

SECURITIES AND EXCHANGE COMMISSION
WASHINGTON, DC 20549

FORM 8-K
CURRENT REPORT

PURSUANT TO SECTION 13 OR 15(D) OF THE
SECURITIES EXCHANGE ACT OF 1934

Date of report (Date of earliest event reported) November 17, 2000
(November 8, 2000)

WESTERN RESOURCES INC.
(Exact Name of Registrant as Specified in Charter)

Kansas (State or Other Jurisdiction of Incorporation)	1-3523 (Commission File Number)	48-0290150 (IRS Employer Identification No.)
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818 South Kansas Avenue, Topeka, Kansas (Address of Principal Executive Offices)	66612 (Zip Code)
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Registrant's telephone number, including area code (785) 575-6300

Item 5. Other Events.

On November 8, 2000, Western Resources, Inc., a Kansas corporation (the "Company"), Public Service Company of New Mexico, a New Mexico corporation ("PNM"), HVOLT Enterprises, Inc., a Delaware corporation ("Parent"), HVK, Inc., a Kansas corporation and a wholly owned subsidiary of Parent ("Merger Sub-1"), and HVNM, Inc., a New Mexico corporation and a wholly owned subsidiary of Parent ("Merger Sub-2"), entered into an Agreement and Plan of Restructuring and Merger, dated as of November 8, 2000 (the "Merger Agreement"), and related agreements, including the Asset Allocation and Separation Agreement, dated as of November 8, 2000 ("Allocation Agreement"), between the Company and Westar Industries, Inc., a Kansas corporation and a wholly owned subsidiary of the Company ("Westar"), providing for an integrated transaction (the "Transaction") involving (a) delivery by the Company to its shareholders of its then ownership interest in Westar, followed by (b) the merger of Merger Sub-1 into the Company and the merger of Merger Sub-2 into Manzano Corporation, a New Mexico holding company to be formed as a result of a pending PNM restructuring ("Manzano"), pursuant to which each of Manzano, PNM and the Company will become wholly owned subsidiaries of Parent and the shareholders of the Company (including Westar) will receive a total of 55 million shares of Parent common stock, subject to adjustment as provided in the Merger Agreement. The Merger Agreement, the Allocation Agreement and the Form of Stockholder Agreement between Parent and Westar, together with the forms of certain certificates of designations relating to the Transaction are filed herewith and are incorporated herein by reference.

Item 7. Financial Statements, Pro Forma Financial Information and Exhibits.

(c) Exhibits.

- 99.1 Agreement and Plan of Restructuring and Merger, dated as of November 8, 2000 among Western Resources, Inc., Public Service Company of New Mexico, HVOLT Enterprises, Inc., HVK, Inc. and HVNM, Inc.
- 99.2 Asset Allocation and Separation Agreement, dated as of November 8, 2000, between Western Resources, Inc. and Westar Industries, Inc.
- 99.3 Form of Stockholder Agreement between HVOLT Enterprises, Inc. and Westar Industries, Inc.
- 99.4 Form of Western Resources, Inc. Certificate of Designations for a Series of Preference Stock designated as "7.5% Convertible Preference Stock."
- 99.5 Form of HVOLT Enterprises, Inc. Certificate of Designations for a Series of Preferred Stock designated as "7.5% Convertible Preferred Stock."

SIGNATURE

Pursuant to the requirements of the Securities Exchange Act of 1934, the registrant has duly caused this report to be signed on its behalf by the

undersigned hereunto duly authorized.

WESTERN RESOURCES, INC.

Date: November 17, 2000

/s/ James A. Martin

By: James A. Martin
Title: Senior Vice President
and Treasurer

Exhibit Index

Exhibit Description

- 99.1 Agreement and Plan of Restructuring and Merger, dated as of November 8, 2000 among Western Resources, Inc., Public Service Company of New Mexico, HVOLT Enterprises, Inc., HVK, Inc. and HVNM, Inc.
- 99.2 Asset Allocation and Separation Agreement, dated as of November 8, 2000, between Western Resources, Inc. and Westar Industries, Inc.
- 99.3 Form of Stockholder Agreement between HVOLT Enterprises, Inc. and Westar Industries, Inc.
- 99.4 Form of Western Resources, Inc. Certificate of Designations for a Series of Preference Stock designated as "7.5% Convertible Preference Stock."
- 99.5 Form of HVOLT Enterprises, Inc. Certificate of Designations for a Series of Preferred Stock designated as "7.5% Convertible Preferred Stock."

AGREEMENT AND PLAN OF RESTRUCTURING AND MERGER

Among

WESTERN RESOURCES, INC.

HVOLT ENTERPRISES, INC.

PUBLIC SERVICE COMPANY OF NEW MEXICO

HVK, INC.

and

HVM, INC.

Dated as of November 8, 2000

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AGREEMENT AND PLAN OF RESTRUCTURING AND MERGER

AGREEMENT AND PLAN OF RESTRUCTURING AND MERGER (hereinafter called this "Agreement"), dated as of November 8, 2000, among Western Resources, Inc., a Kansas corporation (the "Company"), Public Service Company of New Mexico, a New Mexico corporation ("PNM"), HVOLT Enterprises, Inc., a Delaware corporation ("Parent"), HVK, Inc., a Kansas corporation and a wholly owned subsidiary of Parent ("Merger Sub-1") and HVNM, Inc., a New Mexico corporation and a wholly owned subsidiary of Parent ("Merger Sub-2").

RECITALS

WHEREAS, PNM and Manzano Corporation, a New Mexico corporation ("Manzano"), have entered into an Agreement and Plan of Share Exchange, dated as of April 17, 2000 (the "Exchange Agreement"), which provides for the mandatory share exchange by the holders of the outstanding common stock of PNM for shares of the common stock of Manzano at an exchange ratio of one share of Manzano common stock for each share of PNM common stock, whereby PNM will become a wholly owned subsidiary of Manzano (the "Manzano Exchange");

WHEREAS, upon consummation of the Exchange, Manzano will execute a counterpart hereof as set forth below with the effect set forth herein (the date on which PNM becomes a Subsidiary of Manzano and Manzano executes a counterpart of this Agreement being referred to as the "Manzano Transition Date");

WHEREAS, the Company, Parent, PNM, Merger Sub-1 and Merger Sub-2 have agreed to enter into an integrated transaction (the "Transaction") pursuant to which, first (x) the Company shall deliver to its shareholders its then entire ownership interest in Westar Industries, Inc., a Kansas corporation and a subsidiary of the Company ("Westar", together with the subsidiaries of Westar at the time of the Split-Off, the "Westar Subsidiaries") (such transaction being referred to as the "Split-Off"), in exchange for a portion of their shares of the Company Common Stock on the terms and conditions contained herein and in the Asset Allocation and Separation Agreement (the "Allocation and Separation Agreement") and the other agreements and term sheets attached thereto (together with the Allocation and Separation Agreement, the "Split-Off Agreements") between the Company and Westar in the forms attached hereto as Exhibit A, and then (y) Merger Sub-1 will merge with and into the Company, whereby the Company will become a wholly owned subsidiary of Parent (the "Merger"), and Merger Sub-2 will merge with and into Manzano, whereby Manzano and PNM will become wholly owned subsidiaries of Parent (the "Second Merger" and, together with the Merger, the "Mergers"), pursuant to the terms and conditions set forth in this Agreement;

WHEREAS, the respective Boards of Directors of the Company, Parent, PNM, Merger Sub-1 and Merger Sub-2 (i) have determined that the Transaction and other transactions contemplated hereby are fair to, advisable and in the best interests of the Company, Parent, PNM, Merger Sub-1 and Merger Sub-2 and their shareholders, respectively, and (ii) have approved this Agreement and the transactions contemplated hereby; and

WHEREAS, for federal income Tax (as defined below) purposes, it is intended that (i) the Split-Off will be treated as a taxable exchange of the Split-Off Portion (as defined below) of the Company Common Stock for Westar Common Stock, and (ii) the Mergers taken together will be treated as a transaction described in Section 351 of the Internal Revenue Code of 1986, as amended (the "Code").

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

Article I

The Transaction

1.1. The Split-Off.

The Company has or will enter into the Allocation and Separation Agreement and each other Split-Off Agreement to which it is a party, and, provided that all conditions precedent to the Split-Off have been satisfied, immediately prior to the Merger, the Company shall effect, and cause Westar to effect, the Split-Off.

1.2. The Merger.

Upon the terms and subject to the conditions set forth in this Agreement, at the Effective Time, Merger Sub-1 shall be merged with and into the Company and the separate corporate existence of Merger Sub-1 shall thereupon cease. The Company shall be the surviving corporation in the Merger (sometimes hereinafter referred to as the "Surviving Corporation"), and the separate corporate existence of the Company with all its rights, privileges, immunities, powers and franchises shall continue unaffected by the Merger, except as set forth in Article III. The Merger shall have the effects specified in the Kansas General Corporation Code (the "KGCC").

1.3. The Second Merger.

Upon the terms and subject to the conditions set forth in this Agreement, at the Effective Time, Merger Sub-2 shall be merged with and into Manzano and the separate corporate existence of Merger Sub-2 shall thereupon cease. Manzano shall be the surviving corporation in the Second Merger, and the separate corporate existence of Manzano with all its rights, privileges, immunities, powers and franchises shall continue unaffected by the Second Merger. The Second Merger shall have the effects specified in the New Mexico Business Corporation Act (the "NMBCA").

1.4. Effective Time.

On the Closing Date (as defined in Section 4.1), or if not reasonably practicable, as soon as practicable following the Closing Date, the Company and Parent will cause a Certificate of Merger (the "Certificate of Merger") to be executed, acknowledged and filed with the Secretary of State of the State of Kansas as provided in Sections 17-6003 and 17-6701 of the KGCC. The Merger shall become effective at the time when the Certificate of Merger has been duly filed with the Secretary of State of the State of Kansas or upon such later date as agreed upon by the parties and specified in such Certificate of Merger (the "Effective Time"). Not later than simultaneously with the filing of the Certificate of Merger, Manzano and Parent will cause such certificates or other instruments to be filed with the New Mexico Public Regulation Commission (the "NMPRC") as are required in accordance with the NMBCA to cause the Second Merger to become effective at the Effective Time.

Article II.

The Surviving Corporation

2.1. The Articles of Incorporation.

The restated articles of incorporation of the Company as in effect immediately prior to the Effective Time shall be the articles of incorporation of the Surviving Corporation (the "Charter"), until duly amended as provided therein or by applicable law.

2.2. The By-Laws.

The by-laws of the Company as in effect immediately prior to the Effective Time shall be the by-laws of the Surviving Corporation (the "By-Laws"), until thereafter amended as provided therein or by applicable law.

2.3. Directors.

The directors of Merger Sub-1 at the Effective Time shall, from and after the Effective Time, be the directors of the Surviving Corporation until their successors have been duly elected or appointed and qualified or until their earlier death, resignation or removal in accordance with the Charter and the By-Laws. The directors of Merger Sub-1 at the Effective Time shall be appointed by Parent in its sole discretion, provided that at least three such directors shall be resident in the service territory of the Company or Kansas Gas and Electric Company in the State of Kansas.

2.4. Officers.

The officers of Merger Sub-1 at the Effective Time shall, from and after the Effective Time, be the officers of the Surviving Corporation until their successors have been duly elected or appointed and qualified or until their earlier death, resignation or removal in accordance with the Charter and the By-Laws.

Article III.

Effect of the Transaction on Capital Stock; Exchange of Certificates

3.1. Apportionment of Company Common Stock.

(a) The Split-Off.

At the Effective Time and in accordance with the terms hereof and of the Allocation and Separation Agreement, a portion (the "Split-Off Portion") of each share of common stock, par value \$5.00 per share, of the Company (the "Company Common Stock") shall be exchanged for shares of common stock, par value \$.01 per share, of Westar (the "Westar Common Stock"). The Split-Off Portion shall be calculated as follows: the market value of the shares of Westar Common Stock issued to and held by the Company divided by the market value of the total number of issued and outstanding shares of Company Common Stock, in each case immediately prior to the effective time of the Split-Off and determined based on the average (rounded to the nearest thousandth, or if there shall not be a nearest thousandth, the next highest thousandth) of the volume weighted averages (rounded to the nearest thousandth, or if there shall not be a nearest thousandth, the next highest thousandth) of the trading price of Westar Common Stock or Company Common Stock, as the case may be, on the New York Stock Exchange as reported by Bloomberg Financial Markets, or if not reported thereby, another reputable source, in the period of 20 consecutive Trading Days ending on the close of business on the second Business Day immediately preceding the effective time of the Split-Off; provided that if Westar Common Stock is not listed for trading on the New York Stock Exchange, the market price for Westar Common Stock shall be determined as the average of price quotes from three investment banking firms, one appointed by Westar, one appointed by the Company and the third by the two other appointees.

(b) The Merger.

At the Effective Time, the portion of each share of Company Common Stock not included in the Split-Off Portion (the "Merger Portion") shall be converted into the right to receive the Merger Consideration as set forth in Section 3.2(b) below.

3.2. Effect of the Transaction on Capital Stock.

(a) Permitted Intercompany Adjustments.

For the period from the date hereof through the close of business on the day that is 15 Business Days prior to the Closing Date (the "Cut Off Date"), the following intercompany transfers between the Company and Westar shall be permitted and shall be adjustments to the Merger Consideration to the extent set forth in subsection (b) below:

(i) Westar may pay Additional Cash to the Company, at Westar's option, as:

(A) consideration for the purchase of shares of Company Common Stock at a price based on the average (rounded to the nearest thousandth, or if there shall not be a nearest thousandth, the next higher thousandth) of the volume weighted averages (rounded to the nearest thousandth, or if there shall not be a nearest thousandth, the next higher thousandth) of the trading price of Company Common Stock on the New York Stock Exchange as reported by Bloomberg Financial Markets, or if not reported thereby, another reputable source, in the period of 20 consecutive Trading Days ending on the close of business on the Business Day immediately preceding the date of purchase; or

(B) consideration for the purchase of convertible preference shares of the Company having the terms set forth on Exhibit B hereto (as may be amended following approval by the Company's shareholders of amendments to the articles of incorporation of the Company with respect to the voting rights of such shares) (the "Convertible Preference Shares") in accordance with the terms thereof, at the price specified thereon; provided that (x) prior to purchasing any Convertible Preference Shares, Westar will purchase a number of shares of Company Common Stock that would be converted into 9.9% of the issued and outstanding shares of Parent Common Stock on a fully diluted basis (based on the Company's good faith determination of the likely number of shares of Parent Common Stock to be outstanding at the Effective Time taking into consideration the most recent financial statements filed with the Securities and Exchange Commission (the "SEC") by the Company, PNM and Manzano and the Company's good faith estimate of the Adjustment Shares to be issued pursuant to Section 3.2(b)) and (y) the aggregate amount of cash paid by Westar to the Company pursuant to this subsection (B) shall not exceed \$375,000,000. The Convertible Preference Shares may, but are not required to, be converted into shares of Company Common Stock by the holder thereof on or prior to the Effective Time and, to the extent so converted, shall be included in the calculation set forth in Section 3.2(b)(ii)(A); or

(C) consideration for the repurchase of shares of Westar Common Stock at a price based on the average (rounded to the nearest thousandth, or if there shall not be a nearest thousandth, the next higher thousandth) of the volume weighted averages (rounded to the nearest thousandth, or if there shall not be a nearest thousandth, the next higher thousandth) of the trading price of Westar Common Stock on the New York Stock Exchange as

reported by Bloomberg Financial Markets, or if not reported thereby, another reputable source, in the period of 20 consecutive Trading Days ending on the close of business on the Business Day immediately preceding the date of purchase or the initial exercise price for rights to purchase Westar Common Stock, whichever is higher; provided that Westar may not redeem its Common Stock pursuant hereto unless the Westar Common Stock is listed for trading on the New York Stock Exchange or other national securities exchange; or

(D) an increase in the amount of the intercompany receivable owed by the Company to Westar.

As used herein, the term "Trading Day" means a day on which the New York Stock Exchange is open for trading. As used herein, the term "Additional Cash" means cash other than cash paid by Westar or any Split-Off Subsidiary to the Company pursuant to (i) any of the Company Contracts and other arrangements specified in Section 5.1(u) of the Company Disclosure Letter and (ii) the Company's tax sharing and allocation policy (Company Accounting Manual Section No. 6.90) as in effect on the date hereof.

(ii) At any time between the date hereof and the Cut Off Date, Westar may convert any amount of the intercompany receivable into any of the securities listed in subsections (i)(A), (B) or (C) hereto; provided that any remaining outstanding balance of the intercompany receivable shall be so converted at the Effective Time, in each case consistent with the terms of subsections (i)(A), (B) or (C), with Westar providing written notice to the Company of its choice of conversion options on or prior to the Cut Off Date.

(iii) The Company may pay cash to Westar, either as an equity contribution or a reduction in the amount of the intercompany receivable (but not below zero) in an amount not to exceed the limitation set forth in Section 6.7(g) of the Company's \$600 million Credit Agreement dated June 28, 2000, as in effect on the date hereof; provided that any cash payments pursuant to (i) any of the Company contracts and other arrangements specified in Section 5.1(u) of the Company Disclosure Letter and (ii) the Company's tax sharing and allocation policy (Company Accounting Manual Section No. 6.90) as in effect on the date hereof shall not be adjustments to the Merger Consideration.

(iv) The maximum aggregate value of Company Common Stock and Company Preference Shares purchased by Westar pursuant to this Section 3.2(a), including without limitation as a result of the conversion of the existing intercompany receivable, shall not exceed \$641,000,000.

(b) Closing Consideration.

At the Effective Time, as a result of the Split-Off and Merger and without any action on the part of the holder of any capital stock of the Company:

(i) The Split-Off Portion of each share of Company Common Stock issued and outstanding immediately prior to the Effective Time (except for shares of Company Common Stock owned by Parent, Merger Sub-1, Merger Sub-2 or any other direct or indirect subsidiary of Parent or shares of Company Common Stock that are owned by the Company or any direct or indirect subsidiary of the Company but excluding any shares of Company Common Stock issued to and owned directly or indirectly by Westar, and in each case not held on behalf of third parties (each, an "Excluded Share" and collectively, "Excluded Shares")), shall be exchanged for a number of shares of Westar Common Stock equal to the Split-Off Exchange Ratio (the "Split-Off Consideration"). The "Split-Off Exchange Ratio" shall be equal to the number of shares of Westar Common Stock issued to and owned by the Company divided by the number of shares of Company Common Stock issued and outstanding (other than the Excluded Shares), in each case at the Effective Time.

(ii) (A) Subject to the provisions hereof, the aggregate number of shares of Parent Common Stock to be issued in the Merger shall be 55,000,000 (the "Base Shares") plus the Adjustment Shares (as defined below) (the "Aggregate Share Number").

The "Adjustment Shares" shall be determined by dividing (A) the difference (which may be a positive or a negative number) between (x) the sum of: (i) the amount of any proceeds (net of expenses relating to such sale) from the sale of Westar securities received by the Company from the date hereof through the Cut Off Date (excluding the amount of any such proceeds received by Westar directly and transferred to the Company pursuant to clause (iii) or (v) below); (ii) for each regular quarterly record date for payment of dividends on shares of Company Common Stock between the date hereof and the Closing Date, an amount equal to the product of (A) the number of shares of Company Common Stock outstanding and entitled to receive a dividend on such record date and (B) the difference

between \$0.30 and the amount of the actual cash dividend or dividend equivalent under the Stock Plans (as in effect on the date hereof except as such plans may be amended in conformity with this Agreement) declared per share of Common Stock outstanding on such record date; (iii) the value of any shares of Company Common Stock issued to Westar pursuant to subsection (a)(i)(A) or (a)(ii) above based on the consideration paid by Westar for such shares; (iv) the value of any shares of Company Common Stock issued to Westar pursuant to the conversion of Convertible Preference Shares issued to Westar in accordance with subsection (a)(i)(B) or (a)(ii) above based on the consideration paid by Westar for the Convertible Preference Shares which were converted into such Company Common Stock (it being understood that no adjustment shall be made pursuant hereto with respect to any Convertible Preference Shares that will remain issued and outstanding at or after the Effective Time); (v) the value of any shares of Westar Common Stock repurchased by Westar in accordance with subsection (a)(i)(C) or (a)(ii) above based on the purchase price paid by Westar for such shares; (vi) the amount of cash received as consideration for shares of Company Common Stock issued by the Company or the cash value of any compensation paid to employees of the Company in the form of shares of Company Common Stock, as the case may be, between the date hereof and the Cut Off Date pursuant to the Company's Direct Stock Purchase Plan and the Stock Plans (as defined in Section 5.1(b)); and (vii) the amount of any cash (or other consideration pursuant to a cashless exercise) received from the exercise of outstanding options (including pursuant to cashless exercises) to purchase shares of Company Common Stock between the date hereof and the Cut Off Date, and (y) the sum of (i) the amount of any cash paid by the Company to Westar as an equity contribution pursuant to subsection (a)(iii) above and (ii) \$234 million, by (B) \$27.00. On or prior to the Cut Off Date the Company shall deliver to Parent a statement showing the adjustment calculated in accordance with this Section 3.2(b) (the "Adjustment Calculation"). The Adjustment Calculation shall have sufficient detail to enable Parent to ascertain whether or not the adjustment proposed by the Company was made in conformity with the provisions of this Agreement.

(B) Parent may dispute the Adjustment Calculation provided by the Company by providing notice in writing to the Company within five Business Days of receipt of the Adjustment Calculation. If Parent and the Company are unable to reach resolution of any differences with respect to the Adjustment Calculation within ten Business Days of receipt of Parent's written notice of dispute to the Company, Parent and the Company shall submit the amounts remaining in dispute to one of the five largest nationally recognized independent auditing firms selected by the Company but not to include the auditing firm who prepared the most recent audited financial statements for Parent or the Company (the "Neutral Auditor"). The Neutral Auditor shall ----- be instructed to determine and report to the parties, within 20 Business Days after such submission, upon such remaining disputed amounts, and such report shall be final, binding and conclusive on the parties hereto with respect to the amounts disputed. The fees and disbursements of the Neutral Auditor shall be shared equally by Parent and the Company.

(iii) The Merger Portion of each share of the Company Common Stock issued and outstanding immediately prior to the Effective Time (other than the Excluded Shares) shall be converted into, and become exchangeable for a number of shares of common stock, par value \$0.001 per share of Parent (the "Parent Common Stock") equal to the Exchange Ratio (the "Merger Consideration" and together with the Split-Off Consideration, the "Closing Consideration"). The "Exchange Ratio" shall be equal to the Aggregate Share Number divided by the number of outstanding shares of Company Common Stock at the Effective Time (other than the Excluded Shares).

(iv) Each Excluded Share shall, by virtue of the Split-Off and Merger and without any action on the part of the holder thereof, cease to be outstanding, shall be cancelled and retired without payment of any consideration therefor and shall cease to exist.

(v) At the Effective Time, all shares of Company Common Stock shall no longer be outstanding and shall be cancelled and retired and shall cease to exist, and each certificate (a "Certificate") formerly representing any such shares of Company Common Stock (other than Excluded Shares) shall thereafter represent only the right to receive the Closing Consideration and the right, if any, to receive pursuant to Section 3.4(e) cash in lieu of fractional shares into which such shares of Company Common Stock have been converted pursuant to this Section 3.2(b) and any distribution or dividend pursuant to Section 3.4(c).

(vi) Each issued and outstanding Convertible Preference Share shall be converted into one share of convertible preferred stock of Parent having the terms set forth on Exhibit C hereto (the "Parent Convertible Shares").

(c) Second Merger Consideration.

(i) Each share of common stock, par value \$0.001 per share of Manzano (the "Manzano Common Stock") issued and outstanding prior to the Effective Time (excluding shares owned by Parent, PNM, Manzano or any of their direct or indirect subsidiaries or by the Company or any Split-Off Subsidiary or any other direct or indirect subsidiaries, in each case not held on behalf of third parties, each a "Manzano Excluded Share" and collectively (the "Manzano Excluded Shares")) shall be converted into, and exchangeable for, one share of Parent Common Stock (the "Manzano Merger Consideration").

(ii) At the Effective Time, all shares of Manzano Common Stock shall no longer be outstanding and shall be cancelled and retired and shall cease to exist, and each certificate (a "Manzano Certificate") formerly representing any such shares of Manzano Common Stock (other than Manzano Excluded Shares) shall thereafter represent only the right to receive shares of Parent Common Stock pursuant to subsection (i) above and the right, if any, to receive pursuant to Section 3.4(e) cash in lieu of fractional shares into which such shares of Manzano Common Stock have been converted pursuant to this Section 3.2(c) and any distribution or dividend pursuant to Section 3.4(c).

(iii) Each Manzano Excluded Share shall, by virtue of the Second Merger and without any action on the part of the holder thereof, cease to be outstanding, shall be cancelled and retired without payment of any consideration therefor and shall cease to exist.

(d) Merger Sub-1.

At the Effective Time, each share of Common Stock, no par value, of Merger Sub-1 issued and outstanding immediately prior to the Effective Time shall be converted into one share of common stock of the Surviving Corporation and shall constitute the only shares of capital stock of the Surviving Corporation.

(e) Merger Sub-2.

At the Effective Time, each share of Common Stock, no par value, of Merger Sub-2 issued and outstanding immediately prior to the Effective Time shall be converted into one share of Manzano Common Stock and shall constitute the only shares of capital stock of Manzano.

3.3. Exchange of Certificates Exchanged in the Split-Off.

(a) At the Effective Time, the Company shall deposit with the Exchange Agent (as defined in Section 3.4 below) a stock certificate or certificates, endorsed in blank by the Company, representing the shares of Westar Common Stock owned by the Company.

(b) Following surrender of any Certificate formerly representing shares of Company Common Stock in accordance with Section 3.4(b), there shall be issued to the holder thereof, the Split-Off Consideration to which such holder is entitled pursuant to the Split-Off.

(c) Holders of record at the Effective Time of unsurrendered Certificates exchanged in the Split-Off shall be entitled to vote after the Effective Time at any meeting of Westar shareholders the number of whole shares of Westar Common Stock represented by such Certificates, regardless of whether such holders have exchanged their Certificates.

3.4. Exchange of Certificates in the Merger.

(a) Exchange Agent.

At the Effective Time, Parent shall deposit, or shall cause to be deposited, with an exchange agent (the "Exchange Agent"), selected by Parent with the Company's prior approval, which shall not be unreasonably withheld, for the benefit of the holders of shares of Company Common Stock, certificates representing the shares of Parent Common Stock to be issued in the Merger pursuant to Section 3.2 in exchange for outstanding shares of the Company Common Stock (such shares of Parent Common Stock and shares of Westar Common Stock deposited pursuant to Section 3.3, together with any dividends or distributions with respect thereto with a record date after the Effective Time and any cash payable in lieu of any fractional shares of Parent Common Stock or Westar Common Stock, being hereinafter referred to as the "Exchange Fund"). At the Effective Time, Parent shall also deposit with the Exchange Agent, to be held as part of the Exchange Fund, certificates representing shares of Parent Common Stock to be issued in the Second Merger in exchange for outstanding shares of Manzano Common Stock, together with any dividends or distributions with respect thereto with a record date after the Effective Time.

(b) Exchange Procedures.

As soon as reasonably practicable after the Effective Time, but in no event later than three Business Days after the Effective Time, the Surviving Corporation and Manzano shall cause the Exchange Agent to mail to each holder of record of shares of Company Common Stock and Manzano Common Stock at the Effective Time (other than holders of Excluded Shares) (i) a letter of transmittal specifying that delivery of the Certificates or the Manzano Certificates, as the case may be, shall be effected, and risk of loss and title to the Certificates or the Manzano Certificates, as the case may be, shall pass, only upon delivery of the Certificates or the Manzano Certificates, as the case may be, (or affidavits of loss in lieu thereof) to the Exchange Agent, such letter of transmittal to be in such form and have such other provisions as Parent and the Company may reasonably agree, and (ii) instructions for use in effecting the surrender of the Certificates or the Manzano Certificates, as the case may be, in exchange for (A) Closing Consideration, in the case of the Split-Off and Merger, or Manzano Merger Consideration, in the case of the Second Merger and (B) any unpaid dividends and other distributions and cash in lieu of fractional shares to be paid pursuant to this Agreement (such instructions shall include instructions for the payment of the Closing Consideration, in the case of the Split-Off and Merger, or Manzano Merger Consideration, in the case of the Second Merger, cash in lieu of fractional shares, and dividends or other distributions to a Person other than the Person in whose name the surrendered Certificate, or Manzano Certificate, as the case may be, is registered on the transfer books of the Company or Manzano, as the case may be, subject to the receipt of appropriate documentation for such transfer). Upon surrender of a Certificate, or Manzano Certificate, as the case may be, (or evidence of loss in lieu thereof) for cancellation to the Exchange Agent together with such letter of transmittal, duly executed in accordance with the provisions of this Section 3.4(b), the holder of such Certificate, or Manzano Certificate, as the case may be, shall be entitled to receive in exchange therefor (x) Merger Consideration, in the case of the Merger, or, Manzano Merger Consideration, in the case of the Second Merger, in each case that such holder is entitled to receive pursuant to this Article III, and (y) a check in the amount (after giving effect to any required tax withholdings) of (A) any cash in lieu of fractional shares plus (B) any unpaid non-stock dividends and any other dividends or other distributions that such holder has the right to receive pursuant to the provisions of this Article III, and the Certificate, or Manzano Certificate, as the case may be, so surrendered shall forthwith be cancelled. No interest will be paid or accrued on any amount payable upon due surrender of the Certificates, or Manzano Certificates, as the case may be. In the event of a transfer of ownership of shares of Company Common Stock or Manzano Common Stock that is not registered in the transfer records of the Company or Manzano, respectively, payment may be issued to such a transferee if the Certificate, or Manzano Certificate, as the case may be, formerly representing such shares of Company Common Stock or Manzano Common Stock is presented to the Exchange Agent, accompanied by all documents required to evidence and effect such transfer and the person requesting such issuance pays any transfer or other taxes required by reason of such payment to a person other than the registered holder of such Certificate, or Manzano Certificate, as the case may be, or establishes to the satisfaction of Parent and the Company that such tax has been paid or is not applicable.

For the purposes of this Agreement, the term "person" shall mean any individual, corporation (including not-for-profit corporations), general or limited partnership, limited liability company, joint venture, estate, trust, association, organization, Governmental Entity or other entity of any kind or nature.

(c) Distributions with Respect to Unexchanged Shares; Voting.

(i) All shares of Parent Common Stock to be issued pursuant to the Mergers shall be deemed issued and outstanding as of the Effective Time and whenever a dividend or other distribution is declared by Parent in respect of the Parent Common Stock, the record date for which is at or after the Effective Time, that declaration shall include dividends or other distributions in respect of all shares of Parent Common Stock issuable pursuant to this Agreement. No dividends or other distributions in respect of the Parent Common Stock shall be paid to any holder of any unsurrendered Certificate, or Manzano Certificate, as the case may be, until such Certificate, or Manzano Certificate, as the case may be, is surrendered for exchange in accordance with this Article IV. Following surrender of any Certificate, or Manzano Certificate, as the case may be, there shall be issued and/or paid to the holder of the certificates representing whole shares of Parent Common Stock issued in exchange therefor, without interest, (A) at the time of such surrender, the dividends and other distributions with a record date after the Effective Time theretofore payable with respect to such whole shares of Parent Common Stock and not paid with respect to such shares and (B) at the appropriate payment date, the dividends and other distributions payable with respect to such whole shares of Parent Common Stock with a record date after the Effective Time but with a payment date subsequent to surrender.

(ii) Holders of record at the Effective Time of unsurrendered Certificates shall be entitled to vote after the Effective Time at any meeting of Parent

shareholders the number of whole shares of Parent Common Stock represented by such Certificates, regardless of whether such holders have exchanged their Certificates. Holders of record at the Effective Time of unsurrendered Manzano Certificates shall be entitled to vote after the Effective Time at any meeting of Parent shareholders the number of whole shares of Parent Common Stock represented by such Manzano Certificates, regardless of whether such holders have exchanged their Manzano Certificates.

(d) Transfers, Etc.

After the Effective Time, there shall be no transfers on the stock transfer books of the Company or Manzano of shares of Company Common Stock or Manzano Common Stock that were outstanding immediately prior to the Effective Time.

(e) Fractional Shares.

Notwithstanding any other provision of this Agreement to the contrary and solely for convenience and not as a separately bargained for consideration, no fractional shares of Parent Common Stock will be issued and any holder of shares of Company Common Stock entitled to receive a fractional share of Parent Common Stock but for this Section 3.4(e) shall be entitled to receive a cash payment in lieu thereof, as follows. The Exchange Agent will be directed to determine the number of whole shares and fractional shares of Parent Common Stock issuable to each holder of record of certificates formerly representing shares of Company Common Stock as of the Effective Time. Upon the determination by the Exchange Agent of such number of fractional shares, as soon as practicable after the Effective Time, the Exchange Agent, acting on behalf of the holders thereof, shall sell such fractional shares for cash on the open market in each case at the then prevailing market prices and shall distribute to each holder entitled thereto, in lieu of any fractional share, without interest, that holder's ratable share of the proceeds of that sale, after making appropriate deductions of the amount required, if any, to be withheld for United States income Tax purposes.

(f) Termination of Exchange Fund.

Any portion of the Exchange Fund relating to the Merger Consideration in the case of the Merger or the Manzano Merger Consideration, in the case of the Second Merger that remains unclaimed by the shareholders of the Company or the shareholders of Manzano for one year after the Effective Time shall be returned to Parent. At the same time, any portion of the Exchange Fund comprised of Split-Off Consideration shall be returned to Westar. Any shareholders of the Company or of Manzano who have not theretofore complied with this Article III shall thereafter look only to (i) Parent for payment of the Merger Consideration in the case of the Merger, or Manzano Merger Consideration, in the case of the Second Merger, and any cash, dividends and other distributions in respect thereof payable and/or issuable pursuant to Section 3.2 and Section 3.4(c) upon due surrender of their Certificates, or Manzano Certificates, as the case may be, (or affidavits of loss in lieu thereof), and (ii) Westar for payment of the Split-Off Consideration, in each case, without any interest thereon. Notwithstanding the foregoing, none of Parent, the Surviving Corporation, Manzano, Westar, the Exchange Agent or any other person shall be liable to any former holder of shares of Company Common Stock or Manzano Common Stock for any amount properly delivered to a public official pursuant to applicable abandoned property, escheat or similar laws.

(g) Lost, Stolen or Destroyed Certificates.

In the event that any Certificate, or Manzano Certificate, as the case may be, shall have been lost, stolen or destroyed, upon the making of an affidavit of that fact by the person claiming such Certificate, or Manzano Certificate, as the case may be, to be lost, stolen or destroyed and, if required by Parent, the posting by such person of a bond in customary amount as indemnity against any claim that may be made against it with respect to such Certificate, or Manzano Certificates, as the case may be, the Exchange Agent will issue in exchange for such lost, stolen or destroyed Certificate, or Manzano Certificate, as the case may be, the Closing Consideration in the case of the Merger and the Split-Off, or the Manzano Merger Consideration, in the case of the Second Merger, and, if applicable, any cash payable and any unpaid dividends or other distributions deliverable in respect thereof pursuant to Section 3.4(c) upon due surrender of the shares of the Company Common Stock or Manzano Common Stock represented by such Certificate, or Manzano Certificate, as the case may be, pursuant to this Agreement.

(h) Affiliates.

Notwithstanding anything herein to the contrary, Certificates surrendered by any "affiliate" (as determined pursuant to Section 7.6) of the Company shall not be exchanged until Parent shall have received a written agreement from such person as provided for in Section 7.6 hereof.

3.5. Dissenters' Rights.

(a) In the event that appraisal rights are available under Section 17-6712 of the KGCC to holders of shares of the Company Common Stock at the Effective Time, any issued and outstanding shares of the Company Common Stock held by a person who objects to the Transaction and complies with all applicable provisions of the KGCC concerning the right of such person to dissent from the Transaction and demands appraisal of shares ("Company Dissenting Holder") shall from and after the Effective Time represent only the right to receive such consideration as may be determined to be due to such Company Dissenting Holder with respect to such shares pursuant to the KGCC and shall not be converted as described in Section 3.2(b); provided, however, that shares outstanding immediately prior to the Effective Time and held by a Company Dissenting Holder who shall withdraw the demand for appraisal or lose the right of appraisal of such shares pursuant to the KGCC shall be deemed to be converted, as of the Effective Time, into the right to receive the Closing Consideration.

(b) Any issued and outstanding shares of Manzano Common Stock held by a person who objects to the Second Merger and complies with all applicable provisions of the NMBCA concerning the right of such person to dissent from the Second Merger and demands appraisal of such shares ("Manzano Dissenting Holder") shall from and after the Effective Time represent only the right to receive such consideration as may be determined to be due to such Manzano Dissenting Holder with respect to such shares pursuant to the NMBCA and shall not be converted as described in Section 3.2(c); provided, however, that shares outstanding immediately prior to the Effective Time and held by a Manzano Dissenting Holder who shall withdraw the demand for appraisal, or lose the right of appraisal of such shares pursuant to the NMBCA shall be deemed to be converted, as of the Effective Time, into the right to receive the Manzano Merger Consideration.

3.6. Adjustments to Prevent Dilution.

In the event that the Company changes the number of shares of Company Common Stock or securities convertible or exchangeable into or exercisable for shares of Company Common Stock (other than the issuance of Convertible Preference Shares), Manzano changes the number of shares of Manzano Common Stock or securities convertible or exchangeable for shares of Manzano Common Stock, or Parent changes the number of shares of Parent Common Stock or securities convertible or exchangeable into or exercisable for shares of Parent Common Stock, in each case issued and outstanding prior to the Effective Time as a result of a reclassification, stock split (including a reverse stock split), stock dividend or distribution, recapitalization, merger, subdivision, issuer tender or exchange offer, or other similar transaction, the Closing Consideration, the Exchange Ratio and the Split-Off Exchange Ratio shall be equitably adjusted to reflect such change in the case of the Merger and the Split-Off, and the number of shares of Parent Common Stock into which each share of Manzano Common Stock shall be converted shall be equitably adjusted to reflect such change, in the case of the Second Merger.

3.7. Restructuring of the Mergers.

If for any reason, the Manzano Transition Date can not occur, or the regulatory approvals required to permit it to occur are likely to materially delay the Effective Time, then the parties agree to restructure certain of the transactions contemplated hereby and to exclude Manzano from participation in the transactions contemplated hereby. In such event, PNM and Parent, in lieu of the Manzano Exchange and the Second Merger, as provided for herein, shall enter into an agreement and plan of share exchange (the "PNM Exchange Agreement") (which agreement shall be substantially the same as the Exchange Agreement with such changes therein as are appropriate to reflect Parent's status as a Delaware corporation, except that Article VI of the Exchange Agreement shall be modified to require all holders to surrender their certificates for cancellation or cancellation and transfer) pursuant to which (i) the Exchange Agreement would be terminated and the Manzano Exchange abandoned, (ii) at the Effective Time, each share of PNM Common Stock would be automatically converted into shares of Parent Common Stock based on the Manzano Exchange Ratio (the "PNM Exchange") and Parent would thereby acquire and become the owner and holder of each issued and outstanding share of PNM Common Stock. In the event the Manzano Transition Date does not occur prior to the Effective Time, PNM shall retain all of its rights, obligations, interests and liabilities under this Agreement. The Parties recognize that there may be other circumstances in which it may be preferable to effectuate a business combination between Parent, PNM and the Company by means of an alternative structure to the Transaction. Accordingly, if, prior to satisfaction of the conditions contained in Article VIII hereto, either party proposes the adoption of an alternative structure that will not delay the Effective Time and that otherwise substantially preserves for Parent, PNM, the Company and the holders of the Company Common Stock the economic and Tax benefits of the Transactions, then the parties shall make good faith to effect a business combination among themselves by means of a mutually agreed upon structure other than the Transactions that so preserves such benefits; provided that if the Company Requisite Vote or the Parent Requisite Vote has already been

obtained, such alternative business combination does not require any additional approval of the shareholders of the Company under the KGCC or other applicable law or the shareholders of PNM under the NMBCA or other applicable law. In the event that the parties adopt a restructured transaction, the Agreement shall be revised to reflect such transaction as determined necessary by the parties hereto and prior to closing any such restructured transaction, all material third party and Governmental Authority declarations, filings, registrations, notices, authorizations, consents or approvals necessary for the effectuation of such alternative business combination shall have been obtained and all other conditions to the parties' obligations to consummate the Transaction and other transactions contemplated hereby, as applied to such alternative business combination, shall have been satisfied or waived.

3.8. Manzano Guaranty; Etc.

Effective from the Manzano Transition Date, (i) Manzano unconditionally guarantees the obligations of Parent under this Agreement but only through the Effective Time, it being the intent of the parties that such obligations shall be obligations solely of Parent from and after the Effective Time and (ii) Manzano assumes and agrees to perform all obligations of PNM hereunder and shall succeed to all rights, interests and liabilities of PNM hereunder and be substituted for PNM for all purposes of this Agreement as if originally named herein, in each case without necessity for further act by any party hereto. Manzano agrees promptly to execute a counterpart of this Agreement upon PNM becoming its Subsidiary. PNM agrees to give written notice to all other parties hereto of the occurrence of the Manzano Transition Date.

Article IV.

The Closing

4.1. Closing.

The closing of the Transaction (the "Closing") shall take place (i) at the offices of LeBoeuf, Lamb, Greene & MacRae, L.L.P., 125 West 55th Street, New York, New York at 10:00 A.M. on the twentieth Business Day after the last to be satisfied or waived of the conditions set forth in Article VIII (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) shall be satisfied or waived (by the party entitled to the benefit of such condition) in accordance with this Agreement or (ii) at such other place and time and/or on such other date as the Company and Parent may agree in writing (the "Closing Date"); provided that in the event a dispute resolution process pursuant to Section 3.2(b)(ii)(B) is pending, the Closing Date shall automatically be extended to two business days following the date of delivery of the report of the Neutral Auditor. For purposes of this Agreement, the term "Business Day" means a day on which banks are not required or authorized by law to close in New York City.

Article V.

Representations and Warranties

5.1. Representations and Warranties of the Company.

Except as set forth in the disclosure letter delivered to Parent by the Company on or prior to entering into this Agreement (the "Company Disclosure Letter") or the Company Reports, the Company hereby represents and warrants to Parent, PNM, Merger Sub-1 and Merger Sub-2 that:

(a) Organization, Good Standing and Qualification.

Each of the Company and its Utility Subsidiaries is a corporation duly organized, validly existing and in good standing under the laws of its respective jurisdiction of organization and has all requisite corporate or similar power and authority to own and operate its properties and assets and to carry on its business as presently conducted in all material respects and is qualified to do business and is in good standing as a foreign corporation in each jurisdiction where the ownership or operation of its properties or conduct of its business requires such qualification, except where the failure to be so qualified as a foreign corporation or be in good standing would not be reasonably likely to have, either individually or in the aggregate, a Company Material Adverse Effect. Wolf Creek Nuclear Operating Corporation is a corporation in good standing under the laws of the state of Kansas. The Company has made available to Parent complete and correct copies of the Company's and each of its Utility Subsidiaries' articles of incorporation and by-laws (or comparable governing instruments), as amended to date. The Company's and its Utility Subsidiaries' articles of incorporation and by-laws (or comparable governing instruments) so delivered are in full force and effect. Section 5.1(a) of the Company Disclosure Letter sets forth a list, as of the date hereof, of all of the Subsidiaries of the Company, the jurisdictions under which such Subsidiaries were incorporated, the percent of the equity interest therein owned

by the Company and each Subsidiary of the Company, as applicable, whether such Subsidiary has active business operations, and specifies each Subsidiary that as of the date hereof, (i) (A) owns or operates any portion of the Company's electric utility business as reflected in the unconsolidated balance sheet included in Section 5.1(e)(ii) of the Company Disclosure Letter and (B) is to remain a Subsidiary of the Company after giving effect to the Split-Off or (ii) otherwise holds the Company's investments in affordable housing tax credits as shown in the consolidated financial statements of the Company and its Subsidiaries included in the Company Reports (the Subsidiaries so specified in the list being herein collectively called the "Utility Subsidiaries"). Section 5.1(a) of the Company Disclosure Letter specifies the status of each Utility Subsidiary under Section 2(a)(5), 2(a)(7), 2(a)(11), 32(a)(1) or 33(a)(3) of the Public Utility Holding Company Act of 1935, as amended (the "1935 Act") and Section 201(e) of the Federal Power Act (the "Power Act"). No Subsidiary which is a Utility Subsidiary will be a Westar Subsidiary.

As used in this Agreement, the term "Subsidiary" means, with respect to the Company, PNM, Parent, Merger Sub-1 or Merger Sub-2, as the case may be, any entity, other than a Westar Subsidiary, whether incorporated or unincorporated, of which at least a majority of the securities or ownership interests having by their terms ordinary voting power to elect a majority of the board of directors or other persons performing similar functions is directly or indirectly owned or controlled by such party or by one or more of its respective Subsidiaries or by such party and any one or more of its respective Subsidiaries.

As used in this Agreement, the term "Significant Subsidiary" means a "significant subsidiary" (other than, with respect to the Company, a Westar Subsidiary) within the meaning of Rule 1.02(w) of Regulation S-X promulgated pursuant to the Securities Exchange Act of 1934, as amended ("Exchange Act").

As used in this Agreement, the term "Company Material Adverse Effect" means a material adverse effect on the financial condition, business, assets or results of operations of the Company and its Subsidiaries taken as a whole; provided, however, that any such effect resulting from or arising out of (i) any change in law, rule, regulation or generally accepted accounting principles ("GAAP") or interpretations thereof, (ii) economic or business conditions in the United States generally, (iii) conditions generally affecting the electric utility industry or (iv) the execution and delivery of this Agreement, the consummation of the transactions contemplated hereby or by the Split-Off Agreements shall not be considered when determining if a Company Material Adverse Effect has occurred. As used in this Agreement, the term " " or any similar formulation of knowledge shall mean the actual knowledge of, with respect to the Company, those persons set forth in Section 5.1(a) of the Company Disclosure Letter and, with respect to Parent and PNM, those persons set forth in Section 5.2 of the Parent Disclosure Letter. Notwithstanding the foregoing, the parties hereto acknowledge and agree that in no event shall any matter that is or would be a Westar Group Liability (as such term is defined in the Allocation and Separation Agreement) constitute or give rise to, in whole or in part, a Company Material Adverse Effect; provided that, such matter does not also constitute or result in a Western Group Liability (as such term is defined in the Allocation and Separation Agreement).

(b) Capital Structure.

The authorized capital stock of the Company consists of (x) 150,000,000 shares of Company Common Stock, of which 69,980,902 shares were outstanding as of the close of business on November 6, 2000, (y) 6,600,000 shares of preferred stock, (the "Preferred Shares") of which 138,576 shares of 4 1/2% series were outstanding, 60,000 shares of 4 1/4% series were outstanding, and 50,000 shares of 5% series were outstanding, in each case, as of November 6, 2000, and (z) 4,000,000 shares of preference stock, none of which are outstanding as of November 6, 2000. All of the issued and outstanding shares of capital stock of the Company have been duly authorized and are validly issued, fully paid and nonassessable. Each of the outstanding shares of capital stock or other securities of each of the Company's Subsidiaries is duly authorized, validly issued, fully paid and nonassessable and owned by the Company or a direct or indirect wholly owned Subsidiary of the Company, free and clear of any lien, pledge, security interest, claim or other encumbrance. Other than pursuant to the Company Long Term Incentive and Share Award Plan, the Executive Stock for Compensation Program, the Employee's Stock Purchase Plan and the 401(k) Plan (collectively, the "Stock Plans") and pursuant to the Company Direct Stock Purchase Plan, there are no preemptive or other outstanding rights, options, warrants, conversion rights, stock appreciation rights, redemption rights, repurchase rights, agreements, arrangements or commitments to issue or to sell any shares of capital stock or other securities of the Company or any of its Subsidiaries or any securities or obligations convertible or exchangeable into or exercisable for, or giving any Person a right to subscribe for or acquire, any securities of the Company or any of its Subsidiaries, and no securities or obligations evidencing such rights are authorized, issued or outstanding. The Company does not have outstanding any bonds, debentures, notes or other obligations the holders of which have the right to vote (or convertible into or

exercisable for securities having the right to vote) with the shareholders of the Company on any matter ("Voting Debt").

(c) Corporate Authority.

(i) The Company has all requisite corporate power and authority and has taken all corporate action necessary in order to execute, deliver and perform its obligations under this Agreement and to consummate, on the terms and subject to the conditions of this Agreement, the transactions contemplated hereby, subject only to receipt of the Company Requisite Vote and the Company Required Statutory Approvals. This Agreement is a valid and legally binding agreement of the Company enforceable against such party in accordance with its terms, subject to bankruptcy, insolvency, fraudulent transfer, reorganization, moratorium and similar laws of general applicability relating to or affecting creditors' rights and to general equity principles (the "Bankruptcy and Equity Exception").

