

Large Filing Separator Sheet

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Section: 3 of 3

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Description of Document: Renewal Certification
Application

Document. All payments required to be made by VP EM or the Counterparty under or in respect of each MxEnergy-VP EM Financially-Settled Hedging Transaction prior to the Closing Date have been duly paid in full.

(b) As of the Closing Date, no MxEnergy-Counterparty Hedging Transactions are in effect.

Section 4.13 Insurance.

(a) Schedule 4.13 sets forth a true, complete and correct description of all Existing insurance maintained by the Transaction Parties as of the Closing Date. As of such date, such insurance is in full force and effect and all premiums have been duly paid.

(b) The properties of the Transaction Parties are insured with financially sound and reputable insurance companies not Affiliates of any Transaction Party, in such amounts, with such deductibles and covering such risks as are customarily carried by companies engaged in similar businesses and owning similar properties in localities where applicable Transaction Party operates.

Section 4.14 Taxes. Each Transaction Party has filed all material Federal, state and other Tax returns and reports required to be filed, and have paid all material Federal, state and other Taxes, assessments, fees and other governmental charges levied or imposed upon them or their properties, income or assets otherwise due and payable, except those which are being contested in good faith by appropriate proceedings diligently conducted and for which adequate reserves have been provided in accordance with GAAP. There is no written proposed Tax assessment against the Transaction Party that would, if made, have a Material Adverse Effect.

Section 4.15 Security Interests.

(a) Section 7.04 of this Agreement, the Security Agreement, the ISDA Credit Support Annex and the Intercreditor Agreement are effective to create in favor of the Hedge Provider a legal, valid, enforceable, perfected, first priority security interest in each Collateral Account and all Collateral Account Property from time to time held or contained therein, in each case subject to no other Liens of any other Person. The aggregate value or amount of the Hedging Facility Collateral is equal to \$25,000,000.

(b) The Pledge Agreement is effective to create in favor of the Hedge Provider a legal, valid and enforceable security interest in the Collateral (as defined in the Pledge Agreement), and, when such Collateral (to the extent such Collateral constitutes a certificated security under the applicable Uniform Commercial Code) is delivered to the Administrative Agent or the Hedge Provider (as applicable) and UCC financing statements in appropriate form are filed in the offices specified on Schedule 1 to the Pledge Agreement, such Pledge Agreement shall constitute a fully perfected second priority Lien on, and security interest in, all right, title and interest of the pledgors thereunder in such Collateral, in each case prior and superior in right to any other Person, other than (i) the Administrative Agent and the Lenders to the extent expressly provided in the Intercreditor Agreement and (ii) Permitted Liens.

(c) The Security Agreement is effective to create in favor of the Hedge Provider a legal, valid, and enforceable security interest in the Collateral (as defined in the Security Agreement) and, when UCC financing statements in appropriate form are filed in the offices specified on Schedule 1 to the Security Agreement, such Security Agreement shall constitute a fully perfected (i) first priority Lien on, and security interest in, all right, title and interest of the Counterparty in such portion of the First Lien Collateral in which a security interest may be perfected by the filing of a financing statement under the applicable Uniform Commercial Code, in each case prior and superior in right to any other Person, and (ii) second priority Lien on, and security interest in, all right, title and interest of the grantors thereunder in such portion of the Second Lien Collateral in which a security interest may be perfected by the filing of a financing statement under the applicable Uniform Commercial Code, in each case prior and superior in right to any other Person, other than (A) the Administrative Agent and the Lenders to the extent expressly provided in the Intercreditor Agreement and (B) Permitted Liens.

(d) Upon the execution and delivery of Amendment No. 1 to Intercreditor Agreement by the Hedge Provider and each other party thereto, the Hedge Provider (i) shall be a "Secured Counterparty" and a "Credit Agreement Secured Party", the Obligations shall be "Secured Counterparty Obligations" and "Credit Agreement Obligations", and the ISDA Credit Support Annex, the Security Agreement and the Pledge Agreement shall each be a "Secured Counterparty Security Document" (each such enquoted term having the meaning specified in the Intercreditor Agreement), (ii) shall pursuant to the Security Agreement and the Intercreditor Agreement have a first priority security interest in and to the First Lien Collateral, and such First Lien Collateral shall constitute the Hedge Provider's Secured Counterparty Primary Collateral (as defined in the Intercreditor Agreement), and (iii) shall pursuant to the Security Agreement and the Pledge Agreement conclusively have a second priority security interest in and to all of the Second Lien Collateral, and all such Second Lien Collateral shall also constitute the Hedge Provider's Credit Agreement Primary Collateral (as defined in the Intercreditor Agreement). The Intercreditor Agreement and the Loan Documents do not establish or impose any prohibition, restriction or limitation, or right or interest of any other Person in or to, on any Collateral Account, any Collateral Account Property or any Letter of Credit constituting part of the Hedging Facility Collateral or the exercise or enforcement of any rights or remedies of the Hedge Provider under this Agreement or any other Transaction Document with respect to any of the Hedging Facility Collateral.

Section 4.16 Solvency. Immediately following the entering into of each Hedging Transaction under the Transaction Documents and the making of any payment by the Hedge Provider to the Counterparty or by the Counterparty to the Hedge Provider in respect of any Hedging Transaction, (a) the fair value of the assets of each Transaction Party will exceed its debts and liabilities, subordinated, contingent or otherwise; (b) the present fair saleable value of the property of each Transaction Party will be greater than the amount that will be required to pay the probable liability of its debts and other liabilities, subordinated, contingent or otherwise, as such debts and other liabilities become absolute and matured; (c) each Transaction Party will be able to pay its debts and liabilities, subordinated, contingent or otherwise, as such debts and liabilities become absolute and matured; and (d) each Transaction Party will not have unreasonably small capital with which to conduct the business in which it is engaged as such business is now conducted and is proposed to be conducted following the Closing Date.

Section 4.17 Senior Obligations. Except to the extent expressly provided in the Intercreditor Agreement, the obligations of the Transaction Parties hereunder and under any Transaction Document are not subordinated or junior in right of payment to any Debt or other payment obligations of any Transaction Party.

Section 4.18 Investment Company Act. None of the Parent, any Person controlling the Parent, or any Subsidiary is required to be registered as an "investment company" under the Investment Company Act of 1940.

Section 4.19 Names and Locations. As of the Closing Date, Schedule 4.19 sets forth (a) all legal names and all other names (including trade names, fictitious names and business names) under which the Transaction Parties currently conduct business, or has at any time during the past five years conducted business, (b) the name of any entity which any Transaction Party has acquired in whole or in part or from whom any Transaction Party has acquired a significant amount of assets within the past five years, (c) the state or other jurisdiction of organization or incorporation for each Transaction Party and sets forth each Transaction Party's organizational identification number or specifically designates that one does not exist, and (d) the location of all offices of the Transaction Parties and the locations of all inventory of the Transaction Parties.

Section 4.20 Revisions or Updates to the Schedules. Should any of the information or disclosures provided on Schedules 1.01(a), 4.01, 4.10, 4.13 or 4.19 originally attached hereto become outdated or incorrect in any material respect, the Counterparty shall from time to time deliver to the Hedge Provider such revisions or updates to such schedule(s) whereupon such schedules shall be deemed to be amended by such revisions or updates, as may be necessary or appropriate to update or correct such schedule(s), provided that, notwithstanding the foregoing, no such revisions or updates shall be deemed to have amended, modified, or superseded any such schedules as originally attached hereto, or to have cured any breach of warranty or representation resulting from the inaccuracy or incompleteness of any such schedules, unless and until the Hedge Provider shall have accepted in writing such revisions or updates to any such schedules.

Section 4.21 SESCo Acquisition.

(a) The SESCO Acquisition Agreement is in full force and effect, no material breach, default or waiver of any term or provision thereof by the Counterparty or, to the best of the Counterparty's knowledge, the other parties thereto, has occurred and no action has been taken by any competent authority which restrains, prevents or imposes any material adverse condition upon, or seeks to restrain, prevent or impose any material adverse condition upon, any component of the SESCO Acquisition Transaction.

(b) At the time of consummation of the SESCO Acquisition Transaction, each component of the SESCO Acquisition Transaction shall have been consummated in accordance with the terms of the SESCO Acquisition Agreement and all applicable laws.

(c) At the time of consummation of the SESCO Acquisition Transaction, all consents and approvals of, and filings and registrations with, and all other actions in respect of, all Governmental Authorities and third parties required in order to make or consummate each component of the SESCO Acquisition Transaction shall have been obtained, given, filed or taken

and are or will be in full force and effect (or effective judicial relief with respect thereto has been obtained).

(d) All applicable waiting periods with respect to the SESCO Acquisition Transaction have or, prior to the time when required, will have, expired without, in all such cases, any action being taken by any competent authority which restrains, prevents, or imposes material adverse conditions upon the consummation of any component of the SESCO Acquisition Transaction.

(e) At the time of consummation of the SESCO Acquisition Transaction, no action, suit or proceeding (including, without limitation, any inquiry or investigation) is pending or threatened against any Transaction Party or with respect to the SESCO Acquisition Agreement, the SESCO Acquisition Transaction, the financing contemplated hereby or any documentation executed in connection therewith, unless such action, suit or proceeding could not reasonably be expected to result in a Material Adverse Effect, and no injunction or other restraining order is issued or a hearing therefore pending or noticed with respect to the SESCO Acquisition Agreement, the SESCO Acquisition Transaction, this Agreement or any other Transaction Document or the transactions contemplated hereby or thereby.

ARTICLE V

AFFIRMATIVE COVENANTS

The Transaction Parties hereby jointly and severally covenant and agree that, so long as the Hedge Provider shall have any Commitment hereunder, any Obligations remain outstanding or any Hedging Transaction or Transaction Document remains in effect, unless the Hedge Provider shall otherwise consent in writing, each Transaction Party shall:

Section 5.01 Preservation of Existence, Etc. Except as permitted under Article VI, (a) preserve, renew and maintain in full force and effect its legal existence and good standing under the Legal Requirements of the jurisdiction of its formation, (b) in the case of the Counterparty and its Subsidiaries, be licensed and in good standing to purchase, sell or supply and deliver natural gas or related products and enter into physically-settled and financially-settled Hedge Agreements by FERC and each of the state public utility commissions identified on Schedule 4.01 so long as the Counterparty or any of its Subsidiaries, as the case may be, is still engaging in such activities in the relevant jurisdiction, (c) take all reasonable action to obtain, preserve, renew, extend, maintain and keep in full force and effect all rights, privileges, permits, licenses, authorizations and franchises necessary or desirable in the normal conduct of its business, including, in the case of the Counterparty and its Subsidiaries, those rights, privileges, permits, licenses, authorizations and franchises necessary to supply natural gas or related products to End Users in each of the jurisdictions identified in Schedule 4.01, and (d) qualify and remain qualified as a foreign entity in each jurisdiction in which qualification is necessary in view of its business and operations or the ownership of its Properties, other than in the case of clause (d) such failures to so qualify that could not, individually or in the aggregate, reasonably be expected to have a Material Adverse Effect.

Section 5.02 Compliance with Laws, Etc. Comply (a) with all Legal Requirements (excluding, in the case of the Counterparty and its Subsidiaries, any Legal Requirement with

respect to their ability to supply natural gas or electricity or related products to End Users in each of the jurisdictions identified in Schedule 4.01) applicable to it or to its business or property, except in such instances in which such Legal Requirement is being contested in good faith by appropriate proceedings diligently conducted and for which the failure to so comply could not reasonably be expected to have a Material Adverse Effect and (b) in all material respects with, in the case of the Counterparty and its Subsidiaries, any Legal Requirement with respect to their ability to purchase, sell, supply or deliver natural gas or related products to End Users or enter into physically-settled or financially-settled Hedge Agreements of FERC and in each of the jurisdictions identified in Schedule 4.01.

Section 5.03 Maintenance of Property. (a) Maintain and preserve all Property material to the conduct of its business and keep such Property in good repair, working order and condition, (b) from time to time make, or cause to be made, all needful and proper repairs, renewals, additions, improvements and replacements thereto necessary in order that the business carried on in connection therewith may be properly conducted at all times and (c) use the standard of care typical in the industry in the operation and maintenance of its facilities.

Section 5.04 Maintenance of Insurance.

(a) Maintain with financially sound and reputable insurance companies not Affiliates of any Transaction Party, insurance with respect to its Properties and business, to the extent and against loss or damage of the kinds customarily insured against by Persons engaged in the same or similar business, of such types and in such amounts as are customarily carried under similar circumstances by such other Persons and such other insurance as may be required by law.

(b) (i) Cause all such policies covering any Collateral to be endorsed or otherwise amended to include a customary loss payable endorsement, in form and substance reasonably satisfactory to the Hedge Provider, which endorsement shall provide that, from and after the Closing Date, if the insurance carrier shall have received written notice from the Hedge Provider of the occurrence of an Event of Default or Termination Event, the insurance carrier shall pay all proceeds otherwise payable to a Transaction Party under such policies directly to the Hedge Provider; (ii) deliver original or certified copies of all such policies to the Hedge Provider; cause each such policy to provide that it shall not be canceled, modified or not renewed upon not less than 30 days' prior written notice thereof by the insurer to the Hedge Provider; and (iii) deliver to the Hedge Provider, prior to the cancellation, modification or nonrenewal of any such policy of insurance, a copy of a renewal or replacement policy (or other evidence of renewal of a policy previously delivered to the Hedge Provider) together with evidence satisfactory to the Hedge Provider of payment of the premium therefor.

Section 5.05 Payment of Taxes, Etc. Pay and discharge as the same shall become due and payable, all its obligations and liabilities in accordance with their terms, including (a) all material Taxes, assessments and governmental charges or levies imposed upon it or upon its income or profits or in respect of its Property, unless the same are being contested in good faith by appropriate proceedings diligently conducted and adequate reserves in accordance with GAAP are being maintained by the applicable Transaction Party; (b) all lawful claims which, if unpaid, might by law become a Lien upon its Property in violation of this Agreement; and (c) all Debt, as and when due and payable, but subject to any subordination provisions contained in any

instrument or agreement evidencing such Debt, including, without limitation, the Intercreditor Agreement.

Section 5.06 Reporting Requirements. Deliver to the Hedge Provider, in form and substance satisfactory to the Hedge Provider:

(a) Audited Annual Financial Statements. As soon as available and in any event not later than 120 days after the end of each fiscal year of the Parent (beginning for the fiscal year ending June 30, 2006), copies of (i) the audited consolidated and unaudited consolidating balance sheets of the Parent and its Subsidiaries, in each case, as at the end of such fiscal year, together with, in each case, the related audited consolidated and unaudited consolidating statements of income or operations, shareholders' equity and cash flows for such fiscal year, and the notes thereto, all in reasonable detail and setting forth in each case in comparative form the audited consolidated and unaudited consolidating figures as of the end of and for the previous fiscal year, all in reasonable detail and prepared in accordance with GAAP (subject only to normal year-end audit adjustments and the absence of footnotes with respect to any consolidating statements) and (x) in the case of each of such audited consolidated financial statements (excluding any statements in comparative form to be corresponding figures from the consolidated budget), accompanied by a report and opinion of an independent certified public accountant of nationally recognized standing reasonably acceptable to the Hedge Provider, which report and opinion shall be prepared in accordance with generally accepted auditing standards and shall not be subject to any "going concern" or like qualification or exception or any qualification or exception as to the scope of such audit and shall state that such consolidated financial statements present fairly, in all material respects, the consolidated financial position of the Parent and its respective Subsidiaries as at the end of such fiscal year and their consolidated results of operations and cash flows for such fiscal year in conformity with GAAP; or words substantially similar to the foregoing and that the examination by such accountants in connection with such consolidated financial statements has been made in accordance with generally accepted auditing standards, and (y) in the case of such unaudited consolidating financial statements, certified by a Financial Officer of the Parent that such financial statements have been prepared in accordance with GAAP consistently applied and presents fairly, in all material respects, the information contained therein as at the date and for the periods covered thereby; and (ii) the consolidated and consolidating unaudited Non-GAAP Financial Reporting financial statements of the Parent and its Subsidiaries for such fiscal year including a reconciliation to the GAAP financial statements;

(b) Monthly Financial Statements. As soon as available and in any event not later than 45 days after the end of each month (beginning with the month ending June 30, 2006), (i) a consolidated and consolidating balance sheet of the Parent and its Subsidiaries as at the end of such month, and the related consolidated and consolidating statements of income or operations, shareholders' equity and cash flows for such month and for the portion of the Parent's fiscal year then ended, and setting forth in each case with respect to such consolidated statements, in comparative form the consolidated figures for the corresponding month of the previous fiscal year and the corresponding portion of the previous fiscal year, all in reasonable detail and certified by a Financial Officer of the Parent as fairly presenting in all material respects the financial condition, results of operations, shareholders' equity and cash flows of the Parent and its Subsidiaries in accordance with GAAP, subject only to normal year-end audit adjustments

and the absence of footnotes and (ii) the Parent's and its Subsidiaries' consolidated and consolidating Non-GAAP Financial Reporting financial statements including a reconciliation with the GAAP financial statements described in the foregoing clause (i) and a management discussion and analysis of the financial results;

(c) Daily Actual and Forecasted End User Requirements. On each day, a detailed comprehensive daily position report, in form and substance satisfactory to the Hedge Provider, setting forth the Counterparty's existing contractual and projected natural gas physical purchase, sale, supply and delivery (including forward fixed price and variable price) requirements and commitments to its End Users (such projected requirements and commitments and material assumptions being reasonably determined by the Counterparty based on its natural gas pre-sale marketing efforts and actual demand forecasts);

(d) Commodity Hedge Agreements. On each day, a detailed comprehensive daily report, in form and substance satisfactory to the Hedge Provider, describing all commodity Hedge Agreements of the Counterparty and its Subsidiaries then in effect with any other Person (other than the Hedge Provider), including the mark-to-market value of each such commodity Hedge Agreement determined by the Counterparty in accordance with GAAP, together with all collateral, Guarantees, letters of credit or other credit support provided by or on behalf of the Counterparty or any such Subsidiary with respect to such commodity Hedge Agreements;

(e) End User and Inventory Positions. On each day, a detailed comprehensive summary, in form and substance satisfactory to the Hedge Provider, describing each then existing End User Position and Inventory Position and the agreements and contracts governing, evidencing or relating to such positions, including the mark-to-market value of each such End User Position and Inventory Position determined by the Counterparty in accordance with GAAP, together with a reconciliation of each such End User Position and Inventory Position against any Hedge Agreement entered into by the Counterparty with the Hedge Provider or any other Person for the purpose of hedging (dynamically or otherwise) risks arising from such End User Position or such Inventory Position (as applicable);

(f) Collateral Valuation Reports. On the first Business Day following each immediately preceding week, a detailed comprehensive report, in form and substance satisfactory to the Hedge Provider, dated as of the last Business Day of such applicable week, together with supporting documentation reasonably requested by the Hedge Provider, setting forth the aggregate account receivables for each LDC and of End Users by LDC, a schedule of Imbalances and LDC Residual Contract Rights, cash reconciliations, a schedule of the mark-to-market values with respect to each of the Counterparty's then existing forward physical fixed price and variable price transactions (determined in accordance with GAAP), and a description of all cash and other collateral, Guarantees, letters of credit or similar instruments or other credit support provided by or on behalf of the Counterparty to any other Person in respect of any such End User Position and Inventory Position, in each case in such reasonable detail and in a format as the Hedge Provider may reasonably require;

(g) Hedge Reconciliation Reports. On the first Business Day following each immediately preceding week, a Hedge Reconciliation Report, executed by a Financial Officer of the Counterparty, in form and substance satisfactory to the Hedge Provider;

(h) Risk Management Policy Certification and Report. (i) Within seven (7) Business Days after the fifteenth (15th) and last Business Day of each calendar month, a certificate in form satisfactory to the Hedge Provider from a Financial Officer of the Counterparty certifying that the Counterparty is in compliance with the Risk Management Policy; and (ii) within seven (7) days after the last Business Day of each calendar month, a monthly comprehensive risk management report, in form and substance reasonably acceptable to the Hedge Provider, setting forth (A) a description of all of the Counterparty's hedging positions, forward book, Inventory Positions, and transportation and storage capacities and (B) a separate description of each of the foregoing items with respect to the Properties acquired in the SESCO Acquisition Transaction;

(i) Customer Forecasts. Upon the reasonable request of the Hedge Provider, a detailed comprehensive report, in form and substance reasonably satisfactory to the Hedge Provider, containing descriptions of the Counterparty's long-term and short-term natural gas load forecasts, new End User forecasts, End User migration and losses attributable to End Users, and all material assumptions relating thereto;

(j) USA Patriot Act. Promptly, following a request by the Hedge Provider, all documentation and other information that the Hedge Provider reasonably requests in order to comply with its ongoing obligations under applicable "know your customer" and anti-money laundering rules and regulations, including the USA Patriot Act; and

(k) Other Information. Such other information respecting the business, Properties, Hedge Agreements or Collateral, or the condition or operations, financial or otherwise, of any Transaction Party as the Hedge Provider may from time to time reasonably request.

The Hedge Provider acknowledges and agrees that each report prepared by the Counterparty described in this Section 5.06 may initially be based upon spreadsheets generated and used by the Counterparty in the ordinary course of its business and that the Counterparty will exercise commercially reasonable efforts to thereafter cause such reports to be based upon the Sunguard System "Integrate" by the end of 2006. Notwithstanding any term or provision in Sections 5.06(c), (d), (e), (f), and (g), the Hedge Provider and the Counterparty acknowledge and agree that each of them shall cooperate in good faith to establish reports consistent with the data retrieval capability of the Counterparty so as to enable the Counterparty to satisfy its obligations to the Hedge Provider under such provisions.

Section 5.07 Other Notices. Deliver to the Hedge Provider prompt written notice of the following:

(a) Defaults. The occurrence of any Potential Event of Default or Specified Event or any Debt of any Transaction Party being declared when due and payable before its expressed maturity, or any holder of such Debt having the right to declare such Debt due and payable before its expressed maturity, because of the occurrence of any default (or any event which, with notice and/or the lapse of time, shall constitute any default) under such Debt;

(b) Credit Agreement Notices. A copy of each other notice delivered to the Administrative Agent pursuant to Section 5.07 of the Credit Agreement (as in effect on the date hereof); and

(c) Material Changes. Any other event, development or circumstance that has resulted in, or could reasonably be expected to result in, a Material Adverse Effect or that would materially or adversely affect the rights or remedies of the Hedge Provider under any Transaction Document.

Each notice pursuant to this Section shall be accompanied by a statement of a Responsible Officer of the Counterparty setting forth details of the occurrence referred to therein and stating what action the Counterparty has taken and proposes to take with respect thereto. Each notice pursuant to Section 5.07(a) shall describe with particularity any and all provisions of this Agreement and any other Transaction Document that have been breached.

Section 5.08 Books and Records; Inspection. (a) Keep proper records and books of account in which full, true and correct entries will be made in accordance with GAAP and all Legal Requirements, reflecting all financial transactions and matters involving the assets and business of the Transaction Parties and their Subsidiaries; (b) maintain such books and records of account in material conformity with all applicable requirements of any Governmental Authority having regulatory jurisdiction over the Transaction Parties and their Subsidiaries, as the case may be; (c) from time to time during regular business hours upon reasonable prior notice to the Counterparty, permit representatives and designated third party advisors of the Hedge Provider (i) to visit and inspect any of the Counterparty's Properties or systems or any of the Collateral, (ii) to examine the Counterparty's corporate, financial and operating records, and make copies thereof or abstracts therefrom and (iii) to discuss the Counterparty's affairs, finances and accounts with its directors, officers, employees, and independent public accountants, all at the expense of the Counterparty and at such reasonable times during normal business hours and as often as may be reasonably requested; (d) permit the Hedge Provider, upon request, to conduct (or hire a third party advisor to conduct, on behalf of the Hedge Provider), a review of reports and summaries referenced in Section 5.06 and the Risk Management Policy; (e) as soon as possible but in any event not more than thirty (30) days after the installation and implementation by the Counterparty of the Sunguard System "Integrate" referenced in Section 5.06 (or such other date as the Hedge Provider may reasonably require) and thereafter not more than one (1) time during each succeeding twelve (12) month period, permit the Hedge Provider or its representative or designated third party advisor to perform, at the sole cost and expense of the Counterparty, an independent audit of the Counterparty's procedures, policies, reporting and systems relating to the Risk Management Policy; and (f) permit the Hedge Provider or its representative or designated third party advisors or to audit at any time upon request the Counterparty's infrastructure, analytics, and historical and long-term projected data associated with the Counterparty's business; provided that unless a Potential Event of Default or Specified Event has occurred and is continuing, the inspections, examinations, and other actions described in clause (c) above shall be performed no more often than on a semi-annual basis commencing on the date which is three (3) months following the Closing Date at the Counterparty's sole cost and expense and any additional such inspections, examinations or actions shall be performed at the Hedge Provider's sole cost and expense unless a Potential Event of Default or Specified Event has occurred and is continuing at the time of such inspection, examination or action (as applicable).

Section 5.09 Nature of Business. Maintain and operate such business in substantially the manner in which it is presently conducted and operated.

Section 5.10 Risk Management Policy. (a) Comply with the Risk Management Policy delivered to the Hedge Provider on the Closing Date and (b) amend, modify or supplement the Risk Management Policy only upon the prior written consent of the Hedge Provider.

Section 5.11 Additional Guarantors. Notify the Hedge Provider at the time that any Person becomes a Subsidiary of the Parent, and promptly thereafter (and in any event within 30 days), (a) cause such Person to (i) become a Guarantor by executing and delivering to the Hedge Provider a counterpart of the Guaranty or such other document as the Hedge Provider shall deem appropriate for such purpose, (ii) deliver to the Hedge Provider documents of the types referred to in clauses Section 3.01(a)(ix), (x) and (xi) and favorable opinions of counsel to such Person (which shall cover, among other things, the legality, validity, binding effect and enforceability of the documentation referred to in clause (i)), all in form, content and scope reasonably satisfactory to the Hedge Provider and (iii) execute such other Security Documents as the Hedge Provider may reasonably request, in each case to secure the payment and performance of the Obligations and (b) cause the holder of the Equity Interests of such Person to execute a Pledge Agreement pledging 100% of its interests in the Equity Interest of such Person to secure the Obligations and such evidence of corporate authority to enter into and such legal opinions in relation to such Pledge Agreement as the Hedge Provider may reasonably request, along with certificates evidencing the Equity Interests pledged thereby and appropriately executed stock powers in blank; provided that, no new Subsidiary that is a controlled foreign corporation under Section 957 of the Code shall be required to become a Guarantor or enter into any Security Documents if such Guaranty or the entering into of such Security Documents would reasonably be expected to result in any material incremental income tax liability and the Parent or any Subsidiary domiciled in the United States that is an equity holder of a controlled foreign corporation under Section 957 of the Code shall only be required to pledge 65% of the Equity Interest of such controlled foreign corporation pursuant to the applicable Pledge Agreement.

Section 5.12 Further Assurances. Execute any and all further documents, financing statements, agreements and instruments, and take all such further actions (including the filing and recording of financing or continuation statements or amendments thereto (or similar documents required by any laws of any applicable jurisdiction)), which may be required under any Legal Requirement, or which the Hedge Provider may reasonably request, all at the sole cost and expense of the Counterparty. The Counterparty also agrees to provide to the Hedge Provider, from time to time upon request, evidence reasonably satisfactory to the Hedge Provider as to the perfection and priority of the Liens created or intended to be created by the Security Documents. Each Counterparty agrees not to effect or permit any change of the type referred to in Section 5.07(e)(i)(A) of the Credit Agreement as in effect on the Closing Date unless all filings have been made under the Uniform Commercial Code or otherwise that are required in order for the Hedge Provider to continue at all times following such change to have, and each Transaction Party agrees to take all necessary action to ensure that the Hedge Provider does continue at all times to have, a valid, enforceable and perfected security interest in all of the Collateral. The Counterparty also agrees promptly to notify the Hedge Provider if any material portion of the Collateral is damaged or destroyed.

Section 5.13 Account Control Agreement. Cause the Counterparty to (a) execute and deliver the Account Control Agreement, in form and substance reasonably satisfactory to the Hedge Provider, promptly upon the request of the Hedge Provider and (b) substantially

contemporaneously therewith deliver (or cause to be delivered) a favorable opinion of counsel to the Counterparty relating to the Account Control Agreement, in form reasonably satisfactory to the Hedge Provider.

ARTICLE VI

NEGATIVE COVENANTS

The Transaction Parties hereby jointly and severally covenant and agree that, so long as any Hedging Transaction or Transaction Document remains in effect, the Hedge Provider shall have any Commitment hereunder, or any Obligations remain outstanding, unless the Hedge Provider shall otherwise consent in writing, no Transaction Party shall, directly or indirectly:

Section 6.01 Credit Agreement Negative and Financial Covenants. Take or fail to take any action which causes a violation of any of the negative covenants or financial covenants set forth in Article VI of the Credit Agreement, each as in effect on the Closing Date, each such negative covenant and financial covenant, and all defined terms set forth in the Credit Agreement and referenced therein in their respective entireties (in each case as in effect on the Closing Date), being hereby incorporated herein by reference as if fully set forth herein (all such negative covenants, financial covenants and related defined terms being collectively referred to herein as the "First Lien Negative Covenants").

Section 6.02 Limitation on Natural Gas Hedge Agreements. Permit the Counterparty to enter into, assume, purchase or hold any natural gas Hedge Agreement, other than Natural Gas Hedging Transactions entered into with the Hedge Provider in accordance with this Agreement and the other Transaction Documents.

Section 6.03 Limitation on Speculative Hedge Agreements and Positions. (a) Permit the Counterparty to enter into, assume, purchase or hold a speculative position in any exchange-traded or over-the-counter commodities market or futures market or enter into any Hedge Agreement (including any Hedging Transaction) for speculative purposes, (b) be party to or otherwise enter into any Hedge Agreement (including any Hedging Transaction) which (i) is entered into for reasons other than as a part of its normal business operations as a risk management strategy and/or hedge against changes resulting from market conditions related to the Counterparty's or its Subsidiaries' operations in accordance with the Risk Management Policy, or obligates the Counterparty to provide any margin, collateral or other credit support not permitted under this Agreement or any Transaction Document, or (c) amend, modify, waive or supplement the Risk Management Policy without the Hedge Provider's prior written consent.

Section 6.04 Additional Limitations on Liens; Hedging Facility Collateral. Without limiting any term or provision of any First Lien Negative Covenant or any ISDA Document, (a) permit the Counterparty or any other Person to create, incur, assume or permit to exist any Lien on the Collateral Account or any Hedging Facility Collateral, (b) permit the aggregate amount of Hedging Facility Collateral to at any time be less than \$25,000,000 or (c) permit any other Person to become a Secured Counterparty (as defined in the Intercreditor Agreement) under the Intercreditor Agreement without the prior written consent of the Hedge Provider.

Section 6.05 Additional Limitations on Dispositions of Collateral Account Property. Without limiting any term or provision of any First Lien Negative Covenant, assign, sell, transfer, convey or otherwise dispose of any Collateral Account Property, except for the sale of Cash Equivalents contained in the Collateral Account from time to time (subject to and in accordance with Section 7.04), provided that all net proceeds of any such sale shall be held and maintained in, or reinvested in other Cash Equivalents held or maintained in, the Collateral Account.

Section 6.06 Restrictive Agreements. Create, assume or otherwise permit or suffer to exist any prohibition, encumbrance or restriction which prohibits or otherwise restricts the ability of the Counterparty to enter into Natural Gas Hedging Transactions or any of the other transactions contemplated by, or to perform any of its obligations under, any Transaction Document, other than the Credit Agreement and the Intercreditor Agreement, each as in effect on the Closing Date.

Section 6.07 Sale and Leaseback Transactions and other Off-Balance Sheet Liabilities. Enter into, assume, purchase or suffer to exist any (a) Sale and Leaseback Transaction or (b) any other transaction pursuant to which it incurs or has incurred Off-Balance Sheet Liabilities, except for Hedge Agreements permitted to be incurred under the terms of Sections 6.02 and 6.03.

Section 6.08 Subordinated Debt. Except as expressly permitted in Section 2 of the Intercreditor Agreement: (a) make any optional, mandatory or scheduled payments on account of principal or interest (whether by redemption, purchase, retirement, defeasance, set-off or otherwise) in respect of Subordinated Indebtedness; or (b) permit any waiver, supplement, modification, amendment, termination or release of any indenture, instrument or agreement pursuant to which any Subordinated Indebtedness is outstanding if such waiver, supplement, modification, amendment, termination or release would (i) increase the maximum principal amount of such Subordinated Indebtedness or the ordinary interest rate or the default interest rate on such Subordinated Indebtedness; (ii) change the dates upon which payments of principal or interest are due on such Subordinated Indebtedness; (iii) change any event of default or add any covenant with respect to such Subordinated Indebtedness; (iv) change the payment, redemption or prepayment provisions of such Subordinated Indebtedness; (v) change the subordination provisions thereof; or (vi) change or amend any other term if such change or amendment would materially increase the obligations of the obligor or confer additional material rights on the holder of such Subordinated Indebtedness in any manner adverse to the interests of the Hedge Provider under the Transaction Documents.

