KGEN POWER CORPORATION

Four Oaks Place
1330 Post Oak Boulevard, Suite 1500
Houston, Texas 77056

February 16, 2011

To the Stockholders of KGen Power Corporation:

On behalf of the Board of Directors, we cordially invite you to a Special Meeting of Stockholders of KGen Power Corporation. The Special Meeting will be held on March 17, 2011, at 2:00 p.m., local time, in the Central Plains conference room, Suite 200, of the Four Oaks Place building located at 1330 Post Oak Blvd, Houston, Texas 77056.

At the Special Meeting, you will be asked to consider and vote on a resolution to authorize the sale of all of the membership interests of our subsidiary KGen Murray I and II LLC, to Oglethorpe Power Corporation (An Electric Membership Corporation) for a cash purchase price of $531.25 million, subject to working capital and spare parts inventory adjustments, pursuant to a Purchase and Sale Agreement dated January 31, 2011. KGen Murray I and II LLC is our subsidiary that owns our Murray I and Murray II natural gas-fired, combined-cycle power generation plants located at our facility in Murray County, Georgia.

After careful consideration, our Board of Directors determined that the proposed transaction is in the best interests of KGen Power Corporation and its stockholders. Our Board of Directors unanimously approved the proposed transaction and recommends that you vote "FOR" the proposed transaction.

It is important that your views be represented whether or not you are able to be present at the Special Meeting. We urge you to vote on the Internet or by telephone using the number shown on your proxy card, or to complete, sign, date, and return the enclosed proxy card promptly in the accompanying postage-paid envelope.

The enclosed Proxy Statement provides you with detailed information about the Special Meeting, the proposed transaction and the Purchase and Sale Agreement. A copy of the Purchase and Sale Agreement is attached as Annex A to the Proxy Statement. We encourage you to read the Proxy Statement and all annexes thereto carefully and in their entirety. You may also obtain additional information about us or the proposed transaction by calling us at (713) 979-1990.

To Vote by Internet and to Receive Materials Electronically

Go to the website (*www.proxyvote.com*) that appears on your Proxy Card.
Enter the control number found in the shaded box on the front of your
Proxy Card and follow the simple instructions.

Choose to receive an e-mail notice when future proxy statements and annual reports are
available for viewing over the Internet. You will cut down on bulky paper
mailings, help the environment, and lower expenses paid by your company.

The deadline for Internet and telephone voting is 11:59 p.m., Eastern Time, on March 16, 2011. We encourage you to vote via the Internet using the control number that appears on the front of your Proxy Card and to choose to view future mailings electronically rather than receiving them on paper.

Sincerely,

Daniel Hudson
Chairman

Thomas B. White
President and Chief Executive Officer

KGEN POWER CORPORATION

NOTICE OF SPECIAL MEETING OF STOCKHOLDERS

To Be Held on March 17, 2011

NOTICE IS HEREBY GIVEN that a Special Meeting of Stockholders of KGen Power Corporation will be held on March 17, 2011, at 2:00 p.m., local time, in the Central Plains conference room, Suite 200, of the Four Oaks Place building located at 1330 Post Oak Blvd, Houston, Texas 77056 for the following purposes:

1. To consider and vote on a resolution authorizing the sale to Oglethorpe Power Corporation (An Electric Membership Corporation) of all of the membership interests of our subsidiary KGen Murray I and II LLC pursuant to the Purchase and Sale Agreement, dated as of January 31, 2011, by and among KGen LLC and Oglethorpe Power Corporation (An Electric Membership Corporation), and, solely for the limited purposes expressly set forth therein, KGen Power Corporation; and
2. To transact such other business as may properly come before the Special Meeting or any adjournment or postponement thereof.

This Notice is accompanied by a form of proxy and a Proxy Statement which more fully describes the foregoing items of business.

In accordance with the KGen Power Corporation's Bylaws, the close of business on February 3, 2011 has been fixed as the record date for the determination of the stockholders entitled to notice of and to vote at the Special Meeting and any adjournment thereof. A list of stockholders entitled to notice of and to vote at the Special Meeting will be available for examination by any stockholder, for any purpose germane to the meeting, at the offices of KGen Power Corporation, 1330 Post Oak Blvd, Suite 1500, Houston, Texas 77056, Attention: William Marlow, Esq. during ordinary business hours for the ten days immediately prior to the Special Meeting. The stockholder list will also be available for inspection at the Special Meeting by any stockholder present at the meeting.

By Order of the Board of Directors,

William R. Marlow
Secretary

Houston, Texas
February 16, 2011

IMPORTANT

Most stockholders have a choice of voting on the Internet, by telephone, or by mail using a traditional proxy card. Please refer to the proxy card or other voting instructions included with these proxy materials for information on the voting methods available to you. If you vote by telephone or on the Internet, you do not need to return your proxy card.

TABLE OF CONTENTS

QUESTIONS AND ANSWERS ABOUT THE VOTING PROCEDURES FOR THE SPECIAL MEETING

The following questions and answers are intended to address some commonly asked questions regarding the Transaction, the Purchase and Sale Agreement and the Special Meeting. These questions and answers may not address all questions that may be important to you as a stockholder of KGen Power Corporation. Please refer to the "Summary" beginning on page 4 and the more detailed information contained elsewhere in this Proxy Statement, the annexes to this Proxy Statement and the documents referred to or incorporated by reference in this Proxy Statement. See "Where You Can Find Additional Information" beginning on page 49.

Unless the context otherwise requires, in this Proxy Statement, (i) references to "KGen Power Corporation," "KGen," "the Company," "we," "our," and "us" refer to KGen Power Corporation, (ii) references to "KGen LLC" and "Seller" refer to KGen LLC, a subsidiary of KGen, (iii) references to "KGen Murray I and II LLC" and "Murray subsidiary" refer to KGen Murray I and II LLC, a subsidiary of KGen LLC and owner of the Murray facility, (iv) references to the "Murray facility" mean the facility in Murray County, Georgia at which our Murray I and Murray II natural gas-fired, combined-cycle power generation plants are located, (v) references to "the Board" refer to the board of directors of KGen, (vi) references to "Oglethorpe" refer to Oglethorpe Power Corporation (An Electric Membership Corporation), (vii) references to the "Purchase and Sale Agreement" refer to that certain Purchase and Sale Agreement, dated as of January 31, 2011, by and among Seller and Oglethorpe, and, solely for the limited purposes expressly set forth therein, KGen, (viii) references to the "Transaction" refer to the sale of the membership interests of our Murray subsidiary pursuant to the Purchase and Sale Agreement and (ix) references to the "Closing" refer to the consummation of the Transaction pursuant to the Purchase and Sale Agreement.

Q: What is the proposed transaction for which I am being asked to vote?

A: You are being asked to approve the sale of the membership interests of our subsidiary KGen Murray I and II LLC to Oglethorpe for $531,250,000, subject to working capital and spare parts inventory adjustments, pursuant to the Purchase and Sale Agreement. The terms of the Transaction are more fully described below under "The Transaction" beginning on page 14. A copy of the Purchase and Sale Agreement is attached to this Proxy Statement as Annex A. The Board is soliciting your proxy to vote at a special meeting of our stockholders (the "Special Meeting") being held for the purpose of obtaining stockholder approval of a resolution authorizing the Transaction and to transact such other business as may properly come before the Special Meeting or any adjournment or postponement thereof.

Q: What do I need to do now?

A: This Proxy Statement contains important information about the Transaction, including the Special Meeting of the stockholders of KGen. We urge you to carefully read this Proxy Statement, including its annexes. Even if you plan to attend the Special Meeting, if you hold your shares in your own name as the stockholder of record, please vote your shares on the Internet or by telephone using the number shown on your proxy card or by signing, dating and returning the enclosed proxy card. You may also attend the Special Meeting and vote by ballot in person. If you hold your shares in "street name," follow the procedures provided by your bank, broker or other nominee.

A number of brokers and banks participate in a program provided through Broadridge Financial Solutions, Inc. that offers telephone and Internet votes of proxies. If your shares are held in an account with a broker or bank participating in the Broadridge Financial Solutions, Inc. program, you may vote your proxy for those shares telephonically by calling the telephone number shown on the form received from your broker or bank, or via the Internet at Broadridge Financial Solutions, Inc.'s web site at www.proxyvote.com.

Your vote is important. We encourage you to vote as soon as possible.

Q: Why does the Transaction require stockholder approval?

A: The Board is seeking stockholder approval of the Transaction because we are a Delaware corporation and the Transaction may constitute the sale of "substantially all" of our property and assets under Section 271 of the General Corporation Law of the State of Delaware (the "DGCL"). Section 271 of the DGCL requires that a Delaware corporation obtain the approval of the stockholders for the sale of "all or substantially all of its property and assets." Additionally, approval of the Transaction by stockholders is a condition to Closing under the Purchase and Sale Agreement.

Q: What will happen if the Transaction is not approved by stockholders?

A: If the Transaction is not approved by stockholders, the proposed sale of our Murray subsidiary to Oglethorpe will not be completed. In addition, under the Purchase and Sale Agreement, we will be required to pay to Oglethorpe a termination fee of $4 million.

Q: When is the Transaction expected to be completed?

A: If the Transaction is approved by stockholders at the Special Meeting, we expect to complete the Transaction in April 2011. However, the Transaction is subject to approval of the Federal Energy Regulatory Commission, clearance under the Hart-Scott-Rodino Antitrust Improvements Act of 1976, certain third-party consents and certain other customary closing conditions, and it is possible that factors outside of our control could result in the Transaction being completed at a later date or not at all. While the exact timing of the completion of the Transaction cannot be predicted, the Purchase and Sale Agreement may be terminated by any of the parties if the Closing has not occurred on or before June 30, 2011.

Q: Who is entitled to vote at the Special Meeting?

A: The Board has fixed February 3, 2011 as the record date for the Special Meeting (the "Record Date"). If you were a KGen stockholder at the close of business on the Record Date you are entitled to vote your KGen shares at the Special Meeting.

Q: How many votes do I have?

A: You are entitled to one vote for each share of KGen common stock that you owned as of the Record Date. As of the close of business on the Record Date, there were approximately 56,024,736 outstanding shares of KGen common stock. As of that date, less than 1% of the outstanding shares of KGen common stock were held by the directors and executive officers of KGen.

Q: What vote is required to approve the Transaction?

A: The affirmative vote of a majority of the outstanding shares of KGen common stock is required to approve the Transaction.

Q: How will my proxy be voted?

A: If you vote by Internet, by telephone or by completing, signing, dating and mailing your proxy card or voting instruction card, your shares will be voted in accordance with your instructions. If you are a stockholder of record and you sign, date, and return your proxy card but do not indicate how you want to vote or do not indicate that you wish to abstain, your shares will be voted in favor of the approval of the Transaction.

The deadline for Internet and telephone voting is 11:59 p.m., Eastern Time, on March 16, 2011. We encourage you to vote via the Internet using the control number that appears on the front of your Proxy Card and to choose to view future mailings electronically rather than receiving them on paper.

Q: How does the Board recommend that I vote?

A: The Board unanimously recommends that you vote "FOR" the proposal to approve the Transaction. You should read "The Transaction—Background of the Transaction" beginning on page 14 and "The Transaction—Board Recommendation; Reasons for the Transaction" beginning on page 18 for a discussion of the factors that the Board considered in deciding to recommend approval of the Transaction.

Q: When and where is the Special Meeting?

A: The Special Meeting will be held on March 17, 2011, at 2:00 p.m., local time, in the Central Plains conference room, Suite 200, of the Four Oaks Place building located at 1330 Post Oak Blvd, Houston, Texas 77056.

Q: Am I entitled to appraisal rights in connection with the Transaction?

A: No. Delaware law does not provide for stockholder appraisal rights in connection with the Transaction.

Q: Who can attend the Special Meeting?

A: You are entitled to attend the Special Meeting only if you were a stockholder of the Company as of the close of business on the Record Date, or hold a valid proxy issued by any such stockholder.

Q: Can I change my vote after I have submitted a proxy or voting instruction card?

A: Yes. If you are a stockholder of record you can change your vote at any time before your proxy is voted at the Special Meeting. You can do this in one of three ways:

- you can send a signed notice of revocation to the Secretary of KGen;
- you can submit a revised proxy bearing a later date by Internet, telephone or mail as described above; or
- you can attend the Special Meeting and vote in person, which will automatically cancel any proxy previously given, or you may revoke your proxy in person, but your attendance alone will not revoke any proxy that you have previously given.

If you choose the first method of revocation, you must submit your notice of revocation or your new proxy no later than the beginning of the Special Meeting. If you choose the second method of revocation, you must submit your notice of revocation or your new proxy no later than 11:59 p.m., Eastern Time, on March 16, 2011. If you are a beneficial owner of shares held in street name, you may submit new voting instructions by contacting your broker, bank or nominee. You may also vote in person at the Special Meeting if you obtain a legal proxy from your broker, bank or nominee and present it to the inspectors of election with your ballot when you vote at the meeting.

Additional information on changing your vote is located on page 11.

Q: Who can answer any questions I may have about the Special Meeting or the Transaction?

A: Stockholders may call KGen at (713) 979-1990 with any questions they may have.

SUMMARY

This summary highlights selected information contained in this Proxy Statement and may not contain all the information that may be important to you. Accordingly, we encourage you to read carefully this Proxy Statement, its annexes and the documents referred to or incorporated by reference in this Proxy Statement in their entirety. Each item in this summary includes a page reference directing you to a more complete description of that topic. See "Where You Can Find Additional Information" beginning on page 49.

The Transaction

General (page 14)

On January 31, 2011, we entered into the Purchase and Sale Agreement, pursuant to which our subsidiary KGen LLC agreed to sell all of the membership interests in our Murray subsidiary to Oglethorpe for $531,250,000, subject to working capital and spare parts inventory adjustments. Our Murray subsidiary owns the Murray I and Murray II natural gas-fired, combined-cycle power generation plants with a combined nominal capacity of 1,250 megawatts. A copy of the Purchase and Sale Agreement is attached as Annex A. We encourage you to read the Purchase and Sale Agreement carefully and in its entirety. If the Transaction is approved by stockholders at the Special Meeting, we expect to complete the Transaction in April 2011. However, the Transaction is subject to approval of the Federal Energy Regulatory Commission, clearance under the Hart-Scott-Rodino Antitrust Improvements Act of 1976, certain third-party consents and certain other customary closing conditions, and it is possible that factors outside of our control could result in the Transaction being completed at a later date or not at all.

The Parties to the Transaction (page 14)

KGen Power Corporation

KGen Power Corporation owns and operates electric power generation plants and sells electricity and electrical generation capacity in the United States. KGen sells power and related products to wholesale purchasers such as retail electric providers, power trading organizations, municipal utilities, electric power cooperatives, and other power generation companies. Its portfolio of facilities consists of four operational and fully permitted combined-cycle power plants, located in the southeastern United States with General Electric 7FA gas turbines. The combined-cycle plants have an aggregate capacity of 2,390 megawatts. KGen was incorporated in 2006 and is headquartered in Houston, Texas. More information is available online at www.kgenpower.com.

Oglethorpe Power Corporation (An Electric Membership Corporation)

Oglethorpe Power Corporation (An Electric Membership Corporation) is the nation's largest power supply cooperative with approximately $6.5 billion in assets serving 39 Electric Membership Corporations which, collectively, provide electricity to more than 4.1 million Georgia citizens. A proponent of conscientious energy development and use, Oglethorpe balances reliable and affordable energy with environmental responsibility and has an outstanding record of regulatory compliance. Its diverse energy portfolio includes natural gas, hydroelectric, coal and nuclear generating plants with a combined capacity of approximately 5,790 megawatts (summer planning reserve capacity), as well as purchased power. Oglethorpe was established in 1974 and is owned by its 39 Member Systems. It is headquartered in Tucker, Georgia. More information is available online at www.opc.com.

Board Recommendation; Reasons for the Transaction (page 18)

The Board has unanimously determined that the Transaction is in the best interest of KGen and its stockholders and approved the Purchase and Sale Agreement and the Transaction. The Board unanimously recommends that you vote "FOR" the approval of the Transaction.

Opinion of the Company's Financial Advisor (page 20)

In connection with the Transaction, KGen's financial advisor, Credit Suisse Securities (USA) LLC, which we refer to as Credit Suisse, delivered an opinion, dated January 31, 2011, to the Board as to the fairness, from a financial point of view and as of the date of such opinion, to KGen of the $531,250,000 consideration to be received in the Transaction. The full text of Credit Suisse's written opinion is attached to this Proxy Statement as Annex B and sets forth, among other things, the procedures followed, assumptions made, matters considered and limitations on the scope of review undertaken. **Credit Suisse's opinion was provided to the Board (solely in its capacity as such) for its information in connection with its evaluation of the Transaction consideration. The opinion addresses only the fairness of the Transaction consideration from a financial point of view, does not address any other aspect of the proposed Transaction or any related transaction and does not constitute advice or a recommendation to any stockholder as to how such stockholder should vote or act on any matter relating to the proposed Transaction or any related transaction.**

Net Proceeds from the Transaction and Their Expected Use (page 29)

Pursuant to the Purchase and Sale Agreement, we will receive aggregate consideration in the Transaction of $531,250,000 in cash. The consideration may increase or decrease based on potential purchase price adjustments for working capital and spare parts inventory. The Transaction will be a taxable event to us for United States federal income tax purposes. However, we expect to use our existing tax net operating losses ("NOLs") to offset all but approximately $45 million of taxable gain resulting from the Transaction. See "Material United States Federal Income Tax Consequences." We expect that the net proceeds we will receive as a result of the Transaction will be approximately $508 million, after giving effect to taxes, transaction fees and expenses and cash bonuses we are required to pay in connection with the Transaction. The final net proceeds we will receive will vary based on final purchase price adjustments, the amount of taxes payable on the gain from the Transaction and the amount of transaction fees and expenses.

In connection with the closing of Transaction, our existing credit facilities will terminate. We expect to use approximately $139 million of the net proceeds of the Transaction to repay outstanding debt and satisfy other obligations associated with these facilities. Under the terms of the Purchase and Sale Agreement, approximately $80 million of the purchase price will be placed in escrow for a period of 18 months after Closing to secure our post-Closing indemnification obligations. In addition, approximately $6 million of the purchase price will be subject to withholding under Georgia law for the payment of State of Georgia income taxes arising from our operations in Georgia. We expect approximately $4 million of the withheld amount to be refunded to the Company.

The Board expects to declare a special dividend to stockholders out of the net proceeds of the sale. The amount of the dividend will be determined by the Board after Closing based on its review of our on-going cash needs.

Nature of our Business Following the Transaction (page 29)

Following the Transaction we will continue to operate two combined-cycle electric power generation plants and sell electricity and electrical generation capacity in the United States. The two combined-cycle plants are located in Hot Spring County, Arkansas and Hinds County, Mississippi and have an aggregate capacity of 1,140 megawatts. More information is available online at www.kgenpower.com. We are seeking

to sell both these plants, but intend to continue selling power from these plants until we are able to complete a sale of the plants. There is no assurance that we will reach an agreement with any party to purchase these plants at an attractive price or that, if an agreement is entered into, the sale of these plants will be completed.

Interests of Executive Officers and Directors in the Transaction (page 29)

All of our executive officers and one of our directors have interests in the Transaction that may be different from, or in addition to, their interests as KGen stockholders. Restricted Stock Units ("RSUs") held by Daniel T. Hudson, the Chairman of our Board, and by each executive officer (other than Thomas B. White, our President, Chief Executive Officer and a director), will vest upon the consummation of the Transaction as follows: 26,250 held by Mr. Hudson; 11,925 held by James H. Sweeney, Senior Vice President, Energy Management; 11,250 held by William R. Marlow, General Counsel and Secretary; 11,250 held by Charles L. Holland, Senior Vice President, Operations; and 8,700 held by W. Kevin Redmond, Chief Accounting Officer and Controller. In addition, each of the executive officers will be paid a lump sum cash bonus upon the consummation of the Transaction generally in the following amounts: $340,000 for Mr. White, $216,240 for Mr. Sweeney, $204,000 for Mr. Marlow, $204,000 for Mr. Holland, and $157,760 for Mr. Redmond. For a further description of these interests, see the section on "Interests of Executive Officers and Directors in the Transaction."

Regulatory Approvals (page 30)

Under the terms of the Purchase and Sale Agreement and the provisions of the Hart-Scott-Rodino Antitrust Improvements Act of 1976, as amended (the "HSR Act"), the Transaction may not be completed until notification and report forms have been filed with the U.S. Federal Trade Commission (the "FTC") and the Antitrust Division of the U.S. Department of Justice (the "DOJ"), and until the expiration of a 30 calendar day waiting period, or the early termination of that waiting period, following the parties' filing of their respective notification and report forms. If the FTC or the DOJ issues a Request for Additional Information and Documentary Material prior to the expiration of the waiting period, the parties must observe a second 30 calendar day waiting period, which would begin to run only after both parties have substantially complied with the request for information, unless the waiting period is terminated earlier or extended with the consent of the parties. KGen and Oglethorpe expect to shortly file their respective notification and report forms under the HSR Act with the FTC and the DOJ, and the initial 30 calendar day waiting period will expire 30 days after the date of filing unless terminated earlier.

In addition, the Transaction cannot be completed without prior approval of the Transaction by the Federal Energy Regulatory Commission ("FERC"). KGen filed with FERC an application for approval of the Transaction under Section 203 of the Federal Power Act on February 11, 2011. FERC may grant approval subject to conditions, and also retains the authority to issue supplemental orders imposing additional conditions at any time.

Oglethorpe is not obligated to close the Transaction if it is obligated to divest or change the operations of any of its assets in order to consummate the Transaction.

Material United States Federal Income Tax Consequences (page 31)

The Transaction will be a taxable event to us for United States federal income tax purposes. However, we expect to use our existing NOLs to offset all but approximately $45 million of taxable gain resulting from the Transaction. The Transaction itself will not result in any United States federal income tax consequences to you. However, stockholders may be subject to United States federal income tax on the special dividend the Board expects to declare out of the net proceeds of the sale.

The Purchase and Sale Agreement

General (page 33)

The Purchase and Sale Agreement provides that Oglethorpe will acquire all of the membership interests of our Murray subsidiary for $531,250,000 in cash, subject to working capital and spare parts inventory adjustments.

Restrictions on Solicitation of Other Alternative Proposals (page 37)

During the pendency of the Purchase and Sale Agreement, we may not (and must cause each of our affiliates and subsidiaries, and use commercially reasonable efforts to cause our and their representatives, not to), subject to certain exceptions, (a) solicit, initiate or knowingly encourage the submission of any alternative proposal to acquire the Murray facility or any proposal to acquire the Company (an "Alternative Proposal"), (b) furnish non-public information regarding the Murray facility or the Company in connection with or in response to any Alternative Proposal, (c) engage in discussions regarding any Alternative Proposal, (d) endorse or approve any Alternative Proposal, or (e) negotiate or enter into any agreement with respect to any Alternative Proposal. The Board has agreed to recommend to our stockholders the approval of the Transaction and may only change its recommendation in certain limited circumstances.

Conditions to Closing (page 38)

The parties' obligations to close are subject to a number of conditions to Closing, including, among others, (a) the accuracy of the other party's representations and warranties and the performance of the other party's obligations and agreements under the Purchase and Sale Agreement, except for certain exceptions, (b) the absence of a material adverse effect with respect to us, (c) the approval of the Transaction by our stockholders, (d) the absence of any governmental order that prevents the consummation of the Transaction, (e) the expiration or termination of the applicable waiting period under the HSR Act and the approval of FERC, (f) the receipt of certain third party consents, (g) the Murray subsidiary's release from certain of our indebtedness, (h) our delivery of an amended title insurance policy and certain affidavits, and (i) the delivery by each party of certain customary certificates and Closing documents.

Termination and Termination Fees (page 39)

The Purchase and Sale Agreement may be terminated under a number of circumstances, including, among others, (a) by mutual written consent of Oglethorpe and us; (b) by Oglethorpe or us if the Closing shall not have occurred on or before June 30, 2011; (c) by Oglethorpe or us, if a permanent governmental order prevents the consummation of the Transaction; (d) by Oglethorpe or us, if the Murray facility incurs certain casualty losses or suffers a condemnation; (e) by Oglethorpe or us, if our stockholders do not approve of the Transaction at the Special Meeting; (f) by Oglethorpe or us, if the other has materially breached its representations, warranties or covenants in the Purchase and Sale Agreement; (g) by Oglethorpe, if we fail to hold the Special Meeting in accordance with the Purchase and Sale Agreement; or (f) by us, in order to enter into an alternative agreement for a superior proposal if we pay a $20 million termination fee to Oglethorpe and comply with the relevant provisions of the Purchase and Sale Agreement, including providing Oglethorpe with at least five business days to match the superior proposal.

If our Board continues to recommend in favor of the Transaction, but our stockholders do not approve of the Transaction at the Special Meeting, we will be obligated to pay a termination fee of $4 million to Oglethorpe upon termination of the Purchase and Sale Agreement. We will be obligated to pay Oglethorpe an additional $16 million if a third party publicly makes an Alternative Proposal before the Special Meeting, and within nine months of the termination of the Purchase and Sale Agreement, we enter into a definitive agreement for an alternative transaction with that third party that reflects a purchase price

for the Murray subsidiary that is at least 95% of the cash purchase price of $531,250,000 payable in the Transaction and that alternative transaction is subsequently consummated.

If our Board withdraws its recommendation in favor of the Transaction and our stockholders do not approve of the Transaction at the Special Meeting, we will be obligated to pay a termination fee of $20 million to Oglethorpe upon termination of the Purchase and Sale Agreement. If we fail to hold the Special Meeting in accordance with the Purchase and Sale Agreement, we will also be obligated to pay a termination fee of $20 million to Oglethorpe upon termination of the Purchase and Sale Agreement.

Indemnification (page 40)

Subject to certain limitations, the parties have each agreed to indemnify one another against and in respect of any and all losses incurred in connection with, arising from or as a result of a number of items, including, among others, (a) any breach or any inaccuracy of any of the representations and warranties made in the Purchase and Sale Agreement, (b) any breach of the covenants or agreements made in the Purchase and Sale Agreement. The parties may not generally bring claims against the other for the inaccuracy of representations and warranties in the Purchase and Sale Agreement after 18 months have elapsed after Closing, except that for certain specified representations we have made, including with respect to taxes and environmental matters, claims may be made by Oglethorpe for 24 months after Closing. In addition, under the terms of the Purchase and Sale Agreement, approximately $80 million of the purchase price will be placed in escrow for a period of 18 months after closing to secure our post-Closing indemnification obligations.

CAUTIONARY STATEMENT REGARDING FORWARD-LOOKING STATEMENTS

This Proxy Statement, documents incorporated by reference, as well as oral statements made or to be made by us contain or will contain statements reflecting assumptions, expectations, projections, intentions or beliefs about future events that are intended as "forward-looking statements". All statements included in this Proxy Statement, documents incorporated by reference, as well as oral statements made or to be made by us, other than statements of historical fact, that address activities, events or developments that we or our management expect, believe or anticipate will or may occur in the future are forward-looking statements. These statements represent our reasonable judgment on the future based on various factors and using numerous assumptions and are subject to known and unknown risks, uncertainties and other factors that could cause our actual results and financial position to differ materially from those contemplated by the statements. You can identify these statements by the fact that they do not relate strictly to historical or current facts. Words such as "anticipate", "estimate", "project", "forecast", "plan", "may", "will", "should", "expect" and other words of similar meaning identify these forward-looking statements, which appear in a number of places in this Proxy Statement, documents incorporated by reference, as well as oral statements made or to be made by us and include, but are not limited to, all statements relating directly or indirectly to the timing or likelihood of completing the Transaction and the nature of our business after the Transaction, all other statements regarding our intent, plans, beliefs or expectations or those of our directors or officers. Stockholders are cautioned that such forward-looking statements are not assurances for future performance or events and involve risks and uncertainties that could cause actual results and developments to differ materially from those covered in such forward-looking statements. These risks and uncertainties include, but are not limited to, the risks detailed in our Annual Report for the fiscal year ended June 30, 2010 and our Quarterly Reports for the fiscal quarters ended September 30, 2010 and December 31, 2010, respectively, which are incorporated by reference into this Proxy Statement, and the following factors:

- the occurrence of any event, change or other circumstances that could give rise to the termination of the Purchase and Sale Agreement, including a termination of the Purchase and Sale Agreement under circumstances that could require us to pay a termination fee;
- the inability to complete the Transaction due to the failure to satisfy conditions to completion of the Transaction, including receipt of required stockholder and regulatory approvals;
- the failure of the Transaction to close for any other reason;
- the termination of our existing working capital and letters of credit facilities in connection with the Transaction and our likely inability to replace these facilities on as favorable terms, if at all;
- the possibility that we may be required to make indemnification payments to Oglethorpe out of, or in excess of, the $80 million of the purchase price that will be placed into escrow to secure post-Closing indemnification obligations;
- the potential difficulties in the retention of executive management and other key employees after the Closing;
- limitations on our ability to utilize our NOLs to offset taxable gain from the Transaction;
- our remaining power generation plants (after the sale of the Murray subsidiary) will be free cash flow negative for the foreseeable future and, after we use the cash we will have after Closing, we may not generate sufficient cash or otherwise have sufficient liquidity to operate our business;
- the announcement and consummation of the Transaction may make it more difficult for us to sell our remaining facilities; and
- the amount of the costs, fees, expenses, and other charges related to the Transaction.

Consequently, all of the forward-looking statements we make in this document are qualified by the information contained or incorporated by reference herein, including, but not limited to (a) the information contained under this heading and (b) the information contained under the headings "Risk Factors" and in our consolidated financial statements and notes thereto included in our Annual Report for the fiscal year ended June 30, 2010 and our Quarterly Reports for the fiscal quarters ended September 30, 2010 and December 31, 2010, respectively (see "Where You Can Find More Information" beginning on page 49). We are under no obligation to publicly release any revision to any forward-looking statement contained or incorporated herein to reflect any future events or occurrences.

Any or all of our forward-looking statements may turn out to be wrong. They can be affected by inaccurate assumptions or by known or unknown risks, uncertainties and other factors, many of which are beyond our control. You should carefully consider the cautionary statements contained or referred to in this section in connection with any subsequent written or oral forward-looking statements that may be issued by us or persons acting on our behalf.

THE SPECIAL MEETING

Date, Time and Place

The Special Meeting will be held on March 17, 2011, at 2:00 p.m., local time, in the Central Plains conference room, Suite 200, of the Four Oaks Place building located at 1330 Post Oak Blvd, Houston, Texas 77056.

Purpose of the Special Meeting

The purpose of the Special Meeting is for our stockholders to consider and vote upon the following proposals:

- To consider and vote on a resolution authorizing the sale to Oglethorpe Power Corporation of all of the membership interests of our Murray subsidiary pursuant to the Purchase and Sale Agreement; and
- To transact such other business as may properly come before the Special Meeting or any adjournment or postponement thereof.

General

The enclosed proxy is solicited on behalf of the Board of KGen for use at the Special Meeting of Stockholders, or at any adjournment or postponement thereof.

This Proxy Statement, the Notice of Special Meeting of Stockholders and the form of proxy are being mailed to stockholders on or about February 16, 2011.

Record Date and Share Ownership

Stockholders of record on the Company's books at the close of business on February 3, 2011 are entitled to vote at the Special Meeting. At the Record Date, 56,024,736 shares of our common stock were issued and outstanding. For information concerning stock ownership by our directors and officers, see the section on "Security Ownership of Management" beginning on page 48 below.

Revocability of Proxies

Any proxy given pursuant to this solicitation may be revoked by the person who gave the proxy at any time before its use by: (i) delivering to the Company a written notice of revocation prior to the voting of the proxy, (ii) submitting a subsequent proxy by Internet or telephone or delivering to the Company a duly executed proxy bearing a later date, or (iii) if you are a stockholder of record, attending the Special Meeting and voting in person or revoking your prior proxy. Attendance at the Special Meeting will not, by itself, revoke a proxy.

Voting and Solicitation

Each stockholder of record is entitled to one vote for each share of common stock held in his or her name on the Record Date on each matter submitted to a vote at the Special Meeting.

If properly completed and received by the Company (whether by mail, telephone or Internet) before the Special Meeting, any proxy representing shares of common stock entitled to be voted at the Special Meeting and specifying how it is to be voted will be voted accordingly. Any such proxy, however, which fails to specify how it is to be voted, will be voted in accordance with the recommendation of the Board.

A quorum of stockholders is necessary to hold a valid Special Meeting. The presence, in person or by proxy, of the holders of a majority of the outstanding shares of common stock entitled to vote at the Special Meeting is necessary to constitute a quorum. The approval of the resolution authorizing the

Transaction will require the affirmative vote of holders of a majority of the outstanding shares of common stock. The approval of any other proposals that may be presented at the Special Meeting will require the affirmative vote of a majority of the outstanding shares of common stock entitled to vote and present in person or represented by proxy at the Special Meeting.

Pursuant to Delaware law, the Board must appoint an inspector to act at the Special Meeting. The inspector is to carry out the duties imposed pursuant to Section 231 of the DGCL, including the counting of votes. Votes will be counted by the inspector of election appointed for the meeting, who will separately count "For" and "Against" votes and abstentions. Because approval of the resolution authorizing the Transaction requires the affirmative vote of holders of a majority of the outstanding shares of common stock, abstentions and the failure to vote your shares or to instruct your broker or other nominee to vote your shares on your behalf will have the same effect as a vote "Against" the Transaction. When a stockholder signs or otherwise electronically or telephonically submits the proxy card, he or she appoints Thomas B. White, our President and Chief Executive Officer, and Steven McDowell, our Vice President, Mergers and Acquisitions and Finance, or each of them, as his or her representatives at the Special Meeting. Mr. White or Mr. McDowell will vote the shares, as instructed on the proxy card (whether by mail, telephone or Internet), at the Special Meeting. In this manner, the shares will be voted whether or not the stockholder attends the Special Meeting. Even if the stockholder plans to attend the Special Meeting, he or she should complete, sign and return or otherwise electronically or telephonically submit the proxy card in advance of the Special Meeting in the event of a change in plans.

The cost of soliciting proxies will be borne by KGen. In addition, KGen expects to reimburse brokerage firms and other persons representing beneficial owners of common stock for their expenses in forwarding solicitation material to such beneficial owners. Proxies may be solicited by mail and may be supplemented by telephone or personal solicitation by certain of the directors, officers and regular employees of ours or, at our request, by a professional proxy solicitor. No additional compensation will be paid to directors, officers or regular employees for such services, but if professional proxy solicitors are used, such solicitors will be paid their customary fees by us.

Voting via the Internet or by Telephone

Most beneficial owners whose stock is held in street name receive voting instruction forms from their banks, brokers, or other agents.

A number of brokers and banks participate in a program provided through Broadridge Financial Solutions, Inc. that offers telephone and Internet votes of proxies. If your shares are held in an account with a broker or bank participating in the Broadridge Financial Solutions, Inc. program, you may vote your proxy for those shares telephonically by calling the telephone number shown on the form received from your broker or bank, or via the Internet at Broadridge Financial Solutions, Inc.'s web site at www.proxyvote.com.

How to Vote

Telephone and Internet voting information is provided on your proxy card. A control number, located on the proxy card, is designed to verify your identity, allow you to vote your shares and confirm that your voting instructions have been properly recorded.

If your shares are held in the name of a bank or broker, you should follow the voting instructions on the form you receive from the bank or broker. The availability of telephone or Internet voting will depend on your bank or broker's voting process. If you choose not to vote by telephone or Internet, please return your proxy card, properly signed, and the shares represented will be voted in accordance with your directions. You can specify your choices by marking the appropriate boxes on the proxy card.

If your proxy card is signed and returned without specifying choices, the shares will be voted FOR the approval of the Transaction, and otherwise in the discretion of the proxies referenced in the proxy card.

We encourage you to vote your shares in advance of the Special Meeting date even if you plan on attending the Special Meeting.

Attending the Special Meeting

You are entitled to attend the Special Meeting only if you were a stockholder of KGen at the close of business on the Record Date, or hold a valid proxy for the Special Meeting.

Common Stock Ownership of Directors and Executive Officers

As of February 3, 2011, our directors and executive officers had, or were deemed to have, beneficial ownership of shares of our common stock representing, in the aggregate, less than 1% of our voting power entitled to vote at the Special Meeting.

Other Matters

At this time, we know of no other matters to be submitted to our stockholders at the Special Meeting. If any other matters properly come before the Special Meeting, your shares of common stock will be voted in accordance with the discretion of the persons named on the enclosed proxy card in accordance with their best judgment.

Important Notice Regarding the Availability of Proxy Materials for the Special Meeting

This Proxy Statement is available at www.kgenpower.com.

Questions and Additional Information

If you have questions about this Proxy Statement, the Special Meeting or the Transaction or need assistance with voting procedures, you should contact:

KGen Corporation
Four Oaks Place
1330 Post Oak Boulevard, Suite 1500
Houston, Texas 77056
(713) 979-1990

THE TRANSACTION

General

We have agreed to sell to Oglethorpe Power Corporation (An Electric Membership Corporation) all of the membership interests of our subsidiary KGen Murray I and II LLC pursuant to a Purchase and Sale Agreement. KGen Murray I and II LLC is the owner of the Murray I and Murray II natural gas-fired, combined-cycle power generation plants with a combined nominal capacity of 1,250 megawatts that are located in Murray County, Georgia. As consideration in the Transaction, we will be paid $531,250,000 in cash at the Closing subject to adjustment as described below.

The Parties to the Transaction

KGen Power Corporation

KGen Power Corporation
1330 Post Oak Blvd, Suite 1500
Houston, Texas 77056
(713) 979-1900

KGen Power Corporation owns and operates electric power generation plants and sells electricity and electrical generation capacity in the United States. KGen sells power and related products to wholesale purchasers such as retail electric providers, power trading organizations, municipal utilities, electric power cooperatives, and other power generation companies. Its portfolio of facilities consists of four operational and fully permitted combined-cycle power plants, located in the southeastern United States with General Electric 7FA gas turbines. The combined-cycle plants have an aggregate capacity of 2,390 megawatts. KGen was incorporated in 2006 and is headquartered in Houston, Texas. More information is available online at www.kgenpower.com.

Oglethorpe Power Corporation (An Electric Membership Corporation)

Oglethorpe Power Corporation
2100 East Exchange Place
Tucker, Georgia 30084-5336
(770) 270-7600

Oglethorpe Power Corporation (An Electric Membership Corporation) is the nation's largest power supply cooperative with approximately $6.5 billion in assets serving 39 Electric Membership Corporations which, collectively, provide electricity to more than 4.1 million Georgia citizens. A proponent of conscientious energy development and use, Oglethorpe balances reliable and affordable energy with environmental responsibility and has an outstanding record of regulatory compliance. Its diverse energy portfolio includes natural gas, hydroelectric, coal and nuclear generating plants with a combined capacity of approximately 5,790 megawatts (summer planning reserve capacity), as well as purchased power. Oglethorpe was established in 1974 and is owned by its 39 Member Systems. It is headquartered in Tucker, Georgia. More information is available online at www.opc.com.

Background of the Transaction

In late 2007 and early 2008, various stockholders had multiple conversations with the then Company management indicating a strong preference to start a strategic review process to determine the best course of action to enhance stockholder value, including the start of an auction process to sell the Company or its assets. These discussions led to the appointment to the Board in February 2008 of Daniel T. Hudson and another individual at the request of certain stockholders.

In April 2008, stockholders of the Company acted by written consent to remove three of the Company's then directors from the Board, including the then Chairman and Chief Executive Officer, and to elect Thomas B. White as a director of the Company. Subsequently, James P. Jenkins and Gerald J. Stalun were appointed as directors of the Company and three directors who were in office prior to the written consent action resigned from the Board.

In May 2008, the Company announced that it would undertake a review of its strategic alternatives and it retained Credit Suisse as its financial advisor in connection with this review. In addition, as an ongoing part of our business, we have made proposals to various load serving entities in the southeastern United States offering to enter into power purchase agreements relating to, or sell, our Murray facility. None of these proposals have led to any definitive agreement.

During the late spring and summer of 2008, in accordance with the Board's directives, the Company's financial advisor contacted potential acquirers of the Company or one or more of the Company's power generation facilities, including financial acquirers and U.S. and foreign strategic buyers, to ascertain possible interest in a transaction with the Company. As part of the Company's solicitation process, a number of potential bidders conducted due diligence and submitted indications of interest for an acquisition of the Company as well as acquisitions of individual power generation facilities.

In October 2008, after the domestic and international credit markets suffered a significant downturn, parties that had expressed an interest in acquiring the Company or its individual power generation facilities expressed strong reservations about continuing their efforts until such time as the credit markets recovered. As a result of these developments, on October 17, 2008, the Board announced to stockholders that it had determined not to bring the sale process to a conclusion at that time. The Board indicated, however, that it would continue to explore and review credible transaction proposals that would increase stockholder value. Thereafter, the Board, with the assistance of the Company's financial advisor, continued to review the mergers and acquisitions market in the power industry and identify parties potentially interested in a transaction with the Company.

In March 2009, the Board appointed Mr. White as the Chief Executive Officer of the Company. Mr. White remained a director of the Company.

In June 2009, a company we refer to as "Company A," made a verbal indication of interest in acquiring all outstanding shares of the Company at a price of between $9 and $10 per share. Based on this indication of interest, we permitted Company A to perform due diligence on the Company. On August 31, 2009, Company A submitted to the Company a written preliminary offer to acquire all outstanding shares of the Company in a share-for-share merger which valued the Company at approximately $7 per share.

On September 2, 2009, at a regularly-scheduled meeting, the Board asked management to instruct the Company's financial advisor to review financial aspects of Company A's proposal. On September 11, 2009, the Board met to discuss Company A's proposal. Present at the meeting were representatives of Credit Suisse and the Company's outside counsel, Fried, Frank, Harris, Shriver & Jacobson LLP ("Fried Frank"). At the meeting, Credit Suisse discussed financial aspects of Company's A proposal and valuation considerations relating to Company A and the Company. A representative of Fried Frank discussed with the Board its fiduciary duties in connection with its review of the proposal. After review, the Board unanimously rejected Company A's proposal and directed Mr. White to send a letter to Company A communicating the Board's rejection of the proposal.

In September 2009, in response to increased interest in our Sandersville power plant, the Board instructed management, with the assistance of the Company's financial advisor, to conduct a targeted process for the sale of the Sandersville power plant, while at the same time the Board would continue to review proposals it received to acquire the Company or any of its other assets.

In December 2009, the Company began discussions with a financial acquirer, which we refer to as "Company B," that had expressed interest in acquiring all of the outstanding shares of the Company. Company B performed initial due diligence, but did not make a proposal to the Company.

In February 2010, Company B verbally expressed an interest in acquiring all of the outstanding membership interests of our Murray subsidiary at an indicative price that was less than the purchase price payable in the Transaction. After discussion with the members of the Board, Mr. White indicated to Company B that its indication of interest was at a level below what the Board would be willing to consider.

In March 2010, a financial bidder, which we refer to as "Company C," verbally indicated an interest in acquiring approximately 51% of the Company's shares at a price of $10 per share in a restructuring transaction. The Board considered the risks associated with the transaction and the fact that, under the proposed transaction structure, the Company's stockholders would be able to dispose of only about half of their equity interest in the Company with no guarantee of any future purchase of their remaining shares. The Board instructed the Company's management to continue discussions with Company C. Over the next few months, Company management held periodic discussions with Company C regarding its interest in acquiring the Company and the potential terms and structure of an acquisition.

Also in March 2010, a financial bidder, which we refer to as "Company D," verbally indicated an interest in acquiring all of the Company's shares at a price of $9.50 per share. Company D subsequently decided to participate in the process for the sale of KGen Sandersville LLC, but failed to provide a final proposal for KGen Sandersville LLC.

In April 2010, the Company received a verbal indication of interest in the Murray subsidiary from a privately-held independent power producer, which we refer to as "Company E." In September 2010, after having conducted due diligence on the Murray facility, Company E verbally indicated a proposed purchase price that was less than the purchase price payable in the Transaction. The Board determined not to continue discussions with Company E.