(ii) As of the date hereof the Board of Directors of the Company has approved and adopted this Agreement and the Merger, the Split-Off and other transactions contemplated hereby and, subject to its fiduciary duties, has resolved to recommend that the shareholders of the Company approve this Agreement and the transactions contemplated hereby.

(d) Governmental Filings; No Violations.

(i) Other than any reports, filings, registrations, approvals and/or notices (A) required to be made pursuant to Section 1.4 (B) under the Hart-Scott-Rodino Antitrust Improvements Act of 1976, as amended (the "HSR Act"), the Securities Act of 1933, as amended (the "Securities Act"), and the Exchange Act, (C) with, to or of the Federal Energy Regulatory Commission (the "FERC"), (D) with, to or of the Kansas Corporation Commission; (E) with, to or of the SEC under the 1935 Act; (F) to or with the Nuclear Regulatory Commission, (G) to or with the Federal Communications Commission, (H) to comply with state securities or "blue-sky" laws; and (I) to comply with the rules and regulations of the New York Stock Exchange, Inc. (the "NYSE") (items B through I, the "Company Required Statutory Approvals"), no notices, reports, registrations or other filings are required to be made by the Company with, nor are any consents, registrations, approvals, permits or authorizations required to be obtained by the Company from, any governmental or regulatory authority, agency, commission, body or other governmental entity (each a "Governmental Entity"), in connection with the execution and delivery of this Agreement and the consummation by the Company of the transactions contemplated hereby, except for those that the failure to make or obtain are not, individually or in the aggregate, reasonably likely to have a Company Material Adverse Effect or prevent, materially delay or materially impair the ability of the Company to consummate the transactions contemplated by this Agreement.

(ii) The execution, delivery and performance of this Agreement and the consummation by the Company of the transactions contemplated hereby will not constitute or result in (A) a breach or violation of, or a default under, either the articles of incorporation of the Company or by-laws of the Company or the comparable governing instruments of any Company Utility Subsidiary, (B) a breach or violation of, or a default under, the acceleration of any obligations, the loss of any right or benefit, or the creation of a lien, pledge, security interest or other encumbrance on the assets of the Company or any Company Utility Subsidiary (with or without notice, lapse of time or both) pursuant to, any agreement, lease, contract, note, mortgage, indenture, arrangement or other obligation not otherwise terminable by the other party thereto on 90 days' or less notice ("Contracts") binding upon the Company or any Company Utility Subsidiary (the "Company Contracts") or any Law (as defined in Section 5.1(i)) or governmental or non-governmental permit or license to which the Company or any Company Utility Subsidiary is subject or (C) any change in the rights or obligations of any party under any of the Company Contracts, except, in the case of clause (B) or (C) above, for any breach, violation, default, acceleration, creation or change that would not, individually or in the aggregate, be reasonably likely to have a Company Material Adverse Effect or prevent, or materially impair the ability of the Company to consummate the transactions contemplated by this Agreement.

(e) Company Reports; Financial Statements.

(i) The filings required to be made (A) by the Company and its Subsidiaries since January 1, 1999 under the Securities Act; the Exchange Act; the 1935 Act; the Federal Power Act; and applicable state public utility laws and regulations have been filed with the SEC, FERC, or the appropriate state public utilities commission, as the case may be, and (B) by Wolf Creek Nuclear Operating Corporation since January 1, 1999 under the Atomic Energy Act of 1954, as amended, to the knowledge of the Company, have been filed with the NRC, including all forms, statements, reports, agreements (oral or written) and all documents, exhibits, amendments and supplements appertaining thereto, and complied, as of their respective dates, in all material respects with all

applicable requirements of the appropriate statutes and the rules and regulations thereunder, except for such filings the failure of which to have been made or so to comply would not result in a Company Material Adverse Effect. The Company has made available to Parent each registration statement, report, proxy statement or information statement filed by it with the SEC (collectively, including any amendments of any such reports, the "Company Reports") pursuant to the Securities Act or the Exchange Act since January 1, 1999, and prior to the date hereof, including (i) the Company's Annual Report on Form 10-K for the fiscal year ended December 31, 1999 and (ii) the Company's Quarterly Reports on Form 10-Q for the quarterly periods ended March 31, 2000 and June 30, 2000, each in the form (including exhibits, annexes and any amendments thereto) promulgated by the SEC under the Securities Act or the Exchange Act. None of the Company Reports (in the case of Company Reports filed pursuant to the Securities Act), as of their effective dates, contained any untrue statement of a material fact or omitted to state a material fact required to be stated therein or necessary to make the statements made therein, in light of the circumstances under which they were made, not misleading and none of the Company Reports (in the case of Company Reports filed pursuant to the Exchange Act) as of the respective dates filed with the SEC or first mailed to shareholders, as applicable, contained any statement which, at the time and in the light of the circumstances under which it was made, was false or misleading with respect to any material fact, or omitted to state any material fact necessary in order to make the statements therein, in light of the circumstances under which they were made, not misleading. The consolidated financial statements of the Company and its Subsidiaries included in such Company Reports comply as to form in all material respects with the applicable rules and regulations of the SEC with respect thereto. Each of the consolidated balance sheets included in or incorporated by reference into the Company Reports (including the related notes and schedules) presents fairly, in all material respects, the financial position of the Company and its Subsidiaries as of its date and each of the consolidated statements of income and consolidated statements of cash flow included in or incorporated by reference into the Company Reports (including any related notes and schedules) fairly presents in all material respects the results of operations, retained earnings and changes in financial position, as the case may be, of the Company and its Subsidiaries for the periods set forth therein (subject, in the case of unaudited statements, to the absence of notes and normal year-end audit adjustments), in each case in accordance with GAAP consistently applied during the periods involved, except as may be noted therein.

(ii) Section 5.1(e)(ii) of the Company Disclosure Letter contains the unaudited pro forma consolidated balance sheet of the Company and its Utility Subsidiaries as of September 30, 2000, which presents information as if the Split-Off had occurred (on the terms and subject to the conditions set forth in the Split-Off Agreements) as of the Audit Date. Such balance sheet is based on, and should be read in conjunction with, the historical consolidated financial statements included in the Company Reports. Such balance sheet fairly presents in all material respects the consolidated financial position of the Company and its Subsidiaries as of its date, as if the Split-Off had occurred (on the terms and subject to the conditions set forth in the Split-Off Agreements) on such date, subject to notes and normal year-end audit adjustments that will not be material in amount or effect. The accounts reflected in the unaudited pro forma balance sheet referred to in this subsection have been prepared in accordance with GAAP on a basis consistent with the historical audited consolidated balance sheets of the Company and its Subsidiaries (including the Split-Off Subsidiaries) and were prepared in accordance with the requirements of SEC Regulation S-X as it relates to pro forma balance sheets.

(f) Absence of Certain Changes.

Since December 31, 1999 (the "Audit Date"), except as expressly contemplated by this Agreement and the Split-Off Agreements, the Company and its Subsidiaries taken as a whole have conducted their business only in, and have not engaged in any material transaction other than according to, the ordinary and usual course of such business and there has not been (i) any change in the financial condition, properties, assets, business or results of operations of the Company and its Subsidiaries that has had or would be reasonably likely to have a Company Material Adverse Effect; (ii) any declaration, setting aside or payment of any dividend or other distribution in respect of the capital stock of the Company or any repurchase, redemption or other acquisition by the Company or any Subsidiary of any securities of the Company other than regular quarterly dividends on shares of the Company Common Stock in the ordinary course (including any periodic increase thereon consistent with past practice); or (iii) any change by the Company in accounting principles, practices or methods which is not required or permitted by GAAP. Since the Audit Date and through the date hereof, except as provided for herein, there has not been any material increase in the compensation payable or that could become payable by the Company or any of its Subsidiaries to officers or key employees or any material amendment of any of the Compensation and Benefit Plans other than increases or amendments in the ordinary course of business consistent with past practice.

(g) Litigation.

(i) There are no civil, criminal or administrative actions, suits, claims, hearings, investigations, reviews or proceedings pending or, to the knowledge of the Company, threatened against the Company or any of its Utility Subsidiaries, except for those that would not be reasonably likely to have, either individually or in the aggregate, a Company Material Adverse Effect.

(ii) To the knowledge of the Company, there are no civil, criminal or administrative actions, suits, claims, hearings, investigations, reviews or proceedings pending or threatened against Wolf Creek Nuclear Operating Corporation, except for those that would not be reasonably likely to have, either individually or in the aggregate, a Company Material Adverse Effect.

(h) Employee Benefits.

(i) A copy of (i) each bonus, deferred compensation, pension, retirement, profit-sharing, thrift, savings, employee stock ownership, stock bonus, stock purchase, change in control, retention, restricted stock, stock option, employment, termination, severance, compensation, medical, health or other plan, agreement, policy, practice or arrangement that covers employees or former employees of the Company and its Subsidiaries ("Employees"), or directors or former directors of the Company (the "Compensation and Benefit Plans"); and (ii) any trust agreement or insurance contract forming a part of such Compensation and Benefit Plans has been made available to Parent prior to the date hereof. Section 5.1(h) of the Company Disclosure Letter lists all Compensation and Benefit Plans other than those that, in the aggregate, are not material to the Company and its Subsidiaries and any Compensation and Benefit Plans containing "change of control" or similar provisions therein are specifically identified in Section 5.1(h) of the Company Disclosure Letter.

(ii) All Compensation and Benefit Plans, to the extent subject to the Employee Retirement Income Security Act of 1974, as amended ("ERISA") are in substantial compliance with the applicable provisions of ERISA. Each Compensation and Benefit Plan that is an "employee pension benefit plan" within the meaning of Section 3(2) of ERISA (a "Company Pension Plan") and that is intended to be qualified under Section 401(a) of the Code has received a favorable determination letter from the Internal Revenue Service (the "IRS"), and nothing has occurred, whether by action or failure to act, that would cause the loss of such qualification or that would result in costs to the Company or any of its Subsidiaries under the Internal Revenue Service's Employee Plans Compliance Resolution System that would be reasonably likely to have a Company Material Adverse Effect. As of the date hereof, there is no material pending or to the knowledge of the Company threatened litigation relating to the Compensation and Benefit Plans. Neither the Company nor any of its Subsidiaries nor, to the knowledge of the Company, any other person has engaged in a transaction with respect to any Compensation and Benefit Plan that, assuming the taxable period of such transaction expired as of the date hereof, would subject the Company or any of its Subsidiaries to a material tax or penalty imposed by either Section 4975 of the Code or Section 502(i) of ERISA.

(iii) No liability under Subtitle C or D of Title IV of ERISA has been or is expected to be incurred by the Company or any of its Subsidiaries with respect to any ongoing, frozen or terminated "single-employer plan", within the meaning of Section 4001(a)(15) of ERISA, currently or formerly maintained by any of them, or the single-employer plan of any entity which is considered one employer with the Company under Section 4001 of ERISA or Section 414 of the Code (a "Company ERISA Affiliate"). The Company and its Subsidiaries have not incurred and do not expect to incur and would not expect to incur any withdrawal liability with respect to a multiemployer plan under Subtitle E of Title IV of ERISA (regardless of whether based on contributions of a Company ERISA Affiliate) if, as of the date hereof, the Company or a Company ERISA Affiliate were to engage in a "complete withdrawal" (as defined in Section 4203 of ERISA) or a "partial withdrawal" (as defined in Section 4205 of ERISA) from such multiemployer plan. No notice of a "reportable event", within the meaning of Section 4043 of ERISA for which the 30-day reporting requirement has not been waived or extended, other than the extension provided by PBGC Reg. Section 4043.66, has been required to be filed for any Company Pension Plan or by any Company ERISA Affiliate within the 12-month period ending on the date hereof.

(iv) All contributions required to be made under the terms of any Compensation and Benefit Plan as of the date hereof have been timely made or have been reflected on the most recent consolidated balance sheet filed or incorporated by reference in the Company Reports and all premium payments to the Pension Benefit Guaranty Corporation ("PBGC") have been made when due for such plans. Neither any Company Pension Plan nor any single-employer plan of a Company ERISA Affiliate has an "accumulated funding deficiency" (whether or not waived) within the meaning of Section

412 of the Code or Section 302 of ERISA and no Company ERISA Affiliate has an outstanding funding waiver. Neither the Company nor any of its Subsidiaries has provided, or is required to provide, security to any Company Pension Plan or to any single-employer plan of a Company ERISA Affiliate pursuant to Section 401(a)(29) of the Code.

(v) Neither the Company nor its Subsidiaries have any obligations for, or liabilities with respect to, retiree health and life benefits under any Compensation and Benefit Plan, except for benefits required to be provided under Section 4980B of the Code.

(vi) Notwithstanding anything to the contrary contained in this Section 5.1(h), the representations and warranties contained in this Section 5.1(h) shall be deemed to be true and correct unless such failures to be true and correct are reasonably likely to have a Company Material Adverse Effect.

(i) Compliance with Laws.

As of the date hereof, the business of the Company and its Subsidiaries, taken as a whole, is not being conducted in violation of any federal, state, local or foreign law, statute, ordinance, rule, regulation, judgment, order, injunction, decree, arbitration award, agency requirement, license or permit of any Governmental Entity (collectively, "Laws"), except for violations that would not be reasonably likely to have, either individually or in the aggregate, a Company Material Adverse Effect or prevent or materially impair the ability of the Company to consummate the transactions contemplated by this Agreement. As of the date hereof, no investigation or review by any Governmental Entity with respect to the Company or any of its Subsidiaries is pending or, to the knowledge of the Company, threatened, nor has any Governmental Entity indicated an intention to conduct the same, except for those the outcome of which would not be reasonably likely to have, either individually or in the aggregate, a Company Material Adverse Effect or prevent or materially impair the ability of the Company to consummate the transactions contemplated by this Agreement. The Company and each of its Utility Subsidiaries each has all permits, licenses, franchises, variances, exemptions, orders and other governmental authorizations, consents and approvals from Governmental Entities necessary to conduct its business as presently conducted, except for those the absence of which would not be reasonably likely to have, either individually or in the aggregate, a Company Material Adverse Effect or prevent or materially impair the ability of the Company to consummate the transactions contemplated by this Agreement.

(j) Takeover Statutes.

Assuming the accuracy of the representation contained in Section 5.2(q), no business combination, control share, fair price, moratorium or similar anti-takeover provision (a "Takeover Statute") of the KGCC or any applicable anti-takeover provision in the certificate of incorporation of the Company or the bylaws of the Company is applicable to the Transaction or any other transaction contemplated hereby.

(k) Environmental Matters.

Except for such matters that would not, either individually or in the aggregate, be reasonably likely to cause a Company Material Adverse Effect: (i) the Company's operations are in compliance with all applicable Environmental Laws; (ii) the Company possesses and maintains in effect all environmental and natural resources permits, licenses, authorizations and approvals required under applicable Environmental Laws with respect to the business of the Company as presently conducted; (iii) the Company has not received any written environmental claim, notice or request for information during the past three years concerning any violation or alleged violation of any applicable Environmental Law or concerning any liability under any applicable Environmental Law; and (iv) there are no material writs, injunctions, decrees, orders or judgments outstanding, or any actions, suits or proceedings pending relating to compliance by the Company with any environmental permits, licenses, authorizations and approvals required under applicable Environmental Laws or liability of the Company under any applicable Environmental Law.

The representations and warranties in this Section 5.1(k) constitute the sole representations and warranties of the Company with respect to any Environmental Law or Hazardous Substance.

As used herein, the term "Environmental Law" means any federal, state or local laws (including common law), regulations, codes, rules, ordinances, permits, authorizations, decrees, orders, injunctions or judgments and any binding administrative or judicial interpretations thereof relating to: (a) pollution; (b) the protection of the environment (including air, water, soil, subsurface strata, biota and natural resources) or human health and safety from exposure to Hazardous Substances; and (c) the regulation of the generation, use, storage, handling, transportation, treatment, release, remediation or disposal

of Hazardous Substances.

As used herein, the term "Hazardous Substance" means (a) any substances, mixtures, chemicals, products, materials or wastes that, pursuant to Environmental Law, are defined by or regulated as or having the characteristics of "hazardous," "toxic," "pollutant," "contaminant," "flammable," "corrosive," "reactive," "explosive" or "radioactive"; or (b) any petroleum, petroleum products or by-products, friable asbestos or any material or equipment containing regulated concentrations of polychlorinated biphenyls.

As used in this Section 5.1(k), the "Company" shall mean the Company and each of its Subsidiaries.

(l) Taxes.

Except as would not have a Company Material Adverse Effect, the Company and each of its Utility Subsidiaries (i) have duly and timely filed (taking into account any extension of time within which to file) all Tax Returns (as defined below) required to be filed by any of them as of the date hereof and all such filed Tax Returns are complete and accurate in all respects; (ii) (A) have timely paid all Taxes that are shown as due on such filed Tax Returns, except with respect to matters contested in good faith and for which adequate reserves have been established and (B) no penalties or charges are due with respect to the late filing of any Tax Return required to be filed by or with respect to any of them on or before the Effective Time; (iii) with respect to any filed Tax Returns, have not waived any statute of limitations with respect to Taxes or agreed to any extension of time with respect to a Tax assessment or deficiency; (iv) as of the date hereof, does not have any deficiency, or any such audits, examinations, investigations or other proceedings in respect of Taxes or Tax matters pending or proposed or threatened in writing; and (v) has not been or is not a party to any Tax sharing agreement or similar arrangement. Except as would not have a Company Material Adverse Effect when aggregated with the preceding sentence, the Split-Off will not result in any Member of the Mustang Group (as defined in the Allocation and Separation Agreement) or their Affiliates recognizing income or gain pursuant to Treasury Regulation Section 1.1502-13.

"Tax" (and the correlative meaning, "Taxes", "Taxing" and "Taxable") shall mean (i) any net income, gross income, gross receipts, alternative or add-on minimum, sales, use, ad valorem, franchise, profits, license, withholding, payroll, employment, excise, transfer, recording, severance, stamp, occupation, premium, property, environmental, custom duty, or other tax, governmental fee or other like assessment or charge of any kind whatsoever, together with any interest and any penalty, addition to Tax or additional amount imposed by a Taxing Authority; (ii) any liability of the Company, Westar or any Affiliate of the Company or Westar (or, in each case, any predecessor or successor in interest thereto by merger or otherwise), as the case may be, for the payment of any amounts of the type described in clause (i) for any Taxable period resulting from the application of Treasury Regulation Section 1.1502-6 or, in the case of any similar provision applicable under state, local or foreign law; and (iii) any liability of the Company, Westar or any Affiliate of the Company or Westar (or, in each case, any predecessor or successor in interest thereto by merger or otherwise) for the payment of any amounts described in clause (i) as a result of any express or implied obligation to indemnify any other party.

(m) Labor and Employment Matters.

(i) Labor Relations. Except as would not have a Company Material Adverse Effect, (A) neither the Company nor any of its Subsidiaries is a party to any collective bargaining agreement or other labor agreement with any labor union, labor organization, employee association or similar organization, nor does the Company or any of its Subsidiaries have knowledge of any such union, labor organization, employee association or similar organization that represents or claims to represent any of the Company's or any of its Subsidiaries' employees or intends to organize any of the Company's or any of its Subsidiaries' employees; (B) there is no labor strike, dispute, slowdown, stoppage, lockout or other labor dispute actually pending, nor to the knowledge of the Company or any of its Subsidiaries, threatened against or affecting the Company or any of its Subsidiaries; (C) to the knowledge of the Company, neither the Company nor any of its Subsidiaries is engaged in any unfair labor practices as defined in the National Labor Relations Act or other applicable law, ordinance or regulation; nor is there an unfair labor practice charge or complaint against the Company or any of its Subsidiaries pending or, to the knowledge of the Company, threatened before the National Labor Relations Board or any similar state agency; and (D) there is no grievance pending, nor, to the knowledge of the Company, is there any grievance threatened arising out of any collective bargaining agreement or other grievance procedure.

(ii) Employment. Except as would not have a Company Material Adverse Effect, (A) neither the Company nor any of its Subsidiaries is in material violation of any applicable laws respecting employment and employment

practices, terms and conditions of employment, wages, hours of work and occupational safety and health; (B) to the knowledge of the Company, there are no charges with respect to or relating to the Company or any of its Subsidiaries pending before the Equal Employment Opportunity Commission or any other agency responsible for the prevention of unlawful employment practices; (C) to the knowledge of the Company, neither the Company nor any of its Subsidiaries received notice of the intent of any federal, state or local agency responsible for the enforcement of labor or employment laws to conduct an investigation with respect to or relating to the Company or any of its Subsidiaries and no such investigation is in progress; and (D) to the knowledge of the Company, there are no complaints, lawsuits or other proceedings pending or threatened in any forum by or on behalf of any present or former employee of the Company or any of its Subsidiaries, any applicant for employment or classes of the foregoing alleging breach of any express or implied contract for employment, any law or regulation governing employment or the termination thereof or other discriminatory, wrongful or tortious conduct in connection with the employment relationship.

(iii) WARN Act. The Company is presently in compliance with its notification obligations with respect to the Company's employees pursuant to the Worker Adjustment and Retraining Notification (WARN) Act and will conduct any plant closing or mass layoff prior to the date of Closing in accordance with WARN.

(n) Intellectual Property.

(i) After giving effect to the Split-Off, the Company or its Utility Subsidiaries will own, or will be licensed or otherwise possess sufficient legally enforceable rights to use, all patents, trademarks, trade names, service marks, copyrights, technology, know-how, computer software programs or applications, databases and tangible or intangible proprietary information or materials that are currently used in its and its Subsidiaries' businesses (collectively, "Company Intellectual Property Rights"), except for any such failures to own, be licensed or possess that, individually or in the aggregate, are not reasonably likely to have a Company Material Adverse Effect.

(ii) Except as disclosed in the Company Reports filed prior to the date hereof, and except for such matters that, individually or in the aggregate, are not reasonably likely to have a Company Material Adverse Effect, (i) to the knowledge of the Company, the use of the Company Intellectual Property Rights by the Company or its Utility Subsidiaries does not conflict with, infringe upon, violate or interfere with or constitute an appropriation of any right, title, interest or goodwill, including, without limitation, any intellectual property right, patent, trademark, trade name, service mark, copyright of any other Person and (ii) there have been no claims made and neither the Company nor any of its Utility Subsidiaries has received written notice of any claim or otherwise knows that any Company Intellectual Property Right is invalid, or conflicts with the asserted right of any other Person.

(o) Vote Required.

Provided that the Preferred Shares have been redeemed pursuant to Section 7.17, the approval of the majority of the shares of Company Common Stock outstanding on the record date for such vote (the "Company Requisite Vote") is the only vote of any class or series of the capital stock of the Company required to approve this Agreement and the transactions contemplated hereby.

(p) Regulation as a Utility.

The Company is a holding company exempt under Section 3(a)(1) pursuant to Rule 2 from all provisions of the 1935 Act except Section 9(a)(2) thereof. The Company and Kansas Gas and Electric Company are regulated as public utility companies in the state of Kansas and by the FERC. Except as set forth above and in Section 5.1(p) of the Company Disclosure Letter or as contemplated by the Split-Off Agreements, neither the Company nor any "subsidiary company" or "affiliate" of the Company is subject to regulation as a public utility or public service company (or similar designation) by the Federal government of the United States, any state in the United States or any political subdivision thereof, or any foreign country. As used in this Section 5.1(p), the terms "subsidiary company" and "affiliate" shall have the respective meanings ascribed to them in Section 2(a)(8) and Section 2(a)(11), respectively, of the 1935 Act.

(q) Ownership of Parent, PNM, Merger Sub-1 or Merger Sub-2 Common Stock.

None of the Company or any of the Company Subsidiaries or the Westar Subsidiaries beneficially owns any Parent Common Stock or common stock of PNM, Merger Sub-1 or Merger Sub-2.

(r) Brokers and Finders.

Except for Chase Securities, Inc. ("Chase") and Salomon Smith Barney Inc. ("Salomon"), neither the Company nor any of its officers, directors or employees has employed any broker or finder or incurred any liability for any brokerage fees, commissions or finders' fees in connection with the Transaction or the other transactions contemplated hereby.

(s) Opinion of Financial Advisor.

The Company has received the opinions of Chase and Salomon dated as of the date hereof, each to the effect that, as of such date, the Closing Consideration is fair from a financial point of view to holders of Company Common Stock.

(t) Nuclear Power Plant Operations.

To the knowledge of the Company, the operations of the Wolf Creek Generating Station are being conducted in compliance with applicable health, safety, regulatory and other legal requirements, except where the failure to be in compliance in the aggregate does not, and insofar as can reasonably be foreseen, would not have a Company Material Adverse Effect.

(u) Affiliate Contracts.

Section 5.1(u) of the Company Disclosure Letter lists all Company Contracts and other arrangements, including those relating to goods, rights or services provided or licensed between the Company or any Utility Subsidiary and any Westar Subsidiary other than Company Contracts or other arrangements which are Split-Off Agreements.

(v) No Other Representations or Warranties.

Except for the representations and warranties contained in this Section 5.1, neither the Company nor any other Person makes any other express or implied representation or warranty on behalf of the Company or any of its Subsidiaries.

5.2. Representations and Warranties of Parent, PNM, Merger Sub-1 and Merger Sub-2.

Except as set forth in the disclosure letter delivered to the Company by Parent on or prior to entering into this Agreement (the "Parent Disclosure Letter") or the PNM Reports, Parent, PNM, Merger Sub-1 and Merger Sub-2 each represents and warrants to the Company that:

(a) Capitalization of Merger Sub-1 and Merger Sub-2.

The authorized capital stock of Merger Sub-1 consists of 40,000,000 shares of common stock, no par value, of which one was issued and outstanding on the date hereof and 10 million shares of preferred stock, no par value. The authorized capital stock of Merger Sub-2 consists of 1,000 shares of common stock, no par value, of which one was issued and outstanding on the date hereof. All of the issued and outstanding capital stock of Merger Sub-1 and Merger Sub-2 is, and at the Effective Time will be, owned by Parent, and there are (i) no other shares of capital stock or voting securities of Merger Sub-1 and Merger Sub-2 authorized, (ii) no securities of Merger Sub-1 and Merger Sub-2 convertible into or exchangeable for shares of capital stock or voting securities of Merger Sub-1 and Merger Sub-2 and (iii) no options or other rights to acquire from Merger Sub-1 and Merger Sub-2, and no obligations of Merger Sub-1 and Merger Sub-2 to issue, any capital stock, voting securities or securities convertible into or exchangeable for capital stock or voting securities of Merger Sub-1 and Merger Sub-2. Merger Sub-1 and Merger Sub-2 have not conducted any business prior to the date hereof and has no, and prior to the Effective Time will have no, assets, liabilities or obligations of any nature other than those incident to its formation and pursuant to or in connection with the this Agreement and the transactions contemplated hereby.

(b) Organization, Good Standing and Qualification.

Each of Parent and its Significant Subsidiaries is a corporation duly organized, validly existing and in good standing under the laws of its respective jurisdiction of organization and has all requisite corporate or similar power and authority to own and operate its material properties and assets and to carry on its business as presently conducted in all material respects and is qualified to do business and is in good standing as a foreign corporation in each jurisdiction where the ownership or operation of its properties or conduct of its business requires such qualification, except where the failure to be so qualified as a foreign corporation or be in good standing would not be reasonably likely to have, either individually or in the aggregate, a Parent Material Adverse Effect. Parent has made available to the Company a complete and correct copy of Parent's, Manzano's and PNM's and its Significant Subsidiaries' certificates of incorporation and by-laws (or comparable governing instruments), as amended to date and the certificate of incorporation and

by-laws of Parent are set forth in Section 5.2(b) of the Parent Disclosure Schedule. Parent's, Manzano's and PNM's and its Significant Subsidiaries' certificates of incorporation and by-laws (or comparable governing instruments) so delivered are in full force and effect.

As used in this Agreement, the term "Parent Material Adverse Effect" means a material adverse effect on the financial condition, business, assets or results of operations of Manzano and PNM and their Subsidiaries taken as a whole; provided, however, that any such effect resulting from or arising out of (i) any change in law, rule, regulation or GAAP or interpretations thereof, (ii) economic or business conditions in the United States generally, (iii) conditions generally affecting the electric or gas utility industries or (iv) the execution and delivery of this Agreement, or the contemplated consummation of the transactions contemplated hereby, shall not be considered when determining if a Parent Material Adverse Effect has occurred.

(c) Capital Structure.

The authorized capital stock of PNM consists of (x) 80,000,000 shares of common stock, par value \$5.00 per share ("PNM Common Stock"), of which 39,082,599 shares were issued and outstanding on November 6, 2000, and (y) 10,000,000 shares of preferred stock (the "PNM Preferred Shares"), of which 128,000 shares were issued and outstanding on November 6, 2000. All of the issued and outstanding shares of PNM Common Stock and PNM Preferred Shares have been duly authorized and are validly issued, fully paid and nonassessable. The authorized capital stock of Parent consists of 200,000,000 shares of Parent Common Stock, one of which was issued and outstanding on the date hereof and 10,000,000 shares of preferred stock, none of which were outstanding on the date hereof. The authorized capital stock of Manzano consists of 120,000,000 shares of Manzano Common Stock, 100 of which were issued and outstanding on the date hereof. Each of the outstanding shares of capital stock or other securities of each of PNM's Subsidiaries is duly authorized, validly issued, fully paid and nonassessable and owned by PNM or a direct or indirect wholly-owned Subsidiary of PNM, free and clear of any lien, pledge, security interest, claim or other encumbrance. Other than pursuant to the First Restated and Amended Director Retainer Plan, the Third Restated and Amended Performance Stock Plan, the Manzano Omnibus Performance Equity Plan and the PNM Direct Plan (the "Parent Stock Plans"), there are no preemptive or other outstanding rights, options, warrants, conversion rights, stock appreciation rights, redemption rights, repurchase rights, agreements, arrangements or commitments to issue or to sell any shares of capital stock or other securities of Parent, PNM or Manzano or any of their Subsidiaries or any securities or obligations convertible or exchangeable into or exercisable for, or giving any Person a right to subscribe for or acquire, any securities of Parent, Manzano, PNM or any of its Subsidiaries, and no securities or obligations evidencing such rights are authorized, issued or outstanding. Parent, PNM and Manzano do not have outstanding any bonds, debentures, notes or other obligations the holders of which have the right to vote (or convertible into or exercisable for securities having the right to vote) with the shareholders of Parent on any matter ("Parent Voting Debt").

(d) Corporate Authority and Approval.

(i) Each of Parent, Manzano, PNM, Merger Sub-1 and Merger Sub-2 has all requisite corporate power and authority and has taken all corporate action necessary in order to execute, deliver and perform its obligations under this Agreement, and to consummate, subject only to the receipt of the Parent Requisite Vote and the Parent Required Statutory Approvals, the transactions contemplated hereby. This Agreement has been duly executed and delivered by Parent, Manzano, PNM, Merger Sub-1 and Merger Sub-2 and, assuming due authorization, execution and delivery by the Company, is a valid and legally binding agreement of Parent, Manzano, PNM, Merger Sub-1 and Merger Sub-2, enforceable against each of Parent, PNM, Merger Sub-1 and Merger Sub-2 in accordance with its terms, subject to the Bankruptcy and Equity Exception.

(ii) As of the date hereof, the Board of Directors of Parent, Manzano, PNM, Merger Sub-1 and Merger Sub-2 have approved and adopted this Agreement and the Mergers and other transactions set forth herein, and subject to their respective fiduciary duties, the Boards of Directors of PNM and Manzano have resolved to recommend that the shareholders of PNM and Manzano approve this Agreement and the transactions contemplated hereby.

(iii) Prior to the Effective Time, Parent will have taken all necessary action to permit it to issue the number of shares of Parent Common Stock required to be issued pursuant to Article III and upon conversion of any Parent Convertible Shares held by Westar. The Parent Common Stock, when issued, will be validly issued, fully paid and nonassessable, and no shareholder of Parent will have any preemptive right of subscription or purchase in respect thereof. The Parent Common Stock, when issued, will be registered under the Securities Act and Exchange Act

and registered or exempt from registration under any applicable state securities or "blue sky" laws.

(e) Governmental Filings; No Violations.

(i) Other than any reports, filings, registrations, approvals and/or notices (A) required to be made pursuant to Section 1.4, (B) required to be made under the HSR Act, the Securities Act and the Exchange Act, (C) with, to or of the SEC under the 1935 Act, (D) with, to or of the FERC, (E) with or to the Nuclear Regulatory Commission, (F) with or to the Federal Communications Commission, (G) with or to the NMPRC, (H) to comply with state securities or "blue sky" laws, and (I) required to be made with the NYSE, (items B through I, the "Parent Required Statutory Approvals"), no notices, reports, registrations or other filings are required to be made by Parent, Manzano, PNM, Merger Sub-1 or Merger Sub-2 with, nor are any consents, registrations, approvals, permits or authorizations required to be obtained by Parent, Manzano, PNM, Merger Sub-1 or Merger Sub-2 from, any Governmental Entity, in connection with the execution and delivery of this Agreement by Parent, Manzano, PNM, Merger Sub-1 and Merger Sub-2 and the consummation by Parent, Manzano, PNM, Merger Sub-1 or Merger Sub-2 of the Mergers and the other transactions contemplated hereby, except for those that the failure to make or obtain would not be reasonably likely to have, either individually or in the aggregate, a Parent Material Adverse Effect or prevent, materially delay or materially impair the ability of Parent, Manzano, PNM, Merger Sub-1 or Merger Sub-2 to consummate the transactions contemplated hereby.

(ii) The execution, delivery and performance of this Agreement by Parent, Manzano, PNM, Merger Sub-1 or Merger Sub-2 do not, and the consummation by Parent, Manzano, PNM, Merger Sub-1 or Merger Sub-2 of the Merger and the other transactions contemplated hereby will not, constitute or result in (A) breach or violation of, or a default under, either the certificate of incorporation or by-laws of Parent, Manzano, PNM, Merger Sub-1 or Merger Sub-2 or the comparable governing instruments of any of PNM's Significant Subsidiaries, (B) a breach or violation of, or a default under, the acceleration of any obligations, the loss of any right or benefit or the creation of a lien, pledge, security interest or other encumbrance on the assets of PNM or any of its Significant Subsidiaries (with or without notice, lapse of time or both) pursuant to any Contracts binding upon PNM or any of its Significant Subsidiaries (the "Parent Contracts") or any Law or governmental or non-governmental permit or license to which PNM or any of its Significant Subsidiaries is subject or (C) any change in the rights or obligations of any party under any of the Parent Contracts, except, in the case of clause (B) or (C) above, for any breach, violation, default, acceleration, creation or change that would not be reasonably likely to have, either individually or in the aggregate, a Parent Material Adverse Effect or prevent, materially delay or materially impair the ability of Parent, Manzano, PNM, Merger Sub-1 or Merger Sub-2 to consummate the transactions contemplated hereby.

(f) PNM Reports; Financial Statements.

The filings required to be made by PNM and its Subsidiaries since January 1, 1999 under the Securities Act; the Exchange Act; the 1935 Act; the Federal Power Act; the Atomic Energy Act of 1954, as amended, and applicable state public utility laws and regulations have been filed with the SEC, FERC, the NRC or the appropriate state public utilities commission, as the case may be, including all forms, statements, reports, agreements (oral or written) and all documents, exhibits, amendments and supplements appertaining thereto, and complied, as of their respective dates, in all material respects with all applicable requirements of the appropriate statutes and the rules and regulations thereunder, except for such filings the failure of which to have been made or so to comply would not result in a Parent Material Adverse Effect. PNM has made available to the Company each registration statement, report, proxy statement or information statement filed by it with the SEC (collectively, including any amendments of any such reports, the "PNM Reports") pursuant to the Securities Act or the Exchange Act since December 31, 1999, and prior to the date hereof, including (i) PNM Annual Report on Form 10-K for the fiscal year ended December 31, 1999 and (ii) PNM Quarterly Reports on Form 10-Q for the quarterly periods ended March 31, 2000 and June 30, 2000, each in the form (including exhibits, annexes and any amendments thereto) promulgated by the SEC under the Securities Act or the Exchange Act. None of the PNM Reports (in the case of PNM Reports filed pursuant to the Securities Act), as of their effective dates, contained any untrue statement of a material fact or omitted to state a material fact required to be stated therein or necessary to make the statements made therein, in light of the circumstances under which they were made, not misleading and none of the PNM Reports (in the case of PNM Reports filed pursuant to the Exchange Act) as of the respective dates first mailed to shareholders contained any statement which, at the time and in the light of the circumstances under which it was made, was false or misleading with respect to any material fact, or omitted to state any material fact necessary in order to

make the statements therein, in light of the circumstances under which they were made, not misleading. The consolidated financial statements of the PNM and its Subsidiaries included in such PNM Reports comply as to form in all material respects with the applicable rules and regulations of the SEC with respect thereto. Each of the consolidated balance sheets included in or incorporated by reference into the PNM Reports (including the related notes and schedules) presents fairly, in all material respects, the financial position of the PNM and its Subsidiaries as of its date and each of the consolidated statements of income and consolidated statements of cash flow included in or incorporated by reference into the PNM Reports (including any related notes and schedules) fairly presents in all material respects the results of operations, retained earnings and changes in financial position, as the case may be, of the PNM and its Subsidiaries for the periods set forth therein (subject, in the case of unaudited statements, to the absence of notes and normal year-end audit adjustments), in each case in accordance with GAAP consistently applied during the periods involved, except as may be noted therein.

(g) Absence of Certain Changes.

Since the December 31, 1999 (the "PNM Audit Date"), PNM and its Subsidiaries, taken as a whole, have conducted their business only in, and have not engaged in any material transaction other than according to, the ordinary and usual course of such business and there has not been (i) any change in the financial condition, properties, assets, business or results of operations of PNM and its Subsidiaries that has had or would be reasonably likely to have a Parent Material Adverse Effect; (ii) any declaration, setting aside or payment of any dividend or other distribution in respect of the capital stock of PNM or any repurchase, redemption or other acquisition by PNM or any Subsidiary of any securities of PNM other than quarterly dividends in the ordinary course (including any increase thereon consistent with past practice); or (iii) any change by PNM in accounting principles, practices or methods which is not required or permitted by GAAP. Since the PNM Audit Date and through the date hereof, except as provided for herein or as disclosed in the PNM Reports, there has not been any material increase in the compensation payable or that could become payable by PNM or any of its Subsidiaries to officers or key employees or any material amendment of any of the PNM Compensation and Benefit Plans other than increases or amendments in the ordinary course of business consistent with past practice.

(h) Litigation.

There are no civil, criminal or administrative actions, suits, claims, hearings, investigations, reviews or proceedings pending or, to the knowledge of Parent and PNM, threatened against Parent, PNM, or any of its Significant Subsidiaries, except for those that would not be reasonably likely to have, either individually or in the aggregate, a Parent Material Adverse Effect.

(i) Employee Benefits.

(i) A copy of (i) each bonus, deferred compensation, pension, retirement, profit-sharing, thrift, savings, employee stock ownership, stock bonus, stock purchase, change in control, retention, restricted stock, stock option, employment, termination, severance, compensation, medical, health or other plan, agreement, policy, practice or arrangement that covers employees or former employees of PNM and Parent and their Subsidiaries ("Parent Employees"), or directors or former directors of PNM or Parent (the "Parent Compensation and Benefit Plans"); and (ii) any trust agreement or insurance contract forming a part of such PNM Compensation and Benefit Plans has been made available to the Company prior to the date hereof. Section 5.2(i) of the Parent Disclosure Letter lists all Parent Compensation and Benefit Plans other than those that, in the aggregate, are not material to PNM or Parent and their Subsidiaries and any Parent Compensation and Benefit Plans containing "change of control" or similar provisions therein are specifically identified in Section 5.2(i) of the Parent Disclosure Letter.

(ii) All Parent Compensation and Benefit Plans, to the extent subject to ERISA are in substantial compliance with the applicable provisions of ERISA. Each Parent Compensation and Benefit Plan that is an "employee pension benefit plan" within the meaning of Section 3(2) of ERISA (a "Parent Pension Plan") and that is intended to be qualified under Section 401(a) of the Code has received favorable determination letter from the IRS, and nothing has occurred, whether by action or failure to act, that would cause the loss of such qualification or that would result in costs to PNM, Parent or any of their Subsidiaries under the Internal Revenue Service's Employee Plans Compliance Resolution System that would reasonably be likely to have a Parent Material Adverse Effect. As of the date hereof, there is no material pending or to the knowledge of Parent or PNM threatened litigation relating to the PNM Compensation and Benefit Plans. Neither

Parent nor any of its Subsidiaries nor, to the knowledge of Parent, any other person has engaged in a transaction with respect to any Parent Compensation and Benefit Plan that, assuming the taxable period of such transaction expired as of the date hereof, would subject Parent or any of its Subsidiaries to a material tax or penalty imposed by either Section 4975 of the Code or Section 502(i) of ERISA.

(iii) No liability under Subtitle C or D of Title IV of ERISA has been or is expected to be incurred by Parent, PNM or any of their Subsidiaries with respect to any ongoing, frozen or terminated "single-employer plan", within the meaning of Section 4001(a)(15) of ERISA, currently or formerly maintained by any of them, or the single-employer plan of any entity which is considered one employer with Parent, PNM or any of their Subsidiaries under Section 4001 of ERISA or Section 414 of the Code (a "Parent ERISA Affiliate"). Parent, PNM and their Subsidiaries have not incurred and do not expect to incur and would not expect to incur any withdrawal liability with respect to a multiemployer plan under Subtitle E of Title IV of ERISA (regardless of whether based on contributions of a Parent ERISA Affiliate) if, as of the date hereof, Parent, PNM or a Parent ERISA Affiliate were to engage in a "complete withdrawal" (as defined in Section 4203 of ERISA) or a "partial withdrawal" (as defined in Section 4205 of ERISA) from such multiemployer plan. No notice of a "reportable event", within the meaning of Section 4043 of ERISA for which the 30-day reporting requirement has not been waived or extended, other than the extension provided by PBGC Reg. Section 4043.66, has been required to be filed for any Parent Pension Plan or by any ERISA Affiliate within the 12-month period ending on the date hereof.

(iv) All contributions required to be made under the terms of any Parent Compensation and Benefit Plan as of the date hereof have been timely made or have been reflected on the most recent consolidated balance sheet filed or incorporated by reference in the PNM Reports and all premium payments to the PBGC have been made when due for such plans. Neither any Parent Pension Plan nor any single-employer plan of a Parent ERISA Affiliate has an "accumulated funding deficiency" (whether or not waived) within the meaning of Section 412 of the Code or Section 302 of ERISA and no Parent ERISA Affiliate has an outstanding funding waiver. None of Parent, PNM or any of their Subsidiaries has provided, or is required to provide, security to any Pension Plan or to any single-employer plan of a Parent ERISA Affiliate pursuant to Section 401(a)(29) of the Code.

(v) None of Parent, PNM or any of their Subsidiaries have any obligations for, or liabilities with respect to, retiree health and life benefits under any PNM Compensation and Benefit Plan, except for benefits required to be provided under Section 4980B of the Code.

(vi) Notwithstanding anything to the contrary contained in this Section 5.2(i), the representations and warranties contained in this Section 5.2(i) shall be deemed to be true and correct unless such failures to be true and correct are reasonably likely to have a Parent Material Adverse Effect.

(j) Compliance with Laws.

As of the date hereof, the business of PNM and its Subsidiaries, taken as a whole, is not being conducted in violation of any Laws, except for violations that would not be reasonably likely to have, either individually or in the aggregate, a Parent Material Adverse Effect or prevent or materially impair the ability of Parent, Manzano, PNM, Merger Sub-1 or Merger Sub-2 to consummate the transactions contemplated hereby. As of the date hereof, no investigation or review by any Governmental Entity with respect to Parent or any of its Subsidiaries is pending or to the knowledge of Parent threatened, nor has any Governmental Entity indicated an intention to conduct the same, except for those the outcome of which would not be reasonably likely to have, either individually or in the aggregate, a Parent Material Adverse Effect or prevent or materially impair the ability of Parent, Manzano, PNM, Merger Sub-1 or Merger Sub-2 to consummate the transactions contemplated hereby. PNM and its Significant Subsidiaries each has all permits, licenses, franchises, variances, exemptions, orders and other governmental authorizations, consents and approvals from Governmental Entities necessary to conduct its business as presently conducted, except for those the absence of which would not be reasonably likely to have, either individually or in the aggregate, a Parent Material Adverse Effect or prevent or materially impair the ability of Parent, Manzano, PNM, Merger Sub-1 or Merger Sub-2 to consummate the transactions contemplated hereby.

(k) Takeover Statutes.

Assuming the accuracy of the representation contained in Section 5.1(q), no

Takeover Statute of the NMBCA or any applicable anti-takeover provision in the certificate of incorporation of PNM, Manzano or Parent or by-laws of PNM, Manzano or Parent is applicable to the Transaction or any of the other transactions contemplated hereby.

(l) Environmental Matters.

Except for such matters that would not be reasonably likely to cause a Parent Material Adverse Effect: (i) PNM's operations are in compliance with all applicable Environmental Laws; (ii) PNM possesses and maintains in effect all environmental and natural resources permits, licenses, authorizations and approvals required under applicable Environmental Laws with respect to the business of PNM as presently conducted; (iii) PNM has not received any written environmental claim, notice or request for information during the past three years concerning any violation or alleged violation of any applicable Environmental Law or concerning any obligation or liability under any applicable Environmental Law; and (iv) there are no material writs, injunctions, decrees, orders or judgments outstanding, or any actions, suits or proceedings pending relating to compliance by PNM with any environmental permits, licenses, authorizations or approvals required under applicable Environmental Laws or liability of PNM under any applicable Environmental Law.

The representations and warranties in this Section 5.1(l) constitute the sole representations and warranties of Parent or PNM with respect to any Environmental Law or Hazardous Substance.

As used in this Section 5.2(l), "PNM" shall mean PNM and each of its Subsidiaries.

(m) Taxes.

Except as would not have a Parent Material Adverse Effect, PNM and each of its Significant Subsidiaries (i) have duly and timely filed (taking into account any extension of time within which to file) all Tax Returns required to be filed by any of them as of the date hereof and all such filed Tax Returns are complete and accurate in all respects; (ii) (A) have timely paid all Taxes that are shown as due on such filed Tax Returns, except with respect to matters contested in good faith and (B) no penalties or charges are due with respect to the late filing of any Tax Return required to be filed by or with respect to any of them on or before the Effective Time; (iii) with respect to any filed Tax Returns, have not waived any statute of limitations with respect to Taxes or agreed to any extension of time with respect to a Tax assessment or deficiency; (iv) as of the date hereof, does not have any deficiency, or any such audits, examinations, investigations or other proceedings in respect of Taxes or Tax matters pending or proposed or threatened in writing; and (v) has not been or is not a party to any Tax sharing agreement or similar arrangement. Except as would not have a Parent Material Adverse Effect when aggregated with the preceding sentence, neither PNM nor any PNM Subsidiary (x) has engaged in any intercompany transaction within the meaning of Treasury Regulation Section 1.1502-13 for which any income or gain remains unrecognized and (y) has constituted a "distributing corporation" in a distribution of stock qualifying for tax-free treatment under Section 355 of the Code (1) in the past 24-month period, or (2) in a distribution which could otherwise constitute part of a "plan" or "series of related transactions" within the meaning of Section 355(e) of the Code, in each case, excluding any transactions described in Section 355(e)(3) of the Code.

(n) Labor and Employment Matters.

(i) Labor Relations. Except as would not have a Parent Material Adverse Effect, (A) neither PNM nor any of its Subsidiaries is a party to any collective bargaining agreement or other labor agreement with any labor union, labor organization, employee association or similar organization, nor does PNM or any of its Subsidiaries have knowledge of any such union, labor organization, employee association or similar organization that represents or claims to represent any of PNM's or any of its Subsidiaries' employees or intends to organize any of PNM's or any its Subsidiaries' employees; (B) there is no labor strike, dispute, slowdown, stoppage, lockout or other labor dispute actually pending, nor to the knowledge of PNM, threatened against or affecting PNM or any of its Subsidiaries; (C) to the knowledge of Parent and PNM, neither PNM nor any of its Subsidiaries is engaged in any unfair labor practices as defined in the National Labor Relations Act or other applicable law, ordinance or regulation; nor is there an unfair labor practice charge or complaint against PNM or any of its Subsidiaries pending or, to the knowledge of PNM, threatened before the National Labor Relations Board or any similar state agency; and (D) there is no grievance pending, nor to the knowledge of PNM, is there any grievance threatened arising out of any collective bargaining agreement or other grievance procedure.

