid from the revenues of the System and the amount to be paid in any one Contract

Year shall be included in the Annual System Budget as an Annual System Cost.

- (c) TMPA reserves the right to issue refunding bonds, pursuant to Tex. Rev. Civ. Stat. Ann. art. 717k-3 (or any other law available) in order to refund any amount which it may become obligated to pay to TU Electric hereunder, and in the event TMPA elects so to do, TU Electric agrees that it will cause a release of such obligation to be delivered against payment from the proceeds of such refunding bonds.

8.2 Indemnification by TU Electric. TU Electric agrees to indemnify and hold harmless and defend TMPA and the Cities and anyone related to or affiliated with TMPA or the Cities from and against any and all claims, demands, liabilities, losses, costs and expenses, including reasonable attorneys' fees, which TMPA or the Cities or anyone related to or affiliated with TMPA or the Cities may sustain and which arise out of or are based upon or relate to the inaccuracy or falsity of any representation or warranty made by TU Electric set forth in this Agreement or in any other agreement or instrument delivered pursuant hereto or the breach or nonperformance by TU Electric of any covenant or agreement with TMPA or the Cities or anyone related to or affiliated with TMPA or the Cities made by TU Electric set forth in this Agreement or in any agreement or instrument delivered pursuant hereto.

8.3 Survival of Representation and Warranties. With respect to each Closing, the representations, warranties, covenants and agreements of the parties hereto shall survive the execution and delivery of this Agreement and the consummation of the transactions contemplated hereunder for a period of four (4) years after each Closing Date.

8.4 Notice and Opportunity to Participate in Defense. In the event that TMPA, the Cities or TU Electric receives notice of the commencement of any action or proceeding or the assertion of any claim in respect of which TMPA, the Cities or TU Electric, or anyone related to or affiliated with any of them, including the parent, subsidiaries and affiliates of TU Electric, may be entitled to indemnification, the party

receiving such notice shall give the indemnifying party written notice within ten (10) calendar days thereof (except that failure to so notify will not relieve the indemnifying party of its obligations hereunder except to the extent it has been prejudiced thereby) and the opportunity to participate in the defense thereof and in any settlement negotiations with respect thereto, and will cooperate with the other party in all reasonable respects and make available to the other party all records, evidence and personnel for consultation and testimony reasonably requested by the other party in connection therewith. The settlement of any such action, proceeding or claim without the prior written approval of the indemnifying party shall relieve such party of any obligations to the indemnified party in respect of the subject matter of the settlement of such action, proceeding or claim.

ARTICLE IX

SETTLEMENT OF PENDING LITIGATION

9.1 TMPA's Release. Upon the Initial Closing, TMPA, for itself and on behalf of any person or entity, private or governmental, claiming by, through or under TMPA, including without limitation its or their respective insurers, agents, servants, employees, officers, directors, consultants, attorneys and representatives shall waive, release, discharge, renounce and relinquish any and all Subject Claims relating to Comanche Peak it has or they have, or may have, whether known or unknown, contingent or absolute, including, without limitation, those based on common law, whether contract (expressed or implied, including express or implied warranty) or tort (including, without limitation, intentional tort, negligence or gross negligence, sole, joint or concurrent) or strict liability or fraud, and those based upon any Federal, state or local statute, law, order or regulation, including, without limitation, the Atomic Energy Act of 1954, as amended, the regulations of the NRC, the Securities Act of 1933, as amended or the Securities Act of 1934, as amended, and any rule or regulation thereunder, the Texas Securities Act (Title 19, Articles 581-1, et seq., V.A.T.S.) and the Texas Deceptive Trade Practices and Consumer Protection Act, against TU Electric or TUC, or both, in any capacity, whether individually, as Project Manager of Comanche Peak or otherwise, and their respective

insurers, agents, servants, employees, officers, directors, shareholders, consultants, attorneys and representatives, past and present, and any and all of their respective successors, subsidiaries and affiliates and their respective agents, servants, employees, officers, directors, shareholders, consultants, attorneys and representatives, past and present, except Subject Claims arising out of or under this Agreement or any of the other agreements or instruments to be delivered by TU Electric or TUC pursuant hereto. TMPA hereby covenants and warrants that it has not assigned any Subject Claims that are to be released at the Initial Closing. At the Initial Closing, TMPA will execute and deliver to TU Electric the form of Release attached hereto as Exhibit L.