ARTICLE VII

SPECIFIED EVENTS

Section 7.01 Specified Events. The occurrence of any of the following events shall constitute a "Specified Event" hereunder:

(a) The occurrence of (i) an Event of Default under any ISDA Document with respect to which the Counterparty is the Defaulting Party, (ii) any Termination Event under any ISDA

Document with respect to which the Counterparty is an Affected Party or (iii) any VPEM Specified Event; or

(b) The Counterparty or any other Transaction Party shall fail to pay any amount due and payable solely under this Agreement to the Hedge Provider within two (2) Business Days after the same becomes due and payable; or

(c) Any representation or statement made or deemed to be made by the Counterparty or any other Transaction Party (or any of their respective officers) in this Agreement, in any other Transaction Document, or in connection with this Agreement or any other Transaction Document, shall prove to have been incorrect in any material respect when made or deemed to be made; or

(d) Any Transaction Party shall (i) fail to perform or observe any covenant contained in (or incorporated by reference in) Sections 5.01, 5.07(a), 5.10 or 5.12 of this Agreement or in Article VI of this Agreement or (ii) fail to perform or observe any other term or covenant set forth in this Agreement which is not covered by clause (i) above or any other provision of this Section 7.01 if such failure shall remain unremedied for ten (10) days; or

(e) The occurrence of any violation of any covenant specified in Section 2.06(a) of this Agreement; or

(f) The occurrence of a Change in Control; or

(g) The occurrence of any Event of Default (as defined in the Credit Agreement); or

(h) This Agreement, at any time after its execution and delivery and for any reason other than as expressly permitted hereunder, ceases to be in full force and effect; or any Transaction Party or any other Person contests in any manner the validity or enforceability of any of this Agreement; or any Transaction Party denies that it has any or further liability or obligation under this Agreement, or purports to revoke, terminate or rescind, this Agreement; or

(i) The Hedge Provider shall fail to have an Acceptable Security Interest in any of the Collateral, in each case with the relative priorities described in this Agreement and the Intercreditor Agreement.

Section 7.02 Rights and Remedies. If any Specified Event shall have occurred and be continuing, then, and in any such event, the Hedge Provider may (a) by notice to the Counterparty, declare any or all of the Commitments of the Hedge Provider under Article II of this Agreement to be terminated, whereupon the same shall forthwith terminate, and (b) exercise any and all other rights, remedies, powers and privileges available to the Hedge Provider in respect of such Specified Event under any Transaction Document, applicable laws or otherwise.

Section 7.03 Non-Exclusivity of Rights and Remedies. No right or remedy conferred upon the Hedge Provider is intended to be exclusive of any other right or remedy, and each right or remedy shall be cumulative of all other rights and remedies existing by contract, at law, in equity, by statute or otherwise.

Section 7.04 Collateral Account. Each Transaction Party hereby acknowledges that in connection with the ISDA Credit Support Annex the Counterparty and the Hedge Provider may establish one or more Collateral Accounts with the Hedge Provider and the Custodian. The Counterparty shall execute and deliver any documents and agreements (in addition to the ISDA Credit Support Annex and the Account Control Agreement) that the Hedge Provider reasonably requests in connection therewith to establish any such Collateral Account and grant the Hedge Provider first priority perfected security interest in and to any such Collateral Account and the Collateral Account Property. Without limiting the generality of the foregoing, the Counterparty hereby pledges to the Hedge Provider and grants the Hedge Provider a security interest in and to each Collateral Account and all Collateral Account Property held from time to time therein to secure the prompt and complete payment and performance of the Obligations. Without limiting any term or provision in any of the ISDA Documents, after the occurrence and during the continuance of an Event of Default or a Termination Event, the Hedge Provider may exercise any and all rights and remedies under any Transaction Document and applicable law with respect to any Collateral Account and any Collateral Account Property. Cash from time to time held in any Collateral Account may be invested in any other Eligible Collateral (as defined in the ISDA Credit Support Annex) maintained with the Custodian, and under the sole dominion and control of the Hedge Provider, as further provided in the ISDA Credit Support Annex and the Account Control Agreement, and the Hedge Provider shall have no other obligation to make any other investment of any Property therein.

ARTICLE VIII

THE GUARANTY

Section 8.01 Guaranteed Obligations. Each Guarantor hereby, jointly and severally, absolutely, irrevocably and unconditionally guarantees the prompt payment and performance of the Obligations.

Section 8.02 Nature of Guaranty. This guaranty is an absolute, irrevocable, unconditional, completed and continuing guaranty of payment and not a guaranty of collection, and no notice of the Obligations or any extension of credit already or hereafter contracted by or extended to the Counterparty need be given to any Guarantor. This guaranty may not be revoked by any Guarantor and shall continue to be effective with respect to the Obligations arising or created after any attempted revocation by such Guarantor and shall remain in full force and effect until the Obligations are paid and performed in full and all of the Commitments, Hedging Transactions and Transaction Documents are terminated, notwithstanding that from time to time prior thereto no Obligations may be outstanding. The Counterparty and Hedge Provider may modify, alter, rearrange, extend for any period and/or renew from time to time, the Obligations, and the Hedge Provider may waive any or Potential Event of Default, Event of Default, Termination Event or other Specified Event without notice to any Guarantor and in such event each Guarantor will remain fully bound hereunder on the Obligations. This guaranty shall continue to be effective or be reinstated, as the case may be, if at any time any payment of the Obligations is rescinded or must otherwise be returned by the Hedge Provider upon the insolvency, bankruptcy or reorganization of any Transaction Party or otherwise, all as though such payment had not been made. This guaranty may be enforced by the Hedge Provider and any subsequent assignee of any Transaction Document or any subsequent holder of any of the

Obligations and shall not be discharged by the assignment or negotiation of all or part of the Obligations. Each Guarantor hereby expressly waives presentment, demand, notice of non-payment, protest and notice of protest and dishonor, notice of Potential Default, Event of Default, Termination Event or other Specified Event and also notice of acceptance of this guaranty, acceptance on the part of the Hedge Provider being conclusively presumed by the Hedge Provider's request for this guaranty and the Guarantors' being party to this Agreement.

Section 8.03 Hedge Provider's Rights. Each Guarantor authorizes the Hedge Provider, without notice or demand and without affecting any Guarantor's liability hereunder, to take and hold security for the payment of its obligations under this Article VIII and/or the Obligations, and exchange, enforce, waive and release any such security; and to apply such security and direct the order or manner of sale thereof as the Hedge Provider in its discretion may determine, and to obtain a guaranty of the Obligations from any one or more Persons and at any time or times to enforce, waive, rearrange, modify, limit or release any of such other Persons from their obligations under such guaranties.

Section 8.04 Guarantor's Waivers.

(a) General. Each Guarantor waives any right to require the Hedge Provider to (i) proceed against the Counterparty or any other person liable on the Obligations, (ii) enforce any of their rights against any other guarantor of the Obligations, (iii) proceed or enforce any of their rights against or exhaust any Collateral or other security given to secure the Obligations, (iv) have the Counterparty joined with any Guarantor in any suit arising out of this Article VIII and/or the Obligations, or (v) pursue any other right or remedy available to the Hedge Provider whatsoever. It is agreed between the Guarantors and the Hedge Provider that the foregoing waivers are of the essence of the transactions contemplated by this Agreement and the other Transaction Documents and that, but for this Guaranty and such waivers, the Hedge Provider would not enter into this Agreement or any other Transaction Document or continue to enter into any Hedging Transaction. The Hedge Provider shall not be required to mitigate damages or take any action to reduce, collect or enforce the Obligations. Each Guarantor waives any defense arising by reason of any disability, lack of corporate authority or power, or other defense of any Transaction Party or any other guarantor of the Obligations, and shall remain liable hereunder regardless of whether any Transaction Party or any other guarantor be found not liable thereon for any reason. Whether and when to exercise any of the rights and remedies of the Hedge Provider under any of the Transaction Documents or applicable law shall be in the sole and absolute discretion of the Hedge Provider, and no delay by the Hedge Provider in enforcing any right or remedy, including delay in conducting a foreclosure sale, shall be a defense to any Guarantor's liability under this Article VIII.

(b) Marshalling, etc. In addition to the waivers contained in Section 8.04(a) hereof, the Guarantors hereby irrevocably and unconditionally waive, and agree that they shall not at any time insist upon, plead or in any manner whatsoever claim or take the benefit or advantage of, any appraisal, valuation, stay, extension, marshaling of assets or redemption laws, or exemption, whether now or at any time hereafter in force, which may delay, prevent or otherwise affect the performance by the Guarantors of their obligations under, or the enforcement by the Hedge Provider of, this Guaranty. The Guarantors hereby irrevocably and unconditionally waive diligence, presentment and demand (whether for nonpayment or protest or of acceptance,

maturity, extension of time, change in nature or form of the Obligations, any amendment, modification, extension or waiver of any Transaction Document, acceptance of further security, release of further security, composition or agreement arrived at as to the amount of, or the terms of, the Obligations, notice of adverse change in any Transaction Party's financial condition or any other fact which might materially increase the risk to the Guarantors) with respect to any of the Obligations or all other demands whatsoever and waive the benefit of all provisions of law which are or might be in conflict with the terms of this Article VIII. The Guarantors hereby jointly and severally represent, warrant and covenant and agree that, as of the date of this Guaranty, their obligations under this Guaranty are not subject to any offsets or defenses or counterclaims of any kind against the Hedge Provider, the Counterparty or any other Person. The Guarantors further jointly and severally agree and covenant that their obligations under this Guaranty shall not be subject to any counterclaims, offsets, defenses of any kind which may arise in the future against the Hedge Provider, the Counterparty or any other Person.

(c) Subrogation. Until the Obligations have been paid and performed in full, each Guarantor hereby irrevocably and unconditionally waives all rights of subrogation or reimbursement against the Counterparty, whether arising by contract or operation of law (including, without limitation, any such right arising under any federal, state or other applicable bankruptcy or insolvency laws) and hereby irrevocably and unconditionally waives any right to enforce any right or remedy which the Hedge Provider now have or may hereafter have against the Counterparty or any other Transaction Party, and waives any benefit or any right to participate in any Collateral or other security now or hereafter held by Hedge Provider.

Section 8.05 Maturity of Obligations, Payment. Each Guarantor agrees that if the maturity of any of the Obligations is accelerated by bankruptcy or otherwise, such maturity shall also be deemed accelerated for the purpose of this Article VIII without demand or notice to any Guarantor. Each Guarantor will, forthwith upon notice from time to time from the Hedge Provider, jointly and severally pay to the Hedge Provider all amounts due and unpaid by the Counterparty under any Transaction Document and guaranteed hereunder. The failure of the Hedge Provider to give any such notice shall not in any way release any Guarantor from its obligations hereunder.

Section 8.06 Hedge Provider's Expenses. If any Guarantor fails to pay or perform the Obligations after notice from the Hedge Provider of the Counterparty's failure to pay or perform any Obligations at maturity, and if the Hedge Provider obtains the services of an attorney for collection of amounts owing by any Guarantor hereunder, or obtaining advice of counsel in respect of any of its rights or remedies under this Article VIII, or if suit is filed to enforce this Article VIII, or if proceedings are had in any bankruptcy, probate, receivership or other judicial proceedings for the establishment or collection of any amount owing by any Guarantor hereunder, or if any amount owing by any Guarantor hereunder is collected through such proceedings, each Guarantor jointly and severally agrees to pay to the Hedge Provider the Hedge Provider's reasonable attorneys' fees.

Section 8.07 Liability. It is expressly agreed that the liability of each Guarantor for the payment and performance of the Obligations guaranteed hereby shall be primary and not secondary.

Section 8.08 Events and Circumstances Not Reducing or Discharging any Guarantor's Obligations. Each Guarantor hereby consents and agrees to each of the following to the fullest extent permitted by law, and agrees that each Guarantor's obligations under this Article VIII shall not be released, diminished, impaired, reduced or adversely affected by any of the following, and hereby irrevocably and unconditionally waives any rights or remedies (including, without limitation, rights to notice) which each Guarantor might otherwise have as a result of or in connection with any of the following:

(a) Modifications, etc. Any renewal, extension, modification, increase, decrease, alteration or rearrangement of all or any part of the Obligations, or this Agreement or any other Transaction Document, or any contract or understanding between the Counterparty and the Hedge Provider or any Person, pertaining to the Obligations, or the waiver or consent by the Hedge Provider with respect to any of the provisions hereof or thereof, or any modification or termination of the terms of the Intercreditor Agreement or any other intercreditor or subordination agreement pursuant to which claims of other creditors against any Guarantor or the Counterparty are subordinated to the claims of the Hedge Provider or pursuant to which the payment or performance of the Obligations are subordinated to claims of other creditors;

(b) Adjustment, etc. Any adjustment, indulgence, forbearance or compromise that might be granted or given by the Hedge Provider to the Counterparty or any other Transaction Party or any Person liable on or for the Obligations;

(c) Condition of the Counterparty or any Guarantor. The insolvency, bankruptcy, arrangement, adjustment, composition, liquidation, disability, dissolution, death or lack of power of the Counterparty, any other Transaction Party or any other Person at any time liable for the payment or performance of all or any part of the Obligations; or any dissolution of the Counterparty or any other Transaction Party, or any sale, lease or transfer of any or all of the assets of the Counterparty or any other Transaction Party, or any changes in the shareholders, partners, or members of the Counterparty or any other Transaction Party; or any reorganization of the Counterparty or any other Transaction Party;

(d) Invalidity of Obligations. The invalidity, illegality or unenforceability of all or any part of the Obligations, any Transaction Document or any other document or agreement executed in connection with the Obligations, for any reason whatsoever, including, without limitation, the fact that the Obligations, or any part thereof, exceed the amount permitted by law, the act of creating the Obligations or any part thereof is ultra vires, the officers or representatives executing the documents or otherwise creating the Obligations acted in excess of their authority, the Obligations violate applicable usury laws, the Counterparty has valid defenses, claims or offsets (whether at law, in equity or by agreement) which render the Obligations wholly or partially uncollectible from the Counterparty, the creation, performance or repayment of the Obligations (or the execution, delivery and performance of any Transaction Document or any other document or instrument representing part of the Obligations or executed in connection with the Obligations, or given to secure the payment of the Obligations) is illegal, uncollectible, legally impossible or unenforceable, or this Agreement or other documents or instruments pertaining to the Obligations have been forged or otherwise are irregular or not genuine or authentic;

(e) Release of Obligors. Any full or partial release of the liability of the Counterparty or any other Transaction Party from the Obligations or any part thereof, of any co-guarantors, or any other Person now or hereafter liable, whether directly or indirectly, jointly, severally, or jointly and severally, to pay, perform, guarantee or assure the payment of the Obligations or any part thereof, it being hereby recognized, acknowledged and agreed by each Guarantor that such Guarantor may be required to pay and perform the Obligations in full without assistance or support of any other Person, and no Guarantor has been induced to enter into this Article VIII on the basis of a contemplation, belief, understanding or agreement that other parties other than the Counterparty will be liable to pay or perform the Obligations, or the Hedge Provider will look to other parties to pay or perform the Obligations;

(f) Other Security. The taking or accepting of any Collateral other security, or guaranty, or other assurance of payment or performance, for all or any part of the Obligations;

(g) Release of Collateral etc. Any release, surrender, exchange, subordination, deterioration, waste, loss or impairment (including without limitation negligent, willful, unreasonable or unjustifiable impairment) of any Collateral, or other property or security, at any time existing in connection with, or assuring or securing payment or performance of, all or any part of the Obligations;

(h) Care and Diligence. The failure of the Hedge Provider or any other Person to exercise diligence or reasonable care in the preservation, protection, enforcement, sale or other handling or treatment of all or any part of such Collateral, or other property or security;

(i) Status of Liens. The fact that any Collateral, or other security, security interest or lien contemplated or intended to be given, created or granted as security for the payment or performance of the Obligations shall not be properly perfected or created, or shall prove to be unenforceable or subordinate to any other security interest or Lien, it being hereby recognized and agreed by each Guarantor that no Guarantor is entering into this Article VIII in reliance on, or in contemplation of the benefits of, the validity, enforceability, collectibility or value of any of the Collateral or other security for the Obligations;

(j) Payments Rescinded. Any payment by the Counterparty or any other Transaction Party to the Hedge Provider is held to constitute a preference or fraudulent transfer under any applicable laws, or for any reason the Hedge Provider is required to refund such payment or pay such amount to the Counterparty or any other Transaction Party; or

(k) Other Actions Taken or Omitted. Any other action taken or omitted to be taken with respect to this Agreement, any other Transaction Document, the Obligations, or the Collateral or other security therefor, whether or not such action or omission prejudices any Guarantor or increases the likelihood that any Guarantor will be required to pay the Obligations pursuant to the terms hereof, it being the unambiguous and unequivocal intention of each Guarantor that each Guarantor shall be obligated to jointly and severally pay and perform all the Obligations when due, notwithstanding any occurrence, circumstance, event, action, or omission whatsoever, whether contemplated or un contemplated, and whether or not otherwise or particularly described herein, except for the full and final payment and performance of the Obligations.

Section 8.09 Subordination of All Guarantor Claims.

(a) As used herein, the term "Guarantor Claims" shall mean all Debts and liabilities of any Transaction Party or any Subsidiary of any Transaction Party to any Guarantor, whether such Debts and liabilities now exist or are hereafter incurred or arise, or whether the obligation of such Transaction Party or such Subsidiary thereon be direct, contingent, primary, secondary, several, joint and several, or otherwise, and irrespective of whether such Debts or liabilities be evidenced by note, contract, open account, or otherwise, and irrespective of the Person or Persons in whose favor such Debts or liabilities may, at their inception, have been, or may hereafter be created, or the manner in which they have been or may hereafter be acquired by any Guarantor. The Guarantor Claims shall include, without limitation, all rights and claims of any Guarantor against any other Transaction Party or any Subsidiary of any other Transaction Party arising as a result of subrogation or otherwise as a result of such Guarantor's payment or performance of all or any part of the Obligations. Until the Obligations shall be paid and performed in full, all Commitments have expired or been terminated, all Hedging Transactions and Transaction Documents have expired or been terminated and each Guarantor shall have paid and performed all of its obligations hereunder, no Guarantor shall receive or collect, directly or indirectly, from any other Transaction Party or any Subsidiary of any other Transaction Party or any other party any amount upon the Guarantor Claims.

(b) The Counterparty and each Guarantor hereby (i) authorizes the Hedge Provider to demand specific performance of the terms of this Section 8.09, whether or not the Counterparty or any Guarantor shall have complied with any of the provisions hereof applicable to it, at any time when it shall have failed to comply with any provisions of this Section 8.09 which are applicable to it and (ii) irrevocably and unconditionally waives any defense, offset or counterclaim based on the adequacy of a remedy at law, which could be asserted as a bar to such remedy of specific performance.

(c) Upon any distribution of assets of any Transaction Party in any dissolution, winding up, liquidation or reorganization (whether in bankruptcy, insolvency or receivership proceedings or upon an assignment for the benefit of creditors or otherwise):

(i) The Hedge Provider shall first be entitled to receive payment in full of the Obligations before the Counterparty or any Guarantor is entitled to receive any payment on account of the Guarantor Claims.

(ii) Any payment or distribution of assets of any Transaction Party of any kind or character, whether in cash, property or securities, to which the Counterparty or any Guarantor would be entitled except for the provisions of this Section 8.09(c), shall be paid by the liquidating trustee or agent or other Person making such payment or distribution directly to the Hedge Provider, to the extent necessary to make payment in full of all Obligations remaining unpaid after giving effect to any concurrent payment or distribution or provisions therefor to the Hedge Provider.

(d) No right of the Hedge Provider or any other present or future assignees or holders of any Obligations to enforce the subordination provisions herein shall at any time in any way be prejudiced or impaired by any act or failure to act on the part of any Transaction Party or by any

act or failure to act, in good faith, by any such holder, or by any noncompliance by the Counterparty or any Guarantor with the terms hereof, regardless of any knowledge thereof which any such holder may have or be otherwise charged with.

Section 8.10 Claims in Bankruptcy. Except to the extent expressly provided in the Intercreditor Agreement, in the event of receivership, bankruptcy, reorganization, arrangement, debtor's relief, or other insolvency proceedings involving the Counterparty or any other Transaction Party or any of their respective Subsidiaries, as debtor, the Hedge Provider shall have the right to prove their claim in any proceeding, so as to establish their rights hereunder and receive directly from the receiver, trustee or other court custodian, dividends and payments which would otherwise be payable upon Guarantor Claims. Each Guarantor hereby assigns such dividends and payments to the Hedge Provider. If the Hedge Provider receives, for application towards the Obligations, any such dividend or payment which is otherwise payable to any Guarantor, and which, as between either the Counterparty or any Subsidiary of the Counterparty and any Guarantor, shall constitute a credit upon the Guarantor Claims, then upon payment and performance in full of the Obligations, the termination or expiration of the Commitments, and the termination or expiration of all Hedging Transactions and all Transaction Documents, such Guarantor shall become subrogated to the rights of the Hedge Provider to the extent that such payments to the Hedge Provider on the Guarantor Claims have contributed toward the liquidation of the Obligations and such subrogation shall be with respect to that proportion of the Obligations which would have been unpaid if the Hedge Provider had not received dividends or payments upon the Guarantor Claims.

Section 8.11 Payments Held in Trust. In the event that notwithstanding Sections 8.09 and 8.10 above, any Guarantor should receive any funds, payments, claims or distributions which are prohibited by such Sections, such Guarantor shall hold in trust for the Hedge Provider an amount equal to the amount of all funds, payments, claims or distributions so received, and agrees that it shall have absolutely no dominion over the amount of such funds, payments, claims or distributions except to pay them promptly to the Hedge Provider, and each Guarantor covenants promptly to pay the same to the Hedge Provider.

Section 8.12 Benefit of Guaranty. The provisions of this Article VIII are for the benefit of the Hedge Provider, its successors and permitted transferees, endorsees and assigns. In the event all or any part of the Obligations are transferred, endorsed or assigned by the Hedge Provider, as the case may be, to any other Person or Persons in accordance with the terms applicable Transaction Document, any reference to the "Hedge Provider" herein, as the case may be, shall be deemed to refer equally to such Person or Persons.

Section 8.13 Reinstatement. This Article VIII shall remain in full force and effect and continue to be effective in the event any petition is filed by or against the Counterparty, any Guarantor or any other Transaction Party for bankruptcy, liquidation or reorganization, in the event that any of them becomes insolvent or makes an assignment for the benefit of creditors or in the event a receiver, trustee or similar Person is appointed for all or any significant part of any of their assets, and shall continue to be effective or be reinstated, as the case may be, if at any time payment and performance of the Obligations, or any part thereof, is, pursuant to applicable law, rescinded or reduced in amount, or must otherwise be restored or returned by the Hedge Provider, whether as a "voidable preference," "fraudulent conveyance," or otherwise, all as

though such payment or performance had not been made. In the event that any payment, or any part thereof, is rescinded, reduced, restored or returned, the Obligations shall be reinstated and deemed reduced only by such amount paid and not so rescinded, reduced, restored or returned.

Section 8.14 Liens Subordinate. Each Guarantor agrees that any Liens, security interests, judgment liens, charges or other encumbrances upon the Counterparty's or any Subsidiary of the Counterparty's assets securing payment of the Guarantor Claims shall be and remain inferior and subordinate to any Liens, security interests, judgment liens, charges or other encumbrances upon the Counterparty's or any Subsidiary of the Counterparty's assets securing payment and/or performance of the Obligations, regardless of whether such encumbrances in favor of any Guarantor, the Hedge Provider presently exist or are hereafter created or attach.

Section 8.15 Guarantor's Enforcement Rights. Without the prior written consent of the Hedge Provider, no Guarantor shall (a) exercise or enforce any creditor's right it may have against either the Counterparty or any other Transaction Party, or (b) foreclose, repossess, sequester or otherwise take steps or institute any action or proceeding (judicial or otherwise, including without limitation the commencement of or joinder in any liquidation, bankruptcy, rearrangement, debtor's relief or insolvency proceeding) to enforce any lien, mortgages, deeds of trust, security interest, collateral rights, judgments or other encumbrances on assets of the Counterparty or any held by Guarantor.

Section 8.16 Limitation. It is the intention of the Guarantors and the Hedge Provider that the amount of the Obligations guaranteed by each Guarantor shall be in, but not in excess of, the maximum amount permitted by fraudulent conveyance, fraudulent transfer and similar Legal Requirements applicable to such Guarantor. Accordingly, notwithstanding anything to the contrary contained in this Article VIII or in any other agreement or instrument executed in connection with the payment of any of the Obligations guaranteed hereby, the amount of the Obligations guaranteed by a Guarantor under this Article VIII shall be limited to an aggregate amount equal to the largest amount that would not render such Guarantor's obligations hereunder subject to avoidance under Section 548 of the United States Bankruptcy Code or any comparable provision of any other applicable law.

Section 8.17 Contribution Rights.

(a) To the extent that any payment is made under this Guaranty (a "Guarantor Payment"), by a Guarantor, which Guarantor Payment, taking into account all other Guarantor Payments then previously or concurrently made by all other Guarantors, exceeds the amount which such Guarantor would otherwise have paid if each Guarantor had paid the aggregate Obligations satisfied by such Guarantor Payment in the same proportion that such Guarantor's Allocable Amount (as defined below) (in effect immediately prior to such Guarantor Payment) bore to the aggregate Allocable Amounts of all of the Guarantors in effect immediately prior to the making of such Guarantor Payment, then, following the date on which the Obligations shall have been paid and performed in full, all Commitments, Hedging Transactions and Transaction Documents have expired or been terminated and each Guarantor shall have paid and performed all of its obligations hereunder, such Guarantor shall be entitled to receive contribution and indemnification payments from, and be reimbursed by, each of the other Guarantors for the

amount of such excess, pro rata based upon their respective Allocable Amounts in effect immediately prior to such Guarantor Payment.

(b) As of any date of determination, the "Allocable Amount" of any Guarantor shall be equal to the maximum amount of the claim which could then be recovered from such Guarantor under this Guaranty without rendering such claim voidable or avoidable under Section 548 of Chapter 11 of the Bankruptcy Code or under any applicable state Uniform Fraudulent Transfer Act, Uniform Fraudulent Conveyance Act or similar statute or common law.

(c) This Section 8.17 is intended to define the relative rights of the Guarantors and nothing set forth in this Section 8.17 is intended to or shall impair the obligations of the Guarantors, jointly and severally, to pay any amounts as and when the same shall become due and payable in accordance with the terms of this Guaranty.

(d) The rights of the parties under this Section 8.17 shall be exercisable on the date on which the Obligations shall be paid and performed in full, all Commitments, Hedging Transactions and Transaction Documents shall have expired or been terminated, and each Guarantor shall have performed all of its obligations hereunder.

(e) The parties hereto acknowledge that the right of contribution and indemnification hereunder shall constitute assets of any Guarantor to which such contribution and indemnification is owing.

Section 8.18 Release of Guarantors. Upon the sale or disposition of any Guarantor to a Third Person pursuant to the terms of this Agreement and the Credit Agreement to any Person other than any other Guarantor, the Hedge Provider shall, at the Counterparty's sole cost and expense, execute and deliver to such Guarantor such documents as such Guarantor shall reasonably require and take any other actions reasonably required to evidence or effect the release of such Guarantor from this Article VIII.

ARTICLE IX

MISCELLANEOUS

Section 9.01 Amendments, Etc. No amendment or waiver of any provision of this Agreement or any other Transaction Document (other than the Fee Letter), and no consent to any departure by any Transaction Party therefrom, shall in any event be effective unless the same shall be in writing and signed by the Hedge Provider and the Counterparty and then such amendment, waiver or consent shall be effective only in the specific instance and for the specific purpose for which given.

Section 9.02 Notices, Etc.

(a) General. Except in the case of notices and other communications expressly permitted to be given by telephone (and except as provided in paragraph (c) below), all notices and other communications provided for herein shall be in writing and shall be delivered by hand or overnight courier service, mailed by certified or registered mail, sent by telecopier or (subject to subsection (c) below) electronic mail address to the Counterparty, any other Transaction Party,

or the Hedge Provider, to the address, facsimile number, electronic mail address or telephone number specified for such Person on Schedule 9.02 or to such other address, facsimile number, electronic mail address or telephone number as shall be designated by such party in a notice to the other parties.

Notices sent by hand or overnight courier service, or mailed by certified or registered mail, shall be deemed to have been given when received; notices sent by telecopier shall be deemed to have been given when sent (except that, if not given during normal business hours for the recipient, shall be deemed to have been given on the next Business Day for the recipient) and confirmed received. Notices delivered through electronic communications to the extent provided in paragraph (c) below, shall be effective as provided in said paragraph (c). In no event shall a voicemail message be effective as a notice, communication or confirmation hereunder.

(b) Effectiveness of Facsimile Documents and Signatures. Transaction Documents may be transmitted and/or signed by facsimile. The effectiveness of any such documents and signatures shall, subject to applicable Legal Requirements, have the same force and effect as manually-signed originals and shall be binding on all Transaction Parties, and the Hedge Provider. The Hedge Provider may also require that any such documents and signatures be confirmed by a manually-signed original thereof; provided, however, that the failure to request or deliver the same shall not limit the effectiveness of any facsimile document or signature.

(c) Limited Use of Electronic Mail. Notices and other communications to the Hedge Provider hereunder may be delivered or furnished by electronic communication (including e-mail and Internet or intranet websites) pursuant to procedures approved by the Hedge Provider in its sole discretion. The Hedge Provider may, in its sole discretion, agree to accept notices and other communications to it hereunder by electronic communications pursuant to procedures approved by it, provided that approval of such procedures may be limited to particular notices or communications. Unless the Hedge Provider otherwise prescribes, (i) notices and other communications sent to an e-mail address shall be deemed received upon the sender's receipt of an acknowledgement from the intended recipient (such as by the "return receipt requested" function, as available, return e-mail or other written acknowledgement), provided that if such notice or other communication is not sent during the normal business hours of the recipient, such notice or communication shall be deemed to have been sent at the opening of business on the next business day for the recipient, and (ii) notices or communications posted to an Internet or intranet website shall be deemed received upon the deemed receipt by the intended recipient at its e-mail address as described in the foregoing clause (i) of notification that such notice or communication is available and identifying the website address therefor.

(d) Reliance by Hedge Provider. The Hedge Provider shall be entitled to rely and act upon any notices purportedly given by or on behalf of a Transaction Party even if (i) such notices were not made in a manner specified herein, were incomplete or were not preceded or followed by any other form of notice specified herein, or (ii) the terms thereof, as understood by the recipient, varied from any confirmation thereof. **THE COUNTERPARTY HEREBY AGREES TO INDEMNIFY AND HOLD HARMLESS THE HEDGE PROVIDER AND EACH OF ITS RELATED PARTIES FROM ALL LOSSES, COSTS, EXPENSES AND LIABILITIES RESULTING FROM THE RELIANCE BY SUCH PERSON ON EACH NOTICE PURPORTEDLY GIVEN BY OR ON BEHALF OF THE COUNTERPARTY; PROVIDED THAT SUCH INDEMNITY SHALL NOT BE AVAILABLE TO THE EXTENT**

THAT SUCH LIABILITIES, OBLIGATIONS, LOSSES, DAMAGES, PENALTIES, CLAIMS, DEMANDS, ACTIONS, JUDGMENTS, SUITS, COSTS, EXPENSES OR DISBURSEMENTS ARE DETERMINED BY A COURT OF COMPETENT JURISDICTION BY FINAL AND NON-APPEALABLE JUDGMENT TO HAVE RESULTED FROM THE GROSS NEGLIGENCE OR WILLFUL MISCONDUCT OF THE PERSON SEEKING INDEMNIFICATION. All telephonic notices to and other communications with the Hedge Provider may be recorded by the Hedge Provider, and each of the parties hereto hereby consents to such recording.

Section 9.03 No Waiver; Cumulative Remedies. No failure on the part of the Hedge Provider to exercise, and no delay by any such Person in exercising, any right, remedy, power or privilege hereunder shall operate as a waiver thereof; nor shall any single or partial exercise of any such right preclude any other or further exercise thereof or the exercise of any other right, remedy, power or privilege. The rights, remedies, powers and privileges herein provided in this Agreement are cumulative and not exclusive of any rights, remedies, powers and privileges provided under any other Transaction Document or applicable law.