(ii) Employment. Except as would not have Parent Material Adverse

Effect, (A) neither PNM nor any of its Subsidiaries is in material violation of any applicable laws respecting employment and employment practices, terms and conditions of employment, wages, hours of work and occupational safety and health, nor have they ever been; (B) to the knowledge of the Parent and PNM, there are no charges with respect to or relating to PNM or any of its Subsidiaries pending before the Equal Employment Opportunity Commission or any other agency responsible for the prevention of unlawful employment practices; (C) to the knowledge of the Parent and PNM, neither PNM nor any of its Subsidiaries received notice of the intent of any federal, state or local agency responsible for the enforcement of labor or employment laws to conduct an investigation with respect to or relating to PNM or any of its Subsidiaries and no such investigation is in progress; and (D) to the knowledge of the Parent and PNM, there are no complaints, lawsuits or other proceedings pending or threatened in any forum by or on behalf of any present or former employee of PNM or any of its Subsidiaries, any applicant for employment or classes of the foregoing alleging breach of any express or implied contract for employment, any law or regulation governing employment or the termination thereof or other discriminatory, wrongful or tortious conduct in connection with the employment relationship.

(iii) WARN Act. PNM is presently in compliance with its notification obligations with respect to PNM's employees pursuant to the Worker Adjustment and Retraining Notification (WARN) Act and will conduct any plant closing or mass layoff prior to the date of Closing in accordance with WARN.

(o) Intellectual Property.

(i) PNM and its Significant Subsidiaries own, or are licensed or otherwise possess sufficient legally enforceable rights to use, all patents, trademarks, trade names, service marks, copyrights, technology, know-how, computer software programs or applications, databases and tangible or intangible proprietary information or materials that are currently used in its and its Subsidiaries' businesses (collectively, "PNM Intellectual Property Rights"), except for any such failures to own, be licensed or possess that, individually or in the aggregate, are not reasonably likely to have a Parent Material Adverse Effect.

(ii) Except as disclosed in the PNM Reports filed prior to the date hereof, and except for such matters that, individually or in the aggregate, are not reasonably likely to have a Parent Material Adverse Effect, (i) to the knowledge of Parent, the use of the PNM Intellectual Property Rights by PNM or its Significant Subsidiaries does not conflict with, infringe upon, violate or interfere with or constitute an appropriation of any right, title, interest or goodwill, including, without limitation, any intellectual property right, patent, trademark, trade name, service mark, copyright of any other Person and (ii) there have been no claims made and neither the PNM nor any of its Significant Subsidiaries has received written notice of any claim or otherwise knows that any PNM Intellectual Property Right is invalid, or conflicts with the asserted right of any other Person.

(p) Vote Required.

The approval of the Second Merger by two-thirds of the holders of Manzano Common Stock or PNM Common Stock, as the case may be, (the "Parent Requisite Vote") is the only vote of the holders of any class or series of the capital stock of Parent, Manzano or PNM required to approve this Agreement and the transactions contemplated hereby.

(q) Ownership of Company Common Stock.

None of Parent, Manzano, PNM, Merger Sub-1 Merger Sub-2 or any of their respective Subsidiaries beneficially owns any Company Common Stock.

(r) Regulation as to Utility.

None of Merger Sub-1, Merger Sub-2 or Parent is a "public utility company," or a "holding company" under the 1935 Act. None of Merger Sub-1, Merger Sub-2 or Parent is subject to regulation as a public utility company in any state or by the FERC. PNM is a public utility company subject to regulation as such in the State of New Mexico and by the FERC. At the Manzano Transition Date, Manzano will be a "holding company" exempt under Section 3(a)(1) pursuant to Rule 2 from all provisions of the 1935 Act except Section 9(a)(2) thereof. Otherwise, except as set forth in Section 5.2(r) of the Parent Disclosure Letter, none of Parent, PNM, Merger Sub-1, Merger Sub-2, Manzano and their respective "subsidiary companies" and "affiliates" is subject to regulation as a public utility or public service company (or similar designation) by the Federal government of the United States, any state in the United States or any political subdivision thereof, or any foreign country. As used in this Section 5.2(r) the terms

"subsidiary companies" and "affiliates" have meanings correlative to the terms "subsidiary company" and "affiliate" as used in Section 5.1(p) of the Agreement.

(s) Brokers and Finders.

Except for J.P. Morgan Securities Inc. ("JP Morgan"), neither Parent nor any of its officers, directors or employees has employed any broker or finder or incurred any liability for any brokerage fees, commissions or finders' fees in connection with the Transaction or the other transactions contemplated by this Agreement.

(t) Opinion of Financial Advisor.

PNM has received the opinion of JP Morgan dated as of the date hereof to the effect that, as of such date, the PNM ownership percentage is fair from a financial point of view to the holders of PNM Common Stock.

(u) Nuclear Plant Operation.

To the knowledge of PNM, the operations of the Palo Verde Nuclear Generating Station are being conducted in compliance with applicable health, safety, regulatory and other legal requirements, except where the failure to be in compliance in the aggregate does not, and insofar as can reasonably be foreseen, would not have a Parent Material Adverse Effect.

(v) Shareholder Matters.

(i) To the knowledge of PNM and Manzano, (x) no shareholders of PNM (excluding Manzano as sole shareholder of PNM following the effective time of the Manzano Exchange) or Manzano has entered into any agreement, written or unwritten, express or implied, to act in concert with others to control the management and policies of Parent or the Surviving Corporation immediately following the Effective Time and (y) no shareholder of PNM or Manzano will own more than 5% of the outstanding voting securities of Parent immediately following the Effective Time.

(ii) No shareholder of PNM (excluding Manzano as sole shareholder of PNM following the effective time of the Manzano Exchange) or Manzano has entered into any agreement or arrangement to vote in favor of any particular individual or individuals for election to the board of directors of the Surviving Corporation following the Effective Time.

(w) No Other Representations or Warranties.

Except for the representations and warranties contained in this Section 5.2, neither Parent nor any other Person makes any other express or implied representation or warranty on behalf of Parent or any of its Subsidiaries.

Article VI.

Conduct of Business Pending the Transactions

6.1. Covenants of the Company.

The Company covenants and agrees as to itself and its Subsidiaries that, from the date hereof and prior to the Effective Time, except as expressly contemplated or permitted by this Agreement or the Split-Off Agreements, as set forth on Section 6.1 of the Company Disclosure Letter, as required by Law or to the extent Parent shall otherwise consent in writing, which decision regarding consent shall be made as soon as reasonably practicable, and provided that, except as specifically stated therein, the provisions of this Section 6.1 shall not apply to the Westar Subsidiaries and the Company shall not be obligated to cause the Westar Subsidiaries to comply with the obligations of this Section 6.1:

(i) the business of the Company and its Subsidiaries shall be conducted only in the ordinary and usual course and, to the extent consistent therewith, it and its Subsidiaries shall use their respective reasonable best efforts to (a) subject to prudent management of workforce needs and ongoing programs currently in force, preserve its business organization intact and maintain its existing relations and goodwill with customers, suppliers, distributors, creditors, lessors, employees and business associates, (b) maintain and keep material properties and assets in good repair and condition, subject to ordinary wear and tear and (c) maintain in effect all material governmental permits pursuant to which the Company or any of its Significant Subsidiaries currently operates;

(ii) the Company shall not (w) amend its articles of incorporation or by-laws or the comparable governing instruments of any of its Subsidiaries except for such amendments that would not prevent or materially impair the

consummation of the transactions contemplated by this Agreement; (x) split, combine or reclassify its outstanding shares of capital stock; (y) declare, set aside or pay any dividend payable in cash, stock or property in respect of any capital stock (other than (A) dividends from its direct or indirect wholly owned Subsidiaries to it or a wholly-owned Subsidiary, (B) regular quarterly dividends on shares of Common Stock with usual record and payment dates in amounts not to exceed \$1.20 annually per share of Common Stock or (C) dividends required to be paid on Preferred Shares or preferred securities of subsidiary trusts outstanding on the date hereof until redeemed pursuant to Section 7.17 or on Convertible Preference Shares issued to Westar, in each case in accordance with their respective terms) or (z) repurchase, redeem or otherwise acquire any shares of its capital stock or any securities convertible into or exchangeable or exercisable for any shares of its capital stock or permit any of its Subsidiaries to purchase or otherwise acquire, any shares of its capital stock or any securities convertible into or exchangeable or exercisable for any shares of its capital stock (other than for the purpose of funding or providing benefits under the Stock Plans and the Direct Stock Purchase Plan);

(iii) neither the Company nor any of its Subsidiaries shall issue, sell, pledge, dispose of or encumber any shares of, or securities convertible into or exchangeable or exercisable for, or options, warrants, calls, commitments or rights of any kind to acquire, any shares of its capital stock of any class or any Voting Debt or any other property or assets (other than (A) shares of the Company Common Stock issuable pursuant to options or restricted share units (whether or not vested) outstanding on the date hereof under the Stock Plans, issuances of additional options or restricted share units or rights to acquire shares of the Company Common Stock granted pursuant to the terms of the Stock Plans as in effect on the date hereof in the ordinary and usual course of the operation of such Stock Plans and issuances of shares of the Company Common Stock pursuant to options or restricted share units granted after the date hereof pursuant to the Stock Plans; or (B) issuances of shares of the Company Common Stock, including restricted shares, in the ordinary and usual course of the Stock Plans and the Direct Stock Purchase Plan, each as in effect on the date hereof);

(iv) neither the Company nor any of its Subsidiaries shall, other than in the ordinary and usual course of business and other than transactions not in excess of \$50,000,000 in the aggregate in any calendar year, transfer, lease, license, guarantee, sell, mortgage, pledge, dispose of or encumber any other property or assets (including capital stock of any of its Subsidiaries);

(v) neither the Company nor any of its Subsidiaries shall, by any means, make any acquisition of, or investment (other than capital expenditures) in, assets or stock (whether by way of merger, consolidation, tender offer, share exchange or other activity) in any transaction or any series of transactions (whether or not related) for an aggregate purchase price or prices, including the assumption of any debt, in excess of \$50,000,000 in the aggregate in any calendar year;

(vi) neither the Company nor any of its Subsidiaries shall, other than in the ordinary and usual course of business, (i) modify, amend, or terminate any Contract that is material to the Company and its Subsidiaries taken as a whole, (ii) waive, release, relinquish or assign any such Contract (or any of the material rights of the Company or any of its Subsidiaries thereunder), right or claim, or (iii) cancel or forgive any material indebtedness owed to the Company or any of its Subsidiaries;

(vii) neither the Company nor any of its Subsidiaries will (i) adopt a plan of complete or partial liquidation, dissolution, merger, consolidation, recapitalization or other similar reorganization of the Company or any Significant Subsidiary of the Company, or (ii) accelerate or delay collection of notes or accounts receivable in advance of or beyond their regular due dates, other than in the usual and ordinary course of business;

(viii) neither the Company nor any of its Subsidiaries shall terminate, establish, adopt, enter into, make any new grants or awards under, amend or otherwise modify any Compensation and Benefit Plans (other than issuances of additional shares of Company Common Stock or options or rights to acquire shares of Common Stock granted pursuant to the terms of the Stock Plans as in effect on the date hereof in the ordinary and usual course of the operation of such Stock Plans), or increase the salary, wage, bonus or other compensation of any employees except for (A) grants or awards or increases under existing Compensation and Benefit Plans occurring in the ordinary and usual course of business (which shall include normal periodic performance reviews and related compensation and benefit increases), (B) annual reestablishment of Compensation and Benefit Plans and the provision of individual compensation or benefit plans and

agreements for newly hired or appointed officers and employees of the Company and its Subsidiaries comparable in form and amount to such individual compensation or benefit plans or agreements currently maintained by the Company and its Subsidiaries, provided such individual plans and agreements (other than award agreements issued under existing plans) shall not include change of control provisions which would be triggered solely by the execution and delivery of this Agreement, the consummation of the transactions contemplated hereby and voluntary action by an individual employee or (C) actions necessary to satisfy existing contractual obligations under Compensation and Benefit Plans or agreements existing as of the date hereof or applicable law;

(ix) the Company shall, and shall cause its Subsidiaries to, maintain with financially responsible insurance companies (or through self insurance) insurance in such amounts and against such risks and losses as are consistent with the insurance maintained by the Company and its Subsidiaries in the ordinary course of business consistent with past practice;

(x) except in the ordinary and usual course of business or as may be required by applicable Law, neither the Company nor any of its Subsidiaries shall change any accounting principle, practice or method in a manner that is inconsistent with past practice, except to the extent required by GAAP as advised by the Company's regular independent accountants;

(xi) neither the Company nor any of its Subsidiaries shall engage in or allow any transfer of assets or liabilities or other transactions between the Company and its Subsidiaries, on the one hand, and the Westar Subsidiaries, on the other hand except (a) transactions relating to services rendered in the ordinary course of business pursuant to the Contracts specified in Section 5.1(u) of the Company Disclosure Letter or which individually, or in the aggregate, do not involve payments in excess of \$250,000 per year or are terminable upon 90 days' notice in any event prior to the Effective Time, (b) as permitted under Section 3.2(a) hereof, including without limitation the conversion of Convertible Preference Shares into Convertible Preference Shares having amended voting terms on a one-for-one basis; provided that any interest accruing or payable on the intercompany receivable shall be at a rate not in excess of 8 1/2% or (c) as contemplated by the Split-Off Agreements to occur prior to the Effective Time;

(xii) except as may be required by applicable Law, neither the Company nor any of its Subsidiaries shall make capital expenditures during any fiscal year in excess of \$400,000,000;

(xiii) the Company shall promptly notify PNM of any change or event that has had or could reasonably be expected to have a Company Material Adverse Effect or a material adverse effect under Section 8.2(f) hereto and shall provide copies, in advance of filing the same, of any significant regulatory filings proposed to be made by or on behalf of the Company or any of its Utility Subsidiaries;

(xiv) except as otherwise required by law and only to the extent material, all Tax Returns of the Company and any of its Subsidiaries and Affiliates that are filed between the date hereof and the Closing Date shall be prepared in a manner consistent with the allocation of tax liability principles set forth in the agreement to be entered into between the Company and Westar allocating Taxes between the Company and Westar after the Split-Off (the "Tax Disaffiliation Agreement"); and

(xv) neither the Company nor any of its Subsidiaries will authorize or enter into an agreement to do anything prohibited by the foregoing.

6.2. Covenants of Parent, Manzano, PNM, Merger Sub-1 and Merger Sub-2.

Parent, PNM and Manzano each covenants and agrees as to itself and its Subsidiaries that after the date hereof and prior to the Effective Time, except as expressly contemplated or permitted by this Agreement, as set forth on Section 6.2 of the Parent Disclosure Letter, as required by Law or to the extent the Company shall otherwise consent in writing, which decision regarding consent shall be made as soon as reasonably practicable:

(i) the business of PNM and its Subsidiaries shall be conducted only in the ordinary and usual course and, to the extent consistent therewith, it and its Subsidiaries shall use their respective reasonable best efforts to (a) subject to prudent management of workforce needs and ongoing programs currently in force, preserve its business organization intact and maintain its existing relations and goodwill with customers, suppliers, distributors, creditors, lessors, employees and business associates, (b) maintain and keep material properties and assets in good repair and condition, subject to ordinary wear and tear and (c) maintain in effect all

existing material governmental permits pursuant to which PNM or any of its Significant Subsidiaries currently operates;

(ii) PNM, Manzano and Parent shall not (w) amend its certificate of incorporation or by-laws or the comparable governing instruments of any of its Subsidiaries except for such amendments that would not prevent or materially delay the consummation of the transactions contemplated by this Agreement; (x) split, combine or reclassify its outstanding shares of capital stock; (y) declare, set aside or pay any dividend payable in cash, stock or property in respect of any capital stock (other than (A) dividends from its direct or indirect wholly owned Subsidiaries to it or a wholly owned Subsidiary, (B) dividends required to be paid on any preferred stock of any Subsidiary of PNM outstanding on the date hereof or preferred stock issued to refinance currently outstanding preferred stock, in each case, in accordance with their respective terms and (C) regular quarterly dividends on shares of PNM Common Stock with usual record and payment dates (including any periodic increase thereon consistent with past practice) or (z) repurchase, redeem or otherwise acquire any shares of its capital stock or any securities convertible into or exchangeable or exercisable for any shares of its capital stock or permit any of its Subsidiaries to purchase or otherwise acquire, any shares of its capital stock or any securities convertible into or exchangeable or exercisable for any shares of its capital stock (other than (A) as required by the respective terms of any preferred stock of any Subsidiary of PNM outstanding on the date hereof or preferred stock issued to refinance currently outstanding preferred stock in accordance with the terms of the this Agreement, (B) in connection with refunding preferred stock of any Subsidiary of PNM with preferred stock or debt at a lower cost of funds (calculating such cost on an after-tax basis) and (C) for the purpose of funding or providing benefits under the PNM Stock Plans and any dividend reinvestment plan in accordance with past practice);

(iii) none of Parent, Manzano, PNM or any of their Subsidiaries shall issue, sell, pledge, dispose of or encumber any shares of, or securities convertible into or exchangeable or exercisable for, or options, warrants, calls, commitments or rights of any kind to acquire, any shares of its capital stock of any class or any Parent Voting Debt or any other property or assets (other than (A) shares of PNM Common Stock issuable pursuant to options (whether or not vested) outstanding on the date hereof under the Parent Stock Plans, issuances of additional options or rights to acquire shares of PNM Common Stock granted pursuant to the terms of the Parent Stock Plans as in effect on the date hereof in the ordinary and usual course of the operation of such Parent Stock Plans and issuances of shares of PNM Common Stock pursuant to options granted after the date hereof pursuant to the Parent Stock Plans, (B) issuances of shares of PNM Common Stock in the ordinary and usual course of Parent Compensation and Benefits Plans, each as in effect on the date hereof, and (C) the issuance of PNM preferred shares in connection with the repurchase or redemption of preferred stock outstanding on the date of this Agreement either at its stated maturity or at a lower cost of funds (calculating such cost on an after-tax basis));

(iv) neither PNM nor any of its Subsidiaries shall, other than in the ordinary and usual course of business and other than transactions not in excess of \$50,000,000 in the aggregate in any calendar year, transfer, lease, license, guarantee, sell, mortgage, pledge, dispose of or encumber any other property or assets (including capital stock of any of its Subsidiaries);

(v) neither PNM nor any of its Subsidiaries shall, by any means, make any acquisition of, or investment (other than capital expenditures) in, assets or stock (whether by way of merger, consolidation, tender offer, share exchange or other activity) in any transaction or any series of transactions (whether or not related) for an aggregate purchase price or prices, including the assumption of any debt, in excess of \$50,000,000 in any calendar year;

(vi) neither PNM nor any of its Significant Subsidiaries shall, other than in the ordinary and usual course of business, (i) modify, amend, or terminate any Contract that is material to PNM and its Subsidiaries taken as a whole, (ii) waive, release, relinquish or assign any such material contract (or any of the material rights of PNM or any of its Subsidiaries thereunder), right or claim, or (iii) cancel or forgive any material indebtedness owed to PNM or any of its Subsidiaries;

(vii) neither PNM nor any of its Subsidiaries will (i) adopt a plan of complete or partial liquidation, dissolution, merger, consolidation, recapitalization or other similar reorganization of PNM or any Significant Subsidiary of Parent, or (ii) accelerate or delay collection of notes or accounts receivable in advance of or beyond their regular due dates, other than in the usual and ordinary course of business;

(viii) neither PNM nor any of its Subsidiaries shall terminate, establish, adopt, enter into, make any new grants or awards under, amend or otherwise modify, any Parent Compensation and Benefit Plans (other than issuances of additional shares of PNM Common Stock or options or rights to acquire shares of PNM Common Stock granted pursuant to the terms of the Parent Stock Plans as in effect on the date hereof in the ordinary and usual course of the operation of such Parent Stock Plans), or increase the salary, wage, bonus or other compensation of any employees except for (A) grants or awards or increases under existing Parent Compensation and Benefit Plans occurring in the ordinary and usual course of business (which shall include normal periodic performance reviews and related compensation and benefit increases), (B) annual reestablishment of Parent Compensation and Benefit Plans and the provision of individual compensation or benefit plans and agreements for newly hired or appointed officers and employees of PNM and its Subsidiaries comparable in form and amount to such individual compensation or benefit plans or agreements currently maintained by the Parent and its Subsidiaries, provided such individual plans and agreements shall not include change of control provisions which would be triggered solely by the execution and delivery of this Agreement and the consummation of the transactions contemplated hereby or (C) actions necessary to satisfy existing contractual obligations under Parent Stock Plans or agreements existing as of the date hereof or applicable law;

(ix) PNM shall, and shall cause its Subsidiaries to, maintain with financially responsible insurance companies (or through self insurance) insurance in such amounts and against such risks and losses as are consistent with the insurance maintained by PNM and its Subsidiaries in the ordinary course of business consistent with past practice;

(x) except in the ordinary and usual course of business or as may be required by applicable Law, neither PNM nor any of its Subsidiaries shall change any accounting principle, practice or method in a manner that is inconsistent with past practice, except to the extent required by GAAP as advised by Parent's regular independent accountants;

(xi) except as may be required by applicable Law, neither PNM nor any of its Subsidiaries shall make capital expenditures during any fiscal year in excess of \$400,000,000;

(xii) PNM, Manzano and Parent shall promptly notify the Company of any change or event that has had or could reasonably be expected to have a Parent Material Adverse Effect or a material adverse effect under Section 8.2(e) hereto and shall provide copies, in advance of filing the same, of any significant regulatory filings proposed to be made by or on behalf of PNM or any Subsidiary;

(xiii) except as otherwise required by law and only to the extent material, all Tax returns of PNM, Manzano, Parent and their Subsidiaries that are filed between the date hereof and the Closing Date shall be filed in a manner consistent with past practices; and

(xiv) none of PNM, Manzano, Parent or any of their Subsidiaries will authorize or enter into an agreement to do anything prohibited by the foregoing.

(b) 1935 Act.

None of the parties hereto shall, nor shall any such party permit any of its Subsidiaries to, except as required or contemplated by this Agreement or the Split-Off Agreements, engage in any activities that would cause a change in its status, or that of its Subsidiaries, under the 1935 Act if such change would prevent or delay the consummation of the transactions contemplated by this Agreement.

6.3. Necessary Action.

(a) Neither the Company nor PNM, nor any of their respective Subsidiaries, shall take or fail to take any action that is reasonably likely to (i) result in any failure of the conditions to the Mergers set forth in Article VIII, (ii) prevent or delay consummation of the transactions contemplated by this Agreement, (iii) make any representation or warranty of the Company, PNM, Manzano or Parent contained herein inaccurate in any material respect at, or as of any time prior to, the Effective Time, or (iv) individually or in the aggregate, have a Company Material Adverse Effect or a Parent Material Adverse Effect, as the case may be.

(b) The parties shall cooperate and use their best efforts to ensure that the Effective Time does not occur at a time when any of the adjustment events listed in Sections 3.2(b)(ii)(A)(vi) or (vii) would take place in the ordinary course between the Cut Off Date and the Effective Time.

Article VII.

Additional Agreements

7.1. Access.

PNM and the Company agree that upon reasonable notice, and except as may otherwise be required by applicable Law, each shall (and shall cause its Subsidiaries to) afford the other's officers, employees, counsel, accountants and other authorized representatives ("Representatives") reasonable access, during normal business hours throughout the period prior to the Effective Time, to its executive officers, to its properties, books, contracts and records and, during such period, each shall (and each shall cause its Subsidiaries to) furnish promptly to the other all information concerning its business, properties and personnel as may reasonably be requested but only to the extent such access does not unreasonably interfere with the business and operations of such party; provided that no investigation pursuant to this Section 7.1 shall affect or be deemed to modify any representation or warranty made by the Company, Parent, Manzano, PNM, Merger Sub-1 or Merger Sub-2, and provided further that the foregoing shall not require any party to permit any inspection, or to disclose any information, that in the reasonable judgment of such party, would (i) result in the disclosure of any trade secrets of third parties or the loss of any applicable attorney-client privilege, work-product doctrine, self-audit privilege or other privilege or (ii) violate any of its obligations with respect to confidentiality if such party shall have used reasonable efforts to obtain the consent of such third party to such inspection or disclosure. All requests for information made pursuant to this Section 7.1 shall be directed to an executive officer of Manzano, PNM or the Company, as applicable, or such Person as may be designated by either of its executive officers. All such information shall be governed by the terms of the Confidentiality Agreements.

7.2. Acquisition Proposals.

Except pursuant to the Exchange Agreement, each of the Company, Manzano, and PNM agrees that neither it nor any of its Subsidiaries nor any of its or its Subsidiaries' officers and directors shall, and that it shall direct and use its reasonable best efforts to cause its and its Subsidiaries' agents and other representatives (including any investment banker, attorney or accountant retained by it or any of its Subsidiaries) not to, directly or indirectly, initiate, solicit, encourage or otherwise facilitate any inquiries or the making of any proposal or offer with respect to (i) a merger, reorganization, share exchange, consolidation or similar transaction involving it or its Significant Subsidiaries or, in the case of the Company, its Utility Subsidiaries, (ii) any sale, lease, exchange, mortgage, pledge, transfer or purchase of all or substantially all of the assets or equity securities of, it and its Subsidiaries, taken as a whole, in a single transaction or series of related transactions or (iii) any tender offer or exchange offer for 20% or more of the outstanding shares of the Company Common Stock or PNM Common Stock or Manzano Common Stock (any such proposal or offer being hereinafter referred to as an "Acquisition Proposal"). Each of the Company, Manzano and PNM further agrees that neither it nor any of its Subsidiaries nor any of its or its Subsidiaries' officers and directors shall, and that it shall direct and use its reasonable best efforts to cause its and its Subsidiaries' agents and representatives not to, directly or indirectly, engage in any negotiations concerning, or provide any confidential information or data to, or have any discussions with, any person relating to an Acquisition Proposal, or otherwise facilitate any effort or attempt to make or implement an Acquisition Proposal; provided, however, that nothing contained in this Agreement shall prevent the Board of Directors of the Company or of Manzano and PNM, or their respective representatives from, prior to the time their respective required shareholders approvals have been obtained (A) complying with Rule 14e-2 promulgated under the Exchange Act with regard to an Acquisition Proposal or otherwise complying with the Exchange Act; (B) providing information in response to a request therefor by a person who has made a bona fide unsolicited Acquisition Proposal; (C) engaging in any negotiations or discussions with any person who has made a bona fide unsolicited Acquisition Proposal or otherwise facilitating any effort or attempt to implement an Acquisition Proposal; or (D) withdrawing or modifying the approval or recommendation by such Board of Directors of this Agreement, approving or recommending any Acquisition Proposal or causing the applicable party to enter into any letter of intent, agreement in principle, acquisition agreement or other similar agreement relating to any Acquisition Proposal, if, and only to the extent that in each such case referred to in clause (B), (C) or (D) above, the Board of Directors of the Company, Manzano or PNM, as the case may be, determines in good faith, after consultation with outside legal counsel that such action is necessary to act in a manner consistent with the directors' fiduciary duties under applicable law and determines in good faith after consultation with its financial advisors that the person or group making such Acquisition Proposal has adequate sources of financing to consummate such Acquisition Proposal and that such Acquisition Proposal, if consummated as proposed, is materially more favorable to the shareholders of such party from a

financial point of view (any such more favorable Acquisition Proposal being referred to as a "Superior Proposal") and (y) in the case of clause (D) above the Board of Directors of the Company or Manzano or PNM, as the case may be, determines in good faith that such Acquisition Proposal is reasonably capable of being consummated, taking into account legal, financial, regulatory and other aspects of the proposal and the person making the proposal, and prior to taking any such action set forth in clause (B), (C) or (D) above (other than with respect to actions related to entering into a confidentiality agreement), the Company or Manzano or PNM, as the case may be, provides reasonable notice to the other party to the effect that it is taking such action and receives from the person making the Acquisition Proposal an executed confidentiality agreement in reasonably customary form and, in any event, containing terms not materially more favorable to such third party than those contained in the Confidentiality Agreements (as defined in Section 10.7). Prior to or substantially contemporaneous with providing any information to or entering into any discussions or negotiations with any person in connection with an Acquisition Proposal by such person, the Company or Manzano or PNM, as the case may be, shall notify the other party of such Acquisition Proposal (including, without limitation, the material terms and conditions thereof and the identity of the person making it), and, subject to the confidentiality agreement required to be entered into, as specified above, shall provide the other party with a copy of any written Acquisition Proposal or amendment or supplements thereto and shall thereafter inform the other party on a prompt basis of any material changes to the terms and conditions of such Acquisition Proposal. Each of the Company and Manzano and PNM agrees that it will immediately cease and cause to be terminated any existing discussions or negotiations with any parties conducted heretofore with respect to any Acquisition Proposal. Each of the Company and each of Manzano and PNM agrees that it will take the necessary steps to promptly inform the individuals or entities referred to in the first sentence hereof of the obligations undertaken in this Section 7.2.

7.3. Information Supplied.

The Company, Parent, Manzano and PNM each agrees, as to itself and its Subsidiaries, that none of the information supplied or to be supplied by it or its Subsidiaries for inclusion or incorporation by reference in (i) the Registration Statement on Form S-4 to be filed with the SEC by Parent in connection with the issuance of shares of Parent Common Stock in the Mergers (including the joint proxy statement and prospectus (the "Prospectus/Proxy Statement") constituting a part thereof) (the "S-4 Registration Statement") will, at the time the S-4 Registration Statement becomes effective under the Securities Act, contain any untrue statement of a material fact or omit to state any material fact required to be stated therein or necessary to make the statements therein, in light of the circumstances under which they were made, not misleading, and (ii) the Prospectus/Proxy Statement and any amendment or supplement thereto will, at the date of mailing to shareholders of the Company and shareholders of Manzano or PNM, as the case may be, and at the time of the meeting of shareholders of the Company and at the time of the meeting of the shareholders of Manzano or PNM, as the case may be, to be held in connection with this Agreement and the transactions contemplated hereby, contain any untrue statement of a material fact or omit to state any material fact required to be stated therein or necessary in order to make the statements therein, in light of the circumstances under which they were made, not misleading.

7.4. Shareholders Meetings.

The Company will take, in accordance with applicable law and its restated articles of incorporation, as amended, and by-laws, all action necessary to convene a meeting of holders of Company Common Stock as promptly as practicable after the Proxy Statement/Prospectus is mailed to its shareholders to consider and vote upon the approval of this Agreement and the transactions contemplated hereby. Manzano or PNM will take, in accordance with its certificate and by-laws, all action necessary to convene a meeting of holders of Manzano Common Stock or PNM Common Stock, as the case may be, as promptly as practicable after the Proxy Statement/Prospectus is mailed to its shareholders to consider and vote upon the approval of this Agreement and the transactions contemplated hereby. Subject to fiduciary obligations under applicable law, each of the Company's and Manzano's or PNM's board of directors shall recommend such approval and shall take all lawful action to solicit such approval.

7.5. Filings; Other Actions; Notification.

(a) Parent, Manzano or PNM and the Company shall promptly, following the date hereof, prepare and file with the SEC the Prospectus/Proxy Statement, and Parent shall promptly, following the date hereof, prepare and file with the SEC the S-4 Registration Statement. Parent and the Company each shall use its best efforts to have the S-4 Registration Statement declared effective under the Securities Act as promptly as practicable after such filing, and as soon as practicable thereafter mail the Prospectus/Proxy Statement to the shareholders of the Company and the shareholders of Manzano or PNM, as the case may be, and, if necessary after the Prospectus/Proxy Statement is mailed, promptly circulate

amended supplemental proxy material, and, if required, resolicit proxies. Parent shall also use its best efforts to obtain prior to the effective date of the S-4 Registration Statement all necessary state securities law or "blue sky" permits and approvals required in connection with the Mergers and to consummate the other transactions contemplated hereby and will pay all expenses incident thereto.

(b) The Company, Manzano or PNM, as the case may be, each shall use its reasonable best efforts to cause to be delivered to the other party and its directors a letter of its independent auditors, dated (i) the date on which the S-4 Registration Statement shall become effective and (ii) the Closing Date, and addressed to the other party and its directors, in form and substance customary for "comfort" letters delivered by independent public accountants in connection with registration statements similar to the S-4 Registration Statement.

(c) Each party hereto shall file or cause to be filed with the Federal Trade Commission and the Department of Justice any notifications required to be filed under the HSR Act, and the rules and regulations promulgated thereunder with respect to the transactions contemplated hereby. Each party hereto will use all commercially reasonable efforts to make such filings in a timely manner and to respond on a timely basis to any requests for additional information made by either of such agencies.

(d) The Company, Manzano and PNM shall cooperate with each other and use (and shall cause their respective Subsidiaries to use) their respective reasonable best efforts to take or cause to be taken all actions, and do or cause to be done all things, necessary, proper or advisable on its part under this Agreement and applicable Laws to consummate and make effective the Transaction and the other transactions contemplated hereby as soon as practicable, including preparing and filing as soon as practicable all documentation to effect all necessary notices, reports and other filings and to obtain as soon as practicable all consents, registrations, approvals, permits and authorizations necessary or advisable to be obtained from any third party and/or any Governmental Entity in order to consummate the Transaction or any of the other transactions contemplated hereby. Subject to applicable Laws relating to the exchange of information and the preservation of any applicable attorney-client privilege, work-product doctrine, self-audit privilege or other similar privilege, each of Manzano, PNM and the Company shall have the right to review and comment on in advance, and to the extent practicable each will consult the other on, all the information relating to such party, and any of their respective Subsidiaries, that appear in any filing made with, or written materials submitted to, any third party and/or any Governmental Entity in connection with the Transaction and the other transactions contemplated hereby. In exercising the foregoing right, each of the Company, Manzano and PNM shall act reasonably and as promptly as practicable.

(e) Subject to applicable Laws and the preservation of any applicable attorney-client privilege, the Company, PNM and Manzano each shall, upon request by the other, furnish the other with all information concerning itself, its Subsidiaries, directors, officers and shareholders and such other matters as may be reasonably necessary or advisable in connection with the Prospectus/Proxy Statement, the S-4 Registration Statement or any other statement, filing, notice or application made by or on behalf of Parent, Manzano, PNM, the Company or any of their respective Subsidiaries to any third party and/or any Governmental Entity in connection with the Mergers and the other transactions contemplated hereby.

(f) Subject to any confidentiality obligations and the preservation of any attorney-client privilege, the Company and Manzano and PNM each shall keep the other apprised of the status of matters relating to completion of the transactions contemplated hereby, including promptly furnishing the other with copies of notices or other communications received by Parent, Manzano, PNM or the Company, as the case may be, or any of its Subsidiaries, from any third party and/or any Governmental Entity with respect to the Transaction and the other transactions contemplated hereby.

7.6. Affiliates.

At least 10 days prior to the date of the shareholders meeting of the Company with respect to this Agreement, the Company shall deliver to Parent a list of names and addresses of those Persons who the Company expects will be, as of 30 days prior to the Effective Time, "affiliates" of the Company within the meaning of Rule 145 under the Securities Act. There shall be added to such list the names and addresses of any other Person subsequently identified by the Company as a Person who may be deemed within 30 days prior to the Effective Time to be an affiliate of the Company for the purposes described above. The Company shall exercise commercially reasonable efforts to deliver or cause to be delivered to Parent, prior to the date of its shareholders meeting with respect to this Agreement, from each affiliate of the Company identified in the foregoing list (as the same may be supplemented as aforesaid), a letter dated as of the date of such shareholders meeting substantially in the form attached as

7.7. Stock Exchange Listing and De-listing.

Parent shall use its best efforts to cause the shares of Parent Common Stock to be issued in the Mergers to be approved for listing on the NYSE, subject to official notice of issuance, prior to the Closing Date. The Surviving Corporation shall use its best efforts to cause the shares of Company Common Stock to be removed from quotation on the NYSE and de-registered under the Exchange Act as soon as practicable following the Effective Time.

7.8. Publicity.

The initial press release shall be a joint press release and thereafter the Company and PNM each shall consult with the other prior to issuing any press releases or otherwise making public announcements with respect to the Mergers and the other transactions contemplated hereby and prior to making any filings with any third party and/or any Governmental Entity with respect thereto, except as may be required by Law or by obligations pursuant to any listing agreement with or rules of any national securities exchange or national market system.

7.9. Benefits and Other Employee Matters.

(a) Stock Plans.

With respect to each Stock Plan that remains in effect following the Effective Time and each award granted prior to the Effective Time pursuant to a Stock Plan that is to be settled in shares of Company Common Stock (a "Stock Award") which Stock Award remains outstanding following the Effective Time, the Company and Parent shall take all corporate action necessary or appropriate to (i) provide for the issuance or purchase in the open market of Parent Common Stock rather than Company Common Stock pursuant thereto, (ii) obtain shareholder approval with respect to such Stock Plans to the extent such approval is required for purposes of the Code or other applicable law, (iii) reserve for issuance under such Stock Plans or otherwise provide a sufficient number of shares of Parent Common Stock for delivery upon payment of benefits, grant of awards or exercise of options under such Stock Plans or Stock Award and (iv) as soon as practicable after the Effective Time, file registration statements on Form S-8 or amendments on such forms to the Form S-4 Registration Statement, as the case may be (or any successor or other appropriate forms), with respect to the shares of Parent Common Stock subject to such Stock Plans or Stock Award to the extent such registration statement is required under applicable law, and Parent shall use its best efforts to maintain the effectiveness of such registration statements (and maintain the current status of the prospectuses contained therein) for so long as such benefits and grants remain payable and such options remain outstanding. With respect to those individuals who subsequent to the Merger will be subject to the reporting requirements under Section 16(a) of the Exchange Act, the Surviving Corporation shall administer the Stock Plans after the Effective Time, where applicable, in a manner that complies with Rule 16b-3 promulgated under the Exchange Act.

(b) Contributions to Rabbi Trusts.

Prior to the Effective Time, the Company shall contribute to the rabbi trusts maintained or to be established by the Company and its Subsidiaries for (i) the Executive Stock Compensation Program under the Long Term Incentive and Share Award Plan, (ii) the Restricted Share Unit Program under the Long Term Incentive and Share Award Plan, and (iii) the Executive Salary Continuation Plan, the amount of cash or shares of Company Common Stock that it reasonably believes will be required to satisfy outstanding awards or other obligations under such plans (other than any such awards that will be converted to Merger Consideration that is immediately distributed to the holder thereof), and at or prior to the end of each year commencing with the year in which the Closing occurs, Parent shall contribute or cause to be contributed to the rabbi trust any amount of cash or securities required to make up any shortfall in earnings and any additional amounts to keep all benefits and estimated expenses fully funded.

(c) Employee Benefits.

Parent agrees that, during the period commencing at the Effective Time and ending on the second anniversary thereof, the non-union employees of the Company and its Subsidiaries who continue to be employees of the Surviving Corporation, Parent or their respective Subsidiaries (the "Non-Union Employees") will continue to be provided with benefits under employee benefit plans that are no less favorable in the aggregate than those currently provided by the Company and its Subsidiaries to such employees. Following the Effective Time, Parent shall cause service by Non-Union Employees of the Company and its Subsidiaries (and any predecessor entities) to be taken into account for all purposes (including, without limitation, eligibility to participate, eligibility to commence benefits, vesting, benefit accrual and severance) under the Compensation and

Benefit Plans or any other benefit plans of Parent or its Subsidiaries in which such employees participate.

From and after the Effective Time, Parent shall (i) cause to be waived any pre-existing condition limitations under benefit plans, policies or practices of Parent or its Subsidiaries in which employees of the Company or its Subsidiaries participate and (ii) cause to be credited any deductibles and out-of-pocket expenses incurred by such employees and their beneficiaries and dependents during the portion of the calendar year prior to participation in the benefit plans provided by Parent and its Subsidiaries.

Parent shall, and shall cause the Surviving Corporation to, honor all employee benefit obligations to current and former employees and directors under the Compensation and Benefit Plans and to honor all collective bargaining agreements or other labor agreements in effect at the Effective Time. Parent shall cause the Surviving Corporation to assume in writing the rights and obligations under the employment agreements and change of control agreements to which the Company is a party at the Effective Time as required by such agreements; provided, however, that the foregoing shall not prevent Parent or the Surviving Corporation from enforcing such employment agreements and change of control agreements in accordance with their terms, including, without limitation, any reserved right to amend, modify, suspend, revoke or terminate any such employment agreements and change of control agreements.

Parent acknowledges that the transactions contemplated by this Agreement meet the definition of, and shall constitute, a "change in control" under each Compensation and Benefit Plan listed in Section 7.9 of the Company Disclosure Letter.

(d) Employees.

It is the present intention of Parent and the Company that following the Effective Time, there will be no involuntary reductions in workforce at the Surviving Corporation or its Subsidiaries, and that Parent, the Surviving Corporation and their respective Subsidiaries will continue Parent's and the Company's present strategy of achieving workforce reductions through attrition or other voluntary means; provided, however, that if any reductions in workforce in respect of employees of Parent and its Subsidiaries, including the Surviving Corporation and its Subsidiaries, become necessary, they shall be made on a fair and equitable basis, in light of the circumstances and the objectives to be achieved, giving consideration to previous work history, job experience, qualifications, and business needs without regard to whether employment prior to the Effective Time was with the Company or its Subsidiaries or Parent or its Subsidiaries, and any employees whose employment is terminated or jobs are eliminated by Parent, the Surviving Corporation or any of their respective Subsidiaries shall be entitled to participate on a fair and equitable basis in the job opportunity and employment placement programs offered by Parent, the Surviving Corporation or any of their respective Subsidiaries. Any workforce reductions carried out following the Effective Time by Parent or the Surviving Corporation and their respective Subsidiaries shall be done in accordance with all applicable collective bargaining agreements, and all Laws and regulations governing the employment relationship and termination thereof including, without limitation, the Worker Adjustment and Retraining Notification Act and regulations promulgated thereunder, and any comparable state or local law.

7.10. Board of Directors; Corporate Headquarters and Community Involvement.

(a) Election to Parent's Board of Directors.

At the Effective Time, Parent shall take such action as may be necessary to cause two individuals selected by Parent from a pool of nominees designated by the Company, including members of the Board of Directors of the Company, to be appointed to the Board of Directors of Parent with each such designee serving in a different class on the Parent Board of Directors. The directors designated by the Company shall comply with the Parent's criteria for membership on its Board of Directors as in effect for PNM as of the date hereof and set forth in Section 7.10 of the Parent Disclosure Schedule. Each of the directors designated by the Company shall be appointed to serve on a committee of the Parent Board of Directors. The rights set forth in this Section 7.10 are separate from and in addition to any rights Westar shall have to designate members of the Board of Directors of Parent pursuant to the terms of the Stockholder Agreement between Westar and Parent to be entered into as of the Effective Time.

(b) Regional Headquarters.

Following the Effective Time, the Surviving Corporation shall maintain its regional headquarters in Topeka, Kansas.

(c) Community Involvement.

Parent acknowledges that after the Effective Time, it intends to provide

charitable contributions and community support within the service areas of the Company and its Subsidiaries at levels consistent with past practice.

7.11. Dividends.

The Company and Parent shall coordinate with each other the declaration, setting of record dates and payment dates of dividends on shares of their respective common stock so that holders of shares of Company Common Stock do not receive dividends on both shares of Company Common Stock and Parent Common Stock received in the Merger in respect of any single calendar quarter or fail to receive a dividend on either shares of Company Common Stock or Parent Common Stock received in the Merger in respect of any single calendar quarter.

7.12. Indemnification; Directors' and Officers' Insurance.

(a) Parent shall indemnify and hold harmless, to the fullest extent permitted under applicable law and as required pursuant to the existing indemnity agreements of the Company (and Parent shall also advance expenses as incurred to the fullest extent permitted under applicable law and as required pursuant to the existing indemnity agreements of the Company provided the Person to whom expenses are advanced provides an undertaking to repay such advances if it is ultimately determined that such Person is not entitled to indemnification), each present and former director, officer and employee of the Company and its Subsidiaries (collectively, the "Indemnified Parties") against any costs or expenses (including attorneys' fees and expenses), judgments, fines, losses, claims, damages or liabilities (collectively, "Costs") incurred in connection with any claim, action, suit, proceeding or investigation, whether civil, criminal, administrative or investigative, arising out of or pertaining to matters existing or occurring at or prior to the Effective Time, including the transactions contemplated hereby. In the event any claim or claims are asserted or made within six years after the Effective Time, all rights to indemnification in respect of any such claim or claims shall continue until final disposition of any and all such claims.

(b) Any Indemnified Party wishing to claim indemnification under paragraph (a) of this Section 7.12, upon receiving written notification of any such claim, action, suit, proceeding or investigation, shall promptly notify the Surviving Corporation thereof, but the failure to so notify shall not relieve the Surviving Corporation of any liability it may have to such Indemnified Party if such failure does not materially and irreversibly prejudice Parent. In the event of any such claim, action, suit, proceeding or investigation (whether arising before or after the Effective Time), (i) Parent shall pay the fees and expenses of counsel selected by the Indemnified Party, which counsel shall be reasonably satisfactory to Parent, promptly after statements therefor are received, and otherwise advance to such Indemnified Party upon request reimbursement of documented expenses reasonably incurred, (ii) Parent will cooperate in the defense of any such matter, and (iii) any determination required to be made with respect to whether an Indemnified Party's conduct complies with the standards set forth under applicable Law shall be made by independent counsel mutually acceptable to Parent and the Indemnified Party; provided, however, that (A) Parent shall be obligated pursuant to this paragraph (b) to pay for only one firm of counsel for all Indemnified Parties in any jurisdiction, except to the extent there is, in the opinion of counsel to an Indemnified Party, under applicable standards of professional conduct, a conflict on any significant issue between the positions of such Indemnified Party and any other Indemnified Party or Indemnified Parties, in which case each Indemnified Party with a conflicting position on a significant issue shall be entitled to retain separate counsel mutually satisfactory to Parent and such Indemnified Party, (B) the Indemnified Parties shall cooperate in the defense of any such matter and (C) Parent shall not be liable for any settlement effected without its prior written consent (which consent may not be unreasonably withheld or delayed).

(c) The Surviving Corporation shall maintain the Company's existing officers' and directors' liability insurance ("D&O Insurance") for a period of six years after the Effective Time so long as the annual premium therefor is not in excess of 200% of the last annual premium paid prior to the date hereof (the "Current Premium"); provided, however, if the existing D&O Insurance is terminated or cancelled during such six-year period, the Surviving Corporation shall use its best efforts to obtain as much D&O Insurance as can be obtained for the remainder of such period for a premium not in excess (on an annualized basis) of 200% of the Current Premium and shall agree to indemnify the directors and officers for any Costs not covered by such D&O Insurance; and (iii) if the annual premiums for the existing D&O Insurance exceed 200% of the Current Premium, the Surviving Corporation shall obtain as much D&O Insurance as can be obtained for the remainder of such period for a premium not in excess (on an annualized basis) of 200% of the Current Premium.

(d) If Parent or the Surviving Corporation or any of its successors or assigns (i) shall consolidate with or merge into any other corporation or entity and shall not be the continuing or surviving corporation or entity of such consolidation or merger or (ii) shall transfer all or substantially all of its

properties and assets to any individual, corporation or other entity, then, and in each such case, proper provisions shall be made so that the successors and assigns of Parent or the Surviving Corporation shall assume all of the obligations set forth in this Section 7.12.

(e) The provisions of this Section 7.12 are intended to be for the benefit of, and shall be enforceable by, each of the Indemnified Parties, their heirs and their representatives.

7.13. Expenses.

Subject to Sections 9.5(b) through (e), whether or not the Mergers are consummated, all costs and expenses incurred in connection with the Mergers and the other transactions contemplated hereby shall be paid by the party incurring such expense, except that each of the Company and PNM shall bear and pay one-half of the costs and expenses incurred in connection with the filing, printing and mailing of the S-4 Registration Statement and the Prospectus/Proxy Registration Statement (including SEC filing fees).

7.14. Takeover Statute.

If any Takeover Statute is or may become applicable to the Mergers or the other transactions contemplated hereby, each of Parent, Manzano, PNM, Merger Sub-1 Merger Sub-2 and the Company and their respective Board of Directors shall grant such approvals and take such actions as are necessary so that such transactions may be consummated as promptly as practicable on the terms contemplated hereby and otherwise act to eliminate or minimize the effects of such statute or regulation on such transactions.

7.15. Manzano Vote.

Parent and Manzano shall vote (or consent with respect to) or cause to be voted (or a consent to be given with respect to) any shares of Company Common Stock and any shares of common stock of Merger Sub-1 and Merger Sub-2 beneficially owned by it or any of its Affiliates or with respect to which it or any of its Affiliates has the power (by agreement, proxy or otherwise) to cause to be voted (or to provide a consent), in favor of the approval of this Agreement and the transactions contemplated hereby at any meeting of shareholders of the Company, Merger Sub-1 or Merger Sub-2, respectively, at which this Agreement shall be submitted for approval and at all adjournments or postponements thereof (or, if applicable, by any action of shareholders of either the Company, Merger Sub-1 or Merger Sub-2 by consent in lieu of a meeting).

7.16. Agreements Relating to the Split-Off.

The terms of the Split-Off Agreements may be amended by the Company and Westar; provided however, that Parent's consent, which shall not be unreasonably withheld, shall be required in connection with any revision to the terms of the Split-Off Agreements in the forms attached hereto as Exhibit A that would reasonably be expected to be adverse in any manner to the Company or to Parent.