9.2 Covenant Not to Sue. Except as provided for in Section 4.2(g) hereof, upon the Initial Closing, TMPA, for itself and on behalf of any person or entity, private or governmental, claiming by, through or under TMPA, including without limitation its or their respective insurers, agents, servants, employees, officers, directors, consultants, attorneys and representatives shall agree and covenant that it and they, individually, collectively or in any combination, will forbear from asserting against, and never sue for or look for satisfaction with respect to, TU Electric and TUC and their respective insurers, agents, servants, employees, officers, directors, shareholders, consultants, attorneys and representatives, past and present, and any and all of their respective successors, subsidiaries and affiliates and their respective agents, servants, employees, officers, directors, shareholders, consultants, attorneys and representatives, past and present, any Subject Claim (including without limitation any Subject Claim against any contractor, subcontractor, supplier, consultant, vendor or other person, firm or entity in privity in any manner with any of them which may therefor or as a result thereof have a right over or Subject Claim in subrogation) in any manner involving, concerning, arising out of, or relating to, the design, construction, management and licensing of, or any other matter relating to, Comanche Peak, and the management, procurement, conversion, enrichment, fabrication, shipping, transportation and storage of the Fuel, except for claims arising out of or under this Agreement or any of the other agreements or

instruments to be delivered by TU Electric pursuant hereto; and TMPA, for itself and on behalf of any person or entity, private or governmental, claiming by, through or under TMPA, including without limitation its or their respective insurers, agents, servants, employees, officers, directors, consultants, attorneys and representatives hereby further agrees and covenants that, upon and after the Initial Closing, neither it nor they, individually, collectively or in any combination, will directly or indirectly, challenge, contest or assert any complaint in any court or before any administrative agency or body or in any other forum whatsoever with respect to, or in any manner involving, concerning, arising out of, or relating to, Comanche Peak and the incidents and attributes thereof including, without limitation, the design, construction, management and licensing of Comanche Peak or any other aspect thereof, the costs and schedule of construction and completion of Comanche Peak, and the reasonableness, prudence or efficiency of the planning, design, construction, management and licensing of Comanche Peak, the costs of construction and the schedule of construction and completion of Comanche Peak, and the reasonableness, prudence or efficiency of the management, procurement, conversion, enrichment, fabrication, shipping, transportation and storage of the Fuel, and the costs incurred in connection with the management, procurement, conversion, enrichment, fabrication, shipping, transportation and storage of the Fuel, and the breach of the Joint Ownership Agreement and any express or implied warranties arising out of the Joint Ownership Agreement, and any representation, misrepresentation, disclosure or non-disclosure in connection with the negotiations or preceding the execution by TMPA of the Joint Ownership Agreement, and in connection with the performance or nonperformance by TU Electric of its duties, responsibilities or obligations under the Joint Ownership Agreement as Project Manager or otherwise, and the failure of TU Electric to pursue any remedies, either at law or otherwise, that may be, or may have been, available against any and all contractors, subcontractors, suppliers, consultants, vendors or others with respect to Comanche Peak (including separately the Station, Fuel or Transmission Facilities) and on account of anything that has occurred or may have occurred, in whole or

in part, with respect to Comanche Peak, (including separately the Station, Fuel or Transmission Facilities) and the incidents and attributes thereof and any of the foregoing whether known or unknown, except with regard to Subject Claims arising out of or under this Agreement or any of the other agreements or instruments to be delivered by TU Electric pursuant hereto. At the Initial Closing, TMPA will execute and deliver to TU Electric the form of Covenant Not to Sue attached hereto as Exhibit J. Further, TMPA covenants and agrees that it will encourage and solicit its attorneys, including Fulbright & Jaworski, and TMPA's separately employed consultants, to cooperate and assist TU Electric in connection with any matters relating to Comanche Peak; and, if necessary to prevent a conflict of interest, it being understood and agreed that TMPA's separately employed consultants and attorneys may have obtained or developed information regarding Comanche Peak in the course of the Pending Litigation that arguably could be inequitable for them to otherwise utilize in view of the consideration being rendered by TU Electric hereunder in order to obtain a final settlement of the matters referred to in this Agreement, TMPA covenants and agrees that it will take all such action as may be necessary or appropriate in order to prevent the consultants and attorneys, including Fulbright & Jaworski, separately employed by it in connection with the Pending Litigation from participating or assisting in any manner adverse to TMPA's duty of cooperation herein or to TU Electric in connection with the Pending Litigation, the Pending Houston Suit or any current or future proceedings or matter before the PUC or the NRC involving or relating to Comanche Peak, or any current or future proceedings before any court or before any administrative agency or body or in any other forum whatsoever with respect to, or in any manner involving, concerning, arising out of, or relating to: (i) the acts or omissions of TU Electric or the Project Manager referred to or in question in the Pending Litigation or which could have been brought into question in the Pending Litigation; or (ii) the acts or omissions of TU Electric or the Project Manager with respect to Comanche Peak that occur, in whole or in part, prior to the Date of Commercial Operation (as said term is defined in the Joint Ownership Agreement). The