Section 9.04 Costs and Expenses. The Counterparty shall pay (i) all reasonable out-of-pocket expenses incurred by the Hedge Provider (including the reasonable fees, charges and disbursements of counsel for the Hedge Provider) in connection with the preparation, negotiation, execution, delivery and administration of this Agreement and the other Transaction Documents or any amendments, modifications or waivers of the provisions hereof or thereof (whether or not the transactions contemplated hereby or thereby shall be consummated), and (ii) all out-of-pocket expenses incurred by the Hedge Provider (including the fees, charges and disbursements of any counsel for the Hedge Provider) in connection with the enforcement or protection of its rights (A) in connection with this Agreement and the other Transaction Documents, including its rights under this Section, or (B) in connection with any Hedging Transaction hereunder, including all such out-of-pocket expenses incurred during any workout, restructuring or negotiations in respect of such Hedging Transactions. The foregoing costs and expenses shall include all search, filing, and recording, title insurance and appraisal charges and fees and Taxes related thereto, and other out-of-pocket expenses incurred by the Hedge Provider and the cost of independent public accountants and other outside experts retained by the Hedge Provider. All amounts due under this Section 9.04 shall be payable within ten (10) Business Days after demand therefor. The agreements in this Section shall survive the payment and performance of the Obligations, and the expiration or termination of all of the Commitments, Hedging Transactions and Transaction Documents.

Section 9.05 Indemnification. The Counterparty shall indemnify the Hedge Provider and each of its Related Parties (each such Person being called an "Indemnatee") against, and hold each Indemnatee harmless from, any and all liabilities, obligations, losses, damages, penalties, claims, demands, actions, judgments, suits, costs, expenses, or disbursements (including all reasonably incurred fees, expenses and disbursements of any law firm or other external counsel) of any kind or nature whatsoever which may be imposed on, incurred by, or asserted against any Indemnatee in any way relating to or arising out of or in connection with (a) the execution, delivery, enforcement, performance, or administration of this Agreement, any Transaction Document, or any other agreement, letter or instrument delivered in connection with the transactions contemplated hereby and thereby or the consummation of the transactions contemplated hereby and thereby, (b) any Commitment,

(c) any action taken or omitted by the Hedge Provider under this Agreement or any other Transaction Document (including the Hedge Provider's own negligence), or (d) any actual or prospective claim, litigation, investigation or proceeding relating to any of the foregoing, whether based on contract, tort or any other theory (including any investigation of, preparation for, or defense of any pending or threatened claim, investigation, litigation or proceeding) and regardless of whether any Indemnitee is a party thereto (all the foregoing, collectively, the "Indemnified Liabilities"); provided that such indemnity shall not, as to any Indemnitee, be available to the extent that such liabilities, obligations, losses, damages, penalties, claims, demands, actions, judgments, suits, costs, expenses or disbursements are determined by a court of competent jurisdiction by final and nonappealable judgment to have resulted from the gross negligence or willful misconduct of such Indemnitee.

TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, NO TRANSACTION PARTY SHALL ASSERT, AND HEREBY IRREVOCABLY AND UNCONDITIONALLY WAIVES, ANY CLAIM AGAINST ANY INDEMNITEE, ON ANY THEORY OF LIABILITY, FOR SPECIAL, INDIRECT, CONSEQUENTIAL OR PUNITIVE DAMAGES (AS OPPOSED TO DIRECT OR ACTUAL DAMAGES) ARISING OUT OF, IN CONNECTION WITH, OR AS A RESULT OF, THIS AGREEMENT, ANY OTHER TRANSACTION DOCUMENT OR ANY AGREEMENT OR INSTRUMENT CONTEMPLATED HEREBY, THE TRANSACTIONS CONTEMPLATED HEREBY OR THEREBY, OR ANY HEDGING TRANSACTION. NO INDEMNITEE SHALL BE LIABLE FOR ANY DAMAGES ARISING FROM THE USE BY UNINTENDED RECIPIENTS OF ANY INFORMATION OR OTHER MATERIALS DISTRIBUTED BY IT THROUGH TELECOMMUNICATIONS, ELECTRONIC OR OTHER INFORMATION TRANSMISSION SYSTEMS IN CONNECTION WITH THIS AGREEMENT OR THE OTHER TRANSACTION DOCUMENTS OR THE TRANSACTIONS CONTEMPLATED HEREBY OR THEREBY.

ALL AMOUNTS DUE UNDER THIS SECTION 9.05 SHALL BE PAYABLE WITHIN TEN (10) BUSINESS DAYS AFTER DEMAND THEREFOR. THE AGREEMENTS IN THIS SECTION SHALL SURVIVE THE PAYMENT AND PERFORMANCE OF THE OBLIGATIONS AND THE EXPIRATION OR TERMINATION OF ALL OF THE COMMITMENTS, HEDGING TRANSACTIONS AND TRANSACTION DOCUMENTS.

Section 9.06 Successors and Assigns. The terms and provisions of this Agreement and the Transaction Documents shall be binding upon and inure to the benefit of the parties hereto and their respective successors and the assigns permitted hereby, except that no Transaction Party may assign or otherwise transfer any of its rights or obligations hereunder without the prior written consent of the Hedge Provider and the Hedge Provider may not assign or otherwise transfer any of its rights or obligations hereunder without the prior written consent of the Counterparty. Nothing in this Agreement, expressed or implied, shall be construed to confer upon any Person (other than the parties hereto, their respective successors and assigns permitted hereby, and, to the extent expressly contemplated hereby, the Indemnitees) any legal or equitable right, remedy or claim under or by reason of this Agreement.

Section 9.07 Confidentiality. Each party hereto and hereby agrees to maintain the confidentiality of the Information (as defined below), except that Information may be disclosed (a) to its and its Affiliates' directors, officers, employees and agents, including accountants, legal counsel and other advisors (it being understood that the Persons to whom such disclosure is made will be informed of the confidential nature of such Information and instructed to keep such

Information confidential), (b) to the extent requested by any regulatory authority (including any self-regulatory authority), (c) to the extent required by applicable laws or regulations or by any subpoena or similar legal process, (d) to any other party hereto, (e) in connection with the exercise of any rights and remedies hereunder or under any other Transaction Document or any action or proceeding relating to this Agreement or any other Transaction Document or the enforcement of rights or remedies hereunder or thereunder, (f) subject to an agreement containing provisions substantially the same as those of this Section, to the Administrative Agent and any Lender to the extent expressly required under the Credit Agreement, (g) with the consent of the other party or (h) to the extent such Information (x) becomes publicly available other than as a result of a breach of this Section or (y) becomes available to the either party on a nonconfidential basis from a source other than the other party. For purposes of this Section, "Information" means all information received by any party hereto and from any other party hereto relating to any such party or any of its respective businesses, other than any such information that is available to the party to whom such information is disclosed on a nonconfidential basis prior to disclosure by any such party. Any Person required to maintain the confidentiality of Information as provided in this Section shall be considered to have complied with its obligation to do so if such Person has exercised the same degree of care to maintain the confidentiality of such Information as such Person would accord to its own confidential information.

Section 9.08 Execution in Counterparts. This Agreement may be executed in any number of counterparts and by different parties hereto in separate counterparts, each of which when so executed shall be deemed to be an original and all of which taken together shall constitute one and the same agreement.

Section 9.09 Survival of Representations, etc. All representations and warranties made in this Agreement and in any other Transaction Document or other document delivered pursuant hereto or thereto or in connection herewith or therewith shall survive the execution and delivery hereof and thereof. All such representations and warranties have been or will be relied upon by the Hedge Provider, regardless of any investigation made by the Hedge Provider and notwithstanding that the Hedge Provider may have had notice or knowledge of any Potential Event of Default or Specified Event, and shall continue in full force and effect as long as any Obligation hereunder shall remain unpaid or unsatisfied, or any Commitment, any Hedging Transaction or any Transaction Document shall remain in effect.

Section 9.10 Severability. If any provision of this Agreement or the other Transaction Documents is held to be illegal, invalid or unenforceable, (a) the legality, validity and enforceability of the remaining provisions of this Agreement and the other Transaction Documents shall not be affected or impaired thereby and (b) the parties shall endeavor in good faith negotiations to replace the illegal, invalid or unenforceable provisions with valid provisions the economic effect of which comes as close as possible to that of the illegal, invalid or unenforceable provisions. The invalidity of a provision in a particular jurisdiction shall not invalidate or render unenforceable such provision in any other jurisdiction.

Section 9.11 Interest Rate Limitation. Notwithstanding anything to the contrary contained in any Transaction Document, the interest paid or agreed to be paid under the Transaction Documents shall not exceed the maximum rate of non-usurious interest permitted by

applicable Law (the "Maximum Rate"). If the Hedge Provider shall receive interest in an amount that exceeds the Maximum Rate, the excess interest shall at the Hedge Provider's option be maintained in the Collateral Account or refunded to the Counterparty. In determining whether the interest contracted for, charged, or received by the Hedge Provider exceeds the Maximum Rate, such Person may, to the extent permitted by applicable Law, (a) characterize any payment that is not principal as an expense, fee, or premium rather than interest, (b) exclude voluntary prepayments and the effects thereof, and (c) amortize, prorate, allocate, and spread in equal or unequal parts the total amount of interest throughout the contemplated term of the Obligations hereunder.

Section 9.12 Governing Law. **THIS AGREEMENT AND EACH OF THE OTHER TRANSACTION DOCUMENTS SHALL BE GOVERNED BY AND CONSTRUED IN ACCORDANCE WITH THE LAWS OF THE STATE OF NEW YORK, WITHOUT REGARD TO PRINCIPLES OF CONFLICTS OF LAWS THEREOF (OTHER THAN SECTIONS 5-1401 AND 5-1402 OF THE NEW YORK GENERAL OBLIGATIONS LAW).**

Section 9.13 Submission to Jurisdiction.

(a) ANY LEGAL ACTION OR PROCEEDING WITH RESPECT TO THIS AGREEMENT OR ANY OTHER TRANSACTION DOCUMENT MAY BE BROUGHT IN THE COURTS OF THE STATE OF NEW YORK SITTING IN NEW YORK CITY OR OF THE UNITED STATES FOR THE EASTERN DISTRICT OF SUCH STATE, AND BY EXECUTION AND DELIVERY OF THIS AGREEMENT, THE TRANSACTION PARTIES AND THE HEDGE PROVIDER CONSENTS, FOR ITSELF AND IN RESPECT OF ITS PROPERTY, TO THE NON-EXCLUSIVE JURISDICTION OF THOSE COURTS. THE COUNTERPARTY, THE HEDGE PROVIDER AND EACH OTHER TRANSACTION PARTY IRREVOCABLY WAIVES ANY OBJECTION, INCLUDING ANY OBJECTION TO THE LAYING OF VENUE OR BASED ON THE GROUNDS OF *FORUM NON CONVENIENS*, WHICH IT MAY NOW OR HEREAFTER HAVE TO THE BRINGING OF ANY ACTION OR PROCEEDING IN SUCH JURISDICTION IN RESPECT OF ANY TRANSACTION DOCUMENT OR OTHER DOCUMENT RELATED THERETO. THE HEDGE PROVIDER, COUNTERPARTY AND ANY GUARANTOR WAIVE PERSONAL SERVICE OF ANY SUMMONS, COMPLAINT OR OTHER PROCESS, WHICH MAY BE MADE BY ANY OTHER MEANS PERMITTED BY THE LAW OF SUCH STATE.

(b) Each Transaction Party has irrevocably appointed CT Corporation System (the "Process Agent"), with an office on the date hereof at 111 Eighth Ave., New York, New York, 10011, as its agent to receive on its behalf and on behalf of its property service of copies of any summons or complaint or any other process which may be served in any action. Such service may be made by mailing or delivering a copy of such process to such Transaction Party in care of the Process Agent at the Process Agent's above address, and each Transaction Party hereby irrevocably authorizes and directs the Process Agent to accept such service on its behalf. As an alternative method of service, each Transaction Party also irrevocably consents to the service of any and all process in any such action or proceeding by the mailing of copies of such process to it at the address specified for it on the signature pages of this Agreement.

(c) Nothing in this Section 9.13 shall affect the right of the Hedge Provider to serve legal process in any other manner permitted by law or affect the right of the Hedge Provider to

bring any action or proceeding against any Transaction Party (as the Counterparty or as a Guarantor) in the courts of any other jurisdiction.


Section 9.14 Waiver of Jury Trial. EACH PARTY TO THIS AGREEMENT HEREBY EXPRESSLY AND IRREVOCABLY WAIVES ANY RIGHT TO TRIAL BY JURY OF ANY CLAIM, DEMAND, ACTION OR CAUSE OF ACTION ARISING UNDER ANY TRANSACTION DOCUMENT OR IN ANY WAY CONNECTED WITH OR RELATED OR INCIDENTAL TO THE DEALINGS OF THE PARTIES HERETO OR ANY OF THEM WITH RESPECT TO ANY TRANSACTION DOCUMENT, OR THE TRANSACTIONS RELATED THERETO, IN EACH CASE WHETHER NOW EXISTING OR HEREAFTER ARISING, AND WHETHER FOUNDED IN CONTRACT OR TORT OR OTHERWISE; AND EACH PARTY HEREBY AGREES AND CONSENTS THAT ANY SUCH CLAIM, DEMAND, ACTION OR CAUSE OF ACTION SHALL BE DECIDED BY COURT TRIAL WITHOUT A JURY, AND THAT ANY PARTY TO THIS AGREEMENT MAY FILE AN ORIGINAL COUNTERPART OR A COPY OF THIS SECTION WITH ANY COURT AS WRITTEN EVIDENCE OF THE CONSENT OF THE SIGNATORIES HERETO TO THE WAIVER OF THEIR RIGHT TO TRIAL BY JURY.

Section 9.15 Entire Agreement. THIS AGREEMENT AND THE OTHER TRANSACTION DOCUMENTS REPRESENT THE FINAL AGREEMENT AMONG THE PARTIES AND MAY NOT BE CONTRADICTED BY EVIDENCE OF PRIOR, CONTEMPORANEOUS, OR SUBSEQUENT ORAL AGREEMENTS OF THE PARTIES. THERE ARE NO UNWRITTEN ORAL AGREEMENTS AMONG THE PARTIES.

IN WITNESS WHEREOF, each of the undersigned has caused this Master Transaction Agreement to be duly executed and delivered as of the date first above written.

HEDGE PROVIDER:

SOCIÉTÉ GÉNÉRALE

By: 
Name: _____
Title: **Francois-Xavier Saint-Macary**
Managing Director
Global Head of Commodities Trading

COUNTERPARTY:

MXENERGY INC.

By: _____
Name: _____
Title: _____

GUARANTORS:

MXENERGY ELECTRIC INC.

By: _____
Name: _____
Title: _____

MXENERGY HOLDINGS INC.

By: _____
Name: _____
Title: _____

ONLINE CHOICE INC.

By: _____
Name: _____
Title: _____

IN WITNESS WHEREOF, each of the undersigned has caused this Master Transaction Agreement to be duly executed and delivered as of the date first above written.

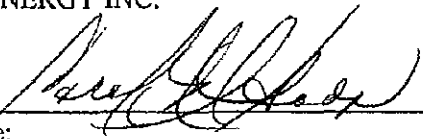
HEDGE PROVIDER:

SOCIÉTÉ GÉNÉRALE

By: _____
Name: _____
Title: _____


COUNTERPARTY:

MXENERGY INC.


By:  _____
Name: _____
Title: _____

GUARANTORS:

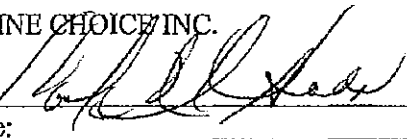
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By:  _____
Name: _____
Title: _____

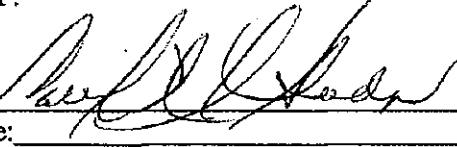
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By:  _____
Name: _____
Title: _____

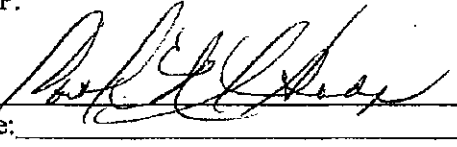
ONLINE CHOICE INC.

By:  _____
Name: _____
Title: _____

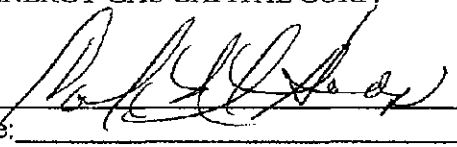
MXENERGY GAS CAPITAL HOLDINGS
CORP.

By: 
Name: _____
Title: _____

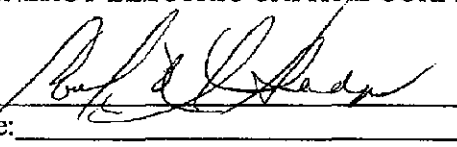
MXENERGY ELECTRIC CAPITAL HOLDINGS
CORP.

By: 
Name: _____
Title: _____

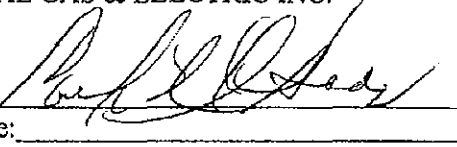
MXENERGY GAS CAPITAL CORP.

By: 
Name: _____
Title: _____

MXENERGY ELECTRIC CAPITAL CORP.

By: 
Name: _____
Title: _____

TOTAL GAS & ELECTRIC INC.

By: 
Name: _____
Title: _____

TOTAL GAS & ELECTRICITY (PA) INC.

By: 

Name: _____

Title: _____

MXENERGY CAPITAL HOLDINGS CORP.

By: 

Name: _____

Title: _____

MXENERGY CAPITAL CORP.

By: 

Name: _____

Title: _____

MXENERGY ENERGY SERVICES INC.

By: 

Name: _____

Title: _____

INFOMETER.COM INC.

By: 

Name: _____

Title: _____

**FIRST AMENDMENT TO
MASTER TRANSACTION AGREEMENT**

This First Amendment (this "Amendment"), dated as of April 6, 2007 (the "Amendment Effective Date"), is by and among MxEnergy Inc., a Delaware corporation ("Counterparty"), MxEnergy Holdings Inc. and certain Subsidiaries thereof (collectively, the "Guarantors"), and Société Générale, as Hedge Provider.

PRELIMINARY STATEMENTS

A. Reference is made to the Master Transaction Agreement dated as of August 1, 2006 (as amended to date, the "Agreement") among the Counterparty, the Guarantors and the Hedge Provider. Unless otherwise expressly provided herein, capitalized terms used herein and not otherwise defined shall have the meanings assigned to such terms in the Agreement.

B. The Counterparty has requested that the Hedge Provider amend the Agreement as hereinafter provided; and

C. The Hedge Provider is willing to amend the Agreement on the terms and conditions set forth herein.

NOW THEREFORE, in consideration of the premises and the covenants and agreements contained herein, the parties hereto agree as follows:

AGREEMENT

Section I. Amendments to Agreement.

(a) Amendment to Section 1.01. The definition of "Credit Agreement" in Section 1.01 of the Agreement is hereby amended by adding the following clause immediately prior to the end of such definition:

"as amended by the First Amendment, dated as of April 6, 2007, by and among the Borrowers, Guarantors and the Lenders party thereto."

(b) Amendment to Section 5.06. Section 5.06(h) of the Agreement is hereby amended by inserting a new clause (ii) and re-numbering the existing clause (ii) as clause (iii):

(ii) on the last day of each fiscal quarter, a certificate from a Responsible Officer of the Counterparty certifying a description of any revisions or updates to the schedules to the Risk Management Policy or, if there have been no such revisions or updates, certifying that there have not been any such revisions or updates.

(c) Amendment to Section 6.01. Section 6.01 of the Agreement is hereby amended in its entirety as follows:

Credit Agreement Negative and Financial Covenants. Take or fail to take any action which causes a violation of any of the negative covenants or financial covenants set forth in Article VI of the Credit Agreement, each as in effect on the Closing Date (or, with respect to Sections 6.05, 6.17, 6.18 and 6.20 of the Credit Agreement, as in effect on April 6, 2007), each such negative covenant and financial covenant, and all defined terms set forth in the Credit Agreement and referenced therein in their respective entireties (in each case as in effect on the Closing Date or, with respect to the definition of "Consolidated Tangible Net Worth" and Sections 6.05, 6.17, 6.18 and 6.20 of the Credit Agreement, as in effect on April 6, 2007), being hereby incorporated herein by reference as if fully set forth herein (all such negative covenants, financial covenants and related defined terms being collectively referred to herein as the "First Lien Negative Covenants").

Section 2. Conditions to Effectiveness. This Amendment shall be effective as of the Amendment Effective Date when the Hedge Provider shall have received confirmation of each of the following in form and substance satisfactory to the Hedge Provider:

- (a) counterparts of this Amendment, duly executed and delivered by the Counterparty and the Guarantors;
- (b) counterparts of the First Amendment to the Credit Agreement, duly executed and delivered by Transaction Parties, the Administrative Agent and the Majority Lenders;
- (c) a certificate of Secretary or other officer of each Transaction Party certifying the name and title of the officer of such Transaction Party that is authorized to execute this Amendment and that none of the organizational documents of such Transaction Party have been changed since the Closing Date; and
- (d) evidence that the Counterparty has paid all other costs, accrued and unpaid fees and expenses to the extent due and payable to the Hedge Provider as of the Amendment Effective Date pursuant to the Agreement and any fee letter executed by the Hedge Provider.

Section 3. Representations and Warranties. Each Transaction Party jointly and severally hereby represents and warrants that, as of the Amendment Effective Date:

- (a) all representations and warranties of such Transaction Party contained in the Agreement and any other Transaction Document are true and correct in all material respects with the same effect as if such representations and warranties had been made on the Amendment Effective Date (it being understood and agreed that any representation which by its terms is

made as of a specified date shall be required to be true and correct only as of such specified date); and

(b) no Specified Event has occurred and is continuing.

Section 4. Consent of Guarantors; Confirmation of Guarantees. Each Guarantor hereby consents to this Amendment and hereby confirms and agrees that notwithstanding the effectiveness of this Amendment, the Guarantee contained in Article VIII of the Agreement is, and shall continue to be, in full force and effect and is hereby ratified and confirmed in all respects.

Section 5. Governing Law. This Amendment shall be governed by, and construed and enforced in accordance with, the internal laws of the State of New York without regard to conflict of laws principles.

Section 6. Entire Agreement. This Amendment, the Agreement and the other Transaction Documents constitute the entire agreement and understanding among the parties and supersede all prior agreements and understandings, whether written or oral, among the parties hereto concerning the transactions provided herein and therein.

Section 7. Execution in Counterparts. This Amendment may be executed in any number of counterparts and by different parties hereto in separate counterparts, each of which when so executed shall be deemed to be an original and all of which taken together shall constitute one and the same agreement. Delivery of an executed counterpart of a signature page to this Amendment by facsimile shall be as effective as delivery of a manually executed counterpart of this Amendment.

Section 8. Headings. The headings set forth in this Amendment are and shall be without substantive meaning or content of any kind whatsoever and are not a part of the agreement between the parties hereto.

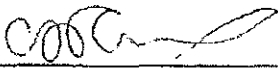
Section 9. Severability. In case any provision in or obligation under this Amendment shall be invalid, illegal or unenforceable in any jurisdiction, the validity, legality and enforceability of the remaining provisions or obligations, or of such provision or obligation in any other jurisdiction, shall not in any way be affected or impaired thereby.

[Signature pages follow]

IN WITNESS WHEREOF, the parties hereto have caused this Amendment to be duly executed and delivered by their respective duly authorized officers as of the Amendment Effective Date.

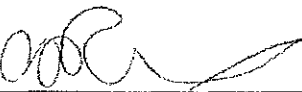
COUNTERPARTY:

MXENERGY INC.

By: 
Chaitu Parikh
Vice President and CFO


GUARANTORS:

MXENERGY ELECTRIC INC.
MXENERGY HOLDINGS INC.
ONLINE CHOICE INC.
MXENERGY GAS CAPITAL HOLDINGS
CORP.
MXENERGY ELECTRIC CAPITAL HOLDINGS
CORP.
MXENERGY GAS CAPITAL CORP.
MXENERGY ELECTRIC CAPITAL CORP.
TOTAL GAS & ELECTRIC INC.
TOTAL GAS & ELECTRICITY (PA) INC.
MXENERGY CAPITAL HOLDINGS CORP.
MXENERGY CAPITAL CORP.
MXENERGY SERVICES INC.
INFOMETER.COM INC.

By: 
Chaitu Parikh
Vice President and CFO

HEDGE PROVIDER:

SOCIÉTÉ GÉNÉRALE

By: 
Name: François-Xavier Saint-Macary
Title: Managing Director
Global Head of Commodities Trading

By: _____
Name: _____
Title: _____

{First Amendment to Agreement}

SECOND AMENDMENT TO MASTER TRANSACTION AGREEMENT

This Second Amendment (this "Amendment"), dated as of December 17, 2007 (the "Amendment Effective Date"), is by and among MxEnergy Inc., a Delaware corporation ("Counterparty"), MxEnergy Holdings Inc. and certain Subsidiaries thereof (collectively, the "Guarantors"), and Société Générale, as Hedge Provider.

PRELIMINARY STATEMENTS

A. Reference is made to the Master Transaction Agreement dated as of August 1, 2006 (as amended by the First Amendment to Master Transaction Agreement dated as of April 6, 2007, the "Agreement") among the Counterparty, the Guarantors and the Hedge Provider. Unless otherwise expressly provided herein, capitalized terms used herein and not otherwise defined shall have the meanings assigned to such terms in the Agreement.

B. The Counterparty has requested that the Hedge Provider amend the Agreement as hereinafter provided; and

C. The Hedge Provider is willing to amend the Agreement on the terms and conditions set forth herein.

NOW THEREFORE, in consideration of the premises and the covenants and agreements contained herein, the parties hereto agree as follows:

AGREEMENT

Section 1. Amendments to Agreement.

(a) Amendment to Section 1.01. The definition of "Credit Agreement" in Section 1.01 of the Agreement is hereby amended in its entirety as follows:

"Credit Agreement" means the First Amended and Restated Credit Agreement dated as of August 1, 2006 among the Borrowers, the Guarantors, the Lenders, and the Administrative Agent, as amended by the First Amendment, dated as of April 6, 2007, and by the Second Amendment, dated as of December 17, 2007.

(b) Amendment to Section 6.01. Section 6.01 of the Agreement is hereby amended in its entirety as follows:

Credit Agreement Negative and Financial Covenants. Take or fail to take any action which causes a violation of any of the negative covenants or financial covenants set forth in Article VI of the Credit Agreement, each as in effect on the Closing Date (or (i) with respect to Sections 6.05, 6.17 and

6.20 of the Credit Agreement, as in effect on April 6, 2007, and (ii) with respect to Sections 6.06(e), 6.06(f) and 6.18 of the Credit Agreement, as in effect on December 17, 2007), each such negative covenant and financial covenant, and all defined terms set forth in the Credit Agreement and referenced therein in their respective entireties (in each case as in effect on the Closing Date, or (A) with respect to the definition of "Consolidated Tangible Net Worth," as in effect on April 6, 2007, (B) with respect to Sections 6.05, 6.17 and 6.20 of the Credit Agreement, as in effect on April 6, 2007, and (C) with respect to Sections 6.06(e), 6.06(f) and 6.18 of the Credit Agreement, as in effect on December 17, 2007), being hereby incorporated herein by reference as if fully set forth herein (all such negative covenants, financial covenants and related defined terms being collectively referred to herein as the "First Lien Negative Covenants").

Section 2. Conditions to Effectiveness. This Amendment shall be effective as of the Amendment Effective Date when the Hedge Provider shall have received confirmation of each of the following in form and substance satisfactory to the Hedge Provider:

- (a) counterparts of this Amendment, duly executed and delivered by the Counterparty and the Guarantors;
- (b) counterparts of the First Amendment to the Credit Agreement, duly executed and delivered by Transaction Parties, the Administrative Agent and the Majority Lenders; and
- (c) evidence that the Counterparty has paid all other costs, accrued and unpaid fees and expenses to the extent due and payable to the Hedge Provider as of the Amendment Effective Date pursuant to the Agreement and any fee letter executed by the Hedge Provider.

Section 3. Representations and Warranties. Each Transaction Party jointly and severally hereby represents and warrants that, as of the Amendment Effective Date:

- (a) all representations and warranties of such Transaction Party contained in the Agreement and any other Transaction Document are true and correct in all material respects with the same effect as if such representations and warranties had been made on the Amendment Effective Date (it being understood and agreed that any representation which by its terms is made as of a specified date shall be required to be true and correct only as of such specified date); and
- (b) no Specified Event has occurred and is continuing.

Section 4. Consent of Guarantors; Confirmation of Guarantees. Each Guarantor hereby consents to this Amendment and hereby confirms and agrees that notwithstanding the effectiveness of this Amendment, the Guarantee contained in Article VIII of the Agreement is,

and shall continue to be, in full force and effect and is hereby ratified and confirmed in all respects.

Section 5. Governing Law. This Amendment shall be governed by, and construed and enforced in accordance with, the internal laws of the State of New York without regard to conflict of laws principles.

Section 6. Entire Agreement. This Amendment, the Agreement and the other Transaction Documents constitute the entire agreement and understanding among the parties and supersede all prior agreements and understandings, whether written or oral, among the parties hereto concerning the transactions provided herein and therein.

Section 7. Execution in Counterparts. This Amendment may be executed in any number of counterparts and by different parties hereto in separate counterparts, each of which when so executed shall be deemed to be an original and all of which taken together shall constitute one and the same agreement. Delivery of an executed counterpart of a signature page to this Amendment by facsimile shall be as effective as delivery of a manually executed counterpart of this Amendment.

Section 8. Headings. The headings set forth in this Amendment are and shall be without substantive meaning or content of any kind whatsoever and are not a part of the agreement between the parties hereto.

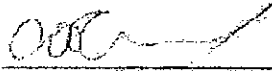
Section 9. Severability. In case any provision in or obligation under this Amendment shall be invalid, illegal or unenforceable in any jurisdiction, the validity, legality and enforceability of the remaining provisions or obligations, or of such provision or obligation in any other jurisdiction, shall not in any way be affected or impaired thereby.

[Signature pages follow]

IN WITNESS WHEREOF, the parties hereto have caused this Amendment to be duly executed and delivered by their respective duly authorized officers as of the Amendment Effective Date.

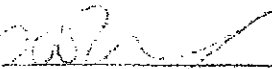
COUNTERPARTY:

MXENERGY INC.

By: 
Chaitu Parikh
Vice President and CFO


GUARANTORS:

MXENERGY ELECTRIC INC.
MXENERGY HOLDINGS INC.
ONLINE CHOICE INC.
MXENERGY GAS CAPITAL HOLDINGS
CORP.
MXENERGY ELECTRIC CAPITAL HOLDINGS
CORP.
MXENERGY GAS CAPITAL CORP.
MXENERGY ELECTRIC CAPITAL CORP.
TOTAL GAS & ELECTRIC INC.
TOTAL GAS & ELECTRICITY (PA) INC.
MXENERGY CAPITAL HOLDINGS CORP.
MXENERGY CAPITAL CORP.
MXENERGY SERVICES INC.
INFOMETER.COM INC.

By: 
Chaitu Parikh
Vice President and CFO

HEDGE PROVIDER:

SOCIÉTÉ GÉNÉRALE

By: 
Name: François-Xavier Saint-Macary
Title: Managing Director, Global Head of
Commodities Trading

**FIRST AMENDMENT TO
MASTER TRANSACTION AGREEMENT**

This First Amendment (this "Amendment"), dated as of April 6, 2007 (the "Amendment Effective Date"), is by and among MxEnergy Inc., a Delaware corporation ("Counterparty"), MxEnergy Holdings Inc. and certain Subsidiaries thereof (collectively, the "Guarantors"), and Société Générale, as Hedge Provider.

PRELIMINARY STATEMENTS

A. Reference is made to the Master Transaction Agreement dated as of August 1, 2006 (as amended to date, the "Agreement") among the Counterparty, the Guarantors and the Hedge Provider. Unless otherwise expressly provided herein, capitalized terms used herein and not otherwise defined shall have the meanings assigned to such terms in the Agreement.

B. The Counterparty has requested that the Hedge Provider amend the Agreement as hereinafter provided; and

C. The Hedge Provider is willing to amend the Agreement on the terms and conditions set forth herein.

NOW THEREFORE, in consideration of the premises and the covenants and agreements contained herein, the parties hereto agree as follows:

AGREEMENT

Section 1. Amendments to Agreement.

(a) Amendment to Section 1.01. The definition of "Credit Agreement" in Section 1.01 of the Agreement is hereby amended by adding the following clause immediately prior to the end of such definition:

"as amended by the First Amendment, dated as of April 6, 2007, by and among the Borrowers, Guarantors and the Lenders party thereto."

(b) Amendment to Section 5.06. Section 5.06(h) of the Agreement is hereby amended by inserting a new clause (ii) and re-numbering the existing clause (ii) as clause (iii):

(ii) on the last day of each fiscal quarter, a certificate from a Responsible Officer of the Counterparty certifying a description of any revisions or updates to the schedules to the Risk Management Policy or, if there have been no such revisions or updates, certifying that there have not been any such revisions or updates.