7.17. Redemption of Preferred Shares.

Prior to the Effective Time, the Board of Directors of the Company shall call for redemption all outstanding Preferred Shares (not including the Convertible Preference Shares) at a redemption price equal to the amount set forth in the restated articles of incorporation of the Company, together with all dividends accrued and unpaid to the date of such redemption and take all other required action so that all Preferred Shares shall be redeemed and no such Preferred Shares shall be deemed to be outstanding at the Effective Time or entitled to vote on the approval of this Agreement and the transactions contemplated hereby. The parties agree to cooperate in connection with registering Parent as a "holding company" under Section 5 of the 1935 Act to use the provisions of subparagraph (iv) of subdivision (c) of paragraph 6 of section A of Article IV of the restated articles of incorporation of the Company as a means of obviating the need to seek approval of this Agreement and the transactions contemplated hereby by the holders of Preferred Shares as a separate class, in which case the outstanding Preferred Shares shall not be called for redemption and shall remain outstanding notwithstanding the Merger.

7.18. Conveyance Taxes.

The Company, Parent, PNM and Manzano shall cooperate in the preparation, execution and filing of all returns, questionnaires, applications or other documents regarding any real property transfer or gains, sales, use, transfer, value added, stock transfer and stamp Taxes, any transfer, recording, registration and other fees, and any similar Taxes which become payable in connection with the transactions contemplated by this Agreement ("Transaction Taxes") that are required or permitted to be paid on or before the Effective Time. The Company shall pay, without deduction or withholding (except where such

deduction or withholding is required by applicable law) from any amount payable to the holders of any shares of the Company Common Stock, any such Transaction Taxes which become payable in connection with the Split-Off and Merger, on behalf of the shareholders of the Company. Manzano, or PNM, as the case may be, shall pay, without deduction or withholding (except where such deduction or withholding is required by applicable law) from any amount payable to the holders of any shares of Manzano Common Stock or PNM Common Stock, any such Transfer Taxes which become payable in connection with the Transaction.

7.19. Transition Steering Team.

As soon as reasonably practicable after the date hereof, PNM and the Company shall create a special transition steering team (the "Transition Steering Team"), with representation from PNM and the Company, that will develop recommendations concerning the future structure and operations of the Surviving Corporation after the Effective Time, subject to applicable law. The members of the Transition Steering Team shall be appointed by the Chief Executive Officers of PNM and the Company. The functions of the Transition Steering Team shall include (i) to direct the exchange of information and documents between the parties and their subsidiaries as contemplated by Section 7.1, and (ii) the development of regulatory plans and proposals, corporate organizational and management plans, workforce combination proposals, and such other matters as they deem appropriate.

7.20. Termination of Tax Sharing Agreements.

At the effective time of the Split-Off, the Company shall cause the Tax sharing agreement with Protection One, Inc. and all other tax sharing agreements and arrangements (other than the Disaffiliation Agreement) to be terminated or no longer in effect with respect to periods following the date of the Split-Off as between any member of the Western Group and its Affiliates (as those terms are defined in the Tax Disaffiliation Agreement) on the one hand and any member of the Westar Group and its Affiliates (as those terms are defined in the Tax Disaffiliation Agreement) on the other hand.

7.21. Tax Disaffiliation Agreement.

At the Effective Time, Parent shall succeed to the rights and obligations of the Company under the Tax Disaffiliation Agreement and shall perform all agreements and covenants contained therein.

7.22. Shared Services Agreement.

Effective upon the Closing, the Company or such other affiliate of the Company as shall be designated by Parent subject to Westar's approval shall enter into a Shared Services Agreement in form and substance reasonably satisfactory to each party and satisfying all requirements of the 1935 Act, pursuant to which the Company shall provide services to Westar on the terms and conditions specified in Exhibit B to the Allocation and Separation Agreement. Effective as of the Closing Date, the Company will assign the Service Agreement between the Company and Protection One, Inc., dated April 1, 1999, as amended, to Westar.

7.23. Interim Reporting.

No later than the tenth Business Day of each calendar month through the Cut-Off Date, the Company will deliver a statement with respect to the immediately preceding calendar month, of (i) Additional Cash paid to the Company (including information as to the source) during such month, (ii) the application of such Additional Cash, and (iii) the option selected by Westar pursuant to Section 3.2(a)(i), such statement also to include a summary of cumulative amounts and any changes in amounts since the date hereof.

7.24. Possible Exchange.

The parties recognize that it would be beneficial for Parent if, in lieu of the conversion of the Convertible Preference Shares into the Parent Convertible Shares pursuant to Section 3.2(b)(iv) hereof (the "Conversion"), the Convertible Preference Shares were instead exchanged (an "Exchange") for a principal amount of 7.5% subordinated debt instruments of Parent equal to the aggregate liquidation preference of the Convertible Preference Shares which debt instruments ("Parent Convertible Debt") would be (i) convertible into shares of Parent Common Stock at the same conversion ratio as the Convertible Preference Shares, (ii) otherwise substantially in the form of the Company's 7-7/8% Cumulative Quarterly Income Preferred Shares, Series A, and (iii) redeemable at the option of Parent at par plus accrued interest on the same date on which the Parent Convertible Shares would have been first redeemable at the option of Parent. Accordingly, if, prior to satisfaction of the conditions contained in Article VIII hereof, Parent proposes that an Exchange occur and such Exchange would (i) not delay the Effective Time and (ii) otherwise preserves for Westar the economic and tax benefits of ownership of Parent Convertible Shares that

otherwise would have been received upon conversion of the Convertible Preference Shares including, but not limited to, the payment to Westar of cash in an amount that reasonably compensates Westar for the reasonably estimated additional Tax payments, if any, resulting from the Proposed Exchange (taking into account, among other things, the amount (as reasonably projected on the Effective Date) of (x) Westar's additional tax liability from the Exchange being taxable and Westar subsequently receiving interest instead of dividends until the date that the Parent Convertible Debt could have first been redeemed by Parent (the "First Redemption Date") and (y) the utilization of or loss of any current or future tax benefits of the Westar Group that could be used to offset tax liability of any member of the Westar Group in any Tax period through the end of the Tax period which includes the First Redemption Date), then the parties shall make a good faith effort to effect an Exchange instead of a Conversion by means of mutually agreed customary documentation that so preserves such benefits; provided that if the Company Requisite Vote or the Parent Requisite Vote has already been obtained, such Exchange does not require any additional approval of the shareholders of the Company under the KGCC or other applicable law or the shareholders of PNM or Parent under the NMBCA or other applicable law. In the event that the parties adopt an Exchange, the Agreement shall be revised to reflect such transaction as determined necessary by the parties hereto and prior to effecting any such Exchange, all material third party and Governmental Authority declarations, filings, registrations, notices, authorizations, consents or approvals necessary for the effectuation of such Exchange shall have been obtained and all other conditions to the parties' obligations to consummate the Transaction and other transactions contemplated hereby, as applied to such Exchange, shall have been satisfied or waived.

Article VIII.

Conditions

8.1. Conditions to Each Party's Obligation to Effect the Transaction.

The respective obligation of each party to effect the Mergers is subject to the satisfaction or waiver at or prior to the Effective Time of each of the following conditions:

(a) Shareholder Approval.

The Company Requisite Vote and the Parent Requisite Vote shall have been obtained. This Agreement shall have been approved by the sole shareholder of Merger Sub-1 and Merger Sub-2.

(b) NYSE Listing.

The shares of Parent Common Stock issuable to the shareholders of the Company and Manzano in the Mergers pursuant to Article II shall have been authorized for listing on the NYSE upon official notice of issuance.

(c) HSR.

The waiting period applicable to the consummation of the Mergers under the HSR Act shall have expired or been earlier terminated.

(d) Other Regulatory Consents.

The Parent Required Statutory Approvals and the Company Required Statutory Approvals shall have been obtained at or prior to the Effective Time, such approvals shall have become Final Orders (as hereinafter defined), and no such Final Order shall impose terms or conditions that would have, or would be reasonably likely to have a material adverse effect on the financial condition, business, assets or results of operations of Parent, Manzano, PNM and the Company (together with their respective Subsidiaries) taken as a whole; it being understood that the effect of any law, regulation, ruling, order or decree referred to in Sections 8.2(f) and 8.3(e) shall not be taken into account in making such determination. A "Final Order" means action (including the approval of transfer, assignment or modification of Environmental Permits) by the relevant regulatory authority that has not been reversed, stayed, enjoined, set aside, annulled or suspended, with respect to which any waiting period prescribed by law before the transactions contemplated hereby may be consummated has expired, and as to which all conditions to the consummation of such transactions prescribed by law, regulation or order have been satisfied.

(e) Injunction.

No court or Governmental Entity of competent jurisdiction shall have enacted, issued, promulgated, enforced or entered any statute, law, ordinance, rule, regulation, judgment, decree, injunction or other order that is in effect and permanently enjoins or otherwise prohibits consummation of the Mergers or the other transactions contemplated hereby (collectively, an "Order").

(f) S-4.

The S-4 Registration Statement shall have become effective under the Securities Act. No stop order suspending the effectiveness of the S-4 Registration Statement shall have been issued, and no proceedings for that purpose shall have been initiated or be threatened, by the SEC.

(g) Split-Off.

The Split-Off shall have been consummated in accordance with the terms hereof and of the Allocation and Separation Agreement and the Company shall have received copies of the "solvency opinions" delivered in connection with the Split-Off.

(h) Stockholder and Registration Rights Agreement.

Each of the Stockholder Agreement between Parent and Westar substantially in the form attached hereto as Exhibit E and the Registration Rights Agreement between Parent and Westar substantially in the form attached hereto as Exhibit F shall have been executed by the parties thereto.

(i) Blue Sky Approvals.

Parent shall have received all state securities and "blue sky" permits and approvals necessary to consummate the Mergers.

8.2. Conditions to Obligations of Parent, Merger Sub-1 and Merger Sub-2.

The obligations of Parent and Merger Sub 1 and Merger Sub-2 to effect the Mergers are also subject to the satisfaction or waiver by Parent at or prior to the Effective Time of the following conditions:

(a) Representations and Warranties.

The representations and warranties of the Company set forth in this Agreement which are not modified by the words "Material Adverse Effect" shall be true and correct as of the Closing Date as though made on and as of the Closing Date, except for failures to be true and correct that individually or in the aggregate would not reasonably be likely to have a Company Material Adverse Effect (except to the extent any such representation or warranty expressly speaks as of an earlier date, which representations and warranties shall be true and correct as of such date in the same manner as specified above), and the representations and warranties of the Company set forth in this Agreement which are modified by the words "Material Adverse Effect" shall be true and correct as of the Closing Date as though made on and as of the Closing Date (except to the extent any such representation or warranty expressly speaks as of an earlier date, which representations and warranties shall be true and correct as of such date in the same manner as specified above), and Parent shall have received a certificate signed on behalf of the Company by an executive officer of the Company to such effect.

(b) Performance of Obligations of the Company.

The Company shall have performed in all material respects all material obligations required to be performed by it under this Agreement at or prior to the Closing Date, and Parent shall have received a certificate signed on behalf of the Company by an executive officer of the Company to such effect.

(c) Tax Opinion.

Parent shall have received an opinion from Winthrop, Stimson, Putnam & Roberts, tax counsel to Parent, in form and substance reasonably satisfactory to Parent, dated as of the Closing Date, substantially to the effect that the Mergers, taken together, will be treated as a transaction described in Section 351 of the Code or the Second Merger will be treated as a transaction described in Section 368(a) of the Code, in each case in which neither the holders of PNM Common Stock or the holders of Company Common Stock (other than Westar) nor Parent or the Company will recognize taxable gain or loss. In rendering such opinion, Winthrop, Stimson, Putnam & Roberts may require and rely upon representations reasonably satisfactory to Winthrop, Stimson, Putnam & Roberts contained in certificates of officers of the Company, Westar, Parent, Manzano, PNM, Merger Sub-1 and Merger Sub-2.

(d) Consents Under Agreements.

The Company shall have obtained the consent or approval of each person whose consent or approval shall be required under any material Company Contract except for such consents or approvals the failure of which to obtain would not be reasonably likely to result in a material adverse effect on Parent and the Company (together with the Subsidiaries of Parent and the Company), taken as a whole.

(e) Affiliates Letters.

Parent shall have received an Affiliates Letter from each person identified as an affiliate of the Company pursuant to Section 7.6.

(f) No Adverse Regulatory Change.

Since the date of this Agreement, no law, regulation, ruling, order or decree (or new interpretation of any of the foregoing) affecting the Company or Kansas Gas and Electric Company shall have been adopted, amended or issued that, individually or in the aggregate, would have a material adverse effect on the financial condition, business, assets or results of operations of Parent, Manzano, PNM and the Company (together with their respective Subsidiaries) taken as a whole. In determining whether this condition has been satisfied, Parent (i) shall also take into account the effects of any ruling, order or decree by any Governmental Entity issued between the date hereof and the Closing Date on the electric rates and charges of the Company and Kansas Gas and Electric Company or on the revenue potential of the Company and Kansas Gas and Electric Company as existing on the date of this Agreement, and (ii) shall not take into account the Parent Required Statutory Approvals and the Company Required Statutory Approvals.

8.3. Conditions to Obligation of the Company.

The obligation of the Company to effect the Merger is also subject to the satisfaction or waiver by the Company at or prior to the Effective Time of the following conditions:

(a) Representations and Warranties.

The representations and warranties of Parent, PNM, Manzano, Merger Sub-1 and Merger Sub-2 set forth in this Agreement which are not modified by the words "Material Adverse Effect" shall be true and correct as of the Closing Date as though made on and as of the Closing Date, except for failures to be true and correct that individually or in the aggregate would not reasonably be likely to have a Parent Material Adverse Effect (except to the extent any such representation or warranty expressly speaks as of an earlier date, which representations and warranties shall be true and correct as of such date in the same manner as specified above) and the representations and warranties of Parent, PNM, Manzano, Merger Sub-1 and Merger Sub-2 set forth in this Agreement which are modified by the words "Material Adverse Effect" shall be true and correct as of the Closing Date as though made on and as of the Closing Date (except to the extent any such representation or warranty expressly speaks as of an earlier date, which representations and warranties shall be true and correct as of such date in the same manner as specified above), and the Company shall have received a certificate signed on behalf of Parent by an executive officer of Parent to such effect.

(b) Performance of Obligations of Parent and Merger Sub.

Each of Parent, Manzano, PNM, Merger Sub-1 and Merger Sub-2 shall have performed in all material respects all material obligations required to be performed by it under this Agreement at or prior to the Closing Date, and the Company shall have received a certificate signed on behalf of Parent by an executive officer of Parent to such effect.

(c) Tax Opinion.

The Company shall have received an opinion from LeBoeuf, Lamb, Greene & MacRae L.L.P., tax counsel to the Company, in form and substance reasonably satisfactory to the Company, dated as of the Closing Date, substantially to the effect that (i) the Split-Off will be treated as a taxable exchange of the Split-Off Portion of the Company Common Stock for shares of Westar Common Stock and (ii) the Mergers, taken together, will be treated as a transaction described in Section 351 of the Code or the Merger will be treated as a transaction described in Section 368(a) of the Code; provided, however, that the condition set forth in clause (i) above shall also be satisfied to the extent the Company receives a private letter ruling from the Internal Revenue Service, in form and substance reasonably satisfactory to the Company, substantially to the same effect as the opinion described in clause (i) above. In rendering such opinion LeBoeuf, Lamb, Greene & MacRae, L.L.P. may require and rely upon representations reasonably satisfactory to LeBoeuf, Lamb, Greene & MacRae, L.L.P. contained in certificates of officers of the Company, Westar, Parent, Manzano, PNM, Merger Sub-1 or Merger Sub-2.

(d) Consents Under Agreements.

Parent shall have obtained the consent or approval of each Person whose consent or approval shall be required under any material Parent Contract except for such consents or approvals the failure of which to obtain would not be

reasonably likely to result in a material adverse effect on Parent and the Company (together with the Subsidiaries of Parent and the Company) taken as a whole.

(e) No Adverse Regulatory Change.

Since the date of this Agreement, no law, regulation, ruling, order or decree (or new interpretation of any of the foregoing) affecting the Parent shall have been adopted, amended or issued that, individually or in the aggregate, would have a material adverse effect on the financial condition, business, assets or results of operations of Parent, Manzano, PNM and the Company (together with their respective Subsidiaries) taken as a whole. In determining whether this condition has been satisfied, the Company (i) shall also take into account the effects of any ruling, order or decree by any Governmental Entity issued between the date hereof and the Closing Date on the rates and charges of PNM (or any successor regulated as to rates by the NMPRC or the FERC) or on the revenue potential of the Company and PNM (or any successor regulated as to rates by the NMPRC or the FERC) as existing on the date of this Agreement, and (ii) shall not take into account the Parent Required Statutory Approvals and the Company Required Statutory Approvals.

(f) Ownership Percentage.

At the Effective Time, the holders of outstanding shares of Company Common Stock, excluding Westar, will receive an amount of shares of Parent Common Stock in excess of the number of shares of Parent Common Stock to be received by shareholders of PNM or Manzano at the Effective Time.

Article IX.

Termination

9.1. Termination by Mutual Consent.

This Agreement may be terminated and the Mergers may be abandoned at any time prior to the Effective Time, whether before or after receipt of the Company Requisite Vote or the Parent Requisite Vote, by mutual written consent of the Company and PNM by action of their respective Boards of Directors.

9.2. Termination by Either Parent or the Company.

This Agreement may be terminated and the Mergers may be abandoned at any time prior to the Effective Time by action of the Board of Directors of either PNM or the Company if (a) the Mergers shall not have been consummated by December 31, 2001, whether such date is before or after the date of receipt of the Company Requisite Vote or the Parent Requisite Vote (the "Termination Date"), provided that the Termination Date shall be automatically extended for twelve months if, on the Termination Date any of the conditions set forth in Section 8.1(c), (d) or (g) shall not have been satisfied or waived but (x) each of the other conditions to the consummation of the Mergers set forth in Article VIII has been satisfied or waived or remains capable of satisfaction, and (y) any approvals required by Section 8.1(c) or (d) that have not yet been obtained are being pursued diligently and in good faith, (b) the Company Requisite Vote or the Parent Requisite Vote shall not have been obtained at a meeting duly convened therefor or at any adjournment or postponement thereof, or (c) any Order permanently restraining, enjoining or otherwise prohibiting consummation of the Mergers shall become final and non-appealable after the parties have used their respective best efforts to have such Order removed, repealed or overturned (whether before or after the approval by the shareholders of the Company); provided, that the right to terminate this Agreement pursuant to clause (a) above shall not be available to any party that has breached in any material respect its obligations under this Agreement in any manner that shall have proximately caused the occurrence of the failure of the Mergers to be consummated.

9.3. Termination by the Company.

This Agreement may be terminated and the Mergers may be abandoned by action of the Board of Directors of the Company at any time prior to (a) receipt of the Company Requisite Vote, if the Board of Directors of the Company shall adopt an agreement providing for a Superior Proposal; provided, however, that (i) the Company is not then in breach of Section 7.2 and (ii) the termination pursuant to this Section 9.3(a) shall not be effective unless the Company shall at or prior to the time of such termination make the payment required by Section 9.5(b); or (b) the Effective Time, whether before or after receipt of the Company Requisite Vote, if there has been a material breach by Parent, PNM, Manzano, Merger Sub-1 or Merger Sub-2 of any material representation, warranty, covenant or agreement contained in this Agreement that is not curable or, if curable, is not cured within 20 days after written notice of such breach is given by the Company to the party committing such breach or (c) to the Effective Time if the Board of Directors of PNM or Manzano withdraws or adversely modifies

its adoption of this Agreement or its recommendation that the shareholders of PNM or Manzano approve this Agreement.

9.4. Termination by Parent.

This Agreement may be terminated and the Mergers may be abandoned by action of the Board of Directors of PNM at any time prior to (a) receipt of the Parent Requisite Vote, if the Board of Directors of PNM or Manzano shall adopt an agreement providing for a Superior Proposal; provided, however, that (i) such party is not then in breach of Section 7.2 and (ii) the termination pursuant to this Section 9.4(a) shall not be effective unless PNM shall at or prior to the time of such termination make the payment required by Section 9.5(c); or (b) the Effective Time, whether before or after receipt of the Parent Requisite Vote, if there has been a material breach by the Company of any material representation, warranty, covenant or agreement contained in this Agreement that is not curable or, if curable, is not cured within 20 days after written notice of such breach is given by PNM to the Company or (c) the Effective Time if the Board of Directors of the Company withdraws or adversely modifies its adoption of this Agreement or its recommendation that the shareholders of the Company approve this Agreement.

9.5. Effect of Termination and Abandonment.

(a) In the event of termination of this Agreement and the abandonment of the Mergers pursuant to this Article IX, this Agreement (other than as set forth in Section 10.1) shall become void and of no effect with no liability on the part of any party hereto (or of any of its directors, officers, employees, agents, legal and financial advisors or other representatives); provided, however, that except as otherwise provided herein, no such termination shall relieve any party hereto of any liability or damages resulting from any breach of this Agreement.

(b) In the event that this Agreement is terminated by the Company pursuant to Section 9.3(a), then the Company shall promptly, but in no event later than two days after the date of such termination, pay PNM a termination fee (as liquidated damages) of \$35 million by wire transfer of same day funds to an account previously designated in writing by PNM to the Company. In the event that an Acquisition Proposal shall have been made to the Company after the date hereof or any person (other than PNM or any of its Affiliates) shall have publicly announced after the date hereof an intention (whether or not conditional) to make an Acquisition Proposal with respect to the Company and thereafter this Agreement is terminated (i) by either PNM or the Company pursuant to Section 9.2(b) (following the failure to obtain the Company Requisite Vote at a time when such Acquisition Proposal remains outstanding) or (ii) by PNM pursuant to Section 9.4(c) (following withdrawal or failure to affirm the recommendation by the Company's Board of Directors), pay PNM a termination fee (as liquidated damages) of \$35 million by wire transfer of same day funds to an account previously designated by PNM to the Company in writing.

(c) In the event that this Agreement is terminated by PNM pursuant to Section 9.4(a), then PNM shall promptly, but in no event later than two days after the date of such termination, pay the Company a termination fee (as liquidated damages) of \$35 million by wire transfer of same day funds to an account previously designated in writing by the Company to PNM. In the event that an Acquisition Proposal shall have been made to PNM or Manzano after the date hereof or any person (other than the Company or any of its Affiliates) shall have publicly announced after the date hereof an intention (whether or not conditional) to make an Acquisition Proposal with respect to PNM and thereafter this Agreement is terminated (i) by either the Company or PNM pursuant to Section 9.2(b) (following the failure to obtain the Parent Requisite Vote at a time when such Acquisition Proposal remains outstanding) or (ii) or by the Company pursuant to Section 9.3(c) (following withdrawal or failure to affirm the recommendation by Board of Directors of PNM or Manzano), pay the Company a termination fee (as liquidated damages) of \$35 million, by wire transfer of same day funds to an account previously designated by the Company to PNM in writing.

(d) In the event that this Agreement is terminated by either PNM or the Company pursuant to Section 9.2(b) as a result of failure to obtain the Company Requisite Vote and at the time of the related meeting of Company Shareholders no Acquisition Proposal for the Company is outstanding, then the Company shall promptly, but in no event later than two days after the date of such termination, pay to PNM by wire transfer of same day funds to an account previously designated by PNM to the Company in writing an amount equal to \$17.5 million. In the event that this Agreement is terminated by either the Company or PNM pursuant to Section 9.2(b) as a result of failure to obtain the Parent Requisite Vote and at the time of the related meeting of PNM or Manzano shareholders, as the case may be, no Acquisition Proposal for PNM or Manzano is outstanding, then PNM shall promptly, but in no event later than five days after the date of such termination, pay to the Company by wire transfer of same day funds to an account previously designated by the Company to PNM in writing an amount equal to \$17.5 million.

(e) In the event that this Agreement is terminated by PNM pursuant to Section 9.4(c) following withdrawal or failure to affirm the recommendation by the Company's Board of Directors and at such time no Acquisition Proposal for the Company is outstanding, then the Company shall promptly, but in no event later than two days after the date of such termination, pay to PNM by wire transfer of same day funds to an account previously designated by PNM to the Company in writing an amount equal to \$25 million. In the event this Agreement is terminated by the Company pursuant to Section 9.3(c) following withdrawal or failure to affirm the recommendation by the Board of Directors of PNM or Manzano and at such time no Acquisition Proposal for PNM or Manzano is outstanding, then PNM shall promptly, but in no event later than two days after the date of such termination, pay to the Company by wire transfer of same day funds to an account previously designated by the Company to PNM in writing as amount equal to \$25 million.

(f) The parties acknowledge that the agreements contained in Sections 9.5(b) through (e) are an integral part of the transactions contemplated by this Agreement, and that, without these agreements the other party would not have entered into this Agreement; accordingly, if any party fails to promptly pay any amounts due pursuant to Sections 9.5(b) through (e) and in order to obtain such payment the other party commences a suit which results in a judgement against the defaulting party for payment of all or a portion of a termination fee, the defaulting party shall pay to the other party its costs and expenses (including its reasonable attorneys' fees) incurred in connection with such suit, together with interest from the date of termination of this Agreement on the amounts owed at the prime rate of Citibank, N.A. in effect from time to time during such period. The payment of such termination fee shall be the sole and exclusive remedy of the other party with respect to the facts and circumstances giving rise to such payment obligation and the Termination Fee is payable whether or not there has been a breach of this Agreement.

Article X.

Miscellaneous and General

10.1. Survival.

This Article X and the agreements of the Company, Parent, Manzano, PNM, Merger Sub-1 and Merger Sub-2 contained in Sections 7.7 (Stock Exchange Listing and De-listing), 7.9 (Benefits and Other Employee Matters), 7.12 (Indemnification; Directors' and Officers' Insurance), 7.13 (Expenses) and 7.21 (Tax Disaffiliation Agreement) shall survive the consummation of the Mergers. This Article X, the agreements of the Company, Parent, Manzano and PNM Sub contained in Section 7.13 (Expenses), Section 9.5 (Effect of Termination and Abandonment) and the Confidentiality Agreements shall survive the termination of this Agreement. All other representations, warranties, covenants and agreements in this Agreement shall not survive the consummation of the Mergers or the termination of this Agreement.

10.2. Modification or Amendment.

Subject to the provisions of applicable Law, at any time prior to the Effective Time, the parties hereto may modify or amend this Agreement, by written agreement executed and delivered by duly authorized officers of the respective parties.

10.3. Waiver of Conditions.

The conditions to each of the parties' obligations to consummate the Mergers are for the sole benefit of such party and may be waived by such party in whole or in part to the extent permitted by applicable law.

10.4. Counterparts.

This Agreement may be executed in any number of counterparts, each such counterpart being deemed to be an original instrument, and all such counterparts shall together constitute the same agreement.

10.5. GOVERNING LAW AND VENUE.

THIS AGREEMENT SHALL BE DEEMED TO BE MADE IN AND IN ALL RESPECTS SHALL BE INTERPRETED, CONSTRUED AND GOVERNED BY AND IN ACCORDANCE WITH THE LAW OF THE STATE OF NEW YORK APPLICABLE TO CONTRACTS TO BE WHOLLY PERFORMED IN SUCH STATE. The parties hereby irrevocably submit to the jurisdiction of the courts of the State of New York and the Federal courts of the United States of America located in the State of New York in each case in the borough of Manhattan solely in respect of the interpretation and enforcement of the provisions of this Agreement and of the documents referred to in this Agreement, and in respect of the Transactions, and hereby waive, and agree not to assert, as a defense in any action, suit or proceeding for the interpretation or enforcement hereof or of

any such document, that it is not subject thereto or that such action, suit or proceeding may not be brought or is not maintainable in said courts or that the venue thereof may not be appropriate or that this Agreement or any such document may not be enforced in or by such courts, and the parties hereto irrevocably agree that all claims with respect to such action or proceeding shall be heard and determined in such a State of New York or Federal court. The parties hereby consent to and grant any such court jurisdiction over the person of such parties and over the subject matter of such dispute and agree that mailing of process or other papers in connection with any such action or proceeding in the manner provided in Section 10.6 or in such other manner as may be permitted by law shall be valid and sufficient service thereof.

10.6. Notices.

Any notice, request, instruction or other document to be given hereunder by any party to the others shall be in writing and delivered personally or sent by registered or certified mail, postage prepaid, or by facsimile:

if to Parent, PNM, Manzano, Merger Sub-1 or Merger Sub-2

Public Service Company of New Mexico and
Manzano Corporation
Alvarado Square,
Albuquerque, NM 87158
Attention: Chief Financial Officer

Fax: (505) 241-2368

with a copy to

Winthrop, Stimson, Putnam & Roberts
One Battery Park Plaza
New York, New York 10004
Attn: Timothy Michael Toy, Esq.
Stephen R. Rusmiser, Esq.
Fax: (212) 858-1500

if to the Company

Western Resources, Inc.
818 South Kansas Avenue
Topeka, KS 66612
Attention: Richard D. Terrill, Esq.
Executive Vice President and
General Counsel
Fax: (785) 575-1936

with a copy to

LeBoeuf, Lamb, Greene & MacRae, L.L.P.
125 West 55th Street
New York, New York 10019
Attn: William S. Lamb, Esq.
Benjamin G. Clark, Esq.
Fax: (212) 424-8500

or to such other persons or addresses as may be designated in writing by the party to receive such notice as provided above.

10.7. Entire Agreement; NO OTHER REPRESENTATIONS.

This Agreement (including any exhibits hereto), the Company Disclosure Letter, the Parent Disclosure Letter and the Confidentiality Agreement dated July 25 2000, between PNM and the Company and the Confidentiality Agreement dated October 24, 2000 between the Company and PNM (collectively, the "Confidentiality Agreements") constitute the entire agreement, and supersede all other prior agreements, understandings, representations and warranties both written and oral, among the parties, with respect to the subject matter hereof. EACH PARTY HERETO AGREES THAT, EXCEPT FOR THE REPRESENTATIONS AND WARRANTIES CONTAINED IN THIS AGREEMENT, NEITHER PARENT, MERGER SUB-1 AND MERGER SUB-2, NOR THE COMPANY MAKES ANY OTHER REPRESENTATIONS OR WARRANTIES, AND EACH HEREBY DISCLAIMS ANY OTHER REPRESENTATIONS OR WARRANTIES MADE BY ITSELF OR ANY OF ITS OFFICERS, DIRECTORS, EMPLOYEES, AGENTS, FINANCIAL AND LEGAL ADVISORS OR OTHER REPRESENTATIVES, WITH RESPECT TO THE EXECUTION AND DELIVERY OF THIS AGREEMENT OR THE TRANSACTIONS, NOTWITHSTANDING THE DELIVERY OR DISCLOSURE TO THE OTHER OR THE OTHER'S REPRESENTATIVES OF ANY DOCUMENTATION OR OTHER INFORMATION WITH RESPECT TO ANY ONE OR MORE OF THE FOREGOING.

10.8. No Third-Party Beneficiaries.

Other than with respect to the matters set forth in Section 7.12 (Indemnification; Directors' and Officers' Insurance) and Section 7.21 (Tax Disaffiliation Agreement), this Agreement is not intended to confer upon any Person other than the parties hereto any rights or remedies hereunder.

10.9. Obligations of Parent and of the Company.

Except as otherwise specifically provided herein, whenever this Agreement requires a Subsidiary of Parent or PNM to take any action, such requirement shall be deemed to include an undertaking on the part of Parent or PNM to cause such Subsidiary to take such action. Whenever this Agreement requires a Subsidiary of the Company to take any action, such requirement shall be deemed to include an undertaking on the part of the Company to cause such Subsidiary to take such action and, after the Effective Time, on the part of the Surviving Corporation to cause such Subsidiary to take such action.

10.10. Severability.

The provisions of this Agreement shall be deemed severable and the invalidity or unenforceability of any provision shall not affect the validity or enforceability of the other provisions hereof. If any provision of this Agreement, or the application thereof to any Person or any circumstance, is invalid or unenforceable, (a) a suitable and equitable provision shall be substituted therefor in order to carry out, so far as may be valid and enforceable, the intent and purpose of such invalid or unenforceable provision and (b) the remainder of this Agreement and the application of such provision to other Persons or circumstances shall not be affected by such invalidity or unenforceability, nor shall such invalidity or unenforceability affect the validity or enforceability of such provision, or the application thereof, in any other jurisdiction.

10.11. Interpretation.

The table of contents and headings herein are for convenience of reference only, do not constitute part of this Agreement and shall not be deemed to limit or otherwise affect any of the provisions hereof. Where a reference in this Agreement is made to a Section or Exhibit, such reference shall be to a Section of or Exhibit to this Agreement unless otherwise indicated. Whenever the words "include," "includes" or "including" are used in this Agreement, they shall be deemed to be followed by the words "without limitation."

10.12. Assignment.

This Agreement shall not be assignable by operation of law or otherwise; provided, however, that Parent may designate, by written notice to the Company, another wholly owned direct or indirect subsidiary to be a constituent corporation in lieu of Merger Sub-1 or Merger Sub-2, so long as such designation would not reasonably be expected to (i) impose any material delay in the obtaining of, or significantly increase the risk of not obtaining any Parent Required Statutory Approval or Company Required Statutory Approval or the expiration or termination of any applicable waiting period, (ii) significantly increase the risk of any Governmental Entity entering an order prohibiting the consummation of the Mergers, (iii) significantly increase the risk of not being able to remove any such order on appeal or otherwise or (iv) materially delay the consummation of the Mergers. If the requirements of the previous sentence are met and Parent wishes to designate another wholly owned direct or indirect subsidiary to be a constituent corporation in lieu of Merger Sub-1 or Merger Sub-2, then, all references herein to Merger Sub-1 or Merger Sub-2, as the case may be, shall be deemed references to such other subsidiary, except that all representations and warranties made herein with respect to Merger Sub-1 or Merger Sub-2, as the case may be, as of the date of this Agreement shall be deemed representations and warranties made with respect to such other subsidiary as of the date of such designation.

IN WITNESS WHEREOF, this Agreement has been duly executed, acknowledged and delivered by the duly authorized officers of the parties hereto as of the date first written above.

WESTERN RESOURCES, INC.

By: /s/David C. Wittig

Name: David C. Wittig
Title: Chairman of the Board,
President and Chief
Executive Officer

HVOLT ENTERPRISES, INC.

By: /s/ Jeffry E. Sterba

Name: Jeffry E. Sterba
Title: President

HVK, INC.

By: /s/ Jeffry E. Sterba

Name: Jeffry E. Sterba
Title: President

HVNM, INC.

By: /s/ Jeffry E. Sterba

Name: Jeffry E. Sterba
Title: President

PUBLIC SERVICE COMPANY OF NEW MEXICO

By: /s/ Jeffry E. Sterba

Name: Jeffry E. Sterba
Title: Chairman, President &
Chief Executive Officer

Pursuant to Section 3.8 of this foregoing Agreement, the undersigned hereby joins in such Agreement this ___ day of _____, 2001.

MANZANO CORPORATION

By: _____
Name:
Title:

ASSET ALLOCATION AND
SEPARATION AGREEMENT

between

Western Resources, Inc.

and

Westar Industries, Inc.

Dated as of November 8, 2000

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ASSET ALLOCATION AND SEPARATION AGREEMENT

ASSET ALLOCATION AND SEPARATION AGREEMENT, dated as of November 8, 2000 (this "Agreement"), between WESTERN RESOURCES, INC., a Kansas corporation ("Western"), and WESTAR INDUSTRIES, INC., a Kansas corporation ("Westar").

W I T N E S S E T H:

WHEREAS, Westar is presently a wholly owned subsidiary of Western;

WHEREAS, the Board of Directors of Western has approved (i) the issuance of non-transferable rights (the "Rights") to purchase up to 9.9% of the outstanding shares of Westar Common Stock (as defined herein) issuable pursuant to the Rights (the "Rights Offering Shares") and (ii) the terms and conditions of the distribution and exercise of Rights as provided by the registration statement filed by Westar under the Securities Act in connection therewith (the "Rights Offering");

WHEREAS, the Board of Directors of Western has determined that it is in the best interests of Western, its shareholders and Westar that all outstanding shares of Westar Common Stock then held by Western be distributed to Western's shareholders in exchange for a portion of the shares of Western common stock held by such shareholders (provided that all conditions precedent to the Split-Off (as defined herein) have been satisfied) and that, pursuant to an agreement and plan of restructuring and merger, dated as of November 8, 2000 (the "Merger Agreement"), among Western, Public Service Company of New Mexico, a New Mexico corporation ("PNM"), HVOLT Enterprises, Inc., a corporation organized under the laws of Delaware ("Parent"), HVK, Inc., a Kansas corporation and a wholly owned subsidiary of Parent ("Merger Sub-1") and HVNM, Inc., a New Mexico corporation ("Merger Sub-2"), Merger Sub-1 be merged with and into Western, as a result of which Western will become a wholly owned subsidiary of Parent (the "Merger");

WHEREAS, for United States federal income Tax (as defined below) purposes, it is intended that (i) the Split-Off will be treated as a taxable exchange of the Split-Off Portion (as defined below) of the Western Common Stock for Westar Common Stock, and (ii) the Mergers taken together will be treated as a transaction described in Section 351 of the Internal Revenue Code of 1986, as amended (the "Code");

WHEREAS, Western and Westar are concurrently herewith entering into, or propose to enter into prior to or on the Separation Date (as defined below), the Ancillary Agreements (as defined below); and

WHEREAS, the parties hereto desire to set forth herein the principal corporate transactions to be effected in connection with the Rights Offering and the Split-Off and certain other matters relating to the relationship and the respective rights and obligations of the parties following the completion of the Rights Offering and, subsequently, following the Split-Off.

NOW, THEREFORE, the parties hereto agree as follows:

ARTICLE I
DEFINITIONS

Section 1.01. Definitions. The following terms, as used herein, have the following meanings:

"Action" means any claim, suit, action, arbitration, inquiry, investigation or other proceeding of any nature (whether criminal, civil, legislative, administrative, regulatory, prosecutorial or otherwise) by or before any arbitrator or Governmental Entity or similar Person or body.

"Affiliate" shall have the meaning ascribed to such term in Rule 12b-2 of the Exchange Act as of the date hereof, provided, however, that except when referred to as an "Existing Affiliate," for purposes of this Agreement, no member of one Group shall be treated as an Affiliate of any member of the other Group.

"Agreement" has the meaning set forth in the recitals.

"Ancillary Agreements" means each of the Registration Rights Agreement, the Tax Disaffiliation Agreement, the Shared Services Agreement, the Westar Option, the Trademark Assignment Agreement and the Sublease Agreement.

"Average Trading Price" means the average of the daily volume-weighted trading price per share of Western Common Stock or Westar Common Stock, as applicable, on the New York Stock Exchange, as applicable, as reported by Bloomberg Financial Markets, or if not reported thereby, another reasonably agreed authoritative source.

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

"Commission" means the Securities and Exchange Commission.

"Company Disclosure Letter" shall have the meaning specified in the Merger Agreement.

"Confidential Information" has the meaning set forth in Section 7.06.

"Confidentiality Agreements" means the Confidentiality Agreement, dated as of July 25, 2000, between PNM and Western and the Confidentiality Letter between Western and PNM dated October 20, 2000.

"Contracts" means any agreement, lease, license, contract, treaty, note, mortgage, indenture, franchise, permit, concession, arrangement or other obligation.

"Control" means the possession, directly or indirectly, of the power to direct or cause the direction of the management and policies of a Person, whether through the ownership of voting securities, by contract or otherwise; and the terms "controlling" and "controlled" have meanings correlative to the foregoing.

"Convertible Preference Stock" means convertible preference stock of Western, with the terms specified in Exhibit B to the Merger Agreement.

"CPI Western Power Holdings" means CPI Western Power Holdings, Inc., a Bermuda limited liability company.

"Cut Off Date" means 15 Business Days prior to the Closing Date (as defined in the Merger Agreement).

"Damages" means, with respect to any Person, any and all damages (including punitive and consequential damages), losses, liabilities and expenses incurred or suffered by such Person (including, but not limited to, all expenses of investigation, all attorneys' and expert witnesses' fees and all other out-of-pocket expenses incurred in connection with any Action or threatened Action).

"Employment Agreements" means the employment agreements listed in Item 10 of Section 7.9 of the Company Disclosure Letter for the Merger Agreement.

"Environmental Law" means any federal, state or local laws (including, without limitation, common law), regulations, codes, rules, ordinances, permits, authorizations, decrees, orders, injunctions or judgments and any binding administrative or judicial interpretations thereof relating to: (a) pollution; (b) the protection of the environment (including air, water, soil, subsurface strata and natural resources) or human health and safety from exposure to Hazardous Substances and (c) the regulation of the generation, use, storage, handling, transportation, treatment, release, remediation or disposal of Hazardous Substances.

"Exchange Act" means the Securities Exchange Act of 1934, as amended, and the rules and regulations promulgated thereunder.

"Existing Affiliate" means any Affiliate of Western as of the date hereof and not giving effect to this Agreement, the Restructuring or the Merger.

"Finally Determined" means, with respect to any Action, threatened Action or other matter, that the outcome or resolution of that Action, threatened Action or other matter either (i) has been decided through binding arbitration or by a Governmental Entity of competent jurisdiction by judgment, order, award, or other ruling or (ii) has been settled or voluntarily dismissed by the parties pursuant to the dispute resolution procedure set forth in Section 9.10 or otherwise and, in the case of each of clauses (i) and (ii), the claimants' rights to maintain that Action, threatened Action or other matter have been finally adjudicated, waived, discharged or extinguished, and that judgment, order, ruling, award, settlement or dismissal (whether mandatory or voluntary, but if voluntary that dismissal must be final, binding and with prejudice as to all claims specifically pleaded in that Action) is subject to no further appeal, vacatur proceeding or discretionary review.

"Former Affiliate" means any Person (as defined below) that was, at any time prior to the date hereof and without giving effect to this Agreement, but

has ceased to be, an Affiliate of Western.

"Governmental Entity" means any U.S. or non-U.S. governmental or regulatory authority, agency, commission, tribunal, body or other governmental, quasi-governmental or self-regulatory entity.

"Group" means, as the context requires, the Westar Group (as defined below) or the Western Group (as defined below).

"Group Policies" means all Policies, current or past, which prior to the Split-Off Time are or at any time were maintained by or on behalf of or for the benefit or protection of Western, any Existing Affiliate or any Former Affiliate (or any of their predecessors) and/or one or more of the current or past directors, officers, employees or agents of any of the foregoing including, without limitation, the Policies identified on Schedule 1.01(a).

"Gross-Up Payment" shall have the meaning set forth in the Employment Agreements.

"Hazardous Substances" means (a) any substances, mixtures, chemicals, products, materials or wastes that, pursuant to Environmental Law, are defined by or regulated as or having the characteristics of "hazardous," "toxic," "pollutant," "contaminant," "flammable," "corrosive," "reactive," "explosive" or "radioactive"; or (b) any petroleum, petroleum products or by-products, friable asbestos or any material or equipment containing regulated concentrations of polychlorinated biphenyls.

"Indemnified Party" has the meaning set forth in Section 5.04.

"Indemnifying Party" has the meaning set forth in Section 5.04.

"Information Statement" means the information statement to be sent, if necessary, to each Western Shareholder of record as of the Split-Off Record Date in connection with the Split-Off.

"Intellectual Property Rights" means (i) inventions, whether or not patentable, reduced to practice or made the subject of one or more pending patent applications, (ii) national and multinational statutory invention registrations, patents and patent applications (including all reissues, divisions, continuations, continuations-in-part, extensions and reexaminations thereof) registered or applied for in the United States and all other nations throughout the world, and all improvements to the inventions disclosed in each such registration, patent or patent application, (iii) trademarks, service marks, trade dress, logos, domain names, trade names and corporate names (whether or not registered) in the United States and all other nations throughout the world, including all variations, derivations, combinations, registrations and applications for registration of the foregoing and all goodwill associated therewith, (iv) copyrights (whether or not registered) and registrations and applications for registration thereof in the United States and all other nations throughout the world, including all derivative works, moral rights, renewals, extensions, reversions or restorations associated with such copyrights, now or hereafter provided by law, regardless of the medium of fixation or means of expression, (v) computer software (including source code, object code, firmware, operating systems and specifications), (vi) trade secrets and, whether or not confidential, business information (including pricing and cost information, business and marketing plans and customer and supplier lists) and know-how (including manufacturing and production processes and techniques and research and development information), (vii) industrial designs (whether or not registered), (viii) databases and data collections, (ix) copies and tangible embodiments of any of the foregoing, in whatever form or medium, (x) all rights to obtain and rights to apply for patents, and to register trademarks and copyrights, (xi) all rights in all of the foregoing provided by treaties, conventions and common law and (xii) all rights to sue or recover and retain damages and costs and attorneys' fees for past, present and future infringement or misappropriation of any of the foregoing.

"Intercompany Receivable" means the receivable evidencing the debt owed from Western to Westar, as such amount shall be adjusted from time to time pursuant to Section 3.02(a)(ii) of the Merger Agreement.

"Law" means any applicable federal, state, local or foreign law, statute, ordinance, directive, rule, regulation, judgment, order, injunction, decree, arbitration award, agency requirement, license or permit of any Governmental Entity.

"Liability" or "Liabilities" means any and all claims, debts, liabilities, assessments, costs (including, with respect to matters under Environmental Laws, removal costs, remediation costs, closure costs and expenses of investigation and ongoing monitoring), deficiencies, charges, demands, fines, penalties, damages, losses, disgorgements and obligations, of any kind, character or description (whether absolute, contingent, matured, not matured, liquidated,

unliquidated, accrued, known, unknown, direct, indirect, derivative or otherwise) whenever arising, including, but not limited to, all costs, interest and expenses relating thereto (including, but not limited to, all expenses of investigation, all attorneys' and expert witnesses' fees and all other out-of-pocket expenses in connection with any Action or threatened Action) (except items relating to Taxes).

"Merger" has the meaning set forth in the recitals.

"Mergers" has the meaning set forth in the Merger Agreement.

"Merger Agreement" has the meaning set forth in the recitals.

"Merger Effective Time" shall have the meaning assigned to the term "Effective Time" in the Merger Agreement.

"Merger Exchange Ratio" shall have the meaning assigned to the term "Exchange Ratio" in the Merger Agreement.

"Merger Per Share Amount" shall have the meaning assigned to the term "Per Share Amount" in the Merger Agreement.

"Merger Sub-1" has the meaning set forth in the recitals.

"NYSE" means the New York Stock Exchange, Inc.

"Parent" has the meaning set forth in the recitals.

"Person" means any individual, corporation (including any not-for-profit corporation), general or limited partnership, limited liability company, joint venture, estate, trust, association, organization, Governmental Entity or other entity of any kind or nature, including any successor or predecessor thereto.

"PNM" has the meaning set forth in the recitals.

"Policy" or "Policies" means insurance policies and insurance contracts of any kind, including, without limitation, primary, excess and umbrella policies, directors and officers', errors and omissions, commercial general liability policies, life and benefits policies and contracts, fiduciary liability, automobile, aircraft, property and casualty, workers' compensation and employee dishonesty insurance policies, bonds and self-insurance and captive insurance company arrangements, together with the rights, benefits and privileges thereunder.

"Properties" means the real property located at 800 South Kansas Avenue and 818 South Kansas Avenue in Topeka, Kansas.

"Proxy Statement" means the proxy statement of Western to be filed with the Commission pursuant to the Exchange Act in connection with the Merger, and, if necessary, the Split-Off.

"Purchase Date" means a date specified as the effective date for a purchase of securities pursuant to Section 3.2(a)(i) or Section 3.2(a)(ii) of the Merger Agreement.

"Purchase Notice" shall have the meaning specified in Section 2.02.

"Purchase Price" means (x) in the case of Western Common Stock, the Average Trading Price of Western Common Stock for the 20 trading days ending on the close of business on the trading day immediately preceding the applicable purchase date, (y) in the case of Convertible Preference Stock, \$100 per share, and (z) in the case of Westar Common Stock, the Average Trading Price of the Westar Common Stock for the 20 trading days ending on the close of business on the Trading day immediately preceding the applicable conversion Purchase Date, but in no event less than the per share exercise price of the Rights.

"Registration Rights Agreement" means the Registration Rights Agreement between Parent and Westar in the form attached hereto as Exhibit F.

"Representatives" has the meaning set forth in Section 7.06.

"Request" has the meaning set forth in Section 7.03(b).

"Restructuring" means the Transfers pursuant to Section 2.01 hereof, the settlement of intercompany accounts in accordance with Section 8.01 hereof, the Rights Offering, the Split-Off and the other transactions contemplated by this Agreement and the Ancillary Agreements.

"Rights" has the meaning set forth in the recitals.

"Rights Offering" has the meaning set forth in the recitals.

"Rights Offering S-1" means the registration statement filed with the Commission on Form S-1 to register the shares of Westar Common Stock being offered in the Rights Offering.

"Rights Offering Shares" has the meaning set forth in the recitals.

"Securities Act" means the Securities Act of 1933, as amended, and the rules and regulations promulgated thereunder.

"Separation" means the delivery of Rights Offering Shares to Western Shareholders upon consummation of the Rights Offering.