On May 6, 2010, the Company entered into a purchase and sale agreement for the sale of KGen Sandersville LLC, the former subsidiary of the Company that owned the Sandersville facility, to an affiliate of ArcLight Capital for a purchase price of $130 million, subject to certain adjustments. That transaction closed on July 9, 2010.

In July 2010, the Company sent a letter to Oglethorpe indicating its interest in selling the Murray facility to Oglethorpe. Oglethorpe subsequently indicated an interest in considering a purchase of the Murray facility and entered into a confidentiality agreement with the Company on August 4, 2010.

In August 2010, two financial bidders, which we refer to as "Company F" and "Company G" verbally indicated an interest in acquiring the Murray facility. Both entities subsequently informed the Company that they did not have the necessary financing for a transaction.

Also during August, the Company received an indication of interest from a financial bidder, which we refer to as "Company H," which was interested in purchasing all of the outstanding shares of the Company. After performing significant due diligence, Company H verbally proposed to acquire all of outstanding shares of the Company at a purchase price of $10 per share. Company H indicated, however, that it had not as of yet been able to secure the necessary financing for a transaction and, as such, its proposal was subject to a financing contingency. The Company continued to engage in discussions with Company H, until the execution of a letter of intent with Oglethorpe in October 2010.

In September 2010, the Company received a verbal indication of interest from a financial bidder, which we refer to as "Company I," for an acquisition of the Murray subsidiary at a purchase price that was less than the purchase price payable in the Transaction. The Board subsequently determined that Company I's verbal indication of interest was too low to form the basis for further discussions.

The Company also received an indication of interest from a financial bidder, which we refer to as "Company J," for the purchase of 100% of the outstanding shares of the Company at a valuation of $10 per share. The Company continued to engage in discussions with Company J, but Company J did not make any formal offer to the Company.

In September, members of management held discussions with Company C regarding its previously expressed interest in acquiring the Company. Company C expressed its view that the purchase price it would pay for the Company should reflect a "significant discount" to the full value of the Company's Hinds and Hot Springs plants. Company management indicated that the Board did not view such a discount as appropriate. Company C also indicated that its review of a potential acquisition had slowed considerably because of market rumors that the Company was considering a sale of the Hinds and Hot Springs plants to a third party.

In early October, after performing initial due diligence, Oglethorpe provided a verbal indication of interest in acquiring the Murray subsidiary. After discussions and negotiations with the Company's management, Oglethorpe and the Company management reached a preliminary understanding on a purchase price of $531,250,000. Oglethorpe requested that the Company agree to enter into exclusive negotiations with Oglethorpe for the sale of the Murray subsidiary. Based on this preliminary understanding, on October 19, 2010, the Board authorized management to begin discussions with Oglethorpe on a letter of intent and term sheet and to indicate a willingness to consider an exclusivity request in the context of the execution of a mutually acceptable letter of intent and term sheet for a transaction. Management subsequently engaged in discussions with Oglethorpe on the terms of a letter of intent and term sheet.

On October 26, 2010, the Board held a meeting to discuss a proposed letter of intent and term sheet that management had negotiated with Oglethorpe. Members of senior management and a representative of Fried Frank participated in this meeting. At the meeting, Mr. White described to the Board the terms of the proposed letter of intent and term sheet, including the provisions included at the insistence of Oglethorpe under which Oglethorpe would be granted exclusivity through January 31, 2011. Mr. White also reviewed with the Board the status of the discussions with the various other parties that had provided indications of interest in acquiring the Company or the Murray subsidiary, including the likelihood of any of those parties being able to enter into a transaction with the Company that was more favorable than the transaction proposed by Oglethorpe. The Board discussed the proposed terms of the letter of intent, the terms of the exclusivity provision requested by Oglethorpe, the process undertaken by management, and the benefits of the proposed transaction with Oglethorpe. A representative of Fried Frank discussed with the Board the restrictions that would be imposed on the Company under the proposed exclusivity provisions. At the conclusion of the meeting, the Board authorized management to execute the proposed letter of intent and term sheet with Oglethorpe and to begin negotiating a definitive transaction agreement with Oglethorpe.

Over the next few weeks, representatives of Oglethorpe and representatives of the Company, including King & Spalding, special transaction counsel to the Company, exchanged drafts of, and met on a number of occasions to negotiate the terms of, the Purchase and Sale Agreement. During this period, Oglethorpe conducted a due diligence review of the Murray facility.

At Board meetings held on November 9, 2010, November 29, 2010, December 13, 2010 and January 11, 2011, management updated the Board on the status of the discussions with Oglethorpe.

On November 3, 2010, the Company received a written non-binding indication of interest from a consortium of financial investors led by Company C to acquire, subject to completion of due diligence, 100% of the outstanding shares of the Company for an aggregate purchase price of $600 million, or approximately $10.70 per share. In addition, in the event that a sale of the Company's Hinds and Hot Springs power plants occurred, Company C's proposal provided that our stockholders could receive additional consideration if a sale of the Hinds and Hot Springs plants was completed within 15 months

following an acquisition of the Company by the Company C consortium, but only to the extent that the net proceeds of the sale that were received before the end of the 15-month period exceeded a specified threshold. After evaluating the likelihood that the Company would be able to reach and consummate a definitive agreement with Oglethorpe for a sale of the Murray subsidiary, the likely purchase price that would be paid by Oglethorpe in any such a sale, the risk to the Company of losing the transaction with Oglethorpe (in addition to potential liability for breach of contract) if it were to engage in discussions with the Company C consortium in breach of the Company's exclusivity agreement with Oglethorpe, the likelihood of reaching and completing a transaction with the Company C consortium and the consideration that would likely be paid to the stockholders in any such transaction, the Board determined that it was in the best interest of the Company and its stockholders not to respond to the Company C consortium's indication of interest and to continue discussions with Oglethorpe for a sale of the Murray subsidiary.

On January 25, 2011, the Board met to discuss the proposed transaction with Oglethorpe. Members of senior management, representatives of Credit Suisse, Fried Frank and King & Spalding attended the meeting. At the meeting, management's forecasts for the Murray facility described below under "Financial Forecasts" were reviewed with the Board, and Credit Suisse reviewed with the Board its preliminary financial analysis of the consideration to be received in the proposed Transaction. A representative of King & Spalding discussed the terms of the proposed Purchase and Sale Agreement, including the restrictions under the agreement to the Company's ability to solicit Alternative Proposals, the termination fees payable under various scenarios, the conditions to closing and the indemnification provisions of the proposed agreement. After discussion, the Board authorized management to continue its discussions with Oglethorpe.

Between January 25 and January 31, 2011, representatives of Oglethorpe and representatives of the Company continued to negotiate the remaining terms of the Purchase and Sale Agreement.

The Board met on January 31, 2011. Members of senior management, representatives of Credit Suisse, Fried Frank and King & Spalding attended the meeting. At the meeting, Credit Suisse updated the Board with respect to its financial analysis previously reviewed with the Board on January 25, 2011 regarding the Transaction consideration and rendered to the Board an oral opinion, confirmed by delivery of a written opinion dated January 31, 2011, to the effect that, as of that date and based on and subject to the matters described in the opinion, the $531,250,000 consideration to be received in the Transaction was fair, from a financial point of view, to the Company. Fried Frank reviewed with the Board its fiduciary duties in connection with its evaluation of the Transaction and King & Spalding reviewed with the Board the changes to the terms of the Purchase and Sale Agreement since the January 25 meeting. In addition, management delivered to the Board its recommendation that the Board approve the Transaction and recommend the Transaction to the Company's stockholders. After discussion, the Board voted unanimously to approve the Transaction, to authorize the execution of the Purchase and Sale Agreement and to recommend that the stockholders of the Company vote to approve the Transaction.

On the evening of January 31, 2011, the Seller and Oglethorpe and for the limited purposes set forth therein, the Company executed the Purchase and Sale Agreement.

Board Recommendation; Reasons for the Transaction

After careful consideration, the Board unanimously determined that the Transaction is in the best interest of KGen and its stockholders, approved the Purchase and Sale Agreement and the Transaction and recommends that you vote "FOR" the approval of the Transaction.

In the course of reaching its determinations, the Board evaluated the Purchase and Sale Agreement in consultation with our management and our legal and financial advisors and considered a number of substantive factors, both positive and negative, and potential benefits and detriments of the Transaction.

The Board believed that, taken as a whole, the following factors supported its decision to approve the Transaction:

Strategic Review Process. The Board considered the process (which began in 2008) through which we explored strategic alternatives for the sale of the Company or its individual power generation facilities, which process included, among other things, (i) engaging a financial advisor to assist the Company with its strategic review process, (ii) approaching over 120 potential acquirers, including financial and strategic buyers, (iii) entering into confidentiality agreements with over 40 parties and providing due diligence material to these parties, (iv) engaging in discussions with 15 to 20 potential acquirers, and (v) considering all credible indications and interest received by the Company. The Board also considered its view of the likelihood of the Company being able to extend or renew the Murray subsidiary's existing power purchase agreement with Georgia Power Corporation with respect to the Murray I plant after that agreement expires in May 2012 in accordance with its terms and the potential terms of any such extension or renewal. The Board believes that the Transaction is more favorable to the Company and our stockholders than any alternatives that may be available to the Company.

Purchase Price. The Board considered the purchase price to be received by us pursuant to the Purchase and Sale Agreement, including the fact that the full amount of the consideration is to be paid at Closing in cash. The Purchase and Sale Agreement does not contain a financing condition and, accordingly, we are not assuming the risk that Oglethorpe will be unable to obtain financing. The Board also considered the prospect of the consideration increasing or decreasing based on the post-Closing working capital and spare inventory adjustments pursuant to the Purchase and Sale Agreement.

Pro Forma Financial Impact. The Board considered the impact of the Transaction on the Company's financial statements, including the fact that most of the taxable gain from the Transaction will be shielded by the Company's existing NOLs and that the Company will be able to use the proceeds to repay outstanding indebtedness and pay a dividend to our stockholders.

Likelihood of Consummation of the Transaction. The Board considered the likelihood that the Transaction will be completed, including the limited number and nature of the conditions to Oglethorpe's obligation to consummate the Transaction and the likelihood that those conditions would be satisfied.

Provisions Allowing Compliance with Fiduciary Duties. The Board considered the fact that the Purchase and Sale Agreement includes provisions that give the Board flexibility to comply with its fiduciary duties.

Purchase and Sale Agreement. The Board considered the other terms of the Purchase and Sale Agreement, which is the product of extensive arm's-length negotiations and are believed to be reasonable and commercially attractive.

Opinion of the Company's Financial Advisor. The Board considered the financial presentation and opinion, dated January 31, 2011, of Credit Suisse to the Board as to the fairness, from a financial point of view and as of the date of the opinion, to KGen of the $531,250,000 consideration to be received in the Transaction, as more fully described under "Opinion of the Company's Financial Advisor" beginning on page 20.

The Board also considered a variety of risks and other potentially negative factors relating to the Transaction, including the following:

Future Revenues and Working Capital. The Board considered the fact that if the Transaction is consummated, we will lose our existing working capital and synthetic letter of credit facilities and we are unlikely to replace those terminated facilities with facilities on as favorable terms, if at all. The Board also recognized that the divestiture of the Murray facility eliminates substantial cash flows that we historically generated through the operation of the Murray facility, that our remaining power generation facilities are expected to be free cash flow negative for the foreseeable future and, after we use the cash we will have after Closing, we may not generate sufficient cash or otherwise have sufficient liquidity to operate our business.

Risk of Non-Completion. The Board considered the risk that the Transaction might not be completed because of the failure to obtain the requisite regulatory approvals, the failure to obtain certain third party consents and other reasons. In the event that the Transaction is not completed, our directors, officers and other employees will have expended extensive time and effort and will have experienced significant distractions from their work during the pendency of the Transaction, and we will have incurred significant transaction costs.

Possible Payment of Termination Fee. The Board considered the termination fees that would be payable by us to Oglethorpe if the Purchase and Sale Agreement is terminated under various circumstances including the payment of a $4 million termination fee if the Transaction is not approved by our stockholders. The Board believed that the termination fees are reasonable and would not unduly preclude a third party from making a superior proposal.

Possible Disruption of the Business. The Board considered the possible disruption to the Murray facility's business that might result from the announcement of the Transaction and the resulting distraction of the attention of our management and employees. The Board also considered the fact that the Purchase and Sale Agreement contains certain limitations regarding the operation of the Murray facility during the period between the signing of the Purchase and Sale Agreement and the Closing. The Board believed that such limitations were customary for transactions similar to the Transaction and appropriately tailored to the specific requirements of the operation of the Murray facility.

Indemnification Obligations. The Board was aware that the Purchase and Sale Agreement placed certain indemnification obligations on us which survive the Closing and that approximately $80 million of the purchase price will be held in escrow for 18 months to satisfy these obligations. The Board considered the customary nature of such indemnification obligations in a sale of a major business unit and the risk of liability to us following the Closing.

Payment of Transaction Bonuses. The Board considered the vesting of restricted stock units and the magnitude and size of the Transaction bonuses that are payable in connection with the Transaction.

Future Transactions. The Board was aware that the sale of the Murray facility could impact the Company's ability to sell its remaining assets and could affect the likelihood and timing of any sale of the Company's remaining assets.

The foregoing discussion summarizes the material factors considered by the Board in its consideration of the Transaction. In view of the variety of factors and the quality and amount of information considered, as well as the complexity of these matters, the Board did not find it practicable to, and did not attempt to, make specific assessments of, quantify, rank or otherwise assign relative weights to the specific factors considered in reaching this determination. The Board conducted an overall review of the factors described above, as well as others, and considered the benefits of the Transaction to outweigh the risks and the factors overall to be favorable to, and to support, its determination. Individual members of the Board may have given different weight to different factors.

Opinion of the Company's Financial Advisor

KGen retained Credit Suisse to act as KGen's financial advisor in connection with the Transaction. In connection with Credit Suisse's engagement, the Board requested that Credit Suisse evaluate the fairness, from a financial point of view, to KGen of the $531,250,000 consideration to be received in the Transaction. On January 31, 2011, at a meeting of the Board held to evaluate the proposed Transaction, Credit Suisse rendered to the Board an oral opinion, which opinion was confirmed by delivery of a written opinion dated January 31, 2011, to the effect that, as of that date and based on and subject to the matters described in its opinion, the $531,250,000 consideration to be received in the Transaction was fair, from a financial point of view, to KGen.

The full text of Credit Suisse's written opinion, dated January 31, 2011, to the Board, which sets forth, among other things, the procedures followed, assumptions made, matters considered and limitations on the scope of review undertaken, is attached as Annex B and is incorporated into this Proxy Statement by reference in its entirety. The description of Credit Suisse's opinion set forth in this Proxy Statement is qualified in its entirety by reference to the full text of Credit Suisse's opinion. Credit Suisse's opinion was provided to the Board (solely in its capacity as such) for its information in connection with its evaluation of the Transaction consideration. The opinion addresses only the fairness of the Transaction consideration from a financial point of view, does not address any other aspect of the proposed Transaction or any related transaction and does not constitute advice or a recommendation to any stockholder as to how such stockholder should vote or act on any matter relating to the proposed Transaction or any related transaction.

In arriving at its opinion, Credit Suisse reviewed the Purchase and Sale Agreement and certain publicly available business and financial information of KGen relating to the Murray facility. Credit Suisse also reviewed certain other information relating to the Murray facility provided to or discussed with Credit Suisse by KGen, including financial forecasts under alternative scenarios as to whether or not the existing power purchase agreement with Georgia Power Company with respect to the Murray I power plant ("PPA") would be extended or renewed, and met with KGen's management to discuss the Murray facility and its prospects. Credit Suisse also considered certain financial data of the Murray facility, and Credit Suisse compared that data with similar data for publicly held companies in businesses it deemed similar to the Murray facility, and Credit Suisse considered, to the extent publicly available, the financial terms of certain other transactions which recently have been effected or announced. Credit Suisse also considered such other information, financial studies, analyses and investigations and financial, economic and market criteria which it deemed relevant.

In connection with its review, Credit Suisse did not independently verify any of the foregoing information and Credit Suisse assumed and relied upon such information being complete and accurate in all material respects. Credit Suisse was advised by KGen that there are no audited financial statements for the Murray subsidiary or the Murray facility and, accordingly, Credit Suisse assumed, at KGen's direction, that any such financial statements would not have contained relevant information not already disclosed to Credit Suisse that would have been material in any respect to its analyses or opinion. With respect to the financial forecasts for the Murray facility that Credit Suisse used in its analyses, KGen's management advised Credit Suisse, and Credit Suisse assumed, with KGen's consent, that such forecasts were reasonably prepared on bases reflecting the best currently available estimates and judgments of KGen's management as to the future financial performance of the Murray facility under the alternative scenarios reflected in such forecasts. Credit Suisse also was advised by KGen's management, and Credit Suisse assumed, as reflected in such forecasts and at KGen's direction, that NOLs of KGen could be utilized to reduce future taxable income generated by the Murray facility if they were operated by KGen in the absence of the Transaction, and Credit Suisse further assumed, as advised by KGen's management and with KGen's consent, that the estimates provided to Credit Suisse by KGen's management as to the potential tax benefits resulting from such utilization and the utilization of additional NOLs of the Murray subsidiary were reasonably prepared on bases reflecting the best currently available estimates and judgments of KGen's management. Credit Suisse relied upon, with KGen's consent and without independent verification, the assessments of KGen's management as to market trends and prospects for the energy industry, regulatory matters relating to the Murray facility and the potential impact thereof on the Murray facility. The financial forecasts for the Murray facility that Credit Suisse reviewed reflect certain industry assumptions of KGen's management, including assumptions as to future power and gas commodity prices, which are subject to significant volatility and which, if different than as assumed, could have an adverse impact on Credit Suisse's analyses or opinion.

Credit Suisse assumed, with KGen's consent, that, in the course of obtaining any regulatory or third party consents, approvals or agreements in connection with the Transaction or related transactions, no

delay, limitation, restriction or condition would be imposed that would have an adverse effect on the Murray facility, the Murray subsidiary, KGen or the Transaction and that the Transaction and related transactions would be consummated in accordance with their respective terms, without waiver, modification or amendment of any material term, condition or agreement. Credit Suisse also assumed, with KGen's consent, that any adjustments to the Transaction consideration would not in any respect be material to Credit Suisse's analyses or opinion. In addition, Credit Suisse was not requested to make, and did not make, an independent evaluation or appraisal of the assets or liabilities (contingent or otherwise) of or relating to the Murray subsidiary or the Murray facility, nor was Credit Suisse furnished with any such evaluations or appraisals.

Credit Suisse's opinion addresses only the fairness, from a financial point of view and as of the date of its opinion, to KGen of the $531,250,000 Transaction consideration and does not address any other aspect or implication of the Transaction or any related transaction or any other agreement, arrangement or understanding entered into in connection with the Transaction, any related transaction or otherwise, including, without limitation, the form or structure of the Transaction (or the tax consequences thereof), any adjustment to the Transaction consideration, the terms of the industrial revenue bonds transfer or the fairness of the amount or nature of, or any other aspect relating to, any compensation to any officers, directors or employees of any party to the Transaction, or class of such persons, relative to the Transaction consideration or otherwise. The issuance of Credit Suisse's opinion was approved by Credit Suisse's authorized internal committee.

Credit Suisse's opinion was necessarily based upon information made available to it as of the date of its opinion and financial, economic, market and other conditions as they existed and could be evaluated on that date. Credit Suisse's opinion did not address the relative merits of the Transaction or any related Transaction as compared to alternative transactions or strategies that might be available with respect to the Murray facility or KGen, nor did it address the underlying business decision of KGen to proceed with the Transaction or any related transaction. Except as described in this summary, KGen imposed no other limitations on Credit Suisse with respect to the investigations made or procedures followed in rendering its opinion.

In preparing its opinion to the Board, Credit Suisse performed a variety of financial and comparative analyses, including those described below. The summary of Credit Suisse's analyses described below is not a complete description of the analyses underlying Credit Suisse's opinion. The preparation of a fairness opinion is a complex process involving various determinations as to the most appropriate and relevant methods of financial analysis and the application of those methods to the particular circumstances and, therefore, a fairness opinion is not readily susceptible to partial analysis or summary description. Credit Suisse arrived at its ultimate opinion based on the results of all analyses undertaken by it and assessed as a whole and did not draw, in isolation, conclusions from or with regard to any one factor or method of analysis. Accordingly, Credit Suisse believes that its analyses must be considered as a whole and that selecting portions of its analyses and factors or focusing on information presented in tabular format, without considering all analyses and factors or the narrative description of the analyses, could create a misleading or incomplete view of the processes underlying its analyses and opinion.

In its analyses, Credit Suisse considered industry performance, general business, economic, market and financial conditions and other matters, many of which are beyond KGen's control. No company, Transaction or business used in Credit Suisse's analyses is identical to the Murray facility or the proposed Transaction, and an evaluation of the results of those analyses is not entirely mathematical. Rather, the analyses involve complex considerations and judgments concerning financial and operating characteristics and other factors that could affect the acquisition, public trading or other values of the companies, transactions or businesses analyzed. The estimates contained in Credit Suisse's analyses and the ranges of valuations resulting from any particular analysis are not necessarily indicative of actual values or predictive of future results or values, which may be significantly more or less favorable than those suggested by the analyses. In addition, analyses relating to the value of businesses or securities do not purport to be

appraisals or to reflect the prices at which businesses or securities actually may be sold. Accordingly, the estimates used in, and the results derived from, Credit Suisse's analyses are inherently subject to substantial uncertainty.

Credit Suisse was not requested to, and it did not, recommend the specific consideration payable in the proposed Transaction, which Transaction consideration was determined through negotiations between KGen and Oglethorpe, and the decision to enter into the Purchase and Sale Agreement was solely that of the Board. Credit Suisse's opinion and financial analyses were only one of many factors considered by the Board in its evaluation of the proposed Transaction and should not be viewed as determinative of the views of Board or management with respect to the Transaction or the Transaction consideration.

The following is a summary of the material financial analyses reviewed with the Board on January 31, 2011 in connection with Credit Suisse's opinion. **The financial analyses summarized below include information presented in tabular format. In order to fully understand Credit Suisse's financial analyses, the tables must be read together with the text of each summary. The tables alone do not constitute a complete description of the financial analyses. Considering the data in the tables below without considering the full narrative description of the financial analyses, including the methodologies and assumptions underlying the analyses, could create a misleading or incomplete view of Credit Suisse's financial analyses.**

Discounted Cash Flow Analysis

Credit Suisse performed a discounted cash flow analysis of the Murray facility to calculate the estimated present value of the (i) standalone unlevered, after-tax free cash flows that the Murray facility could generate over calendar years 2011 through 2015 and (ii) potential tax benefits resulting from the utilization of NOLs of KGen and the Murray subsidiary to reduce future taxable income generated by the Murray facility if they were operated by KGen in the absence of the Transaction. For purposes of its discounted cash flow analysis, Credit Suisse utilized financial forecasts relating to the Murray facility prepared by KGen's management under three alternative business scenarios, referred to as "Case 1," "Case 2" and "Case 3" projections, which cases were the same for calendar year 2011 and thereafter reflected varying assumptions regarding whether or not the existing PPA for a portion of the power capacity of the Murray I power plant would be extended or renewed as follows:

- Case 1: Assumed the PPA expires on May 31, 2012;
- Case 2: Assumed the PPA is extended for one year until May 31, 2013; and
- Case 3: Assumed the PPA expires on May 31, 2012 but KGen enters into a new power purchase agreement relating to Murray I commencing on January 1, 2015.

Credit Suisse also calculated terminal value ranges for the Murray facility as of December 31, 2015 by applying a range of terminal value generating capacity multiples of $350.0 per kilowatt to $550.0 per kilowatt to the combined generating capacity of the Murray facility. The present value (as of January 1, 2011) of the cash flows, potential tax benefits and terminal values were calculated using discount rates ranging from 9.0% to 12.0%. This analysis indicated the following implied enterprise value reference ranges for the Murray facility based on the Case 1, Case 2 and Case 3 projections, as compared to the $531,250,000 Transaction consideration:

Implied Enterprise Value Reference Ranges Based On:			Transaction Consideration
Case 1	Case 2	Case 3	
$237 - $433 million	$272 - $470 million	$265 - $465 million	$531.25 million

Selected Companies Analysis

Credit Suisse reviewed financial and stock market information for KGen and the following seven selected publicly traded independent power producer companies with operations in the merchant power generation industry, three of which, as is the case with KGen, have unlisted common stock that is traded over-the-counter and four of which have common stock that is listed on a national stock exchange:

Unlisted Companies	Listed Companies
• Entegra Corporation	• Calpine Corporation
• MACH Gen LLC	• Dynegy, Inc.
• US Power Generating Company	• GenOn Energy, Inc.
	• NRG Energy, Inc.

Credit Suisse reviewed, among other things, enterprise values of KGen and the selected companies, calculated as market value, based on closing stock prices on January 28, 2011 (and also, in the case of Dynegy, Inc., August 12, 2010, the last trading day prior to public announcement of its proposed sale to Blackstone Group L.P.), plus total debt, non-controlling interests, preferred stock and capitalized leases, less cash and cash equivalents, as multiples of generating capacity as of the most recent publicly available quarter and, in the case of the selected listed companies, calendar years 2010 and 2011 earnings before interest, taxes, depreciation and amortization, referred to as EBITDA. Credit Suisse then applied a range of selected generating capacity multiples derived from KGen and the selected unlisted companies and a range of selected generating capacity multiples derived from the selected listed companies to the combined generating capacity of the Murray facility. Credit Suisse also applied a range of selected multiples of calendar years 2010 and 2011 estimated EBITDA derived from the selected listed companies to calendar years 2010 and 2011 EBITDA, before major maintenance expense, of the Murray facility. Financial data for KGen and the selected companies were based on public filings and other publicly available information, including publicly available research analysts' EBITDA estimates in the case of the selected listed companies, and reflected publicly announced acquisitions and dispositions to the extent pro forma data was publicly available. Financial data for the Murray facility were based on KGen's public filings and, in the case of EBITDA data, internal historical and estimated data from KGen's management. This analysis indicated the following implied enterprise value reference ranges for the Murray facility, as compared to the $531,250,000 Transaction consideration:

Implied Enterprise Value Reference Ranges Based On:		Transaction Consideration
Generating Capacity Multiples	EBITDA Multiples	
$325 - $688 million	$211 - $317 million	$531.25 million

Selected Transactions Analysis

Credit Suisse reviewed financial information for the following 28 selected power generation asset transactions in bilateral or organized capacity markets:

Announcement Date	Acquiror	Seller
Bilateral Markets (SERC Region)		
• 08/13/10	• NRG Energy, Inc.	• Kelson Limited Partnership (Cottonwood facility)
• 04/03/08	• Tennesee Valley Authority	• Cogentrix Energy LLC (Southhaven facility)
• 02/06/08	• Constellation Energy Group, Inc.	• Calpine Corporation (Hillabee facility)
• 07/31/07	• Entergy Corporation	• Cogentrix Energy Inc. (Quachita facility)
• 03/17/05	• Entergy Corporation	• Central Mississippi Generating Company (Attala facility)
Bilateral Markets (SPP Region)		
• 10/30/09	• Entergy Corporation	• Cleco Corporation / King Street Capital Management, L.P. (Acadia 2 facility)
• 07/30/09	• Cleco Corporation	• King Street Capital Management, L.P. (Acadia facilities—50% interest)
• 01/21/08	• Oklahoma Gas and Electric Company / Grand River Dam Authority / Oklahoma Municipal Power Authority	• Kelson Holdings LLC (Redbud facility)
• 08/01/07	• Cajun Gas Energy, LLC	• Calpine Corporation (Acadia facilities)
• 12/06/06	• Kelson Holdings LLC	• Calpine Corporation (Aries facility)
Bilateral Markets (Other Regions)		
• 01/13/11	• Wayzata Investment Partners LLC	• PSEG Power LLC (Guadalupe facility)
• 01/13/11	• High Plains Diversified Energy Corporation	• PSEG Power LLC (Odessa facility)
• 12/30/10	• High Plains Diversified Energy Corporation	• Constellation Energy Group, Inc. (Quail Run facility)
• 10/27/10	• Rayburn Country Electric Cooperative, Inc.	• Calpine Corporation (Freestone facility)
• 06/16/10	• Wayzata Investment Partners LLC	• Entegra Corporation (Gila River facility—25% interest)
• 04/16/10	• Constellation Energy Group, Inc.	• Navasota Energy Partners LP (Colorado Bend and Quail Run facilities)
Organized Capacity Markets		
• 11/16/10	• Energy Capital Partners LLC	• Competitive Power Ventures Holdings, LLC (Milford facility)
• 08/13/10	• NRG Energy, Inc.	• Dynegy, Inc. (Casco Bay facility)
• 08/09/10	• Constellation Energy Group, Inc.	• Boston Generating, LLC (portfolio)
• 04/21/10	• Calpine Corporation	• Pepco Holdings Inc. (portfolio)
• 03/20/10	• Energy Capital Partners LLC	• BG Group plc (portfolio)
• 02/15/10	• Columbia City of Missouri	• Ameren Corp. (Columbia facility)
• 10/13/08	• Tenaska Capital Management LLC	• MACH Gen LLC (Covert facility)
• 04/15/08	• Wabash Valley Association / Hoosier Energy Rural Electric Cooperative, Inc.	• Tenaska Power Fund, LP (Holland facility)
• 01/29/08	• FirstEnergy Generation Corporation	• Calpine Corporation (Fremont facility)
• 11/02/07	• Northern Indiana Public Service Company	• LS Power Development, LLC / NiSource Inc. (Sugar Creek facility)
• 05/25/07	• Consumers Energy Company	• LS Power Development, LLC (Zeeland facility)
• 01/02/07	• AEP Generating Company	• PSEG Power LLC (Lawrenceburg facility)

Credit Suisse reviewed the purchase prices paid in the selected transactions, plus, to the extent publicly available, planned capital expenditures and transaction costs, as a multiple of generating capacity. Credit Suisse then applied a range of selected generating capacity multiples derived from the selected transactions, with particular focus on the selected transactions in the SERC and SPP regions, to the combined generating capacity of the Murray facility. Financial data for the selected transactions were based on publicly available information at the time of announcement of the relevant transaction. Financial data for the Murray facility were based on KGen's public filings. This analysis indicated the following implied enterprise value reference range for the Murray facility, as compared to the $531,250,000 Transaction consideration:

Implied Enterprise Value Reference Range	Transaction Consideration
$406 - $719 million	$531.25 million

Miscellaneous

KGen selected Credit Suisse to act as its financial advisor in connection with the Transaction based on Credit Suisse's qualifications, experience, reputation and familiarity with KGen. Credit Suisse is an internationally recognized investment banking firm and is regularly engaged in the valuation of businesses and securities in connection with mergers and acquisitions, leveraged buyouts, negotiated underwritings, competitive biddings, secondary distributions of listed and unlisted securities, private placements and valuations for corporate and other purposes.

KGen has agreed to pay Credit Suisse for its financial advisory services in connection with the proposed Transaction a customary fee, a portion of which was payable upon delivery of Credit Suisse's opinion and a significant portion of which is contingent upon the consummation of the Transaction. In addition, KGen has agreed to reimburse Credit Suisse for its reasonable expenses, including fees and expenses of legal counsel, and to indemnify Credit Suisse and related parties for certain liabilities and other items, including liabilities under the federal securities laws, arising out of or related to its engagement. Credit Suisse in the past has provided, currently is providing and in the future may provide services to KGen, for which services Credit Suisse has received, and may receive, compensation, including, during the past two years, having acted as financial advisor to KGen in connection with an asset disposition in 2010. Credit Suisse is a full service securities firm engaged in securities trading and brokerage activities as well as providing investment banking and other financial services. In the ordinary course of business, Credit Suisse and its affiliates may acquire, hold or sell, for Credit Suisse's and its affiliates own accounts and the accounts of customers, equity, debt and other securities and financial instruments (including bank loans and other obligations) of KGen, KGen LLC, Oglethorpe and any other company that may be involved in the Transaction, as well as provide investment banking and other financial services to such companies.

Financial Forecasts

In connection with the Transaction, management of the Company prepared and presented to the Board and provided to the Company's financial advisor certain non-public financial forecasts for the Murray facility reflecting three alternative potential scenarios for that facility. These financial forecasts are summarized below.

A summary of management's financial forecasts for the Murray facility is not being included in this document to influence your decision whether to vote for or against the Transaction. The inclusion of this information should not be regarded as an indication that the Board, the Company's advisors or any other person considered, or now considers, these financial forecasts to be material or to be necessarily predictive of actual future results, and these financial forecasts should not be relied upon as such. These forecasts are subjective in many respects and reflect three alternative potential scenarios. There can be no assurance as to which, if any, of these scenarios will occur or as to whether any of these financial forecasts will be

realized or that actual results for the Murray facility will not be significantly higher or lower than forecasted. The financial forecasts cover multiple years and such information by its nature becomes subject to greater uncertainty with each successive year. As a result, the inclusion of the financial forecasts in this Proxy Statement should not be relied upon as necessarily predictive of actual future events.

In addition, the financial forecasts were not prepared with a view toward public disclosure or toward complying with generally accepted accounting principles, which we refer to as GAAP, or the published guidelines of the Securities and Exchange Commission regarding projections and the use of non-GAAP measures or the guidelines established by the American Institute of Certified Public Accountants for preparation and presentation of prospective financial information. Neither our independent registered public accounting firm, nor any other independent accountants, have compiled, examined or performed any procedures with respect to the financial forecasts contained herein, nor have they expressed any opinion or any other form of assurance on such information or its achievability.

These financial forecasts were based on numerous variables and assumptions that were deemed to be reasonable as of the time that the Board approved the execution of the Purchase and Sale Agreement, when the projections were finalized. Such assumptions are inherently uncertain and may be beyond the control of the Company. Important factors that may affect actual results and cause these financial forecasts to not be achieved include, but are not limited to, risks and uncertainties relating to the Company's business, industry performance, the regulatory environment, general business and economic conditions and other factors described or referenced under "Cautionary Statement Regarding Forward-Looking Statements" beginning on page 9. In addition, the financial forecasts also reflect assumptions that are subject to change and do not reflect revised prospects for the Murray facility, changes in general business or economic conditions, or any other transaction or event that may have occurred or that may occur and that were not anticipated at the time the financial forecasts were prepared, including assumptions with respect to the future prices of natural gas and electricity. Accordingly, there can be no assurance that these financial forecasts will be realized under any of the three alternative scenarios presented or that the future financial results of the Murray facility will not materially vary from these financial forecasts.

No one makes any representation to any stockholder or anyone else regarding the financial forecasts by virtue of the inclusion of the information set forth below in this Proxy Statement. Readers of this Proxy Statement are cautioned not to rely on the forecasted financial information. Some or all of the assumptions which have been made regarding, among other things, the timing of certain occurrences or impacts, may have changed since the date such financial forecasts were made. We have not updated and do not intend to update, or otherwise revise the financial forecasts to reflect circumstances existing after the date when made or to reflect the occurrence of future events, even in the event that any or all of the assumptions on which such updated financial forecasts were based are shown to be in error. The Company has made no representation to Oglethorpe in the Purchase and Sale Agreement or otherwise concerning these financial forecasts.

The financial forecasts are forward-looking statements. For information on factors that may cause the Company's future financial results to materially vary, see "Cautionary Statement Regarding Forward-Looking Statements" beginning on page 9.

The following is a summary of the financial forecasts prepared by management of the Company and presented to the Board and provided to the Company's financial advisor.

The following forecasts reflect management's Case 1 scenario under which (i) the Murray subsidiary's existing PPA will expire on May 31, 2012 in accordance with its current terms and the Murray I plant will

operate thereafter on a merchant basis through the remaining forecast period and (ii) the Murray II plant will operate on a merchant basis throughout the forecast period.

	Projected calendar year ending December 31,				
	2011E	2012E	2013E	2014E	2015E
Total merchant energy revenue	$ 78.8	$155.8	$171.6	$178.7	$208.2
Total contracted revenue	$ 57.9	$ 12.4	—	—	—
Total revenue	$136.6	$168.2	$171.6	$178.7	$208.2
Fuel Cost	$ 64.5	$122.1	$140.3	$146.7	$167.3
Gross margin	$ 72.1	$ 46.1	$ 31.3	$ 31.9	$ 40.9
Total operating expenses	$ 34.8	$ 36.6	$ 37.3	$ 38.1	$ 39.5
EBITDA, pre-major maintenance	$ 37.2	$ 9.5	$ (6.0)	$ (6.1)	$ 1.4
EBITDA, post-major maintenance	$ 36.1	$ 8.0	$(56.0)	$ (8.1)	$ (0.6)
EBITDA less capital expenditures & major maintenance	$ 35.1	$ 7.3	$(57.3)	$ (8.9)	$ (1.9)

The following forecasts reflect management's Case 2 scenario under which (i) the PPA will be extended on its existing terms until May 31, 2013, and then expire, and the Murray I plant will operate thereafter on a merchant basis through the remaining forecast period and (ii) the Murray II plant will operate on a merchant basis throughout the forecast period.

	Projected calendar year ending December 31,				
	2011E	2012E	2013E	2014E	2015E
Total merchant energy revenue	$ 78.8	$ 95.6	$139.3	$178.7	$208.2
Total contracted revenue	$ 57.9	$ 59.1	$ 12.4	—	—
Total revenue	$136.6	$154.7	$151.7	$178.7	$208.2
Fuel Cost	$ 64.5	$ 76.6	$110.8	$146.7	$167.2
Gross margin	$ 72.1	$ 78.1	$ 40.9	$ 32.0	$ 41.0
Total operating expenses	$ 34.8	$ 36.0	$ 37.1	$ 38.1	$ 39.5
EBITDA, pre-major maintenance	$ 37.2	$ 42.1	$ 3.9	$ (6.1)	$ 1.4
EBITDA, post-major maintenance	$ 36.1	$ 40.6	$(46.1)	$ (8.1)	$ (0.6)
EBITDA less capital expenditures & major maintenance	$ 35.1	$ 39.8	$(47.4)	$ (8.9)	$ (1.9)

The following forecasts reflect management's Case 3 scenario under which (i) the PPA will expire on May 31, 2012 in accordance with its current terms, the Murray I plant will operate thereafter through 2014 on a merchant basis and the Murray subsidiary enters into a new power purchase agreement that commences in January 1, 2015 and (ii) the Murray II plant will operate on a merchant basis throughout the forecast period.

	Projected calendar year ending December 31,				
	2011E	2012E	2013E	2014E	2015E
Total merchant energy revenue	$ 78.8	$155.8	$171.6	$178.7	$103.3
Total contracted revenue	$ 57.9	$ 12.4	—	—	$ 63.4
Total revenue	$136.6	$168.2	$171.6	$178.7	$166.6
Fuel Cost	$ 64.5	$122.1	$140.3	$146.8	$ 83.0
Gross margin	$ 72.1	$ 46.1	$ 31.3	$ 31.9	$ 83.6
Total operating expenses	$ 34.8	$ 35.6	$ 36.6	$ 37.4	$ 38.5
EBITDA, pre-major maintenance	$ 37.2	$ 10.5	$ (5.3)	$ (5.4)	$ 45.1
EBITDA, post-major maintenance	$ 36.1	$ 9.0	$(55.3)	$ (7.4)	$ 43.1
EBITDA less capital expenditures & major maintenance	$ 35.1	$ 8.3	$(56.6)	$ (8.2)	$ 41.8

Net Proceeds from the Transaction and Their Expected Use

Pursuant to the Purchase and Sale Agreement, we will receive aggregate consideration in the Transaction of $531,250,000 in cash. The consideration may increase or decrease based on a potential purchase price adjustment for working capital and spare parts inventory. The Transaction will be a taxable event to us for United States federal income tax purposes. However, we expect to use our existing NOLs to offset all but approximately $45 million of taxable gain resulting from the Transaction. See "Material United States Federal Income Tax Consequences." We expect that the net proceeds we will receive as a result of the Transaction will be approximately $508 million, after giving effect to taxes, transaction fees and expenses and cash bonuses we are required to pay in connection with the Transaction. The final net proceeds we will receive will vary based on final purchase price adjustments, the amount of taxes payable on the gain from the Transaction and the amount of transaction fees and expenses.

In connection with the Closing, our existing credit and working capital facilities will terminate. We expect to use approximately $139 million of the net proceeds of the Transaction to repay outstanding debt and satisfy other obligations associated with these facilities. In addition, under the terms of the Purchase and Sale Agreement, approximately $80 million of the purchase price will be placed in escrow for a period of 18 months after closing to secure our post-Closing indemnification obligations. In addition, approximately $6 million of the purchase price will be subject to withholding under Georgia law for the payment of State of Georgia income taxes arising from our operations in Georgia. We expect approximately $4 million of the withheld amount to be refunded to the Company.

The Board expects to declare a special dividend to stockholders out of the net proceeds of the sale. The amount of the dividend will be determined by the Board after closing based on its review of our on-going cash needs.

Nature of our Business Following the Transaction

Following the Transaction we will continue to operate two combined-cycle electric power generation plants and sell electricity and electrical generation capacity in the United States. The two combined-cycle plants are located in Hot Spring County, Arkansas and Hinds County, Mississippi and have an aggregate capacity of 1,140 megawatts. More information is available online at www.kgenpower.com. We are seeking to sell both these plants, but intend to continue selling power from these plants until we are able to complete a sale of the plants. There is no assurance that we will reach an agreement with any party to purchase these plants at an attractive price or that, if an agreement is entered into, the sale of these plants will be completed.

Interests of Executive Officers and Directors in the Transaction

When reading this Proxy Statement, you should be aware that our executive officers and directors may have interests in the Transaction that may be different from, or in addition to, the interests of our stockholders generally. Our Board was aware of these interests and considered them, among other factors, in unanimously (i) determining that the Transaction is in the best interest of KGen and its stockholders, (ii) approving the Purchase and Sale Agreement and (iii) recommending the Transaction to the stockholders. A description of these interests is set forth below.

RSUs held by Executive Officers and Directors

Our Chairman, our executive officers and one of our directors currently hold RSUs. In accordance with the terms of their grant agreements, a portion of the RSUs held by our Chairman and each of our executive officers (other than Mr. White) will vest upon the consummation of the Transaction as set forth in the table below. Upon vesting, our Chairman and each executive officer and director will generally receive a number of shares equal to the number of RSUs then being vested. The following table sets forth

the number of RSUs held by our Chairman and our named executive officers that will vest upon consummation of the Transaction.

Director/Executive Officers	Number of RSUs
Daniel T. Hudson, ... Chairman of the Board	26,250
James H. Sweeney, ... Senior Vice President, Energy Management	11,925
William R. Marlow, ... General Counsel & Secretary	11,250
Charles L. Holland, ... Senior Vice President, Operations	11,250
W. Kevin Redmond, ... Chief Accounting Officer and Controller	8,700

Cash Bonuses

Thomas B. White

Pursuant to Mr. White's employment agreement and assuming that there is no purchase price adjustment, Mr. White will be paid a cash bonus upon the consummation of the Transaction in an amount equal to $340,000. This amount will be paid in a lump sum on the third business day after the consummation of the Transaction. In the event that the purchase price is adjusted, Mr. White's transaction bonus will be adjusted proportionally.

Other Named Executive Officers

Pursuant to the KGen Power Management Inc. Employee Performance Bonus and Retention Plan for Senior Employees and their respective restated award letters thereunder, and assuming that there is no purchase price adjustment, each of Mr. Sweeney, Mr. Marlow, Mr. Holland, and Mr. Redmond will be paid a cash bonus upon the consummation of the Transaction in the following amounts: $216,240, $204,000, $204,000, and $157,760, respectively. In the event that the purchase price is adjusted, each executive's transaction bonus will be adjusted proportionally.

Stockholder Approval Requirement

The Board is seeking stockholder approval of the Transaction because we are a Delaware corporation and the Transaction may constitute the sale of "substantially all" of our property and assets under Section 271 of the DGCL. Section 271 of the DGCL requires that a Delaware corporation obtain the approval of the stockholders for the sale of "all or substantially all of its property and assets." Additionally, approval of the Transaction by our stockholders is a condition to Closing under the Purchase and Sale Agreement.