(c) Amendment to Section 6.01. Section 6.01 of the Agreement is hereby amended in its entirety as follows:

Credit Agreement Negative and Financial Covenants. Take or fail to take any action which causes a violation of any of the negative covenants or financial covenants set forth in Article VI of the Credit Agreement, each as in effect on the Closing Date (or, with respect to Sections 6.05, 6.17, 6.18 and 6.20 of the Credit Agreement, as in effect on April 6, 2007), each such negative covenant and financial covenant, and all defined terms set forth in the Credit Agreement and referenced therein in their respective entireties (in each case as in effect on the Closing Date or, with respect to the definition of "Consolidated Tangible Net Worth" and Sections 6.05, 6.17, 6.18 and 6.20 of the Credit Agreement, as in effect on April 6, 2007), being hereby incorporated herein by reference as if fully set forth herein (all such negative covenants, financial covenants and related defined terms being collectively referred to herein as the "First Lien Negative Covenants").

Section 2. Conditions to Effectiveness. This Amendment shall be effective as of the Amendment Effective Date when the Hedge Provider shall have received confirmation of each of the following in form and substance satisfactory to the Hedge Provider:

- (a) counterparts of this Amendment, duly executed and delivered by the Counterparty and the Guarantors;
- (b) counterparts of the First Amendment to the Credit Agreement, duly executed and delivered by Transaction Parties, the Administrative Agent and the Majority Lenders;
- (c) a certificate of Secretary or other officer of each Transaction Party certifying the name and title of the officer of such Transaction Party that is authorized to execute this Amendment and that none of the organizational documents of such Transaction Party have been changed since the Closing Date; and
- (d) evidence that the Counterparty has paid all other costs, accrued and unpaid fees and expenses to the extent due and payable to the Hedge Provider as of the Amendment Effective Date pursuant to the Agreement and any fee letter executed by the Hedge Provider.

Section 3. Representations and Warranties. Each Transaction Party jointly and severally hereby represents and warrants that, as of the Amendment Effective Date:

- (a) all representations and warranties of such Transaction Party contained in the Agreement and any other Transaction Document are true and correct in all material respects with the same effect as if such representations and warranties had been made on the Amendment Effective Date (it being understood and agreed that any representation which by its terms is

made as of a specified date shall be required to be true and correct only as of such specified date); and

(b) no Specified Event has occurred and is continuing.

Section 4. Consent of Guarantors; Confirmation of Guarantees. Each Guarantor hereby consents to this Amendment and hereby confirms and agrees that notwithstanding the effectiveness of this Amendment, the Guarantee contained in Article VIII of the Agreement is, and shall continue to be, in full force and effect and is hereby ratified and confirmed in all respects.

Section 5. Governing Law. This Amendment shall be governed by, and construed and enforced in accordance with, the internal laws of the State of New York without regard to conflict of laws principles.

Section 6. Entire Agreement. This Amendment, the Agreement and the other Transaction Documents constitute the entire agreement and understanding among the parties and supersede all prior agreements and understandings, whether written or oral, among the parties hereto concerning the transactions provided herein and therein.

Section 7. Execution in Counterparts. This Amendment may be executed in any number of counterparts and by different parties hereto in separate counterparts, each of which when so executed shall be deemed to be an original and all of which taken together shall constitute one and the same agreement. Delivery of an executed counterpart of a signature page to this Amendment by facsimile shall be as effective as delivery of a manually executed counterpart of this Amendment.

Section 8. Headings. The headings set forth in this Amendment are and shall be without substantive meaning or content of any kind whatsoever and are not a part of the agreement between the parties hereto.


Section 9. Severability. In case any provision in or obligation under this Amendment shall be invalid, illegal or unenforceable in any jurisdiction, the validity, legality and enforceability of the remaining provisions or obligations, or of such provision or obligation in any other jurisdiction, shall not in any way be affected or impaired thereby.

[Signature pages follow]

IN WITNESS WHEREOF, the parties hereto have caused this Amendment to be duly executed and delivered by their respective duly authorized officers as of the Amendment Effective Date.


COUNTERPARTY:

MXENERGY INC.

By: 
Chaitu Parikh
Vice President and CFO

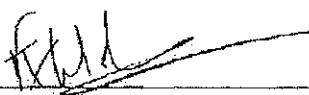
GUARANTORS:

MXENERGY ELECTRIC INC.
MXENERGY HOLDINGS INC.
ONLINE CHOICE INC.
MXENERGY GAS CAPITAL HOLDINGS
CORP.
MXENERGY ELECTRIC CAPITAL HOLDINGS
CORP.
MXENERGY GAS CAPITAL CORP.
MXENERGY ELECTRIC CAPITAL CORP.
TOTAL GAS & ELECTRIC INC.
TOTAL GAS & ELECTRICITY (PA) INC.
MXENERGY CAPITAL HOLDINGS CORP.
MXENERGY CAPITAL CORP.
MXENERGY SERVICES INC.
INFOMETER.COM INC.

By: 
Chaitu Parikh
Vice President and CFO

HEDGE PROVIDER:

SOCIÉTÉ GÉNÉRALE

By: 
Name: François-Xavier Saint-Macary
Title: Managing Director
Global Head of Commodities Trading

By: _____
Name: _____
Title: _____

(First Amendment to Agreement)

EX-10.19 11 a08-5440_1ex10d19.htm EX-10.19

EXHIBIT 10.19

**SECOND AMENDMENT TO
MASTER TRANSACTION AGREEMENT**

This Second Amendment (this "Amendment"), dated as of December 17, 2007 (the "Amendment Effective Date"), is by and among MxEnergy Inc., a Delaware corporation ("Counterparty"), MxEnergy Holdings Inc. and certain Subsidiaries thereof (collectively, the "Guarantors"), and Societe Generale, as Hedge Provider.

PRELIMINARY STATEMENTS

A. Reference is made to the Master Transaction Agreement dated as of August 1, 2006 (as amended by the First Amendment to Master Transaction Agreement dated as of April 6, 2007, the "Agreement") among the Counterparty, the Guarantors and the hedge Provider. Unless otherwise expressly provided herein, capitalized terms used herein and not otherwise defined shall have the meanings assigned to such terms in the Agreement.

B. The Counterparty has requested that the Hedge Provider amend the Agreement as hereinafter provided; and

C. The Hedge Provider is willing to amend the Agreement on the terms and conditions set forth herein.

NOW THEREFORE, in consideration of the premises and the covenants and agreements contained herein, the parties hereto agree as follows:

AGREEMENT

Section 1. Amendments to Agreement.

(a) Amendment to Section 1.01. The definition of "Credit Agreement" in Section 1.01 of the Agreement is hereby amended in its entirety as follows:

"Credit Agreement" means the First Amended and Restated Credit Agreement dated as of August 1, 2006 among the Borrowers, the Guarantors, the Lenders, and the Administrative Agent, as amended by the First Amendment, dated as of April 6, 2007, and by the Second Amendment, dated as of December 17, 2007.

(b) Amendment to Section 6.01. Section 6.01 of the Agreement is hereby amended in its entirety as follows:

Credit Agreement Negative and Financial Covenants. Take or fail to take any action which causes a violation of any of the negative covenants or financial covenants set forth in Article VI of the Credit Agreement, each as in effect on the Closing Date (or (i) with respect to Sections 6.05, 6.17 and

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6.20 of the Credit Agreement, as in effect on April 6, 2007, and (ii) with respect to Sections 6.06 (e), 6.06(1) and 6.18 of the Credit Agreement, as in effect on December 17, 2007), each such negative covenant and financial covenant, and all defined terms set forth in the Credit Agreement and referenced therein in their respective entireties (in each case as in effect on the Closing Date, or (A) with respect to the definition of "Consolidated Tangible Net Worth," as in effect on April 6, 2007, (B) with respect to Sections 6.05, 6.17 and 6.20 of the Credit Agreement, as in effect on April 6, 2007, and (C) with respect to Sections 6.06(e), 6.06(f) and 6.18 of the Credit Agreement, as in effect on December 17, 2007), being hereby incorporated herein by reference as if fully set forth herein (all such negative covenants, financial covenants and related defined terms being collectively referred to herein as the "First Lien Negative Covenants").

Section 2. Conditions to Effectiveness. This Amendment shall be effective as of the Amendment Effective Date when the Hedge Provider shall have received confirmation of each of the following in form and substance satisfactory to the Fledge Provider:

- (a) counterparts of this Amendment, duly executed and delivered by the Counterparty and the Guarantors;
- (b) counterparts of the First Amendment to the Credit Agreement, duly executed and delivered by Transaction Parties, the Administrative Agent and the Majority Lenders; and
- (c) evidence that the Counterparty has paid all other costs, accrued and unpaid fees and expenses to the extent due and payable to the Hedge Provider as of the Amendment Effective Date pursuant to the Agreement and any fee letter executed by the Hedge Provider.

Section 3. Representations and Warranties. Each Transaction Party jointly and severally hereby represents and warrants that, as of the Amendment Effective Date:

- (a) all representations and warranties of such Transaction Party contained in the Agreement and any other Transaction Document are true and correct in all material respects with the same effect as if such representations and warranties had been made on the Amendment Effective Date (it being understood and agreed that any representation which by its terms is made as of a specified date shall be required to be true and correct only as of such specified date); and
- (b) no Specified Event has occurred and is continuing.

Section 4. Consent of Guarantors: Confirmation of Guarantees. Each Guarantor hereby consents to this Amendment and hereby confirms and agrees that notwithstanding the effectiveness of this Amendment, the Guarantee contained in Article VIII of the Agreement is,

and shall continue to be, in full force and effect and is hereby ratified and confirmed in all respects.

Section 5. Governing Law. This Amendment shall be governed by, and construed and enforced in accordance with, the internal laws of the State of New York without regard to conflict of laws principles.

Section 6. Entire Agreement. This Amendment, the Agreement and the other Transaction Documents constitute the entire agreement and understanding among the parties and supersede all prior agreements and understandings, whether written or oral, among the parties hereto concerning the transactions provided herein and therein.

Section 7. Execution in Counterparts. This Amendment may be executed in any number of counterparts and by different parties hereto in separate counterparts, each of which when so executed shall be deemed to be an original and all of which taken together shall constitute one and the same agreement. Delivery of an executed counterpart of a signature page to this Amendment by facsimile shall be as effective as delivery of a manually executed counterpart of this Amendment.

Section 8. Headings. The headings set forth in this Amendment are and shall be without substantive meaning or content of any kind whatsoever and are not a part of the agreement between the parties hereto.

Section 9. Severability. In case any provision in or obligation under this Amendment shall be invalid, illegal or unenforceable in any jurisdiction, the validity, legality and enforceability of the remaining provisions or obligations, or of such provision or obligation in any other jurisdiction, shall not in any way be affected or impaired thereby.

[Signature pages follow]

IN WITNESS WHEREOF, the parties hereto have caused this Amendment to be duly executed and delivered by their respective duly authorized officers as of the Amendment Effective Date.

COUNTERPARTY

MXENERGY INC.

/s/ Chaitu Parikh
Chaitu Parikh
Vice President &
Chief Financial Officer

GUARANTORS:

MXENERGY ELECTRIC INC

MXENERGY HOLDINGS INC.

ONLINE CHOICE INC.
MXENERGY GAS CAPITAL HOLDINGS
CORP.
MXENERGY ELECTRIC CAPITAL
HOLDINGS CORP.
MXENERGY GAS CAPITAL CORP.
MXENERGY ELECTRIC CAPITAL CORP.
TOTAL GAS & ELECTRIC INC.
TOTAL GAS & ELECTRICITY (PA)
INC. MXENERGY CAPITAL
HOLDINGS CORP.
MXENERGY CAPITAL CORP.
MXENERGY SERVICES INC.
INFOMETER.COM INC

/s/ Chaitu Parikh
Chaitu Parikh
Vice President &
Chief Financial Officer

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SOCIÉTÉ GÉNÉRALE

/s/ Francois Xavier Saint- Macary
Francois Xavier Saint- Macary
Managing Director, Global Head of
Commodities Trading

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EX-10.21 3 a08-11825_1ex10d21.htm EX-10.21

EXHIBIT 10.21

THIRD AMENDMENT TO MASTER TRANSACTION AGREEMENT

This Third Amendment to Master Transaction Agreement (this "Amendment"), dated as of May 12, 2008 (the "Amendment Date"), and effective in part to the extent provided herein as of March 1, 2008 (the "Amendment Effective Date"), by and among MXenergy Inc., a Delaware corporation (the "Counterparty"), MXenergy Holdings Inc. and certain Subsidiaries thereof, as guarantors (collectively, the "Guarantors"), and Société Générale, as hedge provider (the "Hedge Provider").

PRELIMINARY STATEMENTS

A. Reference is made to the Master Transaction Agreement, dated as of August 1, 2006 (as amended by the First Amendment to Master Transaction Agreement dated as of April 6, 2007, and as amended by the Second Amendment to Master Transaction Agreement dated as of December 17, 2007, collectively, the "Agreement") among the Counterparty, the Guarantors and the Hedge Provider. Unless otherwise expressly provided herein, capitalized terms used herein and not otherwise defined shall have the meanings assigned to such terms in the Agreement;

B. The Counterparty and the Guarantors have requested that the Hedge Provider amend the Agreement as hereinafter provided; and

C. The Hedge Provider is willing to amend the Agreement on the terms and conditions set forth herein.

NOW THEREFORE, in consideration of the premises and the covenants and agreements contained herein, the parties hereto agree as follows:

AGREEMENT

Section 1. Amendments to Agreement. The Agreement is hereby amended as follows:

(a) Amendment to Section 1.01. The definition of "Applicable Hedging Transaction Spread" in Section 1.01 of the Agreement is hereby amended and restated, effective as of the Amendment Date, in its entirety to read as follows:

"Applicable Hedging Transaction Spread" means, with respect to any Natural Gas Hedging Transaction of any term to maturity, the execution/credit spread to be paid by the Counterparty to the Hedge Provider for or in respect of such transaction, expressed in cents per MMBtu, set forth opposite such term to maturity below:

All Spreads in Cents/MMBtu Term to Maturity (x)	<u>Nymex</u>	<u>Additional Basis</u>	<u>Basis Alone</u>
x ≤ 6 months	1.50	0.50	1.50
6 months < x ≤ 18 months	2.00	0.75	2.00
18 months < x ≤ 30 months	2.50	1.00	2.50

300

30 months < x <= 60 months	3.00	1.25	3.00	"
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(b) Amendment to Section 1.01. The definition of "Credit Agreement" in Section 1.01 of the Agreement is hereby amended and restated, effective as of the Amendment Date, in its entirety to read as follows:

"Credit Agreement" means the First Amended and Restated Credit Agreement dated as of August 1, 2006 among the Borrowers, the Guarantors, the Lenders, and the Administrative Agent, as amended by the First Amendment, dated as of April 6, 2007, by the Second Amendment, dated as of December 17, 2007, and by the Third Amendment, dated as of May 12, 2008."

(c) Amendment to Section 2.06(a). Section 2.06(a) of the Agreement is hereby amended and restated, effective as of the Amendment Date, in its entirety to read as follows:

"(a) Notwithstanding any term or provision in this Agreement or any Transaction Document, the Counterparty covenants and agrees that (i) the Natural Gas Hedging Position Volumes in respect of all Natural Gas Hedging Transactions from time to time in effect between the Hedge Provider and the Counterparty (as determined by the Hedge Provider) shall not at any time exceed 35 Bcf without the prior written consent of the Hedge Provider, and (ii) the ratio of Fixed Price Natural Gas Volumes to Variable Price Natural Gas Volumes (as determined by the Hedge Provider) shall not at any time exceed 70:30 without the prior written consent of the Hedge Provider."

(d) Amendment to Section 6.01. Section 6.01 of the Agreement is hereby amended and restated, effective as of the Amendment Effective Date, in its entirety to read as follows:

"Section 6.01 Credit Agreement Negative and Financial Covenants. Take or fail to take any action which causes a violation of any of the negative covenants or financial covenants set forth in Article VI of the Credit Agreement, each as in effect on the Closing Date (or (i) with respect to Sections 6.05 and 6.17 of the Credit Agreement, as in effect on April 6, 2007, (ii) with respect to Sections 6.06(f) and 6.18 of the Credit Agreement, as in effect on December 17, 2007, and (iii) with respect to Sections 6.06(e), 6.20 and 6.21 of the Credit Agreement, as in effect on March 1, 2008, after giving effect to the Third Amendment to First Amended and Restated Credit Agreement dated as of May 12, 2008), each such negative covenant and financial covenant, and all defined terms set forth in the Credit Agreement and referenced therein in their respective entireties (in each case as in effect on the Closing Date, or (A) with respect to the definition of "Consolidated Tangible Net Worth," as in effect on April 6, 2007, (B) with respect to Sections 6.05 and 6.17 of the Credit Agreement, as in effect on April 6, 2007, (C) with respect to Sections 6.06(f) and 6.18 of the Credit Agreement, as in

effect on December 17, 2007, and (D) with respect to Sections 6.06(e), 6.20 and 6.21 of the Credit Agreement, as in effect on March 1, 2008, after giving effect to the Third Amendment to First Amended and Restated Credit Agreement, dated as of May 12, 2008), being hereby incorporated herein by reference as if fully set forth herein (all such negative covenants, financial covenants and related defined terms being collectively referred to herein as the "First Lien Negative Covenants")."

Section 2. Conditions to Effectiveness. This Amendment shall be effective when the Hedge Provider shall have received each of the following, in form and substance satisfactory to the Hedge Provider:

- (a) counterparts of this Amendment, duly executed and delivered by the Counterparty and the Guarantors;
- (b) a fully executed copy of the Third Amendment to First Amended and Restated Credit Agreement, dated as of May 12, 2008 but effective as of March 1, 2008 (the "Third Amendment to Credit Agreement"), duly executed and delivered by Transaction Parties, the Administrative Agent and the Majority Lenders;
- (c) evidence reasonably acceptable to the Hedge Provider that all conditions to effectiveness of the Third Amendment to Credit Agreement shall have been satisfied;
- (d) payment by the Counterparty to the Hedge Provider of an amendment fee in the amount of \$50,000 in U.S. Dollars and in immediately available funds (the "Amendment Fee"), provided that the Counterparty shall only be required to pay the Amendment Fee if the Hedge Provider shall have executed and provided (by facsimile or electronic mail) its counterpart to this Amendment to the Counterparty at or prior to 5:00 p.m. New York City time on May 13, 2008 (which executed counterpart shall be held in escrow by the Counterparty (and shall not be deemed to be delivered to the Counterparty) until released by the Hedge Provider following satisfaction of the conditions set forth in this Section 2); and
- (e) evidence satisfactory to the Hedge Provider that the Counterparty has paid all other costs, accrued and unpaid fees and expenses to the extent due and payable to the Hedge Provider as of the Amendment Date pursuant to the Agreement and any other Transaction Document.

Section 3. Representations and Warranties. Each Transaction Party hereby jointly and severally represents and warrants to the Hedge Provider that, as of the Amendment Effective Date and the Amendment Date:

- (a) all representations and warranties of such Transaction Party contained in the Agreement and any other Transaction Document are true and correct in all material respects with the same effect as if such representations and warranties had been made on the Amendment Effective Date and on the Amendment Date (it being understood and agreed that any representation which by its terms is made as of a specified date shall be required to be true and correct only as of such specified date); and

(b) no Specified Event has occurred and is continuing.

Section 4. Consent of Guarantors; Confirmation of Guarantees. Each Guarantor hereby consents to the execution, delivery and performance of this Amendment and hereby confirms and agrees that, notwithstanding the effectiveness of this Amendment, the Guarantee contained in Article VIII of the Agreement and each other Transaction Document are, and each of the same shall continue to be, in full force and effect and are hereby ratified and confirmed in all respects.

Section 5. Governing Law. This Amendment shall be governed by, and construed and enforced in accordance with, the internal laws of the State of New York without regard to conflict of laws principles.

Section 6. Entire Agreement; Transaction Document. This Amendment, the Agreement and the other Transaction Documents constitute the entire agreement and understanding among the parties and supersede all prior agreements and understandings, whether written or oral, among the parties hereto concerning the transactions provided herein and therein. This Amendment is and shall be deemed to be a Transaction Document in all respects and for all purposes.

Section 7. Execution in Counterparts. This Amendment may be executed in any number of counterparts and by different parties hereto in separate counterparts, each of which when so executed shall be deemed to be an original and all of which taken together shall constitute one and the same agreement. Delivery of an executed counterpart of a signature page to this Amendment by facsimile shall be as effective as delivery of a manually executed counterpart of this Amendment.

Section 8. Headings. The headings set forth in this Amendment are and shall be without substantive meaning or content of any kind whatsoever and are not a part of the agreement between the parties hereto.

Section 9. Severability. In case any provision in or obligation under this Amendment shall be invalid, illegal or unenforceable in any jurisdiction, the validity, legality and enforceability of the remaining provisions or obligations, or of such provision or obligation in any other jurisdiction, shall not in any way be affected or impaired thereby.

[Signature page follows]

IN WITNESS WHEREOF, the parties hereto have caused this Amendment to be duly executed and delivered by their respective duly authorized officers as of the Amendment Date.

COUNTERPARTY:

MXENERGY INC.

By: /s/Chaitu Parikh
Name: Chaitu Parikh
Title: Vice President and Chief Financial Officer

GUARANTORS:

MXENERGY ELECTRIC INC.
MXENERGY HOLDINGS INC.
ONLINE CHOICE INC.
MXENERGY GAS CAPITAL HOLDINGS CORP.
MXENERGY ELECTRIC CAPITAL HOLDINGS CORP.
MXENERGY GAS CAPITAL CORP.
MXENERGY ELECTRIC CAPITAL CORP.
TOTAL GAS & ELECTRIC INC.
TOTAL GAS & ELECTRICITY (PA) INC.
MXENERGY CAPITAL HOLDINGS CORP.
MXENERGY CAPITAL CORP.
MXENERGY SERVICES INC.
INFOMETER.COM INC.

By: /s/Chaitu Parikh
Name: Chaitu Parikh
Title: Vice President and Chief Financial Officer

HEDGE PROVIDER:

SOCIÉTÉ GÉNÉRALE

By: /s/Francois-Xavier Saint-Macary
Name: Francois-Xavier Saint-Macary
Title: Managing Director
Global Head of Commodities Trading

**AMENDED AND RESTATED
LOAN AGREEMENT**

This Loan Agreement (this "Agreement") is entered into this 14th day of November, 2003 between Lathi, LLC a Delaware limited liability company ("Lathi"), and MxEnergy Inc. a Delaware corporation ("MXE").

RECITALS.

1. On September 6, 2001, MXE and Lathi entered into a loan agreement (the "Original Loan Agreement") providing for certain extensions of credit from Lathi to MXE.
2. On September 6, 2001, MXE and Lathi entered into a Security Agreement pursuant to which MXE granted to Lathi a security interest in the Security (as defined therein) to secure MXE's obligations under the Original Loan Agreement.
3. On July 2, 2002, MXE and Lathi entered into Amendment No. 1 to the Loan Agreement dated September 6, 2001 ("Amendment No. 1") and Amendment No. 1 to the Security Agreement dated September 6, 2001.
4. On September 18, 2002, MXE terminated its energy marketing agreement with Aquila Energy Market Corporation and, to replace such agreement, MXE entered into an energy marketing agreement (the "Dominion Agreement") with Virginia Power Energy Marketing Inc. ("Dominion").
5. On September 18, 2002, Dominion and MXE entered into a Security Agreement pursuant to which MXE granted to Dominion a security interest in the Security (as defined therein) to secure MXE's obligations under the Dominion Agreement
6. On September 18, 2002, Lathi entered into an Intercreditor Agreement (the "Intercreditor Agreement") with Dominion providing that all liens and security interest of Lathi in the Dominion Collateral (as defined in the Intercreditor Agreement) are junior to the liens and security interests of Dominion in the Dominion Collateral until such time as all obligations of MXE to Dominion under the Dominion Agreement have been paid in full in cash and all commitments to extend further credit under the Dominion Agreement have been terminated.
7. MXE and Lathi desire to amend and restate the Original Loan Agreement, as amended by Amendment No.1, to eliminate the term loan facility and increase the amount available under the revolving loan facility to \$12,000,000.

AMENDMENT AND RESTATEMENT:

Effective upon the date all the conditions set forth in Section 4.1 hereof are satisfied (the "Restatement Date"), which conditions must be satisfied no later than the date provided therein, the Original Loan Agreement, as amended by Amendment No. 1, and in effect on the date

hereof, is amended and restated in full as set forth in this Agreement. Terms defined in this Agreement are cross-referenced in Section 9.

1. The Loans.

1.1. Loans. Subject to all the terms and conditions of this Agreement and so long as no Default exists, from time to time on and after the date hereof and prior to the date that is forty-eight months after the date hereof, Lathi will make loans to MXE (each, a "Loan" and collectively, the "Loans") in such amounts as may be requested by MXE in accordance with Section 1.2. The aggregate principal amount of Loans outstanding under this Agreement at any one time shall not exceed \$12,000,000.

1.2. Borrowing Requests. MXE may from time to time request a Loan under Section 1.1 by providing Lathi a borrowing request in the form of Exhibit 1.2 (a "Borrowing Request") not later than noon on the business day prior to the requested date for extension of such Loan (each such date a "Funding Date") specifying (a) the amount of the requested loan, which shall be in an amount not less than \$100,000 and (b) the requested Funding Date therefor, which shall be a business day. Lathi will make such Loan to MXE by wire transfer in accordance with the instructions set forth on Exhibit 1.2, and shall use its best efforts to give wire instructions by no later than noon on the specified Funding Date. Each Borrowing Request shall be accompanied by the documentation required pursuant to Section 4.2; provided, that, with respect to the initial Loan under this Agreement, it shall be a further requirement that on or before the Funding Date thereof (the "Initial Funding Date"), all of the conditions set forth in Section 4.1 shall have been satisfied.

1.3. Notes. MXE's obligations to pay the Loans shall be evidenced by a grid note of MXE in the form of Exhibit 1.3 (the "Note").

1.4. Use of Proceeds. MXE will use the proceeds of the Loans for its working capital and other general corporate purposes occurring in the ordinary course of business.

2. Interest. The Loans shall accrue and bear interest at a rate of 9.0% per annum, computed based on actual number of days elapsed over a year of 365 days. Interest shall be payable quarterly, in arrears, on the last business day of each March, June, September and December, beginning on the first such date after the Initial Funding Date. In addition, on any partial or complete payment or prepayment of principal of the Loans, MXE shall pay the accrued and unpaid interest on any portion of the Loans so paid or prepaid. Any payment or prepayment on the Loans shall be deemed to be applied first to interest and then to principal. To the full extent permitted by law, any interest not paid when due shall bear interest commencing on the 2nd business day after the due date thereof at the rate specified for Loans hereunder; provided, that in the event that applicable law does not permit the charging of interest on interest, or limits the extent of the same, this sentence shall be deemed to impose such interest on interest solely to the

extent not violative of such applicable law. Upon the occurrence and during the continuance of an Event of Default, (x) the outstanding principal amount of the Loans (and any overdue interest as set forth above) shall bear interest at a rate of 12.0% per annum, computed and payable as provided above and (y) Lathi may require accrued interest to be payable on demand or at regular intervals more frequent than quarterly.

3. Payment.

3.1. Payment at Maturity. On the Maturity Date or any accelerated maturity of the Loans, MXE will pay to Lathi an amount equal to the Loans then due, together with all accrued and unpaid interest with respect thereto. "Maturity Date" means the date that is sixty-six months after the date hereof, or such later date as is approved by Lathi in its sole discretion.

3.2. Voluntary Prepayments. MXE may from time to time prepay all or any portion of the Loans (provided that the principal amount to be prepaid shall be in a minimum amount of \$100,000, or such lesser amount as is then outstanding), without premium or penalty of any type. MXE shall give Lathi at least one business day's prior notice of its intention to prepay the Loans under this Section 3.2, specifying the date of payment, the total amount of the Loans to be paid on such date and the amount of interest to be paid with such prepayment. Notice of prepayment having been given in accordance with this Section 3.2, the amount specified to be prepaid shall become due on the date specified for such prepayment. The amounts of the Loans prepaid pursuant to this Section 3.2 may be reborrowed from time to time prior to the Maturity Date in accordance with this Agreement.

3.3. Mandatory Prepayments. At any time that MXE fails to satisfy the financial covenants set forth in Sections 5.1.1 and 5.1.2, MXE shall immediately prepay Loans, together with all accrued and unpaid interest with respect thereto, to the extent necessary to bring MXE into compliance with such financial covenants, without premium or penalty of any type; provided, that the fact that MXE shall, upon such prepayment, have cured the Event of Default arising from such non-compliance with Sections 5.1.1 or 5.1.2 shall not affect Lathi's entitlement to recover default rate interest accrued during the pendency of such Event of Default. MXE shall give Lathi at least one business day's prior notice of its intention to prepay the Loans under this Section 3.3, specifying the date of payment and the total amount of the Loans to be paid on such date. Notice of prepayment having been given in accordance with this Section 3.3, the amount specified to be prepaid shall become due on the date specified for such prepayment. The amounts of the Loans prepaid pursuant to this Section 3.3 may be reborrowed from time to time prior to the Maturity Date in accordance with this Agreement.

3.4. Termination of Commitments. Provided that the Loans, including interest thereon, have been paid in full, MXE may, in its sole discretion and upon notice to Lathi, terminate this Agreement, whereupon Lathi's commitment to lend hereunder shall irrevocably terminate. Notwithstanding the foregoing, in the event of the avoidance or recovery of any payment to Lathi hereunder, this Agreement shall be reinstated as if the payment had not been made; and provided that no termination of this Agreement shall affect MXE's obligations under Sections 5.8 and 8 hereof, which shall survive.

4. Conditions to Extending Credit.

4.1. Conditions to Initial Loan. The obligations of Lathi to make the initial Loan under this Agreement shall be subject to the satisfaction, on or before the business day prior to the Initial Funding Date, of the conditions set forth in this Section 4.1 as well as the further conditions in Section 4.2. If the conditions set forth in this Section 4.1 are not met on or prior to the Initial Funding Date, Lathi shall have no obligation to make any extensions of credit hereunder.

4.1.1. Note. MXE shall have duly executed and delivered to Lathi a Note in the form attached as Exhibit 1.3.

4.1.2. Amendment to Shareholders Agreement. The Second Amended and Restated Shareholders Agreement dated March 5, 2001 by and among MXE, Lathi and the other holders of capital stock of MXE party thereto, as amended (the "Shareholders Agreement"), shall have been further amended (such amendment the "Shareholders Agreement Amendment") to provide that the date after which Lathi's demand registration rights may be exercised shall be March 5, 2005 and to provide that the parties thereto consent to the Loans to be provided by Lathi hereunder, which Shareholders Agreement Amendment shall be in substantially the form attached hereto as Exhibit 4.1.2.

4.1.3. Issuance of Warrants. MXE shall have issued to Lathi the following warrants to purchase shares of MXE common stock (together, the "Warrants"): (i) a warrant for 378,788 shares of MXE common stock having an exercise price per share of \$7.92; (ii) a warrant for 328,947 shares of MXE common stock having an exercise price per share of \$9.12; (iii) a warrant for 257,732 shares of MXE common stock having an exercise price per share of \$11.64; and (iv) a warrant for 218,341 shares of MXE common stock having an exercise price per share of \$13.74, which Warrants shall be in substantially the form attached hereto as Exhibit 4.1.3.

4.1.4. Stock Purchase Agreement. MXE and Lathi shall have entered into a Stock Purchase Agreement providing for the purchase by Lathi of 378,788 shares

of MXE common stock at a purchase price of \$7.92 per share (the "Stock Purchase Agreement"), which Stock Purchase Agreement shall be in substantially the form attached hereto as Exhibit 4.1.4.

4.1.5. Legal Opinion. On the Restatement Date, Lathi shall have received from Paul, Hastings, Janofsky & Walker LLP, counsel to MXE, their opinion with respect to the transactions contemplated by this Agreement, which opinion shall be in substantially the form attached hereto as Exhibit 4.1.5.

4.1.6. Officer's Certificate. The representations and warranties of MXE set forth or incorporated by reference herein shall be true and correct as of the Restatement Date as if originally made on and as of the Restatement Date; no Default shall have occurred on or prior to the Restatement Date; and Lathi shall have received a certificate to these effects signed by an officer in the event the Restatement Date occurs after the date hereof.

4.1.7. Payment of Lathi's Legal Fees and Expenses. MXE shall have paid Lathi's reasonable legal fees and expenses incurred in connection with the preparation and negotiation of this Agreement and in connection with the transactions contemplated hereby.

4.1.8. Proper Proceedings. This Agreement, each other Credit Document and the transactions contemplated hereby and thereby shall have been authorized by all necessary proceedings of MXE. All necessary material consents, approvals and authorizations of any governmental or administrative agency or any other person with respect to any of the transactions contemplated hereby or by any other Credit Document shall have been obtained and shall be in full force and effect.

4.1.9. Amended and Restated Security Agreement. MXE and Lathi shall have entered into an Amended and Restated Security Agreement in substantially the form attached hereto as Exhibit 4.1.9 (the "Security Agreement").

4.1.10. Payment of Outstanding Interest. MXE shall have paid to Lathi in cash, by check or wire transfer of immediately available funds, an amount equal to all accrued and unpaid interest due under that certain Term Note dated July 2, 2002 in the principal amount of \$3,000,000 issued by MXE to Lathi.