"Separation Date" means the Business Day on which the Separation Time occurs.

"Separation Time" means the earlier of (i) the time of delivery of the Rights Offering Shares to the Western Shareholders upon consummation of the Rights Offering and (ii) the Split-Off Time.

"Shared Services Agreement" means the Shared Services Agreement to be entered into between Western and Westar on the Separation Date to be effective as of the Separation Date, in substantially the form attached as Exhibit B hereto.

"Split-Off" means the split-off by Western, pursuant to the terms and subject to the conditions hereof, of all of the outstanding shares of Westar Common Stock held by Western immediately prior to the Split-Off Time to the Western Shareholders of record as of the Split-Off Record Date.

"Split-Off Agent" means the Exchange Agent (as defined in the Merger Agreement).

"Split-Off Date" means the Business Day on which the Split-Off is effected.

"Split-Off Documents" means this Agreement and the Ancillary Agreements and any other agreements or documents entered into to effect the transactions contemplated hereby or by the Ancillary Agreements (but excluding the Confidentiality Agreements and the Merger Agreement).

"Split-Off Portion" shall have the meaning specified in the Merger Agreement.

"Split-Off Record Date" means the Split-off Time.

"Split-Off S-4" means the registration statement to be filed under the Securities Act, if necessary, to register the shares of Westar Common Stock to be distributed in the Split-Off.

"Split-Off Time" means the Merger Effective Time (as defined below).

"Sublease Agreements" means the Sublease Agreements to be entered into on the Split-Off Date between Westar as Sublessor and Western as Sublessee to be effective as of the Split-Off Time (or an Affiliate of Western, in which case the obligations of such Affiliate shall be guaranteed by Western) in respect of the Properties reflecting the terms set forth on Exhibit C.

"Subsidiary" means, with respect to any Person, any corporation or other entity of which at least a majority of the securities or other ownership interests having by their terms ordinary voting power to elect a majority of the board of directors or other Persons performing similar functions are at the time directly or indirectly owned or controlled by such Person or by one or more of its respective Subsidiaries or by such Person and any one or more of its respective Subsidiaries.

"Tax" or "Taxes" means Tax or Taxes as such terms are defined in the Tax Disaffiliation Agreement.

"Tax Disaffiliation Agreement" means the Tax Disaffiliation Agreement hereto to be entered into among Western and Westar on the Separation Date to be effective as of the Split-Off Time in substantially the form attached as Exhibit D.

"Third-Party Claim" has the meaning set forth in Section 5.05(a).

"Trademark Assignment Agreement" means the Trademark Assignment Agreement to be entered into between Western and Westar on the Separation Date to be effective at the Split-Off Time with respect to the Westar Name Rights, reflecting the terms set forth on Exhibit E hereto.

"Transfer" has the meaning set forth in Section 2.01.

"Westar" has the meaning set forth in the recitals.

"Westar Assets" means all assets as reflected in the unaudited consolidated balance sheet as of September 30, 2000 of the Westar Group attached hereto as Schedule 1.01(e), together with all other assets, leases, properties and businesses, of every kind and description, wherever located, real, personal or mixed, tangible or intangible, owned by any member of the Westar Group or otherwise used primarily in connection with the Westar Business. Without limitation and for the avoidance of doubt, the following items are, and shall be, "Westar Assets" (and are not, and shall not be, Western Assets):

(a) All rights of the Westar Group under the Split-Off Documents;

(b) The assets to be transferred from Western to Westar pursuant to Section 2.01, including those assets described on Schedule 2.01

(c) all Westar Intellectual Property Rights; and

(d) all goodwill associated with the Westar Group or the Westar Assets prior to the Separation Time (excluding goodwill associated with the Western Business or the Western Assets).

"Westar Business" means the businesses and operations of the Westar Group, both as conducted on the date hereof, and as formerly conducted by any Westar Subsidiary, irrespective of whether or not a Westar Subsidiary remains a Subsidiary of Westar, but taking into account the Restructuring, and shall also include all businesses and operations conducted on or after January 1, 1995 by any Person at any time a Subsidiary of Western (other than a member of the Western Group) except businesses and operations related to (i) the processing, transmission, distribution or marketing of gas or (ii) the regulated generation, transmission, distribution or marketing of electricity in the United States, or any services related to (i) or (ii).

"Westar Common Stock" means the common stock, par value \$.01 per share, of Westar and the related preferred share purchase rights.

"Westar Group" means Westar and its direct and indirect Subsidiaries (including all successors to each of those Persons).

"Westar Group Liabilities" means, except as otherwise specifically provided in the Merger Agreement or any Split-Off Document, all Liabilities, whether arising before, at or after the Separation Time, of or relating to any member of the Westar Group or the Western Group to the extent arising from the conduct of, in connection with or relating to, the Westar Business (including arising in connection with or relating to the Wing Entities) or the ownership or use of the Westar Assets (including ownership or investments in any Person). Notwithstanding the foregoing, "Westar Group Liabilities" shall exclude any and all: (1) Liabilities for Taxes (which Liabilities shall be governed by the Tax Disaffiliation Agreement), and (2) other Liabilities to the extent specifically retained or assumed by the Western Group.

"Westar Indemnitee" has the meaning set forth in Section 5.02(a).

"Westar Intellectual Property Rights" means all Intellectual Property Rights (i) owned (x) by a member of the Westar Group or (y) by a member of the Western Group and licensed to or used exclusively by a member of the Westar Group or (ii) owned by a third party and licensed or sublicensed to a member of the Westar Group or to the Western Group for the use and benefit of any member of the Westar Group, in each case excluding the Western Intellectual Property Rights but including without limitation:

(a) all right, title and interest in and use of the "Westar" name and any derivative thereof including, without limitation, all trademarks, service marks, trade dress, logos, domain names, trade names and corporate names (whether or not registered) in the United States and all other nations throughout the world, including all variations, derivations, combinations, registrations and applications for registration of the foregoing and all goodwill associated therewith (collectively, the "Westar Name Rights"); and

(b) the Intellectual Property Rights listed on Schedule 1.01(b) hereto.

"Westar Litigation" means (i) the joint litigation that is identified on Schedule 1.01 (c); and (ii) any filed, claimed or threatened litigation arising from the conduct of, in connection with or relating to the conduct of the Westar Business or the Westar Assets (except any litigation related to Taxes, which matters shall be governed solely by the Tax Disaffiliation Agreement).

"Westar Litigation Liabilities" means all Liabilities relating to or

resulting from any filed, claimed or threatened litigation or other proceedings relating to, or arising out of, any event, fact or circumstance (whether alleged or otherwise) which are or become the subject of the matters identified in Schedule 1.01(c).

"Westar Name Rights" has the meaning specified in the definition of Westar Intellectual Property above.

"Westar Option" means the Stock Purchase Option Agreement to be entered into by Western and Westar on the Separation Date to be effective as of the Separation Time, in substantially the form attached hereto as Exhibit B.

"Westar Subsidiaries" means (i) each of the direct and indirect Subsidiaries of Westar listed on Schedule 1.01(h) as supplemented to add Persons that become Subsidiaries of Westar between the date hereof and the Split-Off Time.

"Western" has the meaning set forth in the recitals.

"Western Assets" means all assets as reflected in the unaudited consolidated balance sheet as of September 30, 2000 of the Western Group attached hereto as Schedule 1.01(d), together with all other assets, leases, properties and businesses, of every kind and description, wherever located, real, personal or mixed, tangible or intangible, owned by any member of the Western Group (other than those assets owned, held or used primarily in connection with the Westar Business), or otherwise used primarily in connection with the Western Business. Without limitation and for the avoidance of doubt, the following items are, and shall be, "Western Assets" (and are not, and shall not be, Westar Assets):

(a) all rights of the Western Group (but excluding any and all rights of the Westar Group) under the Merger Agreement, the Confidentiality Agreements and the Split-Off Documents;

(b) all Western Intellectual Property Rights; and

(c) all goodwill associated with the Western Business or the Western Assets.

"Western Benefits Liabilities" means, except to the extent any member of the Westar Group is obligated to indemnify any member of the Western Group pursuant to Section 5.01(c), all Liabilities of any member of the Western Group to any Person under any compensation or employee benefit plan.

"Western Business" means the businesses and operations of Western and the Western Subsidiaries as conducted as of the date hereof and as formerly conducted by any member of the Western Group (other than a member of the Westar Group), and shall also include all businesses and operations of any current or former Subsidiary of Western related to (i) the, processing, transmission, distribution or marketing of gas or (ii) the regulated generation, transmission, distribution or marketing of electricity in the United States, or any services related to (i) or (ii).

"Western Common Stock" means the common stock, par value \$5.00 per share, of Western.

"Western Group" means Western, the Western Subsidiaries and all successors to each of those Persons.

"Western Group Liabilities" means, except as otherwise specifically provided in the Merger Agreement or any Split-Off Document, all of the following Liabilities, whether arising before, at or after the Split-Off Time: (i) all Liabilities of or relating to any member of the Western Group or the Westar Group to the extent arising from the conduct of, in connection with or relating to, the Western Business, or the ownership or use of the Western Assets in connection therewith (including ownership or investments in any Person), and (ii) the Western Benefits Liabilities. Notwithstanding the foregoing, "Western Group Liabilities" shall exclude any and all: (1) Liabilities for Taxes (which Liabilities shall be governed by the Tax Disaffiliation Agreement), (2) Westar Litigation Liabilities, (3) Liabilities to the extent arising in connection with or relating to the Wing Entities, and (4) other Liabilities to the extent specifically retained or assumed by the Westar Group under any of the Split-Off Documents.

"Western Indemnitee" has the meaning set forth in Section 5.01(a).

"Western Intellectual Property Rights" means all Intellectual Property Rights (i) owned by a member of the Western Group or (ii) owned by a third party and licensed or sublicensed to a member of the Western Group and held for use or used primarily in the conduct of the Western Business, but excluding the Westar Name Rights.

"Western Officer Loan Liabilities" has the meaning set forth in Section 2.04.

"Western Resources (Bermuda)" means Western Resources (Bermuda) Ltd., a Bermuda Company.

"Western Shareholders" means the holders of the Western Common Stock.

"Western Subsidiaries" means the direct and indirect Subsidiaries of Western listed on Schedule 1.01 (g), as supplemented to add Persons that become Subsidiaries of Western between the date hereof and the Split-Off Time, but excluding Westar Subsidiaries.

"Wing Colombia" means Wing Colombia, L.L.C., a Delaware limited liability company.

"Wing Entities" means Wing Columbia, Wing Group, Wing International, Wing Turkey, CPI Western Power Holdings Ltd., and Western Resources (Bermuda), collectively.

"Wing Group" means The Wing Group Limited Co., a Delaware corporation.

"Wing International" means Wing International Ltd., a Texas limited liability company.

"Wing Turkey" means Wing Turkey, Inc., a Delaware corporation and a wholly owned subsidiary of Western.

ARTICLE II CONTRIBUTIONS AND ASSUMPTION OF LIABILITIES

Section 2.01. Transfers of Certain Assets to Westar Group. Upon the terms and subject to the conditions set forth herein, effective as of the Separation Time, Western shall, or, if requested, shall cause the relevant member of the Western Group to, assign, contribute, convey, transfer and deliver ("Transfer") to Westar or to one or more of Westar's wholly-owned Subsidiaries all of the right, title and interest of Western, or such member of the Western Group, in and to all Westar Assets that are owned by a member of the Western Group, as the Westar Assets shall exist on the Separation Date or on such later date as a particular Transfer may occur, including without limitation, the assets described on Schedule 2.01.

Section 2.02. Intercompany Transfers and Settlement of Intercompany Debt At any time between the date hereof and the Cut Off Date, Westar may (a) pay cash to Western as provided in Section 3.2(a)(i) of the Merger Agreement for the purposes and subject to the limits provided therein and (b) convert any outstanding amount of the Intercompany Receivable as provided in Section 3.2(a)(ii) of the Merger Agreement. provided any remaining balance of the Intercompany Receivable that has not been converted on or before the Merger Effective Time shall be so converted at the Effective Time, and Westar shall provide written notice to Western of its choice of conversion options on or prior to the Cut Off Date. In addition, Westar may pay cash to Westar as provided in Section 3.2(a)(ii) of the Merger Agreement for the purposes and subject to the limits provided therein.

In order to either (A) convert the Intercompany Receivable (in whole or in part pursuant to Section 3.2(a)(i) of the Merger Agreement), or (B) purchase securities pursuant to Section 3.2(a)(ii) of the Merger Agreement, Westar shall deliver to Western with a copy to PNM by facsimile a notice ("Purchase Notice") at least five Business Days prior to the applicable Purchase Date specified in the Purchase Notice, specifying (i) the amount of the Intercompany Receivable to be converted or cash to be advanced; (ii) the class of securities to be purchased; (iii) the applicable Purchase Price and (iv) the applicable Purchase Date. Western and PNM shall have the opportunity to review and comment on such Purchase Notice. Such Purchase Notice shall also be immediately forwarded to Western by overnight courier or hand delivery. Except as set forth below, the Purchase Notice and election once given shall be irrevocable.

If Western agrees with the calculation of the Purchase Price in the Purchase Notice, Western shall issue and deliver to Westar, or its designee, within three Business Days after the applicable Purchase Date, a certificate or certificates for the number and class of shares of Stock to which Westar shall be entitled as aforesaid. If Western in good faith disputes the calculation of the Purchase Price or the number of shares issuable pursuant to such Purchase Notice, Western shall give written notice of any such objection to Westar within two Business Days of receipt of the Purchase Notice, and the parties shall attempt in good faith to resolve such dispute prior to the specified Purchase Date. If such dispute is not resolved prior to the Purchase Date, the parties shall refer the matter to a nationally recognized accounting firm selected by Westar and reasonably acceptable to Western, the decision of which shall be

final and binding on Western and Westar.

Westar acknowledges and agrees that regulatory approval for the issuance of Convertible Preference Stock may be required prior to the initial issuance of Convertible Preference Stock, and Western agrees to use commercially reasonable efforts to obtain such regulatory approval. If after delivery by Westar of a Purchase Notice notifying Western of Westar's election to purchase Convertible Preference Stock conversion of all or part of the Intercompany Receivable, a regulatory authority of competent jurisdiction prohibits Western from issuing Convertible Preference Stock, or any such regulatory authority conditions its approval on a change in the terms of such security, Westar may revoke its Purchase Notice with respect to such Convertible Preference Stock.

No fractional shares of Stock or scrip representing fractional shares of any Stock shall be issuable hereunder. The number of shares of Stock that are issuable upon any conversion shall be rounded up or down to the nearest whole share.

Section 2.03. Agreement Relating to Consents Necessary to Transfer Assets. Notwithstanding anything in this Agreement to the contrary, this Agreement shall not constitute an agreement to transfer or assign any asset or any claim or right or any benefit arising thereunder or resulting therefrom if an attempted assignment thereof, without the necessary consent of a third party, would constitute a breach or other contravention thereof or in any way materially and adversely affect the rights of Westar, or any member of the Westar Group, or Western, or any member of the Western Group, thereunder. Westar and Western shall cooperate with each other, keep each other informed and will, subject to Section 8.03, use all commercially reasonable efforts necessary to obtain the consent of any third party or any Governmental Entity, if any, required in connection with the transfer or assignment pursuant to Section 2.01 of any such asset or any claim or right or any benefit arising thereunder. Until such required consent is obtained, or if such consent cannot be obtained or an attempted assignment or assumption thereof would be ineffective or would adversely affect the rights of the transferor thereunder so that the intended transferee would not in fact receive substantially all such rights, Westar and Western will cooperate in a mutually agreeable arrangement under which the intended transferee would obtain the benefits and assume the obligations thereunder in accordance with this Agreement including (but not limited to) sub-contracting, sub-licensing or sub-leasing to such transferee, or under which the transferor would enforce for the benefit of the transferee and (except as otherwise provided herein or in any Ancillary Agreement) at the transferor's expense any and all rights of the transferor against, with the transferee assuming the transferor's obligations to, each third party thereto. In the case of any Transfer involving a third party consent, the transferor shall not agree to any terms of transfer (without the prior written consent of the transferee) which have the effect of materially altering the rights or benefits arising under any of the particular Westar Assets, Western Assets, Westar Group Liabilities or Western Group Liabilities, as the case may be, subject to the Transfer.

Section 2.04. Certain Officer Loans. Westar shall use commercially reasonable efforts to obtain the release of Western (and each member of the Western Group that may be obligated) from all liability (whether by way of guaranty, indemnity or otherwise) (collectively, the "Western Officer Loan Liabilities") in respect of loans to officers or directors in connection with their purchase of Westar Common Stock, if any, prior to the Split-Off Date.

Section 2.05. Shared Services. As between Western Group, on the one hand, and the Westar Group, on the other hand, notwithstanding any other provision of this Agreement to the contrary, the parties have agreed that (i) provision of services pursuant to the P1 Agreement (as defined on the Shared Services Agreement) shall be part of the Westar Business for purposes of this Agreement and not part of the Western Business and, (ii) with respect to the provision by Western of services pursuant to the Share Services Agreement, the respective rights, liabilities and obligations of the parties thereto shall be governed by the Shared Services Agreement and not by this Agreement.

Section 2.06. Subleases. Western and the other members of the Western Group may not assign or sublease their rights under the Sublease Agreements without the consent of Westar. Western shall give Westar notice of its intent to assign or sublease under one or both Sublease Agreements, which notice shall disclose the identity of the proposed assignee or sublessee. Westar shall have 30 days following receipt of such notice to either terminate the Sublease Agreement in question (without necessity for any further action by any member of the Westar Group) or consent to the sublease or assignment. If Westar does not deliver notice of termination during such 30 day period, Western may assign or sublease the Sublease Agreement in question to the Person indicated in the original notice. Such right to assign or sublease shall terminate if not exercised within 180 days.

Representations and warranties

Section 3.01. Representations and Warranties of Westar. Westar represents and warrants to Western as follows:

(a) Westar is a corporation duly organized, validly existing and in good standing under the laws of the State of Kansas and has all requisite corporate power and authority to own and operate its properties and to carry on its business as now being conducted.

(b) Westar has all requisite power and authority to execute this Agreement and the Ancillary Agreements and to consummate the transactions contemplated hereby and thereby. The execution and delivery of this Agreement and the consummation of the transactions contemplated hereby have been duly authorized by all necessary action on the part of Westar. This Agreement has been duly executed and delivered by Westar and constitutes a legal, valid and binding obligation of Westar enforceable against it in accordance with its terms, except as may be limited by applicable bankruptcy, insolvency, reorganization, fraudulent conveyance or other similar laws affecting the enforcement of creditors' rights generally, and except that the availability of equitable remedies, including specific performance, may be subject to the discretion of any court before which any proceedings may be brought.

(c) The execution, delivery and performance by Westar of this Agreement will not contravene, violate, result in a breach of or constitute a default under (i) any provision of applicable law or of the articles of incorporation or by-laws of Westar, (ii) any judgment, order, decree, statute, law, ordinance, rule or regulation applicable to Westar or any of its properties or assets, or (iii) any material contract to which Westar is a party or by which Westar or any of its properties is bound.

(d) No consent, approval, order, authorization of, or registration, declaration or filing with, any Governmental Entity is required in connection with the making or performance by Westar of this Agreement, subject to compliance with applicable securities laws.

Section 3.02. Representations and Warranties of Western. Western represents and warrants to Westar as follows:

(a) Western is a corporation duly organized, validly existing and in good standing under the laws of the State of Kansas and has all requisite corporate power and authority to own and operate its properties and to carry on its business as now being conducted.

(b) Western has all requisite power and authority to execute this Agreement and the Ancillary Agreements and to consummate the transactions contemplated hereby and thereby. The execution and delivery of this Agreement and the consummation of the transactions contemplated hereby have been duly authorized by all necessary action on the part of Western. This Agreement has been duly executed and delivered by Western and constitutes a legal, valid and binding obligation of Western enforceable against it in accordance with its terms, except as may be limited by applicable bankruptcy, insolvency, reorganization, fraudulent conveyance or other similar laws affecting the enforcement of creditors' rights generally, and except that the availability of equitable remedies, including specific performance, may be subject to the discretion of any court before which any proceedings may be brought.

(c) Except as set forth on Schedule 3.02(c), the execution, delivery and performance by Western of this Agreement will not contravene, violate, result in a breach of or constitute a default under (i) any provision of applicable law or of the articles of incorporation or by-laws of Western, (ii) any judgment, order, decree, statute, law, ordinance, rule or regulation applicable to Western or any of its properties or assets, or (iii) any material contract to which Western is a party or by which Western or any of its properties is bound.

(d) Except as set forth on Schedule 3.02(d), no consent, approval, order, authorization of, or registration, declaration or filing with, any Governmental Entity is required in connection with the making or performance by Western of this Agreement, subject to compliance with applicable securities laws.

ARTICLE IV THE SPLIT-OFF

Section 4.01. Cooperation Prior to the Split-Off.

(a) Western and Westar shall cooperate in the preparation, filing and mailing, as applicable, of the Split-Off S-4, the Information Statement and any proxy statement that is required to be prepared in connection with the Split-Off.

(b) Western and Westar shall cooperate in preparing, filing with the

Commission and causing to become effective any registration statements or amendments thereto that are appropriate to reflect the establishment of or amendments to any employee benefit and other plans contemplated by the Ancillary Agreements.

(c) Western and Westar shall take all such action as may be necessary or appropriate under the securities or blue sky laws of states or other political subdivisions of the United States and shall use all commercially reasonable efforts necessary to comply with all applicable foreign securities laws in connection with the Split-Off or by the Ancillary Agreements.

(d) Westar shall prepare, file and pursue an application to permit the listing of the Westar Common Stock to be distributed in the Split-Off on the NYSE.

(e) Westar and Western shall execute and deliver each of the Ancillary Agreements on or prior to the Separation Date or the Split-Off Date, as applicable.

Section 4.02. Western Board Action; Conditions Precedent to the Split-Off. Western's Board of Directors shall establish (or delegate authority to establish) appropriate procedures in connection with the Split-Off. In no event shall the Split-Off occur unless the following conditions shall have been satisfied or waived by both parties:

(a) the Westar Common Stock shall have been registered under the Exchange Act, and any registration statement required under the Securities Act for the Split-Off shall be effective and shall not be the subject of any stop order or proceeding by the Commission seeking a stop order;

(b) the Westar Common Stock to be delivered in the Split-Off shall have been approved for listing on the NYSE, subject to official notice of issuance;

(c) each of the Western Board of Directors and the Westar Board of Directors (i) shall have received an opinion, addressed and reasonably satisfactory to each of them from an independent solvency firm selected by those boards of directors, and (ii) shall otherwise be reasonably satisfied, (A) that after giving effect to the Split-Off (x) neither Western nor Westar will be insolvent or will have unreasonably small capital or assets with which to engage in their respective businesses, and (y) each of Western and Westar will be able to pay its respective debts as they become due in the usual course of business and (B) that the Split-Off, when effected in accordance with the terms of this Agreement and the Ancillary Agreements, shall have been effected in accordance with the provisions of Kansas law relating to distributions and applicable fraudulent transfer and fraudulent conveyance laws;

(d) each condition to the Merger set forth in the Merger Agreement shall have been satisfied or waived (other than those conditions relating to the Split-Off and those that are designed to be satisfied after the Split-Off);

(e) no temporary restraining order, preliminary or permanent injunction or other order issued by any Governmental Entity of competent jurisdiction or other legal restraint or prohibition preventing the consummation of the Split-Off shall be in effect (each party agreeing to use all reasonable efforts to have any such order reversed or injunction lifted) and all authorizations from Governmental Entities and other consents required for the consummation of the Split-Off shall have been obtained, including without limitation those listed in Schedules 3.02(c) and 3.02(d);

(f) Westar shall be exempt from registration under the Investment Company Act of 1940;

(g) Each of the Ancillary Agreements shall have been duly executed and delivered by the parties thereto and such Ancillary Agreements shall be in full force and effect; and

(h) Westar shall have been released from any obligations under the split dollar life insurance policies described on Schedule 4.02 and any guarantee of the financial obligations of Westar Generating, Inc.

Section 4.03. The Split-Off. Subject to the terms and conditions set forth in this Agreement, the Split-Off shall be effected as of the Split-Off Time in accordance with the Merger Agreement. Immediately prior to the Split-Off Time, Western shall deliver to the Split-off Agent, for the benefit of the Western Shareholders of record on the Split-Off Record Date, a stock certificate or certificates, endorsed by Western in blank, representing all of the then outstanding shares of Westar Common Stock owned by Western. The Merger and Split-Off shall be effected such that the Merger Consideration (as defined in the Merger Agreement) and the Split-Off Consideration are payable only to the same Western Shareholders.

Section 4.04. Fractional Shares. No certificates representing fractional shares of Westar Common Stock will be distributed in the Split-Off. The Split-Off Agent will be directed to determine the number of whole shares and fractional shares of Westar Common Stock allocable to each Western Shareholder of record as of the Split-Off Record Date. Upon the determination by the Split-Off Agent of such number of fractional shares, as soon as practicable after the Split-Off Date, the Split-Off Agent, acting on behalf of the holders thereof, shall sell such fractional shares for cash on the open market in each case at the then prevailing market prices and shall disburse to each holder entitled thereto, in lieu of any fractional share, without interest, that holder's ratable share of the proceeds of that sale, after making appropriate deductions of the amount required, if any, to be withheld for United States federal income Tax purposes.

ARTICLE V
INDEMNIFICATION AND OTHER MATTERS

Section 5.01. Westar Indemnification of Western Group.

(a) Subject to Section 5.03, from and after the Split-Off Date, Westar shall indemnify, defend and hold harmless each member of the Western Group, their Affiliates (including, for the avoidance of doubt, Parent) and their respective officers, directors and employees (each, a "Western Indemnitee") from and against any and all Damages incurred or suffered by any Western Indemnitee arising out of (i) any and all Westar Group Liabilities other than those relating to Taxes, (ii) the breach by any member of the Westar Group of any obligation under this Agreement, and (iii) any Western Officer Loan Liability. Notwithstanding anything to the contrary contained in this Agreement, all indemnities relating to Taxes or a breach of any obligation under the Tax Disaffiliation Agreement shall be governed solely by the specific terms of the Tax Disaffiliation Agreement.

(b) Subject to Section 5.03, from and after the Split-Off Date, Westar shall indemnify, defend and hold harmless each Western Indemnitee and each Person, if any, who controls any Western Indemnitee within the meaning of either Section 15 of the Securities Act or Section 20 of the Exchange Act from and against any and all Damages caused by any untrue statement or alleged untrue statement of a material fact contained in the Split-Off S-4 or Rights Offering S-1 or any amendment thereof or the Information Statement, Proxy Statement or Prospectus (in each case as amended or supplemented if Westar shall have furnished any amendments or supplements thereto), or caused by any omission or alleged omission to state therein a material fact necessary to make the statements therein, in the light of the circumstances under which they were made, not misleading, except to the extent such Damages were caused by information provided by any member of the Western Group specifically for inclusion therein.

(c) Westar shall indemnify Western and Parent to the extent the Net Present Value (as defined below) of (x) any Gross-Up Payments, (y) any other incremental payments and benefits, net of any tax benefits to Western, Parent or any of their Affiliates, made, or to be made, by Western under the Employment Agreements to a covered employee (provided, however, that such incremental payments or benefits result from both a termination of employment and a change in control (as defined therein) occurring by reason of transactions contemplated by the Merger Agreement (excluding any payments attributable to stock options, restricted stock, restricted share units and other equity-based compensation)), and (z) any incremental payments or benefits, net of any tax benefits to Western, Parent or any of their Affiliates, that Western employees become entitled to receive under the Western Executive Salary Continuation Plan solely as a result of a change in control (as defined therein), exceeds (i) if there are Gross-Up Payments (or additional Tax is due by Western attributable to the loss of deduction under Section 280G of the Code for such payments), \$80,000,000, and (ii) if there are no Gross-Up Payments (and no additional Tax is due by Western attributable to the loss of deduction under Section 280G of the Code for such payments), \$55,000,000. For purposes of clarification, payments or benefits which were vested prior to the date of the change in control (as defined in the applicable agreement or plan) or which are earned after such date shall not be considered for purposes of this indemnification. For purposes of this provision, Net Present Value determined under subsection (z) above, shall be the amount necessary to purchase single premium annuities from an insurance company with an A.M. Best rating of A+ or better to provide the incremental benefits described in said subsection (z), and under subsections (x) and (y) above shall be (I) for any single-sum payment or benefit made within 90 days after the Effective Date, the actual amount of the payment or benefit, and (II) for any other payment or benefit, the amount determined using a discount rate of 120% of the applicable federal rate and other reasonable assumptions. Such Net Present Value shall initially be calculated (the "Employee Payments Calculation") by Western prior to, but as of, the Effective Time assuming (i) there will be no Gross-Up Payments (unless prior to the Effective Date Western, Westar and PNM mutually agree otherwise), and (ii) Western will receive a full tax benefit based on Western's top effective tax rates for

Western's tax year in which the Effective Date occurs. The Employee Payments Calculation shall be delivered to Parent on or prior to the Cut-Off Date (as defined in the Merger Agreement) and shall have sufficient detail to enable Parent to ascertain whether or not such calculation was made in conformity with the provisions of this Agreement. The notice and dispute provisions of Section 3.2(b)(ii) of the Merger Agreement applicable to the Adjustment Calculation (as defined therein) shall also apply to the Employee Payments Calculation. If such Gross-Up Payments assumption is Finally Determined to not have been correct, the indemnification provided above shall be recalculated based on the corrected assumptions. If as a result of such recalculation, Westar's indemnification obligation under this Section 5.03(c) exceeds any prior amounts paid by Westar pursuant to this Section 5.03(c), Westar shall pay to Western such excess amount together with interest thereon at the rate of 120% of the applicable federal rate (in effect on the Effective Date) for the period beginning on the Effective Date and ending on the date such payment is made. The payment, if any, under the prior sentence shall be made within 30 days of the date Finally Determined.

(d) Each of Western and Westar shall, and shall cause the other members of their respective Groups and their respective Affiliates to, use reasonable efforts in good faith (not extending, however, to any obligation to continue to employ any person or to continue any employment benefit or compensation beyond what the parties are otherwise obligated to do pursuant to this Agreement, the other Split-Off Documents or the Merger Agreement) to avoid the imposition of any Gross-Up Payments.

Section 5.02. Western Indemnification of Westar Group.

(a) Subject to Section 5.03, from and after the Split-Off Date, Western shall indemnify, defend and hold harmless each member of the Westar Group, their Affiliates and their respective officers, directors and employees (each, a "Westar Indemnitee") from and against any and all Damages incurred or suffered by any Westar Indemnitee arising out of (i) any and all Western Group Liabilities other than those relating to Taxes and (ii) the breach by any member of the Western Group of any obligation under this Agreement. Notwithstanding anything to the contrary contained in this Agreement, all indemnities relating to Taxes or a breach of any obligation under the Tax Disaffiliation Agreement shall be governed solely by the specific terms of the Tax Disaffiliation Agreement).

(b) Subject to Section 5.03, from and after the Split-Off Date, Western shall indemnify, defend and hold harmless each Westar Indemnitee and each Person, if any, who controls any Westar Indemnitee within the meaning of either Section 15 of the Securities Act or Section 20 of the Exchange Act from and against any and all Damages caused by any untrue statement or alleged untrue statement of a material fact contained in the Rights Offering S-1, the Split-Off S-4 or any amendment thereof or the Information Statement, Proxy Statement or Prospectus (in each case as amended or supplemented if Westar shall have furnished any amendments or supplements thereto), or caused by any omission or alleged omission to state therein a material fact necessary to make the statements therein, in the light of the circumstances under which they were made, not misleading, in each case to the extent, but only to the extent, that those Damages are caused by any such untrue statement or omission or alleged untrue statement or omission based upon information that is furnished to Westar by Western or any of its Affiliates (other than any member of the Westar Group) specifically for use therein.

(c) Except as provided in Section 5.01(c), Western shall indemnify each member of the Westar Group for any and all Liabilities related to (i) any Gross-Up Payments, (ii) any other payments made under the Employment Agreements and (iii) any payments or benefits under the Western Executive Salary Continuation Plan, including, without limitation any shareholder or other third party Claims.

Section 5.03. Insurance and Third Party Obligations; Limitation on Liability.

(a) Upon indemnification of an Indemnified Party (as defined below), the Indemnifying Party shall be subrogated to the rights of the Indemnified Party against the insurer, to the extent permitted by any applicable Policy, or other third party (other than a third party which is a member of the same Group of which the Indemnified Party is a member) with respect to such indemnified amount. It is expressly agreed that no insurer or any other third party shall be (i) entitled to a benefit it would not be entitled to receive in the absence of the foregoing indemnification provisions, (ii) relieved of the responsibility to pay any insured claims or any other claims to which it is obligated or (iii) entitled to any subrogation rights with respect to any obligation hereunder.

(b) Each party shall use all commercially reasonable efforts to mitigate its Damages and not to cause or worsen any Liability which would be a Liability of the other party. If an Indemnified Party shall receive any amount of insurance proceeds or any other amount from a third party in connection with a

specific Liability giving rise to indemnification hereunder (i) at any time subsequent to the actual receipt of a payment in full indemnification of such Liability hereunder, then such Indemnified Party shall reimburse the Indemnifying Party for any such indemnification payment made up to the amount of such insurance proceeds or other amounts actually received or (ii) at any time prior to the receipt of any indemnification payment in respect of such Liability hereunder, then the indemnification to be paid under Section 5.01 or 5.02 shall be paid net of the amount of any such insurance proceeds or other amounts actually received. Notwithstanding this Section 5.03, (x) in no event shall any Indemnified Party be required (i) to take any action, or forebear from exercising any right, under the Merger Agreement or any Split-Off Document or (ii) to take any action with respect to, make any demand under or claim any coverage in connection with, any Policy, and (y) nothing herein shall permit any Indemnifying Party to delay or refrain from making any payment to any Indemnified Party because of the availability or alleged availability of any Policy or insurance proceeds (provided that the foregoing shall not limit the subrogation rights of an Indemnifying Party under Section 5.03(a)).

Section 5.04. Notice and Payment of Claims. If any Western Indemnitee or Westar Indemnitee (the "Indemnified Party") determines that it is or may be entitled to indemnification by any party (the "Indemnifying Party") under this Article V (other than in connection with any Action subject to Section 5.05), the Indemnified Party shall deliver to the Indemnifying Party a written notice specifying, to the extent reasonably practicable, the basis for its claim for indemnification and the amount for which the Indemnified Party reasonably believes it is entitled to be indemnified. Within 30 calendar days after receipt of such notice, the Indemnifying Party shall pay the Indemnified Party such amount in cash or other immediately available funds unless the Indemnifying Party objects in writing to the claim for indemnification or the amount thereof.

Section 5.05. Notice and Defense of Third-Party Claims.

(a) Promptly (and in any event within 10 Business Days) following the earlier of (i) receipt of notice, whether by service of process or otherwise, of the commencement by a third party of any Action against or otherwise involving any Indemnified Party or (ii) receipt of information from a third party alleging the existence of a claim against an Indemnified Party, in either case, with respect to which indemnification may be sought pursuant to this Agreement (a "Third-Party Claim"), the Indemnified Party shall give the Indemnifying Party written notice thereof. The failure of the Indemnified Party to give notice as provided in this Section 5.05 shall not relieve the Indemnifying Party of its obligations under this Agreement, except to the extent that the Indemnifying Party is actually and materially prejudiced by such failure to give notice.

(b) Within 30 calendar days after receipt of notice from the Indemnified Party pursuant to Section 5.05(a), the Indemnifying Party may (by giving written notice thereof to the Indemnified Party) elect at its option to, and shall at the request of the Indemnified Party, assume the defense of any Third-Party Claim seeking monetary Damages at the Indemnifying Party's sole cost and expense unless the Indemnifying Party objects in writing to such indemnification claim (in which case the Indemnified Party may not require the Indemnifying Party to assume the defense and the Indemnifying Party shall only assume the defense with the consent of the Indemnified Party). During such 30-calendar day period, unless and until the Indemnifying Party assumes the defense of such a Third-Party Claim or objects in writing, the Indemnified Party shall take such action as it deems appropriate, acting in good faith, and at Indemnifying Party's expense in connection with such Third-Party Claim; provided, however, that the Indemnified Party shall not settle or compromise, or make any offer to settle or compromise, such Third-Party Claim without the prior written consent of the Indemnifying Party (which shall not be unreasonably withheld); and provided further, that in the event that a Third Party Claim seeks injunctive or other non-monetary relief, the Indemnified Party shall be entitled to control the defense of the Third Party Claim at the cost and expense of the Indemnifying Party.

(c) If the Indemnifying Party assumes the defense of a Third-Party Claim, (w) it shall keep the Indemnified Party timely informed of all significant developments in connection therewith, (x) the defense shall be conducted by counsel retained by the Indemnifying Party (which counsel shall be reasonably satisfactory to the Indemnified Party), provided that the Indemnified Party shall have the right to participate in such proceedings and to be represented by counsel of its own choosing, and if such Third Party Claim only seeks monetary Damages, such participation shall be at the Indemnified Party's sole cost and expense; and (y) the Indemnifying Party may settle or compromise the Third-Party Claim without the prior written consent of the Indemnified Party so long as such settlement or compromise includes an unconditional release of the Indemnified Party from all claims that are the subject of such Third-Party Claim, provided that the Indemnifying Party may not agree to any such settlement or compromise pursuant to which there is any finding or admission of any violation of Law or pursuant to which any remedy or relief (including but not limited to the imposition of a consent order, injunction or decree which would restrict the

future activity or conduct of the Indemnified Party or any Subsidiary or Affiliate thereof), other than monetary damages for which the Indemnifying Party shall be responsible hereunder, shall be applied to or against the Indemnified Party, without the prior written consent of the Indemnified Party (which shall not be unreasonably withheld).

(d) If the Indemnifying Party has not objected in writing to such indemnification claim, and, if at the end of the 30-calendar day period referred to in Section 5.05(b) the Indemnifying Party has not assumed the defense of such claim, or, if earlier, beginning at such time as the Indemnifying Party has declined in writing to assume the defense of a Third-Party Claim, (x) the Indemnified Party will take such steps as it deems appropriate to defend that Third-Party Claim and the defense shall be conducted by counsel retained by the Indemnified Party, provided that the Indemnifying Party shall have the right to participate in such proceedings and to be represented by counsel of its own choosing at the Indemnifying Party's sole cost and expense; and (y) the Indemnifying Party shall reimburse the Indemnified Party on a current basis (and in any event within 30-calendar days after the submission of invoices and bills by an Indemnified Party) for its expenses of investigation, attorneys' and expert witnesses' fees and other out-of-pocket expenses incurred in defending against such Third-Party Claim and the Indemnifying Party shall be bound by the result obtained with respect thereto by the Indemnified Party; provided, further, that the Indemnified Party shall not settle or compromise, or make any offer to settle or compromise, the Third-Party Claim without the prior written consent of the Indemnifying Party (which shall not be unreasonably withheld).

(e) The Indemnifying Party shall pay to (or at the direction of) the Indemnified Party in cash the amount, if any, for which the Indemnified Party is entitled to be indemnified hereunder within 15 calendar days after such Third Party Claim has been Finally Determined, in the case of an indemnity claim as to which the Indemnifying Party has acknowledged liability or, in the case of any indemnity claim as to which the Indemnifying Party has not acknowledged liability, within 15 calendar days after such Indemnifying Party's liability, if any, hereunder has been Finally Determined.

(f) Notwithstanding any other provision of this Agreement, Western acknowledges and agrees that following the Split-Off Time, Westar shall (solely at its own cost and expense) assume and continue the defense of all the Westar Litigation and that, as long as such settlement or compromise includes an unconditional release of all Western Indemnitees, Westar shall be permitted to settle or compromise such Actions without the consent of Western or any of its Affiliates, provided that Westar may not agree to any such settlement or compromise pursuant to which there is any finding or admission of any violation of Law or pursuant to which any remedy or relief (including but not limited to the imposition of a consent order, injunction or decree which would restrict the future activity or conduct of the Western Indemnitees), other than monetary damages for which the Westar Group shall be responsible hereunder, shall be applied to or against any such Western Indemnitee, without the prior written consent of such Western Indemnitee (which shall not be unreasonably withheld); provided, further, that Westar shall use all commercially reasonable efforts to defend any Western Indemnitee and to cause any Western Indemnitee to be dismissed with prejudice as a party to any pending or future Westar Litigation and, to the extent any Western Indemnitee believes, in its reasonable judgment, that Westar has failed to diligently pursue such defense or dismissal, the Western Indemnitee shall be entitled (at its own cost and expense) to independently move for or otherwise pursue such defense or dismissal and to take such related actions as it may deem necessary or appropriate in connection therewith. Notwithstanding the foregoing, the parties may agree to allocate costs and expenses in any other manner pursuant to a settlement to which Western consents. Westar shall keep Western timely informed of all significant developments with respect to the Westar Litigation to which any Western Indemnitee is a party.

(g) Subject to Article VII, each party shall cooperate, and cause their respective Representatives to cooperate, in the defense or prosecution of any Third-Party Claim and shall furnish or cause to be furnished such records, information and testimony, and attend such conferences, discovery proceedings, hearings, trials or appeals, as may be reasonably requested in connection therewith.

Section 5.06. Exclusivity of Remedies. The remedies provided for in this Article V shall be the sole remedy for Damages incurred by an Indemnified Party under this Agreement; provided, if the indemnification provided for in this Article V is unavailable to any Indemnified Party (x) on the grounds that such Indemnified Party was a former Affiliate of the Indemnifying Party or (y) on other public policy grounds, then the Indemnifying Party shall pay to the Indemnified Party's parent such amount that represents the diminution in value to such parent as a result of the Indemnifying Party's inability to so indemnify such Indemnified Party (provided that such amount shall not exceed the amount that would otherwise have been payable by the Indemnifying Party to such Indemnified Party in respect of such claim pursuant to this Article V).

ARTICLE VI
EMPLOYEE MATTERS AND TRANSITION SERVICES

Section 6.01. Employee Matters Generally. Prior to the Split-Off Date, the employees of Westar shall be eligible to participate in all applicable employee benefit plans on the same terms as provided by Western to its employees.

Section 6.02. Shared Services Matters Generally. With respect to the provision of certain services by either Group to the other Group after the Separation Time, the parties hereto agree as set forth herein and in the Shared Services Agreement.

ARTICLE VII
ACCESS TO INFORMATION

Section 7.01. Provision of Corporate Records. Except as otherwise specifically set forth in this Agreement or any Ancillary Agreement, immediately prior to or as soon as practicable following the Split-Off Date, each Group shall provide to the other Group all documents, Contracts, books, records and data (including but not limited to minute books, stock registers, stock certificates and documents of title) in its possession relating primarily to the other Group or its business, assets and affairs (after giving effect to the transactions contemplated hereby); provided that if any such documents, Contracts, books, records or data relate to both Groups or the business and operations of both Groups, each such Group shall provide to the other Group true and complete copies of such documents, Contracts, books, records or data. Data stored in electronic form shall be provided in the format in which it existed at the Split-Off Date, except as otherwise specifically set forth in this Agreement or any Ancillary Agreement.

Section 7.02. Access to Information. From and after the Split-Off Date and for a reasonable period of time after the Split-Off Date, each Group shall, afford promptly to the other Group and its accountants, counsel and other designated Representatives reasonable access during normal business hours to all documents, Contracts, books, records, computer data and other data in such Group's possession relating to such other Group or the business and affairs of such other Group (after giving effect to the transactions contemplated hereby) (other than data and information subject to (i) an attorney/client or other privilege that is not specifically subject to the provisions of this Article VII or (ii) in the case of access provisions in any joint defense arrangements between a member or members of one Group and a member or members of the other Group, the terms of the relevant joint defense agreement), insofar as such access is reasonably required by such other Group, including, without limitation, for audit, accounting, litigation, regulatory compliance and disclosure and reporting purposes.

Section 7.03. Litigation Cooperation. From and after the Split-Off Date:

(a) Each Group shall use all commercially reasonable efforts to make available to the other Group and its accountants, counsel, and other designated representatives, upon written request, its current and former directors, officers, employees and representatives as witnesses, and shall otherwise cooperate with the other Group, to the extent reasonably required in connection with any Action or threatened Action arising out of either Group's business and operations in which the requesting party may from time to time be involved.

(b) Each party hereto shall promptly notify the other party hereto, upon its receipt or the receipt by any of its Affiliates, of a request or requirement (by oral questions, interrogatories, requests for information or documents, subpoenas, civil investigative demands or other similar processes) which relates to the business and operations of the other party (a "Request") reasonably regarded as calling for the inspection or production of any documents or other information in its possession, custody or control, as received from any Person that is a party in any Action, or in the event the Person delivering the Request is not a party to such Action, as received from such Person. In addition to complying with the applicable provisions of Section 7.06, each party shall assert and maintain, or cause its Affiliates to assert and maintain, any applicable claim to privilege, immunity, confidentiality or protection in order to protect such documents and other information from disclosure, and shall seek to condition any disclosure which may be required on such protective terms as may be appropriate. No party may waive, undermine or fail to take any action necessary to preserve an applicable privilege without the prior written consent of the affected party hereto (or any affected Affiliate or Affiliates of any such party) except, in the opinion of such party's counsel, as required by law.

(c) Each of Western, on its own behalf and on behalf of all members of the Western Group, and Westar, on its own behalf and on behalf of all members of the Westar Group, hereby waives any conflict which might preclude counsel currently representing Western, Westar or any of their respective Affiliates from representing Westar and/or any of its Affiliates following the Split-Off Date in

connection with the Westar Litigation existing at the Merger Effective Time.

(d) Western and Westar shall enter into such joint defense agreements, in customary form, as Western and Westar shall determine are advisable.

Section 7.04. Reimbursement. Except to the extent that any member of one Group is obligated to indemnify any member of the other Group under Article V for that cost or expense, each Group providing information or witnesses to the other Group, or otherwise incurring any expense in connection with cooperating, under Sections 7.01, 7.02 or 7.03 shall be entitled to receive from the recipient thereof, upon the presentation of invoices therefor, payment for all out-of-pocket costs and expenses that may be incurred in providing such information, witnesses or cooperation.

Section 7.05. Retention of Records. From and after the Split-Off Date, except as otherwise required by law or agreed to in writing, each party shall, and shall cause the members of its respective Group to, retain all information relating to the other Group's business and operations in accordance with the then general practice of such party with respect to information relating to its own business and operations but in any event for not less than seven years from the Separation Time. Notwithstanding the foregoing sentence, any party may destroy or otherwise dispose of any such information at any time, provided that, prior to such destruction or disposal, (i) such party shall provide not less than 90 calendar days' prior written notice to the other party, specifying the information proposed to be destroyed or disposed of and the scheduled date for such destruction or disposal, and (ii) if the recipient of such notice shall request in writing prior to the scheduled date for such destruction or disposal that any of the information proposed to be destroyed or disposed of be delivered to such requesting party, the party proposing the destruction or disposal shall promptly arrange for the delivery of such of the information as was requested at the expense of the requesting party.

Section 7.06. Confidentiality. From and after the Split-Off Date, each party shall hold and shall cause its Affiliates and their respective directors, officers, employees, counsel, accountants, agents, consultants, advisors and other authorized representatives ("Representatives") to hold in strict confidence all documents and other information (other than any such documents and other information relating solely to the business or affairs of such party) concerning the other party and/or its Affiliates ("Confidential Information") unless such party is compelled to disclose such documents and/or other information by judicial or administrative process or, in the opinion of its counsel, by other requirements of law or the rules of any applicable stock exchange. Confidential Information shall not include such documents and/or other information which can be shown to have been (A) in the public domain through no fault of such party, (B) lawfully acquired after the Split-Off Date on a non-confidential basis from other sources or (C) acquired or developed independently by such party without violating this Section 7.06 or the Confidentiality Agreements. Notwithstanding the foregoing, such party may disclose such Confidential Information to its Representatives so long as such Persons are informed by such party of the confidential nature of such Confidential Information and are directed by such party to treat such documents and/or other information confidentially. In the event that such party or any of its Representatives is requested or required (by oral questions, interrogatories, requests for information or documents, subpoenas, civil investigative demands or other similar processes) to disclose any of the Confidential Information, such party will promptly notify the other party so that the other party may seek a protective order or other remedy or waive such party's compliance with this Section 7.06. Such party shall exercise all commercially reasonable efforts necessary to preserve the confidentiality of the Confidential Information, including, but not limited to, by cooperating with the other party to obtain an appropriate protective order or other reliable assurance that confidential treatment will be accorded the Confidential Information. If, in the absence of a protective order or other remedy or the absence of receipt of a waiver of the other party, such party or any of its Representatives is nonetheless legally compelled to disclose any of the Confidential Information, such party or such Representative may disclose only that portion of the Confidential Information which is legally required to be disclosed. Such party agrees to be responsible for any breach of this Section 7.06 by it and/or its Representatives.