Appraisal Rights in Respect of the Transaction

Under Delaware law, our stockholders are not entitled to appraisal rights in connection with the Transaction.

Regulatory Approvals

Under the terms of the Purchase and Sale Agreement and the provisions of the HSR Act, the Transaction may not be completed until notification and report forms have been filed with the FTC and

the DOJ, and until the expiration of a 30 calendar day waiting period, or the early termination of that waiting period, following the parties' filing of their respective notification and report forms. If the FTC or the DOJ issues a Request for Additional Information and Documentary Material prior to the expiration of the waiting period, the parties must observe a second 30 calendar day waiting period, which would begin to run only after both parties have substantially complied with the request for information, unless the waiting period is terminated earlier or extended with the consent of the parties. KGen and Oglethorpe expect to shortly file their respective notification and report forms under the HSR Act with the FTC and the DOJ, and the initial 30 calendar day waiting period will expire 30 days after the date of filing unless terminated earlier.

At any time before or after consummation of the Transaction, notwithstanding the termination of the waiting period under the HSR Act, the FTC or the DOJ could take such action under the antitrust laws as it deems necessary or desirable in the public interest, including seeking to enjoin the consummation of the Transaction and seeking divestiture of substantial assets of the Company or Oglethorpe. At any time before or after the consummation of the Transaction, and notwithstanding the termination of the waiting period under the HSR Act, any state could take such action under the antitrust laws as it deems necessary or desirable in the public interest. Such action could include seeking to enjoin the consummation of the Transaction and seeking divestiture of substantial assets of KGen or Oglethorpe. Private parties may also seek to take legal action under the antitrust laws under certain circumstances.

In addition, the consummation of the Transaction cannot occur without prior approval of the Transaction by FERC. KGen filed with FERC an application for approval of the Transaction under Section 203 of the Federal Power Act on February 11, 2011. FERC is currently evaluating the application to determine whether the proposed Transaction is consistent with the public interest and whether it will result in cross-subsidization or the pledge or encumbrance of utility assets for the benefit of any "associate company" (as defined in the Public Utility Holding Company Act of 2005). FERC may grant approval subject to conditions and also retains the authority to issue supplemental orders imposing additional conditions at any time.

Under the terms of the Purchase and Sale Agreement, Oglethorpe is not obligated to close the Transaction if it is obligated to divest or change the operations of any of its assets in order to consummate the Transaction.

Accounting Treatment of the Transaction

If the Transaction is consummated, it is expected to be accounted for as a sale of assets, in conformity with GAAP. At the closing of the Transaction, the excess of the purchase price received by us, less transaction expenses, over the carrying value of the assets sold in the Transaction will be recognized as a gain for financial accounting purposes. For additional information, see "Unaudited Pro Forma Consolidated Financial Statements."

Material United States Federal Income Tax Consequences

The following is a summary of the material United States federal income tax consequences of the Transaction based upon the Internal Revenue Code of 1986, as amended (the "Code"), applicable U.S. Treasury Regulations, court decisions, and rulings and pronouncements of the Internal Revenue Service, all as in effect on the date hereof and, all of which are subject to change, possibly on a retroactive basis. This summary does not purport to be a complete analysis of all federal income tax consequences of the Transaction, nor does it address any aspect of state, local, foreign or other tax laws.

The Transaction will be treated as a sale of corporate assets in exchange for cash. The Transaction is a taxable transaction for United States federal income tax purposes. We will realize gain with respect to the membership interests of Murray subsidiary equal to the difference between the proceeds received by us on such sale and our tax basis in the membership interests sold. We expect to use our existing NOLs to offset

all but approximately $45 million of taxable gain resulting from the Transaction. However, a determination of the exact extent to which our NOLs will be available to offset taxable gain resulting from the Transaction is highly complex and is based in part upon facts that will not be known until the completion of the Transaction and the financial performance of the Company in the current fiscal year.

The Transaction is entirely a corporate action and therefore the Transaction itself will not be taxable to our stockholders. However, stockholders may be subject to United States federal income tax on the special dividend the Board expects to declare out of the net proceeds of the Transaction.

TERMS OF THE PURCHASE AND SALE AGREEMENT

Explanatory Note Regarding the Purchase and Sale Agreement

The Purchase and Sale Agreement and this summary of its terms have been included to provide you with information regarding the terms of the Purchase and Sale Agreement. Factual disclosures about the Company contained in this Proxy Statement or in the Company's reports posted on our website may supplement, update or modify the factual disclosures about the Company contained in the Purchase and Sale Agreement and described in this summary. The representations, warranties and covenants made in the Purchase and Sale Agreement by Seller (on behalf of itself and Murray) and Oglethorpe were qualified and subject to important limitations agreed to by Seller and Oglethorpe in connection with negotiating the terms of the Purchase and Sale Agreement. In particular, in your review of the representations and warranties contained in the Purchase and Sale Agreement and described in this summary, it is important to bear in mind that the representations and warranties were negotiated with the principal purposes of establishing the circumstances in which a party to the Purchase and Sale Agreement may have the right not to consummate the Transaction if the representations and warranties of the other party prove to be untrue due to a change in circumstance or otherwise, and allocating risk between the parties to the Purchase and Sale Agreement, rather than establishing matters as facts. The representations and warranties may also be subject to a contractual standard of materiality different from those generally applicable to stockholders and in some cases were qualified by disclosures that were made by each party to the other, which disclosures are not reflected in the Purchase and Sale Agreement. Moreover, information concerning the subject matter of the representations and warranties, which do not purport to be accurate as of the date of this Proxy Statement, may have changed since the date of the Purchase and Sale Agreement and subsequent developments or new information qualifying a representation or warranty may have been included in this Proxy Statement.

General

The Purchase and Sale Agreement provides that Oglethorpe Power Corporation will acquire all of the membership interests of our subsidiary KGen Murray I and II LLC.

As consideration in the Transaction, we will be paid $531,250,000 in cash at the Closing. In addition, we will also be entitled to receive from the Murray subsidiary all the cash it holds prior to the Closing. The consideration will be adjusted at the Closing for (i) certain increases or decreases in inventory from the Murray subsidiary's balance sheet as of September 30, 2010 and (ii) working capital (which for purposes of the Purchase and Sale Agreement only includes accounts payable, accounts receivable and prepaid expenses).

Within 110 days of the Closing, Oglethorpe will prepare a closing statement setting forth the final working capital amount and the final amount of inventory. We will then have 30 days to review the closing statement. If we and Oglethorpe agree on the calculations, then the purchase price will be adjusted to reflect any differences from the estimates provided at Closing and the appropriate party will make a payment. If we disagree with Oglethorpe's calculations, the matters in dispute will be submitted to an independent accounting firm to make a binding determination and the parties will make any appropriate payments based on the final determination of the independent accounting firm.

Representations and Warranties

The Purchase and Sale Agreement contains general representations and warranties made by Seller on behalf of itself and the Murray subsidiary on the one hand and Oglethorpe on the other hand, regarding aspects of their respective businesses, financial condition and structure, as well as other facts pertinent to the Transaction.

Seller has made a number of representations and warranties to Oglethorpe, including representations and warranties related to, among other things, the following matters:

- corporate organization, good standing and qualification;
- authority to enter into the Purchase and Sale Agreement and the enforceability of the Purchase and Sale Agreement;
- ownership and title to the membership interests;
- required regulatory filings, consents and approvals of governmental entities;
- litigation and other legal proceedings;
- brokers and finders; and
- compliance of this Proxy Statement with law.

Seller has also made a number of representations and warranties to Oglethorpe about the Murray subsidiary, including representations and warranties related to, among other things, the following matters:

- corporate organization, good standing and qualification;
- required regulatory filings, consents and approvals of governmental entities;
- capitalization;
- sufficiency of the assets;
- litigation and other legal proceedings;
- compliance with laws and orders and regulatory approvals;
- certain financial statements;
- undisclosed liabilities;
- changes since September 30, 2010;
- taxes;
- material contracts;
- real property;
- title to personal property;
- environmental matters;
- intellectual property;
- brokers and finders;
- employee matters;
- insurance;
- affiliate transactions;
- spare parts inventory;
- operation and maintenance of the power plants and operating records;
- existing title policy; and
- financial resources to pay the termination fee.

Oglethorpe has made a number of representations and warranties to us, including representations and warranties related to, among other things, the following matters:

- corporate organization, good standing and qualification;
- authority to enter into the Purchase and Sale Agreement and the enforceability of the Purchase and Sale Agreement;
- required regulatory filings, consents and approvals of governmental entities;
- litigation and legal proceedings;
- brokers and finders;
- investment intent;
- financial resources to pay the purchase price; and
- investigation of the Murray subsidiary.

Regulatory Approvals

The parties to the Purchase and Sale Agreement have agreed to use commercially reasonable efforts to obtain the regulatory and government approvals necessary to consummate the transaction. Specifically, the parties have agreed to make all the necessary filings under the HSR Act and FERC. However, Oglethorpe cannot be obligated to divest or change the operations of any of its assets or the Murray subsidiary's assets in order to consummate the Transaction. The filing fees in connection with all governmental and regulatory filings are to be divided evenly between Oglethorpe and us.

Access Prior to Closing

Subject to certain limitations, Seller has agreed to give Oglethorpe reasonable access prior to the Closing, to the Murray subsidiary, its power plants, properties, management, books and records. Oglethorpe has agreed to indemnify Seller for certain claims for injury or death or damage to property caused by any representatives of Oglethorpe who are on the Murray subsidiary's property.

Operation of the Murray Subsidiary Prior to Closing

Seller has agreed in the Purchase and Sale Agreement that, until the Closing, it will cause the Murray subsidiary to (i) maintain its assets and properties and operate its business in the ordinary course consistent with past practice, and (ii) use commercially reasonable efforts to (a) comply with the rules and reporting obligations under the North American Electric Reliability Corporation (as designated by FERC) and (b) comply will all applicable environmental laws. Seller has also agreed that until the Closing, it will cause the Murray subsidiary not to take any of the following actions without the consent of Oglethorpe:

- amend its organizational documents;
- dissolve or wind-up;
- acquire or dispose of certain real property or assets;
- incur certain liens;
- amend or terminate material contracts;
- incur certain indebtedness;
- materially change the amount of inventory and supplies;
- terminate or amend any governmental or regulatory approval;

- incur capital expenditures in excess of $500,000 in the aggregate;
- commit to incur any post-Closing liabilities or expenses in excess of $400,000 in the aggregate except in the ordinary course of business;
- modify its corporate existence by merger or otherwise;
- forgive or cancel any debts or settle any claims outside of the ordinary course of business;
- fail to maintain or make material changes to certain insurance policies;
- hire any employees or establish any compensation or benefit plan or arrangement on behalf of any officer or director;
- transfer, lease or create any encumbrances on any of its real property;
- transfer, lease, dispose of or create certain liens on any of its membership interests;
- issue any securities or rights to acquire any securities;
- make any material change in its accounting principles except as otherwise required by GAAP;
- make any changes to certain governmental and regulatory approvals except in the ordinary course of business;
- take certain actions with respect to taxes;
- enter into any contract for the purchase or sale of gas or electric power that has a delivery period in excess of two (2) months;
- enter into any contract (other than purchase orders) with a value in excess of $100,000 providing for the prepayment of services;
- hire, promote or fire any person with a supervisory role at its power plants;
- engage in certain discussions regarding any long-term sale of capacity, energy or other products from its power plants;
- settle any claim by a governmental authority with a value of $100,000 or greater;
- enter into, or make any changes to, certain purchase orders;
- enter into certain contracts; or
- approve certain budget overrun proposals.

Proxy Statement; Special Meeting; Board Recommendation

We have agreed in the Purchase and Sale Agreement to send out a proxy statement to all of our stockholders that complies in all material respects with Section 14(a) of the Securities Exchange Act of 1934, as amended, and provide Oglethorpe with an opportunity to review such statement prior to it being sent out. We have also agreed to (i) hold a special meeting of stockholders to obtain the affirmative vote of the holders of a majority of the outstanding shares of our common stock in favor of a resolution authorizing the sale of the Murray subsidiary, (ii) solicit proxies from our stockholders in favor of such resolution, and (iii) include a recommendation from our board of directors to vote in favor of such resolution.

Subject to certain exceptions, the Board is required to recommend to our stockholders that they approve a resolution authorizing the sale of the membership interests of the Murray subsidiary to Oglethorpe at the Special Meeting. Under certain circumstances described below, the Board may choose

not make the recommendation to stockholders or withdraw its recommendation if already provided to the Stockholders (a "Recommendation Change").

Restrictions on Solicitation of Other Offers

Under the Purchase and Sale Agreement, we may not (and must cause each of our affiliates and subsidiaries, and use commercially reasonable efforts to cause our and their representatives, not to), subject to certain exceptions, (a) solicit, initiate or knowingly encourage the submission of any Alternative Proposal, (b) furnish non-public information regarding the Murray subsidiary or the Murray facility in connection with or in response to any Alternative Proposal, (c) engage in discussions regarding any Alternative Proposal, (d) endorse or approve any Alternative Proposal, or (e) negotiate or enter into any agreement with respect to any Alternative Proposal. If, however, before our stockholders approve the Transaction, we receive an unsolicited Alternative Proposal from a third party that the Board determines in good faith, after consultation with KGen's legal and financial advisors, would be more favorable to KGen or KGen's stockholders from a financial point of view and satisfies certain other conditions (a "Superior Proposal") or would reasonably be expected to lead to a Superior Proposal, we may furnish information to the third party and engage in negotiations with the third party, subject to specified conditions. We must keep Oglethorpe informed of any Alternative Proposals, including any possible acceptance of an Alternative Proposal, and give Oglethorpe an opportunity to match any Alternative Proposal.

In addition, the Board may make a Recommendation Change if it becomes aware of certain information that it was not previously aware of and it determines in good faith that its failure to make a Recommendation Change would be inconsistent with its fiduciary duties under applicable law. See "Termination and Termination Fees" below.

Other Covenants

Within ten days following the Closing, Oglethorpe must cause the Murray subsidiary to cease using the name "KGen" and Oglethorpe has agreed to indemnify Seller for any losses incurred by Seller (or its affiliates) to the extent arising out of any use of such name by Oglethorpe or any of its affiliates.

Oglethorpe has agreed to pay any transfer taxes owed in connection with the Transaction. Following the Closing, Seller is required to timely file all tax returns for taxable periods ending prior to the Closing and pay any taxes due that were not reflected as a current liability on the Murray subsidiary's balance sheet. Seller has agreed to indemnify Oglethorpe and its affiliates for any taxes that are Seller's responsibility pursuant to the Purchase and Sale Agreement. Oglethorpe and Seller have also agreed to cooperate with respect to the content of public announcements.

Seller has agreed to maintain certain insurance policies (which will be terminated at the Closing) and perform scheduled maintenance and inspections until the Closing. Seller has agreed to provide Oglethorpe with certain transition services for up to fifteen days prior to the Closing. Seller has also agreed to terminate certain contracts and to provide Oglethorpe with certain certifications setting forth the Murray subsidiary's compliance with FERC reliability standards and certain environmental laws and permits.

Oglethorpe has agreed to take commercially reasonable steps to fulfill certain conditions, including (i) replacing certain letters of credit and cash collateral, (ii) delivering at Closing a new home office payment agreement related to the Murray Subsidiary's industrial revenue bonds, (iii) taking certain actions in connection with the delivery of a termination and release of the existing home office payment agreement, (iv) entering into certain arrangements with, and terminating and releasing Seller from certain arrangements with, Sequent Energy Management, L.P., and (v) assuming the obligations of an affiliate of Seller under a guaranty with Duke Energy Generation Services, Inc. Seller has agreed to take commercially reasonable steps to fulfill certain conditions, including (a) releasing the Murray subsidiary from certain indebtedness, (b) taking certain actions in connection with the delivery of a termination and

release of the existing home office payment agreement and (c) taking certain actions in connection with the delivery of a new home office payment agreement.

Title/Survey Matters

During the period between the execution of the Purchase and Sale Agreement and the Closing, Oglethorpe has the right to object to any new exceptions to the Murray subsidiary's title insurance policy and certain matters appearing on an updated survey of the Murray subsidiary's property. If Oglethorpe does not make any objection, it shall be deemed to have agreed to accept the membership interests in the Murray subsidiary subject to such matter. If Oglethorpe makes an objection, Seller may elect to cure the objection at its expense and the cure will become a condition to Closing. If Seller elects not to cure the objection, Oglethorpe can either waive the objection or terminate the Purchase and Sale Agreement.

Casualty Losses and Condemnation

If any asset of the Murray subsidiary is damaged or destroyed by a casualty loss prior to the Closing (a "Casualty Loss"), and after giving effect to any insurance proceeds (i) the cost of restoring such asset, if applicable, to a condition in which it operates or performs in substantially the same manner as immediately prior to such Casualty Loss plus (ii) the amount of any lost profits reasonably expected to accrue after the Closing as a result of such Casualty Loss (collectively, the "Restoration Cost") is greater than one half of a percent (0.5%) of the purchase price for the membership interests of the Murray subsidiary but less than or equal to ten percent (10%) of such purchase price, then Seller may elect to reduce the purchase price by an amount equal to the Restoration Cost, or, subject to the review of a neutral appraiser, replace the asset or repair it to the condition in which it operates or performs in substantially the same manner as immediately prior to such Casualty Loss. However, if the Restoration Cost, if applicable, is in excess of ten percent (10%) of the purchase price, then either party may terminate the Purchase and Sale Agreement within thirty days or the parties may agree to (a) have Seller repair or replace the Casualty Loss to the reasonable satisfaction of Oglethorpe, (b) reduce the purchase price by an amount equal to the Restoration Cost or (c) amend the terms of the Purchase and Sale Agreement. If Seller elects to reduce the purchase price, then Seller is entitled to any insurance proceeds in respect of the Casualty Loss. If Seller elects to reduce the purchase price and does not receive insurance proceeds prior to Closing, then Oglethorpe must cooperate with Seller in connection with obtaining such proceeds.

If any asset of the Murray subsidiary is taken by condemnation prior to the Closing and such asset has the sum of (i) a condemnation value and (ii) to the extent not included in the preceding clause (i), the amount of any lost profits or margin reasonably expected to accrue after Closing as a result of such condemnation (the "Condemnation Value") is greater than one half of a percent (0.5%) of the purchase price for the membership interests of the Murray subsidiary but less than or equal to ten percent (10%) of such purchase price, then the purchase price must be reduced by an amount equal to the Condemnation Value and Seller is entitled to any condemnation award. If the Condemnation Value is in excess of ten percent (10%) of the purchase price, then either party may terminate the Purchase and Sale Agreement within thirty days or the parties may agree to (a) reduce the purchase price by an amount equal to the Condemnation Value less any condemnation award or (b) amend the terms of the Purchase and Sale Agreement.

Conditions to Closing

Oglethorpe's obligation to complete the Transaction is subject to the satisfaction or waiver, prior to the consummation of the Transaction, of certain conditions, including:

- the accuracy of Seller's representations and warranties, provided that this condition will be deemed satisfied unless one or more inaccuracies causes a material adverse effect;

- Seller's performance of all covenants and obligations under the Purchase and Sale Agreement in all material respects;
- Seller's delivery of certain certificates at the Closing;
- no material adverse effect has occurred with respect to the Murray subsidiary;
- our stockholders have approved the Transaction in accordance with Delaware law;
- no law or order preventing the Transaction from being consummated;
- all government approvals (including FERC and the termination or expiration of the waiting period under the HSR Act) necessary to consummate the Transaction have been obtained;
- the Murray subsidiary has received certain consents from third parties;
- the Murray subsidiary has been released from certain indebtedness;
- receipt of a new home office payment agreement and consent of the bond issuer;
- Seller's execution and delivery of the escrow agreement;
- Seller's delivery of an amended title insurance policy and certain title affidavits and good standing certificates for Seller and the Murray subsidiary; and
- Seller's delivery of a certificate of non-foreign status of the Murray subsidiary pursuant to Section 1445 of the Code and Sections 1.1445-2(b) and (c) of the Treasury Regulations.

Seller's obligation to complete the Transaction is subject to the satisfaction or waiver, prior to the consummation of the Transaction, of certain conditions, including:

- the accuracy of Oglethorpe's representations and warranties, provided that this condition will be deemed satisfied unless one or more inaccuracies would have a material adverse effect on Oglethorpe's ability to perform its obligations under the Purchase and Sale Agreement;
- Oglethorpe's performance of all covenants and obligations under the Purchase and Sale Agreement in all material respects;
- Oglethorpe's delivery of certain certificates at the Closing;
- our stockholders have approved the Transaction in accordance with Delaware law;
- no law or order preventing the Transaction from being consummated;
- all government approvals (including FERC and the termination or expiration of the waiting period under the HSR Act) necessary to consummate the Transaction have been obtained;
- certain letters of credit and collateral have been replaced by Oglethorpe;
- Seller has received releases from third parties with respect to certain security agreements, guaranties and liens;
- receipt of a termination and release of the existing home office payment agreement and consent of the bond issuer; and
- Buyer's execution and delivery of the escrow agreement.

Termination and Termination Fees

The Purchase and Sale Agreement can be terminated:

- by mutual written consent of Oglethorpe and Seller;

- by either Oglethorpe or Seller if, subject to certain conditions, the Closing has not occurred on or before June 30, 2011;
- by either Oglethorpe or Seller if, subject to certain conditions, a court has issued an order prohibiting the consummation of the Transaction;
- by either Oglethorpe or Seller if, subject to the conditions described in "Casualty Losses and Condemnation" above, a Casualty Loss has occurred or an asset of the Murray subsidiary has been taken by condemnation;
- by Oglethorpe, if there has been a material breach by Seller of any of its representations, warranties, covenants or agreements which would result in a failure of a condition to Closing that cannot be cured prior to June 30, 2011;
- by Seller, if there has been a material breach by Oglethorpe of any of its representations, warranties, covenants or agreements which would result in a failure of a condition to Closing that cannot be cured prior to June 30, 2011;
- by Oglethorpe, if Seller fails to hold the Special Meeting, in which case Seller will be required to pay Oglethorpe a termination fee of $20 million;
- by either Oglethorpe or Seller if the Company's stockholders vote and fail to approve the Transaction at the Special Meeting, in which case, Seller will be required to pay Oglethorpe a termination fee of $4 million if no Recommendation Change was made, and $20 million if a Recommendation Change was made; or
- by Seller, in order to enter into an alternative agreement for a superior proposal, in which case Seller will be required to pay Oglethorpe a termination fee of $20 million.

Seller will also be required to pay Oglethorpe an additional termination fee of $16 million if all of the following events occur: (i) the Purchase and Sale Agreement is terminated under circumstances where a $4 million termination fee was payable; (ii) before the Special Meeting a third party made a proposal for an Alternative Transaction; (iii) the Company signs a definitive agreement with that third party for an Alternative Transaction within nine months of termination of the Purchase and Sale Agreement in which the implied purchase price for the Murray subsidiary is equal to or greater than 95% of the cash purchase price in the Transaction; and (iv) that agreement is subsequently consummated.

Specific Performance

The parties agreed that except for the provisions relating to the termination fees which may be paid by Seller to Oglethorpe in certain circumstances, each party is entitled to seek specific performance for a failure to perform any covenant or agreement by the other party. All remedies conferred upon the parties are deemed cumulative with and not exclusive of any one remedy and will not preclude the exercise of any other remedy.

Indemnification

Subject to certain limitations, we have agreed to indemnify and hold harmless, Oglethorpe, the Murray subsidiary, and their respective partners, members, officers, employees, affiliates and representatives, in respect of any and all losses incurred resulting from any breach or inaccuracy of any representation or warranty made by Seller or any breach of any covenant or agreement of Seller.

Subject to certain limitations, Oglethorpe has agreed to indemnify and hold harmless, Seller and its members, officers, Affiliates and representatives, in respect of any and all losses incurred resulting from any breach or inaccuracy of any representation or warranty of Oglethorpe or any breach of any covenant or agreement of Oglethorpe.

The indemnification obligations will survive for 18 months after the Closing date except that our indemnification obligations will survive for 24 months for any losses incurred in connection with breaches of the following representations and warranties:

- authority and enforceability of the Purchase and Sale Agreement;
- Seller's ownership of the membership interests;
- required regulatory filings, consents and approvals of governmental entities;
- conflicts with organizational documents or certain other agreements;
- corporate organization of the Murray subsidiary;
- taxes; and
- environmental matters.

In addition, the foregoing indemnification obligations are subject to a number of limitations, including, among others (subject to certain exceptions):

- the indemnifications provisions, in regards to breaches of representations or warranties, excluding certain representations and warranties related to (i) Seller's corporate organization, authority, ownership of the membership interests, and brokers, and (ii) the Murray subsidiary's capitalization and taxes, shall only be effective for individual losses that exceed $100,000 and only to the extent that the aggregate amount of all losses exceeds $2,656,250;
- the aggregate liability of all losses for breaches of representations and warranties cannot exceed $79,687,500.

Fees and Expenses

Whether or not the Transaction is completed, all expenses incurred in connection with the Purchase and Sale Agreement and the consummation of the Transaction contemplated thereby will be paid by the party incurring those expenses, except as specifically provided in the Purchase and Sale Agreement.

UNAUDITED PRO FORMA CONSOLIDATED FINANCIAL STATEMENTS

The following unaudited pro forma consolidated financial statements and related notes are presented to show effects of the sale of our membership interests in KGen Murray I and II LLC.

The pro forma consolidated statements of operations for our fiscal year ended June 30, 2010 and for the six months ended December 31, 2010 are presented to show net income attributable to common stock as if the sale occurred effective July 1, 2009. The pro forma consolidated balance sheet is based on the assumption that the sale occurred effective July 1, 2009.

Pro forma data are based on assumptions and include adjustments as explained in the notes to the unaudited pro forma consolidated financial statements. The pro forma data are not necessarily indicative of the financial results that would have been attained had the sale occurred on the dates referenced above and should not be viewed as indicative of operations in future periods. These unaudited pro forma consolidated financial statements should be read in conjunction with the notes hereto and our annual report for the fiscal year ended June 30, 2010 and our quarterly report for the quarter ended December 31, 2010 which are incorporated by reference into this Proxy Statement. See "Where You Can Find Additional Information."

Unaudited Pro Forma Consolidated Statement of Operations

Year Ended June 30, 2010

(in thousands, except per share amounts)

	Historical KPC	Murray Adjustments (a)	Sandersville Adjustments (b)	Pro Forma Adjustments		Adjusted Pro Forma
Revenues:						
Energy sales	$155,389	$ (89,041)	$ (85)	$ —		$ 66,263
Capacity sales	52,033	(50,101)	—	—		1,932
Total revenues	**207,422**	**(139,142)**	**(85)**	**—**		**68,195**
Operating expenses:						
Cost of fuel	131,898	(76,422)	(73)	—		55,403
Operating and maintenance	39,636	(9,900)	(1,367)	—		28,369
Gas transportation	16,569	(13,236)	—	—		3,333
Selling, general, and administrative	11,689	(956)	(120)	587	**c**	11,200
Depreciation	23,978	(11,737)	(1,999)	—		10,242
Auxiliary power	8,532	(5,423)	(414)	—		2,695
Insurance	3,466	(1,388)	(287)	—		1,791
Total operating expenses	**235,768**	**(119,062)**	**(4,260)**	**587**		**113,033**
Operating loss	**(28,346)**	**(20,080)**	**4,175**	**(587)**		**(44,838)**
Other income (expenses):						
Interest expense	(12,226)	—	—	12,224	**d**	(2)
Taxes, other than income taxes	(4,134)	960	1,072	—		(2,102)
Other	(230)	—	—	3	**d**	(227)
Total other income (expenses)	**(16,590)**	**960**	**1,072**	**12,227**		**(2,331)**
Loss from continuing operations before taxes	**(44,936)**	**(19,120)**	**5,247**	**11,640**		**(47,169)**
Income tax benefit from continuing operations	**—**	**—**	**—**	**—**		**—**
Loss from continuing operations after taxes	**(44,936)**	**(19,120)**	**5,247**	**11,640**		**(47,169)**
Loss on discontinued operations, net of tax	**—**	**—**	**—**	**(5,247)**	**b**	**(5,247)**
Net loss	**$ (44,936)**	**$ (19,120)**	**$ 5,247**	**$ 6,393**		**$ (52,416)**
Loss per share from continuing operations—basic	$ (0.80)					$ (0.84)
Loss per share from continuing operations—diluted	$ (0.80)					$ (0.84)
Loss per share from discontinued operations—basic	$ —					$ (0.09)
Loss per share from discontinued operations—diluted	$ —					$ (0.09)
Net loss per share—basic	$ (0.80)					$ (0.93)
Net loss per share—diluted	$ (0.80)					$ (0.93)
Weighted average shares outstanding—basic	55,969			56,080	**e**	56,080
Weighted average shares outstanding—diluted	55,969			56,087	**e**	56,087

Unaudited Pro Forma Consolidated Statement of Operations

For the Six Months Ended December 31, 2010

(in thousands, except per share amounts)

	Historical KPC	Murray Adjustments (a)	Sandersville Adjustments (b)	Pro Forma Adjustments		Adjusted Pro Forma
Revenues:						
Energy sales	$116,122	$(61,760)	$ 2	$ —		$ 54,364
Capacity sales	34,874	(31,465)	—	—		3,409
Total revenues	**150,996**	**(93,225)**	**2**	**—**		**57,773**
Operating expenses:						
Cost of fuel	96,804	(51,906)	—	—		44,898
Operating and maintenance	17,951	(9,703)	(68)	—		8,180
Gas transportation	9,022	(6,640)	—	—		2,382
Selling, general, and administrative	6,457	(754)	(3)	367	c	6,067
Depreciation	11,098	(5,913)	—	—		5,185
Auxiliary power	4,443	(2,909)	(20)	—		1,514
Insurance	1,325	(612)	63	—		776
Total operating expenses	**147,100**	**(78,437)**	**(28)**	**367**		**69,002**
Operating income (loss)	**3,896**	**(14,788)**	**30**	**(367)**		**(11,229)**
Other income (expenses):						
Net gain on sale of assets	64,991	—	(64,991)	—		—
Interest expense	(4,591)	—	—	1,805	d	(2,786)
Taxes, other than income taxes	(1,565)	458	24	—		(1,083)
Other	(73)	—	—	1	d	(72)
Total other income (expenses)	**58,762**	**458**	**(64,967)**	**1,806**		**(3,941)**
Income (loss) from continuing operations before taxes	**62,658**	**(14,330)**	**(64,937)**	**1,439**		**(15,170)**
Income tax (expense) benefit from continuing operations	**—**	**—**	**—**	**—**		**—**
Income (loss) from continuing operations after taxes	**62,658**	**(14,330)**	**(64,937)**	**1,439**		**(15,170)**
Gain on discontinued operations, net of tax	**—**	**—**	**—**	**64,937**	**b**	**64,937**
Net income	**$ 62,658**	**$(14,330)**	**$(64,937)**	**$66,376**		**$ 49,767**
Earnings (loss) per share from continuing operations—basic	$ 1.12					$ (0.27)
Earnings (loss) per share from continuing operations—diluted	$ 1.12					$ (0.27)
Earnings per share from discontinued operations—basic	$ —					$ 1.16
Earnings per share from discontinued operations—diluted	$ —					$ 1.16
Net earnings per share—basic	$ 1.12					$ 0.89
Net earnings per share—diluted	$ 1.12					$ 0.89
Weighted average shares outstanding—basic	56,010			56,117	e	56,117
Weighted average shares outstanding—diluted	56,033			56,187	e	56,187

Unaudited Pro Forma Consolidated Balance Sheet

December 31, 2010

(in thousands, except per share amounts)

	Historical KPC	Pro Forma Adjustments (a)		Adjusted Pro Forma
Assets				
Current assets:				
Cash and cash equivalents	$ 130,323	$ 400,414		$530,737
Restricted cash and cash equivalents	7,443	(7,443)		—
Short-term investments	4,000	—		4,000
Accounts receivable	7,986	(7,048)		938
Spare parts inventories	9,513	(4,255)		5,258
Prepaid expenses and other current assets	781	(189)		592
Total current assets	**160,046**	**381,479**		**541,525**
Property, plant, and equipment	638,779	(349,021)		289,758
Less: accumulated depreciation	84,917	(45,541)		39,376
Net property, plant, and equipment	**553,862**	**(303,480)**		**250,382**
Contract-based intangibles (net of $41,482 of accumulated amortization)	42,060	(42,060)		—
Deferred charge	2,070	(2,070)		—
Deferred financing fees (net of $3,480 of accumulated amortization)	2,784	(2,784)	**b**	—
Other noncurrent assets	325	(80)		245
Total assets	**$ 761,147**	**$ 31,005**		**$792,152**
Liabilities and stockholders' equity				
Current liabilities:				
Accounts payable and accrued liabilities	$ 17,968	$ (12,424)	**b**	$ 5,544
Current portion of long-term debt	1,393	(1,393)		—
Total current liabilities	**19,361**	**(13,817)**		**5,544**
Long-term debt	132,366	(132,366)		—
Contract-based intangibles (net of $5,015 of accumulated amortization)	14,484	(383)		14,101
Other noncurrent liabilities	1,810	(1,793)	**b**	17
Common stock (par value $.01; 150,000 shares authorized; 56,025 shares issued and outstanding at December 31,2010)	560	—		560
Additional paid in capital	743,303	2,166	**b**	745,469
Retained earnings (accumulated deficit)	(150,737)	177,198		26,461
Total stockholders' equity	593,126	179,364		772,490
Total liabilities and stockholders' equity	**$ 761,147**	**$ 31,005**		**$792,152**
Book value per share	**$ 10.59**			**$ 13.76**

Notes to Unaudited Adjusted Pro Forma Consolidated Financial Statements

Assumptions

The unaudited adjusted pro forma financial statements are provided for illustrative purposes only and are not necessarily indicative of the results that would have been achieved had the sale of the Company's Murray facility occurred on the dates indicated and is not necessarily indicative of the consolidated financial statements of the Company for any future period. The unaudited pro forma consolidated financial statements reflect the following assumptions:

- The Company sold the Murray subsidiary on July 1, 2009.
- As the Company's previously-owned KGen Sandersville LLC subsidiary was held-for-sale on the Company's June 30, 2010 historical balance sheet, the results of operations for the year ended June 30, 2010 were treated as discontinued operations. Sandersville's results of operations were discontinued upon the sale of the Murray subsidiary on July 1, 2009 due to the discontinued involvement in the geographic region comprising that business segment.
- The debt structure of the Company's subsidiary, KGen LLC, was assumed to be repaid in full as of July 1, 2009.
- An additional 106,769 shares of common stock issuable upon the vesting of RSUs that vest upon consummation of the sale of the Murray subsidiary were assumed to have been granted and vested on July 1, 2009.

Pro Forma Adjustments to the Unaudited Adjusted Pro Forma Statement of Operations for the Fiscal Year Ended June 30, 2010

a) Reflects the elimination of the results of the Murray subsidiary for the year ended June 30, 2010. The net impact is comprised of the following:

   1) Elimination of $139.1 million of revenues for the fiscal year ended June 30, 2010.

   2) Elimination of $119.1 million of operating expenses for the fiscal year ended June 30, 2010.

   3) Elimination of $1.0 million of other expenses for the fiscal year ended June 30, 2010.

b) Reflects the elimination of the results of KGen Sandersville LLC for the fiscal year ended June 30, 2010 from continuing operations. The net impact is comprised of the following:

   1) Elimination of $85.0 thousand of revenues for the fiscal year ended June 30, 2010.

   2) Elimination of $4.3 million of operating expenses for the fiscal year ended June 30, 2010.

   3) Elimination of $1.1 million of other expenses for the fiscal year ended June 30, 2010.

c) Reflects the inclusion of the RSU compensation expense that would have been recorded at the assumed grant/vest date of July 1, 2009.

d) Reflects the removal of deferred financing fees amortization, interest expense, working capital facility fees, synthetic letter of credit facility fees, gains/losses on swap derivative instruments, and letter of credit fees associated with the previous financing.

e) Basic loss per share was calculated assuming the weighted average amount of shares of common stock outstanding was 56,079,855 for the fiscal year ended June 30, 2010. Diluted loss per share was calculated assuming the weighted average amount of shares of common stock outstanding was 56,087,275 for the fiscal year ended June 30, 2010.

Pro Forma Adjustments to the Unaudited Adjusted Pro Forma Statement of Operations for the Six Months Ended December 31, 2010

a) Reflects the elimination of the results of the Murray subsidiary for the six months ended December 31, 2010. The net impact is comprised of the following:

   1) Elimination of $93.2 million of revenues for the six months ended December 31, 2010.

   2) Elimination of $78.4 million of operating expenses for the six months ended December 31, 2010.

   3) Elimination of $0.5 million of other expenses for the six months ended December 31, 2010.

b) Reflects the elimination of the results of KGen Sandersville LLC for the six months ended December 31, 2010 from continuing operations. The net impact is comprised of the following:

   1) Elimination of a $2.0 thousand debit adjustment to revenues for the six months ended December 31, 2010.

   2) Elimination of $28.0 thousand of operating expenses for the six months ended December 31, 2010.

   3) Elimination of $65.0 million of other income for the six months ended December 31, 2010.

c) Reflects the removal of the RSUs compensation expense associated with the RSUs that will vest upon the consummation of the sale of the Murray subsidiary recorded during the six months ended December 31, 2010. Reflects the inclusion of the RSU compensation expense that would have been recorded at the assumed grant/vest date of July 1, 2009.

d) Reflects the removal of deferred financing fees amortization, interest expense, working capital facility fees, synthetic letter of credit facility fees, gains/losses on swap derivative instruments, and letter of credit fees associated with the previous financing.

e) Basic earnings (loss) per share was calculated assuming the weighted average amount of shares of common stock outstanding was 56,116,816 for the six months ended December 31, 2010. Diluted earnings (loss) per share was calculated assuming the weighted average amount of shares of common stock outstanding was 56,187,314 for the six months ended December 31, 2010.

Pro Forma Adjustments to the Unaudited Adjusted Pro Forma Balance Sheet as of December 31, 2010

a) Reflects the elimination of the KGen Murray I and II LLC balance sheet at December 31, 2010 and other cash transaction fees from the purchase price to calculate the gain upon the sale of the Murray subsidiary. The net impact is comprised of the following:

   1) Elimination of $11.5 million of current assets at December 31, 2010.

   2) Elimination of $303.5 million of property, plant, and equipment at December 31, 2010.

   3) Elimination of $44.2 million of noncurrent assets at December 31, 2010.

   4) Elimination of $9.3 million of current liabilities at December 31, 2010.

   5) Elimination of $0.4 million of noncurrent liabilities at December 31, 2010.

   6) Elimination of $349.5 million of stockholders' equity balance at December 31, 2010.

   The resulting use of the cash proceeds to repay the existing credit facility is also reflected.

b) Reflects the removal of the balance of the deferred financing fees and the balances of the short and long-term swap derivatives associated with the previous financing.

SECURITY OWNERSHIP OF MANAGEMENT

The table below reflects the number of shares of our common stock beneficially owned by (a) each director of the Company, (b) each of our named executive officers and (c) all directors and officers as a group (including officers of the Company not reflected below). Unless otherwise noted, the information is stated as of February 3, 2011. There were 56,024,736 shares of our common stock outstanding as of February 3, 2011.

Each of the share numbers listed represented less than 1% of our outstanding shares of common stock, except for the share number listed for officers/directors combined, which represented approximately 1.5% of our outstanding shares of common stock.

Officers/Directors	Shares Beneficially Owned(
Daniel T. Hudson	110,071(1)
James P. Jenkins	0(2)
Gerald J. Stalun	0(3)
Thomas B. White	23,801
James H. Sweeney	240,445(4)
William R. Marlow	151,204(5)
Charles L. Holland	146,428(6)
W. Kevin Redmond	98,916(7)
All officers/directors combined	860,682(8)

Notes:

(1) Mr. Hudson's shares beneficially owned include 100,000 shares subject to vested option with an exercise price of $19.50 per share.

(2) Mr. Jenkins is a Managing Director of King Street Capital Management, L.P. (KSCM). Funds for which KSCM provides investment advisory services or is an investment manager, together, own 5,574,000 shares of common stock (9.96% of the outstanding shares of common stock). These funds hold an economic interest, but no voting rights, in an additional 589,900 shares of common stock (1.05% of the outstanding shares of common stock). Mr. Jenkins disclaims beneficial ownership of these shares.

(3) Mr. Stalun is a Managing Director of EIG Global Energy Partners. Funds and an investor for which an affiliate of EIG Global Energy Partners is the general partner or investment manager, together, own 5,714,286 shares of common stock (10.21% of the outstanding shares of common stock). Mr. Stalun disclaims beneficial ownership of these shares.

(4) Mr. Sweeney's shares beneficially owned listed above include 201,470 shares subject to vested options with exercise prices ranging from $14.00 to $18.20 per share.

(5) Mr. Marlow's shares beneficially owned listed above include 136,704 shares subject to vested options with exercise prices ranging from $14.00 to $18.20 per share.

(6) Mr. Holland's shares beneficially owned listed above include 122,678 shares subject to vested options with exercise prices ranging from $14.00 to $18.20 per share.

(7) Mr. Redmond's shares beneficially owned listed above include 90,266 shares subject to vested options with exercise prices ranging from $14.00 to $18.20 per share.

(8) The shares of all officers and directors combined listed above include 651,118 shares subject to vested options with exercise prices ranging from $14.00 to $19.50 per share. Officers and directors are entitled to vote 81,455 of the shares listed.

WHERE YOU CAN FIND ADDITIONAL INFORMATION

We provide annual and quarterly reports, proxy statements and other information to our stockholders and posted these documents and information on an Internet web site maintained by us at www.kgenpower.com. You may obtain free copies of these documents and other information by going to the "News and Financials" page of our Internet web site. The information posted on our website, other than copies of the documents listed below, is not part of this Proxy Statement, and therefore is not incorporated herein by reference.

We "incorporate by reference" into this Proxy Statement certain documents we have posted or will post on our website prior to the Special Meeting. This means that we can disclose important information to you by referring you to those documents. The information incorporated by reference is considered to be a part of this Proxy Statement. Later information that we post on our website and incorporate by reference into this Proxy Statement will update and supersede earlier information included in this Proxy Statement or incorporated by reference.

We incorporate by reference into this Proxy Statement the following documents posted on our website:

- Our Annual Report for the Fiscal Year Ended June 30, 2010;
- Our Quarterly Reports for our fiscal quarters ended September 30, 2010 and December 31, 2010;
- Our proxy statement for our 2010 annual meeting of stockholders; and
- Any other document that we post on our website after the date of this Proxy Statement to the extent we indicate in that document that it is incorporated by reference into this Proxy Statement.

Any person, including any beneficial owner of our common stock, to whom this Proxy Statement is delivered may request copies of any of the documents incorporated by reference into this document or other information concerning us, without charge, by written or telephonic request directed to:

KGen Power Corporation
1330 Post Oak Blvd, Suite 1500
Houston, Texas 77056
(713) 979-1990
Attention: William Marlow, Esq.

Please request documents by March 10, 2011 to ensure receipt before the Special Meeting.

Annex A

EXECUTION VERSION

PURCHASE AND SALE AGREEMENT

between

KGEN LLC

as Seller

and

OGLETHORPE POWER CORPORATION
(AN ELECTRIC MEMBERSHIP CORPORATION)

as Buyer

dated as of January 31, 2011

TABLE OF CONTENTS

EXHIBITS

SCHEDULES

PURCHASE AND SALE AGREEMENT

This Purchase and Sale Agreement, dated as of January 31, 2011 (this "**Agreement**"), is made and entered into by and between KGen LLC, a Delaware limited liability company ("**Seller**"), and Oglethorpe Power Corporation (An Electric Membership Corporation), a Georgia electric membership corporation ("**Buyer**"), and, solely for the limited purposes expressly set forth in *Section 11.12* hereof, KGen Power Corporation, a Delaware corporation ("**KPC**").