4.1.11. General. All legal and corporate proceedings in connection with the transactions contemplated by this Agreement shall be reasonably satisfactory in form and substance to Lathi and Lathi shall have received copies of all documents, including certified copies of the charter and by-laws of MXE, records

of corporate proceedings, certificates as to signatures and incumbency of officers and opinions of counsel, which Lathi may have reasonably requested in connection therewith, such documents where customary or reasonably appropriate to be certified by proper corporate or governmental authorities.

4.2. Conditions to Each Loan. The obligation of Lathi to make any Loan shall be subject to the satisfaction, on or before the Funding Date therefor, of the following conditions:

4.2.1. Intentionally Omitted.

4.2.2. Financial Covenant Compliance and Report. Both before and after giving effect to the Loan requested to be made on the applicable Funding Date, MXE shall be in compliance with the financial covenants prescribed in Sections 5.1.1, 5.1.2, 5.1.3 and 5.1.4 as of the close of business on the applicable Funding Date; provided, that for purposes of calculating such compliance after giving effect to the Loan, such calculation shall be made on a pro forma basis after giving effect to the Loan to be made on the applicable Funding Date. MXE shall provide to Lathi a certificate, substantially in the form of Exhibit 4.2.2, dated as of such Funding Date, stating that MXE is in compliance with this Section 4.2.2 and setting forth, in reasonable detail, the calculations required by this Section 4.2.2.

4.2.3. Commitment not Exceeded. After giving effect to the Loan requested to be made on the applicable Funding Date, the aggregate principal amount of the outstanding Loans shall not exceed \$12,000,000.

4.2.4. No Default, etc. The representations and warranties contained in Section 6 hereof shall be true and correct in all material respects on and as of such Funding Date with the same force and effect as though made on and as of such date (except as to any representation or warranty which refers to a specific earlier date); no Default shall exist on such Funding Date prior to or immediately after giving effect to the requested extension of credit, including that all reports required to be delivered pursuant to Section 5.7 shall have been timely delivered; and no Material Adverse Change shall have occurred since June 30, 2000. "Material Adverse Change" means a material adverse change in the business, assets, financial condition, income or prospects of MXE.

4.2.5. Officer's Certificate. MXE shall have furnished to Lathi in connection with the requested Loan an officer's certificate dated as of the proposed Funding Date certifying to the satisfaction of all of the conditions set forth in this Section 4.2 in form satisfactory to Lathi.

5. Covenants. MXE agrees that, until all Loans shall have been paid in full and until Lathi's commitment to extend credit under this Agreement shall have been irrevocably terminated, MXE will comply with the following provisions:

5.1. Financial Covenants.

5.1.1. Forward Book Value. As of the close of business of each business day, there shall be at least 300% coverage of (x) the outstanding balance of the Loans hereunder (including accrued and unpaid interest) by (y) the difference between (i) the Forward Book Value Amount minus (ii) the Dominion Indebtedness Amount, that is, the result of the calculation in clause (y) shall be at least 100% of the outstanding balance of the Loans; provided, for the avoidance of doubt, that notwithstanding that this covenant applies on a daily basis, MXE shall only be obligated to calculate and furnish reports concerning its compliance with this covenant weekly, pursuant to Section 5.7.4, and as of each proposed Funding Date. The "Forward Book Value Amount" shall mean the sum of (x) the net present value of the projected cash flows from MXE's then current base of Qualified Accounts (calculated without assuming any renewals by such customers and assuming a customer cancellation rate of 3% per annum and using an annual discount rate of 10%) plus (y) the In-Balance Volume. The "Dominion Indebtedness Amount" shall mean the sum of (a) all outstanding amounts owed by MXE under the Dominion Agreement, including accrued and unpaid interest, fees and principal (the "Dominion Indebtedness") plus (b) any net hedging obligations of MXE with respect to the Dominion Indebtedness. The "In-Balance Volume" shall mean the amount of gas resulting from the difference between (i) gas actually consumed by the MXE customer pool and (ii) gas actually delivered to such customer pool upon the utility's request. "Qualified Accounts" shall mean residential and commercial customer accounts which are in territories serviced by MXE.

5.1.2. Total Asset Value. As of the close of business of each business day, there shall be at least 200% coverage of (x) the outstanding balance of the Loans hereunder (including accrued and unpaid interest) by (y) the difference between (i) the Total Value Amount minus (ii) the Dominion Indebtedness Amount, that is, the result of the calculation in clause (y) shall be at least 200% of the outstanding balance of the Loans; provided, for the avoidance of doubt, that notwithstanding that this covenant applies on a daily basis, MXE shall only be obligated to calculate and furnish reports concerning its compliance with this covenant weekly, pursuant to Section 5.7.4, and as of each proposed Funding Date. The "Total Value Amount" shall mean the sum of (a) the Forward Book Value Amount plus (b) the Asset Value Amount plus (c) the Inventory Value Amount. The "Asset Value Amount" shall mean the sum of the asset values of all

of the accounts in MXE's then current base of Qualified Accounts, calculated using an asset value for each Qualified Account of the lesser of (1) \$100 per RCE or (2) fair market value as determined by Lathi in its reasonable discretion; provided, that in the event that Lathi determines, from time to time, that the fair market value for any Qualified Accounts is less than \$100 per RCE, it shall provide written notice to MXE of such fair market value and, subject to the requirement that Lathi have exercised reasonable discretion, the parties shall adopt such fair market value as the basis for calculating the asset value of such Qualified Accounts until such notice is modified or revoked. The "Inventory Value Amount" shall mean the value of MXE's inventory, which shall be equal to the lesser of (1) the value attributed to such inventory by Dominion or (2) the value of such inventory calculated using the weighted average accounting method; provided, that it is understood and acknowledged that the value of MXE's inventory is calculated based, in whole or in part, on estimated inventory valuations and MXE's obligation hereunder shall be to make such calculations based on the best information available to it, and MXE shall not be obligated to re-calculate the Inventory Value Amount upon the receipt of actual inventory valuations for dates which have already been reported, but only to use the information concerning actual inventory values as part of the information used by it to calculate current inventory values; and provided, for the avoidance of doubt, that where estimated inventory data was utilized by MXE in calculating its compliance with this covenant as of a particular date, and such estimated data was the best information available to MXE as of such date, and actual inventory data is subsequently received by MXE, no Default or Event of Default shall arise solely by virtue of the fact that a recalculation of the foregoing covenant for such date using such actual inventory data would show a failure to meet the required coverage level. An "RCE" shall mean Qualified Accounts (or portions thereof) which account for 100 MMBTUs of annual natural gas consumption or 10MWH of electricity consumption.

5.1.3. Minimum Account Base. MXE shall at all times have a customer base of not less than 81,000 Qualified Accounts.

5.1.4. Consolidated EBITDA. For each period of four consecutive fiscal quarters of MXE, Consolidated EBITDA shall equal or exceed \$6,000,000. "Consolidated EBITDA" means, for any period, the total of: (a) net income (or loss) of MXE and its subsidiaries, on a consolidated basis ("Consolidated Net Income"); plus (b) all amounts deducted in computing such Consolidated Net Income in respect of: (i) depreciation, amortization and unusual noncash charges (other than the write-down of current assets), (ii) interest expense, (iii) income tax expense, and (iv) customer acquisition costs if MXE has chosen to change its accounting policy and expense these costs in the period incurred, minus (c) all cash payments made during such period on account of reserves, restructuring

charges and other noncash charges added back to Consolidated EBITDA in a previous period, minus (d) all amounts included in Consolidated Net Income in respect of deferred income tax benefits and other noncash income items, in each case computed in accordance with generally accepted accounting principles consistently applied ("GAAP").

5.2. Incurrence of Indebtedness. MXE shall not without the prior consent of Lathi create, incur, assume, or otherwise become or remain liable with respect to liabilities of any kind other than Permitted Indebtedness. "Permitted Indebtedness" shall mean (i) Dominion Indebtedness; (ii) indebtedness to Lathi hereunder and under the Note; (iii) indebtedness secured under purchase money security interests (including mortgages, conditional sales, capital leases and other title retention or deferred purchase devices) so long as (x) the lien is limited to the property whose acquisition was funded, or refinanced, through the incurrence of such indebtedness; (y) such indebtedness is limited in recourse to the applicable financed property or the amount of such indebtedness does not exceed the lesser of (a) the purchase price or construction cost of said property and (b) the fair market value of said property; and (z) the indebtedness was incurred within 60 days after the initial acquisition of the applicable property; (iv) liabilities incurred in the ordinary course of business secured by carriers, warehouses, mechanics and similar liens, so long as MXE is paying on a timely and current basis all amounts due secured by such liens (other than items which are the subject of a bona fide dispute and as to which appropriate reserves exist); (v) liabilities represented by judgments and awards, so long as the amount of same are fully insured and the insurer has acknowledged coverage; (vi) trade payables for goods and services provided to MXE in the ordinary course of business, which are being paid currently; (vii) liabilities incurred under operating leases and contracts in the ordinary course of MXE's business as to which no default giving rise to acceleration or a notice of acceleration has occurred; and (viii) tax liabilities incurred and payable in the ordinary course of business, as to which all material reports, filings and returns have been timely made or filed (taking into account any extensions) and as to which all material taxes have been paid when due (other than taxes which are the subject of a bona fide dispute and for which appropriate reserves have been established). MXE shall not consent to any amendment to the Dominion Agreement without the prior written consent of Lathi, which consent shall not be unreasonably withheld.

5.3. Limitation on Mergers and Similar Transactions. None of MXE or any of MXE's subsidiaries shall consolidate or amalgamate with, or merge into, or transfer all or substantially all its assets to, another entity (other than a merger of one wholly-owned subsidiary of MXE with another wholly-owned subsidiary of MXE or a merger of a wholly-owned subsidiary of MXE with MXE) if, at the time of such consolidation, amalgamation, merger or transfer, the transaction has not been approved in advance by Lathi (which approval shall be in Lathi's sole discretion) and, if the transaction involves MXE or a transfer of all or substantially of its assets (including interests in subsidiaries),

the transferee or survivor assumes all of MXE's obligations hereunder and under the Note.

5.4. Compliance with Applicable Law. MXE shall comply in all material respects with all laws, statutes, rules, regulations, orders, and decrees applicable to it.

5.5. Limitation on Distributions. Without the prior written consent of Lathi, MXE shall not make any Distribution (as defined below) to any person (other than Lathi). "Distribution" means (A) the declaration or payment of any dividend or other distribution of any kind on or in respect of the capital stock of or other interest in MXE, (B) the purchase, redemption, or other retirement of any capital stock or other equity interest in MXE (or rights exercisable or exchangeable therefor), (C) any other distribution on or in respect of any capital stock or other interest in MXE (or rights exercisable or exchangeable therefor), including without limitation any distributions made upon the liquidation or dissolution of MXE, and (D) any payment of principal or interest with respect to, or any purchase, redemption, or defeasance of, any indebtedness of MXE which is not Permitted Indebtedness; provided, that any such dividends, distributions, purchases, redemptions, retirements or payments which are in the form of issuances of common equity not subject to mandatory repurchase by MXE shall not be deemed to be a Distribution for purposes of this Section 5.5.

5.6. Limitation on Business Activity. Without the prior written consent of Lathi, MXE will not engage in any business other than the purchase and sale of natural gas and electricity; provided that MXE may engage in businesses that are complementary to the purchase and sale of natural gas with Lathi's prior written consent, not to be unreasonably withheld. MXE will not own any interest in any subsidiaries other than Infometer.com Inc., a Delaware corporation ("Infometer"), OnlineChoice Inc., a Delaware corporation ("OnlineChoice"), MxEnergy Electric Inc., a Delaware corporation ("MxEnergy Electric"), MxEnergy (Canada) Ltd., a Canadian corporation ("MxEnergy Ltd.") which are all wholly owned subsidiaries of MXE, without the prior written consent of Lathi; provided that MXE may create and/or increase its investment in Infometer, MxEnergy Electric, OnlineChoice and MxEnergy Ltd. with Lathi's prior written consent, not to be unreasonably withheld.

5.7. Financial Statements and Reports. MXE shall maintain a system of accounting in which correct entries shall be made of all transactions in relation to their business and affairs in accordance with GAAP. The fiscal year of MXE and its subsidiaries shall end on June 30 in each year and the fiscal quarters of MXE and its subsidiaries shall end on March 31, June 30, September 30 and December 31 in each year.

5.7.1. Annual Reports. MXE shall furnish to Lathi as soon as available, and in any event within 90 days after the end of each fiscal year, the balance sheet of

MXE as of the end of such fiscal year, and the statements of income, changes in shareholder equity and cash flows of MXE for such fiscal year and comparative figures for the immediately preceding fiscal year, all consistent in scope and detail to the audited financial statements for MXE's fiscal year ended June 30, 2000 previously provided to Lathi, and accompanied by: (i) reports of independent certified public accountants of recognized national standing reasonably satisfactory to Lathi containing no material qualification, to the effect that they have audited the foregoing financial statements in accordance with generally accepted auditing standards and that such financial statements present fairly, in all material respects, the financial position of MXE at the dates thereof and the results of their operations for the periods covered thereby in conformity with GAAP; and (ii) a certificate of the chief financial officer of MXE to the effect that such officer has caused this Agreement to be reviewed and has no knowledge of any Default, or if such officer has such knowledge, specifying such Default and the nature thereof, and what action MXE has taken, is taking or proposes to take with respect thereto.

5.7.2. Monthly Reports. MXE shall furnish to Lathi as soon as available and, in any event, within 60 days after the end of each month, the internally prepared balance sheet of MXE as at the end of such month and the statement of income for such month (in substantially the form of Exhibit 5.7.2), all accompanied by a certificate of the chief financial officer of MXE to the effect that such financial statements were prepared in accordance with GAAP and present fairly, in all material respects, on a summary basis the financial position of MXE at the dates thereof and the results of their operations for the periods covered thereby, subject only to normal year-end audit adjustments and the addition of footnotes. In addition, for each month that is also the end of a fiscal quarter, such monthly report shall also include a certificate of a duly authorized officer of MXE providing a calculation of the covenant set forth in Section 5.1.4 and setting forth a reasonably detailed calculation of the basis for such calculation.

5.7.3. Customer Reports. MXE shall furnish to Lathi within 20 days after the end of each month a report (in substantially the form of Exhibit 5.7.3) listing the states in which MXE is then operating, the total number of RCEs in each such state and the amount of the receivables guarantee provided by the utilities with which MXE conducts business in each such state.

5.7.4. Compliance Report. MXE shall provide to Lathi on Wednesday of every week, a report, in substantially the form as the weekly report provided by MXE to Lathi as of the date hereof, dated as of the preceding Friday, providing calculations of the covenants set forth in Section 5.1.1, 5.1.2 and 5.1.3, stating that MXE is in compliance with such covenants set forth in Section 5.1.1, 5.1.2

and 5.1.3 hereof and setting forth a reasonably detailed calculation of the basis for such calculation.

5.7.5. Notice of Litigation, Defaults, etc. MXE shall promptly furnish to Lathi notice of any litigation or any administrative or arbitration proceeding (a) which creates a material risk of resulting, after giving effect to any applicable insurance, in the payment by MXE of more than \$100,000 or (b) which results, or creates a material risk of resulting, in a Material Adverse Change. Promptly upon acquiring knowledge thereof, MXE shall notify Lathi of the existence of any Default or Material Adverse Change, specifying the nature thereof and what action MXE has taken, is taking or proposes to take with respect thereto.

5.8. Confidentiality. MXE shall maintain confidential the identity of Lathi and its affiliates and the existence and terms of this Agreement and the Loans: provided, however, that MXE may disclose any such information with the prior consent of Lathi; and provided further, however, that MXE may disclose such of the foregoing information as is reasonably necessary in connection with the conduct of its business in order to provide information to, and respond to requests for information from, its customers, suppliers, lenders, investors, auditors, regulatory bodies or other governmental authorities or in connection with any subpoena or other legal process; provided that solely in connection with any information sought through subpoena or other legal process, MXE will notify Lathi prior to making any responsive disclosure in order to permit Lathi the opportunity to contest such disclosure, and shall provide reasonable cooperation in the same. None of Lathi or any of its affiliates shall have, and MXE will in no event represent or otherwise in any way imply or intimate that Lathi or any of its affiliates has, any involvement in or is in any way responsible for or liable in respect of any obligation or liability of MXE. Notwithstanding the foregoing, the parties may disclose to any and all persons, without limitation of any kind, the tax treatment and any facts that may be relevant to the tax structure of the transaction; provided, however, that no party shall disclose any other information (including the identity of any party and any information that could lead another to determine the identity of any party).

5.9. Covenant to Negotiate in Good Faith. MXE covenants to negotiate in good faith with any Eligible Buyer. "Eligible Buyer" means a potential buyer of all or any portion of the outstanding capital stock of MXE, whether by stock purchase, merger, consolidation or otherwise, or all or a substantial portion of the assets of MXE (such a transaction, a "Transaction") that shall have proposed or indicated a willingness to propose a purchase price that is based on a valuation of MXE equal to or in excess of \$200 per Qualified Account; provided, that nothing in this Agreement shall be deemed to require MXE to enter into a Transaction that is conditioned upon the provision of non-competition covenants from the selling stockholders or members of management as a condition to such Transaction.

6. Representations and Warranties of MXE. MXE represents and warrants to Lathi as of the date hereof and as of each extension of credit hereunder as follows:

6.1. Organization. MXE is a corporation duly organized, validly existing, and in good standing under the laws of the State of Delaware.

6.2. Authorization; Enforceability. MXE has the power to execute and deliver this Agreement, the Note, the Shareholders Agreement Amendment, the Security Agreement and the Warrants (collectively, the "Credit Documents") and to perform its obligations hereunder and thereunder, and has taken all necessary action to authorize such execution, delivery, and performance. The obligations of MXE under the Credit Documents constitute its legal, valid, and binding obligations, enforceable in accordance with their respective terms (except to the extent that enforcement may be limited by applicable bankruptcy, reorganization, insolvency, moratorium, or similar laws affecting creditors' rights generally and by laws relating to the availability of specific performance, injunctive relief or other equitable remedies).

6.3. Noncontravention. The execution, delivery, and performance by MXE of the Credit Documents do not violate or conflict with any law applicable to MXE, any provision of its charter documents, any order or judgment of any court or other government agency applicable to it or any of its assets, or any contractual restriction binding on or affecting it or any of its assets.

6.4. Consents. All material governmental and other consents that are required to have been obtained by MXE with respect to the execution of the Credit Documents and the performance thereof have been obtained and are in full force and effect.

6.5. Litigation. There is not pending or, to MXE's knowledge after due inquiry, threatened against MXE any action, suit, or proceeding at law or in equity or before any court, tribunal, governmental body, agency, or official or any arbitrator that has resulted, or creates a material risk of resulting, in a Material Adverse Change or which seeks to enjoin the consummation of or which questions the validity of any of the transactions contemplated by the Credit Documents.

6.6. Financial Statements and Other Information. MXE has previously furnished to the Lathi copies of the following:

6.6.1. The audited balance sheet of MXE as at June 30, 2003 and the audited statements of income, changes in shareholders' equity and cash flows of MXE for the fiscal year of MXE then ended.

6.6.2. The audited financial statements (including the notes thereto) referred to in Section 6.6.1 above were prepared in accordance with GAAP and fairly present in all material respects the financial position of MXE at the date thereof and the results of its operations for the period covered thereby. MXE has no contingent liability material to MXE which is not reflected in the balance sheets referred to in Section 6.6.1 above (or delivered pursuant to Sections 5.7.1 or 5.7.2) or in the notes thereto.

6.7. Indebtedness. MXE is not liable with respect to (a) any indebtedness for borrowed money except for (i) indebtedness under the Dominion Agreement, (ii) indebtedness to Lathi hereunder and under the Note, or (iii) indebtedness set forth on Schedule 6.7 hereto, or (b) any other liability other than Permitted Indebtedness.

6.8. Defaults. MXE is not in default under any provision of its charter or by-laws or of the Dominion Agreement (other than immaterial defaults under the Dominion Agreement) or the Credit Documents. MXE is not in default under any provision of any agreement, instrument, deed or lease to which it is party or by which it or its property is bound so as to result, or create a material risk of resulting, in any Material Adverse Change.

6.9. Warrants. The shares of MXE common stock issuable upon exercise of the Warrants (the "Warrant Shares") have been duly authorized and reserved for issuance by MXE. The issuance, sale and delivery of the Warrants and, upon the proper exercise of the Warrants, the issuance and delivery of the Warrant Shares have been duly authorized by all required corporate action. The Warrant Shares, when issued upon the proper exercise of the Warrants and the payment of any applicable exercise price thereunder, will be validly issued, fully paid and nonassessable and will be free and clear of all liens, charges, restrictions, claims and encumbrances imposed by or through MXE other than pursuant to the Shareholders Agreement. Neither the issuance, sale or delivery of the Warrants nor the issuance or delivery of the Warrant Shares is subject to any preemptive right of stockholders of MXE arising under law or the Certificate of Incorporation or By-laws of MXE, as amended, or to any contractual right of first refusal or other right in favor of any person.

6.10. Disclosure. Neither the Credit Documents nor any financial statement, report, notice, mortgage, assignment or certificate furnished or to be furnished to Lathi on behalf of MXE contains any untrue statement of material fact or omits to state a material fact necessary in order to make the statements contained herein or therein not misleading in light of the circumstances under which they were made. No fact is actually known to MXE which has resulted, or in the future (so far as MXE can reasonably foresee) will result, or creates a material risk of resulting, in any Material Adverse Change, except to

the extent that present or future general economic conditions may result in a Material Adverse Change.

7. Defaults, Events of Default.

7.1. Default. As used herein, a "Default" is any Event of Default and any event or condition which, with the passage of time or giving of notice or both, would become an Event of Default, including the filing against MXE of a petition commencing an involuntary case in bankruptcy.

7.2. Event of Default. Each of the following events is herein referred to as an "Event of Default":

7.2.1. Payment. MXE shall fail to make any payment (x) in respect of principal of the Loans as the same shall become due, whether at maturity, upon required or scheduled prepayment, by acceleration or otherwise, or (y) in respect of interest on the Loans and, in the case of clause (y), such failure shall continue for a period of two (2) business days; or

7.2.2. Breach of Covenant. MXE shall fail to perform or observe (x) any of the provisions of Section 1.4 or of Section 5 (other than defaults under any of Sections 5.2, 5.6, or 5.8 which are not material, individually or in the aggregate) of this Agreement, or (y) in any material respect, any other covenant, agreement, or provision to be performed or observed by it under the Credit Documents, and, in the case of clause (y) such failure shall not be rectified or cured to the satisfaction of Lathi within thirty (30) days of notice to MXE by Lathi; or

7.2.3. Breach of Representation. Any representation or warranty of or with respect to MXE made herein shall prove to have been false in any material respect on the date as of which it was made or deemed to be made; or

7.2.4. Cross-Default.

(a) MXE shall fail to make any payment under the Dominion Agreement when due (after giving effect to any applicable grace periods);

(b) MXE shall fail to perform or observe the terms of the Dominion Agreement, and such failure shall continue, without having been duly cured, waived or consented to, beyond the period of grace, if any, specified in such agreement or instrument, and any notices required under the Dominion Agreement, if any, for such failure to constitute an event of

default under the Dominion Agreement have been given, and such failure shall permit the acceleration of any Dominion Indebtedness;

(c) all or any part of the amounts due under the Dominion Agreement shall be accelerated or shall become due or payable prior to its stated maturity for any reason whatsoever (except with respect to voluntary prepayments or mandatory contingent payments that do not result from a default thereunder or the occurrence of an event similar to an Event of Default hereunder);

(d) any foreclosure or other enforcement action shall be commenced with respect to any lien on any property of MXE securing amounts due under the Dominion Agreement; or

7.2.5. Bankruptcy, etc. MXE shall be involved in financial difficulties as evidenced by: (a) its commencement of a voluntary case under Title 11 of the United States Code as from time to time in effect, or by its authorizing, by appropriate proceedings of its board of directors or other governing body, the commencement of such a voluntary case; (b) the commencement of an involuntary case under said Title 11 and such case is not dismissed within 45 days; (c) its filing an answer or other pleading admitting or failing to deny the material allegations of a petition filed against it commencing an involuntary case under said Title 11, or seeking, consenting to, or acquiescing in the relief therein sought or provided, or by failing to controvert timely the material allegations of any such petition; (d) the entry of an order for relief in any involuntary case commenced under said Title 11; (e) its seeking relief as a debtor under any applicable law, other than said Title 11, of any jurisdiction, whether within or without the United States of America, relating to the insolvency, liquidation, or reorganization of debtors or the modification or alteration of the rights of creditors, or by its consenting to or acquiescing in such relief or any involuntary case or petition filed or made therefor (including without limitation making or seeking to make any arrangement or composition with its creditors, seeking any order or arrangement for rehabilitation or for the appointment of any receiver, administrative receiver, administrator, trustee, or person performing similar functions, or instituting supervisory proceedings or proceedings for court administration or similar proceedings in any jurisdiction); (f) the commencement of any involuntary case or proceeding of the nature referred to in (e) above and such case is not dismissed within 45 days; (g) the passing of any resolution by its members, shareholders, partners, or other controllers to effect, approve or seek its winding up, dissolution or liquidation; (h) the entry of any order by a court, tribunal, or other authority of competent jurisdiction finding it to be bankrupt or insolvent, ordering or approving its liquidation, winding up, dissolution, or

reorganization or any modification or alteration of the rights of its creditors, or assuming custody of, or appointing a receiver, administrator, administrative receiver, trustee, custodian, or other person performing similar functions for all, or a substantial part, of its property or business; (i) its making an assignment for the benefit of, or entering into a composition or other arrangement with, its creditors; or appointing or consenting to the appointment of a receiver, administrator, administrative receiver, trustee, custodian, or other person performing similar functions for all or a substantial part of its property or business; or (j) its admission in writing of its inability to pay its debts as they become due; or

7.2.6. Certain Proceedings. Any federal or state agency, court, tribunal, or other governmental entity or regulatory body of any kind of any jurisdiction within or without the United States or any creditor of MXE shall file any petition or seek any appointment specified in Section 11(d) or under the Securities Investor Protection Act or under any applicable law or regulation, whether of the United States of America or any other jurisdiction, providing for the protection of investors, with respect to such party which petition is not vacated within 60 days; or

7.2.7. Revocation of License. Any authorization, consent, approval, license, exemption of, or filing or registration with any court, tribunal, or governmental department, commission, board, bureau, agency, or instrumentality, securities exchange, or association, whether of the United States of America or any other jurisdiction (each, a "License"), required for MXE's execution of this Agreement or the Note or performance of its obligations hereunder or thereunder or otherwise required for MXE to engage in its business as now conducted or contemplated by this Agreement or the Note shall be revoked or suspended or shall fail to be renewed by any agency, court, tribunal, or other governmental entity or regulatory body of any political subdivision of any kind in any jurisdiction whether or not of or located in the United States, or if any such person or entity shall take any disciplinary action against MXE, or make any order restricting the activities of MXE or its ability to dispose of its assets, which in the opinion of Lathi has or could have a materially adverse effect on the ability of MXE to perform its obligations hereunder or result in a Material Adverse Change; or

7.2.8. Violation of Law. MXE shall engage in any activity which is violative, in any material respect, of any law, rule, or regulation (including without limitation any rule or by-law of any exchange, securities association, or self-regulating organization) relating to any part of its business if such violation could result in a penalty or revocation of license which is materially adverse to its business; or

7.2.9. Enforceability, etc. Any of the Credit Documents shall cease for any reason (other than the scheduled termination thereof in accordance with its terms) to be enforceable in accordance with its terms or in full force and effect in any material respect; or any party thereto shall so assert in a judicial or similar proceeding; or the security interests created by the Security Agreement shall cease to be enforceable and of the same effect and priority purported to be created hereby.

7.3. Certain Actions Following an Event of Default. If any one or more Events of Default shall occur, then in each and every such case:

7.3.1. Terminate Obligation to Extend Credit. Lathi may, in its sole discretion, terminate its obligation to make any further extensions of credit under this Agreement by furnishing notice of such termination to MXE; provided, however, that if such Event of Default is triggered by the occurrence of any of the events described in Section 7.2.5 hereof, Lathi's obligation to make any further extensions of credit under the Credit Documents shall automatically terminate.

7.3.2. Specific Performance; Exercise of Rights. Lathi may, in its sole discretion, proceed to protect and enforce its rights by suit in equity, action at law and/or other appropriate proceeding, either for specific performance of any covenant or condition contained in the Credit Documents or in any instrument or assignment delivered to Lathi pursuant to this Agreement or any other Credit Document.

7.3.3. Acceleration. Lathi may, in its sole discretion, by notice in writing to MXE declare all or any part of the unpaid balance of the Loans then outstanding to be immediately due and payable; provided, however, that if such Event of Default is triggered by the occurrence of any of the events described in Section 7.2.5 hereof, the unpaid balance of the Loans shall automatically become immediately due and payable.

7.3.4. Enforcement of Payment; Credit Security; Setoff. Lathi may, in its sole discretion, proceed to enforce payment of the Loans in such manner as it may elect and to realize upon any and all rights in the collateral pledged pursuant to the Security Agreement. Lathi may offset and apply toward the payment of the Loans (and/or toward the curing of any Event of Default) any indebtedness owing from Lathi to MXE, regardless of the adequacy of any security for the Loans; provided, that Lathi shall provide notice of any such offset to MXE within a reasonable period following such offset. Lathi shall have no duty to determine the adequacy of any such security in connection with any such offset.

7.3.5. Cumulative Remedies. To the extent not prohibited by applicable law which cannot be waived, all of Lathi's rights hereunder and under each other Credit Document shall be cumulative.

7.3.6. Annulment of Defaults. Once an Event of Default has occurred, such Event of Default shall be deemed to exist and be continuing for all purposes of the Credit Documents until Lathi shall have waived such Event of Default in writing, the same has been manifestly cured or cured to Lathi's reasonable satisfaction, or Lathi and MXE shall have entered into an amendment to this Agreement which by its express terms cures such Event of Default, at which time such Event of Default shall no longer be deemed to exist or to have continued. No such action by Lathi shall extend to or affect any subsequent Event of Default or impair any of Lathi's rights of upon the occurrence thereof or, unless expressly stated, operate as a waiver of any default rate interest that has accrued during the pendency of such Event of Default. The making of any extension of credit during the existence of any Default or Event of Default shall not constitute a waiver thereof.

7.3.7. Waivers. To the extent that such waiver is not prohibited by the provisions of applicable law that cannot be waived, MXE hereby waives:

- (a) all presentments, demands for performance, notices of nonperformance (except to the extent required by this Agreement or any other Credit Document), protests, notices of protest and notices of dishonor;
- (b) any requirement of diligence or promptness on the part of Lathi in the enforcement of its rights under this Agreement or any other Credit Document;
- (c) any and all notices of every kind and description which may be required to be given by any statute or rule of law; and
- (d) any defense (other than indefeasible payment in full) which it may now or hereafter have with respect to its liability under this Agreement or any other Credit Document.

8. Indemnification. MXE agrees to indemnify, defend, and hold and save harmless Lathi and its employees, agents, directors, members, management, officers or other affiliates (collectively, "Indemnitees") from any and all losses, damages, claims, actions, demands, or lawsuits of any kind whatsoever (including reasonable attorneys' fees) arising in any way directly

or indirectly out of the transactions contemplated by the Credit Documents, except such as may be caused by the gross negligence or willful misfeasance of the applicable Indemnitee.

Any remedy provided to Lathi or its affiliates in this Agreement, in the Note or the Security Agreement shall not be exclusive, and a party shall be entitled to exercise all rights and take advantage of all remedies available to it under applicable law.

9. Definitional Cross-References. Each of the following terms is defined in the Section or reference set forth opposite such term below:

<u>Defined Term</u>	<u>Definition</u>
Agreement	Preamble
Amendment No. 1	Recitals
Asset Value Amount	Section 5.1.2
Borrowing Request	Section 1.2
Credit Documents	Section 6.2
Consolidated EBITDA	Section 5.1.3
Consolidated Net Income	Section 5.1.3
Default	Section 7.1
Distribution	Section 5.5
Dominion	Recitals
Dominion Agreement	Recitals
Dominion Indebtedness	Section 5.1.1
Dominion Indebtedness Amount	Section 5.1.1
Eligible Buyer	Section 5.9
Event of Default	Section 7.2
Forward Book Value Amount	Section 5.1.1
Funding Date	Section 1.2
GAAP	Section 5.1.3
In-Balance Volume	Section 5.1.1
Infometer	Section 5.6
Initial Funding Date	Section 1.2
Indemnitees	Section 8
Intercreditor Agreement	Recitals
Inventory Value Amount	Section 5.1.2
Lathi	Preamble
License	Section 7.2.7
Loan(s)	Section 1.1
Material Adverse Change	Section 4.2.4
Maturity Date	Section 3.1
MXE	Preamble
MXEnergy Electric	Section 5.6
MXEnergy Ltd.	Section 5.6

Note	Section 1.3
OnlineChoice	Section 5.6
Original Loan Agreement	Recitals
Permitted Indebtedness	Section 5.2
Qualified Accounts	Section 5.1.1
RCE	Section 5.1.2
Restatement Date	Preamble
Security Agreement	Section 4.1.9
Shareholders Agreement	Section 4.1.2
Shareholders Agreement Amendment	Section 4.1.2
Stock Purchase Agreement	Section 4.1.4
Total Value Amount	Section 5.1.2
Transaction	Section 5.9
Warrant Shares	Section 6.9
Warrants	Section 4.1.3

10. Miscellaneous.

10.1. Assignment. Neither this Agreement nor the Note shall be assignable by MXE (nor any obligation delegated) without the prior written consent of Lathi. This Agreement and the Note shall be assignable by Lathi (i) with MXE's consent, not to be unreasonably withheld or (ii) following and during the pendency of an Event of Default. Subject to the foregoing, this Agreement and the Note shall be freely assignable, in whole or in part, and upon such assignment shall be binding upon and shall inure to the benefit of the parties and their respective successors and assigns.