covenant set forth in the prior sentence shall survive all Closings hereunder and remain in force until the expiration of any Subject Claim covered thereby.

9.3 TU Electric Release. Upon the Initial Closing, TU Electric, on behalf of itself, its parent, subsidiaries and affiliates and on behalf of their respective insurers, agents, servants, employees, officers, directors, consultants, attorneys and representatives shall waive, release, discharge, renounce and relinquish any and all Subject Claims relating to Comanche Peak (including separately the Station, Fuel or Transmission Facilities) it has or may have, whether known or unknown, contingent or absolute, including, without limitation, those based on common law, whether contract (express or implied, including express or implied warranty) or tort (including, without limitation, intentional tort, negligence or gross negligence, sole, joint or concurrent) or strict liability or fraud, and those based on any Federal, State or local statute, law, order or regulation, including, without limitation, the Atomic Energy Act of 1954, as amended, the regulations of the NRC, the Securities Act of 1933, as amended or the Securities Act of 1934, as amended, and any rule or regulation thereunder, the Texas Securities Act (Title 19, Articles 581-1, et seq., V.A.T.S.) and the Texas Deceptive Trade Practices and Consumer Protection Act, against TMPA and the Cities in any capacity, whether individually or otherwise, and their respective insurers, agents, servants, employees, officers, directors, consultants, attorneys and representatives, past and present, and any and all of their respective successors, subsidiaries and affiliates and their respective agents, servants, employees, officers, directors, shareholders, consultants, attorneys, and representatives, past and present, except Subject Claims arising out of or under this Agreement or the other agreements and instruments executed and delivered pursuant hereto. TU Electric hereby covenants and warrants that it has not assigned any Subject Claims that are to be released at the Initial Closing. At the Initial Closing, TU Electric will execute and deliver to TMPA the form of Release attached hereto as Exhibit K.

9.4 Assumption of Liabilities and Obligations and Indemnification. Effective upon the Initial Closing, TU Electric agrees to assume all of the duties, responsibilities,

liabilities and obligations of TMPA under the Joint Ownership Agreement. Further, effective upon the Initial Closing, TU Electric agrees to indemnify, hold harmless and defend TMPA and the Cities from and against all Subject Claims or any alleged willful or intentional acts of the Project Manager, its agents, servants, employees or independent contractors acting on behalf of the Project Manager which may be asserted against TMPA by any third party, including without limitation Subject Claims predicated upon the alleged actual or imputed negligence or gross negligence of TMPA or the Cities, arising out of or connected with, the location, planning, design, construction, licensing, condition, maintenance, operation and decommissioning of Comanche Peak, including but not limited to all claims asserted or which might have been or might hereafter be asserted in the Pending Houston Suit; provided, however (and without limitation), that TU Electric specifically shall not indemnify TMPA or the Cities in connection with any Subject Claims which may be asserted by the Cities' or TMPA's bondholders acting in such capacity or their other lending institutions or TMPA's or the Cities' customers acting in such capacity, which in any manner relate to TMPA's participation as an Owner of Comanche Peak or as a party to the Joint Ownership Agreement, or by reason of TMPA's involvement in the Pending Litigation, or by reason of the execution of this Agreement and provided further, that TU Electric specifically shall not indemnify TMPA in connection with any Subject Claims which may be asserted by Tex-La or BEPC or others which in any way relate to TMPA's execution of the Joint Ownership Agreement, or which arise by reason of TMPA's participation in the Pending Litigation, or by reason of TMPA's execution of this Agreement and participation in the transactions provided for herein. TU Electric will, in addition to providing such indemnity, assume the defense of TMPA in any tribunal where any such claim is asserted. Pursuant hereto, at the Initial Closing TU Electric will execute and deliver to TMPA the form of Assumption and Indemnity Agreement attached hereto as Exhibit L. Effective upon the Initial Closing, TMPA agrees to indemnify, hold harmless and defend TU Electric from and against any and all Subject Claims of TMPA or anyone related to or affiliated with TMPA or anyone related to or affiliated with TMPA