W I T N E S S E T H:

WHEREAS, Seller owns 100% of the membership interests (the "**Acquired Interests**") in KGen Murray I and II LLC, a Delaware limited liability company (the "**Company**"), which leases and operates two natural gas-fired, combined-cycle power generation plants located in Murray County, Georgia, one of which has a nominal capacity of 630 megawatts and the second of which has a nominal capacity of 620 megawatts (together, the "**Acquired Projects**"), pursuant to that certain Lease Agreement (the "**MCIDA Lease Agreement**"), dated May 15, 2001, by and between Murray County Industrial Development Authority and the Company (formerly known as Duke Energy Murray, LLC);

WHEREAS, Seller desires to sell, and Buyer desires to purchase, the Acquired Interests on the terms and subject to the conditions set forth in this Agreement;

WHEREAS, Seller owns that certain IDA Bond (as hereinafter defined), and in connection with the transactions contemplated by this Agreement, Seller desires to assign and transfer to Buyer, and Buyer desires to acquire and accept, the IDA Bond on the terms and subject to the conditions set forth in this Agreement; and

WHEREAS, KPC joins in this Agreement for the limited purposes expressly set forth in *Section 11.12* hereunder to induce Buyer to enter into the terms and conditions set forth herein and acknowledges that it will derive a material and substantial benefit from the transactions contemplated by this Agreement.

NOW, THEREFORE, in consideration of the premises and the mutual representations, warranties, covenants and agreements in this Agreement, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties hereby agree as follows:

ARTICLE I

DEFINITIONS AND CONSTRUCTION

Section 1.1 *Definitions.* As used in this Agreement, the following capitalized terms have the meanings set forth below:

"**1933 Act**" has the meaning given to that term in *Section 5.6*.

"**Accounting Firm**" has the meaning given to that term in *Section 2.4(d)*.

"**Accounts Receivable**" means, as of any date of determination, all accounts receivable of the Company as of 11.59 p.m. on the day prior to such date as reflected in the balance sheet of the Company, prepared in accordance with GAAP consistent with past practices.

"**Accounts Payable**" means, as of any date of determination, the accounts payable and accrued liabilities of the Company as of 11.59 p.m. on the day prior to such date as reflected in the balance sheet of the Company, prepared in accordance with GAAP consistent with past practices.

"**Acquired Interests**" has the meaning given to that term in the recitals to this Agreement.

"**Acquired Interests Transfer Power**" means the Acquired Interests transfer power in the form of *Exhibit A* attached hereto.

"**Acquired Projects**" has the meaning given to that term in the recitals to this Agreement.

"**Affiliate**" means, with respect to any Person, any other Person that directly or indirectly through one or more intermediaries, controls, is controlled by or is under common control with such Person. For purposes of this definition, "control" of a Person means the power, direct or indirect, to direct or cause the direction of the management and policies of such Person whether through ownership of voting securities or ownership interests, by Contract or otherwise, and specifically with respect to a corporation, partnership or limited liability company, means direct or indirect ownership of more than 50% of the voting securities in such corporation or of the voting interest in a partnership or limited liability company.

"**Agreement**" has the meaning given to that term in the preamble to this Agreement.

"**Appraisal Firm**" shall have the meaning given to that term in *Section 6.11(a)(i)*.

"**Assets**" of any Person means all assets and properties of every kind, nature, character and description (whether real, personal or mixed, whether tangible or intangible and wherever situated), including the related goodwill, which assets and properties are operated, owned or leased by such Person.

"**Business**" means the lease and operation of the Acquired Projects as currently conducted (and not including any future build out or development rights), including the generation and sale of electricity and capacity and electric related products by the Company at or from the Acquired Projects as currently conducted, the receipt by the Company of fuel and the conduct of other activities by the Company related or incidental to the foregoing as currently conducted.

"**Business Combination Transaction**" means a merger, consolidation, share exchange, tender offer, business combination, reorganization, recapitalization, liquidation, dissolution, joint venture or other similar transaction.

"**Business Day**" means a day other than Saturday, Sunday or any day on which banks located in the State of New York are authorized or obligated to close.

"**Buyer**" has the meaning given to that term in the preamble to this Agreement.

"**Buyer Approvals**" has the meaning given to that term in *Section 5.3(c)*.

"**Buyer Closing Election**" has the meaning given to that term in *Section 6.11(a)*.

"**Buyer Indemnified Parties**" has the meaning given to that term in *Section 10.1(a)*.

"**Buyer Match Period**" has the meaning given to that term in *Section 6.5(d)(ii)*.

"**Buyer Title Objection**" has the meaning given to that term in *Section 6.20(a)*.

"**Buyer's Determination**" has the meaning given to that term in *Section 2.4(c)*.

"**Buyer's Disclosure Schedule**" means the disclosure schedules prepared by Buyer and delivered to Seller in connection with the execution and delivery of this Agreement.

"**Capital Expenditures**" means expenditures for capital additions to or replacements of property, plant and equipment of the Company and other expenditures for repairs on property, plant and equipment of the Company that would be capitalized by the Company in the ordinary course of business.

"**Cash Purchase Price**" has the meaning given to that term in *Section 2.2(a)*.

"**Casualty Loss**" has the meaning given to that term in *Section 6.11*.

"**Claim**" means any demand, claim, action, investigation, legal proceeding (whether at law or in equity) or arbitration.

"**Closing**" means the closing of the transactions contemplated by this Agreement, as provided for in *Section 2.3*.

"**Closing Date**" means the date on which Closing occurs.

"**Closing Date Inventory**" means the aggregate Inventory of the Company as of the Closing Date.

"**Closing Date Net Working Capital**" means the aggregate Net Working Capital of the Company as of the Closing Date.

"**Closing Title Policy**" means the Existing Title Policy amended by endorsement to extend (a) the effective date of the Existing Title Policy to the Closing Date, and (b) the amount of insurance to reflect the portion of the Cash Purchase Price that is reasonably attributable to real property interests, which Closing Title Policy shall be in the form of *Exhibit D* hereto, as such form may be amended to include any Permitted Encumbrances that arise after the date hereof and prior to the Closing Date other than as a result of a breach by Seller of its obligations under this Agreement. For purposes hereof, a marked title commitment or title endorsement signed by the Title Company irrevocably and unconditionally committing the Title Company to endorse the Existing Title Policy to effectuate the coverage of the Closing Title Policy shall be deemed an equivalent to the Closing Title Policy.

"**Code**" means the United States Internal Revenue Code of 1986, as amended, and the rules and regulations promulgated thereunder.

"**Company**" has the meaning given to that term in the recitals to this Agreement.

"**Company Consents**" has the meaning given to that term in *Section 4.2(b)*.

"**Company Contracts**" has the meaning given to that term in *Section 4.11(a)*.

"**Condemnation Value**" has the meaning given to that term in *Section 6.12*.

"**Confidentiality Agreement**" has the meaning given to that term in *Section 6.13(a)*.

"**Contract**" means any legally binding contract, lease, license, easement, mortgage, indenture, binding bid, Purchase Order, letter of credit, security agreement or other legally binding arrangement (in each case, whether written or oral).

"**Credit Agreement**" means that certain First Lien Credit and Guaranty Agreement, dated as of February 8, 2007, among Seller, as borrower, the guarantors (including the Company) party thereto, the lenders party thereto, Morgan Stanley Senior Funding, Inc., as administrative agent for the lenders, and Union Bank, N.A. (f/k/a Union Bank of California, N.A.), as issuer of letters of credit and collateral agent.

"**Credit Rating**" means, with respect to any Person, the rating given to such Person's long-term unsecured debt obligations by Standard & Poor's Ratings Group or Moody's Investors Service, Inc., as applicable, and any successors thereto.

"**Data Site**" means the online presentation of materials prepared by or for Seller to assist Buyer in its investigation of the Company and the Acquired Projects, including the documents, questions and answers and other data posted in the Intralinks "Murray I and II" virtual data room, as well as the documents otherwise made available to Buyer to the extent included on any index included in such virtual data room.

"**Disclosure Schedule**" means Buyer's Disclosure Schedule or Seller's Disclosure Schedule.

"**Duke Guarantee**" means Owner Guaranty, dated August 5, 2004, issued and delivered by KGen Partners LLC, KGen Enterprise LLC, KGen Hinds LLC, KGen Hot Spring LLC, KGen Marshall LLC, KGen New Albany LLC, KGen Sandersville LLC, KGen Southaven LLC, solely for the account of the Company, and for the benefit of Duke Energy Murray Operating, LLC, as amended and supplemented from time to time.

"**Duke O&M Agreement**" has the meaning given to that term in *Section 4.21(a)*.

"**Employee Benefit Plan**" shall mean any "employee benefit plan" (as defined in Section 3(3) of ERISA) or any other pension, retirement, profit-sharing, compensation, stock option, share purchase, phantom stock, employee stock ownership, severance or other termination pay, vacation, bonus, incentive, medical, disability, vision, dental, insurance, cafeteria, flexible spending account plan, or other employee or fringe benefit plan, or any other written or unwritten trust fund, program, arrangement, agreement or understanding, whether arrived at through collective bargaining or otherwise, for the benefit of current or former employees, leased employees, independent contractors, service providers, directors or agents of the Company, or any of their current or former spouses, dependents, or other beneficiaries.

"**Environmental Claim**" means any Claim or Loss arising out of or related to any violation of or liability under any Environmental Law or related to or arising from the presence or Release of any Hazardous Materials.

"**Environmental Law**" means all Laws as of the date hereof of any Governmental Authority having jurisdiction over the property in question addressing pollution or the protection of human health or the environment, including the Comprehensive Environmental Response, Compensation and Liability Act, 42 U.S.C. § 9601 et seq.; the Resource Conservation and Recovery Act, 42 U.S.C. § 6901 et seq.; the Federal Water Pollution Control Act, 33 U.S.C. § 1251 et seq.; the Clean Air Act, 42 U.S.C. § 7401 et seq.; the Toxic Substances Control Act, 15 U.S.C. §§ 2601 through 2629; the Oil Pollution Act, 33 U.S.C. § 2701 et seq.; the Emergency Planning and Community Right-to-Know Act, 42 U.S.C. § 11001 et seq.; the Safe Drinking Water Act, 42 U.S.C. §§ 300f through 300j; and all similar Laws (including implementing regulations) of any Governmental Authority having jurisdiction over the assets in question addressing pollution control or protection of human health or the environment.

"**Environmental Permits**" means the permits, licenses, consents, certificates, notices, waivers, registrations, filings, accreditations, franchises, approvals and other governmental authorizations and Orders issued or granted by a Governmental Authority and required by Environmental Law or otherwise relating to (i) emissions, discharges, releases or threatened releases of Hazardous Materials into ambient air, surface water, groundwater or land, or (ii) the manufacture, processing, distribution, use, treatment, storage, disposal, transport or handling of Hazardous Materials.

"**Equity Interests**" means capital stock, partnership or membership interests or units (whether general or limited), and any other interest or participation that confers on a Person the right to receive a share of the profits and losses of, or distribution of assets of, the issuing entity.

"**Equity Securities**" means (i) Equity Interests, (ii) subscriptions, calls, warrants, options or commitments of any kind or character relating to, or entitling any Person to acquire, any Equity Interests and (iii) securities convertible into or exercisable or exchangeable for shares of Equity Interests.

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

"Escrow Agent" means SunTrust Bank, National Association, or such other escrow agent as shall be mutually agreed between the Parties.

"Escrow Agreement" means the Escrow Agreement to be entered into at the Closing by and among the Escrow Agent, Seller and Buyer, substantially in the form of *Exhibit B* (with such changes as may be reasonably requested by the Escrow Agent or required to give effect to the provisions of this Agreement).

"Escrow Amount" has the meaning set forth in *Section 2.3(a)(ii)*.

"Escrow Fund" has the meaning set forth in the Escrow Agreement.

"Exchange Act" has the meaning given to that term in *Section 6.4(a)*.

"**Exempt Wholesale Generator**" has the meaning given to that term in Section 1262(6) of the PUHCA of 2005.

"**Existing Title Policy**" means First American Title Insurance Company Policy No. FA-33-554317 and all endorsements thereto dated August 18, 2004, as amended by endorsement dated March 15, 2005, and as further amended by endorsement dated February 8, 2007.

"**Expenses**" means all reasonable out-of-pocket costs, fees and expenses (including all costs, fees and expenses of counsel, accountants, investment bankers, financing sources, experts and consultants to a Party and its Affiliates) incurred by a Party or on its behalf in connection with or related to the authorization, preparation, negotiation, execution or performance of this Agreement, the preparation, printing, filing or mailing of the Proxy Statement, the solicitation of stockholder and member approvals and all other matters related to the consummation of the transactions contemplated hereby.

"**FERC**" means the Federal Energy Regulatory Commission or its successor Governmental Authority, and any committee, division or unit thereof.

"**Financial Statements**" has the meaning given to that term in *Section 4.7*.

"**FPA**" means the Federal Power Act.

"**Fundamental Representations**" has the meaning given to that term in *Section 10.2(a)(ii)*.

"**GAAP**" means generally accepted accounting principles in the United States of America as in effect from time to time on the date of determination or for the specified period, as applicable.

"**General Electric Service Agreements**" means (i) the Long Term Service Agreement, dated December 20, 2000, between Duke Energy Murray LLC, as Owner, and General Electric International, Inc., as Contractor, for Murray #1, as amended by the First Amendment to Long Term Service Agreement Murray #1, dated June 4, 2001, as further amended by the Global Amendment to Long Term Service Agreements, dated December 9, 2002, as further amended by the Amendment 2 to Long Term Service Agreement, dated June 1, 2003, as further amended by the Global Amendment #2 to Long Term Service Agreements, dated March 26, 2004, as further amended by the Third Amendment to Long Term Service Agreements, dated August 5, 2004, and as further amended by the Global Amendment #3 to Long Term Service Agreements, dated September 22, 2010, and (ii) the Long Term Service Agreement, dated December 20, 2000, between Duke Energy Murray LLC, as Owner, and General Electric International, Inc., as Contractor, for Murray #2, as amended by the First Amendment to Long Term Service Agreement Murray #2, dated June 4, 2001, as further amended by the Global Amendment to Long Term Service Agreements, dated December 9, 2002, as further amended by the Amendment 2 to Long Term Service Agreement, dated June 1, 2003, as further amended by the Global Amendment #2 to Long Term Service Agreements, dated March 26, 2004, as further amended by the Third Amendment to Long Term Service Agreements, dated August 5, 2004, and as further amended by the Global Amendment #3 to Long Term Service Agreements, dated September 22, 2010.

"**Governmental Authority**" means any (a) federal, state, local, municipal, foreign, international, multinational or other government (including any governmental agency, branch, department, official or entity and any court, tribunal, arbitrator, authority, agency, commission, official or other instrumentality); (b) body entitled to exercise any administrative, executive, judicial, legislative, police, regulatory or taxing authority; or (c) any governmental, quasi-governmental or non-governmental body administering, regulating or having general oversight over natural gas, electricity, power or other markets, including FERC and NERC.

"**Governmental or Regulatory Approval**" means any authorization, consent, approval, license, ruling, permit, tariff, rate, certification, waiver, exemption, filing, variance, registration or Order issued by or required to be filed with, delivered to or obtained from any Governmental Authority.

"**Ground Lease**" means that certain Ground Lease by and between the City of Dalton and Duke Energy Murray, LLC, dated December 6, 2000, as amended by that certain First Amendment to Ground Lease, dated June 1, 2001.

"**Hazardous Material**" means (a) any hazardous materials, hazardous wastes, hazardous substances, toxic wastes and toxic substances as those or similar terms are defined under any Environmental Laws; (b) asbestos; (c) PCBs; (d) any other hazardous, radioactive or toxic substance, material, pollutant or contaminant regulated under any Environmental Law; and (e) any petroleum, petroleum hydrocarbons, petroleum products, crude oil and any fractions or derivatives thereof.

"**Home Office Payment Agreement**" means that certain Home Office Payment and Tax Payment Assurances Agreement, Consent to Financing and Estoppel (Murray) made and entered into June 16, 2004, among Wachovia Bank, National Association, as trustee, IDA Bond Issuer, Seller, KGen Murray LLC, Duke Energy Murray, LLC and Credit Suisse First Boston.

"**HSR Act**" means the Hart-Scott-Rodino Antitrust Improvements Act of 1976, as amended, and the rules and regulations promulgated thereunder.

"**IDA Bond**" means that certain $500,000,000 Murray County Industrial Development Authority Taxable Industrial Development Revenue Bond (Duke Energy Murray, LLC Project) Series 2001 (represented by certificate No. R-2), which was issued to and registered in the name of Seller.

"**IDA Bond Issuer**" means the Murray County Industrial Development Authority.

"**Indebtedness for Borrowed Money**" means any of the following: (i) obligations for any indebtedness for borrowed money; (ii) any obligations evidenced by bonds, debentures, notes or other similar instruments; (iii) any obligations to pay the deferred purchase price of property or services (including both short-term and long-term portions thereof), except trade accounts payable and other current liabilities arising in the ordinary course of business consistent with past practices; (iv) any obligations as lessee under capitalized leases, (v) reimbursement obligations with respect to draws, contingent or otherwise, under acceptances, letters of credits, surety bonds or similar facilities; (vi) obligations required to be classified and accounted for as capital leases on a balance sheet under GAAP; (vii) any obligations under commodity swap agreements, commodity cap agreements, interest rate cap agreements, interest rate swap agreements, foreign currency exchange agreements and other similar agreements; (viii) the Project Indebtedness; and (ix) any guaranty of any of the foregoing, in each case together with all accrued interest thereon, if any, and any termination fees, prepayment penalties, "breakage" costs or similar payments associated with the repayment of or default under such Indebtedness for Borrowed Money.

"**Indemnified Parties**" has the meaning given to that term in *Section 10.1(b)*.

"**Indemnifying Party**" means a Person required to indemnify a Seller Indemnified Party or a Buyer Indemnified Party, as the case may be, pursuant to the terms of this Agreement.

"**Intellectual Property**" has the meaning given to that term in *Section 4.15*.

"**Interim Period**" has the meaning given to that term in *Section 6.1*.

"**Inventory**" means, as of any date of determination, the spare parts inventory of the Company as of 11.59 p.m. on the day prior to such date as reflected in the balance sheet of the Company, prepared in accordance with GAAP consistent with past practices, except that for purposes of the Inventory as of September 30, 2010, such amount shall be the amount of spare parts inventory reflected in the Company's balance sheet as of such date. Inventory shall not include any of the Assets set forth in *Section 4.13(b)(ii) of Seller's Disclosure Schedule*.

"**Inventory Estimate**" has the meaning given to that term in *Section 2.4(b)*.

"**KPC**" has the meaning given to that term in the preamble to this Agreement.

"**KPC Board**" has the meaning given to that term in *Section 6.4(b)(i)(2)*.

"**KPC Intervening Event**" means an event, change, development, effect, condition, circumstance, matter, occurrence or state of facts that (i) is material to KPC, (ii) was not reasonably foreseeable on the

date of this Agreement, and (iii) becomes known to the KPC Board only after the date of this Agreement; *provided*, *however*, that in no event shall any of the following constitute or lead to a KPC Intervening Event: (A) any action taken by either party pursuant to and in compliance with its obligations under this Agreement, and the consequences of any such action; (B) the receipt, existence or terms of a Takeover Proposal or any inquiry relating thereto or the consequences thereof; (C) an inquiry, proposal, offer, request for offers or proposals, or agreement by Georgia Power Company (or any of its Affiliates) to purchase, toll or otherwise obtain all or any portion of the capacity, energy or other products from either or both of the Acquired Projects or (D) any project, proposal, offer, negotiation or undertaking commenced, discussed or considered by the KPC Board prior to the date hereof.

"**KPC Notice of Intervening Event**" has the meaning given to that term in *Section 6.4(b)(ii)*.

"**KPC Recommendation**" has the meaning given to that term in *Section 6.4(b)(i)(2)*.

"**KPC Recommendation Change**" has the meaning given to that term in *Section 6.4(b)(ii)*.

"**Knowledge**" when used in a particular representation or other provision in this Agreement with respect to Seller, means the actual knowledge of the individuals listed on *Schedule 1.1(a)*, in each case (except as otherwise noted on *Schedule 1.1(a))* after due inquiry of their direct reports, and when used in a particular representation or other provision in this Agreement with respect to Buyer, means the actual knowledge of Elizabeth Higgins, George Taylor, Jim Messersmith and Lori Holt after due inquiry of their direct reports.

"**Laws**" means all federal, state, local, municipal or foreign (including supranational) laws (including common law), statutes, rules, regulations, ordinances, directives, regulations, judgments, Orders, injunctions, decrees, court decisions, arbitration awards or agency requirements of any Governmental Authority having or asserting jurisdiction over the Parties or any of their assets, and other pronouncements having the effect of law of any Governmental Authority.

"**Lien**" means any mortgage, encumbrance, pledge, charge, deed of trust, deed to secure debt, assessment, security interest, charge, lien, option, warrant, claim, equitable interest, restriction on transfer, purchase right, conditional sale or other conditional title acquisition agreement (including a capital lease), transfer of security for the payment of any Indebtedness for Borrowed Money, or restriction on the creation of any of the foregoing, whether relating to any property or right or the income or profits therefrom.

"**Loss**" means any and all judgments, losses, liabilities, amounts paid in settlement, damages, fines, penalties, deficiencies, costs, charges, Taxes, obligations, demands, fees, interest, losses and expenses (including court costs and reasonable fees of attorneys, accountants and other experts in connection with any Claim made by a Third Party). For all purposes in this Agreement the term "Losses" does not include any Non-Reimbursable Damages.

"**Market-Based Rate Authorization**" means authorization granted by FERC to the Company pursuant to Section 205 of the FPA and the rules of FERC thereunder to sell electric energy, capacity and/or certain ancillary services at rates established in accordance with market conditions.

"**Material Adverse Effect**" means a material adverse effect (a) on the business, properties, assets, liabilities, results of operations or financial condition of the Company, taken as a whole or (b) that would prevent the consummation of the transactions contemplated hereby; *provided*, *however*, that the following events, occurrences, facts, conditions, changes, developments or effects shall not be deemed to constitute, and shall not be considered in determining whether there has been or exists, a Material Adverse Effect: (i) any change generally affecting the international, national or regional (A) electric generating, transmission or distribution industry, (B) wholesale or retail markets for electric power, and/or (C) wholesale or retail markets for the natural gas industry, (ii) any change in international, national or regional markets for commodities or supplies, including electric power, natural gas or fuel and water, as applicable, used in connection with the Company, (iii) any change in market design and pricing, (iv) any change in general, international, national or regional regulatory or political conditions, including any engagements of hostilities, acts of war or terrorist activities or changes imposed by a Governmental Authority associated with additional security, (v) any change in the international, national or regional electric generating transmission or distribution systems or operations thereof or in the natural gas transmission or distribution systems or the operations thereof, (vi) any change in any Laws (including Environmental Laws) or industry standards, (vii) any change in the financial condition or results of operation of the Company attributable to, or resulting from, the identity or Credit Rating of Buyer, (viii) any change in the financial, banking, or securities markets (including any suspension of trading in, or limitation on prices for, securities on the New York Stock Exchange or Nasdaq Stock Market) or any change in the general international, national or regional economic or financial conditions, or (ix) any actions to be taken pursuant to or in accordance with this Agreement; except, in the case of changes referred to in subclauses (i)-(viii) above, to the extent any such changes adversely affect the Company, the Acquired Projects or the Business in a materially disproportionate manner as compared to the effect on other companies operating comparable natural gas-fired electric power generation facilities in the SERC Reliability Corporation region.

"**Material Governmental or Regulatory Approval**" means any Governmental or Regulatory Approval other than a Non-Material Governmental or Regulatory Approval.

"**MCIDA Lease Agreement**" has the meaning given to that term in the recitals of this Agreement.

"**Member Approvals**" has the meaning given to that term in *Section 5.2(b)*.

"**NERC**" means the North American Electric Reliability Corporation or any successor thereto, and any committee, division, or unit thereof, including any regional reliability organization.

"**Net Working Capital**" means (without duplication), with respect to the Company, the amount (expressed as a positive or negative number) equal to (i) the sum of the Accounts Receivable and Prepaid Expenses *minus* (ii) the Accounts Payable, determined in accordance with the methodology used in the preparation of *Schedule 1.1(b)*, and otherwise in accordance with GAAP.

"**New Home Office Payment Agreement**" has the meaning given to that term in *Section 6.15(b)(i)(2)*.

"**Non-Company Affiliate**" means any Affiliate of Seller, except for the Company.

"**Non-Material Governmental or Regulatory Approval**" means any Governmental or Regulatory Approval (i) not required for the continuing operation of the Acquired Projects, as currently operated by the Company, or (ii) the loss or suspension of which, or the failure to make or obtain, would not reasonably be expected to materially impair the ability of the Company to own and operate the Acquired Projects or adversely affect in any material respect the Business.

"**Non-Reimbursable Damages**" has the meaning given to that term in *Section 10.6(b)*.

"**Notice of Superior Offer**" has the meaning given to that term in *Section 6.5(d)(ii)*.

"**Operating Records**" means all data, information, books, operating records (including historical heat rate curves for each of the Acquired Projects), operating, safety and maintenance manuals, engineering and design plans, blueprints and as-built plans, specifications, drawings, reports, procedures, facility compliance plans, test records and results, other records and filings made with regulatory agencies regarding operations at the Acquired Projects, environmental procedures and similar records of Seller or its Affiliates necessary for the operation of the Business or the Contracts assigned hereunder, to the extent in the possession of Seller or its Affiliates or Representatives, or which may be obtained by Seller or its Affiliates from any Third Party using commercially reasonable efforts, other than the accounting books and records of Seller or its Affiliates (other than the Company) and such items proprietary to Third Parties.

"**Operative Agreements**" means all support or other agreements to be entered into in connection with the purchase and sale of the Acquired Interests and the transfer of the IDA Bond pursuant to this Agreement.

"**Order**" means any writ, judgment, decree, injunction or similar order of any Governmental Authority (in each case whether preliminary or final).

"**Organizational Documents**" means, with respect to any Person, the articles or certificate of incorporation or organization and by-laws, the limited partnership agreement, the partnership agreement or the limited liability company agreement, or such other organizational documents of such Person, including those that are required to be registered or kept in the place of incorporation, organization or formation of such Person and which establish the legal personality of such Person.

"**Parties**" means collectively, Buyer and Seller.

"**Payoff Letter**" has the meaning given to that term in *Section 7.9(b)*.

"**Permitted Encumbrances**" means (i) any Lien for Taxes not yet due or delinquent or being contested in good faith by appropriate proceedings, (ii) ad valorem taxes for the year of the Closing and all future years, (iii) any Lien arising in the ordinary course of business consistent with past practices by operation of Law (e.g. mechanics and materialman's liens) with respect to a liability that is not yet due or delinquent or that is being contested in good faith by Seller or the Company, (iv) all matters that are disclosed in the Existing Title Policy (excluding the following items identified on Schedule B to the Existing Title Policy: Items #20, 21, 22, 23, 24, 25, 26, 27, and 28), the Closing Title Policy (excluding (A) any matters related to the Project Indebtedness and (B) any matters first appearing after the November 5, 2010 effective date of the commitment to endorse the Existing Title Policy) or on the Survey, (v) imperfections or irregularities of title and other Liens that arise after the date of this Agreement without any voluntary grant or failure to timely make any payment due by the Company and that would not, in the aggregate, reasonably be expected to either materially and adversely affect the use of the affected property as a power plant or grant any material easement or encumbrance with respect to the Property, (vi) zoning, planning, and other similar laws, ordinances, rules, limitations and restrictions, and all rights of any Governmental Authority to regulate a Property, (vii) the terms and conditions of the Company Contracts or the Company's Environmental Permits, (viii) pledges and deposits made in the ordinary course of business in compliance with workers' compensation, unemployment insurance and other social security Laws, (ix) any Lien that is released on or prior to Closing, (x) any Lien described in *Section 4.13(a)(2) of Seller's Disclosure Schedule* (*provided*, *however*, that the Home Office Payment Agreement, which is listed on *Section 4.13(a)(2)(f) of Seller's Disclosure Schedule*, shall not be deemed a Permitted Encumbrance for purposes of this Agreement following the Closing), and (xi) any other matter deemed a Permitted Encumbrance under this Agreement pursuant to *Section 6.20*. The exclusion contained in subclause (iv)(B) above shall have no effect on whether any matter otherwise constitutes a Permitted Encumbrance under any of clauses (i) through (iii) or (v) through (xi) hereof.

"**Permitted Transaction**" means any inquiry, proposal or offer by a Third Party that would otherwise constitute a Takeover Proposal (excluding the proviso in the definition of "Takeover Proposal") but that

(a)(i) excludes the capital stock and assets (including the Acquired Projects) of the Company, or (ii) relates to a Business Combination Transaction involving KPC, Seller or any direct or indirect subsidiary of KPC or Seller (other than the Company), (b) would not affect, limit or otherwise modify the obligations of KPC (or its successor) or Seller to effect the transactions contemplated by this Agreement in any material and adverse manner, or decrease in any material respect the likelihood of Seller being able to consummate the sale of the Acquired Interests contemplated by this Agreement, and (c) with respect to a Business Combination Transaction involving KPC or Seller, such transaction would not under any circumstances close prior to the earlier of (x) the date on which the Closing occurs and (y) the termination of this Agreement. For these purposes, any Governmental or Regulatory Approval or Third Party consent or approval, or any condition to closing the Takeover Proposal purporting to constitute a Permitted Transaction, that would decrease in any material respect the likelihood of receipt by KPC, Seller or the Company of any required consent or approval, or which would reasonably be likely to impose additional restrictions on Buyer, the Company or the Acquired Projects following Closing, will preclude such Takeover Proposal from constituting a Permitted Transaction.

"**Person**" means any natural person, corporation, general partnership, limited partnership, limited liability company, proprietorship, other business organization, trust, union, association or Governmental Authority.

"**Prepaid Expenses**" means, as of any date of determination, the prepaid expenses and other current assets of the Company as of 11.59 p.m. on the day prior to such date (excluding all prepaid expenses and amortization in connection with insurance policies of the Company that are not in effect as of such date) as reflected in the balance sheet of the Company, prepared in accordance with GAAP consistent with past practices.

"**Privileges**" has the meaning given to that term in *Section 11.15*.

"**Project Indebtedness**" means Indebtedness for Borrowed Money of the Company incurred as a guarantor under (i) the Credit Agreement, and (ii) all agreements relating to the Credit Agreement to which the Company is bound (including fees, costs, expenses and payments under interest rate protection agreements (whether for their termination or otherwise)).

"**Property**" means the real property on which the Acquired Projects are located, including easements and rights-of-way appertaining thereto.

"**Property Tax Payment Agreement**" means that certain Agreement Regarding Taxation, dated May 17, 2001, by and among Murray County, Georgia, the Board of Tax Assessors of Murray County, Georgia, IDA Bond Issuer and Duke Energy Murray, LLC.

"**Proprietary Information**" has the meaning given to that term in the Confidentiality Agreement.

"**Proxy Statement**" has the meaning given to that term in *Section 3.7*.

"**PUHCA of 2005**" means the Public Utility Holding Company Act of 2005, enacted as part of the Energy Policy Act of 2005, Pub. L. No. 109-58, as codified at § 1261 et seq., and the regulations adopted thereunder, as amended, modified, supplemented or replaced from time to time.

"**Purchase Order**" means a purchase order or work order in connection with the operation of the Acquired Projects, solely for the purchase by or for the Company of goods or services (excluding electric power, capacity, ancillary services, emissions credits, fuel or similar commodities) in the ordinary course of business consistent with past practice.

"**Release**" means any release, spill, emission, migration, leaking, pumping, pouring, emitting, emptying, injection, deposit, escape, leaching, dumping, disposal or discharge of any Hazardous Materials into the environment.

"**Reliability Standards**" means those reliability standards, and any regional variations thereof, approved by FERC, as they may be amended from time to time, pursuant to Section 215 of the FPA.

"**Representatives**" means, as to any Person, its officers, directors, partners, members, employees, counsel, accountants, financial advisers and consultants.

"**Restoration Completion Cost**" has the meaning given to that term in *Section 6.11(a)(iii)(1)*.

"**Restoration Cost**" has the meaning given to that term in *Section 6.11*.

"**SEC**" means the United States Securities and Exchange Commission.

"**Seller**" has the meaning given to that term in the preamble to this Agreement.

"**Seller Approvals**" has the meaning given to that term in *Section 3.4(c)*.

"**Seller Indemnified Parties**" has the meaning given to that term in *Section 10.1(b)*.

"**Seller Marks**" has the meaning given to that term in *Section 6.6(a)*.

"**Seller's Disclosure Schedule**" means the disclosure schedules prepared by Seller and delivered by Seller to Buyer in connection with the execution and delivery of this Agreement, as the same shall be updated from time to time pursuant to this Agreement.

"**Seller Title Response**" has the meaning given to that term in *Section 6.20(a)*.

"**Sequent**" means Sequent Energy Management, L.P.

"**Sequent Gas Agreement**" means the Letter Agreement, dated September 22, 2004, between Sequent and the Company, and attachments thereto, consisting of (a) Contract for Sales Transaction, (b) Base Contract for Purchase and Sale of Natural Gas and (c) Special Provisions to the NAESB Base Contact, as amended by Letter Agreement Re: Extension of Gas Agreement—Murray Power Generation Facility Unit No. 1, dated June 14, 2007.

"**Sequent Security and Acknowledgement Agreement**" means the Security and Acknowledgment Agreement, dated November 5, 2004, among Credit Suisse First Boston, The Bank of New York, Sequent Energy Management, L.P., Seller, KGen Power LLC, KGen Murray LLC, the Company, as amended by the Amendment and Collateral Agency Assignment Agreement, dated February 8, 2007, among Credit Suisse (f/k/a Credit Suisse First Boston), Union Bank of California, N.A., The Bank of New York, Sequent Energy Management, L.P., Seller, KGen Power LLC, KGen Murray LLC, the Company, and as further amended by Consent and Agreement, dated February 8, 2007, among Sequent Energy Management, L.P., the Company, and Union Bank of California, N.A.

"**Settlement Date**" means the date on which the final determination of the Closing Date Net Working Capital occurs as determined pursuant to *Section 2.4(c)*.

"**Software**" means, as they exist anywhere in the world, computer software programs, including all source code, object code, specifications, designs and documentation related to such programs.

"**Special Meeting**" has the meaning given to that term in *Section 6.4(b)(i)*.

"**Specified Purchase Order**" means a Purchase Order (or series of Purchase Orders for the same goods or services that are entered into at the same time or as part of the same transaction and would, in the ordinary course of business consistent with past practice, be reflected on an aggregate basis in the Company's books and records as a single Purchase Order) in an amount equal to or greater than $250,000.

"**Stockholder Approval**" has the meaning given to that term in *Section 6.4(b)(i)*.

"**Straddle Period**" means a taxable year or period beginning on or before, and ending after, the Closing Date.

"**Subsequent Transaction**" has the meaning given to that term in *Section 9.3(a)(v)*.

"**Superior Offer**" means a Takeover Proposal (but replacing references to "20% or more" in the definition thereof with "50% or more") that (i) is fully financed, (ii) has no condition for a vote of the Third Party's equityholders on any matter, or the consent of its debt holders or lenders (in each case except as would be obtained at or prior to the time at which a definitive agreement with respect to such Takeover Proposal would be executed), (iii) is otherwise on terms that the KPC Board has determined in good faith, by resolution duly adopted, after consultation with KPC's outside legal and financial advisors (which shall include a nationally recognized investment banking firm) and considering such factors as the KPC Board considers to be appropriate (including the conditionality and the timing and likelihood of consummation of such proposal) are more favorable to KPC or the KPC stockholders from a financial point of view than the transactions contemplated hereby, and (iv) the KPC Board has determined in good faith is reasonably capable of being consummated in a timely manner on the terms proposed.

"**Superior Offer Documentation**" has the meaning given to that term in *Section 6.5(d)(i)*.

"**Survey**" means that certain ATLA/ACSM Land Title Survey Project No. 3541-001-N1 for Murray Generating Station prepared for Duke Energy, LLC, Development Authority of Washington County, Smith-Roberts National Corporation, and First American Title Insurance Company by Donaldson Garrett & Associates, Inc. acting through Georgia Registered Land Surveyor John M. Story No. 2266, dated June 28, 2004, last revised December 7, 2006 and that certain ATLA/ACSM Land Title Survey Project No. 3541-001-N1 for Murray Generating Station prepared for KGen Murray I and II LLC, Oglethorpe Power Corporation, Murray County Industrial Development Authority, and First American Title Insurance Company by Donaldson Garrett & Associates, Inc. acting through Georgia Registered Land Surveyor John M. Story No. 2266, dated June 28, 2004, last revised January 3, 2011

"**Takeover Proposal**" means any proposal or offer from one or more Third Parties relating to (a) any Business Combination Transaction with the Company (other than the transactions contemplated by this Agreement), (b) any Business Combination Transaction or direct or indirect acquisition or purchase by one or more Third Parties, in a single transaction or a series of related transactions, including by means of the acquisition of capital stock of KPC, the Company or any of their respective Affiliates, of assets or properties that constitute 20% or more of the assets of the Company and its subsidiaries, taken as a whole, or 20% or more of equity interests (measured by economic or voting power) of the Company, in each case other than the transactions contemplated by this Agreement, or (c) the acquisition by KPC, Seller or either of their Affiliates (including the Company) of any Third Party in a Business Combination Transaction in which the shareholders of the Third Party immediately prior to consummation of such Business Combination Transaction will, immediately following such Business Combination Transaction, directly or indirectly own more than 20% of the Company's consolidated assets or outstanding capital stock, including without limitation the issuance by KPC, Seller or the Company of any class of equity interests (measured by economic or voting power) as consideration for assets or securities of the Third Party that would result in the shareholders of such Third Party owning stock of KPC, Seller or the Company that would represent, directly or indirectly, ownership of 20% or more of the capital stock or assets of the Company; *provided*, *however*, that in no event shall the term "Takeover Proposal" include a Permitted Transaction.

"**Tax**" or "**Taxes**" means (i) any federal, state, local or foreign income, gross receipts, ad valorem, sales and use, employment, social security, disability, occupation, property, severance, value added, transfer, capital stock, excise, withholding, premium, occupation or other taxes, levies or other like assessments, customs, duties, imposts, charges, surcharges or fees imposed by or on behalf of any Governmental Authority, including any interest, penalty or addition thereto, (ii) any taxes payable under the Property Tax Payment Agreement, and (iii) any liability for amounts described in clause (i) as a result of transferee liability, by Contract or otherwise.

"**Tax Return**" means any return, report, information return, declaration, claim for refund, election, disclosure, statement, certificate, bill, estimate or other document or written information, together with all

schedules, attachments, amendments and supplements thereto (including all related or supporting information), supplied to or required to be supplied to any Governmental Authority with respect to Taxes.

"**Terminated Contracts**" has the meaning given to that term in *Section 6.19*.

"**Termination and Release of Home Office Payment Agreement**" has the meaning given to that term in *Section 6.15(b)(ii)*.

"**Termination Date**" has the meaning given to that term in *Section 9.1(b)(i)*.

"**Third Party**" means any Person other than Buyer, KPC or any of their respective Affiliates.

"**Title Company**" means First American Title Insurance Company acting through its national commercial services office in Atlanta, Georgia.

"**Total Purchase Price**" has the meaning given to that term in *Section 2.2(a)*.

"**Trade Secrets**" means, as they exist anywhere in the world, proprietary trade secrets, proprietary know-how, proprietary inventions, proprietary processes, proprietary procedures, proprietary databases, proprietary confidential business information and other proprietary information and rights (whether or not patentable or subject to copyright, mask work, or trade secret protection).

"**Transfer Taxes**" means all transfer, sales, use, goods and services, value added, documentary, stamp duty, gross receipts, excise, transfer and conveyance Taxes and other similar Taxes, duties, fees or charges.

"Trustee" means First Union National Bank.

"**Working Capital Estimate**" has the meaning given to that term in *Section 2.4(a)*.

Section 1.2 *Rules of Construction*.

(a) All article, section, subsection, schedule and exhibit references used in this Agreement are to articles, sections, subsections, schedules and exhibits to this Agreement unless otherwise specified. The exhibits and schedules attached to this Agreement constitute a part of this Agreement and are incorporated in this Agreement for all purposes.

(b) If a term is defined as one part of speech (such as a noun), it shall have a corresponding meaning when used as another part of speech (such as a verb). Unless the context of this Agreement clearly requires otherwise words importing the masculine gender shall include the feminine and neutral genders and vice versa. The words "includes" or "including" shall mean "including without limitation", the words "hereof", "hereby", "herein", "hereunder" and similar terms in this Agreement shall refer to this Agreement as a whole and not any particular section or article in which such words appear. Any reference to a Law shall include any amendment thereof or any successor thereto and any rules and regulations promulgated thereunder. Currency amounts referenced in this Agreement are in U.S. Dollars.

(c) Whenever this Agreement refers to a number of days, such number shall refer to calendar days unless Business Days are specified. Whenever any action must be taken hereunder on or by a day that is not a Business Day, then such action may be validly taken on or by the next day that is a Business Day.

(d) Each Party acknowledges that it and its attorneys have been given an equal opportunity to negotiate the terms and conditions of this Agreement and that any rule of construction to the effect that ambiguities are to be resolved against the drafting Party or any similar rule operating against the drafter of an agreement shall not be applicable to the construction or interpretation of this Agreement.

(e) All accounting terms used herein and not expressly defined herein shall have the respective meanings given such terms under GAAP.

ARTICLE II

PURCHASE AND SALE AND CLOSING

Section 2.1 *Purchase and Sale*. Buyer agrees to purchase from Seller, and Seller agrees to sell to Buyer, all of Seller's right, title and interest in and to the Acquired Interests at the Closing, on the terms and subject to the conditions set forth in this Agreement.

Section 2.2 *Purchase Price.*

(a) Subject to the adjustment, if any, made pursuant to *Section 2.4*, the aggregate purchase price for the Acquired Interests is Five Hundred Thirty-One Million Two Hundred Fifty Thousand Dollars ($531,250,000) (the "**Cash Purchase Price**", and as ultimately adjusted pursuant to *Section 2.4*, the "**Total Purchase Price**"). The Cash Purchase Price, as adjusted pursuant to *Sections 2.4(a)* and *2.4(b)* and subject to *Section 2.5*, shall be payable in immediately available funds at the Closing in the manner provided in *Section 2.3*.

(b) Notwithstanding anything in this Agreement to the contrary, Seller shall be entitled to receive from the Company all cash held by or on behalf of the Company on the date prior to the Closing Date and shall, on such date, cause the Company to distribute or otherwise deliver to Seller all such cash. No adjustment to the Cash Purchase Price shall be made to reflect such cash distributions and payments.

Section 2.3 *Closing; Closing Deliveries*.

(a) The Closing shall take place at the offices of King & Spalding LLP, 1180 Peachtree Street NE, Atlanta, Georgia 30309 no later than three (3) Business Days after satisfaction of the conditions set forth in *Articles VII* and *VIII* (or waiver by the Party for whose benefit such conditions exist) other than those conditions that by their nature are to be satisfied at the Closing (but subject to the satisfaction or waiver of those conditions), or at such other time or place as the parties may mutually agree. The time at which the Closing shall be deemed effective shall be 12:00 a.m. (Midnight), local time at the Acquired Projects, on the Closing Date. At the Closing, Buyer shall pay or cause to be paid to Seller by wire transfer of immediately available funds to an account designated in writing by Seller and delivered to Buyer at least three (3) Business Days prior to the Closing, an amount equal to the Cash Purchase Price (as adjusted pursuant to *Sections 2.4(a)* and *2.4(b)*), *less*

(i) the amount, if any, required to be withheld and remitted to the Georgia Department of Revenue pursuant to *Section 2.5* in accordance with Seller's duly executed attestation of gain pursuant to *Section 2.3(b)(iv)*, which amount shall be timely remitted by Buyer to the Georgia Department of Revenue;

(ii) Seventy-Nine Million Six Hundred Eighty Seven Thousand Five Hundred Dollars ($79,687,500) (the "**Escrow Amount**"), which Escrow Amount shall be paid by Buyer to the Escrow Agent at the Closing by wire transfer of immediately available funds to be held by the Escrow Agent in accordance with the terms of the Escrow Agreement; and

(iii) the amount required to be paid to Seller's lenders to satisfy the conditions set forth in *Section 7.9(b)* hereunder, which amount shall be paid by Buyer at the Closing by wire transfer of immediately available funds,

in each case, as more specifically set forth in the closing statement which shall be in form and substance reasonably satisfactory to both Buyer and Seller.