Section 7.07. Preservation of Privilege. The parties hereto recognize that as a consequence of the transactions contemplated by this Agreement or the Merger Agreement or the Ancillary Agreements, the parties may have common interests in the defense of certain pending or threatened litigation which may necessitate the exchange between the parties or their counsel of documents or other information that is subject to the attorney-client privilege, the work product doctrine or other legally recognized privileges, protections or immunities from discovery. Each party agrees to take in addition to, and not in limitation of, its obligations under Section 7.03(b) all commercially reasonable efforts necessary to protect and maintain, and to cause its Affiliates to protect and maintain, any applicable claim to privilege, immunity, protection or

confidentiality in order to protect such documents and other information from improper disclosure or use. In addition to, and not in limitation of, its obligations under Section 7.03(b) and without limiting the generality of the foregoing, and to the maximum extent permitted by law, none of the parties or their respective Affiliates may waive or undermine, or fail to defend in a commercially reasonable manner, any privilege or protection or take or fail to take any other commercially reasonable action (a) that could result in the disclosure of any common-interest or joint-defense materials to any Person that is neither a party to this Agreement nor an Affiliate of any such party or (b) that would have the effect of waiving or undermining such privilege or protection, in either case, without the prior written consent of the affected party and any affected Affiliate of such affected party.

Section 7.08. Inapplicability of Article VII to Tax Matters. Notwithstanding anything to the contrary in this Article VII, this Article VII shall not apply with respect to documents, other information and/or other matters relating to Taxes, all of which shall be governed by the Tax Disaffiliation Agreement.

ARTICLE VIII CERTAIN OTHER AGREEMENTS

Section 8.01. Use of Proceeds and Intercompany Matters.

(a) Except as otherwise specifically set forth herein or in any of the Ancillary Agreements or in the Merger Agreement, effective as of the Split-Off Time, all intercompany accounts receivable and accounts payable relating to (i) any of the contracts and other arrangements specified in Section 5.1(u) of the Company Disclosure Letter and (ii) Western's tax sharing and allocation policy (Western Accounting Manual Section No. 6.90), (other than those governed by the Tax Disaffiliation Agreement) (i) that were not fully paid, satisfied or discharged upon or prior to the Separation Time (if earlier than the Split-Off Time) or (ii) that arose or were incurred after the Separation Time and prior to the Split-Off Time shall be paid in full, in cash or other immediately available funds, by the party or parties owing such obligation on or prior to the Split-Off Time.

(b) Except as otherwise contemplated hereby or as set forth on Schedule 8.01(b) or in any of the other Ancillary Agreements or in the Merger Agreement, all prior agreements and arrangements, including those relating to goods, rights or services provided or licensed, between any member of the Westar Group and any member of the Western Group will terminate on or prior to the Split-Off Time.

Section 8.02. Trademarks; Trade Names.

(a) On or prior to the Separation Time, Western and Westar will enter into the Trademark Assignment Agreement.

(b) From and after the Split-Off Date, each member of the Western Group shall discontinue its use of the Westar name and logo and shall, as necessary, change the name of any Western Subsidiary that incorporates the Westar name; provided however, each member of the Western Group shall have a non-exclusive license to use the flying star logo described in Exhibit 1.01(b) (i) with respect to materials and supplies, until such materials and supplies are consumed in the ordinary course of business and (ii) with respect to each piece of equipment, building or other physical asset, until such asset is replaced or repainted in the ordinary course of business, and such logo shall not be used by any member of the Western Group for any purpose for which it is not currently used. From and after the Split-Off Date, each member of the Starco group will discontinue its use of the Western Resources name and logo and shall, as necessary, change the name of any Starco Subsidiary that incorporates the Western Resources name.

Section 8.03. Further Assurances and Consents. In addition to the actions specifically provided for elsewhere in this Agreement, each of the parties hereto shall use all commercially reasonable efforts to take, or cause to be taken, all actions, and to do, or cause to be done, all things, reasonably necessary, proper or advisable under applicable laws, regulations and agreements or otherwise to consummate and make effective the transactions contemplated by this Agreement, including, without limitation, using all commercially reasonable efforts to obtain any consents and approvals and to make any filings and applications necessary or desirable in order to consummate the transactions contemplated by this Agreement; provided that no party hereto shall be obligated to pay any consideration therefor (except for filing fees and other similar charges) to any third party from whom such consents or approvals are requested or to take any action or omit to take any action if the taking of or the omission to take such action would be materially and unreasonably burdensome to the party, its Group or its Group's business. The parties agree to enter into and execute such additional Split-Off Documents as may be reasonably necessary, proper or advisable to effect the transactions contemplated by this Agreement or the Ancillary Agreements, provided, however, that such additional Split-Off

Documents shall not diminish any of the rights granted or increase any of the Liabilities assumed under this Agreement or the Ancillary Agreements.

Section 8.04. Third Party Beneficiaries. Parent shall be a third party beneficiary of this Agreement. Except as contemplated in the preceding sentence, nothing contained in this Agreement is intended to confer upon any Person or entity other than the parties hereto, Parent, and their respective successors and permitted assigns any benefit, right or remedies under or by reason of this Agreement, except that the provisions of Article V shall inure to the benefit of the Westar Indemnitees and the Western Indemnitees.

Section 8.05. Intellectual Property Rights and Licenses. Western shall take all action necessary prior to the Split-Off Time to permit members of the Westar Group to use the software set forth on Schedule 8.05 in the same manner as such software is being used by members of the Westar Group for the term of the Shared Services Agreement. Except as otherwise specifically set forth in this Agreement or in any of the other Ancillary Agreements, neither Group shall have any right or license in or to any technology, software, Intellectual Property Right or other proprietary right owned, licensed or held for use by the other Group.

Section 8.06. Insurance Claims. At the Split-Off Time, Western shall assign to Westar all rights to payments for claims related to the Westar Business and covered by the Group Policies insofar as such payments relate to claims based on occurrences prior to the Split-Off Time. Without the prior written consent of Westar, both prior to and after the Split-Off Time, Western will take no action that could adversely affect the coverage provided by the Group Policies nor will Western fail to act with knowledge that such failure could adversely affect the coverage provided by the Group Policies. Westar shall be responsible for acquiring such insurance coverage as it deems necessary for periods after the Split-Off Time.

ARTICLE IX
MISCELLANEOUS

Section 9.01. Notices. All notices and other communications to any party hereunder shall be in writing (including telecopy or similar writing) and shall be deemed given when received addressed as follows:

If to Western to:

Western, Inc.
818 South Kansas Avenue
Topeka, Kansas 66612
Telecopy (785) 575-1936
Attention: General Counsel

With copies to:

LeBoeuf, Lamb, Greene & MacRae
125 West 55th Street
New York, New York 10019
Telecopy: (212) 424-8500
Attention: William S. Lamb, Esq. and Benjamin G. Clark, Esq.

If to PNM, to:

Public Service Company of New Mexico
Alvarado Square
Albuquerque, New Mexico 87158
Telecopy: (505) 241-2368
Attention: Chief Financial Officer

With a copy to:

Winthrop, Stimson, Putnam & Roberts
One Battery Park Plaza
Attention: Timothy Michael Toy, Esq.
Stephen R. Rusmiser, Esq.
Telecopy: (212) 858-1500

If to Westar, to:

Westar
818 South Kansas Avenue
Topeka, Kansas 66612
Telecopy: (785) 575-1936
Attention: President

With a copy to:

LeBoeuf, Lamb, Greene & MacRae

125 West 55th Street
New York, New York 10019
Telecopy: (212) 424-8500
Attention: William S. Lamb, Esq. and
Benjamin G. Clark, Esq.

Any party may, by written notice so delivered to the other parties, change the address to which delivery of any notice shall thereafter be made.

Section 9.02. Amendments; No Waivers.

(a) Any provision of this Agreement may be amended or waived if, and only if, such amendment or waiver is in writing and signed, in the case of an amendment, by Western and Westar, or in the case of a waiver, by the party against whom the waiver is to be effective. In addition, unless the Merger Agreement shall have been terminated in accordance with its terms, any such amendment or waiver that is adverse in interest to any member of the Western Group shall be subject to the written consent of Parent.

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

Section 9.03. Expenses.

(a) All costs and expenses incurred by Western or Westar in connection with the consummation of the Rights Offering (including the fees and expenses of all counsel, accountants and financial and other advisors of both Groups in connection therewith, and all expenses in connection with preparation, filing printing and mailing of the prospectus used in the Rights Offering, the Rights Offering S-1 and any filing necessary to register the Westar Common Stock under the Exchange Act) shall be netted against the proceeds of the Rights Offering, and all costs and expenses incurred by Western or Westar in connection with the preparation execution and delivery of the Ancillary Agreements and the consummation of the Split-Off and the other transactions contemplated hereby and therein (including the fees and expenses of all counsel, accountants and financial and other advisors of both Groups in connection therewith, and all expenses in connection with preparation, filing printing and mailing of the Split-Off S-4 the Information Statement and the Proxy Statement) shall be paid by Western.

(b) Each reference in this Agreement to expenses, fees and out-of-pocket costs shall mean such expenses, fees and out-of-pocket costs as the party incurring such expenses, fees or out-of-pocket costs would reasonably incur in connection with its own business under circumstances where such expenses, fees and out-of-pocket costs are not subject to reimbursement.

Section 9.04. Successors and Assigns. The provisions of this Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective successors and assigns; provided that neither party may assign, delegate or otherwise transfer any of its rights or obligations under this Agreement without the prior written consent of the other party, which consent shall not be unreasonably withheld, and unless the Merger Agreement shall have been terminated in accordance with its terms, any such assignment shall require the written consent of Parent. If any party or any of its successors or assigns (i) shall consolidate with or merge into any other Person and shall not be the continuing or surviving corporation or entity of such consolidation or merger or (ii) shall transfer all or substantially all of its properties and assets to any Person, then, and in each such case, proper provisions shall be made so that the successors and assigns of such party shall assume all of the obligations of such party under each of the Split-Off Documents.

Section 9.05. Governing Law. This Agreement shall be construed in accordance with and governed by the laws of the State of New York, applicable to contracts to be performed wholly in such State.

Section 9.06. Counterparts; Effectiveness. This Agreement may be signed in any number of counterparts, each of which shall be an original, with the same effect as if the signatures thereto and hereto were upon the same instrument. This Agreement shall become effective when each party hereto shall have received a counterpart hereof signed by the other party hereto.

Section 9.07. Entire Agreement. This Agreement, the Merger Agreement, the Confidentiality Agreements and the other Split-Off Documents constitute the entire understanding of the parties with respect to the subject matter hereof and thereof and supersede all prior agreements, understandings and negotiations, both written and oral, between the parties with respect to the subject matter hereof and thereof. No representation, inducement, promise, understanding,

condition or warranty not set forth herein or in the Confidentiality Agreements, the Merger Agreement or the other Split-Off Documents has been made or relied upon by any party hereto. To the extent that the provisions of this Agreement are inconsistent with the provisions of any other Ancillary Agreement, the provisions of such other Ancillary Agreement shall prevail.

Section 9.08. Tax Disaffiliation Agreement; Set-Off; Payment of After-Tax Amounts; Certain Transfer Taxes.

(a) Except as otherwise specifically provided herein and not inconsistent with the Tax Disaffiliation Agreement, this Agreement shall not govern any Tax matters, and any and all claims, losses, damages, demands, costs, expenses or liabilities relating to Taxes shall be exclusively governed by the Tax Disaffiliation Agreement.

(b) If Western, Westar or any of their respective post-Separation Affiliates makes a payment pursuant to Section 5.01 or 5.02 of this Agreement, then (i) to the extent not already taken into account pursuant to the terms of this Agreement, such payment shall be reduced as provided in Section 5(f) of the Tax Disaffiliation Agreement if such payment gives rise to any Tax Asset (as such term is defined in the Tax Disaffiliation Agreement), and (ii) such Person shall also pay the recipient of such payment the related After-Tax Amount (as defined in the Tax Disaffiliation Agreement). This Section 9.08(b) shall be interpreted in accordance with the principles set forth in the Tax Disaffiliation Agreement and shall be subject to the dispute resolution provisions contained in Section 15 of the Tax Disaffiliation Agreement.

(c) Except as otherwise provided in the Tax Disaffiliation Agreement, all transfer, documentary, sales, use, stamp and registration taxes and fees (including any penalties and interest) incurred in connection with any of the transactions described in Article II of this Agreement shall be borne and paid 50% by Western and 50% by Westar. The party that is required by applicable law to file any Return (as defined in the Tax Disaffiliation Agreement) or make any payment with respect to any of those taxes shall do so, and the other party shall cooperate with respect to that filing or payment as necessary. If Westar is required to make any payment, Western shall reimburse Westar in accordance with this Section 9.08, as appropriate, within 5 Business Days after it receives notice of the payment of those taxes. If Western is required to make any payment, Westar shall reimburse Western in accordance with this Section 9.08(c), as appropriate, within 5 Business Days after it receives notice of the payment of those taxes. This Section 9.08(c) shall be interpreted in accordance with the principles set forth in the Tax Disaffiliation Agreement and shall be subject to the dispute resolution provisions contained in Section 15 of the Tax Disaffiliation Agreement.

Section 9.09. Jurisdiction. Except as otherwise expressly provided in this Agreement, any Action seeking to enforce any provision of, or based on any matter arising out of or in connection with, this Agreement or the transactions contemplated hereby may be brought in any U.S. federal or state court sitting in Kansas, and each of the parties hereby consents to the jurisdiction of such courts (and of the appropriate appellate courts therefrom) in any such Action and irrevocably waives, to the fullest extent permitted by law, any objection which it may now or hereafter have to the laying of the venue of any such Action in any such court or that any such Action which is brought in any such court has been brought in an inconvenient forum. Process in any such Action may be served on any party anywhere in the world, whether within or without the jurisdiction of any such court. Without limiting the foregoing, each party agrees that service of process on such party as provided in Section 9.01 shall be deemed effective service of process on such party.

Section 9.10. Pre-Litigation Dispute Resolution. Prior to the bringing of any Action against the other, senior officers of Western and Westar shall confer, consult and in good faith attempt for a period of 30 calendar days to resolve any dispute between such parties relating to this Agreement or any of the Ancillary Agreements (other than the Tax Disaffiliation Agreement) without resort to legal remedies; provided that nothing in this Section 9.10 shall prohibit any party hereto or its Affiliates from bringing any Action if such party determines that any delay could reasonably be expected to prejudice such party's rights owing to any applicable statute of limitations or similar legal or equitable bar.

Section 9.11. Severability. If any one or more of the provisions contained in this Agreement should be declared invalid, illegal or unenforceable in any respect, the validity, legality and enforceability of the remaining provisions contained in this Agreement shall not in any way be affected or impaired thereby so long as the economic or legal substance of the transactions contemplated hereby is not affected in any manner materially adverse to any party. Upon such a declaration, the parties shall modify this Agreement so as to effect the original intent of the parties as closely as possible in an acceptable manner so that the transactions contemplated hereby are consummated as originally contemplated to the fullest extent possible.

Section 9.12. Survival. All covenants and agreements of the parties contained in this Agreement and the Confidentiality Agreements shall survive the Split-Off Date indefinitely, unless a specific survival or other applicable period is expressly set forth therein.

Section 9.13. Captions. The captions herein are included for convenience of reference only and shall be ignored in the construction or interpretation hereof.

Section 9.14. Specific Performance. Each party to this Agreement acknowledges and agrees that monetary damages for a breach or threatened breach of any of the provisions of this Agreement would be inadequate and irreparable harm would occur. In recognition of this fact, each party agrees that, if there is a breach or threatened breach, in addition to any monetary damages, the other nonbreaching party to this Agreement, without posting any bond, shall be entitled to seek and obtain equitable relief in the form of specific performance, temporary restraining order, temporary or permanent injunction, attachment, or any other equitable remedy which may then be available to obligate the breaching party (i) to perform its obligations under this Agreement or (ii) if the breaching party is unable, for whatever reason, to perform those obligations, to take any other actions as are necessary, advisable or appropriate to give the other party to this Agreement the economic effect which comes as close as possible to the performance of those obligations (including, but not limited to, transferring, or granting liens on, the assets of the breaching party to secure the performance by the breaching party of those obligations).

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

WESTERN RESOURCES, INC.

By: /s/ David C. Wittig

David C. Wittig
Chairman of the Board, President and
Chief Executive Officer

WESTAR INDUSTRIES, INC.

By: /s/ Paul R. Geist

Paul R. Geist
President

FORM OF STOCKHOLDER AGREEMENT

between

Westar Industries, Inc.,
a Kansas corporation

and

HVOLT Enterprises, Inc.,
a Delaware corporation

Dated as of [], 200_

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EXHIBIT A Stockholder Nominee Notice

This STOCKHOLDER AGREEMENT dated as of [], 200__ (this "Agreement") is between HVOLT Enterprises, Inc. a Delaware corporation (the "Company"), and Westar Industries, Inc., a Kansas corporation (the "Stockholder").

WITNESSETH:

WHEREAS, the Company, Western Resources, Inc., a Kansas corporation ("WRI"), Public Service Company of New Mexico, a New Mexico corporation ("PNM"), HVK, Inc., a Kansas corporation and a wholly owned subsidiary of the Company and HVNM, Inc., a New Mexico corporation and wholly owned subsidiary of the Company have entered into an Agreement, dated as of November 8, 2000, (the "Merger Agreement"), pursuant to which WRI will become a wholly owned subsidiary of the Company (the "Merger") and pursuant to which the Stockholder has acquired Beneficial Ownership (as defined in Article I hereof) of 55,000,000 shares of common stock of the Company, par value \$.001 per share (the "Common Stock") and up to shares of Series ____ Convertible Preferred Stock of the Company, par value \$.001 per share (the "Convertible Preferred Stock");

WHEREAS, prior to the consummation of the Merger (the "Closing"), the Company and the Stockholder desire to establish in this Agreement certain terms and conditions concerning the acquisition and disposition of securities of the Company by the Stockholder, and related provisions concerning the Stockholder's relationship with and investment in the Company; and

WHEREAS, concurrently with the execution and delivery hereof, the Company and the Stockholder are entering into a Registration Rights Agreement, dated as of the date hereof (the "Registration Rights Agreement");

NOW, THEREFORE, in consideration of the mutual covenants and agreements set forth herein and for other good and valuable consideration, receipt and sufficiency of which is hereby acknowledged, the parties hereto hereby agree as follows:

Article I
Certain Definitions

Section 1.1 In addition to other terms defined elsewhere in this Agreement, as used in this Agreement, the following terms shall have the meanings ascribed to them below:

"Affiliate" shall mean, with respect to any person, any other person that directly or indirectly through one or more intermediaries controls or is controlled by or is under common control with such person. For the purposes of this definition, "control," when used with respect to any particular person, means the power to direct the management and policies of such person, directly or indirectly, whether through the ownership of voting securities, by contract or otherwise; and the terms "controlling" and "controlled" have meanings correlative to the foregoing.

"Agreement" shall have the meaning assigned to such term in the introduction hereto.

"Beneficial Owner" (and, with correlative meanings, "Beneficially Own" and "Beneficial Ownership") of any interest means a Person who, together with his or its Affiliates, is or may be deemed a beneficial owner of such interest for purposes of Rule 13d-3 or 13d-5 under the Exchange Act, or who, together with his or its Affiliates, has the right to become such a beneficial owner of such interest (whether such right is exercisable immediately or only after the passage of time) pursuant to any agreement, arrangement or understanding, or upon the exercise, conversion or exchange of any warrant, right or other instrument, or otherwise.

"Board" shall mean the Board of Directors of the Company in office at the applicable time, as elected in accordance with the Charter and By-laws of the Company and with the provisions of this Agreement.

"Buy-Back Offer" shall have the meaning assigned to such term in Section 3.7(a) hereof.

"By-laws" shall mean the by-laws of the Company, in the form specified in the Merger Agreement, as they may be amended from time to time.

"Change in Control" shall mean the occurrence of any one of the following events:

- (1) any Person (other than the Stockholder Group) becoming the Beneficial Owner, directly or indirectly, of Voting Securities, pursuant to the consummation of a merger, consolidation, sale of all or substantially

all of the Company's assets, share exchange or similar form of corporate transaction involving the Company or any of its subsidiaries that requires the approval of the Company's stockholders, whether for such transaction or the issuance of securities in such transaction, so as to cause such Person's Voting Ownership Percentage to exceed the Control Percentage (as defined below); provided, however, that the event described in this paragraph (1) shall not be deemed to be a Change in Control if it occurs as the result of any of the following acquisitions: (A) by any employee benefit plan sponsored or maintained by the Company or any Affiliate, or (B) by any underwriter temporarily holding securities pursuant to an offering of such securities;

(2) the consummation of a merger, consolidation, sale of all or substantially all of the Company's assets, share exchange or similar form of corporate transaction involving the Company or any of its subsidiaries that requires the approval of the Company's stockholders, whether for such transaction or the issuance of securities in such transaction, unless immediately following such transaction more than 50% of the total voting power of (x) the corporation resulting from such transaction, or (y) if applicable, the ultimate parent corporation that directly or indirectly has Beneficial Ownership of 100% of the voting securities eligible to elect directors of such resulting corporation, is represented by Voting Securities that were outstanding immediately prior to such transaction (or, if applicable, shares into which such Voting Securities were converted pursuant to such transaction), and such voting power among the holders of such Voting Securities that were outstanding immediately prior to such transaction is in substantially the same proportion as the voting power of such Voting Securities among the holders thereof immediately prior to such transaction; or

(3) the consummation of a plan of complete liquidation or dissolution of the Company.

"Charter" shall mean the Certificate of Incorporation of the Company, in the form specified in the Merger Agreement, as it may be amended from time to time.

"Clearly Credible Tender Offer" shall mean any bona fide offer, tender offer or exchange offer that is subject to Section 14 of the Exchange Act, other than any such offer with respect to which (i) the Board of Directors of the Company is advised in writing by outside counsel of recognized standing that the consummation of such offer would be in violation of applicable law, or (ii) the party making such offer has not obtained as of the date of the commencement of such offer definitive commitment letters from reputable financial institutions in customary form with respect to the financing of such offer.

"Closing" shall have the meaning assigned in the second recital of this Agreement.

"Commission" shall mean the United States Securities and Exchange Commission.

"Common Stock" shall have the meaning assigned in the first recital of this Agreement.

"Company" shall have the meaning assigned in the introduction of this Agreement.

"Company Repurchase Notice" shall have the meaning assigned in Section 3.5(b) hereof.

"Control Percentage" shall mean a Voting Ownership Percentage of 15%.

"Conversion" shall mean the conversion of shares of Convertible Preferred Stock into shares of Common Stock pursuant to the Charter.

"Convertible Preferred Stock" shall have the meaning assigned in the first recital of this Agreement.

"DGCL" shall have the meaning assigned in Section 3.6 hereof.

"Director" shall mean any member of the Board of Directors of the Company in office at the applicable time, as elected in accordance with the provisions of the By-laws of the Company.

"Exchange Act" shall mean the Securities Exchange Act of 1934, as amended.

"Independent Director" shall mean any person who is not a Stockholder Nominee and is independent of and otherwise unaffiliated with any member of the Stockholder Group, and who is not a director, officer, employee, consultant or advisor (financial, legal or other) of any member of the Stockholder Group and

has not served in any such capacity in the previous three (3) years; provided that any consultant or advisor that has not provided \$60,000 or more per annum of services to the Company in the current or previous two years shall be deemed an Independent Director for purposes of this Agreement.

"Initial Stockholder Nominee Notice" shall have the meaning assigned in Section 4.1(b) of this Agreement.

"Initial Stockholder Nominees" shall have the meaning assigned in Section 4.1(b) of this Agreement.

"Maximum Ownership Percentage" shall mean, calculated at a particular point in time, a Total Ownership Percentage equal to the Total Ownership Percentage at the time of the Closing.

"Merger" shall have the meaning set forth in the first recital of this Agreement.

"Merger Agreement" shall have the meaning set forth in the first recital of this Agreement.

"1935 Act" shall mean the Public Utility Holding Company Act of 1935, as amended.

"Nominating Committee" shall mean the committee comprised of members of the Board whose functions include recommendations to the Board of nominees for election as directors. In the event there shall not be such a committee, "Nominating Committee" shall mean the Board itself.

"NYSE" shall mean the New York Stock Exchange Inc.

"Person" shall mean any individual, partnership, joint venture, corporation, trust, unincorporated organization, government or department or agency of a government.

"Registration Rights" shall mean the rights and obligations of the Stockholder Group and the corresponding rights and obligations of the Company set forth in the Registration Rights Agreement.

"Registration Rights Agreement" shall have the meaning assigned in the third recital of this Agreement.

"Repurchase" shall have the meaning assigned in Section 3.5(a) of this Agreement.

"Sale Notice" shall have the meaning assigned in Section 3.4(b)(i) of this Agreement.

"Sale Option" shall have the meaning assigned in Section 3.4(b) of this Agreement.

"Sale Period" shall have the meaning assigned in Section 3.4(b)(ii) of this Agreement.

"Sale Securities" shall have the meaning assigned in Section 3.4(b)(i) of this Agreement.

"Securities" shall mean any equity securities of the Company.

"Securities Act" shall mean the Securities Act of 1993, as amended.

"Seller" shall have the meaning assigned in Section 3.4 of this Agreement.

"Stockholder" shall have the meaning assigned in the introduction to this Agreement, as well as any successor to the rights and obligations to the holder of Securities hereunder.

"Stockholder Affiliate" shall mean any Affiliate of the Stockholder.

"Stockholder Group" shall mean the Stockholder, any Stockholder Affiliate and any Person with whom any Stockholder or any Affiliate of any Stockholder is part of a 13D Group.

"Stockholder Nominees" shall have the meaning set forth in Section 4.1(d) of this Agreement.

"Successor Stockholder Nominee Notice" shall have the meaning assigned in Section 4.1(d) of this Agreement.

"Successor Stockholder Nominees" shall have the meaning assigned in Section 4.1(d) of this Agreement.

"13D Group" shall mean any group of Persons acquiring, holding, voting or disposing of any Voting Security which would be required under Section 13(d) of the Exchange Act and the rules and regulations thereunder to file a statement on Schedule 13D with the Commission as a "person" within the meaning of Section 13(d)(3) of the Exchange Act.

"Total Ownership Percentage" shall mean, calculated at a particular point in time, the Voting Power which would be represented by the Securities Beneficially Owned by the Person whose Total Ownership Percentage is being determined if all shares of Convertible Preferred Stock (or other Securities convertible into Voting Securities) Beneficially Owned by such Person were converted into shares of Common Stock (or other Voting Security).

"Total Voting Power" shall mean, calculated at a particular point in time, the aggregate Votes represented by all then outstanding Voting Securities.

"Transfer" shall mean any sale, transfer, pledge, encumbrance or other disposition to any Person, and to "Transfer" shall mean to sell, transfer, pledge, encumber or otherwise dispose of to any Person.

"Transferee" shall mean any person to whom Voting Securities are Transferred.

"Unrestricted Ownership Percentage" shall mean a Voting Ownership Percentage of 9.9%.

"Votes" shall mean votes entitled to be cast generally in the election of Directors, not including the votes that would be able to be cast by holders of shares of Convertible Preferred Stock upon Conversion to shares of Common Stock unless such Conversion shall occur or be deemed to occur.

"Voting Ownership Percentage" shall mean, calculated at a particular point in time, the Voting Power represented by the Voting Securities Beneficially Owned by the Person whose Voting Ownership Percentage is being determined. "Voting Power" shall mean, calculated at a particular point in time, the ratio, expressed as a percentage, of (a) the Votes represented by the Voting Securities with respect to which the Voting Power is being determined to (b) Total Voting Power.

"Voting Securities" shall mean the Common Stock and shares of any other class of capital stock of the Company then entitled to vote generally in the election of Directors, and shall not include Convertible Preferred Stock (or other Securities convertible into Voting Securities) prior to Conversion into Common Stock (or other Voting Security).

Article II Representations and Warranties

Section 2.1 Representations and Warranties of the Company. The Company represents and warrants to the Stockholder as of the date hereof as follows:

(a) The Company has been duly incorporated and is validly existing as a corporation in good standing under the laws of the state of its incorporation and has all necessary corporate power and authority to enter into this Agreement and to carry out its obligations hereunder.

(b) This Agreement has been duly and validly authorized by the Company and all necessary and appropriate action has been taken by the Company to execute and deliver this Agreement and to perform its obligations hereunder.

(c) This Agreement has been duly executed and delivered by the Company and assuming due authorization and valid execution and delivery by the Stockholder, this Agreement is a valid and binding obligation of the Company, enforceable in accordance with its terms.

Section 2.2 Representations and Warranties of the Stockholder. The Stockholder represents and warrants to the Company as of the date hereof as follows:

(a) The Stockholder has been duly incorporated and is validly existing as a corporation in good standing under the laws of the state of its incorporation and has all necessary corporate power and authority to enter into this Agreement and to carry out its obligations hereunder.

(b) This Agreement has been duly and validly authorized by the Stockholder and all necessary and appropriate action has been taken by the Stockholder to execute and deliver this Agreement and to perform its obligations hereunder.

(c) This Agreement has been duly executed and delivered by the Stockholder and assuming due authorization and valid execution and delivery by the Company,

this Agreement is a valid and binding obligation of the Stockholder, enforceable in accordance with its terms.

(d) As of the effectiveness of this Agreement, the Stockholder Group Beneficially Owns [_____] shares of Common Stock and [_____] shares of Convertible Preferred Stock and does not Beneficially Own any other Voting Security, warrant, option, convertible security or other similar right to acquire Common Stock or shares of any other class of capital stock of the Company which are entitled to vote generally in the election of directors.

Article III Stockholder and Company Conduct

Section 3.1 Standstill Provision. Subject to the provisions of this Agreement, during the term of this Agreement, the Stockholder agrees with the Company that, without the prior approval of a majority of the Board, the Stockholder will not, and will cause each Stockholder Affiliate not to, take any of the following actions:

(a) singly or as part of a partnership, limited partnership, syndicate or other 13D Group, directly or indirectly, acquire Beneficial Ownership of any Voting Security so as to cause the Stockholder Group's Voting Ownership Percentage to exceed the Unrestricted Ownership Percentage; or

(b) singly or as part of a partnership, limited partnership, syndicate or other 13D Group, directly or indirectly, acquire, propose to acquire, or publicly announce or otherwise disclose an intention to propose to acquire, or offer or agree to acquire, by purchase or otherwise, Beneficial Ownership of any Security so as to cause the Stockholder Group's Total Ownership Percentage to exceed the Maximum Ownership Percentage; or

(c) deposit (either before or after the date of the execution of this Agreement) any Security in a voting trust or subject any Security to any similar arrangement or proxy with respect to the voting of such Security; or

(d) make, or in any way participate, directly or indirectly, in any "solicitation" of "proxies", or become a "Participant" in a "solicitation" (as such terms are used in Regulation 14A under the Exchange Act) to seek to advise or influence any person to vote against any proposal or director nominee recommended to the stockholders of the Company or any of its subsidiaries by at least a majority of the Board of Directors; or

(e) form, join or in any way participate in a 13D Group with respect to any Security of the Company or any securities of its subsidiaries; or

(f) commence (including by means of proposing or publicly announcing or otherwise disclosing an intention to propose, solicit, offer, seek to effect or negotiate) a merger, acquisition or other business combination transaction relating to the Company; or

(g) initiate a "proposal," as such term is used in Rule 14a-8 under the Exchange Act, "propose", or otherwise solicit the approval of, one or more stockholders for a "proposal" or induce or attempt to induce any other person to initiate a "proposal"; or

(h) otherwise act, alone or in concert with others, to seek to control or influence the management, the Board or policies of the Company; or

(i) take any other action to seek or effect control of the Company other than in a manner consistent with the terms of this Agreement.

This Section 3.1 shall not be interpreted to restrict the Stockholder or any Stockholder Affiliate from taking any action or exercising any right consistent with the terms of this Agreement, including engaging in private and confidential discussions with the Board or the management of the Company. In addition, this section shall not be deemed to restrict the Stockholder Nominees from participating as board members in the direction of the Company.

Section 3.2 Required Reduction of Ownership Percentage. If at any time the Stockholder becomes aware that the Stockholder Group's Total Ownership Percentage exceeds the Maximum Ownership Percentage (other than as a result of action on the part of the Company or any of its Affiliates), then the Stockholder shall, or shall cause the Stockholder Affiliates to, consistent with the provisions of Section 3.4 of this Agreement, promptly take all action necessary to reduce the amount of Securities Beneficially Owned by the Stockholder Group such that the Stockholder Group's Total Ownership Percentage is not greater than the Maximum Ownership Percentage.

Section 3.3 Top-Up Rights. (a) During the term of this Agreement, if the Stockholder Group's Voting Ownership Percentage falls below the Unrestricted Ownership Percentage, the Stockholder may purchase Voting Securities from time

to time in the open market or otherwise in an amount sufficient in order to restore the Stockholder Group's Voting Ownership Percentage to the Unrestricted Ownership Percentage.

(b) All Securities acquired by purchase pursuant to this Section 3.3 shall be subject to the terms of this Agreement.

Section 3.4 Restrictions on Transfer. None of the members of the Stockholder Group shall directly or indirectly Transfer any Securities without the prior written consent of a majority of the Independent Directors, except the following Transfers:

(a) Transfers of Securities representing Voting Power (assuming the conversion of all Convertible Preferred Stock to be transferred) of less than 5.0% to any Transferee, without prior notice to the Company, so long as such Transferee and any Affiliate of such Transferee and any such person who is a member of a 13D Group with such Transferee does not have a Voting Ownership Percentage (assuming the conversion of all Convertible Preferred Stock to be transferred) of 5.0% or more immediately after giving effect to such Transfer.

(b) Transfers of Securities representing Voting Power (assuming the conversion of all Convertible Preferred Stock to be transferred) of 5.0% or more pursuant to the following procedure (the "Sale Option"):

(i) If a member of the Stockholder Group (the "Seller") determines that it wishes to seek a buyer for any of the Securities in a transaction that would result in a purchaser other than a member of the Stockholder Group holding 5.0% or more of the Voting Power (assuming the conversion of all Convertible Preferred Stock to be transferred), Seller shall provide written notice (a "Sale Notice") of its intention to sell such Securities (the "Sale Securities"). The Sale Notice shall specify the number of Sale Securities and the cash price per share at which the Company or its designee may purchase the Sale Securities.

(ii) The Company shall give notice to the Seller within 15 days of receiving the Sale Notice of whether the Company intends to purchase the Sale Securities, and if the Company elects to purchase such Sale Securities, the Company shall have a period ending on the later of fifteen (15) days after the date of the Sale Notice and five (5) days from the date of receipt of all necessary regulatory approvals (the "Sale Period") (provided, that in no event shall the Sale Period exceed one hundred eighty (180) days) within which to effect a closing of the Company's or its designee's purchase of all, but not less than all, of the Sale Securities.

(iii) If the Company or its designee shall not give the Seller notice of its election to purchase the Sale Securities within the specified period or shall for any reason fail to effect a closing of the purchase of all of the Sale Securities within the Sale Period, the Seller shall have the right, for a period of one year following such notice of election not to purchase or failure to purchase, to sell all or part of such Sale Securities to any other person for a price equal to or exceeding the price specified in the Sale Notice; provided however that before the Seller may sell the Sale Securities to any such person pursuant to this Section 3.4(b), such person shall have entered into a stockholders agreement containing substantially the same terms as this Agreement, except for Sections 4.1 and 4.2 hereto.

(c) Transfers of Securities to the public in a bona fide underwritten offering pursuant to the Registration Rights Agreement; provided, however, that the Seller and the representative or representatives of the underwriters previously agree in writing with the Company that all reasonable efforts will be made to achieve a wide distribution of the Voting Securities in such offering and to ensure that no Transferee in such offering acquires for its own account Beneficial Ownership of Securities representing upon Transfer Voting Power of 3.0% or more.

(d) Direct or indirect transfers of all or part of the Stockholder Group's Securities pursuant to a distribution of Securities among the stockholders of the Stockholder on either a pro rata basis or a basis otherwise designed to widely distribute such Securities among the Stockholder's existing stockholders.

(e) Transfers of Securities among members of the Stockholder Group; provided, however, that any such Transferee shall agree with the Company in writing prior to each such transfer to be bound by the terms of this Agreement with respect to its Beneficial Ownership of Securities, and that upon such agreement such Transferee shall be considered the Stockholder for purposes of this Agreement.

(f) Transfers in connection with a financing transaction in which the Stockholder grants a security interest in or otherwise collateralizes a financing with Securities; provided, however, that the lender in any such

transaction shall have entered into a stockholders agreement containing substantially the same terms as this Agreement, except for Sections 4.1 and 4.2 hereto.

(g) If a Clearly Credible Tender Offer for the Company has been commenced, at the Stockholder's option Transfers of Securities by means of tenders into such Clearly Credible Tender Offer in an amount not exceeding the percentage (on the basis of total Votes and assuming the conversion of all shares of Convertible Preferred Stock into shares of Common Stock) of the Voting Securities of which it is the Beneficial Owner equal to the highest percentage (on the basis of total Votes) of the aggregate of all Voting Securities not Beneficially Owned by any member of the Stockholder Group which has ever been announced to have been tendered into such Clearly Credible Tender Offer.

Section 3.5 Buy-Back Options. (a) During the term of this Agreement, if the Company purchases Securities from the public, whether by tender offer, open market purchase or otherwise (a "Repurchase"), the Company shall contemporaneously with the Repurchase offer to repurchase from the Stockholder on the same terms and conditions, including price, as in the Repurchase, a percentage (on the basis of total Votes and assuming the conversion of all shares of Convertible Preferred Stock into shares of Common Stock) of those Securities Beneficially Owned by the Stockholder equal to the percentage (on the basis of total Votes and assuming the conversion of all shares of Convertible Preferred Stock into shares of Common Stock) of Securities to be Repurchased from the Beneficial Owners of Securities other than the Stockholder or any Stockholder Affiliate (the "Buy-Back Offer"). The Stockholder may accept such Buy-Back Offer in its sole discretion.

(b) The Company shall provide notice to the Stockholder of its intention to engage in a Repurchase not less than 30 days in advance of the date on which the Repurchase is to begin (the "Company Repurchase Notice"). The Stockholder must provide notice to the Company within ten (10) days of receipt of the Company Repurchase Notice of whether the Stockholder intends to accept the Buy-Back Offer.

Section 3.6 Charter and By-laws. During the term of this Agreement the Company shall not amend, alter or repeal, or propose the amendment, alteration or repeal of, any provision of the Charter or the By-laws in any manner which is inconsistent with the terms of this Agreement and which adversely affects the rights of the Stockholder Group under the terms of this Agreement. If at any time during the term of this Agreement the provisions of this Agreement shall conflict with the provisions of the Charter and the By-laws, the provisions of this Agreement shall, to the extent permitted by the Delaware General Corporation Law (the "DGCL"), be controlling.

Section 3.7 Rights Arrangement. During the term of this Agreement, the Company hereby agrees not to implement or amend any provision of any rights agreement or similar form of stockholder rights or stockholder protective device (a "Rights Arrangement") in any manner which is inconsistent with the terms of this Agreement or the Merger Agreement and which adversely affects the rights of the Stockholder Group under the terms of this Agreement; provided, however, that this provision shall not preclude the Company from implementing a Rights Arrangement in customary form for holding companies registered under the 1935 Act; provided, further, that such Rights Arrangement shall (i) exempt the Stockholder from its provisions pursuant to which ownership of a beneficial interest in the Company's securities affects the exercisability of the rights and (ii) not apply to any person that acquires less than a 20% beneficial ownership interest in the Company's voting securities.

Section 3.8 Taxes Upon Conversion or Exchange. The Company hereby agrees to pay any and all stock transfer and documentary stamp taxes that may be payable in respect of any issuance or delivery of (i) any shares of Convertible Preferred Stock, (ii) any shares of Common Stock issued in a Conversion of shares of Convertible Preferred Stock, or (iii) any exchange of shares of Common Stock for shares of Convertible Preferred Stock, or certificates or instruments evidencing any of such shares or securities. The Company shall not, however, be required to pay any such tax which may be payable in respect of any transfer involved in the issuance or delivery of shares of Common Stock in a Conversion of shares of Convertible Preferred Stock in a name other than that in which the shares of such Convertible Preferred Stock were registered.

Section 3.9 Prohibition on Senior Securities. During the term of this Agreement, the Company hereby agrees that it shall not, except as may otherwise be contemplated by this Agreement, create, authorize or reclassify any authorized stock of the Company into (x) any class or series of the Company's capital stock ranking prior to the Convertible Preferred Stock as to dividends or as to distributions of assets upon liquidation, dissolution or winding up of the Company, whether voluntary or involuntary, or (y) any class or series of the Company's capital stock entitled to vote separately as a class on any matter whatsoever, other than an amendment to the Charter which would have the effect of modifying the voting powers, designations, preferences, rights and

qualifications, limitations or restrictions of such class or series so as to affect the holders thereof adversely, or (z) any security convertible into shares of any class or series described in (x) or (y) above.

Section 3.10 Section 203 of the DGCL. The Board of Directors of the Company shall take such actions as are necessary to ensure that the provisions of Section 203 of the DGCL shall not be applicable to the Stockholder.

Article IV Board Representation and Voting

Section 4.1 Directors Designated by the Stockholder. (a) During the term of this Agreement, the size of the Board shall be nine (9), ten (10) or twelve (12) directorships. During the term of this Agreement, the Company agrees to not cause or allow the size of the Board to be eleven (11) directorships. Immediately following the Closing, if the size of the Board is nine (9) or ten (10) directorships, the Board shall appoint as a Director one (1) Stockholder Nominee (as defined in Section 4.1(b) below and in addition to any Directors that may be appointed pursuant to Section 7.10(a) of the Merger Agreement) who has been designated by the Stockholder in the Stockholder Nominee Notice (as defined in Section 4.1(b) below and attached as Exhibit A hereto). If the size of the Board, at the time of the Closing, is twelve (12) directorships, the Board shall appoint as Directors two (2) Stockholder Nominees (in addition to any Directors that may be appointed pursuant to the Merger Agreement) who have been designated by the Stockholder in the Stockholder Nominee Notice. To the closest extent possible, the Stockholder Nominee (and the nominees to be appointed pursuant to Section 7.10(a) of the Merger Agreement) shall be placed evenly in each class of Directors and, if more Stockholder Nominees are appointed pursuant to this Section 4.1 than there are classes of Directors, then the classes of Directors latest standing for election shall have placed in them additional Stockholder Nominees, with one Director placed in each successive class, so as to keep all classes as even as possible with respect to the number of Stockholder Nominees in each. In the event of a vacancy caused by the disqualification, removal, resignation or other cessation of service of any Stockholder Nominee from the Board, the Board shall elect as a Director (to serve the balance of the predecessor nominee's term) a new Stockholder Nominee who has been designated by the Stockholder in an additional Stockholder Nominee Notice that has been provided to the Company at least seven (7) days prior to the date of a regular meeting of the Board. In the event that the Size of the Board is, at the time of the Closing, nine (9) or ten (10) directorships, and is subsequently during the term of this Agreement, expanded to twelve (12) directorships, then, upon such expansion, the Board shall appoint as an additional Director, a Stockholder Nominee who has been designated by the Stockholder in a Stockholder Nominee Notice. Such additional Director shall be placed in the class of Directors latest standing for election, provided, however, that if placing such additional Director in such class would cause the classes of Directors then existing to have a differential in number of Stockholder Nominees therein in excess of one (1), then such additional Directors shall be placed in such classes so as to cause such differential to be one (1) or less.

(b) The Stockholder shall provide notice to the Company (the "Stockholder Nominee Notice") as required by Section 4.1(a) above, which notice shall contain the following information: (i) the name of the person(s) it has designated to become Director(s) (the "Stockholder Nominees"), and (ii) all information required by Item 5(b) of Schedule 14A under the Exchange Act with respect to each such Stockholder Nominee.

(c) During the term of this Agreement, at each annual meeting of stockholders of the Company at which the term of any Stockholder Nominee is to expire or (ii) a vacancy is caused by the removal, resignation, retirement, death, disability or disqualification or other cessation of service of any Stockholder Nominee, the Stockholder shall provide notice to the Company in writing ninety (90) days prior to the date of the proxy statement for the prior year's annual meeting of the Company's stockholders ("Successor Stockholder Nominee Notice"), indicating (x) the name of the person(s) it has designated to become Director(s) ("Successor Stockholder Nominees" and together with Stockholder Nominees, "Stockholder Nominees"), if any, (y) the class of Directors to which each such Successor Stockholder Nominee shall be assigned, and (z) all information required by Regulation 14A and Schedule 14A under the Exchange Act with respect to each such Successor Stockholder Nominee.

(d) The Stockholder shall consult with the Company in connection with the identity of any proposed Stockholder Nominee. In the event the Company is advised in writing by its outside counsel that a proposed Stockholder Nominee would not be qualified under the Company's Charter or By-laws or any applicable statutory or regulatory standards to serve as a Director, or if the Company otherwise reasonably objects to a proposed Stockholder Nominee, including without limitation because such Stockholder Nominee either (i) is a director or officer of a direct competitor of the Company, (ii) does not satisfy the good faith reasonable criteria for Board membership of PNM in effect as of the date

of the Merger Agreement, or (iii) has engaged in any adverse conduct that would require disclosure under Item 7 of Schedule 14A promulgated under the Exchange Act, the Stockholder agrees to withdraw such proposed Stockholder Nominee and nominate a replacement therefor (which replacement would be subject to the requirements of this Section 4.1(e)). Any such objection by the Company must be made no later than one (1) month after the Stockholder first informs the Company of the identity of the proposed Stockholder Nominee; provided, however, that the Company shall in all cases notify the Stockholder of any such objection sufficiently in advance of the date on which proxy materials are mailed by the Company in connection with such election of directors to enable the Stockholder to propose an alternate Stockholder Nominee pursuant to and in accordance with the terms of this Agreement. Stockholder Nominees may not be officers or employees of the Stockholder.

(e) During the term of this Agreement the Company agrees to include each Stockholder Nominee to be added to or retained on the Board pursuant to this Agreement in the slate of nominees recommended by the Board to the Company's stockholders for election as Directors and shall use its best efforts to cause the election or reelection of each such Stockholder Nominee to the Board, including soliciting proxies in favor of the election of such persons.

(f) During the term of this Agreement, the Stockholder shall be entitled to designate each Stockholder Nominee (including the Directors that may be appointed by the Stockholder pursuant to the Merger Agreement) to be a member of one committee of the Board (including without limitation the executive committee, the audit committee and the executive compensation committee), provided however, that if all such Stockholder Nominees are designated to serve on a committee at a time when an executive committee does not exist, then if an executive committee is so formed, the Stockholder shall be entitled to designate one Stockholder Nominee to serve on such committee in addition to serving on the committee on which such Stockholder Nominee serves at such time.

Section 4.2 Resignation of Stockholder Nominees. Unless otherwise agreed by the Company, the Stockholder shall cause each of the Stockholder Nominees then serving on the Board to offer their resignations from the Board immediately upon the earlier to occur of the following:

(a) The termination of this Agreement pursuant to and in accordance with Section 5.2 hereof; and

(b) The Stockholder Group's Total Ownership Percentage falling below 10%.

Section 4.3 Voting. During the term of this Agreement, the Stockholder, as a holder of shares of Voting Securities, agrees that:

(a) The Stockholder shall, and shall cause each Stockholder Affiliate to, be present, in person or by proxy, at all meetings of stockholders of the Company such that the percentage of the total number of Voting Securities having voting rights which are Beneficially Owned by the Stockholder and the Stockholder Affiliates which are counted for the purpose of determining the presence of a quorum at such meetings shall be equal to the percentage of Voting Securities Beneficially Owned by other than the Stockholder or the Stockholder Affiliate which are present, in person or by proxy, at such meeting of stockholders of the Company, and which are counted for the purpose of determining the presence of a quorum at such meetings.

(b) With respect to all matters submitted to a vote of the Company's stockholders during the term of this Agreement, the Stockholder and each member of the Stockholder Group shall vote all Voting Securities which are counted for the purpose of determining the presence of a quorum at a meeting of stockholders in accordance with Section 4.3(a) hereof, with respect to all matters voted on by the stockholders of the Company (whether at a regular or special meeting or pursuant to a unanimous written consent) in the same proportion as all Voting Securities (other than those Beneficially Owned by the Stockholder or the Stockholder Affiliate) are voted with respect to such matters.

(c) Each Transferee of any Voting Securities who acquires such Voting Securities, directly or indirectly, from the Stockholder or any member of the Stockholder Group agrees that:

(i) The Transferee shall be present, in person or by proxy, at all meetings of stockholders of the Company so that all Voting Securities having voting rights which are Beneficially Owned by the Transferee may be counted for the purpose of determining the presence of a quorum at such meetings.

(ii) (A) With respect to the election of Directors, the Transferee shall vote all Voting Securities Beneficially Owned by the Transferee in favor of the election of all candidates for Director nominated by the Company's Board (including the Stockholder Nominees) and (B) with respect to any proposal initiated by a stockholder of the Company relating to any

matter (other than nonbinding precatory resolutions with respect to which subsection (iii) hereof shall apply), the Transferee shall vote all Voting Securities Beneficially Owned by the Transferee in accordance with the recommendation of the Board.