10.2. Governing Law. This Agreement shall be governed by and construed in accordance with the laws (other than the conflict of laws rules) of the State of Connecticut, and each of the parties hereto hereby submits to the non-exclusive jurisdiction of the state courts of the State of New York and to the non-exclusive jurisdiction of the United States District Court for the Southern District of New York for the purpose of any suit, action, or other proceeding arising out of or based upon this Agreement or the Note or the subject matter hereof or thereof. Each party hereby (a) waives any objection it may have at any time to the laying of venue of any claim, suit, or proceedings brought in any such court, waives any claim that such claim, suit, or proceedings have been brought in an inconvenient forum, and waives the right to object, with respect to such claim, suit, or proceedings, that such court does not have jurisdiction over such party and (b) consents to service of process by means permitted under the applicable rules of any of the state courts of such State or of such United States District Court at any time in effect, including without limitation by means of certified or registered mail.

10.3. Severability. The invalidity or unenforceability of any term or provision hereof shall not affect the validity or enforceability of any other term or provision hereof.

10.4. Merger. This Agreement, together with the Note, the Security Agreement, the Shareholders Agreement Amendment, the Warrants, the Intercreditor Agreement, the Warrant dated July 2, 2002 for 285,928 shares of MXE common stock, the Stock Purchase Agreement, and Amendment No. 1 dated July 2, 2002 to the Shareholders Agreement dated March 5, 2002 between MXE and the shareholders named therein, constitute the entire understanding of the parties with respect to the subject matter hereof and thereof and supersedes all prior and contemporaneous understandings and agreements, whether written or oral.

10.5. Counterparts. This Agreement may be executed in counterparts, each of which will be deemed an original, but all of which taken together shall constitute one instrument.

10.6. Amendments. No amendment, modification, or waiver of or in respect of this Agreement or any right arising under or in respect of this Agreement will be effective unless in writing and executed by both parties hereto.

10.7. Notice. All notices, requests, and demands to or upon MXE or Lathi shall be deemed effective upon receipt and shall be given in writing (including by facsimile transmission), as follows:

If to MXE: MxEnergy Inc.
20 Summer Street
5th Floor
Stamford, CT 06901
Telephone No.: 203-356-1318
Facsimile No.: 203-425-9562
Attention: Robi Artman-Hodge

If to Lathi: Lathi, LLC
600 Atlantic Avenue
Boston, MA 02210
Telephone No.: 617-523-7698
Facsimile No.: 617-878-6916
Attention: Megan Kelleher

IN WITNESS WHEREOF, the parties hereto have executed this Agreement on the date first above written.

MXENERGY INC.

By: _____

Name: _____

Title: _____

Jeffrey A. Meyer
President / CEO

LATHI, LLC

By: Harvard Management Company, Inc.,
pursuant to delegated authority

By: _____

Authorized Signatory

By: _____

Authorized Signatory

IN WITNESS WHEREOF, the parties hereto have executed this Agreement on the date first above written.

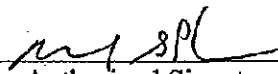
MXENERGY INC.

By: _____
Name: _____
Title: _____

LATHI, LLC

By: Harvard Management Company, Inc.,
pursuant to delegated authority

By:  _____
Authorized Signatory

By:  _____
Authorized Signatory

MXENERGY INC.

AMENDMENT NO. 2 TO AMENDED AND RESTATED LOAN AGREEMENT AND
AMENDMENT NO. 1 TO AMENDED AND RESTATED SECURITY AGREEMENT

This AMENDMENT NO. 2 TO AMENDED AND RESTATED LOAN AGREEMENT AND AMENDMENT NO. 1 TO AMENDED AND RESTATED SECURITY AGREEMENT (the "Amendment") is dated as of December 19, 2005 and entered into by and between MxEnergy Inc., a Delaware corporation (the "Company"), and Sowood Commodity Partners Fund LP (the "Lender"). This Amendment amends (i) the Amended and Restated Loan Agreement (as amended, amended and restated, supplemented or otherwise modified, the "Loan Agreement") dated as of November 14, 2003 by and between the parties hereto and (ii) the Amended and Restated Security Agreement (as amended, amended and restated, supplemented or otherwise modified, the "Security Agreement") dated as of November 14, 2003 by and between the parties hereto. Capitalized terms used herein without definition shall have the same meanings herein as set forth in the Loan Agreement or the Security Agreement, as applicable.

RECITALS

WHEREAS, the parties hereto entered into the Loan Agreement, which provides for a loan facility to the Company;

WHEREAS, the parties hereto entered into the Security Agreement which secures the Company's obligations under the Loan Agreement; and

WHEREAS, the Company has requested and the Banks have agreed to make certain amendments to the Loan Agreement and the Security Agreement as set forth below;

NOW, THEREFORE, in consideration of the premises and the agreements, provisions and covenants herein contained, the parties hereto agree as follows:

1. Amendments to Loan Agreement.

- (a) Section 5.2 of the Loan Agreement is hereby amended by (i) deleting the word "and" after clause (vii) of the definition of "Permitted Indebtedness" and (ii) inserting the following after clause (vii) of the definition of "Permitted Indebtedness":

“and (viii) indebtedness permitted under Section 6.02 of the Credit Agreement dated as of December 19, 2005 among the Company, MxEnergy Electric Inc., MxEnergy Holdings Inc. and certain subsidiaries thereof, the lenders from time to time party thereto and Société Générale, as administrative agent (the “SG Credit Agreement”)”

- (b) Section 5.5 of the Loan Agreement is hereby amended by adding the words “and Distributions permitted under Section 6.06 of the SG Credit Agreement as of the date of the SG Credit Agreement (other than (i) subsection (b) thereof and (ii) with respect to subsection (e) thereof, the inclusion of such subsection shall not be deemed to supersede or amend the terms of any document or instrument governing such Subordinated Indebtedness (as such term is defined in the SG Credit Agreement))” immediately after the words “other than Lathi” in the parenthetical in the first sentence thereof.
- (c) Section 5.7.1 of the Loan Agreement is hereby deleted in its entirety and the following Section is inserted in lieu thereof:

“5.7.1 Annual Reports. MXE shall furnish to Lathi as soon as available, and in any event within 120 days after the end of each fiscal year, the balance sheet of MxEnergy Holdings Inc. (“Holdings”) as of the end of such fiscal year, and the statements of income, changes in shareholder equity and cash flows of Holdings for such fiscal year and comparative figures for the immediately preceding fiscal year, all consistent in scope and detail to the audited financial statements for Holdings’ fiscal year ended June 30, 2005 previously provided to Lathi, and accompanied by: (i) reports of independent certified public accountants of recognized national standing reasonably satisfactory to Lathi containing no material qualification, to the effect that they have audited the foregoing financial statements in accordance with generally accepted auditing standards and that such financial statements present fairly, in all material respects, the financial position of Holdings at the dates thereof and the results of their operations for the periods covered thereby in conformity with GAAP; and (ii) a certificate of the chief financial officer of MXE to the effect that such officer has caused this Agreement to be reviewed and has no knowledge of any Default, or if such officer has such knowledge, specifying such Default and the nature thereof, and what action MXE has taken, is taking or proposes to take with respect thereto.”

2. Amendment to Security Agreement. Section 3.3 of the Security Agreement is hereby amended by deleting clause (d) thereof in its entirety and inserting the following clause (d) in lieu thereof:

“(d) Liens securing indebtedness described in clauses (iii), (iv), (viii) and (ix) of the definition of Permitted Indebtedness”
3. Consent to New Credit Agreement. The Lender hereby consents to the execution and delivery by the Company of the Credit Agreement dated as of December 19, 2005 among the Company, MxEnergy Electric Inc., MxEnergy Holdings Inc. and certain subsidiaries thereof, the lenders from time to time party thereto and Société Générale, as administrative agent and the incurrence by the Company of its obligations thereunder and under the documents executed in connection therewith.
4. Termination of Term Loan Facility. The parties hereto agree that the Company shall no longer have the ability to request or receive any Term Loans pursuant to Section 1.1.2 of the Loan Agreement.
5. Legend on Credit Documents. All of the Credit Documents shall be deemed to be amended to add the following legend thereon:

“This instrument and the rights and obligations evidenced hereby are and shall at all times be and remain subordinated in right of payment to the extent and in the manner set forth in that certain Subordination and Intercreditor Agreement dated as of December 19, 2005 among (a) Société Générale, as Credit Agreement Representative, (b) Virginia Power Energy Marketing, Inc., a Virginia corporation, and each additional counterparty which becomes a party to such Subordination and Intercreditor Agreement in compliance with Section 10.12 thereof, (c) Sowood Commodity Partners Fund LP, a Delaware limited partnership, (d) MxEnergy Holdings Inc., a Delaware corporation, and (e) MxEnergy Inc., a Delaware corporation, and MxEnergy Electric Inc., a Delaware corporation, and each of the other Loan Parties (as defined therein) party thereto to the prior payment in full of all Senior Obligations (as defined therein), as amended, supplemented, or otherwise modified from time to time; and each holder of this instrument, by its acceptance hereof, irrevocably agrees to be bound by the provisions of such Subordination and Intercreditor Agreement.”

6. Effectiveness of Amendments. This Amendment shall become effective on the date on which the Company and the Lender have executed and delivered the same.
7. Representations and Warranties; No Default or Event of Default. On the date of effectiveness of this Amendment, the Company shall be deemed to have certified to the Lender that, after giving effect to the amendments contained herein that become effective on such date (i) all of the representations and warranties contained in the Loan Agreement are true and correct in all material respects on and as of the date thereof with the same effect as if made on and as of such date (except to the extent such representations and warranties expressly refer to an earlier date, in which case they shall be true and correct as of such earlier date and (ii) no Default or Event of Default exists as of such date.
8. Miscellaneous.
 - (a) This Amendment modifies the Loan Agreement and the Security Agreement to the extent set forth herein, is hereby incorporated by reference into the Loan Agreement and Security Agreement and is made a part thereof. On and after the effective date, each reference in the Loan Agreement or the Security Agreement to "this Agreement", "hereunder", "hereof", "herein" or words of like import referring to the Loan Agreement or Security Agreement, as applicable, and each reference in the other Credit Documents to the "Loan Agreement", "Security Agreement," "thereunder", "thereof" or words of like import referring to the Loan Agreement or Security Agreement shall mean and be a reference to the Loan Agreement or Security Agreement as amended by this Amendment.
 - (b) Except as specifically amended by this Amendment, the Loan Agreement, the Security Agreement and the other Credit Documents shall remain in full force and effect and are hereby ratified and confirmed.
 - (c) The execution, delivery and performance of this Amendment shall not, except as expressly provided herein, constitute a waiver of any provision of, or operate as a waiver of any right, power or remedy of the Lender under, the Loan Agreement, the Security Agreement or any of the other Credit Documents.
 - (d) Section and subsection headings in this Amendment are included herein for convenience of reference only and shall not constitute a part of this Amendment for any other purpose or be given any substantive effect.
 - (e) THIS AMENDMENT SHALL BE GOVERNED BY, AND SHALL BE CONSTRUED AND ENFORCED IN ACCORDANCE WITH, THE

INTERNAL LAWS OF THE STATE OF CONNECTICUT, WITHOUT REGARD TO CONFLICT OF LAWS PRINCIPLES.

- (f) This Amendment may be executed in any number of counterparts and by different parties hereto in separate counterparts, each of which when so executed and delivered shall be deemed an original, but all such counterparts together shall constitute one and the same instrument.

[REMAINDER OF PAGE INTENTIONALLY LEFT BLANK]

IN WITNESS WHEREOF, the parties hereto have caused this
Amendment to be duly executed and delivered by their respective officers thereunto duly
authorized as of the date first written above.

MXENERGY INC.

By: _____
Name:
Title:

SOWOOD COMMODITY PARTNERS FUND LP

By: Sowood Commodity Partners GP LP, its
General Partner

By: Sowood GP LLC, its General Partner

By: Megan Kelleher
Name: Megan Kelleher
Title: Member

AMENDED AND RESTATED SECURITY AGREEMENT

This Agreement, dated as of November 14, 2003, between MxEnergy Inc., a Delaware corporation ("MXE"), and Lathi, LLC, a Delaware limited liability company ("Lathi"), amends and restates in its entirety the Security Agreement dated September 6, 2001, as amended, between MXE and Lathi.

1. Reference to Loan Agreement; Definitions; Certain Rules of Construction. Reference is made to the Amended and Restated Loan Agreement between MXE and Lathi dated the date hereof, as the same may be amended or restated from time to time (the "Loan Agreement") together with the Note (as defined therein) issued thereunder (collectively, the "Documents"). Capitalized terms defined in the Loan Agreement and not otherwise defined herein are used herein with the meanings so defined. Certain other capitalized terms are used in this Agreement as specifically defined below in this Section 1. Except as the context otherwise explicitly requires, (a) the capitalized term "Section" refers to sections of this Agreement, (b) the capitalized term "Exhibit" refers to exhibits to this Agreement, (c) references to a particular Section shall include all subsections thereof, (d) the word "including" shall be construed as "including without limitation", (e) terms defined in the UCC and not otherwise defined herein have the meaning provided under the UCC, (f) references to a particular statute or regulation include all rules and regulations thereunder and any successor statute, regulation or rules, in each case as from time to time in effect and (g) references to a particular Person include such Person's successors and assigns to the extent not prohibited by this Agreement. References to "the date hereof" mean the date first set forth above.

1.1. "Accounts" is defined in Section 2.1.4.

1.2. "Agreement" means this Amended and Restated Security Agreement as from time to time in effect.

1.3. "Contracts" is defined in Section 2.1.1.

1.4. "Distribution" means, with respect to any Person, (a) the declaration or payment of any dividend or distribution on or in respect of any shares of any class of capital stock of, membership interest in, or other equity interests in such Person; (b) the purchase, redemption or other retirement of any shares of any class of capital stock of, membership interest in, or other equity interest in such Person or of options, warrants or other rights for the purchase of such shares; (c) any other distribution on or in respect of any shares of any class of capital stock of, membership interest in, or equity or other beneficial interest in such Person; (d) any payment of principal or interest with respect to, or any purchase, redemption or defeasance of, any indebtedness of such Person; and (e) any payment, loan or advance or other distribution by such Person to the holder of any shares of any class of capital stock of, membership interest in, or equity interest in such Person, or any affiliate of such holder.

1.5. "Dominion Liens" is defined in Section 3.3.

1.6. "Event of Default" means an "Event of Default" under the Loan Agreement.

1.7. "Investment Property" is defined in Section 2.1.2.

1.8. "Lathi" is defined in the preamble.

1.9. "Lien" means, with respect to any Person, any lien, encumbrance, mortgage, pledge, charge or security interest of any kind upon any property or assets of such Person, whether now owned or hereafter acquired, or upon the income or profits therefrom.

1.10. "MXE" is defined in the preamble.

1.11. "MXE Obligations" is defined in Section 2.1.

1.12. "Permitted Liens" is defined in Section 3.3.

1.13. "Person" means any present or future natural person or any corporation, association, partnership, joint venture, limited liability, joint stock or other company, business trust, trust, organization, business or government or any governmental agency or political subdivision thereof.

1.14. "Pledged Indebtedness" is defined in Section 2.1.8.

1.15. "Pledged Rights" is defined in Section 2.1.7.

1.16. "Pledged Securities" means the Pledged Stock, the Pledged Rights and the Pledged Indebtedness, collectively.

1.17. "Pledged Stock" is defined in Section 2.1.6.

1.18. "Security" is defined in Section 2.1.

1.19. "Securities Act" is defined in Section 5.5.

1.20. "UCC" means the Uniform Commercial Code as in effect in Connecticut on the date hereof; provided, however, that with respect to the perfection of Lathi's Lien on the Security and the effect of nonperfection thereof, the term "UCC" means the Uniform Commercial Code as in effect in any jurisdiction the laws of which are made applicable by section 9-103 of the Uniform Commercial Code as in effect in Connecticut.

2. Security.

2.1. Security. In order to induce Lathi to enter into the Loan Agreement and to provide extensions of credit under the Note, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, MXE is hereby granting to Lathi a security interest in all of its assets to secure the obligations of MXE now or hereafter owed under the Loan Agreement and the Note (collectively, the "MXE Obligations"), in accordance with the terms thereof.

As security for the payment and performance of the MXE Obligations, MXE mortgages, pledges and collaterally grants and assigns to Lathi and the holders from time to time of any MXE Obligation, and creates a security interest in favor of Lathi and such holders in, all of MXE's right, title and interest in and to (but none of its obligations or liabilities with respect to) the items and types of present and future property described in Sections 2.1.1 through 2.1.16 (subject, however, to Section 2.1.17), whether now owned or hereafter created or acquired, all of which shall be included in the term "Security":

2.1.1. Contracts. All contracts, including without limitation all contracts for the purchase or sale of natural gas, including all such contracts involving spot sales, whether or not such contracts are "commodity contracts" as defined in the UCC ("Contracts").

2.1.2. Investment Property. All "investment property," including all "securities," whether certificated or uncertificated, "security entitlements," "securities accounts," "commodity contracts," or "commodity accounts" (as each of such terms is defined in the UCC) (collectively, "Investment Property").

2.1.3. Tangible Personal Property. All goods, machinery, equipment, and inventory, including without limitation all natural gas purchased by MXE for resale to customers, and all other tangible personal property of any nature whatsoever, wherever located, including raw materials, work in process, finished parts and products, supplies, spare parts, replacement parts, merchandise for resale, computers, tapes, disks and computer equipment.

2.1.4. Rights to Payment of Money. All rights to receive the payment of money, including accounts and receivables, rights to receive the payment of money under contracts, franchises, licenses, permits, subscriptions or other agreements (whether or not earned by performance), and rights to receive payments from any other source (all such rights being referred to herein as "Accounts").

2.1.5. Intangibles. All of the following (to the extent not included in Section

2.1.1): (a) contracts, franchises, licenses, permits, subscriptions and other agreements and all rights thereunder; (b) rights granted by others which permit MXE to sell or market items of personal property; (c) United States and foreign common law and statutory copyrights and rights in literary property and rights and licenses thereunder; (d) trade names, United States and foreign trademarks, service marks, Internet domain names, registrations of any of the foregoing and related goodwill; (e) United States and foreign patents and patent applications; (f) computer software, designs, models, know-how, trade secrets, rights in proprietary information, formulas, customer lists, backlog, orders, subscriptions, royalties, catalogues, sales material, documents, good will, inventions and processes; (g) judgments, causes in action and claims, whether or not inchoate, and (h) all other general intangibles and intangible property and all rights thereunder.

2.1.6. Pledged Stock. (a) All shares of capital stock or other evidence of beneficial interest in any corporation, business trust or limited liability company, (b) all limited partnership interests in any limited partnership, (c) all general partnership interests in any general or limited partnership, (d) all joint venture interests in any joint venture and (e) all options, warrants and similar rights to acquire such capital stock or such interests. All such capital stock, interests, options, warrants and other rights are collectively referred to as the "Pledged Stock".

2.1.7. Pledged Rights. All rights to receive profits or surplus of, or other Distributions (including income, return of capital and liquidating Distributions) from, any partnership, joint venture or limited liability company, including any Distributions by any such Person to partners, joint venturers or members. All such rights are collectively referred to as the "Pledged Rights".

2.1.8. Pledged Indebtedness. All indebtedness from time to time owing to MXE from any Person (all such indebtedness being referred to as the "Pledged Indebtedness").

2.1.9. Chattel Paper, Instruments, etc. All chattel paper, non-negotiable instruments, negotiable instruments, documents and investment property.

2.1.10. Leases. All leases of personal property, whether MXE is the lessor or the lessee thereunder.

2.1.11. Deposit Accounts. All general or special deposit accounts, including

any demand, time, savings, passbook or similar account maintained by MXE with any bank, trust company, savings and loan association, credit union or similar organization, and all money, cash and cash equivalents of MXE, whether or not deposited in any such deposit account.

2.1.12. Collateral. All collateral granted by third parties to, or held by, MXE with respect to the Accounts, Pledged Securities, chattel paper, instruments, leases and other items of Security.

2.1.13. Books and Records. All books and records, including books of account and ledgers of every kind and nature, all electronically recorded data (including all computer programs, disks, tapes, electronic data processing media and software used in connection with maintaining MXE's books and records), all files, correspondence, all containers for the foregoing, and all documents and storage media related to any of the items pledged pursuant to this Section 2.1.

2.1.14. Insurance. All insurance policies which insure against any loss or damage to any other Security or which are otherwise owned by MXE.

2.1.15. All Other Property. All other property, assets and items of value of every kind and nature, tangible or intangible, absolute or contingent, legal or equitable.

2.1.16. Proceeds and Products. All proceeds, including insurance proceeds, and products of the items of Security described or referred to in Sections 2.1.1 through 2.1.15 and, to the extent not included in the foregoing, all Distributions with respect to the Pledged Securities.

2.1.17. Excluded Property. Notwithstanding Sections 2.1.1 through 2.1.16, the payment and performance of the MXE Obligations shall not be secured by:

- (a) any contract, license, permit or franchise that validly prohibits the creation by MXE of a security interest in such contract, license, permit or franchise (or in any rights or property obtained by MXE under such contract, license, permit or franchise); provided, however, that the provisions of this Section 2.1.17 shall not prohibit the security interest created by this Agreement from extending to the proceeds of such contract, license, permit or franchise (or such rights or property) of the monetary value of the goodwill and other general intangibles relating thereto; or

(b) any rights or property to the extent that any valid contract or public utility tariff or any valid and enforceable law or regulation applicable to such rights or property prohibits the creation of a security interest therein; provided, however, that the provisions of this Section 2.1.17 shall not prohibit the security interests created by this Agreement from extending to the proceeds of such rights or property or to the monetary value of the goodwill and other general intangibles of MXE relating thereto.

MXE expressly authorizes Lathi to file financing statements describing the Security with the phrase "all assets."

3. Certain Covenants with Respect to Security. MXE covenants that:

3.1. Pledged Stock. All shares of capital stock, limited partnership interests, membership interests and similar securities included in the Pledged Stock shall be at all times duly authorized, validly issued, fully paid and (in the case of capital stock and limited partnership interests) nonassessable. If Lathi so requests, MXE will deliver to Lathi certificates representing the Pledged Stock, accompanied by a stock transfer power executed in blank and, if Lathi so requests, with the signature guaranteed, all in form and manner reasonably satisfactory to Lathi. Pledged Stock that is not evidenced by a certificate will be registered in the name of Lathi or its nominee on the issuer's records or an appropriate control statement with respect thereto shall be provided to Lathi, all in form and substance reasonably satisfactory to Lathi. Subject to compliance with applicable securities laws, upon the occurrence of an Event of Default by MXE, Lathi may at any time transfer into its name or the name of its nominee any Pledged Stock. In the event the Pledged Stock includes any margin stock, MXE will furnish to Lathi Federal Reserve Form U-1 and take such other action as Lathi may reasonably request to ensure compliance with applicable laws.

3.2. Accounts and Pledged Indebtedness. MXE will, promptly upon Lathi's request therefor, deliver to Lathi any promissory note or similar instrument representing any Account or Pledged Indebtedness, after having endorsed such promissory note or instrument in blank.

3.3. No Liens or Restrictions on Transfer or Change of Control. All Security shall be free and clear of any Liens, except for (a) Liens in favor of Dominion to secure MXE to Dominion pursuant to the Dominion Agreement between MXE and Doi ("Dominion Liens"), (b) Liens in favor of Lathi that secure the MXE Obligations, respect of judgments and awards but only to the extent that such Liens are junior to the Security securing the MXE Obligations, and (d) Liens securing indebtedness described in clauses (iii), (iv) and (viii) of the definition of Permitted Indebtedness (collectively, "Liens"). Without limiting the generality of the foregoing and without the prior written

Lathi, which shall not be unreasonably withheld, MXE will not enter into any contract, including without limitation any contract for the purchase or sale of energy, agreement, deed or lease that purports to prevent or restrict MXE from creating a security interest to Lathi in such contract, agreement, instrument, deed or lease or any rights or property acquired thereunder as contemplated hereby, provided that MXE shall be permitted to enter into agreements and become subject to tariffs with public utilities that prohibit the creation of security interests in natural gas within such utilities storage and pipeline systems. None of the Pledged Stock shall be subject to any option to purchase or similar rights of any Person. Except with the written consent of Lathi, which consent will not be unreasonably withheld, or in the Loan Agreement, MXE will in good faith attempt to exclude from any agreement, instrument, deed or lease provisions that would restrict the change of control or ownership of MXE, or the creation of a security interest in the ownership of MXE.

3.4. Jurisdiction of Incorporation; Location of Security. MXE shall provide Lathi with 10 days prior written notice of any change to its state of incorporation. MXE shall at all times keep its records concerning the Security at (a) its chief executive office and principal place of business or (b) so long as MXE shall have taken all steps reasonably necessary to perfect Lathi's security interest in the Security with respect to such new address, at such other address as MXE may specify by notice actually received by Lathi not fewer than 10 business days prior to such change of address. MXE shall not at any time keep tangible personal property of the type referred to in Section 2.1.3 in any jurisdiction other than the jurisdiction specified in the foregoing clause (a) or, so long as MXE shall have taken all steps reasonably necessary to perfect Lathi's security interest in the Security with respect to such other jurisdiction, other jurisdictions as MXE may specify by notice actually received by Lathi not fewer than 10 days prior to moving such tangible personal property into such other jurisdiction.

3.5. Trade Names. MXE will not adopt or do business under any name other than "MxEnergy" or any other name specified by notice actually received by Lathi not less than 10 business days prior to the conduct of business under such additional name. Since its inception, MXE has not changed its name or adopted or conducted business under any trade name other than "MxEnergy."

3.6. Delivery of Documents; Inspection Rights. Upon Lathi's reasonable request, MXE shall deliver to Lathi, promptly upon MXE's receipt thereof, copies of any agreements, instruments, documents or invoices comprising or relating to the Security. Pending such request, MXE shall keep such items at its chief executive office and principal place of business, and Lathi shall be entitled to review any such materials during normal business hours.

3.7. Perfection of Security. This Agreement shall create in favor of Lathi a legal, valid and enforceable first priority security interest in the Security described herein (except for

Dominion Liens and Liens included within subsection (d) of the definition of Permitted Liens), subject to no Liens other than Permitted Liens. In the case of the Pledged Stock, when stock certificates representing such Pledged Stock and stock powers related thereto duly executed in blank by the relevant pledgor are delivered to Lathi, and in the case of the other Security described in this Agreement, when financing statements in appropriate form are filed in the jurisdictions and offices listed on Schedule 3.7, this Agreement shall provide a fully perfected, first priority Lien on, and security interest in, all right, title and interest of MXE in such Security, as security for the MXE Obligations, in each case prior and superior in right to any other Person other than Dominion. Upon Lathi's reasonable request from time to time, MXE will execute and deliver, and file and record in the proper filing and recording places, all such instruments, including financing statements, mortgages or deeds of trust and notations on certificates of title, and will take all such other action, as Lathi deems reasonably necessary for confirming to it the Security or to carry out any other purpose of this Agreement or any other Document.

4. Administration of Security. The Security shall be administered as follows, and if an Event of Default shall have occurred and be continuing, Section 5 shall also apply.

4.1. Use of Security. Until an Event of Default has occurred and is continuing, MXE may use, commingle and dispose of any part of the Security in the ordinary course of its business (including without limitation making distributions of income and profits), all subject to the provisions of the Documents.

4.2. Accounts. To the extent specified by prior written notice from Lathi and subject to the prior rights, if any, of Dominion set forth in the Intercreditor Agreement, after the occurrence and during the continuance of an Event of Default, all sums collected or received and all property recovered or possessed by MXE in connection with any Security shall be received and held by MXE in trust for and on Lathi's behalf, shall be segregated from the assets and funds of MXE, and shall be delivered to Lathi. Upon Lathi's request after the occurrence and during the continuance of an Event of Default, MXE will cause its accounting books and records to be marked with such legends and segregated in such manner as Lathi may specify.

4.3. Distributions on Pledged Securities.

4.3.1. Until an Event of Default shall occur and be continuing, MXE shall be entitled, to the extent permitted by the Documents, to receive all Distributions on or with respect to the Pledged Securities, Contracts or Investment Property (other than Distributions constituting additional Pledged Securities). All Distributions constituting additional Pledged Securities will be retained by Lathi (or if received by MXE shall be held by such Person in trust and shall be immediately delivered by such Person to Lathi in the original form received, endorsed in blank) and held

by Lathi as part of the Security.

4.3.2. If an Event of Default shall have occurred and be continuing, all Distributions on or with respect to the Pledged Securities, Contracts or Investment Property shall be retained by Lathi (or if received by MXE shall be held by such Person in trust and shall be immediately delivered by it to Lathi in the original form received, endorsed in blank) and held by Lathi as part of the Security or applied by Lathi to the payment of the MXE Obligations in accordance with Section 5.6.

4.4. Voting Pledged Securities.

4.4.1. Until an Event of Default shall occur and be continuing, MXE shall be entitled to vote or consent with respect to the Pledged Securities in any manner not inconsistent with the terms of any Document, and Lathi will, if so requested, execute appropriate revocable proxies therefor.

4.4.2. If an Event of Default shall have occurred and be continuing, if and to the extent that Lathi shall so notify in writing MXE pledging the Pledged Securities in question, only Lathi shall be entitled to vote or consent or take any other action with respect to the Pledged Securities (and MXE will, if so requested, execute appropriate proxies therefor).

5. Right to Realize upon Security. Except to the extent prohibited by applicable law that cannot be waived, this Section 5 shall govern Lathi's rights to realize upon the Security if any Event of Default shall have occurred and be continuing. The provisions of this Section 5 are in addition to any rights and remedies available at law or in equity and in addition to the provisions of any other Document, subject to the prior rights, if any, of Dominion, set forth in the Intercreditor Agreement. In the case of a conflict between this Section 5 and any other Document, this Section 5 shall govern.

5.1. Assembly of Security; Receiver. If an Event of Default shall have occurred and be continuing, MXE shall, upon Lathi's request, assemble the Security and otherwise make it available to Lathi. Lathi may have a receiver appointed for all or any portion of MXE's assets or business which constitutes the Security in order to manage, protect, preserve, sell and otherwise dispose of all or any portion of the Security in accordance with the terms of the Documents, to continue the operations of MXE and to collect all revenues and profits therefrom to be applied to the payment of the MXE Obligations, including the compensation and expenses of such receiver.

5.2. General Authority. If an Event of Default shall have occurred and be continuing, to

the extent reasonably requested by written notice from Lathi to MXE, MXE grants Lathi full and exclusive power and authority, subject to the other terms hereof and applicable law, to take any of the following actions at MXE's expense:

- (a) To ask for, demand, take, collect, sue for and receive all payments in respect of any Contracts, Accounts, general intangibles, Pledged Securities or leases which MXE could otherwise ask for, demand, take, collect, sue for and receive for its own use.
- (b) To extend the time of payment of any Accounts, general intangibles, Pledged Securities or leases and to make any allowance or other adjustment with respect thereto.
- (c) To settle, compromise, prosecute or defend any action or proceeding with respect to any Contracts, Accounts, general intangibles, Pledged Securities or leases and to enforce all rights and remedies thereunder which MXE could otherwise enforce.
- (d) To enforce the payment of any Contracts, Accounts, general intangibles, Pledged Securities or leases, either in the name of MXE or in its own name, and to endorse the name of MXE on all checks, drafts, money orders and other instruments tendered to or received in payment of any Security.
- (e) To notify the third party payor with respect to any Accounts, general intangibles, Pledged Securities or leases of the existence of the security interest created hereby and to cause all payments in respect thereof thereafter to be made directly to Lathi; provided, however, that whether or not Lathi shall have so notified such payor, MXE will at its expense render all reasonable assistance to Lathi in collecting such items and in enforcing claims thereon.
- (f) To sell, transfer, assign or otherwise deal in or with any Security or the proceeds thereof, as fully as MXE otherwise could do.