(b) At the Closing:

(i) Seller shall deliver, or shall cause to be delivered, to Buyer (A) a duly executed Acquired Interests Transfer Power, pursuant to which Seller will assign and transfer to Buyer all

of Seller's right, title and interest in and to the Acquired Interests, and (B) the certificates representing ownership of the Acquired Interests duly endorsed in blank or accompanied by transfer powers duly executed in blank for transfer;

(ii) Buyer and Seller shall execute and deliver the Escrow Agreement;

(iii) Seller shall deliver, or cause to be delivered, to Buyer, the IDA Bond, registered in the name of Buyer, and authenticated by the Trustee in accordance with the Indenture under which the IDA Bond was issued;

(iv) Seller shall deliver a duly executed attestation of gain subject to withholding (Georgia Department of Revenue Form IT-AFF2);

(v) Buyer shall pay or cause to be paid to the Title Company the amount required to secure the delivery of the Closing Title Policy in the amount of coverage set forth on the Closing Title Policy or such lesser amount as Buyer may select in its sole discretion (excluding any amounts to be paid to the Title Company by Seller pursuant to *Section 6.20* for affirmative title coverage provided in the Closing Title Policy to cure a Buyer Title Objection, to the extent not previously paid by Seller); and

(vi) the Parties will also cause to be delivered the other documents and instruments to be delivered under *Articles VII* and *VIII*, and Seller shall deliver to Buyer originals (if available) or true, correct and complete copies of all books and records of the Company that are in the possession of Seller (or cause all of such to be in the possession of the Company if any of the foregoing items are not delivered to Buyer at the Closing).

Section 2.4 *Post-Closing Adjustments*.

(a) Not later than three (3) Business Days prior to the Closing Date, Seller shall deliver or cause to be delivered to Buyer, Seller's good faith estimate of the Closing Date Net Working Capital (the "**Working Capital Estimate**"), including reasonable supporting information and calculations, which may be positive or negative and shall be prepared using the methodology set forth in *Schedule 1.1(b)*. At the Closing, the Cash Purchase Price payable to Seller shall be (i) increased by the amount, if any, by which the Working Capital Estimate is positive or (ii) decreased by the amount, if any, by which the Working Capital Estimate is negative (i. e., by the absolute value of the negative amount).

(b) Not later than three (3) Business Days prior to the Closing Date, Seller shall deliver or cause to be delivered to Buyer, Seller's good faith estimate of the Company's Inventory as of the Closing Date (the "**Inventory Estimate**"), including reasonable supporting information and calculations, which shall be prepared using the methodology set forth in *Schedule 1.1(b)*. At the Closing and in addition to the adjustment contemplated by *Section 2.4(a)*, the Cash Purchase Price payable to Seller shall be (i) increased by the amount, if any, by which the Inventory Estimate exceeds the Inventory as set forth in the balance sheet of the Company as of September 30, 2010, and (ii) decreased by the amount, if any, by which the Inventory Estimate is less than the Inventory as set forth in the balance sheet of the Company as of September 30, 2010.

(c) After the Closing Date, Seller and Buyer shall cooperate and provide each other access to their respective books and records and employees as are reasonably requested in connection with the matters addressed in this *Section 2.4*. Within one hundred ten (110) days after the Closing Date, Buyer shall determine the Closing Date Net Working Capital and Closing Date Inventory and shall provide Seller with written notice of such determination, along with reasonable supporting information and calculations (the "**Buyer's Determination**").

(d) If Seller objects to Buyer's Determination, then it shall provide Buyer written notice thereof within thirty (30) days after receiving Buyer's Determination. If the Parties are unable to agree on the Closing Date Net Working Capital and/or the Closing Date Inventory within one hundred twenty

(120) days after the Closing Date, the Parties shall refer such dispute to Ernst & Young LLP or, if that firm declines to act as provided in this *Section 2.4(d)*, another firm of independent public accountants, mutually acceptable to Buyer and Seller (the "**Accounting Firm**"), which firm shall make a final and binding determination as to all matters in dispute with respect to this *Section 2.4* (and only such matters) on a timely basis and promptly shall notify the Parties in writing of its resolution. The Accounting Firm shall not have the power to modify or amend any term or provision of this Agreement, and in making its determination the Accounting Firm shall use the methodology set forth in *Schedule 1.1(b)*. Each Party shall bear and pay one-half of the fees and other costs charged by the Accounting Firm. If Seller does not object to Buyer's Determination with respect to the Closing Date Net Working Capital or the Closing Date Inventory within the time period and in the manner set forth in the first sentence of this *Section 2.4(d)* or if Seller accepts Buyer's Determination, the Closing Date Net Working Capital and/or Closing Date Inventory, as applicable, as set forth in Buyer's Determination shall become final and binding upon the Parties for all purposes hereunder.

(e) If the Closing Date Net Working Capital (as agreed between the Parties or as determined by the Accounting Firm or otherwise) is greater than the Working Capital Estimate, then Buyer shall pay Seller, within five (5) Business Days after such amounts are agreed or determined pursuant to *Section 2.4(d)*, by wire transfer of immediately available funds to an account designated by Seller, the difference between the Closing Date Net Working Capital and the Working Capital Estimate. If the Closing Date Net Working Capital (as agreed between the Parties or as determined by the Accounting Firm or otherwise) is less than the Working Capital Estimate, then Seller shall pay Buyer, within five (5) Business Days after such amounts are agreed or determined pursuant to *Section 2.4(d)*, by wire transfer of immediately available funds to an account designated by Buyer, the difference between the Closing Date Net Working Capital and the Working Capital Estimate.

(f) If the Closing Date Inventory (as agreed between the Parties or as determined by the Accounting Firm or otherwise) is greater than the Inventory Estimate, then Buyer shall pay Seller, within five (5) Business Days after such amounts are agreed or determined pursuant to *Section 2.4(d)*, by wire transfer of immediately available funds to an account designated by Seller, the difference between the Closing Date Inventory and the Inventory Estimate. If the Closing Date Inventory (as agreed between the Parties or as determined by the Accounting Firm or otherwise) is less than the Inventory Estimate, then Seller shall pay Buyer, within five (5) Business Days after such amounts are agreed or determined pursuant to *Section 2.4(d)*, by wire transfer of immediately available funds to an account designated by Buyer, the difference between the Closing Date Inventory and the Inventory Estimate.

Section 2.5 *Withholding*. Buyer shall be entitled to deduct and withhold from any consideration payable or otherwise deliverable pursuant to this Agreement such amounts as may be required to be withheld and remitted to the Georgia Department of Revenue in accordance with O.C.G.A. § 48-7-128.

Section 2.6 *Purchase Price Allocation*. Within thirty (30) days after the Settlement Date, Seller shall prepare and deliver to Buyer for its review an allocation of an amount equal to the sum of the Total Purchase Price and all liabilities of the Company properly taken into account for purposes of determining the consideration for U.S. federal income tax purposes among the Assets of the Company in accordance with Section 1060 of the Code. Within fifteen (15) days of its receipt of such allocation, Buyer shall (i) notify Seller that it concurs with the allocation and/or determination of the consideration or (ii) provide written comments to the allocation and/or determination of the consideration. If Seller and Buyer disagree on any aspect of the allocation and/or determination of the consideration, Seller and Buyer agree to use reasonable efforts to resolve any such disagreement within sixty (60) days after the Settlement Date. If Seller and Buyer do not agree on an allocation and determination of the consideration pursuant to this *Section 2.6* within such sixty (60)-day period, Seller and Buyer shall be free to use their own allocation and/or determination of the consideration in preparing their respective U.S. federal Tax Returns and other filings. Except as otherwise required by any final and unappealable decision or Order by any court of

competent jurisdiction, any allocation agreed upon by Seller and Buyer shall be binding on Seller and Buyer for all income Tax reporting purposes, and Seller and Buyer shall not take (or cause or permit any Affiliate to take) inconsistent positions with respect to, and shall each use (and cause each Affiliate to use) reasonable efforts to sustain, such agreed upon allocation in any subsequent income Tax audit or similar proceeding, and each of Seller and Buyer agrees to cooperate with the other in preparing an IRS Form 8594, and to furnish the other with a draft copy of such form within a reasonable period before its filing due date.

ARTICLE III

REPRESENTATIONS AND WARRANTIES OF SELLER

Seller hereby represents and warrants to Buyer that, except as set forth in Seller's Disclosure Schedule, on the date of this Agreement and as of the Closing Date, as follows:

Section 3.1 *Organization*. Seller is a limited liability company duly formed, validly existing and in good standing under the Laws of Delaware. Seller is duly qualified or licensed to do business in each other jurisdiction where the actions to be performed by it hereunder makes such qualification or licensing necessary, except in those jurisdictions where the failure to be so qualified or licensed would not reasonably be expected to result in a material adverse effect on Seller's ability to perform such actions under this Agreement.

Section 3.2 *Authority; Enforceability*. Seller has all requisite limited liability company power and authority to execute and deliver this Agreement, to perform its obligations hereunder and to consummate the transactions contemplated hereby; provided that the consummation of the sale of the Acquired Interests contemplated hereby is subject to the authorization of such sale by a resolution adopted by the holders of a majority of the outstanding shares of common stock of KPC. The execution and delivery by Seller of this Agreement, and the execution and delivery by Seller or any of its Affiliates of the other agreements or instruments contemplated hereby, the consummation of the transactions contemplated hereby and thereby and the performance of their respective obligations hereunder and thereunder, have been duly and validly authorized by all necessary limited liability company action or corporate action, as the case may be, on the part of Seller or its Affiliates, respectively; provided that the consummation of the sale of the Acquired Interests contemplated hereby is subject to the authorization of such sale by a resolution adopted by the holders of a majority of the outstanding shares of common stock of KPC. This Agreement and the other agreements and instruments contemplated hereby have been (or will be) duly and validly executed and delivered by Seller and constitute the legal, valid and binding obligation of Seller enforceable against Seller in accordance with its terms, except as the same may be limited by bankruptcy, insolvency, reorganization, fraudulent conveyance, moratorium or other similar Laws relating to or affecting the rights of creditors generally, or by general equitable principles. As of the date of this Agreement, the KPC Board has, by resolution duly adopted at a meeting duly called, (i) approved this Agreement and the transactions contemplated hereby, (ii) deemed such transactions expedient and for the best interests of KPC, (iii) directed that a resolution authorizing the sale of the Acquired Interests pursuant to this Agreement be submitted to the holders of the outstanding shares of common stock of KPC for their approval at a meeting of the stockholders of KPC duly called and held for such purpose, and (iv) subject to *Sections 6.4* and *6.5*, determined to recommend that the stockholders of KPC approve such resolution.

Section 3.3 *Ownership of Acquired Interests; Title*. Except as set forth in *Section 3.3 of Seller's Disclosure Schedule*, Seller owns of record and beneficially one hundred percent (100%) of the Acquired Interests free and clear of all Liens and restrictions on transfer other than those (i) arising pursuant to this Agreement, the Organizational Documents of the Company or applicable securities Laws or (ii) for Taxes not yet due or delinquent. Without limiting the generality of the foregoing, none of the Acquired Interests are subject to any voting trust, member or partnership agreement or voting agreement or other agreement,

right, instrument or understanding with respect to any purchase, sale, issuance, transfer, repurchase, redemption or voting of any Equity Securities of the Company, other than the Organizational Documents of the Company. Seller is not a party to or bound by any shareholders' agreement or any other Contract affecting or relating to Seller's right to sell or otherwise transfer the Acquired Interests. The execution and delivery at the Closing of the Assignment of Membership Interest, together with the certificate(s) representing the Acquired Interests, in the manner provided in *Section 2.3* will transfer to Buyer good and valid title to the Acquired Interests, free and clear of all Liens, other than Liens created by or through Buyer.

Section 3.4 *No Conflicts, Consents and Approvals*. Neither the execution and delivery by Seller of this Agreement or the Operative Agreements, nor the performance by Seller of its obligations hereunder or thereunder will:

(a) conflict with or result in a violation or breach of any of the terms, conditions or provisions of the Organizational Documents of Seller;

(b) assuming all of the Company Consents have been obtained and the Project Indebtedness has been repaid, (i) conflict with, be in violation of or result in a breach of, (ii) constitute (with or without the giving of notice, the lapse of time, or both) a default under, (iii) give rise to any right of termination, cancellation, acceleration or modification, or (iv) require the Seller to give prior notice to or obtain the consent or approval of any counterparty under any Contract to which Seller is a party and which provides for an aggregate payment to or from the Seller in amount exceeding $100,000, except for any such conflicts, violations, breaches, defaults, rights of termination, cancellation, acceleration or modification or failures to give notice or obtain consents or approvals which would not, in the aggregate, reasonably be expected to result in a material adverse effect on Seller's ability to perform its obligations hereunder; and

(c) assuming all required filings, waivers, approvals, consents, authorizations and notices set forth on *Section 3.4(c) of Seller's Disclosure Schedule* (collectively, the "**Seller Approvals**"), Company Consents and other notifications provided in the ordinary course of business have been made, obtained or given, (i) conflict with, violate or result in the breach of any term or provision of any Law applicable to Seller, or (ii) require any Governmental or Regulatory Approval, or notice to, or declaration or registration with, any Governmental Authority, under any applicable Law, in each case, other than such conflicts, violations, breaches, failures to obtain Governmental or Regulatory Approvals, give notices, make declarations or register which would not reasonably be expected to result in a material adverse effect on Seller's ability to perform its obligations hereunder or occur solely as a result of the identity or regulatory status of Buyer or any of its Affiliates. To the Knowledge of Seller, there are no such conflicts, violations, breaches or failures that occur solely as a result of the identity or regulatory status of Buyer or any of its Affiliates; *provided*, *however*, this representation and warranty is made subject to the provisions of the last sentence of *Section 10.2(k)*.

Section 3.5 *Legal Proceedings*. There is no Claim pending by or against Seller, or to the Knowledge of Seller, threatened against Seller, by or before any Governmental Authority or alternative dispute resolution arbiter or by any other Third Party which would be reasonably likely to result in the issuance of any Order restraining, enjoining or otherwise prohibiting or making illegal the consummation of the transactions contemplated by this Agreement.

Section 3.6 *Brokers*. Except for the fees due to Credit Suisse Securities (USA) LLC and fees payable to certain employees of Seller's Affiliates (in each case which are payable by Seller's Affiliates (but not Company)), Seller does not have any liability or obligation to pay fees or commissions to any broker, finder or agent with respect to the transactions contemplated by this Agreement.

Section 3.7 *Proxy Statement*. The proxy statement to be submitted to the stockholders of KPC (as amended or supplemented from time to time, the "**Proxy Statement**") in respect of the transactions contemplated by this Agreement will comply, in all material respects, with the requirements of Law applicable thereto. Notwithstanding the foregoing, Seller makes no representation or warranty with respect to any information supplied in writing by or on behalf of Buyer which is contained in the Proxy Statement.

ARTICLE IV

REPRESENTATIONS AND WARRANTIES REGARDING THE COMPANY

Seller hereby represents and warrants to Buyer that, except as set forth in Seller's Disclosure Schedule, on the date of this Agreement and as of the Closing Date, as follows:

Section 4.1 *Organization*. The Company is a limited liability company duly formed, validly existing and in good standing under the Laws of Delaware, and has all requisite limited liability company power and authority to conduct its business as it is now being conducted and to own, lease and operate its Assets. The Company is duly qualified or licensed to do business in each jurisdiction in which the ownership or operation of its Assets make such qualification or licensing necessary, except in those jurisdictions where the failure to be so duly qualified or licensed would not reasonably be expected to result in (a) Material Adverse Effect or (b) a material adverse effect on Seller's ability to perform its obligations hereunder. Seller has, prior to the date of this Agreement, made available to Buyer in the Data Site true and complete copies of the Organizational Documents of the Company in effect as of the date of this Agreement.

Section 4.2 *No Conflicts, Consents and Approvals*. Neither the execution and delivery by Seller of this Agreement or the Operative Agreements, nor the performance by Seller of its obligations hereunder or thereunder, nor the consummation of the transactions contemplated hereby or thereby, nor the taking of any action contemplated to be taken by the Company hereunder or thereunder will:

(a) conflict with or result in a violation or breach of any of the terms, conditions or provisions of the Organizational Documents of the Company;

(b) assuming all of the consents set forth on *Section 4.2(b) of Seller's Disclosure Schedule* (the "**Company Consents**") have been obtained, (i) conflict with, be in violation of or result in a breach of, (ii) constitute (with or without the giving of notice, the lapse of time, or both) a default under, (iii) give rise to any right of termination, cancellation, acceleration or modification, or (iv) require the Seller or the Company to give prior notice to or obtain the consent or approval of any counterparty under, any Company Contract except for any such conflicts, violations, breaches, defaults, rights of termination, cancellation, acceleration or modification or failures to give notice or obtain consents or approvals which would not (x) reasonably be expected to result in a Material Adverse Effect or (y) reasonably be expected to result in a material adverse effect on Seller's ability to perform its obligations hereunder;

(c) subject to obtaining all of the Seller Approvals, the Company Consents and providing the other notifications set forth on *Section 4.2(c) of Seller's Disclosure Schedule* provided in the ordinary course of business have been made, obtained or given, (i) conflict with or result in a violation or breach of any term or provision of any Law applicable to the Company or any Asset of the Company with a value equal to or greater than $100,000 or (ii) require any Governmental or Regulatory Approval, or notice to, or declaration or registration with, any Governmental Authority, under any applicable Law, in each case, other than such conflicts, violations, breaches, failures to obtain Governmental or Regulatory Approvals, give notices, make declarations or register (x) which would not reasonably be expected to result in a Material Adverse Effect, (y) which would not reasonably be expected to result in a material adverse effect on Seller's ability to perform its obligations hereunder or (z) occur solely as a result of the identity or regulatory status of Buyer or any of its Affiliates; or

(d) result in the imposition or creation of any Lien on the Acquired Interests or any Asset of the Company with a value equal to or greater than $100,000, other than Permitted Encumbrances.

To the Knowledge of Seller, there are no conflicts, violations, breaches or failures of the type referred to in *Section 4.2(c)* that occur solely as a result of the identity or regulatory status of Buyer or any of its Affiliates; *provided*, *however*, this representation and warranty is made subject to the provisions of the last sentence of *Section 10.2(k)*.

Section 4.3 *Capitalization*. The Acquired Interests were duly authorized and validly issued, are fully paid and nonassessable, and constitute all of the outstanding Equity Interests of the Company. Other than Buyer's rights pursuant to this Agreement, no Person has any option, right or privilege capable of becoming an agreement or option, for the purchase, subscription, allotment or issue of any unissued interests, units or other securities (including debt instruments, convertible securities, warrants or convertible obligations of any nature) of the Company. The Company has no subsidiaries and never has owned any equity interests in any Person.

Section 4.4 *Sufficiency of Assets*. Except as set forth in *Section 4.4 of Seller's Disclosure Schedule* and except for cash and working capital, the tangible properties and Assets of the Company are sufficient to operate the Acquired Projects and conduct the Business as currently conducted as of the date of this Agreement, subject to normal wear and tear. Except as set forth in *Section 4.4 of Seller's Disclosure Schedule*, the Company will retain the right to use all such tangible properties immediately following the Closing.

Section 4.5 *Legal Proceedings*. Except as set forth in *Section 4.5 of Seller's Disclosure Schedule*, no Claim is pending against, and to Seller's Knowledge, none has been threatened against or relating to the Company that affects the Company or the Assets of the Company before any alternative dispute resolution arbiter or Governmental Authority that would, individually or in the aggregate, reasonably be expected to (a) cause the Company to incur a liability exceeding $100,000 or (b) lead to injunctive relief prohibiting or impeding the Company's conduct of the Business. There are no Orders outstanding against the Company restraining, enjoining or otherwise prohibiting or making illegal any of the transactions contemplated hereunder or which would, individually or in the aggregate, reasonably be expected to lead to injunctive relief prohibiting or impeding the Company's conduct of the Business.

Section 4.6 *Compliance with Laws and Orders; Regulatory Matters*.

(a) Except with respect to Environmental Laws (which are addressed solely in *Section 4.14*) and regulatory compliance matters (which are addressed solely in paragraphs (b), (c) and (d) below), the Company (i) is in material compliance and for the previous five (5) years has materially complied with all Laws and Orders with which (A) compliance is required for the continuing operation of the Acquired Projects, as currently operated by the Company, or (B) the failure to comply would reasonably be expected to materially impair the ability of the Company to own and operate the Acquired Projects or adversely affect in any material respect the conduct of the Business, and (ii) holds, and is in compliance with, all Governmental or Regulatory Approvals necessary to conduct the Business as currently conducted, which Governmental or Regulatory Approvals are valid and in full force and effect, except for such failures to comply with such Governmental or Regulatory Approvals, that would not, individually or in the aggregate, reasonably be expected to create a Material Adverse Effect or a material adverse effect on Seller's ability to perform its obligations hereunder. Neither Seller nor the Company has received any written notification that it is under investigation by a Governmental Authority or is in violation of any Governmental or Regulatory Approvals necessary to conduct the Business as currently conducted, or any Laws.

(b) Except as set forth on *Section 4.6(b) of Seller's Disclosure Schedules*, Seller has not received any notice from any Governmental Authority of any violation of any Laws with respect to the Property or the Business.

(c) *Section 4.6(c) of Seller's Disclosure Schedules* lists all current Governmental or Regulatory Approvals issued to the Company, including the names of the Governmental or Regulatory Approvals. All fees and charges due and payable with respect to such Governmental or Regulatory Approvals as of the date hereof have been paid in full. No event has occurred that, with or without notice or lapse of time or both, would reasonably be expected to result in the revocation, suspension, lapse or limitation of any Governmental or Regulatory Approval.

(d) The Company is in material compliance with all applicable Reliability Standards, including those standards developed by NERC, except where the failure to be in compliance would not individually or in the aggregate reasonably be expected to (i) cause the Company to incur a liability exceeding $100,000 or (ii) lead to injunctive relief prohibiting or impeding the Company's conduct of the Business as currently conducted as of the date of this Agreement.

(e) The Company is an Exempt Wholesale Generator.

(f) The Company (i) has, in full force and effect, Market-Based Rate Authorization, with all waivers of regulations and blanket authorizations as are customarily granted by FERC to entities with Market-Based Rate Authorization, (ii) has, in full force and effect, blanket authorization to issue securities and assume liabilities pursuant to Section 204 of the FPA, and (iii) has complied in all material respects with all applicable FERC rules and reporting obligations.

Section 4.7 *Financial Statements*. Seller has previously delivered to Buyer true and complete copies of the unaudited balance sheet and statement of income of the Company as of September 30, 2010 (the "**Financial Statements**"). The Financial Statements were prepared in accordance with GAAP using the same accounting principles, policies and methods as had been historically used in connection with the calculation of the items reflected thereon and present fairly in all material respects the financial condition and results of operations of the Company as of the date thereof and for the respective periods covered thereby subject to normal year-end adjustments.

Section 4.8 *No Undisclosed Liabilities*. Except (i) as set forth on *Section 4.8 of Seller's Disclosure Schedule*, (ii) as disclosed on the Financial Statements, (iii) for liabilities and obligations that have arisen in the ordinary course of business since September 30, 2010, and (iv) for liabilities and obligations that are not required to be reflected on a balance sheet (excluding any notes thereto) prepared in accordance with GAAP, the Company does not have any liabilities or obligations.

Section 4.9 *Absence of Certain Changes*. Except as set forth in *Section 4.9 of Seller's Disclosure Schedule*, from the date of the Financial Statements to the date of this Agreement, the Company has, in all material respects, operated in the ordinary course of business, consistent with past practices. From the date of the Financial Statements to the date of this Agreement, there has not been any Material Adverse Effect, and no event has occurred or circumstance exists that would reasonably be expected to result in a Material Adverse Effect.

Section 4.10 *Taxes*. (i) all Tax Returns that are required to be filed on or before the date of this Agreement by the Company have been duly and timely filed, taking into account all permitted extensions, (ii) all Taxes of the Company that are due and payable have been paid in full, (iii) all withholding Tax requirements imposed on the Company have been satisfied in full, except for amounts that are being contested in good faith, (iv) the Company does not have in force any waiver of any statute of limitations in respect of Taxes or any extension of time with respect to a Tax assessment or deficiency, (v) there are no pending or active audits or legal proceedings involving Tax matters or, to Seller's Knowledge, threatened audits or proposed deficiencies or other claims for unpaid Taxes of the Company, (vi) the Company is classified as a disregarded entity for federal and state income tax purposes and has been since August 4, 2004, (vii) all deficiencies asserted or assessments made as a result of any examination of Tax Returns of the Company have been paid in full or are being timely and properly contested in good faith, (viii) there are no Liens for Taxes (other than Permitted Encumbrances) on any of the Assets of the Company,

(viii) the Company, or a predecessor of the Company, has not been a member of any group filing Tax Returns on a consolidated, combined or unitary basis, and (ix) the Company has not received written notice of any claim by a Governmental Authority in a jurisdiction where the Company does not file a Tax Return that it may be subject to taxation by such jurisdiction.

Section 4.11 *Contracts*.

(a) *Section 4.11(a) of Seller's Disclosure Schedule* sets forth for the Company, as of the date of this Agreement, a true, correct and complete list of the Company Contracts. The following Contracts to which the Company is a party or by which the Company is bound (together with the Ground Lease, are referred to collectively as the "**Company Contracts**"):

(i) all Contracts for the purchase, exchange or sale of gas with a value of $250,000 or more (other than those that will be fully performed prior to Closing (other than as to any financial settlement that may occur post-Closing so long as it is taken into account for purposes of Closing Date Net Working Capital));

(ii) all Contracts for the purchase, exchange or sale of emissions credits, electric power, capacity or ancillary services with a value of $250,000 or more (other than those that will be fully performed prior to Closing (other than as to any financial settlement that may occur post-Closing so long as it is taken into account for purposes of Closing Date Net Working Capital));

(iii) all Contracts for the transportation of gas;

(iv) all Contracts for the transmission of electric power;

(v) all interconnection Contracts for electricity, fuel, or water;

(vi) all Contracts with respect to storage, parking, loaning, distribution, wheeling, facility or meter construction, unloading, delivery or balancing of natural gas;

(vii) other than Contracts of the nature addressed by *Sections 4.11(a)(i)-(vi)*, all Contracts (A) for the sale of any Property or that grant the Company any interest in, or the right or option to purchase, any Property, or (B) for the sale of any rights of the Company, or that grant a right or option to purchase any rights of the Company other than, in the case of this clause (B), Contracts entered into in the ordinary course of business consistent with past practices relating to assets with a value of less than $200,000 individually or $400,000 in the aggregate;

(viii) excluding Purchase Orders and other than Contracts of the nature addressed by *Sections 4.11(a)(i)-(vi)* or that will be fully performed prior to Closing, all Contracts that (A) are material to the conduct of the Business or (B) require payments by or to the Company in excess of, or expose the Company to liability reasonably likely to exceed, $200,000 for each individual Contract or $400,000 in the aggregate for all such Contracts;

(ix) all performance bonds, working capital maintenance support agreements, contingent obligation agreements or any other outstanding agreements of guaranty, surety, indemnification or undertaking by or on behalf of the Company to pay the indebtedness of any other Person, direct or indirect, by the Company (other than Contracts of the nature addressed by *Sections 4.11(a)(x) and (xii)*);

(x) all Contracts with respect to the sharing, indemnification or allocation of Taxes or Tax costs;

(xi) any Contract that restricts the Company's right to compete, whether by restricting territories, customers or otherwise, in any line of business relevant to the operation of the Acquired Projects;

(xii) all Contracts between the Company, on the one hand, and Seller, any current or former officer, director, manager of the Company or any Affiliate of Seller, on the other hand;

(xiii) all Contracts under which the Company has created, incurred, assumed or guaranteed any outstanding Indebtedness for Borrowed Money, or under which the Company has imposed a security interest on any of its Assets which security interest secures outstanding Indebtedness for Borrowed Money (other than any agreement concerning Project Indebtedness);

(xiv) all Contracts that require the Company to purchase its total requirements of any product or service from a Third Party or that contain "take or pay" provisions;

(xv) all Contracts that relate to the acquisition or disposition of any business, a material amount of stock or assets of any other Person or any real property (whether by merger, sale of stock, sale of assets or otherwise);

(xvi) all Contracts with any Governmental Authority to which the Company is a party;

(xvii) all Contracts granting a power of attorney or other agency on behalf of the Company (other than those to be terminated at Closing);

(xviii) partnership, joint venture or limited liability company agreements;

(xix) all outstanding futures, swap, collar, put, call, floor, cap, or option (or other Contracts that are intended to benefit from or reduce or eliminate the risk of fluctuations in the price of interest rates or commodities, including electric power or gas); and

(xx) other than Purchase Orders that will be fully performed prior to Closing, all Purchase Orders that (A) are material to the conduct of the Business or (B) require payments by or to the Company in excess of, or expose the Company to liability reasonably likely to exceed, $100,000 (individually or together with other Purchase Orders for the same goods or services that are entered into at the same time or as part of the same transaction and would, in the ordinary course of business consistent with past practice, be reflected on an aggregate basis in the Company's books and records as a single Purchase Order).

(b) Seller has provided Buyer access to the Data Site, which contains true, correct and complete copies of each Company Contract.

(c) Except with respect to Purchase Orders (as to which no representation is made under this subsection (c)), each of the Company Contracts (other than any Company Contract which will terminate, or expire by its terms prior to Closing) is in full force and effect and, except as set forth on *Section 4.11(c) of Seller's Disclosure Schedule*, constitutes a legal, valid and binding obligation of the Company and, to Seller's Knowledge, of the other parties thereto.

(d) Except with respect to Purchase Orders (as to which no representation is made under this subsection (d)), none of Seller, the Company or any of their Affiliates has received any written notices purporting to assert an event of default under or right to terminate under any Company Contract, and neither the Company, the Seller, nor, to Seller's Knowledge, any other party to any Company Contract, as applicable, is in breach or default of any Company Contract (or with notice or lapse of time or both, would be in breach or default of such Company Contract). Except with respect to Purchase Orders (as to which no representation is made under this subsection (d)), as of the date of this Agreement and the Closing Date, to Seller's Knowledge, no event or circumstance has occurred that would reasonably be expected to result in a termination of, or acceleration of any right or obligation under, any Company Contract or the loss of any material benefit thereunder.

(e) Neither the Company, the Seller nor, to Seller's Knowledge, any other party to a Specified Purchase Order, as applicable, is in breach or default of any payment terms under any such Specified Purchaser Order.

(f) Except with respect to Purchase Orders (as to which no representation is made under this subsection (f)), to the Knowledge of Seller, no party has repudiated any provision of any Company Contract.

(g) Other than with respect to Purchase Orders (as to which no representation is made under this subsection (g)), Seller is not currently renegotiating any Company Contract and has not received any notice of any non-renewal or price increase of more than 10% with respect thereto.

(h) Except with respect to Purchase Orders (as to which no representation is made under this subsection (h)), neither Seller nor, to the Knowledge of Seller, any other party to a Company Contract has validly waived any of its material rights under a Company Contract.

Section 4.12 *Real Property*.

(a) The Company owns or leases (and with respect to the (i) owned Property, has good, valid and marketable fee simple title to, and (ii) the Ground Lease and any other lease that is material to the Company, has good and valid leasehold title to) the Property described in *Section 4.12(a) of Seller's Disclosure Schedule* as being owned or leased by the Company, in each case, free and clear of all Liens (except for Permitted Encumbrances). The Company does not own any parcels of real property or interests therein that are part of, or used exclusively in connection with, the Acquired Projects, except for the Property.

(b) Except for Permitted Encumbrances, the Company has not mortgaged, pledged, assigned, transferred, sub-leased, or otherwise encumbered or conveyed any of its interests in the Property.

(c) the Company has received no written notices purporting to assert a violation or default, and, to Seller's Knowledge, is not in violation of or default, under any easements, restrictions or other Liens on or relating to the Property, (ii) to Seller's Knowledge, there are no improvements that have been made or authorized by any Governmental Authority, the costs of which are to be assessed as special Taxes or charges against any of the Property; and (iii) there are no pending or, to the Knowledge of Seller, threatened actions, suits or proceedings to modify the zoning or land use classification of the Property.

Section 4.13 *Title to Personal Property*.

(a) The Company has good and valid title to, or rights by license, lease or other agreement to use, all personal property and Assets (other than Intellectual Property, which is addressed in *Section 4.15*) necessary for the conduct of the Business as presently conducted and purported to be owned or leased by it, free and clear of all Liens, except for (i) Permitted Encumbrances and (ii) Liens, restrictions and similar matters which would not reasonably be expected to (A) cause the Company to incur a liability in excess of $100,000 or (B) lead to injunctive relief prohibiting or impeding the Company's conduct of the Business.

(b) Except for Assets that have been temporarily removed from the Property from time to time in the ordinary course of business for refurbishment, repair and/or inspection, *Section 4.13(b)(i) of Seller's Disclosure Schedule* sets forth as of December 31, 2010 the location of all Assets referred to in paragraph (a) above, having an a value in excess of $50,000 and which was not located on the Property. As of December 31, 2010, (i) the Assets listed in *Section 4.13(b)(ii) of Seller's Disclosure Schedule* were owned or held by the Company subject to the terms of the General Electric Service Agreements, and (ii) the motor vehicles, portable generators and rolling stock listed in *Section 4.13(b)(iii) of Seller's Disclosure Schedule* were included in the Company's Assets. Except as set forth in *Section 4.13 of Seller's Disclosure Schedule*, no Person other than the Company owns any of the Assets on the Property on the date of this Agreement, except for (x) any leased equipment, property or other Assets, (y) any equipment, property or other Assets owned by Duke Energy Generation Services, Inc. or any of its subcontractors (or any of their respective affiliates or representatives), or

(z) any equipment, property or other Assets owned by General Electric International, Inc. or other third party service providers (or any of their respective affiliates or representatives).

Section 4.14 *Environmental Matters*.

(a) Seller has made available to Buyer copies of all material environmental site assessment reports in the possession or control of Seller or the Company, or to which the Seller or the Company has access, that are not subject to a claim of legal privilege by Seller or the Company and that relate to environmental matters in connection with operation of the Acquired Projects.

(b) Except as set forth in *Section 4.14(b) of Seller's Disclosure Schedule*:

(i) the Acquired Projects are in compliance in all material respects and the Company has operated the Acquired Projects in compliance with all applicable Environmental Laws and Environmental Permits since January 1, 2006, except where any non-compliance would not result in a material fine, penalty or loss;

(ii) the Company has obtained, and is in material compliance with, all Environmental Permits required under Environmental Laws;

(iii) the Company does not need to make any unusual expenditure in order to achieve or maintain compliance with any Environmental Law or any Environmental Permit;

(iv) during the Company's operation of the Acquired Projects or the use of the Property, no Hazardous Materials have been Released, treated or stored on, disposed of at, or transported from, the Property or the Business in violation of any Environmental Laws, or otherwise in a manner which may reasonably be expected to result in any material liability under Environmental Laws;

(v) the Company has not been served with or received any written notice of any Environmental Claims, actions, proceedings or investigations that are currently outstanding, and no Environmental Claims are pending or, to Seller's Knowledge, threatened, against the Company by any Governmental Authority or any other party under any Environmental Laws;

(vi) neither the Company nor the Acquired Projects is the subject of any material Order or party to any material Contract with respect to any Environmental Law, remedial action or Release or threatened Release of Hazardous Materials; and

(vii) there is no site to which the Company has transported or arranged for the transport of Hazardous Materials associated with the Company which, to Seller's Knowledge, is the subject of any environmental action that would result in an Environmental Claim.

(c) *Section 4.14(c) of Seller's Disclosure Schedule* sets forth all emission reduction credits and emissions allowances that have been allocated to the Company as of the date of this Agreement.

Section 4.15 *Intellectual Property*. The Company owns, or possesses adequate licenses or other valid rights to use, all material existing Software, Trade Secrets, technology currently used in the Business and trademarks, trade names, service marks, materials subject to copyright Laws, and other intangible intellectual property rights currently used in the Business and necessary or appropriate to conduct its business in the ordinary course as presently conducted (the "**Intellectual Property**"), except as set forth in *Section 4.15 of Seller's Disclosure Schedule*. To the Knowledge of Seller, (i) the current or former ownership, licensing or use of Intellectual Property by the Company does not infringe on or otherwise violate in any material respect the rights of any Third Party and (where such Intellectual Property is licensed by the Company) is undertaken in all material respects in accordance with the applicable license, (ii) neither Seller nor the Company has received any written communication, and no Claim has been instituted, settled threatened, that alleges any such infringement or violation, (iii) none of the Intellectual Property is subject to any outstanding Order that has an adverse effect on the Company's right to use such Intellectual Property in the conduct of the Business as currently conducted on the date hereof, (iv) no Third Party is

infringing on or otherwise violating any right of the Company with respect to such Intellectual Property; provided that, with respect to clauses (i) through (iv), Intellectual Property shall not include commercially-available "off-the-shelf" Software that (x) has not been modified or customized for the Company and (y) is licensed to the Company for a one-time or annual fee not in excess of $100,000.

Section 4.16 *Brokers*. Except for fees payable to certain employees of the Company's Affiliates (which are payable by the Company's Affiliates (but not the Company)), the Company does not have any liability or obligation to pay fees or commissions to any broker, finder or agent with respect to the transactions contemplated by this Agreement.

Section 4.17 *Employee Matters*. The Company currently has no employees and has not had any employees from the time of its organization. The Company has never maintained, and has no liability under, and is not subject to any Lien or other adverse right relating to, any Employee Benefit Plan that would (i) affect in any manner Buyer's right to use or enjoy (free and clear of any Lien, other than the Permitted Encumbrances), any Acquired Project or related Assets of the Company, (ii) affect in any manner Buyer's right, title and interest to the Acquired Interests (free and clear of all Liens) or (iii) result in the assumption by or imposition on Buyer of any liability (except for the Company's obligations under the Duke O&M Agreement). The Company has never maintained, contributed to, participated in, or had any liability or obligation with respect to, any Employee Benefit Plan except for the Company's obligations under the Duke O&M Agreement.

Section 4.18 *Insurance*.

(a) *Section 4.18(a) of Seller's Disclosure Schedule* contains a true, correct and complete list of all insurance policies (except title insurance policies) in effect as of the date of this Agreement that insure the Business or the Assets related thereto, including the Acquired Projects, or affect or relate to the ownership, use or operation of the Business or the Assets related thereto, including the Acquired Projects, and that have been issued to or for the benefit of the Company.

(b) Each such policy is valid and binding and in full force and effect, as of the date of this Agreement. No premiums due and payable under any such policies on or prior to the date hereof have not been paid and neither Seller nor the Company has received any written notice of cancellation or termination in respect of any such policy or is in default under any such policy, or has otherwise failed to comply with, in any material respect, any provision of any such policy. No such insurance policy provides for any retrospective premium adjustment or other experience-based liability for which the Company would be liable after the Closing Date. There are no pending insurance claims with respect to the Company or the Business as of the date of this Agreement, in excess of $100,000.

Section 4.19 *Transactions with Affiliates*. Except as set forth in *Section 4.19 of Seller's Disclosure Schedule*, and, to Seller's Knowledge, no officer or director of the Company, no Person with whom any such officer or director has any direct or indirect relation by blood, marriage or adoption, no entity in which any such officer, director or Person owns any beneficial interest (other than a publicly held corporation whose stock is traded on a national securities exchange or in the over-the-counter market and less than five percent (5%) of the stock of which is beneficially owned by all such officers, directors and Persons in the aggregate), no Affiliate of any of the foregoing and no current or former Affiliate of the Company has any interest in: (i) any Contract with, or relating to the Company or the Assets of the Company or (ii) any property (real, personal or mixed), tangible or intangible, owned by the Company.

Section 4.20 *Inventory*. *Section 4.20 of Seller's Disclosure Schedule* sets forth, as of September 30, 2010, a true, correct and complete list of each item in the Inventory of the Company that was reflected on the balance sheet of the Company as of September 30, 2010, and has a value of $50,000 or more.

Section 4.21 *Operation and Maintenance of the Acquired Projects; Operating Records*.

(a) Since January 1, 2006, the Company has, in all material respects, operated and maintained the Acquired Projects and conducted the Business in compliance with (i) the Operation and

Maintenance Agreement dated as of August 5, 2004, by and between the Company as Owner and Duke Energy Murray Operating, LLC as Operator, as amended to the date hereof (the "**Duke O&M Agreement**").

(b) Other than as part of routine or planned maintenance in the ordinary course of business consistent with past practices, to Seller's Knowledge, the Company has repaired or replaced each item of machinery, equipment, parts, spare parts, tools, supplies, materials, inventory or vehicles located at, or used in connection with the operation or maintenance of, the Acquired Projects that, to the Knowledge of Seller, is in need of repair or replacement such that failure to repair or replace would reasonably be expected to (i) prevent the Acquired Projects from being operated in the ordinary course of business consistent with past practices or (ii) result in a Material Adverse Effect, in each case except for any such repairs or replacements that the Company would delay or otherwise elect not make at the present time in the ordinary course of business consistent with past practice (all of which delayed or unmade repairs or replacements that are material and will not be completed prior to the Closing Date shall have been disclosed to Buyer in writing by Seller at or prior to the Closing).

(c) Except as set forth in *Section 4.21(c) of Seller's Disclosure Schedule*, and except for such defective work, equipment or materials that have not prevented the Acquired Projects from being operated in the ordinary course of business consistent with past practices and have not resulted, and would not reasonably be expected to result, in a Material Adverse Effect, there are no pending claims for defective work, equipment or materials relating to the Acquired Projects made by the Company, Seller or any of its Affiliates against any Person.

(d) Seller has provided to Buyer or has otherwise permitted Buyer to have access to copies of all Operating Records covering the period from the date on which the Seller acquired ownership of the Company and the Acquired Projects through the date of this Agreement. Such Operating Records, taken as a whole, reflect the operational history of the Acquired Projects during such period in all material respects; *provided*, *however*, that no representation or warranty under this paragraph (d) is made with respect to any design plans, blueprints and as-built plans, specifications, drawings and other documents and information of a similar character included in the definition of Operating Records or which is otherwise not material to the continued operation and maintenance of the Acquired Projects as currently conducted.

(e) Prior to the Closing Date, Seller shall have provided to Buyer (or otherwise permitted Buyer to have access to and make) copies of:

(i) each written notice of violation or similar written correspondence that has been received by Seller or the Company within the preceding five (5) years from any Governmental Authority or any written notice of any continuing event of default by the Company (or its Affiliates, as applicable) or the applicable counterparty with respect to any Company Contract or other Contract assigned hereunder; and

(ii) all written reports, certifications, responses or other documents with respect to the Business submitted by Seller or its Affiliates to, or received from, NERC in connection with any audit, certification, report or self-report, spot check, investigation, or otherwise, and demonstrating, purporting to demonstrate, or relied upon by the Company to demonstrate compliance with applicable Reliability Standards in each case within the preceding five (5) years,

all of which shall be entitled to confidential treatment in accordance with *Section 6.13(a)*.

Section 4.22 *Existing Title Policy*. Seller has, prior to the date of this Agreement, made available to Buyer in the Data Site a true and complete copy of the Existing Title Policy. To Seller's Knowledge, Seller has not done anything to invalidate or limit the coverage afforded by the Existing Title Policy. Seller has not made any claims for loss, damage, or indemnification against the Title Company under the Existing Title Policy.