(iii) The Transferee shall vote as requested by a majority of the Board on compensatory stock plans submitted to stockholders of the Company for their approval, provided that (i) the Transferee shall not be obligated to so vote if the stock plan at issue involves the potential issuance of more than 5% of the equity securities of the Company, on a fully diluted basis, and (ii) the Transferee shall not be obligated to so vote if the aggregate of all such plans involves the potential issuance of more than 5% of the equity securities of the Company, on a fully diluted basis, in any rolling five-year period.

(iv) With respect to all other matters submitted to a vote of the Company's stockholders during the term of this Agreement, (i) the Transferee may vote in its sole discretion a number of Voting Securities Beneficially Owned by the Transferee having voting rights with respect to such other matters representing in the aggregate a Voting Ownership Percentage not in excess of the Unrestricted Ownership Percentage, and (ii) the Transferee shall vote all Voting Securities Beneficially Owned by the Transferee having voting rights with respect to such other matters representing in the aggregate a Voting Ownership Percentage in excess of the Unrestricted Ownership Percentage in the same proportion (based on total Votes) as all Voting Securities voted on any such other matter are voted by the stockholders of the Company other than the Transferee, provided, however, that the Transferee may vote any or all of the Voting Securities Beneficially Owned by it in its sole discretion with respect to a vote of the Company's stockholders on any transaction or series of transactions which would, if consummated, constitute a Change in Control of the Company.

(v) At all times the Transferee may exercise in its sole discretion such voting rights as the Convertible Preferred Stock may have from time to time pursuant to the Charter and with respect to an amendment to the Charter which would have the effect of modifying the voting powers, designations, preferences, rights and qualifications, limitations or restrictions of such class or series so as to affect the holders thereof adversely.

Article V Effectiveness and Termination

Section 5.1 Effectiveness. This Agreement shall take effect immediately upon the Closing and shall remain in effect until it is terminated pursuant to Section 5.2 hereof.

Section 5.2 Termination. Unless otherwise agreed in writing by the Stockholder, this Agreement shall terminate upon the earliest to occur of the following:

(a) The Company's failure to pay the stated quarterly dividend on any series of Convertible Preferred Stock in any four (4) quarters during the term of this Agreement.

(b) The election to the Board of a majority of Directors other than those nominated by the Nominating Committee of the Board.

(c) The size of the Board being increased to more than twelve (12) directors.

(d) The Stockholder Group's Total Ownership Percentage falling below 10% for a period of 365 consecutive days.

(e) Any material breach of this Agreement by the Company, provided that the Company has not cured the breach within sixty (60) days after receiving notice of such breach, or if cure within such time is not possible, the Company has not made reasonable good faith efforts to cure such breach, provided, further that in no event shall such cure period extend longer than ninety (90) days from the date of first notice of such breach.

(f) Mutual written agreement of the Company and the Stockholder at any time to terminate this Agreement, which termination shall occur at a time to be fixed in such mutual agreement.

Article VI Miscellaneous

Section 6.1 Compliance With Law. Notwithstanding anything to the contrary in this Agreement, no Transfer of Securities shall be deemed to be required or

permitted pursuant to this Agreement if such Transfer would require regulatory approvals which, individually or in the aggregate with respect to such Transfer, would have a material adverse impact on the Company or any of its subsidiaries or the Stockholder or any Stockholder Affiliate.

Section 6.2 Regulatory Matters. During the term of this Agreement, the Company agrees to take all commercially reasonable steps to assist the Stockholder in securing such regulatory approvals as would not reasonably be expected to have a material adverse effect on the Company and as may be necessary to allow the Stockholder to exercise its rights under the Agreement at all times, including without limitation the right of the Stockholder to Transfer Securities free of the restrictions and limitations imposed by Section 6.1.

Section 6.3 Injunctive Relief. Each party hereto acknowledges that it would be impossible to determine the amount of damages that would result from any breach of any of the provisions of this Agreement and that the remedy at law for any breach, or threatened breach, of any of such provisions would likely be inadequate and, accordingly, agrees that each other party shall, in addition to any other rights or remedies which it may have, be entitled to seek such equitable and injunctive relief as may be available from any court of competent jurisdiction to compel specific performance of, or restrain any party from violating, any of such provisions. In connection with any action or proceeding for injunctive relief, each party hereto hereby waives the claim or defense that a remedy at law alone is adequate and agrees, to the maximum extent permitted by law, to have each provision of this Agreement specifically enforced against him or it, without the necessity of posting bond or other security against him or it, and consents to the entry of injunctive relief against him or it enjoining or restraining any breach or threatened breach of such provisions of this Agreement.

Section 6.4 Successors and Assigns. This Agreement shall be binding upon, shall inure to the benefit of and shall be enforceable by the Company and by the Stockholder and their respective successors and permitted assigns, and no such term or provision is for the benefit of, or intended to create any obligations to, any other Person.

Section 6.5 Amendments; Waiver. (a) This Agreement may be amended only by an agreement in writing executed by the parties hereto. Any approval of an amendment of this Agreement upon the part of the Company shall require the approval of a majority of the Independent Directors at a duly convened meeting thereof or all of the Company's directors by written consent thereto.

(b) Either party may waive in whole or in part any benefit or right provided to it under this Agreement, such waiver being effective only if contained in a writing executed by the waiving party. No failure by any party to insist upon the strict performance of any covenant, duty, agreement or condition of this Agreement or to exercise any right or remedy consequent upon breach thereof shall constitute a waiver of any such breach or of any other covenant, duty, agreement or condition, nor shall any delay or omission of either party to exercise any right hereunder in any manner impair the exercise of any such right accruing to it thereafter. Any waiver of any benefit or right provided to the Company under this Agreement shall require the approval of a majority of the Board and a majority of the Independent Directors at a duly convened meeting thereof or all of the Company's directors by written consent thereto.

Section 6.6 Notices. Except as otherwise provided in this Agreement, all notices, requests, claims, demands, waivers and other communications hereunder shall be in writing and shall be deemed to have been duly given when delivered by hand, when delivered personally or by courier, three days after being deposited in the mail (registered or certified mail, postage prepaid, return receipt requested), or when received by facsimile transmission if promptly confirmed by one of the foregoing means, as follows:

If to the Company:

Public Service Company or New Mexico and
HVOLT Enterprises, Inc.
Alvarado Square,
Albuquerque, NM 87158
Attention: Chief Financial Officer
Fax: (505) 241-2368

with a copy to:

Winthrop, Stimson, Putnam & Roberts
One Battery Park Plaza
New York, New York 10004
Attention: Timothy Michael Toy, Esq.
Stephen R. Rusmiser, Esq.
Fax: (212) 858-1500

If to the Stockholder:

Westar Industries, Inc.
818 South Kansas Avenue
Topeka, KS 66612
Attention: President

Fax: (785) 575-1936

with a copy to:

LeBoeuf, Lamb, Greene & MacRae, L.L.P.
125 West 55th Street
New York, New York 10019
Attention: William S. Lamb, Esq.
Benjamin G. Clark, Esq.
Fax: (212) 424-8500

or to such other address or facsimile number as either party may, from time to time, designate in a written notice given in a like manner.

Section 6.7 APPLICABLE LAW. THIS AGREEMENT SHALL BE GOVERNED BY AND CONSTRUED IN ACCORDANCE WITH THE INTERNAL LAWS OF THE STATE OF DELAWARE WITHOUT GIVING EFFECT TO PRINCIPLES OF CONFLICTS OF LAW.

Section 6.8 Headings. The descriptive headings of the several sections in this Agreement are for convenience only and do not constitute a part of this Agreement and shall not be deemed to limit or affect in any way the meaning or interpretation of this Agreement.

Section 6.9 Integration. This Agreement and the other writings referred to herein or delivered pursuant hereto which form a part hereof contain the entire understanding of the parties with respect to its subject matter. This Agreement supersedes all prior agreements and understandings between the parties with respect to its subject matter. There are no restrictions, agreements, promises, representations, warranties, covenants or undertakings with respect to its subject matter other than those expressly set forth or referred to herein.

Section 6.10 Severability. If any term or provision of this Agreement or any application thereof shall be declared or held invalid, illegal or unenforceable, in whole or in part, whether generally or in any particular jurisdiction, such provision shall be deemed amended to the extent, but only to the extent, necessary to cure such invalidity, illegality or unenforceability, and the validity, legality and enforceability of the remaining provisions, both generally and in every other jurisdiction, shall not in any way be affected or impaired thereby.

Section 6.11 Consent to Jurisdiction. In connection with any suit, claim, action or proceeding arising out of this Agreement, the Stockholder and the Company each hereby consent to the in personam jurisdiction of the United States federal courts and state courts located in Topeka, Kansas; the Stockholder and the Company each agree that service in the manner set forth in Section 6.5 hereof shall be valid and sufficient for all purposes; and the Stockholder and the Company each agree to, and irrevocably waive any objection based on forum non conveniens or venue not to, appear in any United States federal court state court located in Topeka, Kansas.

Section 6.12 Counterparts. This Agreement may be executed by the parties hereto in two or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument.

IN WITNESS WHEREOF, the Company and the Stockholder have caused this Agreement to be duly executed by their respective authorized officers as of the date set forth at the head of this Agreement.

HVOLT ENTERPRISES, INC.

By: _____
Name:
Title:

WESTAR INDUSTRIES, INC.

By: _____
Name:
Title:

Stockholder Nominee Notice

This Stockholder Nominee Notice is provided to HVOLT Enterprises, Inc. (the "Company") by Westar Industries, Inc., (the "Stockholder") pursuant to Sections 4.1(a) and (b) of the Stockholder Agreement, dated as of [], 200_, between the Stockholder and the Company. Additional sheets may be attached hereto as necessary to answer each item below.

1. The Stockholder hereby designates the person set forth below (the "Stockholder Nominee") to be a director of the Company:

Name: _____

Principal occupation or employment: _____

Principal business of the organization _____

by which _____ is employed: _____

Mailing address: _____

Tel: _____

Principal Business Address of _____

employer specified above: _____

Tel: _____

2. Except as set forth below, the Stockholder Nominee has/has not, during the past ten years, been convicted in a criminal proceeding (excluding traffic violations or similar misdemeanors).

(If answer is positive):

Dates: _____

Nature of Conviction: _____

Name and location of _____

court: _____

Penalty imposed or other _____

disposition _____

3. The Stockholder Nominee beneficially owns, directly or indirectly, the following securities of the Company:

Description of Security	Quantity Owned
- - - - -	- - - - -
- - - - -	- - - - -
- - - - -	- - - - -
- - - - -	- - - - -

4. The Stockholder Nominee owns of record, but not beneficially, the following securities of the Company:

Description of Security	Quantity Owned
- - - - -	- - - - -
- - - - -	- - - - -
- - - - -	- - - - -
- - - - -	- - - - -

5. During the past two years, the Stockholder Nominee has purchased or sold securities of the Company as set forth below:

Description of Security	Date Purchased	Date Sold
- - - - -	- - - - -	- - - - -
- - - - -	- - - - -	- - - - -
- - - - -	- - - - -	- - - - -
- - - - -	- - - - -	- - - - -

6. Of the securities described above, the following parts of the purchase price or market value of the shares specified is represented by funds borrowed or otherwise obtained for the purpose of acquiring or holding such securities:

Description of Security	Amount of Indebtedness
- - - - -	- - - - -
- - - - -	- - - - -
- - - - -	- - - - -

7. If the funds described above were borrowed or obtained otherwise than pursuant to a margin account or bank loan in the regular course of business of a bank, broker or dealer, a brief description of the transaction, including the names of the parties, is set forth immediately below:

Description of Security
- - - - -
- - - - -

Description of Transaction
- - - - -
- - - - -
- - - - -
- - - - -

8. Within the past year, the Stockholder Nominee was/was not a party to any contract, arrangements or understandings with any person with respect to any securities of the Company, including, but not limited to joint ventures, loan or option arrangements, puts or calls, guarantees against loss or guarantees of profit, division of losses or profits, or the giving or withholding of proxies.

If the Stockholder Nominee has been such a party, a description of the parties to such contracts, arrangements or understandings is set forth below:

9. The Stockholder Nominee's associates beneficially own, directly or indirectly, the following securities of the Company:

Associate Name	Address	Description of Security	Amount Owned
-----	-----	-----	-----
-----	-----	-----	-----
-----	-----	-----	-----
-----	-----	-----	-----

10. The Stockholder Nominee beneficially owns, directly or indirectly, the following amounts of each class of securities of any parent or subsidiary of the Company:

Description of Security	Quantity Owned
-----	-----
-----	-----
-----	-----
-----	-----

11. Set forth below is a description of any transaction, or series of similar transactions, since the beginning of the Company's last fiscal year, or any currently proposed transaction, or series of similar transactions, to which the Company or any of its subsidiaries was or is to be a party, in which the amount involved exceeds \$60,000 and in which the Stockholder Nominee had, or will have, a direct or indirect material interest, including a description of the nature of the Stockholder Nominee's interest in the transaction(s), the amount of such transaction(s) and, where practicable, the amount of such person's interest in the transaction(s):

12. Except as set forth below, neither the Stockholder Nominee (nor any associate of the Stockholder Nominee) has any arrangement or understanding with any person with respect to any future employment by the Company or its affiliates or with respect to any future transactions to which the Company or any of its affiliates will or may be a party:

Submitted by:

Westar Industries, Inc.

By: _____

Name: _____

Title: _____

Date: _____

FORM OF

WESTERN RESOURCES, INC.

Certificate of Designations
for a Series of Preference Stock

designated as "7.5% Convertible Preference Stock"
(this "Certificate")

Pursuant to Section 17-6401(g) of the General
Corporation Code of the State of Kansas

Western Resources, Inc., a corporation of the State of Kansas (formerly named "The Kansas Power and Light Company") (hereinafter called the "Corporation"), by the President and Chief Executive Officer, an officer authorized to exercise the duties ordinarily exercised by a Vice President, and an Assistant Secretary, DOES HEREBY CERTIFY that the Board of Directors of the Corporation, at a meeting duly convened and held on November 8, 2000, at which a quorum was present and acting throughout, duly and unanimously adopted the following resolutions authorizing the issuance of a series of the Corporation's Preference Stock, and fixing the designations, preferences and relative, participating, optional and other rights and the qualifications, limitations and restrictions thereof other than those which would apply to all series of Preference Stock of the Corporation as follows:

BE IT RESOLVED, that a new series of the Preference Stock, without par value, of the Corporation be, and it hereby is, established;

FURTHER RESOLVED, that the following be, and it hereby is, a statement of the designation and the powers, preferences and rights, and the qualifications, limitations and restrictions, of such series, subject to the provisions set forth in the Restated Articles of Incorporation of the Corporation, as heretofore amended (the "Articles") (capitalized terms used herein and not otherwise defined herein shall have the meanings given thereto in the Articles; certain other terms used herein are defined in Section 9 of this Certificate):

1. Designation. The Preference Stock created and authorized hereby shall be designated as the "7.5% Convertible Preference Stock" (the "7.5% Series"). The number of shares constituting the 7.5% Series shall be 4,000,000 and no more. The 7.5% Series comprises all of the 4,000,000 shares of Preference Stock that the Corporation is authorized to issue pursuant to the Articles.

2. Dividends. The rate per annum of dividends on the 7.5% Series shall be \$7.50 per share and dividends thereon shall be cumulative from and including the date of issuance. January 1, 2001 shall be the first dividend payment date for shares issued before that date, and dividends shall be payable thereafter on the first day of January, April, July and October of each year. For any period during which any share of such series is outstanding less or more than a full quarterly dividend period, the dividends payable shall be computed on the basis of twelve 30-day months and the actual number of days elapsed in the period for which the dividends are payable.

3. Optional Redemption(a). (a) The shares of the 7.5% Series shall not be redeemable prior to the earlier to occur of (i) the fourth anniversary of the Lobos Merger Effective Time and (ii) the fourth anniversary of termination of the Lobos Merger Agreement, and on or after such date such shares shall be redeemable in whole or in part at the option of the Corporation, subject to the terms, provisions and effect as generally provided for redemption of shares of the Corporation's Preference Stock in the Articles, at the Liquidation Preference, plus, in each case, an amount equal to the accrued but unpaid dividends on said shares to the date of redemption; provided, however, that no redemption shall be made if any dividends payable on the 7.5% Series are in arrears, unless all shares of the 7.5% Series are redeemed. In the case of an optional redemption of less than all of the shares of the 7.5% Series at the time outstanding, the Corporation shall select by lot the shares so to be redeemed.

(b) No sinking fund or redemption, purchase or similar account or fund will be provided for shares of the 7.5% Series.

4. Liquidation, Dissolution or Winding Up. In the event of the voluntary or involuntary liquidation, dissolution or winding up of the Corporation, the holders of the 7.5% Series shall be entitled to receive from any assets and funds of the Corporation remaining after payment of the debts and other liabilities of the Corporation and after payment to the

holders of Preferred Stock of the preferential amount or amounts to which such holders are entitled thereon) for each share an amount equal to the Liquidation Preference, plus as to each share, an amount equal to the accrued but unpaid dividends thereon to the dates of distribution.

5. Voting Rights. Subject to the special voting rights provided to holders of the Corporation's Preferred Stock and the special rights stated below as provided to holders of the Corporation's Preference Stock, as stated in replacement Paragraph 1 of Section D of Article IV of the Articles (set forth in the Certificate of Amendment to the Restated Articles dated and filed May 12, 1998) each holder of shares of the 7.5% Series shall have one vote for each share held by such holder for the election of directors and upon all other matters requiring stockholder action; provided, however, that whenever, as provided in or pursuant to the Articles, the Preference Stockholders are entitled to vote separately as a class for the election of certain directors, each holder of shares of the 7.5% Series shall be entitled to vote such shares only for the directors to be elected by the holders of the Preference Stock.

As stated in Subdivision (a) of Paragraph 5 of Section D of Article IV of the Articles (said Article IV being the former Article VI which article was renumbered as specified in the Certificate of Amendment to Restated Articles dated May 26, 1994). The holders of all Preference Stock shall be entitled to the following special voting rights:

(a) If at any time, dividends payable on the Corporation's Preference Stock are in default in an amount equivalent to six or more full quarterly dividends, whether or not consecutive, the holders of all outstanding shares of the Corporation's Preference Stock, voting separately as a class and without regard to series, and in the manner provided in Paragraph 1 of Section D of Article IV of the Articles, shall be entitled until, but only until, all dividends in default shall have been paid or deposited in trust with a bank or trust company having the qualifications set forth in Paragraph 3 of Section B of Article IV of the Articles for payment on or before the next succeeding dividend payment date, to elect two directors to the Board of Directors, and the holders of the Preferred Stock and the Common Stock, voting together, or voting as provided in Section A of Article IV of the Articles in the event that the holders of the Preferred Stock are then entitled to special voting rights pursuant to Subdivision (a) of Paragraph 6 of Section A of Article IV of the Articles, and in either case in the manner provided in Paragraph 1 of Section D of Article IV of the Articles, shall be entitled to elect the remaining directors. If and when all dividends then in default on the Preference Stock shall thereafter be paid (and such dividends shall be declared and paid out of surplus or net profits legally available therefore as soon as reasonably practicable) the Preference Stock shall thereupon be divested of any special rights to elect such two directors to the Board of Directors, but subject always to the same provisions for vesting of special rights in the Preference Stock in the case of any similar future default or defaults.

(i) The foregoing right of the Preference Stock to elect two directors to the Board of Directors of the Corporation may be exercised at any annual meeting of stockholders held for such purpose. Upon the accrual of such special right of the holders of Preference Stock, a meeting (which may be a special meeting of the stockholders held pursuant to Subdivision (a) of Paragraph 6 of Section A of Article IV of the Articles) of the holders of the Preference Stock shall be held upon notice promptly given as provided in the By-laws for a special meeting, by the Chairman of the Board, President or Secretary of the Corporation. If, within fifteen (15) days after the accrual of such special right of the Preference Stockholders, the Chairman of the Board, President and Secretary of the Corporation shall fail to call such meeting, then, upon request signed by any holder of record of Preference Stock then outstanding delivered to the Corporation at its principal office, the President of the Corporation shall call a special meeting of the Preference Stockholders (which may be a special meeting of the stockholders called pursuant to Subdivision (a) of Paragraph 6 of Section A of Article IV of the Articles) to be held within sixty (60) days after the receipt of such request for the purpose of electing two directors to the Board of Directors by a vote of the Preference Stock as above provided, to serve until the next annual meeting or until their successors shall be elected and qualified. The term of office of two of the persons who are directors of the Corporation at the time (who shall not be directors who have been elected by the holders of Preferred Stock pursuant to Subdivision (a) of Paragraph 6 of Section A of Article IV of the Articles) shall be designated by a majority of the directors then in office as the directors whose terms shall terminate upon the election of the two directors to the Board of Directors by the Preference Stockholders, notwithstanding that the term for which such two directors have been elected shall not then have expired.

(ii) At such time as the Preference Stock shall be divested of the right to elect two directors to the Board of Directors, the term of such directors so elected by the holders of the Preference Stock shall terminate and the vacancies in the Board of Directors effected thereby may be filled by a majority of the remaining directors.

(iii) At any annual or special meeting of stockholders held for the purpose of electing directors at which the holders of the Preference Stock would be entitled to elect two directors to the Board of Directors, the presence in person or by proxy of the holders of a majority of the outstanding Preference Stock shall be required to constitute a quorum of Preference Stock for the election by such class of two directors to the Board of Directors; provided, however, that a majority of the holders of the Preference Stock who are present in person or by proxy shall have the power to adjourn such meeting for the purpose of the election of such two directors by such shares from time-to-time without notice other than an announcement at the meeting. No delay or failure by the holders of any class of shares to elect the members of the Board of Directors which such holders are entitled to elect shall invalidate the election of the remaining members of the Board of Directors by the holders of such other class or classes of shares, and a majority of the directors so elected shall, in such case, constitute a quorum for the transaction of business by the Board of Directors.

(iv) If, during any interval between the annual meeting of stockholders for the election of directors and while the Preference Stock shall be entitled to elect two directors, a director in office who has been elected by the holders of the Preference Stock shall have resigned, died or been removed, then (x) such vacancy shall be filled by the remaining director then in office who was elected by the Preference Stockholders or who succeeded to the director so elected, and (y) if both directors so representing the Preference Stockholders shall have resigned, died or been removed, or if any vacancy which occurred more than six months prior to the date of the next ensuing annual meeting is not so filled within forty (40) days after the occurrence thereof, the President of the Corporation shall call a special meeting of the holders of the Preference Stock and such vacancy shall be filled at such special meeting.

(v) Any director elected by the holders of Preference Stock may be removed from office only by vote of the holders of a majority of the outstanding shares of Preference Stock voted for his election or for his predecessor in cases where such director was elected by the Board of Directors.

(b) As stated in Subdivision (b) of Paragraph 5 of Section B of Article IV of the Articles (as corrected by the Certificate of Correction to Restated Articles dated and filed January 24, 1992), so long as any shares of Preference Stock are outstanding, the Corporation shall not, without the consent (given by vote in person or by proxy at a meeting called for that purpose) of the holders of at least two-thirds (2/3) of the shares of Preference Stock then outstanding, voting separately as a class and without regard to series,

(i) Amend, alter, change or repeal any of the express terms or provisions of then outstanding Preference Stock in a manner substantially prejudicial to the holders thereof; provided, however, that, if any such amendment, alteration, change or repeal adversely affects the holders of some but not all of the outstanding shares of Preference Stock, only the consent of the holders of two-thirds (2/3) of the total number of shares so affected shall be required; or

(ii) Create any class of stock ranking prior to the Preference Stock as to dividends or upon liquidation, or securities convertible into shares ranking prior to the Preference Stock in respects aforesaid; provided that no such consent shall be required with respect to the taking of any such action relating to the Corporation's Preferred Stock, par value \$100 per share, or Preferred Stock, without par value.

6. Conversion Rights.

(a) Right to Convert. Each share of the 7.5% Series may be converted at the option of the holder thereof at any time and from time to time, and without the payment of any additional consideration therefor, into that number of fully paid and nonassessable shares of Common Stock, \$5.00 par value per share, of the Corporation (the "Common Stock") as provided herein.

(b) Conversion Procedures. Each holder of the 7.5% Series who elects to convert the same into shares of Common Stock shall surrender the certificate or certificates therefor, duly endorsed, at the office of the Corporation or any transfer agent for the 7.5% Series as may be designated by the Board of Directors (the "Transfer Agent"), and shall give written notice to the Corporation at such office that such holder elects to convert the same and shall state therein the number of shares of the 7.5% Series being converted; provided, however, such number of shares shall not be fewer than 25,000. Thereupon, the Corporation shall promptly issue and deliver at such office to such holder a certificate or certificates for the number of shares of Common Stock to which such holder is entitled upon such conversion. Such conversion shall be deemed to have been made immediately prior to the close of business on the date of such surrender of the certificate or certificates representing the shares of the 7.5% Series to be converted, and the person entitled to receive the shares of Common Stock issuable upon such conversion shall be treated for all purposes as the record holder of such shares of Common Stock on such date.

(c) Conversion Price. Each share of the 7.5% Series shall be convertible in accordance with this Section 6 into the number of shares of Common Stock that results from dividing the Liquidation Preference for the 7.5% Series by the conversion price that is in effect at the time of conversion (the "Conversion Price"). The initial Conversion Price for the 7.5% Series shall be \$32.40 per share. The Conversion Price shall be subject to adjustment from time to time as provided below.

(d) Adjustment of Conversion Price. The Conversion Price shall be adjusted from time to time as follows:

(i) If the Corporation shall hereafter pay a dividend in or make a distribution of Common Stock to all holders of any outstanding class or series of Common Stock, the Conversion Price in effect at the opening of business on the date following the date fixed for the determination of stockholders entitled to receive such dividend or other distribution shall be reduced by multiplying such Conversion Price by a fraction of which the numerator shall be the number of shares of Common Stock outstanding at the close of business on the Record Date fixed for such determination and the denominator shall be the sum of such number of outstanding shares and the total number of shares constituting such dividend or other distribution, such reduction to become effective immediately after the opening of business on the day following the Record Date. If any dividend or distribution of the type described in this Section 6(d)(i) is declared but not so paid or made, the Conversion Price shall again be adjusted to the Conversion Price which would then be in effect if such dividend or distribution had not been declared.

(ii) If the Corporation shall offer to issue rights or warrants to all holders of its outstanding Common Stock entitling them to subscribe for or purchase Common Stock at a price per share less than the Current Market Price on the Record Date fixed for the determination of stockholders entitled to receive such rights or warrants, the Conversion Price shall be adjusted so that the same shall equal the price determined by multiplying the Conversion Price in effect at the opening of business on the date after such Record Date by a fraction of which the numerator shall be the number of shares of Common Stock outstanding at the close of business on the Record Date plus the number of shares of Common Stock which the aggregate offering price of the total number of shares of Common Stock subject to such rights or warrants would purchase at such Current Market Price and of which the denominator shall be the number of shares of Common Stock outstanding at the close of business on the Record Date plus the total number of additional shares of Common Stock subject to such rights or warrants for subscription or purchase. Such adjustment shall become effective immediately after the opening of business on the day following the Record Date fixed for determination of stockholders entitled to purchase or receive such rights or warrants. For the purposes of this Section 6(d)(ii), the issuance of rights or warrants to subscribe for or purchase securities convertible into Common Stock shall be deemed to be the issuance of rights or warrants to purchase the shares of Common Stock into which such securities are convertible at an aggregate offering price equal to the aggregate offering price of such securities plus the minimum aggregate amount (if any) payable upon conversion of such securities into shares of Common Stock. To the extent that shares of Common Stock are not delivered pursuant to such rights or warrants, upon the expiration or termination of

such rights or warrants the Conversion Price shall again be adjusted to be the Conversion Price which would then be in effect had the adjustments made upon the issuance of such rights or warrants been made on the basis of delivery of only the number of shares of Common Stock actually delivered. If such rights or warrants are not so issued, the Conversion Price shall again be adjusted to be the Conversion Price which would then be in effect if such date fixed for the determination of stockholders entitled to receive such rights or warrants had not been fixed. In determining whether any rights or warrants entitle the holders to subscribe for or purchase Common Stock at less than such Current Market Price, and in determining the aggregate offering price of such shares of Common Stock, there shall be taken into account any consideration received for such rights or warrants, with the value of such consideration, if other than cash, to be determined by the Board of Directors.

(iii) If the outstanding shares of Common Stock shall be subdivided into a greater number of shares of Common Stock, the Conversion Price in effect at the opening of business on the day following the day upon which such subdivision becomes effective shall be proportionately reduced, and, conversely, if the outstanding shares of Common Stock shall be combined into a smaller number of shares of Common Stock, the Conversion Price in effect at the opening of business on the day following the day upon which such combination becomes effective shall be proportionately increased, such reduction or increase, as the case may be, to become effective immediately after the opening of business on the day following the day upon which such subdivision or combination becomes effective.

(iv) If the Corporation shall, by dividend or otherwise, distribute to all holders of its shares of Common Stock shares of any class of capital stock of the Corporation (other than any dividends or distributions to which Section 6(d)(i) applies) or evidences of its indebtedness, cash or other assets (including securities, but excluding any rights or warrants of a type referred to in Section 6(d)(ii) and excluding dividends and distributions paid exclusively in cash and excluding any capital stock, evidences of indebtedness, cash or assets distributed upon a merger or consolidation to which Section 7(a) applies) (the foregoing hereinafter in this Section 6(d)(iv) called the "Distributed Securities"), then, in each such case, the Conversion Price shall be reduced so that the same shall be equal to the price determined by multiplying the Conversion Price in effect immediately prior to the close of business on the Record Date with respect to such distribution by a fraction of which the numerator shall be the Current Market Price of the Common Stock on such date less the fair market value (as determined by the Board of Directors, whose determination shall be conclusive and described in a resolution of the Board of Directors) on such date of the portion of the Distributed Securities so distributed applicable to one share of Common Stock and the denominator shall be such Current Market Price, such reduction to become effective immediately prior to the opening of business on the day following the Record Date; provided, however, that, in the event the then fair market value (as so determined) of the portion of the Distributed Securities so distributed applicable to one share of Common Stock is equal to or greater than the Current Market Price on the Record Date, in lieu of the foregoing adjustment, adequate provision shall be made so that each holder of the 7.5% Series shall have the right to receive upon conversion of a share of the 7.5% Series (or any portion thereof) the amount of Distributed Securities such holder would have received had such holder converted such share of the 7.5% Series (or portion thereof) immediately prior to such Record Date. If such dividend or distribution is not so paid or made, the Conversion Price shall again be adjusted to be the Conversion Price which would then be in effect if such dividend or distribution had not been declared. If the Board of Directors determines the fair market value of any distribution for purposes of this Section 6(d)(iv) by reference to the actual or when issued trading market for any securities comprising all or part of such distribution, it must in doing so consider the prices in such market over the same period used in computing the Current Market Price to the extent possible.

Notwithstanding the foregoing, this Section 6(d)(iv) shall not apply in the event that the Record Date for the distribution to holders of the Common Stock of shares of Weststar Industries, Inc. is the same as the Record Date for the receipt of Lobos Parent Common Stock by holders of the Common Stock pursuant to

Rights or warrants distributed by the Corporation to all holders of Common Stock entitling the holders thereof to subscribe for or purchase shares of the Corporation's Capital Stock (either initially or under certain circumstances), which rights or warrants, until the occurrence of a specified event or events ("Dilution Trigger Event"): (i) are deemed to be transferred with such Common Stock; (ii) are not exercisable; and (iii) are also issued in respect of future issuances of Common Stock, shall be deemed not to have been distributed for purposes of this Section 6(d)(iv) (and no adjustment to the Conversion Price under this Section 6(d)(iv) shall be required) until the occurrence of the earliest Dilution Trigger Event, whereupon such rights and warrants shall be deemed to have been distributed and an appropriate adjustment to the Conversion Price under this Section 6(d)(iv) shall be made. If any such rights or warrants, including any such existing rights or warrants distributed prior to the date hereof, are subject to subsequent events, upon the occurrence of each of which such rights or warrants shall become exercisable to purchase different securities, evidences of indebtedness or other assets, then the occurrence of each such event shall be deemed to be such date of issuance and record date with respect to new rights or warrants (and a termination or expiration of the existing rights or warrants without exercise by the holder thereof). In addition, in the event of any distribution (or deemed distribution) of rights or warrants, or any Dilution Trigger Event with respect thereto, that was counted for purposes of calculating a distribution amount for which an adjustment to the Conversion Price under this Section 6(d)(iv) was made, (1) in the case of any such rights or warrants which shall all have been redeemed or repurchased without exercise by any holders thereof, the Conversion Price shall be readjusted upon such final redemption or repurchase to give effect to such distribution or Dilution Trigger Event, as the case may be, as though it were a cash distribution, equal to the per share redemption or repurchase price received by a holder or holders of Common Stock with respect to such rights or warrants (assuming such holder had retained such rights or warrants), made to all holders of Common Stock as of the date of such redemption or repurchase, and (2) in the case of such rights or warrants which shall have expired or been terminated without exercise by any holders thereof, the Conversion Price shall be readjusted as if such rights and warrants had not been issued.

Notwithstanding any other provision of this Section 6(d)(iv) to the contrary, capital stock, rights, warrants, evidences of indebtedness, other securities, cash or other assets (including any rights distributed pursuant to any shareholder rights plan) shall be deemed not to have been distributed for purposes of this Section 6(d)(iv) if the Corporation makes proper provision so that each holder of shares of the 7.5% Series who converts a share of the 7.5% Series (or any portion thereof) after the date fixed for determination of stockholders entitled to receive such distribution shall be entitled to receive upon such conversion, in addition to the Common Stock issuable upon such conversion, the amount and kind of such distributions that such holder would have been entitled to receive if such holder had, immediately prior to such determination date, converted such share of the 7.5% Series into Common Stock.

For purposes of this Section 6(d)(iv) and Sections 6(d)(i) and (ii), any dividend or distribution to which this Section 6(d)(iv) is applicable that also includes Common Stock, or rights or warrants to subscribe for or purchase Common Stock to which Section 6(d)(ii) applies (or both), shall be deemed instead to be (1) a dividend or distribution of the evidences of indebtedness, cash, assets, shares of capital stock, rights or warrants other than (A) such shares of Common Stock or (B) rights or warrants to which Section 6(d)(2) applies (and any Conversion Price reduction required by this Section 6(d)(iv) with respect to such dividend or distribution shall then be made) immediately followed by (2) a dividend or distribution of such Common Stock or such rights or warrants (and any further Conversion Price reduction required by Section 6(d)(i) and (ii) with respect to such dividend or distribution shall then be made), except that (x) the Record Date of such dividend or distribution shall be substituted as "the Record Date fixed for the determination of stockholders entitled to receive such dividend or other distribution", "Record Date fixed for such determination" and "Record Date" within the meaning of Section 6(d)(i) and as "the Record Date fixed for the

determination of stockholders entitled to receive such rights or warrants", "the date fixed for the determination of the stockholders entitled to receive such rights or warrants" and "such Record Date" within the meaning of Section 6(d)(ii), and (y) any share of Common Stock included in such dividend or distribution shall not be deemed "outstanding at the close of business on the date fixed for such determination" within the meaning of Section 6(d)(i).

(v) If the Corporation shall, by dividend or otherwise, distribute to all holders of its Common Stock cash (excluding any cash that is distributed upon a merger or consolidation to which Section 7(a) applies or as part of a distribution referred to in paragraph 6(d)(iv)) in an aggregate amount that, combined together with (1) the aggregate amount of any other such distributions to all holders of its Common Stock made exclusively in cash within the 12 months preceding the date of payment of such distribution, and in respect of which no adjustment pursuant to this Section 6(d)(v) has been made, and (2) the aggregate of any cash plus the fair market value (as determined by the Board of Directors, whose determination shall be conclusive and described in a resolution of the Board of Directors) of consideration payable in respect of any tender offer by the Company or a Subsidiary of the Company for all or any portion of the Common Stock concluded within the 12 months preceding the date of payment of such distribution, and in respect of which no adjustment pursuant to Section 6(d)(vi) has been made, exceeds 15% of the product of the Current Market Price on the Record Date with respect to such distribution times the number of shares of Common Stock outstanding on such date, then, and in each such case, immediately after the close of business on such date, the Conversion Price shall be reduced so that the same shall equal the price determined by multiplying the Conversion Price in effect immediately prior to the close of business on such Record Date by a fraction (i) the numerator of which shall be equal to the Current Market Price on the Record Date less an amount equal to the quotient of (x) the excess of such combined amount over such 15% amount divided by (y) the number of shares of Common Stock outstanding on the Record Date and (ii) the denominator of which shall be equal to the Current Market Price on such Record Date; provided, however, that, if the portion of the cash so distributed applicable to one share of Common Stock is equal to or greater than the Current Market Price of the Common Stock on the Record Date, in lieu of the foregoing adjustment, adequate provision shall be made so that each holder of Convertible Preferred Stock shall have the right to receive upon conversion of a share of Convertible Preferred Stock (or any portion thereof) the amount of cash such holder would have received had such holder converted such share of Convertible Preferred Stock (or portion thereof) immediately prior to such Record Date. If such dividend or distribution is not so paid or made, the Conversion Price shall again be adjusted to be the Conversion Price which would then be in effect if such dividend or distribution had not been declared.

(vi) If a tender or exchange offer made by the Company or any of its Subsidiaries for all or any portion of the Common Stock expires and such tender or exchange offer (as amended upon the expiration thereof) requires the payment to stockholders (based on the acceptance (up to any maximum specified in the terms of the tender offer) of Purchased Shares) of an aggregate consideration having a fair market value (as determined by the Board of Directors, whose determination shall be conclusive and described in a resolution of the Board of Directors) that, combined together with (i) the aggregate of the cash plus the fair market value (as determined by the Board of Directors, whose determination shall be conclusive and described in a resolution of the Board of Directors), as of the expiration of such tender offer, of consideration payable in respect of any other tender offers by the Company or any of its Subsidiaries for all or any portion of the Common Stock expiring within the 12 months preceding the expiration of such tender offer and in respect of which no adjustment pursuant to this Section 6(d)(vi) has been made and (ii) the aggregate amount of any distributions to all holders of the Common Stock made exclusively in cash within 12 months preceding the expiration of such tender offer and in respect of which no adjustment pursuant to Section 6(d)(v) has been made, exceeds 15% of the product of the Current Market Price as of the last time (the "Expiration Time") tenders could have been made pursuant to such tender offer (as it may be amended) times the number of shares of Common Stock outstanding (including

any tendered shares) at the Expiration Time, then, and in each such case, immediately prior to the opening of business on the day after the date of the Expiration Time, the Conversion Price shall be adjusted so that the same shall equal the price determined by multiplying the Conversion Price in effect immediately prior to the close of business on the date of the Expiration Time by a fraction of which the numerator shall be the number of shares of Common Stock outstanding (including any tendered shares) at the Expiration Time multiplied by the Current Market Price of the Common Stock on the Trading Day next succeeding the Expiration Time and the denominator shall be the sum of (x) the fair market value (determined as aforesaid) of the aggregate consideration payable to stockholders based on the acceptance (up to any maximum specified in the terms of the tender offer) of all shares validly tendered and not withdrawn as of the Expiration Time (the shares deemed so accepted, up to any such maximum, being referred to as the "Purchased Shares") and (y) the product of the number of shares of Common Stock outstanding (less any Purchased Shares) at the Expiration Time and the Current Market Price of the Common Stock on the Trading Day next succeeding the Expiration Time, such reduction (if any) to become effective immediately prior to the opening of business on the day following the Expiration Time. If the Company is obligated to purchase shares pursuant to any such tender offer, but the Company is permanently prevented by applicable law from effecting any such purchases or all such purchases are rescinded, the Conversion Price shall again be adjusted to be the Conversion Price which would then be in effect if such tender offer had not been made. If the application of this Section 6(d)(vi) to any tender offer would result in an increase in the Conversion Price, no adjustment shall be made for such tender offer under this Section 6(d)(vi).

(vii) No adjustment in the Conversion Price shall be required unless such adjustment would require an increase or decrease of at least 1% in such price; provided, however, that any adjustments which by reason of this Section 6(d)(vi) are not required to be made shall be carried forward and taken into account in any subsequent adjustment. All calculations under this Section 6(d) shall be made by the Corporation and shall be made to the nearest cent or to the nearest one-hundredth of a share, as the case may be. No adjustment need be made for a change in the par value or no par value of the Common Stock.

(viii) Whenever the Conversion Price is adjusted as herein provided, the Corporation shall promptly file with the Transfer Agent an Officers' Certificate setting forth the Conversion Price after such adjustment and setting forth a brief statement of the facts requiring such adjustment. Promptly after delivery of such certificate, the Corporation shall prepare a notice of such adjustment of the Conversion Price setting forth the adjusted Conversion Price and the date on which each adjustment becomes effective and shall mail such notice of such adjustment of the Conversion Price to each holder of the 7.5% Series at such holder's last address appearing on the register of holders maintained for that purpose within 20 days of the effective date of such adjustment. Failure to deliver such notice shall not affect the legality or validity of any such adjustment.

(ix) In any case in which this Section 6(d) provides that an adjustment shall become effective immediately after a Record Date for an event, the Corporation may defer until the occurrence of such event issuing to the holder of any share of the 7.5% Series converted after such Record Date and before the occurrence of such event the additional Common Stock issuable upon such conversion by reason of the adjustment required by such event over and above the Common Stock issuable upon such conversion before giving effect to such adjustment.

(x) For purposes of this Section 6(d), the number of shares of Common Stock at any time outstanding shall not include shares held in the treasury of the Corporation but shall include shares issuable in respect of scrip certificates issued in lieu of fractions of Common Stock. The Corporation shall not pay any dividend or make any distribution on Common Stock held in the treasury of the Corporation.

7. Corporate Events.

(a) Merger. In case of (i) any reclassification or change of outstanding shares of Common Stock (other than a change in par value or

from par value to no par value or from no par value to par value, or as a result of a subdivision or combination) or (ii) any consolidation or merger of the Corporation with one or more other corporations (other than the Lobos Merger or any consolidation or merger in which the Corporation is the continuing corporation and which does not result in any reclassification, conversion, exchange or cancellation of outstanding shares of Common Stock issuable upon conversion of the 7.5% Series), (iii) any sale or conveyance to another corporation or other entity of all or substantially all of the property of the Corporation, or (iv) any other transaction which would constitute a Change of Control of the Corporation, then the Corporation, or such successor corporation or other entity, as the case may be, shall make appropriate provision so that the holder of each share of the 7.5% Series then outstanding shall have the right thereafter, to convert such share of the 7.5% Series into the kind and amount of securities, cash and other property receivable upon such consolidation, merger, sale, reclassification, change or conveyance by a holder of the number of shares of Common Stock into which such share of the 7.5% Series might have been converted immediately prior to such consolidation, merger, sale, reclassification, change or conveyance, subject to such adjustment which shall be as nearly equivalent as may be practicable to the adjustments provided in Section 6(d). The above provisions of this Section 7(a) shall similarly apply to successive consolidations, mergers, conveyances or transfers.

(b) Offer to Repurchase. In addition to the foregoing, upon the occurrence of a Change of Control (other than the Lobos Merger), the Corporation shall make an offer (a "Change of Control Offer") to each holder of shares of the 7.5% Series to repurchase all or any part of each such holder's shares of the 7.5% Series at an offer price in cash equal to 100% of the Liquidation Preference as of the Change of Control Payment Date (the "Change of Control Payment"); provided, however, such Change of Control Offer shall be limited to that number of shares of the 7.5% Series equal to the total number of outstanding shares of the 7.5% Series multiplied by a quotient equal to the total cash consideration paid to stockholders pursuant to such Change of Control transaction divided by the total consideration paid to stockholders pursuant to such Change of Control transaction. The Corporation shall comply with the requirements of Rule 14e-1 under the Exchange Act and any other securities laws and regulations thereunder to the extent such laws and regulations are applicable in connection with the repurchase of shares of the 7.5% Series as a result of a Change of Control, and the Corporation shall not be in violation of this Certificate of Designation by reason of any act required by such rule or other applicable law.

Within 25 days following any Change of Control, the Corporation shall mail a notice to each holder of shares of the 7.5% Series stating:

(i) that the Change of Control Offer is being made pursuant to this Section 7.5 and that up to the stated number of shares of the 7.5% Series tendered will be accepted for payment;

(ii) the purchase price and the purchase date, which shall be at least 30 but no more than 60 days from the date on which the Corporation mails notice of the Change of Control (the "Change of Control Payment Date");

(iii) that any shares of the 7.5% Series not tendered will continue to accrue dividends as provided in this Certificate of Designation;

(iv) that, unless the Corporation defaults in the payment of the Change of Control Payment, all shares of the 7.5% Series accepted for payment pursuant to the Change of Control Offer shall cease to accrue dividends after the Change of Control Payment Date;

(v) that holders of shares of the 7.5% Series electing to have any shares of the 7.5% Series purchased pursuant to a Change of Control Offer shall be required to surrender the shares of the 7.5% Series to the Corporation or its designated agent (the "Paying Agent") for such purpose, at the address specified in the notice prior to the close of business on the third Business Day preceding the Change of Control Payment Date; and

(vi) that holders of shares of the 7.5% Series will be entitled to withdraw their election if the Corporation or the Paying Agent receives, not later than the close of business on the second Business Day preceding the Change of Control Payment Date, a telegram, telex, facsimile transmission or letter setting forth the name of the holder of shares of the 7.5% Series, the number of shares of the 7.5% Series delivered for purchase, and a statement that such holder is withdrawing his election to have such shares purchased.

On the Change of Control Payment Date, the Corporation shall, to the extent lawful, (i) accept for payment all shares of the 7.5% Series tendered pursuant to the Change of Control Offer; provided, however, that if the number of such tendered shares exceeds the limits set forth above, the Corporation shall accept such shares pro rata and (ii) deposit with the Paying Agent an amount equal to the Change of Control Payment in respect of all shares of the 7.5% Series so accepted for payment. The Corporation shall promptly mail to each holder of shares of the 7.5% Series so tendered the Change of Control Payment for such shares. The Corporation shall publicly announce the results of the Change of Control Offer on or as soon as practicable after the Change of Control Payment Date.

(c) Notice of Record Date. In case at any time or from time to time (i) the Corporation shall pay any stock dividend or make any other non-cash distribution to the holders of its Common Stock, or offer for subscription pro rata to the holders of its Common Stock any additional shares of stock of any class or any other right, or (ii) there shall be any capital reorganization or reclassification of the Common Stock of the Corporation or consolidation or merger of the Corporation with or into another corporation, or any sale or conveyance to another corporation of the property of the Corporation as an entirety or substantially as an entirety, or (iii) there shall be a voluntary or involuntary dissolution, liquidation or winding up of the Corporation, then, in any one or more of said cases the Corporation shall give at least 20 days' prior written notice (the time of mailing of such notice shall be deemed to be the time of giving thereof) to the registered holders of the 7.5% Series at the addresses of each as shown on the books of the Corporation maintained by the Transfer Agent thereof of the date on which (A) a record shall be taken for such stock dividend, distribution or subscription rights or (B) such reorganization, reclassification, consolidation, merger, sale or conveyance, dissolution, liquidation or winding up shall take place, as the case may be; provided that, in the case of any transaction to which clause (a) applies the Corporation shall give at least 30 days' prior written notice as aforesaid. Such notice shall also specify the date as of which the holders of the Common Stock of record shall participate in said dividend, distribution or subscription rights or shall be entitled to exchange their Common Stock for securities or other property deliverable upon such reorganization, reclassification, consolidation, merger, sale or conveyance or participate in such dissolution, liquidation or winding up, as the case may be. Failure to give such notice shall not invalidate any action so taken.

8. Reservation of Stock Issuable Upon Conversion. The Corporation shall at all times reserve and keep available out of its authorized but unissued shares of Common Stock solely for the purpose of effecting the conversion of the shares of the 7.5% Series, such number of its shares of Common Stock as shall from time to time be sufficient to effect the conversion of all then outstanding shares of the 7.5% Series; and if at any time the number of authorized but unissued shares of Common Stock shall not be sufficient to effect the conversion of all then outstanding shares of the 7.5% Series, the Corporation will take such corporate action as may be necessary to increase its authorized but unissued shares of Common Stock to such number of shares as shall be sufficient for such purpose.

9. Definitions. Certain capitalized terms are used in this Certificate as defined below:

"Affiliate" shall mean, with respect to any Person, any other Person that directly or indirectly through one or more intermediaries controls or is controlled by or is under common control with such Person. For the purposes of this definition, "control," when used with respect to any particular Person means the power to direct the management and policies of such Person, directly or indirectly, whether through ownership of voting securities, by contract or otherwise.

"Beneficial Owner" (and with correlative meanings, "Beneficially Own" and "Beneficial Ownership") of any interest means a Person who, together with his, her or its Affiliates, is or may be deemed a beneficial owner of such interest for purposes of Rule 13d-3 or 13d-5 under the Exchange Act, or who, together with his, her, or its Affiliates, has the right to become such a beneficial owner of such interest (whether such right is exercisable immediately or only after the passage of time) pursuant to any agreement, arrangement or understanding, or upon the exercise, conversion or exchange of any warrant, right or other instrument, or otherwise.