or the customers of TMPA acting in such capacity or debt holders acting in such capacity (including without limitation the holder of any revenue or other bond or other obligation) of TMPA relating to TMPA's execution of the Joint Ownership Agreement, TMPA's execution of this Agreement and participation in the transactions provided herein, and TMPA's activities as an Owner separate and apart from joint activities with all other Owners or activities by, through and under the Project Manager. Pursuant hereto, at the Initial Closing TMPA will execute and deliver to TU Electric the form of Indemnity Agreement attached hereto as Exhibit M.

9.5 Covenant of Cooperation. The parties hereby covenant and agree to assist, cooperate with, and support each other (other than financial support) in the event that a third party institutes any action against either of them with respect to Comanche Peak and any incident or attribute thereof, by virtue of either of them being or having been an Owner, except that TMPA shall not cooperate with or support any party in the Pending Litigation with regard to the Subject Claims being made therein by Tex-La and BEPC.

9.6 Termination of Participation. To the extent that TMPA can and not be in violation of Section 210 of the Energy Reorganization Act, 42 USC Section 5851 (1983), upon the execution of this Agreement, TMPA, for itself and on behalf of any person or entity, private or governmental, claiming by, through or under TMPA, including without limitation its or their respective insurers, agents, servants, employees, officers, directors, consultants, attorneys, representatives and customers (to the extent in the case of such customers of TMPA it has legal right or standing to do so) agrees and covenants to immediately abate any and all currently pending actions whatsoever, directly or indirectly, involving or relating to the prosecution or processing of any Subject Claims against TU Electric or TUC, or their respective directors, officers, employees, agents, insurers, consultants or attorneys, past or present, and any and all of their respective successors, subsidiaries and affiliates and their respective agents, servants, employees, officers, directors, shareholders, consultants, attorneys and representatives, past and present, presently or hereafter pending in any court or before any administrative agency

or body (except Subject Claims being made in the Pending Litigation, which shall be governed by the provisions of Article IV of this Agreement). In such capacity and to the extent TMPA can and not be in violation of Section 210 of the Energy Reorganization Act, 42 USC Section 5851 (1983) (TMPA hereby representing and warranting that it knows of no violation, actual or alleged, of Section 210 of the Energy Reorganization Act, 42 USC Section 5851 (1983) which has not heretofore been disclosed to TU Electric in writing), TMPA agrees and covenants that TMPA for itself and on behalf any person or entity, private or governmental, claiming by, through or under TMPA, including without limitation its or their respective insurers, agents, servants, employees, officers, directors, consultants, attorneys, representatives and customers (to the extent in the case of such customers of TMPA it has legal right or standing to do so) shall not prosecute, directly or indirectly, any Subject Claims, objections, motions or other actions adverse to TU Electric in connection with applications for granting the requisite licenses and approvals for Comanche Peak pending before the NRC and its Atomic Safety and Licensing Boards and Atomic Safety and Licensing Appeal Boards, including, without limitation, in NRC Dockets Nos. 50-445-OL, 50-446-OL and 50-445-CPA, the ongoing antitrust review relative to the licensing of Comanche Peak, and any and all appeals from rulings and orders of the NRC related to, or growing out of, said Dockets which are pending before any court. Within three (3) Business Days after the Initial Closing, TMPA shall cause the dismissal, with prejudice to the refiling of same in any form whatsoever, of all of its Subject Claims against TU Electric, TUC and their subsidiaries and affiliates in the Pending Litigation, and shall withdraw all of its Subject Claims adverse to TU Electric in connection with the granting of the requisite licenses and approvals for Comanche Peak pending in the NRC Dockets Nos. 50-445-OL, 50-446-OL and 50-445-CPA and any and all proceedings in any manner related to, or arising out of, said Dockets.