Section 4.23 *Financial Resources*. As of the date of this Agreement, KPC has sufficient cash or available credit facilities to pay the termination fee in accordance with this Agreement.

ARTICLE V

REPRESENTATIONS AND WARRANTIES OF BUYER

Buyer hereby represents and warrants to Seller that, except as set forth in Buyer's Disclosure Schedule, on the date of this Agreement and as of the Closing Date, as follows:

Section 5.1 *Organization*. Buyer is an electric membership corporation duly formed, validly existing and in good standing under the Laws of the State of Georgia. Buyer is duly qualified or licensed to do business in each other jurisdiction where the actions to be performed by it hereunder makes such qualification or licensing necessary, except in those jurisdictions where the failure to be so qualified or licensed would not reasonably be expected to result in a material adverse effect on its ability to perform such actions under this Agreement.

Section 5.2 *Authority; Enforceability*.

(a) Buyer has all requisite corporate power and authority to enter into this Agreement, to perform its obligations hereunder and to consummate the transactions contemplated hereby. The execution and delivery by Buyer of this Agreement and the performance by Buyer of its obligations under this Agreement have been duly and validly authorized by all necessary corporate action on behalf of Buyer. This Agreement has been duly and validly executed and delivered by Buyer and constitutes the legal, valid and binding obligation of Buyer enforceable against Buyer in accordance with its terms except as the same may be limited by bankruptcy, insolvency, reorganization, fraudulent conveyance, arrangement, moratorium or other similar Laws relating to or affecting the rights of creditors generally or by general equitable principles. As of the date of this Agreement, the Board of Directors of Buyer has, by resolution duly adopted at a meeting duly called, (i) approved this Agreement and the transactions contemplated hereby, (ii) deemed such transactions expedient and for the best interests of Buyer and its member cooperatives, (iii) directed that a resolution approving the transactions contemplated hereby be submitted to Buyer's member cooperatives for their approval by written consent, and (iv) subject to *Section 6.4*, determined to recommend that Buyer's member cooperatives approve and adopt such resolution.

(b) The only approvals of Buyer's distribution member cooperatives necessary for Buyer to consummate the transactions contemplated by this Agreement are (i) Buyer's receipt of executed subscription agreements from Buyer's members subscribing to an aggregate of 100% of the Acquired Projects' output as a new member resource; and (ii) resolutions of the board of directors of 75% of the members and of members representing 75% of the patronage capital of Buyer approving Buyer's acquisition of the Acquired Projects as a new resource (collectively, the "**Member Approvals**"). All Member Approvals (i) have been obtained prior to the date hereof, (ii) are irrevocable; (iii) were obtained by Buyer in compliance with all applicable Laws and Buyer's Organizational Documents, and (iv) are in full force and effect.

Section 5.3 *No Conflicts*. The execution and delivery by Buyer of this Agreement does not, and the performance by Buyer of its obligations hereunder and the consummation of the transactions contemplated hereby will not:

(a) conflict with or result in a violation or breach of any of the terms, conditions or provisions of its Organizational Documents;

(b) be in violation of or result in a breach of or default (or give rise to any right of termination, cancellation or acceleration) under (with or without the giving of notice, lapse of time, or both) any Contract to which Buyer is a party, except for any such violations or defaults (or rights of termination,

cancellation or acceleration) which would not, in the aggregate, reasonably be expected to result in a material adverse effect on Buyer's ability to perform its obligations hereunder; or

(c) assuming all required filings, waivers, approvals, consents, authorizations and notices set forth in *Section 5.3(c) of Buyer's Disclosure Schedule* (collectively, the "**Buyer Approvals**") have been made, obtained or given, (i) conflict with, violate or breach any term or provision of any Law applicable to Buyer or any of its Assets which would reasonably be expected to result in a material adverse effect on Buyer's ability to perform its obligations hereunder or (ii) require any material Governmental or Regulatory Approval or notice to, or declaration, filing or registration with, any Governmental Authority, under any applicable Law, other than such consents, approvals, notices, declarations, filings or registrations (x) which, if not made or obtained, would not reasonably be expected to result in a material adverse effect on Buyer's ability to perform its obligations hereunder, or (y) that occur solely as a result of the identity or regulatory status of Seller or any of its Affiliates (including the Company). To the Knowledge of Buyer, there are no such conflicts, violations, breaches or failures that occur solely as a result of the identity or regulatory status of Seller or the Company or any of their Affiliates; *provided*, *however*, this representation and warranty is made subject to the provisions of the last sentence of *Section 10.2(k)*.

Section 5.4 *Legal Proceedings*. Except as set forth in *Section 5.4 of Buyer's Disclosure Schedule*, there is no Claim pending by or against Buyer, or to Buyer's Knowledge, threatened against Buyer, by or before any Governmental Authority or by any Third Party which would be reasonably likely to result in the issuance of any Order restraining, enjoining or otherwise prohibiting or making illegal the consummation of the transactions contemplated by this Agreement.

Section 5.5 *Brokers*. Buyer does not have any liability or obligation to pay fees or commissions to any broker, finder or agent with respect to the transactions contemplated by this Agreement for which Seller or the Company or any of their respective Affiliates could become liable or obligated.

Section 5.6 *Acquisition as Investment*. Buyer is acquiring the Acquired Interests for its own account as an investment without the present intent to sell, transfer or otherwise distribute the same to any other Person. Buyer has made, independently and without reliance on Seller (except to the extent that Buyer has relied on the representation and warranties of Seller in this Agreement), its own analysis of the Acquired Interests, the Company, and the Assets of the Company for the purpose of acquiring the Acquired Interests, and Buyer has had reasonable and sufficient access to documents, other information and materials as it considers appropriate to make its evaluations. Buyer acknowledges that the Acquired Interests are not registered pursuant to the Securities Act of 1933 (the "**1933 Act**") and that none of the Acquired Interests may be transferred, except pursuant to an applicable exception under the 1933 Act. Buyer is an "accredited investor" as defined under Rule 501 promulgated under the 1933 Act.

Section 5.7 *Financial Resources*. At the Closing, Buyer will have sufficient cash and/or available credit facilities to pay the Cash Purchase Price in accordance with this Agreement. As of the date of this Agreement, Buyer has sufficient cash or available credit facilities to pay the termination fee in accordance with this Agreement. Buyer hereby acknowledges and agrees that the receipt of any financing shall not be a condition precedent to Buyer's obligations to acquire the Acquired Interests or pay the termination fee, if applicable, in accordance with this Agreement.

Section 5.8 *Opportunity for Independent Investigation; No Other Representations* Prior to its execution of this Agreement, Buyer has conducted to its satisfaction an independent investigation and verification of the current condition and affairs of the Company, the Assets of the Company and the Acquired Projects, including the condition, the cash flow and the prospects of the Company. Buyer acknowledges that: (i) it has had the opportunity to visit with Seller and meet with its Representatives to discuss the Company and its condition, cash flows and prospects, (ii) all materials and information requested by Buyer have been provided to Buyer to Buyer's reasonable satisfaction, and (iii) except as set

forth in *Articles III* and *IV*, neither Seller, the Company nor any Non-Company Affiliate makes any representation or warranty, express or implied, as to the Company or the Assets of the Company.

Section 5.9 *Representations Complete*. Except as and to the extent set forth in this Agreement, Buyer makes no representations or warranties whatsoever to Seller and hereby disclaims all liability and responsibility for any representation, warranty, statement, or information not included herein that was made, communicated, or furnished (orally or in writing) to Seller or its representatives (including any opinion, information, projection, or advice that may have been or may be provided to Seller by any director, officer, employee, agent, consultant, or representative of Buyer or Affiliate thereof).

ARTICLE VI

COVENANTS

The Parties hereby covenant and agree as follows:

Section 6.1 *Regulatory and Other Approvals*. From the date of this Agreement until Closing (the "**Interim Period**"):

(a) Except as otherwise permitted under *Sections 6.4* and *6.5*, each Party will, in order to consummate the transactions contemplated hereby, (i) use its reasonable best efforts, and proceed diligently and in good faith, as promptly as practicable to obtain all Governmental or Regulatory Approvals and make all filings with and give all notices to Governmental Authorities or any other Person required of such Party to consummate the transactions contemplated hereby, including (as applicable) the Seller Approvals, Company Consents and Buyer Approvals, (ii) provide such other information and communications to such Governmental Authorities or other Persons as such Governmental Authorities or other Persons may reasonably request in connection therewith, and (iii) provide reasonable cooperation to the other Party in connection with its performance of its obligations hereunder.

(b) The Parties will provide prompt notification to each other when any such approval or action referred to in *Section 6.1(a)* is obtained, taken, made, given or denied, as applicable, and will advise each other of any material communications (and, unless precluded by Law, provide copies of any such communications that are in writing) with any Governmental Authority or other Person regarding any of the transactions contemplated by this Agreement.

(c) In furtherance of the foregoing covenants:

(i) Each Party shall prepare, as soon as is practical following the execution of this Agreement, all necessary filings in connection with the transactions contemplated by this Agreement that may be required to be filed by such Party with FERC or under the HSR Act or any other federal, state or local Laws. Each Party shall submit such filings as soon as practicable, but in no event later than fifteen (15) Business Days (subject to extension by mutual agreement) after the execution hereof for filings with FERC, and fifteen (15) Business Days after the execution hereof for filings under the HSR Act. The Parties shall request expedited treatment of any such filings, shall promptly furnish each other with copies of any notices, correspondence or other written communication from the relevant Governmental Authority, shall promptly make any appropriate or necessary subsequent or supplemental filings and shall cooperate in the preparation of such filings as is reasonably necessary and appropriate. Each Party shall have the right to review in advance all information related to Seller, the Company, or Buyer, as applicable, and the transactions contemplated by this Agreement with respect to any filing made by the other Party in connection with the transactions contemplated by this Agreement.

(ii) The Parties shall not, and shall cause their respective Affiliates not to, take any action that could reasonably be expected to adversely affect any Governmental or Regulatory Approval.

(iii) Notwithstanding the foregoing, nothing in this *Section 6.1* shall require, or be construed to require, Buyer or any of its Affiliates to agree to (i) sell, hold, divest, discontinue or limit, before or after the Closing Date, any Assets, businesses or interests of Buyer, the Company or any of their respective Affiliates; (ii) any conditions relating to, or changes or restrictions in, the operations of any such Assets, businesses or interests; or (iii) any material modification or waiver of the terms and conditions of this Agreement.

(iv) All filing fees required to be made hereunder shall be split equally between Buyer and Seller.

Section 6.2 *Access of Buyer and Seller*.

(a) During the Interim Period, Seller shall:

(i) provide Buyer and its Representatives with reasonable access, upon reasonable prior notice and during normal business hours, to the Company, the Property, the Acquired Projects and the officers and employees of Seller and its Affiliates who have significant responsibility for the Company, but only to the extent that such access does not unreasonably interfere with the business of Seller or the Business and that such access is reasonably related to the requesting Party's obligations and rights hereunder, and subject to compliance with applicable Laws and any Contracts, Governmental or Regulatory Approvals or Environmental Permits to which Seller, the Company or any of their Affiliates is a party,

(ii) furnish to Buyer copies of any notice of violation or similar correspondence received by Seller or any of its Affiliates (including the Company) from a Governmental Authority during the Interim Period or any notice of an event of default by the Company (or its Affiliates, as applicable) or the applicable counterparty with respect to any Company Contract (with all such notices and correspondence being entitled to confidential treatment in accordance with *Section 6.13(a)*);

(iii) furnish to Buyer copies of any reports, certifications, responses or other documents with respect to the Business or the Acquired Projects submitted by Seller or its Affiliates to, or otherwise received from, NERC during the Interim Period in connection with any audit, certification, report or self-report, spot check, investigation or otherwise;

(iv) furnish to Buyer and its Representatives such other information relating to the Business as such Persons may reasonably request (including any new information and data of a similar character included in the definition of Operating Records created, prepared or generated during the Interim Period, to the extent in the possession of Seller or its Affiliates or Representatives); and

(v) to the extent permitted under the Duke O&M Agreement, instruct its employees and the employees of Duke Energy Murray Operating, LLC and the Representatives of Seller and the Company who are currently involved in the conduct of the Business to provide reasonable cooperation to Buyer in connection with the activities contemplated by this *Section 6.2*;

provided, *however,* that neither Buyer, nor any of its Affiliates or Representatives, shall conduct any compliance evaluation or investigation with respect to the Company or its Property during the Interim Period without the prior written consent of Seller (such consent not to be unreasonably withheld or delayed) and without ongoing consultation with Seller with respect to any such activity (it being understood that in no event shall any subsurface investigation or testing of any environment media be conducted); *provided*, *further*, *however*, that Seller shall have the right to (x) have a Representative present for any communication with any officers of Seller or its Affiliates or personnel located at or involved in the operation of the Acquired Projects, including officers and employees of any Third Party contractors, (y) impose reasonable restrictions and requirements for safety purposes and

(z) restrict access to any privileged information relating to any pending or threatened Claim. Buyer shall provide Seller with not less than two (2) Business Days prior written notice of the date and time on which any such entry upon the Property shall occur.

(b) Buyer hereby agrees to indemnify and hold harmless Seller, its Affiliates and Representatives from and against any and all Claims for injury or death to persons or damage to property to the extent caused directly by any action of any Person or firm entering the Property to carry out the activities described in *Section 6.2(a)* or *Section 6.17* to the extent conducted by or at the direction of Buyer or its Representatives; *provided*, *however*, that the foregoing shall not apply to (i) Claims for injury or death to persons, damage to property or other losses, damages or Claims to the extent arising as a result of the negligence or willful misconduct of Seller or its Representatives or (ii) Claims to the extent arising from or related to any condition existing in, under or on the Property (including the gas-fired combustion turbine generators, steam generators, chiller systems and any components thereof) or the Property prior to the date of such inspections or other activities, including existing environmental contamination and Hazardous Materials; it being understood that Buyer's liability shall be limited to the incremental portion of any such Claims that arise out of any actions taken by Buyer or its Representatives that exacerbated such pre-existing condition. Notwithstanding anything to the contrary in this Agreement, in no event will Buyer be liable for any special, incidental, indirect, consequential or punitive damages of Seller, its Affiliates and Representatives relating to Claims under this *Section 6.2*; *provided*, *however*, this will not limit Buyer's liability for any special, incidental, indirect, consequential or punitive damages incurred by third parties to the extent that they are or become payable by Seller, its Affiliates and Representatives.

Section 6.3 *Conduct of Business and Certain Restrictions*.

(a) Except as required or expressly permitted by this Agreement, or as consented to by Buyer (which consent shall not be unreasonably withheld, conditioned or delayed), during the Interim Period, Seller shall, and shall cause the Company to (i) (x) operate the Business in all material respects in the ordinary course of business consistent with past practices, and (y) use commercially reasonable efforts to conduct the Business in material compliance with all (A) rules and reporting obligations applicable to the Company under NERC, as designated by FERC, to the extent required to ensure that the representation contained in *Section 4.6(d)* is true as of the Closing Date, and (B) Environmental Laws and Environmental Permits applicable to the Company, and (ii) use commercially reasonable efforts to preserve, maintain and protect in all material respects consistent with past practices the Business and the Assets, rights, Property and goodwill of the Company. Without limiting the foregoing, except (I) as otherwise required or expressly permitted by this Agreement or required by the terms of any Environmental Permit or any Company Contract, or (II) as consented to by Buyer, which consent shall not be unreasonably withheld, conditioned or delayed (except that this *Section 6.3* shall not apply to Terminated Contracts or services terminated pursuant to *Section 6.19*), during the Interim Period, Seller (1) shall not sell, transfer or dispose of any equity interests in the Company or amend the Company's Organizational Documents or take any action with respect to any such amendment or any recapitalization, reorganization, liquidation, dissolution or winding up of the Company, and (2) shall cause the Company not to:

(i) amend the Company's Organizational Documents or take any action with respect to any such amendment or any recapitalization, reorganization, liquidation, dissolution or winding up of the Company;

(ii) acquire any Assets (but not interests in real property, which are covered by subclause (iii) below) except to the extent that such Assets are acquired or exchanged (A) in the ordinary course of business and are not in excess in value of $200,000 individually or $400,000 in the aggregate, (B) are for the purchase or sale of gas, transportation rights, capacity, transmission rights, electric power or ancillary services in the ordinary course of business, (C) pursuant to

Purchase Orders in existence on the date of this Agreement or entered into in the ordinary course, or (D) as expressly contemplated by this Agreement;

(iii) acquire or, other than due to condemnation or related actions or as otherwise required by Law or court order, dispose of any interest in real property;

(iv) other than the use of supplies, materials and spare parts inventory and sales of capacity, electric power or ancillary services, in each case in the ordinary course of business, dispose of any Assets of the Company except to the extent that such Assets are disposed of (A) in the ordinary course of business and are not in excess in value of $200,000 individually or $400,000 in the aggregate or (B) as expressly contemplated by this Agreement;

(v) incur any Liens on, or permit any Liens to be imposed on, any Assets or Property of the Company, except for Permitted Encumbrances or Liens incurred or imposed (A) in the ordinary course of business and not in excess in value of $200,000 individually or $400,000 in the aggregate or (B) expressly contemplated by this Agreement;

(vi) amend, modify, terminate (partially or completely) the Company Contracts identified on *Schedule 6.3(a)(vi)*;

(vii) other than the Company Contracts covered by (vi) above, materially amend, modify, terminate (partially or completely, but other than in accordance with its terms) any Company Contract (other than any Company Contract terminated in accordance with *Section 6.19* and any Purchase Order amended, modified, or terminated in the ordinary course of business);

(viii) incur, create, assume or otherwise become liable for any Indebtedness for Borrowed Money other than Indebtedness for Borrowed Money which will be repaid (or where the obligations of the Company with respect thereto will be released) at or prior to the Closing Date or enter into any guarantee of the obligations of another Person which will be binding on the Company after Closing;

(ix) make any material change in the levels of supplies, materials and spare parts inventory customarily maintained by the Company, other than consistent with past practice;

(x) terminate or amend any Governmental or Regulatory Approval necessary to conduct the Business as currently conducted;

(xi) incur Capital Expenditures in excess of $500,000 in the aggregate;

(xii) except in the ordinary course of business and notwithstanding subsection (ix), make commitments to incur any expenses or other liabilities after the Closing Date in an aggregate amount exceeding $400,000;

(xiii) fail to maintain its existence as a limited liability company or merge or consolidate with or invest in any other Person;

(xiv) forgive or cancel any debts, or waive or settle any Claims or rights other than in the ordinary course of business;

(xv) materially amend, cancel or fail to maintain any of the levels or types of coverage contained in the insurance policies identified in *Section 4.18(a) of Seller's Disclosure Schedule* to the extent such coverage applies to the Company or the Assets;

(xvi) hire any employees or establish any compensation or benefit plan, program, policy, practice, arrangement or agreement on behalf of any officer or director of the Company;

(xvii) mortgage, pledge, assign, transfer (other than as noted in clause (iii) above), sub-lease, or otherwise encumber or convey any of the Property or any of the Company's interests in the

Property or enter into any agreement granting to any person any right to acquire any interest in the Property;

(xviii) sell, transfer, lease or otherwise dispose of, the Acquired Interests or create or permit to exist any Liens with respect to or otherwise encumbering the Acquired Interests other than Liens securing Project Indebtedness which shall be released at or prior to the Closing;

(xix) issue equity or other securities, or options or rights to acquire equity or other securities, of the Company, including any securities convertible into the foregoing securities;

(xx) make any material change in the Company's accounting principles, methods or policies, except as otherwise required by GAAP;

(xxi) except in the ordinary course of business, amend, restate, supplement or waive or terminate any rights under any Material Governmental or Regulatory Approval;

(xxii) (A) change any Tax accounting methods, policies or practices of or with respect to the Company, or with respect to the Assets of the Company, except as required by a change in GAAP, (B) make (except in the ordinary course of business), revoke or amend any Tax election of or with respect to the Company, or with respect to the Assets of the Company, (C) file any amended Tax Return or claim for refund of or with respect to the Company, or with respect to the Assets of the Company, (D) enter into any closing agreement affecting any Tax liability or refund of or with respect to the Company, or with respect to the Assets of the Company, (E) settle or compromise any Tax liability or refund of or with respect to the Company, or with respect to the Assets of the Company, or (F) extend or waive the application of any statute of limitations regarding the assessment or collection of any Tax of or with respect to the Company, or with respect to the Assets of the Company;

(xxiii) enter into any Contract for the purchase or sale of gas or electric power, whether settled financially or physically, that has a delivery period thereunder in excess of two (2) months from the date that such Contract was entered into;

(xxiv) enter into any Contract (other than Purchase Orders) providing for the prepayment of services with a value in excess of $100,000;

(xxv) approve the hiring as or promotion of any Person to, or termination of any Person employed as, the position of manager or other similar supervisory position of an Acquired Project without the prior written consent of Buyer;

(xxvi) make any offer regarding, solicit or respond to offers regarding, or engage in discussions or negotiations regarding any long-term sale of capacity, energy or other products from or associated with the Acquired Projects that would adversely affect the ability of Buyer or its members to fully utilize the Acquired Projects after the Closing;

(xxvii) enter into any compromise or settlement of any Claim by a Governmental Authority relating to the Company or its Assets with a value equal to or in excess of $100,000 other than in the ordinary course of business;

(xxviii) enter into, or amend, modify or terminate (partially or completely), any Purchase Orders that are (A) material to the conduct of the Business or (B) require payments by or to the Company in excess of, or expose the Company to liability reasonably likely to exceed, $250,000 (individually or together with other Purchase Orders for the same goods or services that are entered into at the same time or as part of the same transaction and would, in the ordinary course of business consistent with past practice, be reflected on an aggregate basis in the Company's books and records as a single Purchase Order); provided that Seller agrees to provide Buyer a list of all open Purchase Orders on a bi-weekly or more frequent basis;

(xxix) enter into any Company Contract (excluding Purchase Orders) except as may be reasonably required or desirable in connection with the continued operation and maintenance of the Acquired Projects;

(xxx) approve a budget overrun proposal for one or more Major Line Items set forth in the month by month projection of expenses provided in the Annual Management Plan provided by Duke Energy Murray Operating, LLC to the Company for the current Operating Year, where the amount of such overrun amounts will not be adequately reflected in the Closing Date Net Working Capital. For purposes of this *Section 6.3(a)(xxx)*, the terms "Major Line Items", "Annual Management Plan" and "Operating Year" shall have the meanings given to such terms in the Duke O&M Agreement; or

(xxxi) agree or commit to do or engage in any of the foregoing.

(b) Notwithstanding the foregoing, Seller may, without having to obtain the consent of Buyer, permit the Company to take commercially reasonable actions with respect to emergency situations as reasonably determined by Seller so long as Seller shall, upon receipt of notice of any such actions, promptly inform Buyer of any such actions taken outside the ordinary course of business consistent with past practices.

Section 6.4 *KPC Proxy Statement; Recommendations*.

(a) *KPC Proxy Statement.* As promptly as practicable after the date of this Agreement, KPC shall, and Seller and Buyer shall cooperate with KPC to enable it to, prepare the Proxy Statement and cause the Proxy Statement to be mailed to the stockholders of KPC. Notwithstanding that KPC is not required to filed reports with the SEC under the Securities Exchange Act of 1934, as amended (the "**Exchange Act**"), KPC shall nonetheless include in such Proxy Statement the information that would be required to be disclosed in the Proxy Statement to comply in all material respects with Section 14(a) of the Exchange Act and the rules and regulations promulgated thereunder as if KPC was so required to file reports with the SEC. Prior to mailing the Proxy Statement to its stockholders, KPC shall provide Buyer a reasonable opportunity to review and comment on the Proxy Statement. If any communication proposed to be made by KPC or any of its Representatives generally to the stockholders of KPC will refer to or comment upon the transactions contemplated hereby, prior to the release or issuance of such communication, KPC shall provide Buyer a reasonable opportunity to review and comment on the portion of such communication that refers to or comments upon the transactions contemplated hereby.

(b) KPC Special Meeting of Stockholders.

(i) *Holding Special Meeting.* As promptly as practicable after the date of this Agreement, KPC shall in accordance with applicable Law and KPC's Organizational Documents duly call, give notice of, convene and hold a special meeting of stockholders (the "**Special Meeting**") for the purpose of obtaining the affirmative vote of the holders of a majority of the outstanding shares of KPC's common stock (the "**Stockholder Approval**") in favor of a resolution authorizing the sale of the Acquired Interests pursuant to this Agreement. KPC shall:

(1) use its commercially reasonable efforts to solicit from its stockholders proxies in favor of a resolution authorizing the sale of the Acquired Interests pursuant to this Agreement and use its commercially reasonable efforts to take all other action necessary or advisable to secure the Stockholder Approval in compliance with all applicable Laws; and

(2) subject to the provisions of this *Section 6.4(b)* and *Section 6.5*, include in the Proxy Statement the recommendation of the Board of Directors of KPC (the "**KPC Board**") that the stockholders of KPC approve a resolution authorizing the sale of the Acquired Interests pursuant to this Agreement at the Special Meeting (the "**KPC Recommendation**").

(ii) *KPC Recommendation to Stockholders.* The KPC Board shall not fail to make the KPC Recommendation to its stockholders, and shall not withdraw, qualify, amend or modify the KPC Recommendation, and no director or executive officer of KPC shall make any statement to the stockholders of KPC, or otherwise directly or indirectly communicate with the stockholders of KPC or with the financial press or general public in a manner that is inconsistent with, the KPC Recommendation (any of the foregoing, a "**KPC Recommendation Change**"), except that:

(1) the KPC Board may make a KPC Recommendation Change in connection with a Takeover Proposal in accordance with *Section 6.5*; and

(2) if a KPC Intervening Event shall have occurred, the KPC Board may make a KPC Recommendation Change in response to such KPC Intervening Event before the Stockholder Approval has been obtained if the KPC Board determines in good faith, after consulting with its outside legal advisors, that the failure by the KPC Board to make a KPC Recommendation Change in response to such KPC Intervening Event would be inconsistent with its fiduciary duties under applicable Law.

Notwithstanding clause (2) above, the KPC Board shall not be permitted to make a KPC Recommendation Change in response to a KPC Intervening Event unless, at least five (5) days prior to the KPC Board taking such action, KPC shall have provided written notice to Buyer (a "**KPC Notice of Intervening Event**") (A) describing the KPC Intervening Event, and (B) stating that the KPC Board intends to make a KPC Recommendation Change in response to such KPC Intervening Event, and the KPC Board's reasons for making such KPC Recommendation Change. KPC agrees that after delivering a KPC Notice of Intervening Event, Buyer will be permitted to propose to KPC revisions to the terms of the transactions contemplated by this Agreement such that the KPC Board will no longer be required to make a KPC Recommendation Change, and that KPC and its Representatives will consider in good faith any such revisions to the terms of the transactions contemplated by this Agreement proposed by Buyer.

(iii) *Obligation to Hold Special Meeting Continues.* Prior to the termination of this Agreement, the obligation of KPC pursuant to *Section 6.4(b)(i)* to call, give notice of, convene and hold the Special Meeting and to hold a vote of KPC's stockholders on the adoption of this Agreement and the approval of the sale of the Acquired Interests at the Special Meeting shall not be limited or otherwise affected by the commencement, disclosure, announcement or submission to it of any Takeover Proposal (whether or not a Superior Offer), occurrence of a KPC Intervening Event or by a KPC Recommendation Change. In any case in which the KPC Board makes a KPC Recommendation Change, and unless this Agreement is sooner terminated, (i) KPC shall nevertheless submit the resolution regarding the matters contemplated by this Agreement to a vote of its stockholders in accordance with *Section 6.4(b)(i)* and (ii) the Proxy Statement and any and all accompanying materials (including the proxy card) shall be identical in form and content to the Proxy Statement and any and all accompanying materials (including the proxy card) that would have been prepared by KPC had no KPC Recommendation Change been made, except for appropriate changes to the disclosure in the Proxy Statement (x) stating that such KPC Recommendation Change has been made, (y) describing matters relating to the KPC Intervening Event or Superior Offer, as applicable, to the extent required by applicable Law, and (z) providing such other information as would be required to be disclosed to comply in all material respects with Section 14(a) of the Exchange Act and the rules and regulations promulgated thereunder if KPC's solicitation of its stockholders were subject to Section 14(a) of the Exchange Act and the rules and regulations promulgated thereunder. KPC agrees that, prior to the termination of this Agreement, it shall not submit to the vote of its stockholders any Takeover Proposal (whether or not a Superior Offer, but excluding any Permitted Transaction) or propose to do so. KPC may postpone or adjourn the Special Meeting or delay the solicitation of

proxies to the extent necessary to ensure that any supplement or amendment to the Proxy Statement required by Law (including Section 14(a) of the Exchange Act and the rules and regulations promulgated thereunder as if KPC's solicitation of its stockholders were subject to Section 14(a) of the Exchange Act and the rules and regulations promulgated thereunder) is provided to KPC's stockholders or, if as of the time for which the Special Meeting is scheduled, there are insufficient shares of stock of KPC represented (either in person or by proxy) to constitute a quorum necessary to conduct the business of the Special Meeting.

Section 6.5 *No Solicitation*.

(a) *General Rule.* Except as set forth in this *Section 6.5*, none of KPC, Seller, the Company or any of their respective Affiliates shall, and KPC and Seller shall each use commercially reasonable efforts to cause its respective Representatives to not:

(i) solicit, initiate or knowingly encourage (including through the providing of information), or take any other action to in any way knowingly facilitate, any inquiries, proposals or offers from a Third Party with respect to, or the making of any proposal that constitutes or could reasonably be expected to lead to, a Takeover Proposal (provided, however, that in connection with a request to terminate, waive, amend or modify any provision of, or grant permission under, any standstill provision, which request is made by a Third Party without any solicitation, initiation, knowing encouragement or facilitation by KPC, Seller, the Company or any of their respective Affiliates, this clause (i) shall not prohibit the KPC Board from terminating, waiving, amending or modifying any provision of, or granting permission under, any standstill provision if the KPC Board determines in good faith, after consulting with KPC's outside legal advisors, that the failure to do so would be inconsistent with its fiduciary duties under applicable Law);

(ii) furnish any non-public information regarding the Company or KPC to any Person (other than Buyer or its Representatives) in connection with or in response to a Takeover Proposal or any inquiry, proposal or offer that reasonably could be expected to lead to a Takeover Proposal;

(iii) engage in discussions or negotiations with any Person with respect to any Takeover Proposal or any inquiry, proposal or offer that reasonably could be expected to lead to a Takeover Proposal;

(iv) withdraw or modify, or propose publicly to withdraw or modify the KPC Recommendation, except as permitted by *Section 6.4(b)* or this *Section 6.5*;

(v) endorse, approve or recommend, or propose publicly to endorse, approve or recommend, any Takeover Proposal; or

(vi) negotiate or enter into any letter of intent, agreement in principle, acquisition agreement or other similar agreement or document (whether binding or not) for any Takeover Proposal.

Each of KPC and Seller (x) shall, as promptly as practicable following the date hereof, advise their respective Representatives of the restrictions set forth herein and shall cause its Affiliates to, and shall use its reasonable best efforts to cause its Representatives to, abide by such restrictions, (y) shall, and shall cause its Affiliates to, and shall use its reasonable best efforts to cause its and its Affiliates' Representatives to, immediately cease and cause to be terminated any existing activities, discussions or negotiations with any Persons conducted heretofore with respect to any Takeover Proposal, and (z) request the prompt return or destruction of all confidential information concerning the Company and its Affiliates previously furnished by KPC, Seller, the Company, or their respective subsidiaries, Affiliates or Representative to any Third Party (other than Buyer). KPC and Seller acknowledge and

agree that any action taken by any Affiliate or Representative of KPC or Seller (whether or not such Person is purporting to act on behalf of KPC or Seller) that would, had such action been taken directly by KPC or Seller, constitute a breach of the restrictions set forth in this *Section 6.5* shall be deemed to constitute a breach of this *Section 6.5* by each of KPC and Seller.

(b) *Takeover Proposal.* Notwithstanding anything in this Agreement to the contrary, including *Section 6.5(a)*, at any time prior to obtaining the Stockholder Approval, if KPC or any of its Representatives receives a written Takeover Proposal that did not result from a breach of *Section 6.5(a)* (including any action taken by any Affiliate or Representative deemed to be a breach of *Section 6.5(a)* by KPC and Seller), KPC, Seller or any of their respective Representatives may contact the Person or Persons making such Takeover Proposal to clarify (but not negotiate) any terms or conditions thereof that the KPC Board may reasonably require to make a good faith determination (after consultation with KPC's outside legal and financial advisors) as to whether such Takeover Proposal is, or could reasonably be expected to lead to, a Superior Offer, and may also:

(i) furnish non-public information regarding KPC or the Company or any of their respective subsidiaries in response to a request by the Third Party who made such Takeover Proposal so long as such Third Party executes (or is otherwise bound by) a confidentiality agreement at least as restrictive as the Confidentiality Agreement (a true and complete copy of which shall be provided to Buyer promptly upon receipt of such Takeover Proposal (with respect to a Third Party already subject to a confidentiality agreement satisfying the provisions of this *Section 6.5(b)*) or immediately following the execution of same (including any amendment to an existing confidentiality agreement to conform to the provisions of this *Section 6.5(b)*); provided that (x) in the case of an existing, amended or new confidentiality agreement, as applicable, such confidentiality agreement may not prohibit KPC or Seller from providing information to Buyer, including information concerning the actual or contemplated Takeover Proposal, to the extent required to permit Seller to satisfy its obligations under *Section 6.5(d)(ii)* and (y) no such amended or new confidentiality agreement need prohibit the making or amendment of a Takeover Proposal; and/or

(ii) engage in discussions or negotiations with the Third Party who made such Takeover Proposal,

if, prior to taking any of the actions described in clause (i) or (ii), the KPC Board determines in good faith (x) after consultation with KPC's outside legal and financial advisors that such Takeover Proposal is, or could reasonably be expected to lead to, a Superior Offer and (y) after consultation with KPC's outside legal advisors, that the failure to take such action would be inconsistent with its fiduciary duties under applicable Law. KPC shall make available, or cause to be made available, to Buyer (in each case prior to or substantially concurrently with the time it is provided to such Third Party) any non-public information regarding the Company or KPC or any of its subsidiaries provided by KPC or Seller to any Person or Persons who made a Takeover Proposal, to the extent that such information was not previously made available to Buyer.

(c) *Notice of Inquiries.* KPC shall (i) notify Buyer as promptly as practicable (and in any event within twenty-four (24) hours) after the receipt by Seller, KPC or any of their respective Representatives, of any bona fide inquiries, proposals or offers, requests for information or requests for discussions or negotiations regarding any Takeover Proposal, or that could reasonably be expected to result in a Takeover Proposal, specifying the terms and conditions thereof and the identity of the Person making such inquiry, proposal, offer or request, and (ii) keep Buyer informed on a reasonably current basis of the status of any discussions or negotiations and of any modifications to any such Takeover Proposal or any such inquiries, proposals, offers or requests for information.

(d) *Superior Offer*

(i) *Actions Following Superior Offer.* Notwithstanding anything in this Agreement to the contrary, including *Section 6.5(a)*, at any time prior to obtaining Stockholder Approval (1) the KPC Board may make a KPC Recommendation Change in connection with a Takeover Proposal or (2) KPC and Seller may terminate this Agreement (by delivery of a written notice of termination to Buyer) so that KPC, Seller or the Company may enter into an agreement in respect of a Superior Offer (the "**Superior Offer Documentation**"), but only if, in the case of either or both of clause (1) or (2) above: (x) Seller or KPC shall have received a Takeover Proposal that did not result from a material breach of *Section 6.5(a)*, (y) the KPC Board determines in good faith, after consultation with KPC's outside advisors, that such proposal constitutes a Superior Offer, and, after consultation with KPC's outside legal advisors, that the failure of the KPC Board to make a KPC Recommendation Change and/or the failure of Seller to terminate this Agreement, as applicable, would be inconsistent with the fiduciary duties of the KPC Board under applicable Law, and (z) prior to or contemporaneously with termination of this Agreement pursuant to this *Section 6.5(d)*, KPC shall have paid to Buyer the termination fee in accordance with *Section 9.3(a)(iv)*.

(ii) *Notice and Buyer Match Rights.* Notwithstanding the foregoing, the KPC Board shall not be permitted to make a KPC Recommendation Change and KPC and Seller shall not be permitted to terminate this Agreement, in each case in connection with a Superior Offer, unless, at least five (5) days prior to the taking of such action, KPC shall have provided written notice to Buyer (a "**Notice of Superior Offer**") (A) specifying the material terms and conditions of the Superior Offer and the identity of the Third Party making the Superior Offer, and (B) stating that the KPC Board intends to make a KPC Recommendation Change or that KPC and Seller intend to terminate this Agreement so that KPC, Seller or the Company may enter into the Superior Offer Documentation (in which case such notice shall be accompanied by a copy of the then most recent drafts of the Superior Offer Documentation), as applicable. KPC agrees that after delivering a Notice of Superior Offer, Buyer will be permitted to propose to KPC revisions to the terms of the transactions contemplated by this Agreement such that the relevant Takeover Proposal shall no longer be deemed a Superior Offer, and that KPC and its Representatives will consider in good faith any such revisions to the terms of the transactions contemplated by this Agreement proposed by Buyer. KPC Board shall not be permitted to make a KPC Recommendation Change and KPC and Seller shall not be permitted to terminate this Agreement pursuant to this *Section 6.5(d)*, as applicable, if during the five (5)-day period after delivery of the Notice of Superior Offer (the "**Buyer Match Period**"), Buyer shall have made to KPC a binding offer to revise the terms of this Agreement and, after consideration of the terms of this Agreement as proposed by Buyer to be revised by the KPC Board in good faith and after consulting with KPC's outside advisors, the KPC Board concludes that the Takeover Proposal referenced in the Notice of Superior Offer no longer constitutes a Superior Offer. In the event of any amendment to the consideration or any other material revisions to the Superior Offer, KPC shall be required to deliver a new Notice of Superior Offer to Buyer and to comply with the requirements of this *Section 6.5(d)* with respect to such new Notice of Superior Offer, including a new Buyer Match Period except that the new Buyer Match Period shall be three (3) days.

(e) *Tender Offer.* Nothing contained in this Agreement shall prohibit KPC or the KPC Board from taking and disclosing to KPC's stockholders a position with respect to a tender offer by a Third Party pursuant to Rule 14 e-2 promulgated under the Securities Exchange Act of 1934, as amended, or from making such disclosure to KPC's stockholders which, in the judgment of the KPC Board, after consulting with outside legal counsel, is reasonably likely to be required under applicable Law; *provided*, *however*, that any disclosure made pursuant to this *Section 6.5(e)* (other than a "stop, look and listen" letter or similar communication of the type contemplated by Rule 14d-9(f) under the Exchange Act) shall be deemed to be a KPC Recommendation Change unless the KPC Board expressly states in such disclosure that the KPC Recommendation has not changed.

(f) *Permitted Transaction.* KPC shall keep Buyer reasonably apprised of any negotiations concerning a Permitted Transaction described in clause (a)(ii) of the definition of that term (other than any Business Combination Transaction that is a direct sale of only the equity interests in or assets of KGen Hinds LLC and/or KGen Hot Springs LLC), and shall, at least five (5) Business Days prior to executing documentation providing for such Permitted Transaction, provide Buyer with a copy of such documentation in order to permit Buyer to confirm that the relevant transaction complies with the definition of Permitted Transaction.

(g) *No Buyer Solicitation.* Except as shall be required by any applicable Law or Order, neither Buyer nor any of its controlled Affiliates, or its or their officers, directors, or employees may, directly or indirectly, make any offer regarding, solicit or respond to offers regarding, or engage in discussions or negotiations regarding, any direct or indirect acquisition of any other electric generation facilities to the extent that such acquisition would adversely affect Buyer's ability or willingness to enter into this Agreement or to consummate the transactions contemplated hereby. In the event Buyer determines that it is legally compelled to make any offer regarding, solicit or respond to offers regarding, or engage in discussions or negotiations regarding any acquisition specified in the previous sentence, then, to the extent permitted by applicable Law, Buyer shall provide Seller with prompt written notice of such requirement and action so that Seller may have the opportunity to dispute such determination. Buyer represents and warrants that, after the date hereof, neither it nor any of its controlled Affiliates will continue any such discussions that would violate this *Section 6.5(g)* and are not party to or bound by any agreement that would conflict with this *Section 6.5(g)*. Nothing herein will restrict Buyer or any of its controlled Affiliates from developing or constructing other electric generation facilities.

Section 6.6 *Use of Certain Names*.

(a) Within ten (10) days following the Closing, Buyer shall cause the Company to cease using the name "KGen", and any word or expression similar thereto or constituting an abbreviation or extension thereof (the "**Seller Marks**"), including eliminating the Seller Marks from the name of the Company, the Property and Assets of the Company and disposing of any unused stationery and literature of the Company bearing the Seller Marks, and thereafter, Buyer shall not, and shall cause the Company and their Affiliates not to, use the Seller Marks or any logos, trademarks, trade names, patents or other Intellectual Property rights belonging to Seller or any Affiliate thereof, and Buyer acknowledges that it, its Affiliates and the Company have no rights whatsoever to use such Intellectual Property.

(b) Notwithstanding Buyer's right to use the Seller Marks for the time periods set forth in *Section 6.6(a)*, Buyer acknowledges and agrees as follows: (i) neither Buyer nor any of its Affiliates (including the Company after the Closing Date) shall be deemed an agent, representative or joint venture partner of Seller, (ii) Seller shall retain sole and exclusive ownership of the Seller Marks, and all goodwill and rights related thereto, (iii) all use of the Seller Marks by Buyer and its Affiliates (including the Company after the Closing Date) shall inure exclusively to the benefit of Seller, (iv) Buyer and its Affiliates (including the Company after the Closing Date) shall take no action inconsistent with Seller's rights, or the rights of any of Seller's Affiliates, with respect to the Seller Marks, (v) Buyer and its Affiliates (including the Company after the Closing Date) shall not engage in any conduct or take part in any activity that would be reasonably likely to (A) impair the validity or enforceability of the Seller Marks, (B) dilute the distinctiveness of the Seller Marks, (C) disparage the Seller Marks or (D) be considered an infringement or other violation of the rights of Seller or its Affiliates in the Seller Marks, and (vi) notwithstanding anything to the contrary contained in *Article X*, and irrespective of such *Article X*, Buyer shall indemnify, defend and hold harmless the Seller Indemnified Parties from, against, and in respect of, any and all Losses incurred or suffered by a Seller Indemnified Party to the extent arising out of or relating to any use of any of the Seller Marks by Buyer or any of its Affiliates (including the Company after the Closing Date).

Section 6.7 *Insurance*. Seller shall maintain or cause to be maintained in full force and effect the insurance policies described in *Section 4.18(a) of Seller's Disclosure Schedule* covering the Company and the Acquired Projects until the Closing or, if they expire or are terminated prior to the Closing, shall replace them with reasonably comparable policies. All such insurance coverage shall be terminated as of the Closing. Buyer shall be solely responsible from and after the Closing for providing insurance to the Company and the Acquired Projects for events or occurrences that occur after the Closing.

Section 6.8 *Transfer Taxes*. Buyer shall pay any Transfer Taxes imposed on Buyer, Seller, KPC or the Company by Law as a result of the sale of the Acquired Interests. If Seller is required at Law to pay any such Transfer Taxes, Buyer shall promptly reimburse Seller for such amounts. Seller and Buyer shall timely file their own Transfer Tax Tax Returns as required by Law and shall notify the other Party when such filings have been made. Seller and Buyer shall cooperate and consult with each other prior to filing such Transfer Tax Tax Returns to ensure that all such returns are filed in a consistent manner. Notwithstanding the foregoing, Buyer shall be solely responsible for any Transfer Taxes arising from any action to dissolve, terminate or restructure the Company or to convey, distribute or transfer any Assets, properties or other rights by deed, bill of sale or otherwise to or from the Company in each case after the Closing.