5.3. Marshaling, etc. Lathi shall not be required to marshal the Security or to resort to the Security in any particular order, and all of its rights hereunder or under any other Document shall be cumulative. To the extent it may lawfully do so, MXE absolutely and irrevocably waives and relinquishes the benefit and advantage of, and covenants not to assert against Lathi, any valuation, stay, appraisal, extension, redemption or similar laws now or hereafter existing which, but for this provision, might be applicable to the sale of any Security made under the judgment, order or decree of any court, or privately under the power of sale conferred by this

Agreement, or otherwise, and agrees that it will not invoke any law relating to the marshalling of collateral or any other law which might cause a delay in or impede the enforcement of Lathi's rights under this Agreement or under any other instrument creating or evidencing any Security, and to the extent it may do so, MXE hereby waives the benefit of all such laws. In addition, MXE waives any right to prior notice (except to the extent expressly required by this Agreement or the UCC) or judicial hearing in connection with foreclosure on or disposition of any Security, including any such right which MXE would otherwise have under the Constitution of the United States of America, any state or territory thereof or any other jurisdiction.

5.4. Sales of Security. Subject to the prior rights, if any, of Dominion set forth in the Intercreditor Agreement, all or any part of the Security may be sold for cash or other value in any number of lots at public or private sale, without demand, advertisement or notice; provided, however, that unless the Security to be sold threatens to decline speedily in value or is of a type customarily sold on a recognized market, Lathi shall give MXE 20 days' prior written notice of the time and place of any public sale, or the time after which a private sale may be made, which notice MXE and Lathi agree to be reasonable. Subject to the UCC, at any sale or sales of Security, Lathi or any of its officers acting on its behalf, or its assigns, may bid for and purchase all or any part of the property and rights so sold, may use all or any portion of the MXE Obligations owed to Lathi as payment for the property or rights so purchased, and upon compliance with the terms of such sale may hold and dispose of such property and rights without further accountability to MXE, except for the proceeds of such sale or sales pursuant to Section 5.6. MXE acknowledges that any such sale will be made by Lathi on an "as is" basis with disclaimers of all warranties, whether express or implied. MXE will execute and deliver or cause to be executed and delivered such instruments, documents, assignments, waivers, certificates and affidavits, will supply or cause to be supplied such further information and will take such further action, as Lathi shall reasonably request in connection with any such sale.

5.5. Sale without Registration. If, at any time when Lathi shall determine to exercise its rights hereunder to sell all or part of the securities included in the Security, the securities in question shall not be effectively registered under the Securities Act of 1933, as amended (the "Securities Act") (or other applicable law), Lathi may, in its sole discretion, sell such securities by private or other sale not requiring such registration in such manner and in such circumstances as Lathi may deem necessary or advisable in order that such sale may be effected in accordance with applicable securities laws without such registration and the related delays, uncertainty and expense. Without limiting the generality of the foregoing, in any event Lathi may, in its sole discretion, (a) approach and negotiate with a single purchaser or one or more possible purchasers to effect such sale, (b) restrict such sale to one or more purchasers each of whom will represent and agree that such purchaser is purchasing for its own account, for investment and not with a view to the distribution or sale of such securities and (c) cause to be placed on certificates representing the securities in question a legend to the effect that such securities have not been

registered under the Securities Act (or other applicable law) and may not be disposed of in violation of the provisions thereof. MXE agrees that such manner of disposition is commercially reasonable, that it will upon Lathi's request give any such purchaser access to such information regarding the issuer of the securities in question as Lathi may reasonably request and that Lathi shall not incur any responsibility for selling all or part of the securities included in the Security at any private or other sale not requiring such registration, notwithstanding the possibility that a substantially higher price might be realized if the sale were deferred until after registration under the Securities Act (or other applicable law) or until made in compliance with certain other rules or exemptions from the registration provisions under the Securities Act (or other applicable law). MXE acknowledges that no adequate remedy at law exists for breach by it of this Section 5.5 and that such breach would not be adequately compensable in damages and therefore agrees that this Section 5.5 may be specifically enforced.

5.6. Application of Proceeds. Subject to the prior rights, if any, of Dominion set forth in the Intercreditor Agreement, the proceeds of all sales and collections in respect of any Security or other assets of MXE, all funds collected from MXE and any cash contained in the Security, the application of which is not otherwise specifically provided for herein, shall be applied as follows:

- (a) First, to the payment of the costs and expenses of such sales and collections, and the reasonable expenses of Lathi and the reasonable fees and expenses of its special counsel incurred in connection with such sales and collections;
- (b) Second, any surplus then remaining to the payment of the MXE Obligations in such order and manner as Lathi may in its reasonable discretion determine; and
- (c) Third, any surplus then remaining shall be paid to MXE, subject, however, to the rights of the holder of any then existing Lien of which Lathi has actual notice.

5.7. Custody of Security. Except as provided by applicable law that cannot be waived, Lathi will have no duty as to the custody and protection of the Security, the collection of any part thereof or of any income thereon or the preservation or exercise of any rights pertaining thereto, including rights against prior parties, except for the use of reasonable care in the custody and physical preservation of any Security in its possession. Lathi will not be liable or responsible for any loss or damage to any Security, or for any diminution in the value thereof, by reason of the act or omission of any agent selected by Lathi acting in good faith.

5.8. Termination. Following the expiration or termination of this Agreement or the Documents, and upon satisfaction of all of the outstanding MXE Obligations, Lathi hereby agrees that it will, within 10 business days following MXE's request, execute and deliver to

MXE UCC-3 termination statements and any other instrument proffered by MXE which is reasonably necessary to effect a release of the security interests created by this Agreement.

5.9. General. Addresses for notices, consent to jurisdiction and numerous other provisions applicable to this Agreement are contained in the Loan Agreement. The invalidity or unenforceability of any provision hereof shall not affect the validity or enforceability of any other provision hereof, and any invalid or unenforceable provision shall be modified so as to be enforceable to the maximum extent of its validity or enforceability. The headings in this Agreement are for convenience of reference only and shall not limit, alter or otherwise affect the meaning hereof. This Agreement and the other Documents constitute the entire understanding of the parties with respect to the subject matter hereof and thereof and supersede all prior and current understandings and agreements, whether written or oral. This Agreement may be executed in any number of counterparts, which together shall constitute one instrument. This Agreement shall be governed by and construed in accordance with the laws (other than the conflict of laws rules) of the State of Connecticut, except as may be required by the UCC of other jurisdictions with respect to matters involving the perfection of Lathi's Lien on the Security located in such other jurisdictions.

Each of the undersigned has caused this Agreement to be executed and delivered by its duly authorized officer as an agreement under seal as of the date first written above.

MXENERGY INC.

By

Name:

Title:

Jeffrey Mayer
President

LATHI LLC

By: Harvard Management Company, Inc.,
pursuant to delegated authority

By

Authorized Signatory

By

Authorized Signatory

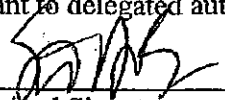
Each of the undersigned has caused this Agreement to be executed and delivered by its duly authorized officer as an agreement under seal as of the date first written above.

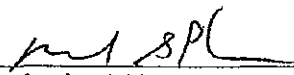
MXENERGY INC.

By _____
Name:
Title:

LATHI LLC

By: Harvard Management Company, Inc.,
pursuant to delegated authority

By  _____
Authorized Signatory

By  _____
Authorized Signatory

MXENERGY INC.

AMENDMENT NO. 3 TO AMENDED AND RESTATED LOAN AGREEMENT AND
AMENDMENT NO. 2 TO AMENDED AND RESTATED SECURITY AGREEMENT

This AMENDMENT NO. 3 TO AMENDED AND RESTATED LOAN AGREEMENT AND AMENDMENT NO. 2 TO AMENDED AND RESTATED SECURITY AGREEMENT (the "Amendment") is dated as of August 1, 2006 and entered into by and between MxEnergy Inc., a Delaware corporation ("MXE"), and Sowood Commodity Partners Fund LP (the "Lender"). This Amendment amends (i) the Amended and Restated Loan Agreement (as amended, amended and restated, supplemented or otherwise modified, the "Loan Agreement") dated as of November 14, 2003 by and between the parties hereto and (ii) the Amended and Restated Security Agreement (as amended, amended and restated, supplemented or otherwise modified, the "Security Agreement") dated as of November 14, 2003 by and between the parties hereto. Capitalized terms used herein without definition shall have the same meanings herein as set forth in the Loan Agreement or the Security Agreement, as applicable.

RECITALS

WHEREAS, pursuant to the Transfer Agreement dated July 1, 2004 by and between Lathi, LLC, certain other parties, and Sowood Commodity Partners Fund LP and the Consent to Transfer dated June 30, 2004 by and between Lathi, LLC and MXE, Lathi, LLC transferred all of its rights and obligations in respect of MXE to Sowood Commodity Partners Fund LP;

WHEREAS, the parties hereto entered into the Loan Agreement, which provides for a loan facility to MXE;

WHEREAS, the parties hereto entered into the Security Agreement which secures MXE's obligations under the Loan Agreement; and

WHEREAS, MXE has requested and the Banks have agreed to make certain amendments to the Loan Agreement and the Security Agreement as set forth below;

NOW, THEREFORE, in consideration of the premises and the agreements, provisions and covenants herein contained, the parties hereto agree as follows:

1. Amendments to Loan Agreement.

- (a) All references in all Credit Documents to "Lathi, LLC" are hereby amended to read "Sowood Commodity Partners Fund LP" and the term "Sowood" shall refer to Sowood Commodity Partners Fund LP.
- (b) The first paragraph of Section 1.2 of the Loan Agreement is amended to read as follows:

"Borrowing Requests. MXE may from time to time request a Loan under Section 1.1 by providing to Sowood a borrowing request in the form of Exhibit 1.2 (a "Borrowing Request") not later than noon, five business days prior to the requested date for extension of such Loan (each such date a "Funding Date") specifying (a) the amount of the requested loan, which shall be in an amount not less than \$100,000 and (b) the requested Funding therefor, which shall be a business day."

The remainder of Section 1.2 remains unchanged.

- (c) Section 5.2 of the Loan Agreement is hereby deleted in its entirety and the following is substituted in lieu thereof:

"Incurrence of Indebtedness. MXE shall not without the prior consent of Sowood create, incur, assume, or otherwise become or remain liable with respect to liabilities of any kind other than Permitted Indebtedness. "Permitted Indebtedness" shall mean (i) Dominion Indebtedness; (ii) indebtedness to Sowood hereunder and under the Note; (iii) indebtedness secured under purchase money security interests (including mortgages, conditional sales, capital leases and other title retention or deferred purchase devices) so long as (x) the lien is limited to the property whose acquisition was funded, or refinanced, through the incurrence of such indebtedness; (y) such indebtedness is limited in recourse to the applicable financed property or the amount of such indebtedness does not exceed the lesser of (a) the purchase price or construction cost of said property and (b) the fair market value of said property; and (z) the indebtedness was incurred within 60 days after the initial acquisition of the applicable property; (iv) liabilities incurred in the ordinary course of business secured by carriers, warehouses, mechanics and similar liens, so long as MXE is paying on a timely and current basis all amounts due secured by such liens (other than items which are the subject of a bona fide dispute and as to which appropriate reserves exist); (v) liabilities represented by judgments and awards, so long as the amount of same are fully insured and the insurer has acknowledged coverage; (vi)

trade payables for goods and services provided to MXE in the ordinary course of business, which are being paid currently; (vii) liabilities incurred under operating leases and contracts in the ordinary course of MXE's business as to which no default giving rise to acceleration or a notice of acceleration has occurred; (viii) tax liabilities incurred and payable in the ordinary course of business, as to which all material reports, filings and returns have been timely made or filed (taking into account any extensions) and as to which all material taxes have been paid when due (other than taxes which are the subject of a bona fide dispute and for which appropriate reserves have been established); and (ix) indebtedness permitted under Section 6.02 of the First Amended and Restated Credit Agreement among MXE, MxEnergy Electric Inc., MxEnergy Holdings Inc. and certain subsidiaries thereof, the lenders from time to time party thereto and Société Générale, as administrative agent (the "SG Credit Agreement")."

- (d) Section 5.5 of the Loan Agreement is hereby amended by adding the words "and Distributions permitted under Section 6.06 of the SG Credit Agreement as of the date of the SG Credit Agreement (other than subsection (b) thereof" immediately after the words "other than Sowood" in the parenthetical in the first sentence thereof.

2. Amendments to Security Agreement.

- (a) All references to "Lathi, LLC" are hereby amended to read "Sowood Commodity Partners Fund LP".
- (b) Section 3.3 of the Security Agreement is hereby amended by deleting clause (d) thereof in its entirety and inserting the following clause (d) in lieu thereof:

"(d) Liens permitted under Section 6.01 of the SG Credit Agreement as of the date of the SG Credit Agreement"

- 3. Consent to New Credit Agreement. The Lender hereby consents to the execution and delivery by MXE of the First Amended and Restated Credit Agreement dated as of August 1, 2006 among MXE, MxEnergy Electric Inc., MxEnergy Holdings Inc. and certain subsidiaries thereof, the lenders from time to time party thereto and Société Générale, as administrative agent and the incurrence by MXE of its obligations thereunder and under the documents executed in connection therewith.
- 4. Effectiveness of Amendments. This Amendment shall become effective on the date on which MXE and the Lender have executed and delivered the same.

5. Representations and Warranties: No Default or Event of Default. On the date of effectiveness of this Amendment, MXE shall be deemed to have certified to the Lender that, after giving effect to the amendments contained herein that become effective on such date (i) all of the representations and warranties contained in the Loan Agreement are true and correct in all material respects on and as of the date thereof with the same effect as if made on and as of such date (except to the extent such representations and warranties expressly refer to an earlier date, in which case they shall be true and correct as of such earlier date and (ii) no Default or Event of Default exists as of such date.
6. Miscellaneous.
- (a) This Amendment modifies the Loan Agreement and the Security Agreement to the extent set forth herein, is hereby incorporated by reference into the Loan Agreement and Security Agreement and is made a part thereof. On and after the effective date, each reference in the Loan Agreement or the Security Agreement to "this Agreement", "hereunder", "hereof", "herein" or words of like import referring to the Loan Agreement or Security Agreement, as applicable, and each reference in the other Credit Documents to the "Loan Agreement", "Security Agreement," "thereunder", "thereof" or words of like import referring to the Loan Agreement or Security Agreement shall mean and be a reference to the Loan Agreement or Security Agreement as amended by this Amendment.
 - (b) Except as specifically amended by this Amendment, the Loan Agreement, the Security Agreement and the other Credit Documents shall remain in full force and effect and are hereby ratified and confirmed.
 - (c) The execution, delivery and performance of this Amendment shall not, except as expressly provided herein, constitute a waiver of any provision of, or operate as a waiver of any right, power or remedy of the Lender under, the Loan Agreement, the Security Agreement or any of the other Credit Documents.
 - (d) Section and subsection headings in this Amendment are included herein for convenience of reference only and shall not constitute a part of this Amendment for any other purpose or be given any substantive effect.
 - (e) THIS AMENDMENT SHALL BE GOVERNED BY, AND SHALL BE CONSTRUED AND ENFORCED IN ACCORDANCE WITH, THE INTERNAL LAWS OF THE STATE OF CONNECTICUT, WITHOUT REGARD TO CONFLICT OF LAWS PRINCIPLES.
 - (f) This Amendment may be executed in any number of counterparts and by different parties hereto in separate counterparts, each of which when so

executed and delivered shall be deemed an original, but all such counterparts together shall constitute one and the same instrument.

[REMAINDER OF PAGE INTENTIONALLY LEFT BLANK]

IN WITNESS WHEREOF, the parties hereto have caused this
Amendment to be duly executed and delivered by their respective officers thereunto duly
authorized as of the date first written above.

MXENERGY INC.

By: [Signature]
Name: Charles R. HENRY-HODGE
Title: SVT & COO

SOWOOD COMMODITY PARTNERS FUND LP

By: Sowood Commodity Partners GP LP
Its general partner

By: Sowood GP LLC
Its general partner

By: [Signature]
Name: Megan Kelleher
Title: member

AMENDMENT NO. 4 TO AMENDED AND RESTATED LOAN AGREEMENT

AMENDMENT NO. 4 (this "**Amendment**") dated as of January 9, 2008 (the "**Effective Date**"), by and between MxEnergy Inc. ("**MXE**") and Denham Commodity Partners Fund LP f/k/a Sowood Commodity Partners Fund LP (the "**Lender**"), amending the Amended and Restated Loan Agreement, dated as of November 14, 2003, as amended by Amendment No. 1 to Amended and Restated Loan Agreement, dated as of March 22, 2004, Amendment No. 2 to Amended and Restated Loan Agreement and Amendment No. 1 to Amended and Restated Security Agreement, dated as of December 19, 2005, and Amendment No. 3 to Amended and Restated Loan Agreement and Amendment No. 2 to Amended and Restated Security Agreement, dated as of August 1, 2006 (as amended, , the "**Loan Agreement**"), in each case, by and between MXE and Denham Commodity Partners Fund LP (f/k/a Sowood Commodity Partners Fund LP and as successor to Lathi LLC).

WITNESSETH:

WHEREAS, the parties hereto desire to amend the Loan Agreement, as set forth herein.

NOW, THEREFORE, the parties hereto agree as follows:

SECTION 1. Definitions; References. Unless otherwise specifically defined herein, each capitalized term used herein which is defined in the Loan Agreement shall have the meaning assigned to such term in the Loan Agreement. Each reference to "hereof", "hereunder", "herein" and "hereby" and each other similar reference and each reference to "this Agreement" and each other similar reference contained in the Loan Agreement shall, from and after the date hereof, refer to the Loan Agreement as amended by this Amendment.

SECTION 2. Amendment. Section 1.1.1 of the Loan Agreement is hereby amended by replacing the date "November 14, 2007" contained therein with the date "November 14, 2008".

SECTION 3. Representations and Warranties; No Default or Event of Default. On the Effective Date, MXE shall be deemed to have certified to the Lender that, after giving effect to the amendment contained herein that becomes effective on such date (i) all of the representations and warranties contained in the Loan Agreement are true and correct in all material respects on and as of the date thereof with the same effect as if made on and as of such date (except to the extent such representations and warranties expressly refer to an earlier date, in which case they shall be true and correct as of such earlier date), and (ii) no Default or Event of Default exists as of such date.

SECTION 4. No Other Changes. Except as otherwise expressly provided in this Amendment, all of the terms and conditions of the Loan Agreement remain unchanged and in full force and effect and are hereby ratified and confirmed.

SECTION 5. GOVERNING LAW. THIS AMENDMENT SHALL BE GOVERNED BY, AND SHALL BE CONSTRUED AND ENFORCED IN ACCORDANCE WITH, THE

INTERNAL LAWS OF THE STATE OF CONNECTICUT, WITHOUT REGARD TO
CONFLICT OF LAWS PRINCIPLES.

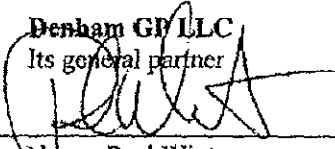
SECTION 6. *Counterparts; Effectiveness.* This Amendment may be signed in any number of counterparts, each of which shall be an original, with the same effect as if the signatures thereto and hereto were upon the same instrument. This Amendment shall become effective as of the date first written above when duly executed below.

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

DENHAM COMMODITY PARTNERS FUND LP

By: **Denham Commodity Partners GP LP**
Its general partner

By: **Denham GP LLC**
Its general partner

By: 
Name: Paul Winters
Title: Authorized signatory

MXENERGY INC.

By: _____
Name: Carole R. Artman-Hodge
Title: Executive Vice President

INTERNAL LAWS OF THE STATE OF CONNECTICUT, WITHOUT REGARD TO
CONFLICT OF LAWS PRINCIPLES.

SECTION 6. *Counterparts; Effectiveness.* This Amendment may be signed in any number of counterparts, each of which shall be an original, with the same effect as if the signatures thereto and hereto were upon the same instrument. This Amendment shall become effective as of the date first written above when duly executed below.

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

DENHAM COMMODITY PARTNERS FUND LP

By: Denham Commodity Partners GP LP
Its general partner

By: Denham GP LLC
Its general partner

By: _____
Name: Paul Winters
Title: Authorized signatory

MXENERGY INC.

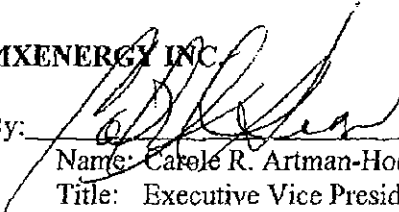
By:  _____
Name: Carele R. Artman-Hodge
Title: Executive Vice President

Exhibit C-5 Forecasted Financial Statements

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CONFIDENTIAL

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REDACTED

Major Assumptions Underlying FY 2009-2010 Financial Forecast

Assumptions

Annual Gas Volumes - FY 2009
Annual Power Volumes - FY 2009
Annual Attrition
Bad Debt %
Average No. of Days of Working Capital
Effective Tax Rate
Forward Prices

Prepared by:

00001

70:4 114 71 700 5002

70:4 114 71 700 5002

Exhibit C-5 Forecasted Financial Statements

Page 2 of 4

REDACTED

Key Metrics

Number of RCEs	FY 2009	FY 2010
Gas RCEs		
Power RCEs		
Total RCE Growth (Count)		
Total RCE Attrition (Count)		
Annual Attrition Rate (Per MX Calc Method)		
Gas Consumption Volume (mmbtu)		
Power Consumption Volume (Mwh)		

CONFIDENTIAL

Page 3 of 4

REDACTED

FYE 6/30

Cash & Cash Equivalents
Restricted cash (only supporting LCs)
Net Accounts Receivable
Commodity Imbalance Receivable
Inventory

Other assets
Deferred Tax Assets
Capitalized Customer Accounts
Plant, Prop + Equip

Liabilities	Accounts Payable (Energy)
	Accounts Payable (Other)
	Payroll & Benefits Liab.

HY Notes Outstanding

Redeemable Convertible Preferred Stock

Common shares,
Additional Paid in Capital
Retained Earnings

Total Liabilities & Preferred Stock & SE Equity[illegible]

Does not include the impact of FAS133 Accounting for Derivatives as it is a pass through benefit or expense and cannot be forecasted over future years. All projected numbers are subject to change due to uncertainties in volumetric consumption of customers in any month, actual start dates of customers, actual cost of goods that will be sold, plus all ancillary costs associated with the timing of bringing on customers.

Exhibit C-5 Forecasted Financial Statements

Page 4 of 4

REDACTED

Income Statement

FYE 6/30

		FY 2009	FY 2010
Sales	Commodity Sales - Gas		
	Commodity Sales - Power		
	Passthrough Charges - Gas		
	Passthrough Charges - Power		
	Fee Income - Gas		
	Fee Income - Power		
	Total Gas Revenue		
	Total Power Revenue		
	Total Revenue		
Cost of Sales	Commodity COGS - Gas		
	Commodity COGS - Power		
	Passthrough Charges - Gas		
	Passthrough Charges - Revenue		
	Total Gas COGS		
	Total Power COGS		
	Total COGS		
Gross Margin	Commodity - Gas		
	Commodity - Power		
	Fee Income - Gas		
	Fee Income - Power		
	Gross Margin Gas		
	Gross Margin Power		
	Total Gross Margin		
OpEx	General & Administrative		
	Reserves and Discounts		
	Professional Fees		
	Marketing Expenses		
	Salaries & Related Expenses		
	Total Operating Expense		
EBITDA			
	Depreciation & Amortization		
	Net Interest Expense		
EBT			
	Income Taxes		
Net Income			

Does not include the impact of FAS133 Accounting for Derivatives as it is a pass through benefit or expense and cannot be forecasted over future years. All projected numbers are subject to change due to uncertainties in volumetric consumption of customers in any month, actual start dates of customers, actual cost of goods that will be sold, plus all ancillary costs associated with the timing of bringing on customers.

Exhibit C-6

Credit Rating

Please see attached Standard & Poor's rating of MXenergy Holdings Inc. and Dun & Bradstreet Report of MXenergy Inc. attached.

**STANDARD
& POOR'S**

RATINGSDIRECT®

May 19, 2008

Research Update:

MXEnergy Holdings Announces Weak Q3 Earnings; Outlook Revised To Negative

Primary Credit Analyst:

William Ferara, New York (1) 212-438-1776; bill_ferara@standardandpoors.com

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Outlook

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www.standardandpoors.com/ratingsdirect

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Research Update:

MXEnergy Holdings Announces Weak Q3 Earnings; Outlook Revised To Negative

Rationale

On May 19, 2008, Standard & Poor's Ratings Services revised its outlook on MXEnergy Holdings Inc. to negative from stable, and affirmed the company's 'B' corporate credit rating. The revision follows the publication of the company's third-quarter results, which exhibited a significant decline in adjusted EBITDA. The decline resulted from lower natural gas profits, reduced volumes, and higher operating costs. As a result, key credit metrics have declined considerably, with debt to EBITDA at slightly more than 4x as of March 31, 2008. The company also amended its debt covenants, including raising the average debt to EBITDA ratio to 5x from 4x and reducing the minimum interest coverage ratio to 1.4x from 1.6x, which are now less supportive of bondholder protection. Liquidity could be strained by rising gas prices, which will reduce availability under its revolving credit facility. The credit facility matures in December 2008, and will need to be extended or replaced for ongoing liquidity needs. As of March 31, 2008, MXEnergy had \$162 million of debt.

Adjusted EBITDA for the nine months ended 2008 was \$37 million versus \$59 million for the nine months ended 2007. The company experienced results significantly below plan in the third quarter, which is by far the most profitable quarter due to the winter heating season. Reduced volumes due to warmer-than-normal weather, lower-than-expected gas customer count, and higher operating costs for integration and financial systems affected results.

The 'B' corporate credit rating on MXEnergy reflects its vulnerable business risk profile and highly leveraged financial profile. Credit risks include management's acquisitive nature, a highly leveraged capital structure, the lack of significant barriers to entry or any major competitive advantages in the retail marketing segment, relatively flat participation in retail choice programs across the country, and newly implemented internal controls and procedures.

MXEnergy's position as one of the largest players in retail gas marketing with consistent customer growth, an experienced management team with a sizable ownership stake, improved risk-management systems and policies, minimal counterparty credit risk along with the absence of a need to post collateral against mark-to-market fluctuations in hedging activities, and its focus on more stable residential and small commercial customers temper the company's credit risks.

Stamford, Conn.-based MXEnergy is an independent provider of retail natural gas and electric power to residential and commercial customers in deregulated markets in the U.S. and Canada. MXEnergy is one of the largest retail gas marketers in the country, serving about 700,000 residential customer equivalents (RCEs; one RCE equals 100 million BTU (mmBTU), per year of consumption) in 28 local distribution company (LDC) territories across 11 states and Ontario, Canada.

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MXEnergy offers fixed-price contracts with terms of up to three years and variable-price contracts with monthly variations (the breakdown is about 50/50) that are usually priced competitively with the incumbent utility. MXEnergy's electricity operations, a very small percentage of gross margins, are expected to experience modest organic growth. Private-equity funds with capital- and risk-management expertise own MXEnergy. Management and employees own about 25% of the company, aligning their interests with the company's financial performance. MXEnergy has a very acquisitive history, as evidenced by its eight acquisitions in seven years, which have provided about 50% of the company's customer base. However, besides the 2006 acquisition of Shell Energy Services Co. (SESCo), most acquisitions have been small, tuck-in purchases.

A lack of material barriers to entry or sustainable competitive advantages creates a competitive industry where margins are generally vulnerable to new entrants. The company's key Georgia market, however, does contain considerable back-office and credit-support requirements. MXEnergy focuses on residential and small and mid-market commercial customers and not the large commercial/industrial customer segment, which is generally the most competitive retail market division. Participation in retail choice programs have improved modestly over the past few years. Standard & Poor's does not expect a broad resurgence of retail choice in states that do not have programs at this time.

The company has improved its risk-management systems, processes, and controls over the past year. Existing risk-management policies are conservative and appropriate for the marketing business. The company seeks to be price and volume neutral. Regarding its fixed-price customers, MXEnergy's policy is to hedge its estimated customer supply obligations in advance.

MXEnergy generally targets a fixed \$/mmBTU margin from its marketing contracts. The average life of a customer contract is about two-and-a-half years providing adequate margins for customer acquisition costs. Funds from operations (FFO) declined significantly to \$18 million for the 12 months ended March 31, 2008 from \$58 million for the year ended Dec. 31, 2007 due to reduced gas margins and higher operating costs. FFO interest coverage and FFO to total debt were weak as of March 31, 2008 at 1.1x and 11%, respectively. Debt to total capital improved to about 70% as of March 31, 2008 from 83% as of Dec. 31, 2007 due to the repayment of \$23 million of debt obligations. Due to the reduced volumes and lower profitability, no further debt reduction is expected in the near term.

Liquidity

MXEnergy's liquidity is currently strained, although it should improve over the next several months as payments for deliveries during the winter heating season are made and the company's cash balance rises. However, the expiration of the revolving credit facility in December 2008 exposes the company to significant refinancing risk. Liquidity could be further strained by elevated and rising gas prices further emphasizing the need for this type of liquidity. As of March 31, 2008, MXEnergy had \$53 million in cash and equivalents and \$47 million available under its \$280 million (capacity can increase to \$400 million with additional lender commitments) revolving credit facility, which matures in December 2008. The facility provides for the issuance of LOCs and

for cash borrowings, with availability limited by the size of MxEnergy's borrowing base, mostly made up of unrestricted cash, receivables, and natural gas inventories. The facility also has other customary covenants, including minimum consolidated tangible net worth, minimum consolidated working capital, minimum interest coverage, and maximum debt to EBITDA.

In May 2008, the company reduced the minimum interest coverage ratio to 1.4x from 1.6x and increased the average debt to EBITDA ratio to 5x from 4x. The covenant amendment provides less bondholder protection and raises additional concerns given our expectations for operating performance and potential liquidity requirements.

In addition to its revolving credit facility, MxEnergy also has a committed, hedge facility with SocGen, which matures in August 2008, but is expected to be renewed for one year as allowed under the terms of the agreement. The facility allows MxEnergy to enter into NYMEX settled and basis swaps for up to three years. A first lien on customer contracts and a second lien on substantially all other assets secure the hedge facility. Except for \$25 million of static margin posted at the outset, this facility should allow MxEnergy to enter into fixed-price NYMEX gas swaps without any additional margin requirements. This is a substantial positive for the company, because it eliminates working-capital requirements related to collateral posting.

MxEnergy's primary liquidity needs include LOC postings for monthly physical gas purchases, LOCs to satisfy LDC credit requirements, and cash to purchase inventory for storage. As all three liquidity sources demand increases as commodity prices rise, we evaluated MxEnergy's liquidity requirements assuming various fixed forward NYMEX prices with required LOC postings at winter peak levels for the next 12 months. Our analysis showed that the full \$400 million of borrowing capacity during the winter months could be required when the average gas price is above \$13/mmBTU.

Recovery analysis

We rate the company's \$162 million senior unsecured notes 'CCC+', two notches below the corporate credit rating, with a recovery rating of '6'. The '6' recovery rating reflects negligible (0%-10%) prospects for recovery in the event of a payment default. The pledge of substantially all assets, including receivables, inventory, and customer contracts, to its revolving credit and hedge facilities, will result in limited assets available for the unsecured notes under our default scenario.

Outlook

The outlook on MxEnergy is negative. The outlook reflects the weakened credit metrics resulting from the significant decline in adjusted EBITDA due to reduced volumes and higher operating costs. It also reflects the company's liquidity position, which is under pressure from rising gas prices. We could lower the rating if adjusted EBITDA in the near term is below our expectations. We could also lower the rating if the company makes additional debt-funded acquisitions or market conditions deteriorate. We could revise the outlook to stable if financial metrics and liquidity improve to levels

appropriate for the rating.

Ratings List

Rating Affirmed, Outlook Revised To Negative

	To	From
MXEnergy Holdings Inc.		
Corp. credit rating	B/Negative/--	B/Stable/--

Complete ratings information is available to subscribers of RatingsDirect, the real-time Web-based source for Standard & Poor's credit ratings, research, and risk analysis, at www.ratingsdirect.com. All ratings affected by this rating action can be found on Standard & Poor's public Web site at www.standardandpoors.com; select your preferred country or region, then Ratings in the left navigation bar, followed by Credit Ratings Search.

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Business Information Report: Mxenergy Inc.

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- Not For Distribution -

IN DATE

Statement Date: JUN 30 2007

RATING CHANGE

DUNS: 18-531-0609
MXENERGY INC.
MXENERGY ELECTRICITY

595 SUMMER ST STE 300
AND BRANCH(ES) OR DIVISION(S)
STAMFORD CT 06901
TEL: 203 356-1318

DATE PRINTED
MAR 18 2008

NATURAL GAS
SIC NO.
49 32

SUMMARY
RATING 5A2
FORMERLY
4A4
STARTED 1999
SALES F \$652,284,807
WORTH F \$79,910,272
EMPLOYS 200(47 HERE)
HISTORY CLEAR
FINANCING SECURED
FINANCIAL
CONDITION STRONG

CHIEF EXECUTIVE: JEFFREY MAYER, PRES-CEO

SPECIAL EVENTS

10/01/07 D&B has recently requested an updated fiscal financial statement from this business. The receipt of this statement may be delayed due to financial disclosure policies or other reasons. When an updated financial statement is received, it will be promptly made available in the Finance and/or Statement Update section.