TMPA agrees and covenants, from and after the Initial Closing, to fully cooperate with TU Electric and provide all reasonably requested assistance, including providing the

legal assistance of its attorneys (including Fulbright & Jaworski), in a timely manner in connection with any legal proceedings (excluding the Pending Litigation) involving Comanche Peak, including the licensing of Comanche Peak by the NRC, including without limitation the ongoing antitrust review in connection therewith, and all proceedings involving Comanche Peak before the PUC. Except as specifically provided otherwise in this Agreement, TU Electric shall promptly reimburse TMPA for any and all reasonable out-of-pocket expenses and any and all reasonable outside professional fees, including, without limitation, attorneys fees, incurred by TMPA in providing such cooperation.

9.7 TU Electric Actions and Litigation Costs. Within three (3) Business Days after the Initial Closing, TU Electric shall cause the dismissal, with prejudice to the refiling of same in any form whatsoever, of all of its Subject Claims against TMPA in the Pending Litigation; provided, however, that TU Electric shall have the right to retain TMPA as a party to the Pending Dallas Suit, not for the purpose of seeking any affirmative relief against or from TMPA, but for the purpose of defeating a possible contention on the part of the other parties thereto with respect to the absence of a necessary party to TU Electric's Subject Claims against the other parties in said case (it being understood that TU Electric's position is that any such contention would not be valid). TU Electric shall promptly reimburse TMPA for any and all expenses reasonably incurred because of any such retention of TMPA by TU Electric in the Pending Dallas Suit. It is expressly understood that nothing herein shall in any manner affect, diminish or impair TU Electric's right to fully prosecute any and all of its Subject Claims against the other parties in the Pending Litigation. Except as provided otherwise above, all costs and expenses related to or incurred in connection with the Pending Litigation shall be borne and paid by the party by whom incurred or to which they are related.

9.8 Termination of Joint Ownership Agreement Relationship. Except as otherwise provided in Section 9.4 hereof with respect to TU Electric's assumption of TMPA's obligations under the Joint Ownership Agreement, TMPA and TU Electric hereby agree that, upon the final Subsequent Closing, the Joint Ownership Agreement, as

between TMPA and TU Electric, shall be deemed terminated and of no further force and effect as between them.

9.9 Permission to be Sued. In any suit or other action by TU Electric that is based on claims other than tort arising out of the breach of this Agreement or the breach of any other agreement or instrument delivered pursuant to this Agreement, TMPA hereby: (a) waives any immunity from suit to which it may be entitled by virtue of its status as a political subdivision of the State of Texas, and (b) grants TU Electric permission to sue TMPA without the imposition of any additional condition to, limitation of (including but not limited to any limitation as to the time within which such suit may be brought) or alteration of the effect of, such permission, other than such condition, limitation or alteration (if any) as may otherwise be expressly required by this Agreement and applicable statutes of limitation.

9.10 Releases, etc. from the Cities. As a condition of the Initial Closing, TMPA agrees to cause each of the Cities to deliver to TU Electric at the Initial Closing the form of Release and Covenant Not to Sue attached hereto as Exhibit E.

ARTICLE X

TMPA PROGRESS PAYMENTS

10.1 Assumption of Payments. Effective November 30, 1987, TMPA shall have the right to discontinue making progress payments with respect to Comanche Peak pursuant to the Joint Ownership Agreement, and TU Electric assumes TMPA's obligation to make and agrees it will timely make for TMPA any and all such payments that become due until the final Subsequent Closing Date or ninety (90) days after termination of this Agreement, whichever is the first to occur.