Section 6.9 *Books and Records*. Seller shall deliver the books and records of the Company in Seller's possession to Buyer as promptly as practicable following the Closing Date if such books and records are not present at the Company on the Closing Date (it being agreed that Seller may retain a copy thereof). From and after Closing, Buyer agrees to preserve and keep the books and records of the Company (including all accounting records) for a period of three (3) years from the Closing, or for any longer periods as may be required by any Governmental Authority or ongoing litigation. If Buyer wishes to destroy such records after such time period, it shall give sixty (60) days' prior written notice to Seller, and Seller shall have the right at its option and expense, upon prior written notice within such sixty (60)-day period, to take possession of the books and records within ninety (90) days after the date of Buyer's notice to Seller. From and after the Closing, Buyer agrees, upon reasonable prior notice from Seller, to provide to Seller and its Representatives, at Seller's sole cost and expense, access to or copies of books and records of the Company to the extent relating to events that occurred prior to the Closing and to the extent needed for a legitimate business purpose.

Section 6.10 *Tax Matters*.

(a) Seller shall: (i) prepare and timely file (taking into account available extensions) all Tax Returns required to be filed by or with respect to the Company (or any of the income, assets or operations of the Company) for taxable years or periods ending on or prior to the Closing Date and (ii) timely pay all Taxes shown to be due and payable on such Tax Returns, other than any such Taxes reflected as an Account Payable for purposes of *Section 2.4*. All such Tax Returns shall be prepared in a manner consistent with past practice.

(b) To the extent permitted or required by Law or administrative practice, the taxable year of the Company which includes the Closing Date shall be treated as closing on (and including) the Closing Date. Where it is necessary for purposes of this Agreement to apportion between Seller and Buyer the Taxes of or with respect to the Company, or with respect to the Assets of the Company, for a Straddle Period (which is not treated under the immediately preceding sentence as closing on the Closing Date), such liability shall be apportioned between the period deemed to end at the close of the Closing Date, and the period deemed to begin at the beginning of the date following the Closing Date on the basis of an interim closing of the books, except that Taxes (such as real or personal property Taxes or any payments under the Property Tax Payment Agreement) imposed on a periodic basis shall be allocated on a daily basis.

(c) Seller shall, at Seller's expense, control any audit, examination or proceeding relating to Taxes of or with respect to or payable by the Company, or with respect to the Assets of the Company,

for any taxable years or periods, or portions thereof, ending on or before the Closing Date; provided that Seller shall not (and shall not cause or permit any of its Affiliates to) settle or compromise any such audit, examination or proceeding without first obtaining Buyer's written consent (which consent shall not be unreasonably withheld, conditioned or delayed). Buyer will have the opportunity to participate in any such audit, examination or proceeding. Buyer will have the right to control, at its own expense, any audit, examination or proceeding (or portion thereof) that does not relate to a taxable year or period, or portion thereof, ending on or before the Closing Date. Notwithstanding anything to the contrary herein, Buyer shall not have any right to review any Tax Return or participate in any audit, examination or proceeding relating to Taxes of Seller, except (i) as provided in this *Section 6.10(c)* or (ii) if such Tax Return, audit, examination or proceeding would reasonably be expected to directly affect the Taxes of the Company, Buyer or any of their Affiliates.

(d) Seller shall indemnify the Buyer Indemnified Parties from and against and in respect of any and all Losses incurred by the Buyer Indemnified Parties, which may be imposed on, sustained, incurred, or suffered by or assessed against the Buyer Indemnified Parties, directly or indirectly, to the extent relating to or arising out of (i) any breach of any of Seller's representations or warranties contained in *Section 4.10*, (ii) any breach of any covenant or agreement of Seller contained in *Section 6.8* or this *Section 6.10*, (iii) any liability for Taxes of or with respect to the Company, or with respect to the Assets of the Company, for any taxable year or period that ends on or before the Closing Date and, with respect to any Straddle Period, the portion of such Straddle Period deemed to end on and include the Closing Date, but only to the extent any such Tax exceeds the accrual or reserve for such Tax taken into account in determining the final Closing Date Net Working Capital and (iv) Seller's portion of Transfer Taxes, as determined pursuant to *Section 6.8*.

(e) Seller and Buyer hereby agree that any and all indemnity payments made pursuant to this Agreement shall, to the maximum extent permitted by applicable Law, be treated for all Tax purposes as adjustments to the Total Purchase Price.

(f) Notwithstanding any other provision of this Agreement, the representations and warranties of Seller contained in *Section 4.10* and the obligations of Seller set forth in this *Section 6.10* shall not be subject to any restrictions, requirements or limitations other than those expressly set forth in this *Section 6.10* and *Section 10.2*.

Section 6.11 *Casualty*. If any Asset of the Company is damaged or destroyed by casualty loss after the date of this Agreement and prior to the Closing (a "**Casualty Loss**"), then the "**Restoration Cost**" shall equal (i) the cost of restoring such damaged or destroyed Asset to a condition in which it operates and performs in substantially the same manner as immediately prior to such Casualty Loss plus (ii) the amount of any lost profits or margin reasonably expected to accrue after the Closing as a result of such Casualty Loss to such Asset (in each case, without giving effect to any insurance proceeds that may be available to the Company)).

(a) If the Restoration Cost is greater than one half of one percent (0.5%) of the Cash Purchase Price but less than or equal to ten percent (10%) of the Cash Purchase Price, then (A) neither Buyer nor Seller shall have the right to terminate this Agreement as a result of such Casualty Loss, and (B) Seller shall promptly elect by written notice to Buyer to (x) reduce the Cash Purchase Price by an amount equal to the Restoration Cost, or (y) as promptly as practicable replace the Asset with an Asset of the same type, quality and capabilities or restore it to the condition in which it operates and performs in substantially the same manner as immediately prior to such Casualty Loss (at Seller's sole cost and expense). In connection with such election, Seller shall engage the Appraisal Firm (as defined below) to estimate the Restoration Cost and shall make its election as promptly as practicable following receipt of such estimate from the Appraisal Firm. If Seller elects to reduce the Cash Purchase Price by an amount equal to the Restoration Cost, then the Closing of the transactions contemplated by this Agreement shall occur (subject to the satisfaction (or waiver by the applicable

Party) of the conditions set forth in *Articles VII* and *VIII*). If Seller elects to replace or restore the Asset, then promptly after the date that Seller or Buyer becomes aware of the event giving rise such a Casualty Loss:

(i) Buyer and Seller shall engage a qualified independent firm reasonably acceptable to both Parties (the "**Appraisal Firm**"). If, for any reason, the Parties are unable to agree upon the Appraisal Firm, then each Party shall promptly select an independent expert of its choosing and the experts selected by Buyer and Seller shall, in turn, promptly select a third qualified independent expert to act as the Appraisal Firm.

(ii) Seller and the Company shall cooperate with the Appraisal Firm, including (1) granting access to the damaged Assets immediately following its selection by Buyer and Seller, (2) promptly delivering to the Appraisal Firm any periodic reports from contractors and allowing the Appraisal Firm to attend meetings relating to restoration or replacement of any damaged Assets, and (3) the Appraisal Firm shall, without unreasonably interfering with Seller's construction activities, have the right to (x) meet with Seller and Seller's contractors and inspect such Assets and the Operating Records and (y) observe the performance of Seller and Seller's contractors, in each case until such time as Seller's repair or restoration is complete.

(iii) The Parties shall inform (and update as applicable) the Appraisal Firm of the expected time that all of the conditions set forth in *Articles VII* and *VIII* will have been satisfied (or otherwise waived by the Party for whose benefit such conditions exist). If at any point the Appraisal Firm determines that the repair or restoration is not reasonably likely to be completed by such time, then:

(1) as promptly as practicable, the Appraisal Firm shall estimate the cost of completing such replacement and/or restoration and the amount of any lost profits or margin reasonably expected to accrue after the Closing as a result of such Casualty Loss (the "**Restoration Completion Cost**"); and

(2) unless otherwise elected by Seller, the Parties shall proceed to Closing the transactions contemplated under this Agreement (subject to the satisfaction (or waiver by the applicable Party) of the conditions set forth in *Articles VII* and *VIII* and the completion of the Appraisal Firm's estimate), and the Cash Purchase Price shall be reduced by an amount equal to the Restoration Completion Cost.

If Seller elects to not proceed to Closing the transaction contemplated by this Agreement, Buyer may nevertheless, at any time prior to completion of replacement and/or restoration, elect to require that the Parties proceed to Closing upon giving notice to Seller (which shall be a minimum of three (3) calendar days after Seller's election or a minimum of thirty (30) calendar days for any subsequent Buyer election)(a "**Buyer Closing Election**"). In the event of a Buyer Closing Election, (x) the Cash Purchase Price shall be reduced by an amount equal to the Restoration Completion Cost (excluding for this purpose the amount of any lost profits or margin reasonably expected to accrue after the Closing as a result of such Casualty Loss to such Asset) and (y) to the extent that, after the Closing, Seller or any of its Affiliates (other than the Company) receives insurance proceeds in respect of any lost profits or margin expected to accrue after the Closing as a result of such Casualty Loss to such Asset, Seller or its Affiliates shall promptly pay such proceeds to the Company. The Parties acknowledge and agree that, if Seller has elected to not proceed to Closing and Buyer does not make a Buyer Closing Election, the Closing and the Termination Date shall be delayed until such time as Seller has completed its restoration or replacement of the damaged Asset to the condition in which it operates and performs in substantially the same manner as immediately prior to such Casualty Loss. In the event the Closing occurs and the Cash Purchase Price is reduced by the Restoration Cost or the Restoration Completion Cost pursuant to this *Section 6.11(a)*, Buyer shall assume, at its sole cost and risk, responsibility for the replacement and/or restoration of the damaged Assets.

(b) If the Restoration Cost is in excess of ten percent (10%) of the Cash Purchase Price, then (i) Seller and Buyer may, by mutual agreement: (A) agree that Seller shall promptly repair or replace the Casualty Loss to the reasonable satisfaction of Buyer (at Seller's sole cost and expense); provided that the same terms and conditions set forth in *Section 6.11(a)* above shall apply with respect to a partially completed restoration and/or replacement, or (B) elect to reduce the Cash Purchase Price by an amount equal to the Restoration Cost, or (C) agree to other modifications to the terms of this Agreement; or (ii) either Seller or Buyer may, at its sole discretion, elect, within (30) days after determination of the estimated Restoration Cost, to terminate this Agreement by written notice to the other Party.

(c) If, pursuant to paragraph (a) or (b) above, Seller has elected to reduce the Cash Purchase Price by an amount equal to the Restoration Cost or Restoration Completion Cost, as applicable (in lieu of repairing or replacing the damaged or destroyed Asset), then

(i) to the extent that Seller or any of its Affiliates (other than the Company) has received insurance proceeds in respect of the applicable Casualty Loss prior to the Closing, Seller or its Affiliates may retain such proceeds; and

(ii) to the extent that Buyer or any of its Affiliates receives insurance proceeds in respect of the applicable Casualty Loss following the Closing, Buyer shall pay or cause its Affiliates to pay such insurance proceeds to Seller as promptly as practicable following receipt.

(d) If insurance proceeds in respect of a Casualty Loss under this *Section 6.11* are not received by Seller or any of its Affiliates (other than the Company) prior to Closing, then following the Closing Buyer shall cooperate with Seller and provide all such assistance and information as Seller shall reasonably request in connection with its pursuit of any insurance claim made by Seller or its Affiliates in respect of such Casualty Loss, including by providing Seller with reasonable access to the books, records and other data of the Company relating to the Casualty Loss and related claim. Except in the event of a Buyer Closing Election, all insurance proceeds received by Seller or its Affiliates following the Closing in respect of any such claim shall be retained by Seller and its Affiliates. In the event of a Buyer Closing Election, following the Closing Seller shall use commercially reasonable efforts to pursue an insurance claim for the covered amount of any lost profits or margin expected to accrue after the Closing as a result of the Casualty Loss to such Asset.

(e) In the event the Parties do not agree as to the Restoration Cost under this *Section 6.11*, the Restoration Cost shall be conclusively determined by a qualified independent firm selected in the same manner as the Appraisal Firm is selected under *Section 6.11(a)(i)*.

Section 6.12 *Condemnation*.

(a) If any Asset of the Company is taken by condemnation after the date of this Agreement and prior to the Closing and such Asset has the sum of (i) a condemnation value and (ii) to the extent not included in preceding clause (i), the amount of any lost profits or margin reasonably expected to accrue after Closing as a result of such condemnation of such Asset (such sum with respect to any such Asset, as estimated by a qualified independent firm selected in the same manner that the Appraisal Firm is selected under *Section 6.11(a)(i)* promptly after the date that Seller becomes aware of the event giving rise to the condemnation event, the "**Condemnation Value**") is greater than one half of one percent (0.5%) of the Cash Purchase Price but less than or equal to ten percent (10%) of the Cash Purchase Price, then (A) neither Buyer nor Seller shall have the right to terminate this Agreement as a result of such condemnation, and (B) the Cash Purchase Price shall be reduced by an amount equal to the Condemnation Value. Seller shall be entitled to any condemnation award related thereto.

(b) If the Condemnation Value is in excess of ten percent (10%) of the Cash Purchase Price, then (i) Seller and Buyer may, by mutual agreement: (A) agree to reduce the Cash Purchase Price by

the amount of such Condemnation Value less the amount of any condemnation award related thereto that is not applied by the Company prior to the Closing, or (B) agree to other modifications to the terms of this Agreement or (C) agree to other modifications to the terms of this Agreement; or (ii) either Seller or Buyer may, at its sole discretion, elect, within (30) days after the date of receipt by such Party of the estimated Condemnation Value, to terminate this Agreement by providing written notice to the other Party.

Section 6.13 *Confidentiality*.

(a) Buyer acknowledges that the information provided to it in connection with this Agreement and the transactions contemplated hereby is subject to the terms of the confidentiality agreement between Buyer and KGen Power Management Inc., dated August 4, 2010 (the "**Confidentiality Agreement**"), the terms of which are incorporated herein by reference. KPC and Seller shall, and shall take reasonable measures to cause their respective subsidiaries and Representatives to, keep all information of Buyer and its Affiliates (including, from and after the Closing, Proprietary Information as set forth in the next sentence) acquired in connection with this Agreement and the transactions contemplated hereby confidential to the same extent that Buyer is obligated to keep Proprietary Information confidential under the Confidentiality Agreement; it being understood that (i) the information of Buyer and its Affiliates that is subject to the foregoing restrictions shall not include any information of the type that is excluded from the definition of Proprietary Information, and (ii) KPC, Seller and their respective subsidiaries and Representatives shall be entitled to disclose any covered information to the same extent and in the same manner that Buyer may disclose such Proprietary Information pursuant to Section 4 of the Confidentiality Agreement. At the Closing, all Proprietary Information shall become Proprietary Information of Buyer (and shall be deemed not to be excluded from Proprietary Information because it was previously in the possession of Seller, KPC or its Affiliates or due to any similar exclusion).

(b) Upon the other Party's prior written approval (which shall not be unreasonably withheld), either Party may provide Proprietary Information to any Governmental Authority with jurisdiction as necessary to comply with *Section 6.1*. To the extent permitted by Law, the disclosing Party shall seek confidential treatment for the Proprietary Information provided to any Governmental Authority and the disclosing Party shall notify the other Party as far in advance as is practicable of its intention to release to any Governmental Authority any Proprietary Information.

(c) The obligations of the Parties in this *Section 6.13* will survive the termination of this Agreement, the discharge of all other obligations owed by the Parties to each other, any transfer of the Acquired Interests and the Closing of the transactions contemplated in this Agreement.

(d) Notwithstanding anything in this Agreement to the contrary, Seller shall be permitted to retain copies, or originals to the extent it provides Buyer with copies of same, of all Operating Records and other Proprietary Information, subject to the confidentiality provisions of this *Section 6.13*.

Section 6.14 *Public Announcements*. No press or other public announcement, or public statement or comment in response to any inquiry, relating to the transactions contemplated by this Agreement or the terms hereof shall be issued or made by KPC, Buyer or Seller without the joint approval of the other Party; provided that a press release or other public announcement, regulatory filing, statement or comment made without such joint approval shall not be in violation of this *Section 6.14* if (i) it involves a public disclosure to the stockholders of KPC, including in the Proxy Statement (including any such disclosure of the Total Purchase Price or any material term of this Agreement), to the extent that Buyer has been previously provided a copy of such disclosure for review (but not approval) or (ii) it is made in order for the disclosing Party or any of its Affiliates to comply with applicable Laws or stock exchange rules and in the reasonable judgment of the Party making such release or announcement, based upon advice of counsel, prior review and joint approval, despite reasonable efforts to obtain the same, would prevent dissemination of such release or announcement in a sufficiently timely fashion to comply with such Laws or rules, and provided

further, that in all instances prompt notice from one Party to the other shall be given with respect to any such release, announcement, statement or comment, and each Party shall use commercially reasonable efforts, consistent with such applicable Law or rule, to consult with the other Party with respect to the text of such release, announcement, statement or comment. Seller and Buyer shall inform their Affiliates that may be involved in the transactions contemplated by this Agreement of the requirements set forth in this *Section 6.14* and shall make reasonable efforts to obtain compliance with the provisions of this *Section 6.14* from such Affiliates.

Section 6.15 *Fulfillment of Conditions*.

(a) Subject to *Sections 6.4* and *6.5*, the Parties (i) shall execute and deliver at the Closing each document that it is required to execute and deliver as a condition to the Closing under this Agreement, (ii) shall take all commercially reasonable steps necessary or desirable and proceed diligently and in good faith to satisfy each other condition to the obligations of the Parties contained in this Agreement and (iii) shall not, and shall not permit any of its Affiliates to, take any action that would reasonably be expected to result in the nonfulfillment of any such condition.

(b) Without limiting the generality of the foregoing, at or prior to the Closing:

(i) Buyer shall:

(1) cause (i) all letters of credit listed on *Section 6.15* of Seller's *Disclosure Schedule* to be replaced with letters of credit, cash collateral or other security acceptable to the beneficiary thereof in equal amounts as those replaced, (ii) all cash collateral posted by the Company as credit support to contractual counterparties listed in *Section 6.15 of Seller's Disclosure Schedule*, or resulting from a draw on a letter of credit in respect of which the Company was the account party listed in *Section 6.15 of Seller's Disclosure Schedule*, to be replaced with letters of credit, cash collateral or other security acceptable to the beneficiary thereof in equal amounts as that replaced;

(2) use commercially reasonable efforts to cause to be delivered at Closing a new Home Office Payment Agreement among Wachovia Bank, National Association, as Trustee, IDA Bond Issuer, the Company and Buyer (such agreement, substantially in the form of the Home Office Payment Agreement, with such changes or additions as shall not adversely affect Buyer, Seller or their respective Affiliates, being referred to herein as the "**New Home Office Payment Agreement**");

(3) take such actions as shall be reasonably requested of it in connection with the delivery of the Termination and Release of Home Office Payment Agreement;

(4) to the extent required by the IDA Bond Issuer as a condition to providing its consent to the transfer and sale of all of Seller's right, title and interest in and to the Acquired Interests, or its execution and delivery of the New Home Office Payment Agreement or Termination and Release of the Home Office Payment Agreement, Buyer shall duly and validly assume all of the obligations of Seller and the Company under the Property Tax Payment Agreement;

(5) use commercially reasonable efforts to enter into arrangements with Sequent which, among other things, would result in the release of Seller and its Affiliates of all liabilities and obligations arising out of or relating to the Sequent Gas Agreement, including (i) the Sequent Security and Acknowledgment Agreement, (ii) all guarantees of the Company's obligations under the Sequent Gas Agreement (including those pursuant to the Guaranty of Seller dated November 5, 2004 for the benefit of Sequent), (ii) the security interests granted to Union Bank, as Collateral Agent for Sequent pursuant to the Security

Deposit Agreement, (iii) all obligations relating to fees and expenses of Union Bank as Collateral Agent for Sequent, with such releases to be confirmed in writing by Sequent; and

(6) (x) expressly assume in writing, in a form reasonably acceptable to Duke Energy Generation Services, Inc., the obligations of KGen Partners LLC under the Duke Guarantee or (y) otherwise obtain a release of KGen Partners LLC from the Duke Guarantee. To the extent that KGen Partners LLC is not released prior to Closing from its obligations under the Duke Guarantee, then following the Closing Buyer shall indemnify and hold KGen Partners LLC harmless for all Losses incurred as a result of a demand on the Duke Guarantee as provided in *Section 10.1(b)(iii)*; *provided*, *however*, that the foregoing shall not affect Buyer's rights to make a claim under this Agreement. Buyer further agrees that, following the Closing and until KGen Partners LLC shall have been released from all of its obligations under the Duke Guarantee or the Duke Guarantee shall have been terminated in accordance with its terms, Buyer shall cause the Company not to amend, supplement or modify, or suspend, cancel or terminate the Duke Guarantee in any manner adverse to KGen Partners LLC, without, in each case, the prior written consent of Seller, which consent shall not be unreasonably withheld, conditioned or delayed.

(ii) Seller shall:

(1) cause all of the Company's outstanding obligations under any security agreements, financing arrangements, pledge agreements, guaranties or similar instruments in respect of (x) the Project Indebtedness or (y) any Indebtedness for Borrowed Money of the Company which would otherwise be outstanding on the Closing Date to be terminated, and obtain and deliver to Buyer written evidence of such termination pursuant to *Section 7.9* of this Agreement;

(2) use commercially reasonable efforts to cause to be delivered at Closing a termination and release of the Home Office Payment Agreement substantially in the form of *Exhibit F* with such changes (i) as may be requested by the Third Parties who are parties thereto that shall not adversely affect Seller, Buyer or their respective Affiliates or the Company or (ii) shall be necessary to effect the full termination and release of the obligations of Seller and its Affiliates thereunder, being referred to herein as the "**Termination and Release of Home Office Payment Agreement**"); and

(3) take such actions as shall be reasonably requested of it in connection with the delivery of the New Home Office Payment Agreement.

Section 6.16 *Scheduled Maintenance*. During the Interim Period, Seller shall, in all material respects, perform or cause to be performed, any maintenance for the Company, including major maintenance and inspections, that is to be performed during such period in accordance with the timing and specifications required in the General Electric Service Agreements. Without limiting the foregoing, if the Closing has not occurred on or prior to the date on which the March 2011 maintenance is scheduled to begin, the Company will initiate and continue to perform (or cause to be performed) such maintenance on a timely basis until the earlier of the date on which the Closing occurs and the date on which such maintenance has been completed; *provided*, *however*, that the Parties acknowledge and agree that the completion of the March 2011 maintenance shall not delay or be a condition for the Closing.

Section 6.17 *Transition Services*. For a reasonable period not to exceed fifteen (15) Business Days preceding the Closing Date, Seller and the personnel of Seller and its Affiliates shall, and Seller shall use commercially reasonable efforts to cause Duke Energy Murray Operating, LLC to, reasonably cooperate with Buyer and its Representatives in the interest of planning and facilitating an orderly transition of the management and administration of the Company, the Acquired Projects and the Business, including permitting Buyer and its Representatives to have access to the Acquired Projects and Property to set up hardware and software systems to effect the orderly transition of ownership of the Company and the operation of the Business to Buyer; *provided*, *however,* that in no event shall Buyer or its Representatives have any right to disable or interfere with the availability or operation of any hardware, networks, or other information systems located on the Property or on any property of Seller prior to Closing. Buyer and Seller shall cooperate to ensure that there is no interruption in the operation or availability of the Acquired Projects as a result of such removal and transition. Prior to the end of such fifteen (15)-day period or as soon as reasonably practicable thereafter, Seller shall use commercially reasonable efforts to download and deliver to Buyer (or shall permit Buyer to download) all Operating Records that are in downloadable form from the software applications that are a part of any servers or other data housing systems that are not Assets of the Company (including any facility control system software that is not an Asset of the Company, if applicable) in a usable format as may be reasonably requested by Buyer. Buyer shall pay, or promptly reimburse Seller for all out-of-pocket expenses incurred by Seller or the Company in connection with the use of any Third Party to perform their obligations hereunder.

Section 6.18 *Allocation of Certain Items.* The Parties acknowledge and agree that certain payments or adjustments to be made or received with respect to any Contract of the Company shall be prorated as of the Closing Date as follows: (i) Buyer shall pay to Seller the amount of any payment or adjustment received by Buyer or the Company to the extent such payment or adjustment relates to the operation of the Business prior to the Closing Date and (ii) Seller shall reimburse Buyer for any payment or adjustment required to be made by Buyer or the Company to the extent such payment or adjustment relates to the operation of the Business of the Company prior to the Closing Date. Any amount payable pursuant to this *Section 6.18* shall be paid in cash as soon as practicable after the facts giving rise to such payment are known to Seller and Buyer; *provided*, *however*, that such payments shall not be required to the extent such amounts are adequately reflected in the Closing Date Net Working Capital.

Section 6.19 *Termination of Certain Services and Contracts.* Notwithstanding anything in this Agreement to the contrary, at or prior to the Closing, Seller shall (i) terminate, sever, or assign to Seller or a Non-Company Affiliate effective upon or before the Closing any services provided to the Company by Seller or a Non-Company Affiliate, including the termination or severance of insurance policies, Tax services, legal services and banking services (to include the severance of any centralized clearance accounts), (ii) use commercially reasonable efforts to terminate or assign to Seller or a Non-Company Affiliate each Contract listed in *Section 6.19 of Seller's Disclosure Schedule*, and (iii) cause all Claims or obligations (contingent or otherwise) between the Company, on one hand, and Seller or any Non-Company Affiliate, on the other, to be released effective immediately prior to Closing (collectively such services, Contracts, Claims or obligations, the "**Terminated Contracts**").

Section 6.20 *Title & Survey Matters.*

(a) During the Interim Period, excluding the Permitted Encumbrances, Buyer shall have the right to object to the following: (i) any matters first appearing after the November 5, 2010, effective date of the commitment to endorse the Existing Title Policy which was delivered to Buyer on November 18, 2010, and a copy of which was provided to Seller prior to the date of this Agreement, and (ii) any matters first revealed by an update to the Survey obtained by Buyer after the date of this Agreement (any such matter, a "**Buyer Title Objection**"). If Buyer fails to object on or before the expiration of the Interim Period to any matter that could have been a Buyer Title Objection, such matter shall be deemed a Permitted Encumbrance and Buyer will be deemed to have agreed to accept the Acquired Interests and Property subject to such matter. If Buyer delivers written notice of a Buyer

Title Objection, Seller shall respond in writing within ten (10) days after receipt of Buyer's notice indicating whether or not Seller will cure the matter (the "**Seller Title Response**"). If Seller elects to cure the Buyer Title Objection, the cure shall be completed at Seller's expense and shall be deemed a condition to Closing under *Article VII*. For purposes of this Agreement, affirmative title coverage over a matter provided in Buyer's Closing Title Policy shall be deemed a cure. If Seller elects not to cure a Buyer Title Objection or fails to timely respond to Buyer's written notice of a Buyer Title Objection, Buyer shall within five (5) Business Days after the deadline for Seller Title Response, elect in writing to either: (i) waive the Buyer Title Objection and proceed to the Closing whereupon the matter shall be deemed a Permitted Encumbrance; provided, however, that if such uncured Buyer Title Objection is a Lien, at the Closing a portion of the Purchase Price shall be used to cure the Buyer Title Objection or, alternatively the amount necessary to satisfy such Lien shall be accounted for in the post-Closing adjustments set forth in *Section 2.4(a)* with Seller being responsible for such amounts, or (ii) terminate this Agreement whereupon Buyer and Seller shall have no further obligations except as otherwise expressly set forth herein. Excluding any Seller cures to a Buyer Title Objection, the Closing Title Policy, any update to the Survey, and any new survey of the Property shall be at Buyer's expense.

(b) Notwithstanding the foregoing, during the Interim Period Seller shall not voluntarily encumber the Property with Liens (other than Lien for Taxes not yet due or delinquent and Permitted Encumbrances); *provided*, *however*, that Seller may seek Buyer's consent for any such Lien at any time (whether before or after any such encumbrance has taken effect) and Buyer shall not unreasonably withhold, condition or delay its consent; *provided*, *further*, that Seller agrees to cause such Lien to be released on or prior to Closing or, alternatively, agrees that the amount necessary to satisfy such Lien shall be accounted for in the post-Closing adjustments set forth in *Section 2.4(a)* with Seller being responsible for such amounts. Any such Lien consented to by Buyer shall be deemed a Permitted Encumbrance and Buyer will be deemed to have agreed to accept the Acquired Interests and Property subject to such matter. Except as expressly set forth in the first sentence of this paragraph, this *Section 6.20(b)* shall not be construed as limiting Buyer's right to raise a Buyer Title Objection pursuant to *Section 6.20(a)*.

Section 6.21 *Ongoing Certification Matters.*

(a) On or before the Closing Date, the Company shall provide to Buyer written certification setting forth the extent to which the Company is in compliance with all requirements of the Reliability Standards applicable to the Company, the Acquired Projects and the Business as of a date that is not more than two (2) days prior to the Closing Date. Such written certification shall be in form and content substantially similar to the form and content required by NERC for certification of compliance with applicable Reliability Standards and shall be signed and verified by an authorized representative of the Company with authority and knowledge to provide such certification. Buyer hereby acknowledges and agrees that the identification or existence of any non-compliance with the requirements of the Reliability Standards applicable to the Company, the Acquired Projects and the Business shall have no effect on the liability of Seller under this Agreement or on the conditions to Closing, unless and to the extent that such non-compliance constitutes a breach of Seller's representations and warranties, in which case, the effect (if any) on Seller's liability under this Agreement or on the conditions to Closing will be determined solely with respect to the breach of such representations and warranties. For a period of forty-five (45) days after the Closing Date, Seller and the personnel of Seller and its Affiliates shall reasonably cooperate with Buyer and its Representatives in providing or making available to Buyer documents, data and other information in Seller's possession and required by NERC for Buyer to comply with requirements of the Reliability Standards with respect to the reporting period immediately preceding and through the Closing Date (including demonstrating such compliance in audits, self-certifications (if applicable), and other established NERC procedures).

(b) On or before the Closing Date, the Company shall provide to Buyer written certification setting forth the extent to which the Company is in compliance with all certifications, reports and notices required under Environmental Laws and Environmental Permits applicable to the Company, the Acquired Projects and the Business as of a date that is not more than two (2) days prior to the Closing Date. Such written certification shall be in form and content substantially similar to the form and content required by the Georgia Environmental Protection Division of the Department of Natural Resources, or such other Governmental Authority for certification of compliance with applicable Environmental Laws and Environmental Permits, and shall be signed and verified by an authorized representative of the Company with authority and knowledge to provide such certification. Buyer hereby acknowledges and agrees that the identification or existence of any non-compliance under Environmental Laws and Environmental Permits applicable to the Company, the Acquired Projects and the Business shall have no effect on the liability of Seller under this Agreement or on the conditions to Closing, unless and to the extent that such non-compliance constitutes a breach of Seller's representations and warranties, in which case, the effect (if any) on Seller's liability under this Agreement or on the conditions to Closing will be determined solely with respect to the breach of such representations and warranties. For a period of forty-five (45) days after the Closing Date, Seller and the personnel of Seller and its Affiliates shall reasonably cooperate with Buyer and its representatives in providing or making available to Buyer documents, data and other information in Seller's possession and required by any Governmental Authority for Buyer to comply with requirements of applicable Environmental Laws and Environmental Permits with respect to the reporting period immediately preceding and through the Closing Date.

Section 6.22 *Further Assurances*.

(a) Subject to the terms and conditions of this Agreement, at any time or from time to time after the Closing, at any Party's request and without further consideration, the other Party shall execute and deliver to such Party such other instruments of sale, transfer, conveyance, assignment and confirmation, provide such materials and information and take such other actions as such Party may reasonably request in order to consummate the transactions contemplated by this Agreement.

(b) Following the Closing, each Party will afford the other Party and its Representatives, during normal business hours, cooperation and reasonable access to the books, records and other data relating to the business or financial or operating condition of the Company in its possession with respect to periods prior to the Closing Date, and the right to make copies and extracts therefrom, to the extent that such cooperation and access may be reasonably required by the requesting Party in connection with (i) the preparation of Tax Returns, determining a liability for Taxes or preparing for any audits of, or disputes with any Governmental Authority regarding, any Tax Returns by or with respect to the Company or its Assets, (ii) compliance with the requirements of any Governmental Authority, or (iii) any actual or threatened Claim.

(c) If, in order to prepare its Tax Returns, other documents or reports required to be filed with Governmental Authorities or its financial statements or to fulfill its obligations hereunder, it is necessary that a Party be furnished with additional information, documents or records relating to the business or financial or operating condition of the Company or its Assets, and such information, documents or records are in the possession or control of the other Party, such other Party agrees to use all commercially reasonable efforts to furnish or make available such information, documents or records (or copies thereof) at the recipient's request, cost and expense, to the extent permitted by Law.

(d) Notwithstanding anything to the contrary contained in this *Section 6.22*, if the Parties are in an adversarial relationship in any Claim, the furnishing of information, documents or records in accordance with any provision of this *Section 6.22* shall be subject to applicable rules relating to discovery.

ARTICLE VII

BUYER'S CONDITIONS TO CLOSING

The obligation of Buyer to consummate the Closing is subject to the fulfillment of each of the following conditions (except to the extent waived in writing by Buyer):

Section 7.1 *Representations and Warranties*. The representations and warranties made by Seller in *Articles III* and *IV* shall be true and accurate as of the Closing Date (and the Fundamental Representations shall also be true and accurate as of the date of this Agreement) as though made on and as of the Closing Date, except for (i) changes permitted or contemplated hereby, (ii) representations and warranties which are as of a specific date, which shall be true and accurate as of such date, or (iii) where the failure to be true and accurate would not, individually or in the aggregate, reasonably be expected to result in a Material Adverse Effect.

Section 7.2 *Performance*. Seller shall have performed and complied, in all material respects, with all agreements, covenants and obligations required by this Agreement to be performed or complied with by Seller at or before the Closing.

Section 7.3 *Officer's Certificate*. Seller shall have delivered to Buyer at the Closing a certificate of an officer of Seller, dated as of the Closing Date, as to the matters set forth in *Sections 7.1* and *7.2*.

Section 7.4 *Incumbency Certificate*. Seller shall have delivered to Buyer at the Closing a certificate of Seller's and KPC's Secretary or Assistant Secretary identifying the name and title and bearing the signatures of Seller's and KPC's officers authorized to execute and deliver this Agreement and all other agreements and instruments contemplated hereby.

Section 7.5 *No Material Adverse Effect*. No event or events shall have occurred, since the date of this Agreement which, individually or in the aggregate, have had, or would reasonably be expected to have, a Material Adverse Effect.

Section 7.6 *Stockholder Approval*. The Stockholder Approval shall have been obtained, and Seller shall have delivered to Buyer copies, certified by each of Seller's and KPC's Secretary or Assistant Secretary, of resolutions of Seller's and KPC's Board of Directors, authorizing the execution, delivery and performance of this Agreement and all other agreements and instruments, in each case, to be executed and delivered by Seller or KPC, as applicable, in connection with this Agreement.

Section 7.7 *Orders*. There shall be no Order that prevents the purchase and sale of the Acquired Interests pursuant to this Agreement.

Section 7.8 *Governmental Approvals.* The Buyer Approvals shall have been duly obtained, made or given and shall be in full force and effect, including authorization by FERC under Section 203 of the FPA, and the termination or expiration of the waiting period under the HSR Act shall have occurred; *provided*, *however*, that the absence of any appeals and the expiration of any appeal period with respect to any of the foregoing shall not constitute a condition to Closing hereunder.

Section 7.9 *Third Party Consents; Payoff Letters; Closing Title Policy.*

(a) The Company Consents set forth in *Section 4.2(b) of the Seller's Disclosure Schedule* shall have been obtained and shall be in full force and effect and written evidence of each such consent (or waiver in lieu thereof) shall have been delivered to Buyer.

(b) (i) The Company and the Property shall, at or prior to the Closing, have been released from all obligations in respect of (x) the Project Indebtedness and (y) any Indebtedness for Borrowed Money of the Company outstanding immediately prior to the Closing, and (ii) Seller shall have obtained, and provided to Buyer, written evidence from lenders or their agents in respect of the Project Indebtedness, substantially in the form of *Exhibit C* (the "**Payoff Letter**") (with such changes

as may be reasonably requested by the lenders or their agents or required to give effect to the provisions of this Agreement) that (A) the Company, as of or prior to the Closing, has been released from all obligations in respect of the Project Indebtedness and (B) all Liens on the Property of the Company granted in connection with such Project Indebtedness have, as of or prior to the Closing, been released (including copies of all UCC-3 termination statements to be filed in connection with obtaining such payoff letters and such other documents as may be reasonably necessary to effectively and fully release or terminate, as applicable, each of the guarantees, mortgages, deeds of trust, security agreements, pledges or UCC-1 financing statements covering the Company or any of its Assets granted in connection with the Project Indebtedness or any Indebtedness for Borrowed Money).

(c) At the Closing, Buyer shall have received the New Home Office Payment Agreement duly executed by the Trustee, the Company and the IDA Bond Issuer and, to the extent not contained therein, written evidence of the IDA Bond Issuer's consent to the transfer and sale of all of Seller's right, title and interest in and to the Acquired Interests.

(d) Buyer shall have received the Closing Title Policy.

Section 7.10 *Escrow Agreement*. Seller and the Escrow Agent shall have executed and delivered the Escrow Agreement.

Section 7.11 *Title Affidavits and Related Documentation.* Seller shall have delivered to Buyer (a) an original duly executed non-imputation affidavit in the form of *Exhibit E*, (b) an owner's affidavit in the form of *Exhibit G* and (c) good standing documentation for Seller and the Company.

Section 7.12 *FIRPTA.* Seller shall have delivered to Buyer a duly executed certificate of non-foreign status of the Company pursuant to Section 1445 of the Code and Sections 1.1445 -2 (b) and (c) of the Treasury Regulations thereunder, substantially in the form of *Exhibit H* hereto and executed by Seller.

ARTICLE VIII

SELLER'S CONDITIONS TO CLOSING

The obligation of Seller to consummate the Closing is subject to the fulfillment of each of the following conditions (except to the extent waived in writing by Seller):

Section 8.1 *Representations and Warranties.* The representations and warranties made by Buyer in *Article V* shall be true and accurate as of the Closing Date as though made on and as of the Closing Date, except for (i) changes permitted or contemplated hereby, (ii) representations and warranties which are as of a specific date, in which event they shall be true and accurate as of such date, or (iii) where the failure to be true and accurate would not, individually or in the aggregate, reasonably be expected to result in a material adverse effect on Buyer's ability to perform its obligations hereunder.

Section 8.2 *Performance.* Buyer shall have performed and complied, in all material respects, with all agreements, covenants and obligations required by this Agreement to be so performed or complied with by Buyer at or before the Closing.

Section 8.3 *Officer's Certificate.* Buyer shall have delivered to Seller at the Closing a certificate of an officer of Buyer, dated as of the Closing Date, as to the matters set forth in *Sections 8.1* and *8.2*.

Section 8.4 *Incumbency Certificate.* Buyer shall have delivered to Seller at the Closing a certificate of Buyer's Secretary identifying the name and title and bearing the signatures of Buyer's officers authorized to execute and deliver this Agreement and all other agreements and instruments contemplated hereby.

Section 8.5 *Stockholder Approval.* The Stockholder Approval shall have been obtained, and Buyer shall have delivered to Seller, certified by Buyer's Secretary, or an excerpt of resolutions from Buyer's Board of Directors authorizing the execution, delivery and performance of this Agreement and all other agreements and instruments, in each case, to be executed and delivered by Buyer in connection with this Agreement.

Section 8.6 *Orders.* There shall be no Order that prevents the purchase and sale of the Acquired Interests pursuant to this Agreement.

Section 8.7 *Governmental Approvals.* The Seller Approvals shall have been duly obtained, made or given and shall be in full force and effect, including authorization by FERC under Section 203 of the FPA, and the termination or expiration of the waiting period under the HSR Act shall have occurred; *provided*, *however*, that the absence of any appeals and the expiration of any appeal period with respect to any of the foregoing shall not constitute a condition to Closing hereunder.

Section 8.8 *Existing Collateral.* At the Closing (i) all letters of credit listed in *Section 6.15(i) of Seller's Disclosure Schedule* have been replaced with letters of credit (and the original replaced letters of credit shall have been returned to Seller) or cash collateral in equal amounts as those replaced, (ii) all cash collateral posted by the Company as credit support to contractual counterparties listed in *Section 6.15(ii) of Seller's Disclosure Schedule*, or resulting from a draw on a letter of credit in respect of which the Company was the account party listed in *Section 6.15(ii) of Seller's Disclosure Schedule*, have been replaced at or prior to the Closing with letters of credit, cash collateral or other security acceptable to the beneficiary thereof in its sole discretion in equal amounts to that replaced, and (iii) Seller shall have received releases executed and delivered by the applicable Third Parties of all of the liabilities and obligations of the Seller and its Affiliates (other than the Company) under any security agreements, financing arrangements, pledge agreements, guaranties or similar instruments listed in *Section 6.15(iii) of Seller's Disclosure Schedule* and all Liens listed in *Section 6.15(iii) of Seller's Disclosure Schedule* on the assets and properties of the Seller and any of its Affiliates shall have been released.

Section 8.9 *IDA Bond Documents.* At the Closing, (i) Seller shall have received the Termination and Release of Home Office Payment Agreement executed by the Third Parties thereto, and written evidence reasonably satisfactory to Seller that (x) to the extent required by the IDA Bond Issuer, Buyer has duly and validly assumed all of the obligations of Seller and the Company under the Property Tax Payment Agreement and that the IDA Bond Issuer has consented to the acquisition by Buyer of the Acquired Interests, and (ii) such termination and assumption, if any, shall be in full force and effect.

Section 8.10 *Escrow Agreement.* Buyer and the Escrow Agent shall have executed and delivered the Escrow Agreement.

ARTICLE IX

TERMINATION

Section 9.1 *Termination.* This Agreement may be terminated, and the transactions contemplated hereby may be abandoned, at any time before the Closing, by notice from the terminating Party to the other Party (except that no notice need be given if termination is pursuant to *Section 9.1(a)*) as follows:

(a) by mutual written consent of Buyer and Seller.

(b) by either Seller or Buyer:

(i) if the Closing has not occurred on or before June 30, 2011, or such later date as Buyer and Seller may agree in writing (the "**Termination Date**"), and the failure of the Closing to occur is not caused by the terminating Party's failure to fulfill in any material respect any undertaking, commitment or condition provided for herein on the part of such terminating Party that is required to be fulfilled at or prior to the Closing;

(ii) if any court of competent jurisdiction in the United States or any Governmental Authority shall have issued an Order or taken any other final action restraining, enjoining or otherwise prohibiting the consummation of the transactions contemplated by this Agreement and such Order or other action is or shall have become final and nonappealable; *provided*, *however*, that the Party seeking to terminate this Agreement pursuant to this *Section 9.1(b)(ii)* shall have used reasonable efforts to prevent the entry of and to remove such Order or other final action;

(iii) in accordance with *Section 6.11* or *Section 6.12*;

(iv) if the Stockholder Approval is not obtained at the Special Meeting called pursuant to *Section 6.4(b)* (or any adjournment or postponement thereof) (A) at which a vote with respect to the Stockholder Approval was taken, and (B) prior to which a KPC Recommendation Change had not been made; or

(v) if the Stockholder Approval is not obtained at the Special Meeting called pursuant to *Section 6.4(b)* (or any adjournment or postponement thereof) (A) at which a vote with respect to the Stockholder Approval was taken, and (B) prior to which a KPC Recommendation Change had been made.

(c) by Buyer:

(i) if there has been a material breach by Seller of any of its representations, warranties, covenants or agreements contained in this Agreement which (x) would result in a failure of a condition set forth in *Sections 7.1* or *7.2* and (y) cannot be cured prior to the Termination Date; or

(ii) if KPC breaches its obligation under *Section 6.4(b)* to hold the Special Meeting for Stockholder Approval.