* * * CUSTOMER SERVICE * * *

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* * * SUMMARY ANALYSIS * * *

The Summary Analysis section reflects information in D&B's file as of

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March 17, 2008.

RATING SUMMARY

The Rating was changed on March 14, 2008 because D&B's analysis of the financial statement supports a higher Rating. The "5A" portion of the Rating (the Rating Classification) indicates that the company has a worth in excess of \$50 million. The "2" on the right (Composite Credit Appraisal) indicates an overall "good" credit appraisal. This credit appraisal was assigned because of D&B's overall assessment of the company's financial, payment, and its historical information.

Below is an overview of the company's D&B Rating(s) since 01/19/01:

RATING	DATE APPLIED
5A2	03/14/08
4A4	08/17/07
4A2	01/02/07
5A2	11/04/04
4A2	05/08/04
--	04/28/04
4A2	06/10/03
1R3	01/30/02
--	01/19/01

* * * PAYMENT SUMMARY * * *

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

The PAYDEX for this company is 79.

This PAYDEX score indicates that payments to suppliers average 2 days beyond terms, weighted by dollar amounts. When dollar amounts are not considered, approximately 82% of the company's payments are within terms.

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

	TOTAL RCV'D	TOTAL DOLLAR AMOUNTS	LARGEST HIGH CREDIT	% W/IN TERMS	DAYS SLOW	<31	31-60	61-90	91+
	#	\$	\$	%	%	%	%	%	%
Total in D&B's file	56	31,896,900	30,000,000						
Top 10 Industries:									
1 Nonclassified	9	42,300	20,000	100	-	-	-	-	-
2 Telephone communicatns	9	21,650	7,500	76	23	1	-	-	-
3 Natural gas distrib	5	1,270,000	1,000,000	49	51	-	-	-	-
4 Photocopying service	4	6,000	5,000	100	-	-	-	-	-
5 Short-trm busn credit	3	15,300	15,000	2	49	-	-	-	49
6 Whol computers/softwr	2	10,250	10,000	51	49	-	-	-	-
7 Gas w/other services	1	30,000,000	30,000,000	100	-	-	-	-	-
8 Whol electronic parts	1	500,000	500,000	100	-	-	-	-	-
9 Whol office supplies	1	15,000	15,000	100	-	-	-	-	-

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10 Ret-direct selling	1	5,000	5,000	100	-	-	-	-
11 OTHER INDUSTRIES	18	11,350	2,500	85	9	4	-	2

Other Payment Categories:

Cash experiences	1	0	0
Payment record unknown	1	50	50
Unfavorable comments	0	0	0
Placed for collection			
with D&B	0	0	
other	0	N/A	

The highest "Now Owes" on file is \$20,000,000

The highest "Past Due" on file is \$30,000

The aggregate dollar amount of the 56 payment experiences in D&B's file equals 58.7% of this company's average monthly sales. In Dun & Bradstreet's opinion, payment experiences exceeding 10% of a company's average monthly sales can be considered representative of payment performance.

=====

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

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

REPORTED	PAYING RECORD	HIGH CREDIT	NOW OWES	PAST DUE	SELLING TERMS	LAST SALE WITHIN
02/08	Ppt	65000	1000	-0-	N30	1 Mo
	Ppt	20000	10000	-0-		1 Mo
	Ppt	15000	7500	-0-		1 Mo
	Ppt	7500	7500	-0-		1 Mo
	Ppt	5000	5000	-0-	N30	1 Mo
	Ppt	5000	500	-0-		1 Mo
	Ppt	2500	-0-	-0-		4-5 Mos
	Ppt	2500	-0-	-0-		4-5 Mos
	Ppt	1000	-0-		N30	2-3 Mos
	Ppt	1000	-0-	-0-		1 Mo
	Ppt	750	-0-	-0-		1 Mo
	Ppt	750	-0-	-0-		1 Mo
	Ppt	250	-0-	-0-		1 Mo
	Ppt	250	250	-0-		1 Mo
	Ppt	250	-0-	-0-		6-12 Mos
	Ppt	250	250	-0-		1 Mo
	Ppt	50	-0-	-0-		6-12 Mos
	Ppt	50	-0-	-0-		6-12 Mos
	Ppt-Slow 30	1000000	200000	30000	N30	1 Mo
	Ppt-Slow 30	85000	60000	5000	N30	1 Mo
	Ppt-Slow 30	20000	10000	-0-	N30	1 Mo
	Ppt-Slow 30	10000	-0-	-0-	N30	6-12 Mos
	Ppt-Slow 30	1000	500	-0-		1 Mo
	Ppt-Slow 30	750	-0-	-0-		4-5 Mos
	Ppt-Slow 60	1000	-0-	-0-		6-12 Mos
	Ppt-Slow 60+	100	100	100	N10	2-3 Mos
	Ppt-Slow 120	500	250	-0-		1 Mo
	Slow 30	100000	20000	20000	N30	1 Mo

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01/08	Slow 30-120+	15000	2500	-0-	1 Mo
	Ppt	2500	750	-0-	1 Mo
	Ppt	500	-0-	-0-	6-12 Mos
	Ppt	500	500	-0-	1 Mo
	Ppt-Slow 30	7500	2500	-0-	1 Mo
	Slow 30	1000	-0-	-0-	6-12 Mos
	Slow 30-60	250	100	50	1 Mo
12/07	Ppt	5000	5000		1 Mo
	Ppt	1000	1000		1 Mo
	Ppt		-0-		1 Mo
	Ppt		-0-		4-5 Mos
	(040)			Sales COD	1 Mo
	(041)	100			6-12 Mos
	Satisfactory.				
11/07	Ppt	15000	500	-0-	1 Mo
	Ppt	750			1 Mo
	Ppt	250	250		2-3 Mos
	Ppt	100			6-12 Mos
	Ppt	50	50		4-5 Mos
	Ppt	50	-0-	-0-	2-3 Mos
	Ppt-Slow 30	50	-0-	-0-	6-12 Mos
10/07	Ppt		-0-	-0-	1 Mo
09/07	Ppt	500	100		
	Lease agreement				
06/07	Ppt	1000	-0-	-0-	6-12 Mos
05/07	Ppt-Slow 30	250	100	-0-	1 Mo
	(053)	50	-0-	-0-	6-12 Mos
02/07	Ppt	30000000	20000000	-0-	N30 1 Mo
06/06	Ppt	500000+	500000+	-0-	Spec agreement 1 Mo
02/06	(056)	50			6-12 Mos
	Satisfactory.				

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

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

=====

STATEMENT UPDATE

03/14/08 Fiscal statement dated JUN 30 2007:

Cash	\$ 135,839,437	Accts Pay	\$ 15,319,338
Accts Rec	28,500,426	Unrealized Loss	
Inventory	46,235,893	Derivatives	15,782,165
Restricted Cash	150,000	Deferred Income	
Due From		Taxes	19,987
Intercompany	(125,874,546)		
Unrealized Gain-			
Risk Mgt			
Activities	49,474		
Deferred Income			
Taxes	7,365,197		
Other Curr Assets	(1,533,147)		
-----		-----	
Curr Assets	90,732,734	Curr Liabs	31,121,490
Fixt & Equip	18,402,879	Unrealized Loss	
Deferred Income		Derivatives	2,701,283
Taxes	1,723,762	Deferred Income	
Customer		Taxes	(3,732,484)

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Acquisition Costs	(15,234,559)		
Goodwill	3,810,178	STOCKHOLDERS'	
Other Assets	14,175,745	EQUITY	83,520,450

Total Assets	113,610,739	Total	113,610,739
--------------	-------------	-------	-------------

From JUL 01 2006 to JUN 30 2007 annual sales \$652,284,807; cost of goods sold \$555,748,584. Gross profit \$96,536,223; operating expenses \$58,620,365. Operating income \$37,915,858; other expenses \$26,639,948; net income before taxes \$11,275,910; Federal income tax (8,416,259); net income \$19,692,169.

Submitted MAR 13 2008 by Dominick Cipollone, Treasury Manager.
Extent of audit, if any, not indicated.

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Item worth shown in summary section was computed after deduction of intangibles, goodwill \$3,610,178, totaling \$3,610,178.

FINANCE
08/17/07

	Fiscal Jun 30 2004	Fiscal Individual Jun 30 2006	
Curr Assets	122,362,793	67,516,955	
Curr Liabs	60,606,993	29,893,067	
Current Ratio	2.02	2.26	
Working Capital	61,755,800	37,623,888	
Other Assets	39,857,870	30,451,750	
Worth	78,438,399	35,393,275	
Sales	185,658,764	362,560,295	
Long Term Liab	23,175,271	32,682,363	
Net Profit (Loss)	20,068,125	(39,782,249)	
Fiscal Individual statement dated JUN 30 2006:			
Cash	\$ 6,092,697	Accounts Payable \$	
Accts Rec	31,575,429	& Accrued	
Inventory	18,498,918	Expenses	14,898,075
Restricted		Accruals	14,542,934
Cash/Investments	426,823	Unrealzd Losses-	
Unrealized Gain-		Risk Mgt	
Risk Mgt		Activities	452,058
Activities	1,664,170		
Income Tax			
Receivable	5,535,210		
Deferred Income			
Taxes	1,045,729		
Other Curr Assets	2,677,979		

Curr Assets	67,516,955	Curr Liabs	29,893,067
Fixt & Equip	8,637,342	Unrealzd Losses-	
Customer		Risk Mgt	
Acquisition		Activities	3,324,996
Costs-Net	10,821,578	Redeemable	
Deposits	3,348,097	Convertible Pref	
Unrealized Gain-		Stock	29,357,367
Risk Mgt		COMMON STOCK	33,888
Activities	1,272,080	ADDIT. PD.-IN CAP	17,355,102
Deferred Income		UNEARNED STOCK	
Taxes	3,395,222	COMPENSATION	(115,013)
Other Assets	2,977,431	RETAINED EARNINGS	18,159,365
		ACCUM OTHER	
		COMPREHENSIVE	

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LOSS (40,067)

Total Assets 97,968,705 Total 97,968,705
 From JUL 01 2005 to JUN 30 2006 annual sales
 \$362,560,295; cost of goods sold \$389,525,730. Gross profit
 \$(26,965,435); operating expenses \$36,617,721. Operating income
 \$(63,583,156); other expenses \$3,200,194; net income before taxes
 \$(66,783,350); Federal income tax \$(27,001,101). (net loss)
 \$39,782,249.

Prepared from statement(s) by Accountant: Ernst & Young LLP,
 Stamford, CT.

ACCOUNTANTS OPINION: A review of the accountant's opinion
 indicated that the financial statement meets generally accepted
 accounting principles and the audit contains no qualifications.

--0--

Accounts receivable shown net less \$3,285,000 allowance. Fixed
 assets shown net less \$4,190,000 depreciation.

On AUG 10 2007 Chaitu Parikh, CFO, referred to the above figures
 as still representative.

PUBLIC FILINGS

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

* * * LIEN(S) * * *

DOCKET NO.: 2007CV09316NT

AMOUNT: \$98,955

TYPE: State Tax

FILED BY: STATE OF PENNSYLVANIA

AGAINST: MXENERGY INC

WHERE FILED: DAUPHIN COUNTY PROTHONOTARY,
 HARRISBURG, PA

STATUS: Open

DATE STATUS ATTAINED: 09/13/2007

DATE FILED: 09/13/2007

LATEST INFO RECEIVED: 10/26/2007

* * * UCC FILING(S) * * *

COLLATERAL: All Assets

FILING NO: 2061969

TYPE: Original

SEC. PARTY: LATHI LLC, BOSTON, MA

DEBTOR: MXENERGY.COM INC.

DATE FILED: 08/29/2001

LATEST INFO RECEIVED: 09/21/2001

FILED WITH: SECRETARY OF
 STATE/UCC DIVISION,
 NJ

COLLATERAL: All Assets

FILING NO: 2001171460375

TYPE: Original

SEC. PARTY: LATCHI LLC, BOSTON, MA

DEBTOR: MXENERGY.COM INC.

DATE FILED: 08/28/2001

LATEST INFO RECEIVED: 02/11/2002

FILED WITH: SECRETARY OF
 STATE/UCC DIVISION,
 KY

COLLATERAL: All Assets

FILING NO: 00000181094175

TYPE: Original

SEC. PARTY: LATHI LLC, BOSTON, MA

DEBTOR: MXENERGY.COM INC.

DATE FILED: 08/28/2001

LATEST INFO RECEIVED: 12/17/2001

FILED WITH: UCC DIVISION, MD

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FILING NO: 00000181094175 DATE FILED: 07/17/2006
TYPE: Continuation LATEST INFO RECEIVED: 10/02/2006
SEC. PARTY: LATHI LLC, BOSTON, MA ORIG. UCC FILED: 08/28/2001
ASSIGNEE: SOWOOD COMMODITY PARTNERS FUND ORIG. FILING NO: 00000181094175
LP, BOSTON, MA FILED WITH: UCC DIVISION, MD
DEBTOR: MXENERGY.COM INC.

FILING NO: 00000181094175 DATE FILED: 07/17/2006
TYPE: Assignment LATEST INFO RECEIVED: 09/01/2006
SEC. PARTY: LATHI LLC, BOSTON, MA ORIG. UCC FILED: 08/27/2001
ASSIGNEE: SOWOOD COMMODITY PARTNERS FUND ORIG. FILING NO: 00000181094175
LP, BOSTON, MA FILED WITH: UCC DIVISION, MD
DEBTOR: MXENERGY.COM INC.

COLLATERAL: All Assets
FILING NO: OH00037930913 DATE FILED: 08/28/2001
TYPE: Original LATEST INFO RECEIVED: 09/18/2001
SEC. PARTY: LATHI LLC, BOSTON, MA FILED WITH: SECRETARY OF
DEBTOR: MXENERGY.COM INC. STATE/UCC DIVISION,
OH

FILING NO: 20061990462 DATE FILED: 07/17/2006
TYPE: Assignment LATEST INFO RECEIVED: 07/31/2006
SEC. PARTY: LATHI LLC, BOSTON, MA ORIG. UCC FILED: 08/28/2001
SOWOOD COMMODITY PARTNERS FUND ORIG. FILING NO: OH00037930913
LP, BOSTON, MA FILED WITH: SECRETARY OF
DEBTOR: MXENERGY.COM INC. STATE/UCC DIVISION,
OH

FILING NO: 20061990466 DATE FILED: 07/17/2006
TYPE: Continuation LATEST INFO RECEIVED: 07/31/2006
SEC. PARTY: LATHI LLC, BOSTON, MA ORIG. UCC FILED: 08/28/2001
SOWOOD COMMODITY PARTNERS FUND ORIG. FILING NO: OH00037930913
LP, BOSTON, MA FILED WITH: SECRETARY OF
DEBTOR: MXENERGY.COM INC. STATE/UCC DIVISION,
OH

COLLATERAL: All Assets
FILING NO: 34280198 DATE FILED: 08/28/2001
TYPE: Original LATEST INFO RECEIVED: 10/22/2001
SEC. PARTY: LATHI LLC, BOSTON, MA FILED WITH: SECRETARY OF
DEBTOR: MXENERGY.COM INC STATE/UCC DIVISION,
PA

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

FILING NO: 2006072002838 DATE FILED: 07/19/2006
TYPE: Continuation LATEST INFO RECEIVED: 07/25/2006
SEC. PARTY: LATHI LLC, BOSTON, MA ORIG. UCC FILED: 08/28/2001
DEBTOR: MXENERGY.COM INC ORIG. FILING NO: 34280198
FILED WITH: SECRETARY OF
STATE/UCC DIVISION,
PA

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

FILING NO: 2006072403864 DATE FILED: 07/21/2006

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TYPE: Assignment LATEST INFO RECEIVED: 10/30/2006
SEC. PARTY: LATHI LLC, BOSTON, MA ORIG. UCC FILED: 08/28/2001
ASSIGNEE: SOWOOD COMMODITY PARTNERS FUND ORIG. FILING NO: 34280198
LP, BOSTON, MA FILED WITH: SECRETARY OF
DEBTOR: MXENERGY.COM INC STATE/UCC DIVISION,
PA

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

FILING NO: 2006072602145 DATE FILED: 07/25/2006
TYPE: Continuation LATEST INFO RECEIVED: 08/15/2006
SEC. PARTY: LATHI LLC, BOSTON, MA ORIG. UCC FILED: 08/28/2001
SOWOOD COMMODITY PARTNERS FUND ORIG. FILING NO: 34280198
LP, BOSTON, MA FILED WITH: SECRETARY OF
DEBTOR: MXENERGY.COM INC STATE/UCC DIVISION,
PA

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

COLLATERAL: Negotiable instruments including proceeds and products - Inventory
including proceeds and products - Account(s) including proceeds and
products - Assets including proceeds and products - and OTHERS
FILING NO: 3302243 4 DATE FILED: 11/18/2003
TYPE: Original LATEST INFO RECEIVED: 12/16/2003
SEC. PARTY: LATHI LLC, BOSTON, MA FILED WITH: SECRETARY OF
DEBTOR: MXENERGY INC. STATE/UCC DIVISION,
DE

FILING NO: 4211015 5 DATE FILED: 07/27/2004
TYPE: Assignment LATEST INFO RECEIVED: 03/27/2006
SEC. PARTY: LATHI LLC, BOSTON, MA ORIG. UCC FILED: 11/18/2003
ASSIGNEE: SOWOOD COMMODITY PARTNERS FUND ORIG. FILING NO: 3302243 4
LP, BOSTON, MA FILED WITH: SECRETARY OF
DEBTOR: MXENERGY INC. STATE/UCC DIVISION,
DE

COLLATERAL: Negotiable instruments including proceeds and products - Inventory
including proceeds and products - Assets including proceeds and
products - Account(s) including proceeds and products - and OTHERS
FILING NO: 0002092398 DATE FILED: 08/31/2001
TYPE: Original LATEST INFO RECEIVED: 10/03/2001
SEC. PARTY: LATHI LLC, BOSTON, MA FILED WITH: UCC COMMERCIAL
DEBTOR: MXENERGY.COM INC. RECORDING DIVISION,
CT

FILING NO: 0002405014 DATE FILED: 07/17/2006
TYPE: Amendment LATEST INFO RECEIVED: 09/08/2006
SEC. PARTY: SOWOOD COMMODITY PARTNERS FUND ORIG. UCC FILED: 08/31/2001
LP, BOSTON, MA ORIG. FILING NO: 0002092398
DEBTOR: MXENERGY.COM INC. FILED WITH: UCC COMMERCIAL
RECORDING DIVISION,
CT

FILING NO: 0002405016 DATE FILED: 07/17/2006
TYPE: Amendment LATEST INFO RECEIVED: 08/03/2006
SEC. PARTY: SOWOOD COMMODITY PARTNERS FUND ORIG. UCC FILED: 08/31/2001
LP, BOSTON, MA ORIG. FILING NO: 0002092398
DEBTOR: MXENERGY.COM INC. FILED WITH: UCC COMMERCIAL

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RECORDING DIVISION,
CT

COLLATERAL: All Accounts receivable including proceeds and products - All
Equipment including proceeds and products
FILING NO: 33241356 DATE FILED: 10/31/2000
TYPE: Original LATEST INFO RECEIVED: 12/26/2000
SEC. PARTY: AQUILA ENERGY MARKETING CORP, FILED WITH: SECRETARY OF
KANSAS CITY, MO STATE/UCC DIVISION,
DEBTOR: MXENERGY.COM INC PA

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

COLLATERAL: Accounts receivable including proceeds and products - Equipment
including proceeds and products
FILING NO: 0002031713 DATE FILED: 10/31/2000
TYPE: Original LATEST INFO RECEIVED: 01/23/2001
SEC. PARTY: AQUILA ENERGY MARKETING FILED WITH: UCC COMMERCIAL
CORPORATION, KANSAS CITY, MO RECORDING DIVISION,
DEBTOR: MXENERGY.COM INC. CT

FILING NO: 0002198441 DATE FILED: 04/23/2003
TYPE: Amendment LATEST INFO RECEIVED: 05/14/2003
SEC. PARTY: AQUILA ENERGY MARKETING ORIG. UCC FILED: 10/31/2000
CORPORATION, KANSAS CITY, MO ORIG. FILING NO: 0002031713
DEBTOR: MXENERGY.COM INC. FILED WITH: UCC COMMERCIAL
RECORDING DIVISION,
CT

COLLATERAL: Accounts receivable - Products - General intangibles(s) - Real
property - Equipment
FILING NO: AP289652 DATE FILED: 10/31/2000
TYPE: Original LATEST INFO RECEIVED: 11/27/2000
SEC. PARTY: AQUILA ENERGY MARKETING CORP, FILED WITH: SECRETARY OF
KANSAS CITY, MO STATE/UCC DIVISION,
DEBTOR: MXENERGY.COM INC OH

There are additional UCC's in D&B's file on this company
available by contacting 1-800-234-3867.

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

HISTORY
08/17/07

JEFFREY MAYER, PRES-CEO
BOB BLAKE, V PRES
GINA GOLDBERG, V PRES
DIRECTOR(S): THE OFFICER(S)

CAROLE R ARTMAN-HODGE, EXEC V
PRES-SEC
CHAITU PARIKH, CFO
STEVEN MURRAY, COO

* * * CORPORATE AND BUSINESS REGISTRATIONS * * *
PROVIDED BY MANAGEMENT OR OTHER SOURCE

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The Corporate Details provided below may have been submitted by the management of the subject business and may not have been verified with the government agency which records such data.

REGISTERED NAME: MXEnergy.com, Inc

CORPORATION TYPE: NOT AVAILABLE

FILING DATE: 04/28/1999

BUSINESS TYPE: CORPORATION

STATE OF ORGANIZATION (INCORPORATION): DELAWARE

DATE OF ORGANIZATION (INCORPORATION) : 04/28/1999

STATUS: ACTIVE

WHERE FILED: SECRETARY OF STATE/CORPORATIONS DIVISION, DOVER, DE

Business started 1999. 100% of capital stock is owned by shareholders.

JEFFREY MAYER. Antecedents are undetermined.

CAROLE R ARTMAN-HODGE. 1999 to present active here.

BOB BLAKE. Antecedents are undetermined.

CHAITU PARIKH. Antecedents are undetermined.

GINA GOLDBERG. Antecedents are undetermined.

STEVEN MURRAY. Antecedents are undetermined.
=====

OPERATION

08/17/07 Operates as a natural gas marketer (100%).

Terms are net 30 days. Sells to general public and wholesalers.

Territory : United States & Canada.

EMPLOYEES: 200 which includes officer(s). 47 employed here.

FACILITIES: 7,500 sq. ft. in on 3rd floor of a five story steel building.

LOCATION: Central business section on main street.

BRANCHES: This business has additional branches; detailed branch information is available in D&B's linkage or family tree products.

03-18(9AC /104)

99999

068114114 H

FULL DISPLAY COMPLETE

Exhibit C-7
Credit Report

Please see Dunn & Bradstreet Business Information Report attached under Exhibit C-6 –Credit Rating.

Exhibit C-8

Bankruptcy Information

There have been no reorganizations, actions for protection from creditors, or any other form of bankruptcy filings made by the applicant, a parent or affiliate organization that guarantees the obligation of the applicant or any officer of the applicant in the current year or since the applicant last filed for certification.

Exhibit C-9

Merger Information

On May 12, 2006, MXenergy Inc. entered into an Asset Purchase Agreement with Shell Energy Services Company L.L.C. ("SESCO") pursuant to which substantially all of the assets of SESCo was purchased by MXenergy Inc. SESCo is a retail energy marketer that serves residential and small to mid-market commercial customers in Georgia and Ohio. The acquisition added approximately 315,000 residential customer equivalents ("RCEs") to the list of operation states on Exhibit B-1.

On May 17, 2007 we acquired substantially all of the assets of Vantage Power Services, L.P., ("Vantage") and began supplying power to approximately 12,000 former RCEs of Vantage in and around Houston, Dallas/Ft. Worth and Corpus Christi, Texas.

On January 22, 2008, the Company completed the acquisition of substantially all of the retail natural gas assets of PS Energy Group, Inc., including the natural gas customer contracts and rights to the brand name of their GasKey division. Nearly all of the customers served under such contracts are located in Georgia serving approximately 60,000 residential customer equivalents.

Exhibit D-1
Operations:

Please see Exhibit A-16 titled Company History

Exhibit D-2

Operations Expertise:

MXenergy supply team includes 5 schedulers including 2 senior schedulers each with more than 10 years scheduling experience on more than 20 different pipelines, 4 supply traders, 1 derivatives trader with over 15 years experience, 5 support staff, and supply vice president with 20 years energy trading experience.

Biographies of senior team members:

Stephanie Stehling: Senior Scheduler for MXenergy since September 2005. Prior to joining MXenergy, Ms. Stehling worked for Quantum Gas & Power Services (formally known as Perry Gas Companies), Enron Energy Services and Eagle Natural Gas Company. Ms. Stehling has 20 years experience in the wholesale and retail gas scheduling field, with close to 10 years on the retail marketing side of the industry.

Joe Cepparulo: Manager Gas Operations for MXenergy since August 2006. Mr. Cepparulo has held positions at MXenergy of increasing responsibility since October 2004. Prior to joining MXenergy, he had an 18 year career at BOC Gases in Energy Affairs and Logistics. From 2000 to 2004, he was Senior Operations Analyst for BOC Gases responsible for the movements of all gas products.

Blas Pina: Director Derivatives for MXenergy since October 2006. Prior to joining MXenergy, Mr. Pina held several positions in energy trading primarily in the financial trading side executing derivative transactions and optimization of physical assets. His energy trading career includes positions at Cinergy Marketing and Trading, Shell Energy, Unocal and El Paso Natural Gas.

Eve Hoffman: Manager Supply Administration for MXenergy since July 2007. Ms. Hoffman joined MXenergy in November 2005 as Gas Administration Supervisor. Prior to joining MXenergy, she had a 12 year career with NUI Energy Brokers and NUI Elizabethtown Gas in positions including Back Office Analyst responsible for deal capture and gas purchase accruals for 5 NUI Companies and Gas Cost Accountant responsible for gas purchase reconciliations for four NUI Companies.

Bob Werner: Vice President of Supply for MXenergy since August 2006. Prior to joining MXenergy, Mr. Werner had a 28 year career with Royal Dutch Shell in energy trading, supply chain management, and pipeline engineering and operations. From 2002 to 2006, he was Vice President of Supply for Shell Energy Services responsible for natural gas supply, commodity price exposure management, and pricing.

Exhibit D-3

Key Technical Personnel

Jeffrey A. Mayer, President and CEO

595 Summer Street, Suite 300, Stamford, CT 06901
(203) 356-1318 Ext. 7715 jmayer@mxenergy.com

- Jeffrey Mayer serves as President and Chief Executive Officer for MxEnergy. Mr. Mayer is one of the two founders of MxEnergy after a twenty-year career in the commodities industry. After four years in private law practice, representing, among others, the New York Mercantile Exchange and serving as Acting Counsel of the Coffee, Sugar & Cocoa Exchange, Mr. Mayer was recruited by Goldman, Sachs & Co. to be Chief Counsel of its J. Aron Commodities Division. In 1987 Mr. Mayer was asked to manage the clearing operations of the Futures Services Department at Goldman, Sachs Trading Corporation, a subsidiary of the American International Group ("AIG"). As a Managing Director for AIG, he managed natural gas derivatives marketing. Mr. Mayer also served as Chairman of AIG Clearing Corporation, the futures clearing arm of AIG Trading, as well as Chairman of AIG Securities Corporation, the securities affiliate of AIG Trading. Mr. Mayer developed the first business plan for AIG Trading, later renamed Sempra Energy Trading Corp., and assisted in the creation of Energy America, a joint venture of Sempra Energy Trading Corp., Sempra Energy, and Direct Energy Marketing of Toronto, Canada. Mr. Mayer is an expert in the field of energy risk management and developed the Energy Traders Institute, a seminar on risk management heard by over thirty utilities and energy producers in North America. Between 2000 and 2004 Mr. Mayer served as a member of the Risk Oversight Committee of Northeast Utilities.

Carole R. Artman-Hodge, Executive V.P., COO and Secretary

595 Summer Street, Suite 300, Stamford, CT 06901
(203) 356-1318 Ext. 7711 rhodge@mxenergy.com

- Carole R. Artman-Hodge serves as Executive Vice President and Chief Operating Officer for MxEnergy. Ms. Artman-Hodge is another of the founders of MxEnergy after a twenty-one year career in the merchant banking and risk mitigation industries, principally with Harris Bank, ING, Banque Paribas, and Bank of Ireland. She has been a senior managing director of commodity and natural gas resource units; commodity, foreign exchange, interest rate, and energy risk mitigation units; and project finance areas. She also founded new companies and products for the banks within these sectors.

Chaitu Parikh, V.P. of Finance, CFO and Assistant Treasurer

595 Summer Street, Suite 300, Stamford, CT 06901
(203) 356-1318 Ext. 7711 cparikh@mxenergy.com

- Chaitu Parikh serves as Vice President and Chief Financial Officer for MxEnergy. Mr. Parikh has over 15 years experience in finance and accounting. After spending 6 years with a "Big 4" accounting firm, Mr. Parikh has spent the last 8 years with various deregulated energy marketers as either the CFO or VP Finance in the US and Canada. Over the last 15 years, Mr. Parikh has been involved in taking companies public, several mergers and acquisitions, and debt and private equity financings.

Exhibit D-3

Key Technical Personnel (continued)

John Glad, Controller

595 Summer Street, Suite 300, Stamford, CT 06901
(203) 356-1318 Ext. 7616 jglad@mxenergy.com

- *John Glad* serves as the Controller for MxEnergy. Mr. Glad has over 25 years experience in the energy industry in both Fortune 100 and small companies. Experience in all aspects of finance including general accounting, financial reporting, budgeting and planning, project analysis, treasury, and international accounting.

Emmett Capanna, Senior V.P. of Gas Supply

510 Thornall Street, Suite 270, Edison, NJ 08837
(732) 805-0300 Ext. 6815 ecapanna@mxenergy.com

- *Emmett Capanna* serves as Senior Vice President, Supply/Marketing for MxEnergy. Mr. Capanna was a founder of PSEG Energy Technologies, one of the pioneers in U.S. retail energy sales. Prior to joining New Jersey's Public Service Electric & Gas, Mr. Capanna was head of fuel supply and marketing for Amerada Hess and for EMS Marketing, an affiliate of Elizabethtown Gas Company in New Jersey. Mr. Capanna has over thirty years of experience buying, hedging, trading and marketing fuel oil and natural gas.

William Hunsicker, Director of Information Systems

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- *Bill Hunsicker* serves as Director of Information Systems for MxEnergy. He has over 15 years experience in the information services area of an electric utility. He has been directly involved in the development and enhancement of utility customer information systems, customer billing systems and setting up a remittance processing center. He has managed the migration of data between different systems and the consolidation of multiple systems into one common system. Bill has directly interacted with various regulatory agencies in both the US and Canada in order to ensure the customer information systems are compliant with the regulatory requirements of that jurisdiction.

Thomas W. Hartmann, Esq., General Counsel

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- *Thomas Hartmann* serves as the General Counsel of MxEnergy. Prior to that he has over 20 years of experience in criminal and civil litigation; international business operations; bankruptcy; mergers and acquisitions; telecommunications; and construction law. Mr. Hartmann is also a member of the United States Air Force Judge Advocate General's Corps Reserve.

Exhibit D-3

Key Technical Personnel (continued)

Gina Goldberg, Vice President, Sales and Marketing

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- Gina Goldberg serves as Vice President, Sales and Marketing for MxEnergy. She has over 20 years of sales, marketing and brand management experience. Prior to joining MxEnergy in November, 2004 she worked at Showtime Networks Inc., a television program provider for the cable and satellite industry. As SVP, Marketing at Showtime, Gina oversaw all consumer, trade and affiliate marketing and advertising. She began her career in the Marketing & Promotions department of The Dallas Morning News.

Greg Taffet, Vice President of Systems/Chief Technology Officer

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- Gregg Taffet serves as Vice President of Systems/Chief Information Officer for MxEnergy. Prior to joining MxEnergy, Mr. Taffet was the Chief Information Officer of Bodine Corporation, a manufacturer of high-speed assembly and testing equipment. In that capacity, Mr. Taffet was responsible for database management, LAN development, groupware applications, office automation and website development.

Robert Blake, Vice President of Regulatory Affairs

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- Robert Blake serves as Vice President of Regulatory Affairs for MxEnergy. With over 22 years of experience in energy marketing and customer care, Mr. Blake served as Regional Sales Director for Connectiv and Director of Commercial and Industrial Energy Services for United Illuminating Company, an electric utility in New Haven, Connecticut. Prior to joining MxEnergy in the Spring of 2001, Mr. Blake served as Manager of United Energy, a retail gas marketer with operations in four states. Mr. Blake is a mechanical engineer who has been involved with numerous national and regional committees and has held leadership positions with several regional energy groups.