ARTICLE XI

TERMINATION OF AGREEMENT

11.1 Termination of Agreement by TU Electric. In the event at any time after TU Electric's having given written notice of intent to terminate this Agreement and the lapse of two (2) days of discussion (which shall take place within five (5) days of said

written notice of intent) between TMPA and TU Electric with respect thereto, TU Electric reasonably determines that the Initial Closing cannot occur for reasons that are beyond TU Electric's control, TU Electric may terminate this Agreement upon seven (7) Business Days' written notice of termination from TU Electric to TMPA, and TMPA agrees to promptly refund and pay to TU Electric the following: (i) the Signing Payment, plus an incremental amount calculated from the date of receipt of the Signing Payment by TMPA until repaid to TU Electric at the rate of 9-1/2% per annum; and (ii) the Refunded Payment, without any incremental amount. Further, in such event, TMPA shall, within ninety (90) calendar days after receipt of such notice of termination, pay and reimburse to TU Electric, in view of TU Electric's obligation set forth in Section 10.1 hereof, all such amounts as shall be necessary to make TMPA's progress payments under the Joint Ownership Agreement fully current, without any incremental amount, and TMPA agrees that it shall thereafter on a timely basis continue making any progress payments due in accordance with the terms of the Joint Ownership Agreement, without prejudice to TMPA's right to contest its obligation to make such progress payments under the Joint Ownership Agreement. TMPA agrees that it shall have no right to withhold payment of any amounts it agrees to pay herein in respect to or on the basis of its alleged claims in the Pending Litigation. Payment by TMPA of all of such funds to TU Electric shall constitute acceptance by TMPA of TU Electric's right to terminate this Agreement under the circumstances.

11.2 Termination of Agreement by TMPA. In the event at any time after TMPA's having given written notice of intent to terminate this Agreement and the lapse of two (2) days of discussion (which shall take place within five (5) days of said written notice of intent) between TMPA and TU Electric with respect thereto, TMPA reasonably determines that the Initial Closing cannot occur for reasons that are beyond TMPA's control, TMPA may terminate this Agreement upon seven (7) Business Days' written notice of termination from TMPA to TU Electric. If no written notice of objection to such termination is given by TU Electric to TMPA within seven (7) Business Days of

having received TMPA's written notice of termination, TMPA will immediately refund and pay to TU Electric the following: (i) the Signing Payment, plus in addition thereto an incremental amount calculated from the date of receipt of the Signing Payment by TMPA at the rate of nine and one-half percent (9-1/2%) per annum; and (ii) the Refunded Payment, without any incremental amount. Further, in such event, TMPA shall, within ninety (90) calendar days thereafter, pay and reimburse to TU Electric, in view of TU Electric's obligation set forth in Section 10.1 hereof, all such amounts as shall be necessary to make TMPA's progress payments under the Joint Ownership Agreement fully current, without any incremental amount, and TMPA agrees that it shall thereafter on a timely basis continue making any progress payments due in accordance with the terms of the Joint Ownership Agreement, without prejudice to TMPA's right to contest its obligation to make such progress payments under the Joint Ownership Agreement. TMPA agrees that it shall have no right to withhold payment of any amounts it agrees to pay herein in respect to or on the basis of its alleged claims in the Pending Litigation. Acceptance by TU Electric of return of all of such funds from TMPA shall constitute acceptance by TU Electric of TMPA's right to terminate this Agreement under the circumstances.

11.3 Automatic Termination. Unless either the Initial Closing has occurred or there is a written agreement signed by TU Electric and TMPA to extend the date set out in this paragraph, this Agreement shall automatically terminate at 5:00 p.m., Dallas, Texas time, on September 22, 1988, without any need for the giving of notice or any other action by either TU Electric or TMPA. In the event such termination occurs, TMPA will immediately refund and pay to TU Electric the following: (i) the Signing Payment, plus in addition thereto an incremental amount calculated from the date of receipt of the Signing Payment by TMPA at the rate of nine and one-half percent (9-1/2%) per annum; and (ii) the Refunded Payment, without any incremental amount. Further, in such event, TMPA shall, within ninety (90) calendar days thereafter, pay and reimburse to TU Electric, in view of TU Electric's obligations set forth in Section 10.1 hereof, all such amounts as shall

be necessary to make TMPA's progress payments under the Joint Ownership Agreement fully current, without any incremental amount, and TMPA agrees that it shall thereafter on a timely basis continue making any progress payments due in accordance with the terms of the Joint Ownership Agreement, without prejudice to TMPA's right to contest its obligation to make such progress payments under the Joint Ownership Agreement. Payment by TMPA and acceptance by TU Electric, respectively, of the amounts set forth in this paragraph shall constitute acceptance by TU Electric and TMPA of termination of this Agreement.