(d) by Seller:

(i) if there has been a material breach by Buyer of any of its representations, warranties, covenants or agreements contained in this Agreement which (A) would result in a failure of a condition set forth in *Sections 8.1* or *8.2* and (B) cannot be cured prior to the Termination Date; or

(ii) in accordance with *Section 6.5(d)*.

Section 9.2 *Effect of Termination.* In the event of the termination of this Agreement pursuant to *Section 9.1*, the written notice thereof given to the other Party shall specify the provision hereof pursuant to which such termination is made, and upon such termination (subject to *Section 9.3* and clauses (i)-(iii) of this *Section 9.2*) there shall be no further liability or obligations under this Agreement on the part of any Party or KPC (or any of their respective Representatives or Affiliates), except that (i) if this Agreement is validly terminated pursuant to *Sections 9.1(c)(i)* or *(d)(i)* the rights and remedies granted under this Agreement shall be cumulative and nonexclusive of any other right or remedy available to the terminating party at law or in equity, (ii) *Section 6.13* (Confidentiality), *Section 9.2* (Effect of Termination), *Section 9.3* (Termination Fees), *Section 9.4* (Specific Performance and Other Remedies) and the entirety of *Article XI* (Miscellaneous) and the Confidentiality Agreement, as well as the definitions and any other provisions of this Agreement needed to give effect to the intent of the foregoing, will continue to apply following any termination of this Agreement and (iii) nothing in this *Section 9.2* shall be deemed to release any Party from liability for any fraud.

Section 9.3 *Termination Fees.*

(a) Buyer and Seller agree that if this Agreement is terminated:

(i) by Buyer or Seller pursuant to *Section 9.1(b)(iv)*, then KPC shall pay or cause to be paid to Buyer, within two Business Days of such termination, an amount equal to $4,000,000;

(ii) by Buyer or Seller pursuant to *Section 9.1(b)(v)*, then KPC shall pay or cause to be paid to Buyer, within two Business Days of such termination, an amount equal to $20,000,000;

(iii) by Buyer pursuant to *Section 9.1(c)(ii)*, then KPC shall pay or cause to be paid to Buyer, within two Business Days of such termination, an amount equal to $20,000,000;

(iv) by Seller pursuant to *Section 9.1(d)(ii)* then KPC shall pay or cause to be paid to Buyer, prior to or contemporaneously with such termination, an amount equal to $20,000,000; or

(v) by Buyer or Seller pursuant to *Section 9.1(b)(iv)* and if (A) after the date hereof and prior to the Special Meeting at which a vote with respect to the Stockholder Approval was taken, a Third Party has publicly announced a Takeover Proposal or otherwise communicates in any material respect with any material stockholders or group of stockholders of KPC a Takeover Proposal and (B) within nine (9) months of the date of termination of this Agreement, KPC or any of its subsidiaries enters into a definitive agreement with regard to a Takeover Proposal (replacing the references to "20% or more" with "50% or more") with such Third Party or any of its Affiliates (a "**Subsequent Transaction**"), and the purchase price paid by the buyer in connection with the Subsequent Transaction reflects an actual or implied purchase price for the Acquired Interests that is equal to or greater than 95% of the Cash Purchase Price, then KPC shall pay or cause to be paid to Buyer upon consummation of the transaction contemplated by such definitive agreement an amount equal to $16,000,000. To the extent permitted by Law and enforceable, if a fee is payable pursuant to this *Section 9.3(a)(vi)* in connection with the consummation of a Subsequent Transaction and such fee is not paid when due the applicable Subsequent Transaction shall be void.

(b) In the event that Buyer receives full payment of all amounts due to Buyer pursuant to *Section 9.3*, the full receipt of such amounts shall be deemed to be liquidated damages and the sole and exclusive remedy for any and all Losses suffered or incurred by Buyer in connection with this Agreement (and the termination hereof), the transactions contemplated hereby (and the abandonment thereof) or any matter forming the basis for such termination, and Buyer shall not bring or maintain any other Claim against Seller, KPC or their respective Affiliates or any other Person arising out of this Agreement, any of the transactions contemplated hereby or any matters forming the basis for such termination. The Parties and KPC acknowledge that the Losses incurred by Buyer would be difficult to determine and that the foregoing liquidated damages amount represents a reasonable estimate of such Losses.

(c) KPC, Seller and Buyer acknowledge that the agreements contained in this *Section 9.3* are an integral part of this Agreement. In the event KPC shall fail to pay an amount under this *Section 9.3* when due, KPC shall reimburse Buyer for all reasonable costs and expenses actually incurred (including reasonable accrued costs and expenses that become payable) by Buyer (including reasonable fees and expenses of counsel) in connection with any action (including the filing of any lawsuit) taken to collect payment of such amounts, together with interest on such unpaid amounts at the prime lending rate prevailing during such period as published in The Wall Street Journal, calculated on a daily basis from the date such amounts were required to be paid to the date of actual payment.

Section 9.4 *Specific Performance and Other Remedies.* Each Party and KPC hereby acknowledges and agrees that (a) the rights of each Party to consummate the transactions contemplated hereby are special, unique and of extraordinary character, (b) if any Party or KPC violates or fails or refuses to perform any covenant or agreement made by it herein, the non-breaching Party would suffer irreparable harm and be without an adequate remedy at law, and (c) except as otherwise provided in this Agreement (including without limitation in *Section 9.3(b)*), if any Party or KPC violates or fails or refuses to perform any covenant or agreement made by such Party or KPC herein, the non-breaching Party or Parties shall, subject to the terms hereof and in addition to any remedy at law for damages or other relief, be entitled to specific performance of such covenant or agreement, or to seek any other equitable relief.

ARTICLE X

INDEMNIFICATION, LIMITATIONS OF LIABILITY AND WAIVERS

Section 10.1 *Indemnification.*

(a) Subject to *Section 10.2*, from and after Closing, Seller shall indemnify, defend and hold harmless Buyer, the Company, and their respective partners, members, officers, employees, Affiliates and Representatives (collectively, the "**Buyer Indemnified Parties**") from and against all Losses incurred or suffered by any Buyer Indemnified Party resulting from or arising out of:

(i) any breach or inaccuracy as of the Closing Date (as though made on and as of the Closing Date except to the extent otherwise provided in this Agreement) of any representation or warranty of Seller contained in this Agreement; and

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

(b) Subject to *Section 10.2*, from and after Closing, Buyer shall indemnify, defend and hold Seller and its members, officers, Affiliates and Representatives (collectively, the "**Seller Indemnified Parties**" and, together with the Buyer Indemnified Parties, the "**Indemnified Parties**") harmless from and against all Losses incurred or suffered by any Seller Indemnified Party resulting from or arising out of:

(i) any breach or inaccuracy as of the Closing Date (as though made on and as of the Closing Date except to the extent otherwise provided in this Agreement) of any representation or warranty of Buyer contained in this Agreement;

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

(iii) the indemnity obligations set forth in *Section 6.15(b)(i)(6)*, which shall survive the Closing until the date on which (A) KGen Partners LLC is fully, unconditionally and irrevocably released and discharged from all liabilities arising out of or relating to the Duke Guarantee or (B) the Duke Guarantee has expired by its terms and KGen Partners LLC has no further liability thereunder.

Section 10.2 *Limitations of Liability.* Notwithstanding anything in this Agreement to the contrary:

(a) the representations, warranties, covenants, agreements and obligations in this Agreement shall survive the Closing; *provided*, *however*, that no Party may make or bring a Claim:

(i) with respect to the representations or warranties contained in *Articles III*, *IV* or *V* (except as otherwise provided in *Section 10.2(a)(ii)*) after eighteen (18) months following the Closing Date, and

(ii) with respect to (A) the representations and warranties contained in *Section 3.2* (Authority; Enforceability), *Section 3.3* (Ownership of Acquired Interests; Title), *Section 3.4* (No Conflicts, Consents and Approvals), *Section 4.1* (Organization), *Section 4.2* (No Conflicts, Consents and Approvals), *Section 5.2* (Authority; Enforceability), and *Section 5.3* (No Conflicts) (collectively, the "**Fundamental Representations**"), (B) the representations and warranties contained in *Section 4.10* (Taxes) and the indemnification obligations set forth in *Section 6.10(d)(i)* (Tax Matters), and (C) the representations and warranties set forth in *Section 4.14* (Environmental Matters), in each case after twenty-four (24) months following the Closing Date.

(b) Seller shall have no liability for breaches of any representations or warranties contained in this Agreement, other than the representations and warranties in *Sections 3.1, 3.2, 3.3, 3.6, 4.3, and 4.10*, unless, until and only to the extent that the aggregate amount of all Losses incurred by Buyer with respect to such breaches exceeds $2,656,250; *provided*, *however*, that in no event will Seller have

any liability for any breaches of any representations and warranties (other than for breaches of the representations and warranties in *Sections 3.1, 3.2, 3.3, 3.6, 4.3, and 4.10))* unless such Claim or aggregate Claims arising out of related facts, events or circumstances involves Losses in excess of $100,000 (in which case the full amount of such Losses from the first dollar shall be considered).

(c) in no event shall Seller's aggregate liability arising out of or relating to breaches of representations and warranties contained in this Agreement (including in any certificate delivered pursuant to *Section 7.3*) exceed $79,687,500;

(d) no Indemnifying Party shall have liability under this *Article X* to indemnify any Indemnified Party with respect to a Loss to the extent that the Loss arose from or was exacerbated by the negligence of, or any violation of Law or breach of this Agreement by, any Indemnified Party or its Affiliates on or after the Closing Date other than the continuation of a violation of Law that existed as of the Closing Date;

(e) any Indemnified Party that becomes aware of a Loss for which it seeks indemnification under this *Article X* shall be required to use commercially reasonable efforts to mitigate the Loss and an Indemnifying Party shall not be liable for any Loss to the extent that it is attributable to the Indemnified Party's failure to mitigate;

(f) no Party shall have any liability for any Loss which would not have arisen but for any alteration or repeal or enactment of any Law after the Closing Date;

(g) Seller shall have no liability for any Loss which would not have arisen but for any change in the accounting policies, practices or procedures adopted by Buyer and/or its Affiliates after the Closing Date;

(h) Seller shall have no liability for any Losses that represent the cost of repairs, replacements or improvements, to the extent that they enhance the value of the repaired, replaced or improved asset above its value on the Closing Date or represent costs of repair or replacement that were incurred in connection with some other benefit provided to the Buyer, the Company or any other Affiliate of Buyer;

(i) the Losses suffered by any Indemnified Party shall be calculated after giving effect to any amounts paid by Third Parties, including insurance proceeds and any associated tax benefits actually received by the Indemnified Party or its Affiliates in connection with such Loss, net of reasonable expenses incurred in obtaining such recovery or benefit and calculated by taking into account any tax burdens on the Indemnified Party as a result of any payment made to such Indemnified Party pursuant to a Claim for Losses (it being understood and agreed that the Indemnified Parties shall use their commercially reasonable efforts to seek insurance recoveries in respect of Losses to be indemnified hereunder). If any insurance proceeds or other recoveries from third parties are actually realized by an Indemnified Party subsequent to the receipt by such Indemnified Party of an indemnification payment hereunder in respect of the Claims to which such insurance proceedings or third party recoveries relate, appropriate refunds shall be made promptly to the Indemnifying Party regarding the amount of such indemnification payment. In the event that any Claims are made for Losses and such Claims are made (or may be made) against any of the insurance policies of Seller and its Affiliates (including the Company) set forth on *Section 4.18(a) of Seller's Disclosure Schedules,* then Buyer and its Affiliates (including the Company) shall be entitled reasonable access to such insurance policies and Seller or its Affiliates, as applicable, shall, at the request of Buyer, diligently and promptly pursue or otherwise file claims directly with the applicable insurance provider and recover proceeds under the terms of such policies for the benefit of Buyer and the Company. Nothing in this Agreement shall be construed as requiring Buyer or its Affiliates (including, following the Closing, the Company) to maintain any type or level of insurance with respect to the Acquired Projects or Buyer's or the Company's operations;

(j) in (i) determining whether any representation or warranty of Seller or KPC contained in this Agreement which is qualified by the words "material", "in all material respects", "Material Adverse Effect" or similar materiality qualifications has been breached, such breach shall be determined, and (ii) calculating the amount of any Losses incurred or suffered by any Buyer Indemnified Party arising from such breach, such Losses shall be calculated, as if such qualifier were not contained therein; provided, however, that with respect to the representations and warranties in *Sections 4.11* (Contracts) and *4.21* (Operation and Maintenance of the Acquired Projects; Operating Records) the provisions of clause (i) shall not apply; and

(k) the right to indemnification, payment of Losses or other remedies provided by this Agreement arising out of or related to a breach of a representation, warranty, covenant or other obligation will not be affected by any investigation conducted by the Party to, or for whom, such representation, warranty, covenant or obligation is made, or any knowledge acquired (or capable of being acquired) at any time by such Party, whether before or after the execution and delivery of this Agreement or the Closing Date, with respect to the accuracy or inaccuracy of or compliance with any such representation, warranty, covenant or obligation. Seller and KPC acknowledge that, regardless of any investigation made (or not made) by or on behalf of Buyer, and regardless of the results of any such investigation, Buyer has entered into this Agreement in express reliance upon the representations and warranties of Seller set forth in *Articles III* and *IV*. Notwithstanding the provisions of this paragraph (k), no Party shall have a right to indemnification, payment of Losses or other remedies provided by this Agreement arising out of or related to a breach of any representation and warranty contained in (i) the last sentence of *Section 3.4(c)*, (ii) the last sentence of *Section 4.2 or (iii)* the last sentence of *Section 5.2(c)* to the extent that such Party had Knowledge of any inaccuracy of such representation or warranty.

Section 10.3 *Indirect Claims.* From and after the Closing, Buyer agrees to release, indemnify and hold harmless Seller, its Affiliates and the officers, directors, managers and employees of the Company (acting in their capacity as such) from and against any Claims made by Buyer or its Affiliates for controlling stockholder liability or breach of any fiduciary duty relating to any pre-Closing actions or failures to act (including negligence or gross negligence) by Seller or any of its Affiliates in connection with the Business prior to the Closing.

Section 10.4 *Escrow Fund.* Any indemnification obligations of Seller for Losses incurred under *Section 10.1(a)* shall be satisfied first from amounts in the Escrow Fund, and thereafter, subject to the limitations on liability set forth in *Section 10.2*, such indemnification obligations shall be satisfied by Seller.

Section 10.5 *Waiver of Other Representations.*

EXCEPT FOR THE REPRESENTATIONS AND WARRANTIES SET FORTH IN THIS AGREEMENT: (A) THE ACQUIRED INTERESTS AND THE ASSETS OF THE COMPANY ARE "AS IS, WHERE IS", (B) SELLER EXPRESSLY DISCLAIMS ANY REPRESENTATIONS OR WARRANTIES OF ANY KIND OR NATURE, EXPRESS OR IMPLIED, AS TO LIABILITIES, OPERATIONS OF THE ACQUIRED PROJECTS, TITLE, CONDITION, VALUE OR QUALITY OF THE ASSETS OF THE COMPANY OR THE PROSPECTS (FINANCIAL AND OTHERWISE), RISKS AND OTHER INCIDENTS OF THE ASSETS OF THE COMPANY OR THE COMPANY INCLUDING WITH RESPECT TO THE ACTUAL OR RATED GENERATING CAPABILITY OF THE ACQUIRED PROJECTS OR THE ABILITY OF THE COMPANY TO SELL FROM THE ACQUIRED PROJECTS ELECTRIC ENERGY, CAPACITY OR OTHER PRODUCTS FROM TIME TO TIME, AND (C) SELLER SPECIFICALLY DISCLAIMS ANY REPRESENTATION OR WARRANTY OF MERCHANTABILITY, USAGE, OR SUITABILITY OR FITNESS FOR ANY PARTICULAR PURPOSE WITH RESPECT TO THE ASSETS OF THE COMPANY, OR ANY PART THEREOF, OR AS TO THE WORKMANSHIP THEREOF, OR THE ABSENCE OF ANY DEFECTS THEREIN, WHETHER LATENT OR PATENT, OR COMPLIANCE WITH ENVIRONMENTAL REQUIREMENTS. EXCEPT AS OTHERWISE EXPRESSLY PROVIDED IN THIS AGREEMENT,

SELLER FURTHER SPECIFICALLY DISCLAIMS ANY REPRESENTATION OR WARRANTY REGARDING THE ABSENCE OF HAZARDOUS SUBSTANCES OR LIABILITY OR POTENTIAL LIABILITY ARISING UNDER ENVIRONMENTAL LAWS. WITHOUT LIMITING THE GENERALITY OF THE FOREGOING, EXCEPT AS EXPRESSLY PROVIDED IN THIS AGREEMENT, SELLER EXPRESSLY DISCLAIMS ANY REPRESENTATION OR WARRANTY OF ANY KIND REGARDING THE SUITABILITY OF THE ACQUIRED PROJECTS AS SITES FOR THE DEVELOPMENT OF ADDITIONAL OR REPLACEMENT GENERATION CAPACITY. NO MATERIAL OR INFORMATION PROVIDED BY OR COMMUNICATIONS MADE BY SELLER, OR BY ANY BROKER OR INVESTMENT BANKER, INCLUDING ANY INFORMATION OR MATERIAL CONTAINED IN THE DESCRIPTIVE MEMORANDUM RECEIVED BY BUYER OR ITS AFFILIATES (INCLUDING ANY SUPPLEMENTS), INFORMATION PROVIDED DURING DUE DILIGENCE, INCLUDING INFORMATION IN THE DATA ROOM, AND ANY ORAL, WRITTEN OR ELECTRONIC RESPONSE TO ANY INFORMATION REQUEST PROVIDED TO BUYER, WILL CAUSE OR CREATE ANY WARRANTY, EXPRESS OR IMPLIED, AS TO THE TITLE, CONDITION, VALUE OR QUALITY OF THE ASSETS THAT IS NOT SET FORTH IN THIS AGREEMENT.

Section 10.6 *Waiver of Remedies.*

(a) The Parties hereby agree that following the Closing, the remedies set forth in *Article X* are a party's sole and exclusive remedies for any breach of a representation, warranty or covenant in this Agreement (or in any certificate delivered pursuant to *Section 7.3* or *8.3*), except in the event of fraud (but not constructive fraud) or willful misconduct.

(b) NOTWITHSTANDING ANYTHING IN THIS AGREEMENT TO THE CONTRARY, NO PARTY SHALL BE LIABLE FOR SPECIAL, PUNITIVE, EXEMPLARY, INCIDENTAL, CONSEQUENTIAL (INCLUDING LOST PROFITS) OR INDIRECT DAMAGES, WHETHER BASED ON CONTRACT, TORT, STRICT LIABILITY, OTHER LAW OR OTHERWISE AND WHETHER OR NOT ARISING FROM THE OTHER PARTY'S SOLE, JOINT OR CONCURRENT NEGLIGENCE, STRICT LIABILITY OR OTHER FAULT ("**NON-REIMBURSABLE DAMAGES**"); *PROVIDED*, *HOWEVER*, THAT (1) DIMINUTION OR LOSS OF VALUE SHALL NOT BE DEEMED NON-REIMBURSABLE DAMAGES, EXCEPT TO THE EXTENT THAT SUCH DIMINUTION OR LOSS ARISES OUT OF OR RELATES TO SPECIAL CIRCUMSTANCES OF BUYER AND (2) ANY AMOUNTS PAYABLE TO THIRD PARTIES PURSUANT A THIRD-PARTY CLAIM (OTHER THAN A CLAIM FOR CONSEQUENTIAL DAMAGES ARISING UNDER A CONTRACT PROVISION AGREED TO BY THE INDEMNIFIED PARTY THAT DOES NOT PURPORT TO NEGATE CONSEQUENTIAL DAMAGES) SHALL NOT BE DEEMED NON-REIMBURSABLE DAMAGES, AND (3) THESE LIMITATIONS SHALL NOT APPLY IN THE EVENT OF FRAUD (BUT NOT CONSTRUCTIVE FRAUD) OR WILLFUL MISCONDUCT. The foregoing shall not affect the express provisions of *Sections 6.11* and *6.12*, which provide for taking into account lost profits or margins.

(c) Notwithstanding anything in this Agreement to the contrary, no Representative or Affiliate of Seller shall have any liability to Buyer or any other Person as a result of the breach of any representation, warranty, covenant, agreement or obligation of Seller in this Agreement.

Section 10.7 *Procedure with Respect to Third-Party Claims.*

(a) If an Indemnified Party (or as to Buyer after Closing, the Company) becomes subject to a pending or threatened Claim of a Third Party and such Indemnified Party believes it has a Claim against an Indemnifying Party as a result, then the Indemnified Party shall promptly notify the Indemnifying Party in writing of the basis for such Claim setting forth the nature of the Claim in reasonable detail. The failure of the Indemnified Party to so notify the Indemnifying Party shall not

relieve the Indemnifying Party of liability hereunder except to the extent that the defense of such Claim is prejudiced by the failure to give such notice.

(b) If any proceeding is brought by a Third Party against an Indemnified Party and the Indemnified Party gives notice to the Indemnifying Party pursuant to this *Section 10.7*, the Indemnifying Party shall be entitled to participate in such proceeding and, to the extent that it wishes, to assume the defense of such proceeding, if (i) the Indemnifying Party admits liability to indemnify the Indemnifying Party with respect to such Claim, (ii) the Indemnifying Party provides written notice to the Indemnified Party that the Indemnifying Party intends to undertake such defense, (iii) the Indemnifying Party conducts the defense of the Third-Party Claim actively and diligently with counsel reasonably satisfactory to the Indemnified Party and (iv) if the Indemnifying Party is a party to the proceeding, the Indemnifying Party or the Indemnified Party has not determined in good faith that joint representation would be inappropriate because of a conflict in interest. The Indemnified Party shall, in its sole discretion, have the right to employ separate counsel (who may be selected by the Indemnified Party in its sole discretion) in any such action and to participate in the defense thereof, and the fees and expenses of such counsel shall be paid by such Indemnified Party. The Indemnified Party shall fully cooperate with the Indemnifying Party and its counsel in the defense or compromise of such Claim. If the Indemnifying Party assumes the defense of a proceeding, no compromise or settlement of such Claims may be effected by the Indemnifying Party without the Indemnified Party's consent (not to be unreasonably withheld or delayed) unless (A) there is no finding or admission of any violation of Law or any violation of the rights of any Person and no effect on any other Claims that may be made against the Indemnified Party and (B) the sole relief provided is monetary damages that are paid in full by the Indemnifying Party.

(c) If (i) notice is given to the Indemnifying Party of the commencement of any Third-Party legal proceeding and the Indemnifying Party does not, within thirty (30) days after the Indemnified Party's notice is given, give notice to the Indemnified Party of its election to assume the defense of such legal proceeding, (ii) any of the conditions set forth in clauses (i) through (iv) of *Section 10.7(b)* above become unsatisfied or (iii) an Indemnified Party determines in good faith that there is a reasonable probability that a legal proceeding may adversely affect it other than as a result of monetary damages for which it would be entitled to indemnification from the Indemnifying Party under this Agreement, then the Indemnified Party shall (upon notice to the Indemnifying Party) have the right to undertake the defense, compromise or settlement of such Claim; *provided*, *however*, that the Indemnifying Party shall reimburse the Indemnified Party for the costs of defending against such Third-Party Claim (including reasonable attorneys' fees and expenses) and shall remain otherwise responsible for any liability with respect to amounts arising from or related to such Third-Party Claim, in both cases to the extent it is ultimately determined that such Indemnifying Party is liable with respect to such Third-Party Claim for a breach under this Agreement. The Indemnifying Party may elect to participate in such legal proceedings, negotiations or defense at any time at its own expense.

(d) If an Indemnified Party claims a right to payment pursuant to this *Article X*, such Indemnified Party shall send written notice of such Claim to the Indemnifying Party. Such notice shall specify the basis for such Claim. Except as otherwise set forth in this *Section 10.7*, the failure by any Indemnified Party so to notify the Indemnifying Party shall not relieve the Indemnifying Party from any liability that it may have to such Indemnified Party with respect to any Claim made pursuant to this *Article X*, it being understood that notices for Claims must be delivered prior to the expiration of the applicable claims period under *Section 10.2(a)*. If the Indemnifying Party does not notify the Indemnified Party within thirty (30) days following its receipt of such notice that the Indemnifying Party disputes its liability to the Indemnified Party under this *Article X* or the amount thereof, the Claim specified by the Indemnified Party in such notice shall be conclusively deemed a liability of the Indemnifying Party under this *Article X*, and the Indemnifying Party shall pay the amount of such liability to the Indemnified Party on demand or, in the case of any notice in which the amount of the

Claim (or any portion of the Claim) is estimated, on such later date when the amount of such Claim (or such portion of such Claim) becomes finally determined. If the Indemnifying Party has timely disputed its liability with respect to such Claim as provided above, as promptly as possible, such Indemnified Party and the appropriate Indemnifying Party shall establish the merits and amount of such Claim (by mutual agreement, litigation, arbitration or otherwise) and, within five (5) Business Days following the final determination of the merits and amount of such Claim, the Indemnified Party shall pay to the Indemnifying Party immediately available funds in an amount equal to such Claim as determined under this Agreement.

ARTICLE XI

MISCELLANEOUS

Section 11.1 *Notices.*

(a) Unless this Agreement specifically requires otherwise, any notice, demand or request provided for in this Agreement, or served, given or made in connection with it, shall be in writing and shall be deemed properly served, given or made if delivered in person or sent by facsimile or sent by registered or certified mail, postage prepaid, or by a nationally recognized overnight courier service that provides a receipt of delivery, in each case, to the Parties at the addresses specified below:

If to Buyer, to:

Oglethorpe Power Corporation (An Electric Membership Corporation)
2100 East Exchange Place
Tucker, Georgia 30084
Attn: Elizabeth B. Higgins, Executive Vice President and Chief Financial Officer
Facsimile No. (770) 270-7325

in each case with copies to:

Oglethorpe Power Corporation (An Electric Membership Corporation)
2100 East Exchange Place
Tucker, Georgia 30084
Attn: General Counsel
Facsimile No. (770) 270-7325

Sutherland Asbill & Brennan LLP
999 Peachtree Street, N.E.
Atlanta, GA 30309
Attention: Herbert J. Short, Jr.
Tel: (404) 853-8491
Fax: (404) 853-8806
e-mail: herbert.short@sutherland.com

If to Seller, to:

KGen LLC
1330 Post Oak Boulevard
Suite 1500
Houston, Texas 77056
Attn: Vice President, M&A
Facsimile No.: (713) 979-1950

in each case with copies to:

KGen LLC
1330 Post Oak Boulevard
Suite 1500
Houston, Texas 77056
Attn: General Counsel
Facsimile No.: (713) 979-1950

King & Spalding LLP
1185 Avenue of the Americas
New York, New York 10036
Attn: Crayton L. Bell
Facsimile No.: (212) 556-2222

(b) Notice given by personal delivery, mail or overnight courier pursuant to this *Section 11.1* shall be effective upon physical receipt. Notice given by facsimile pursuant to this *Section 11.1* shall be effective as of the date of confirmed delivery if delivered before 5:00 p.m. Eastern Time on any Business Day or the next succeeding Business Day if confirmed delivery is after 5:00 p.m. Eastern Time on any Business Day or during any non-Business Day.

Section 11.2 *Entire Agreement.* Except for the Confidentiality Agreement, which shall remain in effect in accordance with its terms, this Agreement supersedes all prior discussions and agreements between the Parties with respect to the subject matter hereof and this Agreement, the Confidentiality Agreement and the other documents delivered pursuant to this Agreement contain the sole and entire agreement between the Parties hereto with respect to the subject matter hereof.

Section 11.3 *Expenses.* Except as otherwise provided in this Agreement, whether or not the transactions contemplated by this Agreement are consummated, each Party will pay its own Expenses incurred in connection with the negotiation, execution and the Closing of this Agreement and the consummation of the transactions contemplated by this Agreement.

Section 11.4 *Disclosure.*

(a) Seller or Buyer may, at its option, include in the Seller's Disclosure Schedule or Buyer's Disclosure Schedule, respectively, items that are not material in order to avoid any misunderstanding, and any such inclusion, or any references to dollar amounts, shall not be deemed to be an acknowledgment or representation that such items are material, to establish any standard of materiality or to define further the meaning of such terms for purposes of this Agreement. Information disclosed in any Section of a Disclosure Schedule shall constitute a disclosure for purposes of all other Sections of the Disclosure Schedule notwithstanding the lack of specific cross-reference thereto, to the extent the applicability of such disclosure to such other Section is reasonably apparent on its face. In no event shall the inclusion of any matter in the Disclosure Schedules be deemed or interpreted to broaden Seller's or Buyer's representations, warranties, covenants or agreements contained in this Agreement. The mere inclusion of an item in the Disclosure Schedules shall not be deemed an admission by Seller or Buyer that such item represents a material exception or fact, event, or circumstance or that such item is reasonably likely to result in a Material Adverse Effect.

(b) Seller shall have the right, but not the obligation, from time to time prior to the Closing Date, to supplement or amend Seller's Disclosure Schedule in writing (in reasonable detail (as determined by Seller) so that Buyer can understand the significance of such for the Company) with respect to any matter hereafter arising or discovered, which if existing or known at the date of this Agreement would have been required to be set forth or described in such Seller's Disclosure Schedule. None of such supplements or amendments of Seller's Disclosure Schedule shall be deemed

to cure the representations or warranties to which such matters relate with respect to rights to indemnification pursuant to *Article X* or conditions set forth in *Article VII*, or otherwise affect any other term or condition contained in this Agreement; *provided*, *however*, that unless Buyer shall have delivered a notice of breach pursuant to *Section 9.1(c)(i)* (to the extent Buyer is entitled to deliver such notice pursuant to such Section) within ten (10) Business Days of the receipt by Buyer of any supplement or amendment to Seller's Disclosure Schedule pursuant to this *Section 11.4(b)* (together with disclosure to Buyer of information reasonably requested by Buyer to enable Buyer to understand, and evaluate the effects of, such supplement or amendment), then Buyer shall have waived any and all rights to terminate this Agreement, pursuant to *Article IX* or otherwise, or to consider any condition to the Closing not to be satisfied, arising out of or relating to the contents of such supplement or amendment.

Section 11.5 *Waiver.* No failure on the part of any Party to exercise and no delay in exercising, and no course of dealing with respect to, any right, remedy, power or privilege under this Agreement shall operate as a waiver of such right, remedy, power or privilege, nor shall any single or partial exercise of any right, remedy, power or privilege under this Agreement preclude any other or further exercise of any such right, remedy, power or privilege or the exercise of any other right, remedy, power or privilege. Any term or condition of this Agreement may be waived at any time by the Party that is entitled to the benefit thereof, but no such waiver shall be effective unless set forth in a written instrument duly executed by or on behalf of the Party waiving such term or condition. No waiver by any Party of any term or condition of this Agreement, in any one or more instances, shall be deemed to be or construed as a waiver of the same or any other term or condition of this Agreement on any future occasion. All remedies, either under this Agreement or by Law or otherwise afforded, will be cumulative and not alternative.

Section 11.6 *Amendment.* This Agreement may be amended, supplemented or modified only by a written instrument duly executed by or on behalf of each Party.

Section 11.7 *No Third Party Beneficiaries.* With the exception of indemnitees that are not party to this Agreement, but only to the extent set forth in *Article X*, this Agreement is solely for the benefit of the Parties hereto and their respective successors and permitted assigns and this Agreement shall not be deemed to confer upon or give to any other Third Party any remedy, Claim of liability or reimbursement, cause of action or other right.

Section 11.8 *Assignment; Binding Effect.* Neither this Agreement nor any right, interest or obligation hereunder may be assigned by any Party without the prior written consent of the other Party (which such Party may withhold in its sole discretion), and any attempt to do so will be void. Subject to this *Section 11.8*, this Agreement is binding upon, inures to the benefit of and is enforceable by the Parties and their respective successors and permitted assigns.

Section 11.9 *Headings.* The headings used in this Agreement have been inserted for convenience of reference only and do not define or limit the provisions hereof and are not intended to affect the interpretation of any provisions of this Agreement.

Section 11.10 *Invalid Provisions.* If any provision of this Agreement is held to be illegal, invalid or unenforceable under any present or future Law, and if the rights or obligations of any Party under this Agreement will not be materially and adversely affected thereby, such provision will be fully severable, this Agreement will be construed and enforced as if such illegal, invalid or unenforceable provision had never comprised a part hereof, the remaining provisions of this Agreement will remain in full force and effect and will not be affected by the illegal, invalid or unenforceable provision or by its severance herefrom. Upon determination that any provision of this Agreement is so prohibited or unenforceable, the Parties shall negotiate in good faith to modify this Agreement so as to effect the original intent of the Parties as closely as possible in an acceptable manner in order that the transactions contemplated hereby are consummated as originally contemplated to the greatest extent possible.

Section 11.11 *Counterparts.* This Agreement may be executed in any number of counterparts, all of which taken together shall constitute one and the same instrument and any of the parties to this Agreement may execute this Agreement by signing any such counterpart.

Section 11.12 *Limited Obligations of KPC.* The Parties hereby acknowledge and agree that, by executing this Agreement, KPC is agreeing to perform only those obligations that are explicitly set forth as obligations of KPC in *Section 6.4*, *Section 6.5*, *Section 6.14* and *Section 9.3*, and that KPC shall have no liability or obligations of any kind whatsoever with respect to the actions or obligations of Seller under this Agreement.

Section 11.13 *Governing Law; Venue; Jurisdiction.*

(a) This Agreement shall be governed by and construed in accordance with the Laws of the State of New York, without giving effect to any conflict or choice of law provision that would result in the imposition of another state's Law.

(b) For all purposes of this Agreement, and for all purposes of any Claim arising out of or relating to the transactions contemplated hereby or for recognition or enforcement of any judgment, each Party submits to the personal jurisdiction of the courts of the State of New York and the federal courts of the United States sitting in New York County, and hereby irrevocably and unconditionally agrees that any such Claim may be heard and determined in such New York court or, to the extent permitted by Law, in such federal court. Each Party agrees that a final judgment in any such Claim may be enforced in any other jurisdiction by suit on the judgment or in any other manner provided by Law. Nothing in this Agreement shall affect any right that any Party may otherwise have to bring any Claim relating to this Agreement against the other party in the courts of any jurisdiction. Notwithstanding the foregoing in this *Section 11.13(b)*, each Party agrees that before instituting any Claim hereunder, each Party shall make available its senior officers or other authorized Representative designated by them, each of whom shall work in good faith to resolve the relevant dispute. Such authorized officers shall meet, either in person or by telephonic conference, within ten (10) days of the delivery of notice by a Party to the other Party of a dispute. To the extent that such dispute is not resolved within twenty (20) days following the first meeting of such authorized Representatives, each Party shall have the ability to institute a Claim hereunder.

(a) Each Party hereto irrevocably and unconditionally waives, to the fullest extent it may legally and effectively do so:

(i) any objection which it may now or hereafter have to the laying of venue of any Claim arising out of or relating to this Agreement or any related matter in any New York state or federal court located in New York County; and

(ii) the defense of an inconvenient forum to the maintenance of such Claim in any such court.

(c) Each Party irrevocably consents to service of process by registered mail, return receipt requested, as provided in *Section 11.1*. Nothing in this Agreement will affect the right of any party hereto to serve process in any other manner permitted by Law.

Section 11.14 *Waiver of Jury Trial.* TO THE FULLEST EXTENT PERMITTED BY LAW, EACH PARTY HEREBY WAIVES ALL RIGHTS TO A TRIAL BY JURY IN ANY LEGAL ACTION TO ENFORCE OR INTERPRET THE PROVISIONS OF THIS AGREEMENT OR THAT OTHERWISE RELATES TO THIS AGREEMENT.

Section 11.15 *Special Counsel.* Seller has asserted that certain communications between Seller and the Company and its counsel, including King & Spalding LLP, made in connection with the negotiation, preparation, execution, delivery and closing under, or any dispute or proceeding arising under or in connection with, this Agreement, or any matter relating to any of the foregoing, are subject to privilege,

including the attorney-client and/or work product privileges (the "**Privileges**"). If it is determined that, with respect to such communications, Privilege could be asserted by Seller or the Company under applicable Law or this Agreement, then to the fullest extent permitted by Law, Seller shall have the sole authority to determine whether to waive such Privilege on its behalf and on behalf of the Company and Buyer shall not, and shall not permit the Company to, waive such Privilege without Seller's written consent.

[signature page follows]

IN WITNESS WHEREOF, this Agreement has been duly executed and delivered by the duly authorized officer of each Party as of the date first above written.

OGLETHORPE POWER CORPORATION
(AN ELECTRIC MEMBERSHIP CORPORATION)

By: _____

Name: Elizabeth B. Higgins
Title: *Executive Vice President and Chief Financial Officer*

KGEN LLC

By: _____

Name:
Title:

KGEN POWER CORPORATION
(solely for the limited purposes expressly set forth in *Section 11.12*)

By: _____

Name:
Title:

CREDIT SUISSE SECURITIES (USA) LLC
Eleven Madison Avenue Tel 1 212 325 2000
New York, NY 10010-3629 www.credit-suisse.com

January 31, 2011

Board of Directors
KGen Power Corporation
Four Oaks Place
1330 Post Oak Boulevard, Suite 1500
Houston, Texas 77056

Members of the Board:

You have asked us to advise you with respect to the fairness, from a financial point of view, to KGen Power Corporation ("KGen") of the Consideration (as defined below) to be received pursuant to the terms of a Purchase and Sale Agreement, dated as of January 31, 2011 (the "Agreement"), between KGen LLC, a wholly owned subsidiary of KGen ("KGen LLC"), and Oglethorpe Power Corporation (An Electric Membership Corporation) ("Oglethorpe"). The Agreement provides for, among other things, the sale to Oglethorpe of KGen's two natural gas-fired, combined-cycle power generation plants located in Murray County, Georgia (the "Facilities") by way of a sale by KGen LLC of all of its membership interests in KGen Murray I and II LLC ("KGen Murray"), which owns the Facilities (the "Transaction"). As more fully described in the Agreement, KGen LLC will receive in the Transaction aggregate consideration of $531,250,000 in cash (the "Consideration"), subject to adjustment as set forth in the Agreement. The Agreement provides that, at the closing of the Transaction, the industrial development revenue bond issued by the Murray County Industrial Development Authority in connection with the construction of the Facilities and held by KGen LLC will be transferred to Oglethorpe (the "IDA Bond Transfer").

In arriving at our opinion, we have reviewed the Agreement and certain publicly available business and financial information of KGen relating to the Facilities. We also have reviewed certain other information relating to the Facilities provided to or discussed with us by KGen, including financial forecasts under alternative scenarios as to whether or not the existing power purchase agreement with Georgia Power Company for a portion of the power capacity of the Facilities will be extended or renewed, and have met with the management of KGen to discuss the Facilities and their prospects. We also have considered certain financial data of the Facilities, and we have compared that data with similar data for publicly held companies in businesses we deemed similar to the Facilities, and we have considered, to the extent publicly available, the financial terms of certain other transactions which recently have been effected or announced. We also considered such other information, financial studies, analyses and investigations and financial, economic and market criteria which we deemed relevant.

In connection with our review, we have not independently verified any of the foregoing information and we have assumed and relied upon such information being complete and accurate in all material respects. We have been advised by KGen that there are no audited financial statements for KGen Murray or the Facilities and, accordingly, we have assumed, at your direction, that any such financial statements would not have contained relevant information not already disclosed to us that would have been material in any respect to our analyses or opinion. With respect to the financial forecasts for the Facilities that we have used in our analyses, the management of KGen has advised us, and we have assumed, with your consent, that such forecasts have been reasonably prepared on bases reflecting the best currently available estimates and judgments of the management of KGen as to the future financial performance of the Facilities under the alternative scenarios reflected in such forecasts. We also have been advised by the management of KGen, and we have assumed, as reflected in such forecasts and at your direction, that net

operating loss carryforwards of KGen could be utilized to reduce future taxable income generated by the Facilities if the Facilities were operated by KGen in the absence of the Transaction, and we further have assumed, as advised by the management of KGen and with your consent, that the estimates provided to us by the management of KGen as to the potential tax benefits resulting from such utilization and the utilization of additional net operating loss carryforwards of KGen Murray have been reasonably prepared on bases reflecting the best currently available estimates and judgments of the management of KGen. We have relied upon, with your consent and without independent verification, the assessments of the management of KGen as to market trends and prospects for the energy industry, regulatory matters relating to the Facilities and the potential impact thereof on the Facilities. As you are aware, the financial forecasts for the Facilities that we have reviewed reflect certain industry assumptions of the management of KGen, including assumptions as to future power and gas commodity prices, which are subject to significant volatility and which, if different than as assumed, could have an adverse impact on our analyses or opinion.

We have assumed, with your consent, that, in the course of obtaining any regulatory or third party consents, approvals or agreements in connection with the Transaction or related transactions (including, without limitation, the IDA Bond Transfer), no delay, limitation, restriction or condition will be imposed that would have an adverse effect on the Facilities, KGen Murray, KGen or the Transaction and that the Transaction and related transactions will be consummated in accordance with their respective terms without waiver, modification or amendment of any material term, condition or agreement thereof. We also have assumed, with your consent, that any adjustments to the Consideration will not in any respect be material to our analyses or opinion. In addition, we have not been requested to make, and have not made, an independent evaluation or appraisal of the assets or liabilities (contingent or otherwise) of or relating to KGen Murray or either of the Facilities, nor have we been furnished with any such evaluations or appraisals.

Our opinion addresses only the fairness, from a financial point of view and as of the date hereof, to KGen of the Consideration to be received in the Transaction and does not address any other aspect or implication of the Transaction or any related transaction or any other agreement, arrangement or understanding entered into in connection with the Transaction, any related transaction or otherwise, including, without limitation, the form or structure of the Transaction (or the tax consequences thereof), any adjustment to the Consideration, the terms of the IDA Bond Transfer or the fairness of the amount or nature of, or any other aspect relating to, any compensation to any officers, directors or employees of any party to the Transaction, or class of such persons, relative to the Consideration or otherwise. The issuance of this opinion was approved by our authorized internal committee.

Our opinion is necessarily based upon information made available to us as of the date hereof and financial, economic, market and other conditions as they exist and can be evaluated on the date hereof. Our opinion does not address the relative merits of the Transaction or any related transaction as compared to alternative transactions or strategies that might be available with respect to the Facilities or KGen, nor does it address the underlying business decision of KGen to proceed with the Transaction or any related transaction.

We have acted as financial advisor to KGen in connection with the Transaction and will receive a fee for our services, a significant portion of which is contingent upon the consummation of the Transaction. We also became entitled to receive a fee upon the rendering of our opinion. In addition, KGen has agreed to indemnify us and certain related parties for certain liabilities and other items arising out of or related to

our engagement. We in the past have provided, currently are providing and in the future may provide services to KGen, for which services we have received, and may receive, compensation, including, during the past two years, having acted as financial advisor to KGen in connection with an asset disposition in 2010. We are a full service securities firm engaged in securities trading and brokerage activities as well as providing investment banking and other financial services. In the ordinary course of business, we and our affiliates may acquire, hold or sell, for our and our affiliates' own accounts and the accounts of customers, equity, debt and other securities and financial instruments (including bank loans and other obligations) of KGen, KGen LLC, Oglethorpe and any other company that may be involved in the Transaction, as well as provide investment banking and other financial services to such companies.

It is understood that this letter is for the information of the Board of Directors of KGen (solely in its capacity as such) in connection with its evaluation of the Transaction and does not constitute advice or a recommendation to any stockholder as to how such stockholder should vote or act on any matter relating to the proposed Transaction or any related transaction. This letter may not be disclosed to any person without our prior written consent and is not to be quoted or referred to, in whole or in part, nor shall this letter be used or relied upon for any other purpose, without our prior written consent.

Based upon and subject to the foregoing, it is our opinion that, as of the date hereof, the Consideration to be received in the Transaction is fair, from a financial point of view, to KGen.

Very truly yours,

CREDIT SUISSE SECURITIES (USA) LLC