ARTICLE XII

MISCELLANEOUS PROVISIONS

12.1 Bulk Sales Law Waiver. To the extent it may lawfully do so, TU Electric hereby waives compliance by TMPA with the bulk sales law of any jurisdiction, if applicable, with respect to the transactions contemplated hereby, and TMPA agrees to hold TU Electric harmless from and against any liability, loss, cost or expense, including reasonable attorneys' fees, which TU Electric may sustain by reason of such noncompliance. TU Electric agrees to give TMPA prompt notice of the assertion of any claim resulting from such noncompliance.

12.2 Further Assurance. TMPA agrees that, after any Closing, it will from time to time, upon the reasonable request of TU Electric, execute, acknowledge and deliver in proper form any instrument of conveyance or further assurance necessary for perfecting in TU Electric or its successors and assigns, as the case may be, the title to the portion of the Purchased Assets contemplated herein to have been theretofore conveyed by TMPA to TU Electric or for carrying out the purpose and intent of this Agreement.

12.3 No Third Party Beneficiaries. The parties hereto acknowledge and agree that this Agreement is entered into for the sole benefit of the TU Electric, TMPA and the Cities, their respective successors and assigns (to the extent permitted) and, to the extent specifically and expressly set forth elsewhere in this Agreement, their respective insurers, agents, servants, employees, officers, directors, affiliates, representatives and customers,

and that nothing in this Agreement shall be construed as giving any right, benefit, remedy or claim to any person, firm, corporation or other entity, other than the TU Electric and TMPA, their respective successors and assigns (to the extent permitted) and, to the extent specifically and expressly set forth elsewhere in this Agreement, their respective insurers, agents, servants, employees, officers, directors, affiliates, representatives and customers. Without in any way limiting the foregoing provisions, it is expressly understood that nothing in this Agreement shall affect any of the rights, obligations and remedies among TU Electric and BEPC and Tex-La under the Joint Ownership Agreement or otherwise.

12.4 Default. In the event of default in performance hereunder by either TMPA or TU Electric at the time of any Closing hereunder, unless with respect to the Initial Closing this Agreement has been terminated in accordance with the provisions of Article XI hereof, the non-defaulting party shall be entitled to all remedies legally available to it including the remedy of specific performance, the parties hereto agreeing that no adequate remedy at law exists.

12.5 Property and Transfer Taxes.

- (a) Property Taxes. All real and personal property taxes, and other similar taxes, charges, and fees imposed on or with respect to or measured by the Purchased Assets shall be prorated between TMPA and TU Electric as of each Closing Date, to the effect that TMPA shall be solely responsible for and shall pay with respect to its ownership share of Comanche Peak any such taxes (including all such taxes assessable or assessed against TMPA) relating to periods after TMPA's acquisition of the Purchased Assets and prior to the particular Closing Date and TU Electric shall be solely responsible for and shall pay with respect to its ownership share of Comanche Peak any such taxes relating to periods on and after the particular Closing Date (including all such taxes assessable or assessed against it and with respect to its ownership of the Purchased Assets acquired pursuant to

this Agreement), provided, however, TU Electric agrees to assume the defense (with right to contest) of any such taxes asserted against TMPA with respect to the period after the Initial Closing Date and shall reimburse TMPA for any taxes and penalties with respect thereto that may become due from TMPA.

- (b) Transfer Taxes. The payment of any and all real estate transfer, stamp, documentary, deed and recording taxes and fees, and all sales and excise taxes imposed in connection with the subject sales shall be the responsibility and liability of TU Electric.

12.6 Expenses. TMPA and TU Electric shall each pay all expenses incurred by them respectively in connection with this Agreement, including the fees of their respective counsel and accountants, if any, except as may be otherwise provided.

12.7 Governing Law. This Agreement shall be construed, and the provisions hereof shall be enforced, in accordance with the laws of the State of Texas.

12.8 Announcements. All press releases or other announcements by TU Electric or TMPA prior to or in connection with the execution of this Agreement shall be approved by TMPA and TU Electric prior to the issuance thereof, which approval shall not be unreasonably withheld.

12.9 Entire Agreement, Amendments. This Agreement, and the other documents delivered pursuant hereto, constitute the entire agreement between TMPA and TU Electric relating to the subject matter hereof and supersede all other prior agreements, representations and understandings between the parties. No supplement, modification or amendment of this Agreement shall be binding, unless executed in writing by both TMPA and TU Electric.

12.10 Assigns, etc. This Agreement shall be binding upon and inure to the benefit of TMPA and TU Electric and their respective successors and assigns but shall not confer any rights upon any third persons except to the extent expressly provided herein. This

Agreement may not be assigned by TMPA without the written consent of TU Electric or by TU Electric without the written consent of TMPA.

12.11 Notices. All notices, requests, demands and other communications under this Agreement shall be in writing and shall be deemed to have been duly given (a) if served personally on the party to whom notice is to be given at the addresses and to the attention of the persons named as follows, or (b) if sent by telex or nationally recognized overnight delivery service or by first class mail, postage prepaid, certified and return receipt requested, and properly addressed as follows:

(a) To TMPA at:

Texas Municipal Power Agency
P. O. Box 7000
Bryan, Texas 77805

Attention: Ed Wagoner

For Federal Express:

Texas Municipal Power Agency
3 Miles North of Carlos on FM 244
Anderson, Texas 77830

Attention: Ed Wagoner

(with copy to)

Fulbright & Jaworski
1301 McKinney
Houston, Texas 77010

Attention: Blake Tartt

(b) To TU Electric at:

Texas Utilities Electric Company
2001 Bryan Street
Suite 1900
Dallas, Texas 75201

Attention: Eyle Nye

(with copy to)

Worsham, Forsythe, Sampels & Wooldridge
2001 Bryan Street
Suite 3200
Dallas, Texas 75201

Attention: Robert A. Wooldridge

12.12 Headings. The division of this Agreement into Articles and Sections and the insertion of headings are for convenience of reference only and shall not affect the construction or interpretation of this Agreement.

12.13 Execution and Counterparts. This Agreement may be executed in any number of counterparts, each and all of which shall be deemed for all purposes to be one agreement.

12.14 Interest on Past Due Payments. In the event that TMPA or TU Electric fails to timely make any payments to the other which become due under this Agreement, the incremental amount due on the past due payment for the period between and including the due date and the date actually paid shall be calculated at the rate of twelve and one-half percent (12-1/2%) per annum.

12.15 Use of Representations or Recitals. Any representations or recitals made by TMPA and TU Electric in this Agreement are for the purposes of this Agreement only. In the event that this Agreement is terminated or does not timely close at the Initial Closing Date, neither TMPA nor TU Electric shall use, as evidence or otherwise, any such representations or recitals against the other in any way in the New Lawsuit or any other lawsuit concerning any Subject Claims which have been made in the Pending Litigation.

12.16 Separate Litigation. Any Subject Claims arising out of or under this Agreement shall be prosecuted in a lawsuit separate from the lawsuit in which any Subject Claims which have been made in the Pending Litigation are prosecuted.

12.17 Construction of Comanche Peak. If TU Electric continues to believe that the completion of Comanche Peak is economically and otherwise feasible, TU Electric covenants that it will use its best efforts to complete, or cause to be completed, the construction of Comanche Peak and placing the same in operation.

12.18 Severability. The parties hereto agree that the various obligations and undertakings specified in this Agreement and in the other agreements or instruments referred to herein are each mutually dependent upon one another and, in the event that any fundamental or essential provision of this Agreement or any of such other agreements or instruments is finally determined to be invalid, illegal or unenforceable by a court or administrative body having jurisdiction, TU Electric and TMPA hereby agree to conduct good faith negotiations for the purpose of reaching a mutually acceptable written agreement to replace the deleted provision with a provision which will most nearly accomplish the purpose and intent of the deleted provision. Failing to reach such a mutually acceptable agreement, the parties shall rescind the transactions provided for herein and therein.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the date set forth at the outset hereof.

TEXAS MUNICIPAL POWER AGENCY

(Seal)

ATTEST:

By: Merrin Tate
Its: President, Board of Directors

By: Roland Sohn
Its: Secretary, Board of Directors

TEXAS UTILITIES ELECTRIC COMPANY

(Corporate Seal)

ATTEST:

By: E. O. [Signature]
Its: Chairman of the Board

By: [Signature]
Its: Secretary