"Board of Directors" shall mean the board of directors of the Corporation.

"Business Day" shall mean any day other than a Saturday, a Sunday or a day on which banking institutions in The City of New York or at a place of payment are authorized by law, regulation or executive order to remain closed.

"Change of Control" means the occurrence of any of the following: (i) any Person becoming the Beneficial Owner, directly or indirectly, of Voting Securities, pursuant to the consummation of a merger, consolidation, sale of all or substantially all of the Corporation's assets, share exchange or similar form of transaction that requires the approval of the Corporation's stockholders, whether for such transaction or the issuance of securities in such transaction, so as to cause such Person's Voting Ownership Percentage to exceed 50% of the Total Voting Power; provided, however, that the event described in this clause (i) shall not be deemed to be a Change of Control if it occurs as a result of the following acquisitions: (A) by any employee benefit plan sponsored or maintained by the Corporation or any Affiliate, or (B) by any underwriter temporarily holding securities pursuant to an offering of such securities; (ii) the consummation of a merger, consolidation, sale of all or substantially all of the Corporation's assets, share exchange or similar form of corporate transaction involving the Corporation or any of its subsidiaries that requires the approval of the Corporation's shareholders whether for such transaction or the issuance of securities in such transaction, unless immediately following such transaction more than 50 percent of the total voting power of (x) the corporation resulting from such transaction, or (y) if applicable, the ultimate parent corporation that directly or indirectly has Beneficial Ownership of 100 percent of the voting securities eligible to elect directors of such resulting corporation, is represented by Voting Securities that were outstanding immediately prior to such transaction in substantially the same proportion as the voting power of such Voting Securities among the holders thereof immediately prior to such transaction; or (iii) the consummation of a plan of complete liquidation or dissolution of the Corporation.

"closing price" with respect to any securities on any day means the last sale price on such day or, if no such sale takes place on such day, the average of the reported high bid and low ask prices on such day, in each case on the Nasdaq National Market or the New York Stock Exchange, as applicable, or, if such security is not listed or admitted to trading on such national market or exchange, on the principal national securities exchange or quotation system on which such security is quoted or listed or admitted to trading, or, if not quoted or listed or admitted to trading on any national securities exchange or quotation system, the average of the high bid and low ask prices of such security on the over-the-counter market on the day in question as reported by the National Quotation Bureau Incorporated or a similar generally accepted reporting service, or, if not so available, in such manner as furnished by any New York Stock Exchange member firm selected from time to time by the Board of Directors for that purpose, or a price determined in good faith by the Board of Directors, whose determination shall be conclusive and described in a resolution of the Board of Directors.

"Current Market Price" means the average of the daily closing prices per share of Common Stock for the 20 consecutive Trading Days immediately prior to the date in question; provided, however, that (A) if the "ex" date (as hereinafter defined) for any event (other than the issuance or distribution requiring such computation) that requires an adjustment to the Conversion Price pursuant to Section 6(d)(i), (ii), (iii) or (iv) occurs during such 20 consecutive trading days, the closing price for each trading day prior to the "ex" date for such other event shall be adjusted by multiplying such closing price by the same fraction by which the Conversion Price is so required to be adjusted as a result of such other event, (B) if the "ex" date for any event (other than the issuance or distribution requiring such computation) that requires an adjustment to the Conversion Price pursuant to Section 6(d)(i), (ii), (iii) or (iv) occurs on or after the "ex" date for the issuance or distribution requiring such computation and prior to the date in question, the closing price for each trading day on and after the "ex" date for such other event shall be adjusted by multiplying such closing price by the reciprocal of the fraction by which the Conversion Price is so required to be adjusted as a result of such other event and (C) if the "ex" date for the issuance or distribution requiring such computation is prior to the day in question, after taking into account any adjustment required

pursuant to clause (A) or (B) of this proviso, the closing price for each trading day on or after such "ex" date shall be adjusted by adding thereto the amount of any cash and the fair market value (as determined by the Board of Directors in a manner consistent with any determination of such value for purposes of Section 6(d)(iv), whose determination shall be conclusive and described in a resolution of the Board of Directors) of the evidence of indebtedness, shares of Capital Stock or assets being distributed applicable to one Common Stock as of the close of business on the day before such "ex" date. For purposes of this paragraph, the term "ex" date (I) when used with respect to any issuance or distribution, means the first date on which the Common Stock trades regular way on the relevant exchange or in the relevant market from which the closing price was obtained without the right to receive such issuance or distribution, (II) when used with respect to any subdivision or combination of Common Stock, means the first date on which the Common Stock trades regular way on such exchange or in such market after the time at which such subdivision or combination becomes effective and (III) when used with respect to any tender or exchange offer means the first date on which the Common Stock trades regular way on such exchange or in such market after the Expiration Time of such offer. Notwithstanding the foregoing, whenever successive adjustments to the Conversion Price are called for pursuant to this Section 6(d), such adjustments shall be made to the Current Market Price as may be necessary or appropriate to effectuate the intent of this Section 6(d) and to avoid unjust or inequitable results, as determined in good faith by the Board of Directors.

"fair market value" shall mean the amount which a willing buyer would pay a willing seller in an arm's-length transaction.

"Record Date" shall mean, with respect to any dividend, distribution or other transaction or event in which the holders of Common Stock have the right to receive any cash, securities or other property or in which the Common Stock (or other applicable security) is exchanged for or converted into any combination of cash, securities or other property, the date fixed for determination of stockholders entitled to receive such cash, securities or other property (whether such date is fixed by the Board of Directors or by statute, contract or otherwise).

"Exchange Act" shall mean the Securities Exchange Act of 1934, as amended, or any successor federal statute, and the rules and regulations of the SEC thereunder, all as the same shall be in effect at the time. Reference to a particular section of the Exchange Act shall include reference to the comparable section, if any, of any such successor federal statute.

"Liquidation Preference" with respect to a share of the 7.5% Series shall mean, as at any date, \$100.00 per share (as adjusted for any stock dividends, combinations or splits with respect to such share), plus an amount equal to all accrued but unpaid dividends (whether or not declared) on such share as at such date.

"Lobos Parent Common Stock" means the common stock, \$0.001 par value, of Parent.

"Lobos Merger" means the merger of Merger Sub-1 into the Corporation pursuant to the terms of the Lobos Merger Agreement.

"Lobos Merger Agreement" means the Agreement and Plan of Restructuring and Merger dated as of November 8, 2000, among the Corporation, Public Service Company of New Mexico, Parent, Merger Sub-1 and HVNM, Inc., as amended and in effect from time to time.

"Lobos Merger Effective Time" means the "Effective Time" as defined in the Lobos Merger Agreement.

"Merger Sub-1 means HVK, Inc., a Kansas corporation

"Person" means any individual, "group" (as such term is used in sections 13(d) and 14(d) of the Exchange Act), corporation, partnership, joint venture, trust, unincorporated organization, government or any agency or political subdivision thereof, or any other entity.

"Parent" means HVOLT Enterprise Inc., a Delaware corporation.

"Total Voting Power" shall mean, calculated at a particular point in time, the aggregate votes represented by then outstanding Voting Securities.

"Trading Day" shall mean a day on which the principal national securities exchange on which the Common Stock is listed or admitted to trading is open for the transaction of business.

"Voting Ownership Percentage" shall mean, calculated at a particular point in time, the Voting Power represented by the Voting Securities Beneficially Owned by the Person whose Voting Ownership Percentage is being determined.

"Voting Power" shall mean, calculated at a particular point in time, the ratio, expressed as a percentage, of (a) the votes represented by the Voting Securities with respect to which the Voting Power is being determined to (b) Total Voting Power.

"Voting Securities" shall mean the Common Stock and shares of any class of capital stock of the Corporation then entitled to vote generally in the election of any member of the Board of Directors, as elected in accordance with the provisions of the By-laws and Articles of the Corporation and shall not include the shares of the 7.5% Series prior to its conversion into Common Stock.

10. Conflicts. In the event of a conflict between any provision of this Designation and the Articles, the Articles shall take precedence and shall control the resolution of such conflict.

IN WITNESS WHEREOF, Western Resources, Inc. has made this Certificate of Designations under its seal and the hand of the President and Chief Executive Officer, an officer authorized to exercise the duties ordinarily exercised by a Vice President, and an Assistant Secretary this ____ day of November, 2000.

WESTERN RESOURCES, INC.

By: _____
Name: _____
Title: _____

ATTEST:

Name: _____
Title: _____

STATE OF KANSAS)
) ss:
COUNTY OF SHAWNEE)

BE IT REMEMBERED, that on this ____ day of November, 2000, before me, the undersigned, a Notary Public in and for the County and State aforesaid, personally came _____, _____ president of Western Resources, Inc., a corporation duly organized, incorporated and existing under the laws of the State of Kansas, who is personally known to me to such officer, and who is personally known to me to be the same person who executed as such officer the above instrument in writing, and he duly acknowledged execution of the same as _____ of said corporation.

IN WITNESS WHEREOF, I have hereunto subscribed my name and affixed my official seal the day and year last above written.

Notary Public

My commission expires:

FORM OF
HVOLT ENTERPRISES INC.

Certificate of Designations
for a Series of Preferred Stock
designated as "7.5% Convertible Preferred Stock"

(this "Certificate")

Pursuant to Section 151 of the General
Corporation Law of the State of Delaware

HVOLT Enterprises, Inc., a corporation of the State of Delaware (hereinafter called the "Corporation") DOES HEREBY CERTIFY pursuant to Section 151(g) of the General Corporation Law of the State of Delaware that:

BE IT RESOLVED, that a new series of the Preferred Stock, \$.001 par value per share, of the Corporation be, and it hereby is, established;

FURTHER RESOLVED, that the following be, and it hereby is, a statement of the designation and the powers, preferences and rights, and the qualifications, limitations and restrictions, of such series, subject to the provisions set forth in the Certificate of Incorporation of the Corporation, as heretofore amended (the "Charter") (capitalized terms used herein and not otherwise defined herein shall have the meanings given thereto in the Charter; certain other terms used herein are defined in Section 9 of this Certificate):

1. Designation. The Preferred Stock created and authorized hereby shall be designated as the "7.5% Convertible Preferred Stock" (the "7.5% Series"). The number of shares constituting the 7.5% Series shall be 0 and more.

2. Dividends. The rate per annum of dividends on the 7.5% Series shall be \$7.50 per share and dividends thereon shall be cumulative from and including the date of issuance. _____, 20__, shall be the first dividend payment date for shares issued before such date, and dividends shall be payable thereafter on the first day of January, April, July and October of each year. For any period during which any share of such series is outstanding less or more than a full quarterly dividend period, the dividends payable shall be computed on the basis of twelve 30-day months and the actual number of days elapsed in the period for which the dividends are payable.

3. Optional Redemption. (a) The shares of the 7.5% Series shall not be redeemable at the option of the Corporation prior to the fourth anniversary of the date of original issue, and on or after such date, such shares shall be redeemable in whole or in part at the option of the Corporation, subject to the terms, provisions and effect as generally provided for redemption of shares of the Corporation's Preferred Stock in the Charter, at the Liquidation Preference, plus, in each case, an amount equal to the accrued but unpaid dividends on said shares to the date of redemption. In the case of an optional redemption of less than all of the shares of the 7.5% Series at the time outstanding, the Corporation shall select by lot the shares so to be redeemed. In lieu of exercising its right to redeem shares of the 7.5% Series under this Section 3, the Corporation may purchase shares from the holder at the applicable redemption price, and such right to purchase may be assigned.

(b) No sinking fund or redemption, purchase or similar account or fund will be provided for shares of the 7.5% Series.

4. Liquidation, Dissolution or Winding Up. In the event of the voluntary or involuntary liquidation, dissolution or winding up of the Corporation, the holders of the 7.5% Series shall be entitled to receive (on a pro rata basis with holders of any other series of Preferred Stock, from any assets and funds of the Corporation remaining after payment of the debts and other liabilities of the Corporation) for each share an amount equal to the Liquidation Preference, plus as to each share, an amount equal to the accrued but unpaid dividends thereon to the dates of distribution.

5. Voting Rights. (a) Subject to the special voting rights provided to holders of the Corporation's Preferred Stock below, holders of shares of the 7.5% Series shall not be entitled, by virtue of their being holders thereof, to vote in any election of directors to the Board of Directors or with respect to any other matter submitted to the stockholders of the

Corporation. Where a vote of the holders of the 7.5% Series, voting as a separate class may be required by applicable law or by this Section 5, each share of the 7.5% Series shall carry one vote.

(b) The holders of all Preferred Stock shall be entitled to the following special voting rights:

(i) If at any time, dividends payable on the Corporation's Preferred Stock are in default in an amount equivalent to six or more full quarterly dividends, whether or not consecutive, the holders of all outstanding shares of the Corporation's Preferred Stock, voting separately as a class and without regard to series shall be entitled until, but only until, all dividends in default shall have been paid or deposited in trust with a bank or trust company for payment on or before the next succeeding dividend payment date, to elect two directors to the Board of Directors, and the holders of the Common Stock shall be entitled to elect the remaining directors. If and when all dividends then in default on the Preferred Stock shall thereafter be paid (and such dividends shall be declared and paid out of surplus or net profits legally available therefore as soon as reasonably practicable) the Preferred Stock shall thereupon be divested of any special rights to elect such two directors to the Board of Directors, but subject always to the same provisions for vesting of special rights in the Preferred Stock in the case of any similar future default or defaults.

(I) The foregoing right of the Preferred Stock to elect two directors to the Board of Directors of the Corporation may be exercised at any annual meeting of stockholders held for such purpose. Upon the accrual of such special right of the holders of Preferred Stock, a meeting (which may be a special meeting of the stockholders) of the holders of the Preferred Stock shall be held upon notice promptly given as provided in the By-laws for a special meeting, by the Chairman of the Board, President or Secretary of the Corporation. If, within fifteen (15) days after the accrual of such special right of the Preferred Stockholders, the Chairman of the Board, President and Secretary of the Corporation shall fail to call such meeting, then, upon request signed by any holder of record of Preferred Stock then outstanding delivered to the Corporation at its principal office, the President of the Corporation shall call a special meeting of the Preferred Stockholders (which may be a special meeting of the stockholders) to be held within sixty (60) days after the receipt of such request for the purpose of electing two directors to the Board of Directors by a vote of the Preferred Stock as above provided, to serve until the next annual meeting or until their successors shall be elected and qualified. The term of office of two of the persons who are directors of the Corporation at the time shall be designated by a majority of the directors then in office as the directors whose terms shall terminate upon the election of the two directors to the Board of Directors by the Preferred Stockholders, notwithstanding that the term for which such two directors have been elected shall not then have expired.

(II) At such time as the Preferred Stock shall be divested of the right to elect two directors to the Board of Directors, the term of such directors so elected by the holders of the Preferred Stock shall terminate and the vacancies in the Board of Directors effected thereby may be filled by a majority of the remaining directors.

(III) At any annual or special meeting of stockholders held for the purpose of electing directors at which the holders of the Preferred Stock would be entitled to elect two directors to the Board of Directors, the presence in person or by proxy of the holders of a majority of the outstanding Preferred Stock shall be required to constitute a quorum of Preferred Stock for the election by such class of two directors to the Board of Directors; provided, however, that a majority of the holders of the Preferred Stock who are present in person or by proxy shall have the power to adjourn such meeting for the purpose of the election of such two directors by such shares from time-to-time without notice other than an announcement at the meeting. No delay or failure by the holders of any class of shares to elect the members of the Board of Directors which such holders are entitled to elect shall invalidate the election of the remaining members of the Board of Directors by the holders of such other class or classes of shares, and a majority of the directors so elected shall, in such case, constitute a quorum for the transaction of business by the Board of Directors.

(IV) If, during any interval between the annual meeting of stockholders for the election of directors and while the Preferred Stock shall be entitled to elect two directors, a director in office who has been elected by the holders of the Preferred Stock shall have resigned, died or been removed, then (x) such vacancy shall be filled

by the remaining director then in office who was elected by the Preferred Stockholders or who succeeded to the director so elected, and (y) if both directors so representing the Preferred Stockholders shall have resigned, died or been removed, or if any vacancy which occurred more than six months prior to the date of the next ensuing annual meeting is not so filled within forty (40) days after the occurrence thereof, the President of the Corporation shall call a special meeting of the holders of the Preferred Stock and such vacancy shall be filled at such special meeting.

(V) Any director elected by the holders of Preferred Stock may be removed from office only by vote of the holders of a majority of the outstanding shares of Preferred Stock voted for his election or for his predecessor in cases where such director was elected by the Board of Directors.

(ii) So long as any shares of Preferred Stock are outstanding, the Corporation shall not, without the consent (given by vote in person or by proxy at a meeting called for that purpose) of the holders of at least two-thirds (2/3) of the shares of Preferred Stock then outstanding, voting separately as a class and without regard to series,

(I) Amend, alter, change or repeal any of the express terms or provisions of then outstanding Preferred Stock in a manner substantially prejudicial to the holders thereof; provided, however, that, if any such amendment, alteration, change or repeal adversely affects the holders of some but not all of the outstanding shares of Preferred Stock, only the consent of the holders of two-thirds (2/3) of the total number of shares so affected shall be required; or

(II) Create any class of stock ranking prior to the Preferred Stock as to dividends or upon liquidation, or securities convertible into shares ranking prior to the Preferred Stock in respects aforesaid.

6. Conversion Rights.

(a) Right to Convert. Each share of the 7.5% Series may be converted at the option of the holder thereof at any time and from time to time, and without the payment of any additional consideration therefor, into that number of fully paid and nonassessable shares of Common Stock, \$.001 par value per share, of the Corporation (the "Common Stock") as provided herein.

(b) Conversion Procedures. Each holder of the 7.5% Series who elects to convert the same into shares of Common Stock shall surrender the certificate or certificates therefor, duly endorsed, at the office of the Corporation or any transfer agent for the 7.5% Series as may be designated by the Board of Directors (the "Transfer Agent"), and shall give written notice to the Corporation at such office that such holder elects to convert the same and shall state therein the number of shares of the 7.5% Series being converted; provided, however, such number of shares shall not be fewer than 25,000. Thereupon, the Corporation shall promptly issue and deliver at such office to such holder a certificate or certificates for the number of shares of Common Stock to which such holder is entitled upon such conversion. Such conversion shall be deemed to have been made immediately prior to the close of business on the date of such surrender of the certificate or certificates representing the shares of the 7.5% Series to be converted, and the person entitled to receive the shares of Common Stock issuable upon such conversion shall be treated for all purposes as the record holder of such shares of Common Stock on such date.

(c) Conversion Price. Each share of the 7.5% Series shall be convertible in accordance with this Section 6 into the number of shares of Common Stock that results from dividing the Liquidation Preference for the 7.5% Series (including the stated liquidation preference and accrued but unpaid dividends) by the conversion price that is in effect at the time of conversion (the "Conversion Price"). The initial Conversion Price for the 7.5% Series shall be \$32.40 per share. The Conversion Price shall be subject to adjustment from time to time as provided below.

(d) Adjustment of Conversion Price. The Conversion Price shall be adjusted from time to time as follows:

(i) If the Corporation shall hereafter pay a dividend in or make a distribution of Common Stock to all holders of any outstanding class or series of Common Stock, the Conversion Price in effect at the opening of business on the date following the date fixed for the determination of stockholders entitled to receive such dividend or other distribution shall be reduced by multiplying such Conversion Price by a fraction of which the numerator shall be the number of shares of Common Stock outstanding at the

close of business on the Record Date fixed for such determination and the denominator shall be the sum of such number of outstanding shares and the total number of shares constituting such dividend or other distribution, such reduction to become effective immediately after the opening of business on the day following the Record Date. If any dividend or distribution of the type described in this Section 6(d)(i) is declared but not so paid or made, the Conversion Price shall again be adjusted to the Conversion Price which would then be in effect if such dividend or distribution had not been declared.

(ii) If the Corporation shall offer to issue rights or warrants to all holders of its outstanding Common Stock entitling them to subscribe for or purchase Common Stock at a price per share less than the Current Market Price on the Record Date fixed for the determination of stockholders entitled to receive such rights or warrants, the Conversion Price shall be adjusted so that the same shall equal the price determined by multiplying the Conversion Price in effect at the opening of business on the date after such Record Date by a fraction of which the numerator shall be the number of shares of Common Stock outstanding at the close of business on the Record Date plus the number of shares of Common Stock which the aggregate offering price of the total number of shares of Common Stock subject to such rights or warrants would purchase at such Current Market Price and of which the denominator shall be the number of shares of Common Stock outstanding at the close of business on the Record Date plus the total number of additional shares of Common Stock subject to such rights or warrants for subscription or purchase. Such adjustment shall become effective immediately after the opening of business on the day following the Record Date fixed for determination of stockholders entitled to purchase or receive such rights or warrants. For the purposes of this Section 6(d)(ii), the issuance of rights or warrants to subscribe for or purchase securities convertible into Common Stock shall be deemed to be the issuance of rights or warrants to purchase the shares of Common Stock into which such securities are convertible at an aggregate offering price equal to the aggregate offering price of such securities plus the minimum aggregate amount (if any) payable upon conversion of such securities into shares of Common Stock. To the extent that shares of Common Stock are not delivered pursuant to such rights or warrants, upon the expiration or termination of such rights or warrants the Conversion Price shall again be adjusted to be the Conversion Price which would then be in effect had the adjustments made upon the issuance of such rights or warrants been made on the basis of delivery of only the number of shares of Common Stock actually delivered. If such rights or warrants are not so issued, the Conversion Price shall again be adjusted to be the Conversion Price which would then be in effect if such date fixed for the determination of stockholders entitled to receive such rights or warrants had not been fixed. In determining whether any rights or warrants entitle the holders to subscribe for or purchase Common Stock at less than such Current Market Price, and in determining the aggregate offering price of such shares of Common Stock, there shall be taken into account any consideration received for such rights or warrants, with the value of such consideration, if other than cash, to be determined by the Board of Directors.

(iii) If the outstanding shares of Common Stock shall be subdivided into a greater number of shares of Common Stock, the Conversion Price in effect at the opening of business on the day following the day upon which such subdivision becomes effective shall be proportionately reduced, and, conversely, if the outstanding shares of Common Stock shall be combined into a smaller number of shares of Common Stock, the Conversion Price in effect at the opening of business on the day following the day upon which such combination becomes effective shall be proportionately increased, such reduction or increase, as the case may be, to become effective immediately after the opening of business on the day following the day upon which such subdivision or combination becomes effective.

(iv) If the Corporation shall, by dividend or otherwise, distribute to all holders of its shares of Common Stock shares of any class of capital stock of the Corporation (other than any dividends or distributions to which Section 6(d)(i) applies) or evidences of its indebtedness, cash or other assets (including securities, but excluding any rights or warrants of a type referred to in Section 6(d)(ii) and excluding dividends and distributions paid exclusively in cash and excluding any capital stock, evidences of indebtedness, cash or assets distributed upon a merger or consolidation to which Section 7(a) applies) (the foregoing hereinafter in this Section 6(d)(iv) called the "Distributed Securities"), then, in each such case, the Conversion Price shall be reduced so that the same shall be equal to the price determined by multiplying the Conversion Price in effect immediately prior to the close of business on the Record Date with respect to such distribution by a fraction of which the numerator shall be the Current Market Price of the Common Stock on such date less the fair market value (as determined by the Board of Directors, whose determination shall be conclusive and described in a resolution of the Board of Directors) on

such date of the portion of the Distributed Securities so distributed applicable to one share of Common Stock and the denominator shall be such Current Market Price, such reduction to become effective immediately prior to the opening of business on the day following the Record Date; provided, however, that, in the event the then fair market value (as so determined) of the portion of the Distributed Securities so distributed applicable to one share of Common Stock is equal to or greater than the Current Market Price on the Record Date, in lieu of the foregoing adjustment, adequate provision shall be made so that each holder of the 7.5% Series shall have the right to receive upon conversion of a share of the 7.5% Series (or any portion thereof) the amount of Distributed Securities such holder would have received had such holder converted such share of the 7.5% Series (or portion thereof) immediately prior to such Record Date. If such dividend or distribution is not so paid or made, the Conversion Price shall again be adjusted to be the Conversion Price which would then be in effect if such dividend or distribution had not been declared. If the Board of Directors determines the fair market value of any distribution for purposes of this Section 6(d)(iv) by reference to the actual or when issued trading market for any securities comprising all or part of such distribution, it must in doing so consider the prices in such market over the same period used in computing the Current Market Price to the extent possible.

Rights or warrants distributed by the Corporation to all holders of Common Stock entitling the holders thereof to subscribe for or purchase shares of the Corporation's Capital Stock (either initially or under certain circumstances), which rights or warrants, until the occurrence of a specified event or events ("Dilution Trigger Event"): (i) are deemed to be transferred with such Common Stock; (ii) are not exercisable; and (iii) are also issued in respect of future issuances of Common Stock, shall be deemed not to have been distributed for purposes of this Section 6(d)(iv) (and no adjustment to the Conversion Price under this Section 6(d)(iv) shall be required) until the occurrence of the earliest Dilution Trigger Event, whereupon such rights and warrants shall be deemed to have been distributed and an appropriate adjustment to the Conversion Price under this Section 6(d)(iv) shall be made. If any such rights or warrants, including any such existing rights or warrants distributed prior to the date hereof, are subject to subsequent events, upon the occurrence of each of which such rights or warrants shall become exercisable to purchase different securities, evidences of indebtedness or other assets, then the occurrence of each such event shall be deemed to be such date of issuance and record date with respect to new rights or warrants (and a termination or expiration of the existing rights or warrants without exercise by the holder thereof). In addition, in the event of any distribution (or deemed distribution) of rights or warrants, or any Dilution Trigger Event with respect thereto, that was counted for purposes of calculating a distribution amount for which an adjustment to the Conversion Price under this Section 6(d)(iv) was made, (1) in the case of any such rights or warrants which shall all have been redeemed or repurchased without exercise by any holders thereof, the Conversion Price shall be readjusted upon such final redemption or repurchase to give effect to such distribution or Dilution Trigger Event, as the case may be, as though it were a cash distribution, equal to the per share redemption or repurchase price received by a holder or holders of Common Stock with respect to such rights or warrants (assuming such holder had retained such rights or warrants), made to all holders of Common Stock as of the date of such redemption or repurchase, and (2) in the case of such rights or warrants which shall have expired or been terminated without exercise by any holders thereof, the Conversion Price shall be readjusted as if such rights and warrants had not been issued.

Notwithstanding any other provision of this Section 6(d)(iv) to the contrary, capital stock, rights, warrants, evidences of indebtedness, other securities, cash or other assets (including any rights distributed pursuant to any shareholder rights plan) shall be deemed not to have been distributed for purposes of this Section 6(d)(iv) if the Corporation makes proper provision so that each holder of shares of the 7.5% Series who converts a share of the 7.5% Series (or any portion thereof) after the date fixed for determination of stockholders entitled to receive such distribution shall be entitled to receive upon such conversion, in addition to the Common Stock issuable upon such conversion, the amount and kind of such distributions that such holder would have been entitled to receive if such holder had, immediately prior to such determination date, converted such share of the 7.5% Series into Common Stock.

For purposes of this Section 6(d)(iv) and Sections 6(d)(i) and (ii), any dividend or distribution to which this Section 6(d)(iv) is applicable that also includes Common Stock, or rights or warrants to subscribe for or purchase Common Stock to which Section 6(d)(ii)

applies (or both), shall be deemed instead to be (1) a dividend or distribution of the evidences of indebtedness, cash, assets, shares of capital stock, rights or warrants other than (A) such shares of Common Stock or (B) rights or warrants to which Section 6(d)(2) applies (and any Conversion Price reduction required by this Section 6(d)(iv) with respect to such dividend or distribution shall then be made) immediately followed by (2) a dividend or distribution of such Common Stock or such rights or warrants (and any further Conversion Price reduction required by Section 6(d)(i) and (ii) with respect to such dividend or distribution shall then be made), except that (x) the Record Date of such dividend or distribution shall be substituted as "the Record Date fixed for the determination of stockholders entitled to receive such dividend or other distribution", "Record Date fixed for such determination" and "Record Date" within the meaning of Section 6(d)(i) and as "the Record Date fixed for the determination of stockholders entitled to receive such rights or warrants", "the date fixed for the determination of the stockholders entitled to receive such rights or warrants" and "such Record Date" within the meaning of Section 6(d)(ii), and (y) any share of Common Stock included in such dividend or distribution shall not be deemed "outstanding at the close of business on the date fixed for such determination" within the meaning of Section 6(d)(i).

(v) If the Corporation shall, by dividend or otherwise, distribute to all holders of its Common Stock cash (excluding any cash that is distributed upon a merger or consolidation to which Section 7(a) applies or as part of a distribution referred to in paragraph (6)(d)(iv)) in an aggregate amount that, combined together with (1) the aggregate amount of any other such distributions to all holders of its Common Stock made exclusively in cash within the 12 months preceding the date of payment of such distribution, and in respect of which no adjustment pursuant to this Section 6(d)(v) has been made, and (2) the aggregate of any cash plus the fair market value (as determined by the Board of Directors, whose determination shall be conclusive and described in a resolution of the Board of Directors) of consideration payable in respect of any tender offer by the Company or a Subsidiary of the Company for all or any portion of the Common Stock concluded within the 12 months preceding the date of payment of such distribution, and in respect of which no adjustment pursuant to Section 6(d)(vi) has been made, exceeds 15% of the product of the Current Market Price on the Record Date with respect to such distribution times the number of shares of Common Stock outstanding on such date, then, and in each such case, immediately after the close of business on such date, the Conversion Price shall be reduced so that the same shall equal the price determined by multiplying the Conversion Price in effect immediately prior to the close of business on such Record Date by a fraction (i) the numerator of which shall be equal to the Current Market Price on the Record Date less an amount equal to the quotient of (x) the excess of such combined amount over such 15% amount divided by (y) the number of shares of Common Stock outstanding on the Record Date and (ii) the denominator of which shall be equal to the Current Market Price on such Record Date; provided, however, that, if the portion of the cash so distributed applicable to one share of Common Stock is equal to or greater than the Current Market Price of the Common Stock on the Record Date, in lieu of the foregoing adjustment, adequate provision shall be made so that each holder of the 7.5% Series shall have the right to receive upon conversion of a share of the 7.5% Series (or any portion thereof) the amount of cash such holder would have received had such holder converted such share of the 7.5% Series (or portion thereof) immediately prior to such Record Date. If such dividend or distribution is not so paid or made, the Conversion Price shall again be adjusted to be the Conversion Price which would then be in effect if such dividend or distribution had not been declared.

(vi) If a tender or exchange offer made by the Company or any of its Subsidiaries for all or any portion of the Common Stock expires and such tender or exchange offer (as amended upon the expiration thereof) requires the payment to stockholders (based on the acceptance (up to any maximum specified in the terms of the tender offer) of Purchased Shares (as defined below)) of an aggregate consideration having a fair market value (as determined by the Board of Directors, whose determination shall be conclusive and described in a resolution of the Board of Directors) that, combined together with (i) the aggregate of the cash plus the fair market value (as determined by the Board of Directors, whose determination shall be conclusive and described in a resolution of the Board of Directors), as of the expiration of such tender offer, of consideration payable in respect of any other tender offers by the Company or any of its Subsidiaries for all or any portion of the Common Stock expiring within the 12 months preceding the expiration of such tender offer and in respect of which no adjustment pursuant to this Section 6(d)(vi) has been made and (ii) the aggregate amount of any distributions to all holders of the Common Stock made exclusively in cash within 12 months preceding the expiration of such tender offer and in respect of which no adjustment pursuant to Section

6(d)(v) has been made, exceeds 15% of the product of the Current Market Price as of the last time (the "Expiration Time") tenders could have been made pursuant to such tender offer (as it may be amended) times the number of shares of Common Stock outstanding (including any tendered shares) at the Expiration Time, then, and in each such case, immediately prior to the opening of business on the day after the date of the Expiration Time, the Conversion Price shall be adjusted so that the same shall equal the price determined by multiplying the Conversion Price in effect immediately prior to the close of business on the date of the Expiration Time by a fraction of which the numerator shall be the number of shares of Common Stock outstanding (including any tendered shares) at the Expiration Time multiplied by the Current Market Price of the Common Stock on the Trading Day next succeeding the Expiration Time and the denominator shall be the sum of (x) the fair market value (determined as aforesaid) of the aggregate consideration payable to stockholders based on the acceptance (up to any maximum specified in the terms of the tender offer) of all shares validly tendered and not withdrawn as of the Expiration Time (the shares deemed so accepted, up to any such maximum, being referred to as the "Purchased Shares") and (y) the product of the number of shares of Common Stock outstanding (less any Purchased Shares) at the Expiration Time and the Current Market Price of the Common Stock on the Trading Day next succeeding the Expiration Time, such reduction (if any) to become effective immediately prior to the opening of business on the day following the Expiration Time. If the Company is obligated to purchase shares pursuant to any such tender offer, but the Company is permanently prevented by applicable law from effecting any such purchases or all such purchases are rescinded, the Conversion Price shall again be adjusted to be the Conversion Price which would then be in effect if such tender offer had not been made. If the application of this Section 6(d)(vi) to any tender offer would result in an increase in the Conversion Price, no adjustment shall be made for such tender offer under this Section 6(d)(vi).

(vii) No adjustment in the Conversion Price shall be required unless such adjustment would require an increase or decrease of at least 1% in such price; provided, however, that any adjustments which by reason of this Section 6(d)(vii) are not required to be made shall be carried forward and taken into account in any subsequent adjustment. All calculations under this Section 6(d) shall be made by the Corporation and shall be made to the nearest cent or to the nearest one-hundredth of a share, as the case may be. No adjustment need be made for a change in the par value or no par value of the Common Stock.

(viii) Whenever the Conversion Price is adjusted as herein provided, the Corporation shall promptly file with the Transfer Agent an Officers' Certificate setting forth the Conversion Price after such adjustment and setting forth a brief statement of the facts requiring such adjustment. Promptly after delivery of such certificate, the Corporation shall prepare a notice of such adjustment of the Conversion Price setting forth the adjusted Conversion Price and the date on which each adjustment becomes effective and shall mail such notice of such adjustment of the Conversion Price to each holder of the 7.5% Series at such holder's last address appearing on the register of holders maintained for that purpose within 20 days of the effective date of such adjustment. Failure to deliver such notice shall not affect the legality or validity of any such adjustment.

(ix) In any case in which this Section 6(d) provides that an adjustment shall become effective immediately after a Record Date for an event, the Corporation may defer until the occurrence of such event issuing to the holder of any share of the 7.5% Series converted after such Record Date and before the occurrence of such event the additional Common Stock issuable upon such conversion by reason of the adjustment required by such event over and above the Common Stock issuable upon such conversion before giving effect to such adjustment.

(x) For purposes of this Section 6(d), the number of shares of Common Stock at any time outstanding shall not include shares held in the treasury of the Corporation but shall include shares issuable in respect of scrip certificates issued in lieu of fractions of Common Stock. The Corporation shall not pay any dividend or make any distribution on Common Stock held in the treasury of the Corporation.

7. Corporate Events.

(a) Merger. In case of (i) any reclassification or change of outstanding shares of Common Stock (other than a change in par value or from par value to no par value or from no par value to par value, or as a result of a subdivision or combination) or (ii) any consolidation or merger of the Corporation with one or more other corporations (other than any consolidation or merger in which the Corporation is the continuing corporation and which does not result in any reclassification, conversion, exchange or cancellation of outstanding shares of Common Stock issuable

upon conversion of the 7.5% Series), (iii) any sale or conveyance to another corporation or other entity of all or substantially all of the property of the Corporation, or (iv) any other transaction which would constitute a Change of Control of the Corporation, then the Corporation, or such successor corporation or other entity, as the case may be, shall make appropriate provision so that the holder of each share of the 7.5% Series then outstanding shall have the right thereafter, to convert such share of the 7.5% Series into the kind and amount of securities, cash and other property receivable upon such consolidation, merger, sale, reclassification, change or conveyance by a holder of the number of shares of Common Stock into which such share of the 7.5% Series might have been converted immediately prior to such consolidation, merger, sale, reclassification, change or conveyance, subject to such adjustment which shall be as nearly equivalent as may be practicable to the adjustments provided in Section 6(d). The above provisions of this Section 7(a) shall similarly apply to successive consolidations, mergers, conveyances or transfers.

(b) Offer to Repurchase. In addition to the foregoing, upon the occurrence of a Change of Control in which all or part of the consideration payable to holders of Common Stock is in the form of cash, the Corporation shall make an offer (a "Change of Control Offer") to each holder of shares of the 7.5% Series to repurchase all or any part of each such holder's shares of the 7.5% Series at an offer price in cash equal to 100% of the Liquidation Preference as of the Change of Control Payment Date (the "Change of Control Payment"); provided, however, such Change of Control Offer shall be limited to that number of shares of the 7.5% Series equal to the total number of outstanding shares of the 7.5% Series multiplied by a quotient equal to the total cash consideration paid to stockholders pursuant to such Change of Control transaction divided by the total consideration paid to stockholders pursuant to such Change of Control transaction. The Corporation shall comply with the requirements of Rule 14e-1 under the Exchange Act and any other securities laws and regulations thereunder to the extent such laws and regulations are applicable in connection with the repurchase of shares of the 7.5% Series as a result of a Change of Control, and the Corporation shall not be in violation of this Certificate of Designation by reason of any act required by such rule or other applicable law.

Within 25 days following any Change of Control, the Corporation shall mail a notice to each holder of shares of the 7.5% Series stating:

(i) that the Change of Control Offer is being made pursuant to this Section 7 and that up to the stated number of all shares of the 7.5% Series tendered will be accepted for payment;

(ii) the purchase price and the purchase date, which shall be at least 30 but no more than 60 days from the date on which the Corporation mails notice of the Change of Control (the "Change of Control Payment Date");

(iii) that any shares of the 7.5% Series not tendered will continue to accrue dividends as provided in this Certificate of Designation;

(iv) that, unless the Corporation defaults in the payment of the Change of Control Payment, all shares of the 7.5% Series accepted for payment pursuant to the Change of Control Offer shall cease to accrue dividends after the Change of Control Payment Date;

(v) that holders of shares of the 7.5% Series electing to have any shares of the 7.5% Series purchased pursuant to a Change of Control Offer shall be required to surrender the shares of the 7.5% Series to the Corporation or its designated agent (the "Paying Agent") for such purpose, at the address specified in the notice prior to the close of business on the third Business Day preceding the Change of Control Payment Date; and

(vi) that holders of shares of the 7.5% Series will be entitled to withdraw their election if the Corporation or the Paying Agent receives, not later than the close of business on the second Business Day preceding the Change of Control Payment Date, a telegram, telex, facsimile transmission or letter setting forth the name of the holder of shares of the 7.5% Series, the number of shares of the 7.5% Series delivered for purchase, and a statement that such holder is withdrawing his election to have such shares purchased.

On the Change of Control Payment Date, the Corporation shall, to the extent lawful, (i) accept for payment all shares of the 7.5% Series tendered pursuant to the Change of Control Offer; provided, however, that if the number of such tendered shares exceeds the limits set forth above, the Corporation shall accept such shares pro rata and (ii) deposit with the Paying Agent an amount equal to the Change of Control Payment in respect of all shares of the 7.5% Series so accepted for payment. The Corporation

shall promptly mail to each holder of shares of the 7.5% Series so tendered the Change of Control Payment for such shares. The Corporation shall publicly announce the results of the Change of Control Offer on or as soon as practicable after the Change of Control Payment Date.

(c) Notice of Record Date. In case at any time or from time to time (i) the Corporation shall pay any stock dividend or make any other non-cash distribution to the holders of its Common Stock, or offer for subscription pro rata to the holders of its Common Stock any additional shares of stock of any class or any other right, or (ii) there shall be any capital reorganization or reclassification of the Common Stock of the Corporation or consolidation or merger of the Corporation with or into another corporation, or any sale or conveyance to another corporation of the property of the Corporation as an entirety or substantially as an entirety, or (iii) there shall be a voluntary or involuntary dissolution, liquidation or winding up of the Corporation, then, in any one or more of said cases the Corporation shall give at least 20 days' prior written notice (the time of mailing of such notice shall be deemed to be the time of giving thereof) to the registered holders of the 7.5% Series at the addresses of each as shown on the books of the Corporation maintained by the Transfer Agent thereof of the date on which (A) a record shall be taken for such stock dividend, distribution or subscription rights or (B) such reorganization, reclassification, consolidation, merger, sale or conveyance, dissolution, liquidation or winding up shall take place, as the case may be; provided that, in the case of any transaction to which clause (a) applies the Corporation shall give at least 30 days' prior written notice as aforesaid. Such notice shall also specify the date as of which the holders of the Common Stock of record shall participate in said dividend, distribution or subscription rights or shall be entitled to exchange their Common Stock for securities or other property deliverable upon such reorganization, reclassification, consolidation, merger, sale or conveyance or participate in such dissolution, liquidation or winding up, as the case may be. Failure to give such notice shall not invalidate any action so taken.

8. Reservation of Stock Issuable Upon Conversion. The Corporation shall at all times reserve and keep available out of its authorized but unissued shares of Common Stock solely for the purpose of effecting the conversion of the shares of the 7.5% Series, such number of its shares of Common Stock as shall from time to time be sufficient to effect the conversion of all then outstanding shares of the 7.5% Series; and if at any time the number of authorized but unissued shares of Common Stock shall not be sufficient to effect the conversion of all then outstanding shares of the 7.5% Series, the Corporation will take such corporate action as may be necessary to increase its authorized but unissued shares of Common Stock to such number of shares as shall be sufficient for such purpose.

9. Definitions. Certain capitalized terms are used in this Certificate as defined below:

"Affiliate" shall mean, with respect to any Person, any other Person that directly or indirectly through one or more intermediaries controls or is controlled by or is under common control with such Person. For the purposes of this definition, "control," when used with respect to any particular Person means the power to direct the management and policies of such Person, directly or indirectly, whether through ownership of voting securities, by contract or otherwise.

"Beneficial Owner" (and with correlative meanings, "Beneficially Own" and "Beneficial Ownership") of any interest means a Person who, together with his, her or its Affiliates, is or may be deemed a beneficial owner of such interest for purposes of Rule 13d-3 or 13d-5 under the Exchange Act, or who, together with his, her, or its Affiliates, has the right to become such a beneficial owner of such interest (whether such right is exercisable immediately or only after the passage of time) pursuant to any agreement, arrangement or understanding, or upon the exercise, conversion or exchange of any warrant, right or other instrument, or otherwise.

"Board of Directors" shall mean the board of directors of the Corporation.

"Business Day" shall mean any day other than a Saturday, a Sunday or a day on which banking institutions in The City of New York or at a place of payment are authorized by law, regulation or executive order to remain closed.

"Change of Control" means the occurrence of any of the following: (i) any Person becoming the Beneficial Owner, directly or indirectly, of Voting Securities, pursuant to the consummation of a merger, consolidation, sale of all or substantially all of the Corporation's assets, share exchange or similar form of transaction that requires the approval of the Corporation's stockholders, whether for such transaction or the issuance of securities in

such transaction, so as to cause such Person's Voting Ownership Percentage to exceed 50% of the Total Voting Power; provided however, that the event described in this clause (i) shall not be deemed to be a Change of Control if it occurs as a result of the following acquisitions: (A) by any employee benefit plan sponsored or maintained by the Corporation or any Affiliate, or (B) by any underwriter temporarily holding securities pursuant to an offering of such securities; (ii) the consummation of a merger, consolidation, sale of all or substantially all of the Corporation's assets, share exchange or similar form of corporate transaction involving the Corporation or any of its subsidiaries that requires the approval of the Corporation's shareholders whether for such transaction or the issuance of securities in such transaction, unless immediately following such transaction more than 50 percent of the total voting power of (x) the corporation resulting from such transaction, or (y) if applicable, the ultimate parent corporation that directly or indirectly has Beneficial Ownership of 100 percent of the voting securities eligible to elect directors of such resulting corporation, is represented by Voting Securities that were outstanding immediately prior to such transaction in substantially the same proportion as the voting power of such Voting Securities among the holders thereof immediately prior to such transaction; or (iii) the consummation of a plan of complete liquidation or dissolution of the Corporation.

"closing price" with respect to any securities on any day means the last sale price on such day or, if no such sale takes place on such day, the average of the reported high bid and low ask prices on such day, in each case on the Nasdaq National Market or the New York Stock Exchange, as applicable, or, if such security is not listed or admitted to trading on such national market or exchange, on the principal national securities exchange or quotation system on which such security is quoted or listed or admitted to trading, or, if not quoted or listed or admitted to trading on any national securities exchange or quotation system, the average of the high bid and low ask prices of such security on the over-the-counter market on the day in question as reported by the National Quotation Bureau Incorporated or a similar generally accepted reporting service, or, if not so available, in such manner as furnished by any New York Stock Exchange member firm selected from time to time by the Board of Directors for that purpose, or a price determined in good faith by the Board of Directors, whose determination shall be conclusive and described in a resolution of the Board of Directors.

"Current Market Price" means the average of the daily closing prices per share of Common Stock for the 20 consecutive Trading Days immediately prior to the date in question; provided, however, that (A) if the "ex" date (as hereinafter defined) for any event (other than the issuance or distribution requiring such computation) that requires an adjustment to the Conversion Price pursuant to Section 6(d)(i), (ii), (iii) or (iv) occurs during such 20 consecutive trading days, the closing price for each trading day prior to the "ex" date for such other event shall be adjusted by multiplying such closing price by the same fraction by which the Conversion Price is so required to be adjusted as a result of such other event, (B) if the "ex" date for any event (other than the issuance or distribution requiring such computation) that requires an adjustment to the Conversion Price pursuant to Section 6(d)(i), (ii), (iii) or (iv) occurs on or after the "ex" date for the issuance or distribution requiring such computation and prior to the date in question, the closing price for each trading day on and after the "ex" date for such other event shall be adjusted by multiplying such closing price by the reciprocal of the fraction by which the Conversion Price is so required to be adjusted as a result of such other event and (C) if the "ex" date for the issuance or distribution requiring such computation is prior to the day in question, after taking into account any adjustment required pursuant to clause (A) or (B) of this proviso, the closing price for each trading day on or after such "ex" date shall be adjusted by adding thereto the amount of any cash and the fair market value (as determined by the Board of Directors in a manner consistent with any determination of such value for purposes of Section 6(d)(iv), whose determination shall be conclusive and described in a resolution of the Board of Directors) of the evidence of indebtedness, shares of Capital Stock or assets being distributed applicable to one Common Stock as of the close of business on the day before such "ex" date. For purposes of this paragraph, the term "ex" date (I) when used with respect to any issuance or distribution, means the first date on which the Common Stock trades regular way on the relevant exchange or in the relevant market from which the closing price was obtained without the right to receive such issuance or distribution, (II) when used with respect to any subdivision or combination of Common Stock, means the first date on which the Common Stock trades regular way on such exchange or in such market after the time at which such subdivision or combination becomes effective and (III) when used with respect to any tender or exchange offer means the first date on which the Common Stock trades regular way on such exchange or in such market after the Expiration Time of such offer. Notwithstanding the

foregoing, whenever successive adjustments to the Conversion Price are called for pursuant to this Section 6(d), such adjustments shall be made to the Current Market Price as may be necessary or appropriate to effectuate the intent of this Section 6(d) and to avoid unjust or inequitable results, as determined in good faith by the Board of Directors.

"Exchange Act" shall mean the Securities Exchange Act of 1934, as amended, or any successor federal statute, and the rules and regulations of the SEC thereunder, all as the same shall be in effect at the time. Reference to a particular section of the Exchange Act shall include reference to the comparable section, if any, of any such successor federal statute.

"fair market value" shall mean the amount which a willing buyer would pay a willing seller in an arm's-length transaction.

"Liquidation Preference" with respect to a share of the 7.5% Series shall mean, as at any date, \$100.00 per share (as adjusted for any stock dividends, combinations or splits with respect to such share), plus an amount equal to all accrued but unpaid dividends (whether or not declared) on such share as at such date.

"Person" means any individual, "group" (as such term is used in sections 13(d) and 14(d) of the Exchange Act), corporation, partnership, joint venture, trust, unincorporated organization, government or any agency or political subdivision thereof, or any other entity.

"Record Date" shall mean, with respect to any dividend, distribution or other transaction or event in which the holders of Common Stock have the right to receive any cash, securities or other property or in which the Common Stock (or other applicable security) is exchanged for or converted into any combination of cash, securities or other property, the date fixed for determination of stockholders entitled to receive such cash, securities or other property (whether such date is fixed by the Board of Directors or by statute, contract or otherwise).

"Total Voting Power" shall mean, calculated at a particular point in time, the aggregate votes represented by then outstanding Voting Securities.

"Trading Day" shall mean a day on which the principal national securities exchange on which the Common Stock is listed or admitted to trading is open for the transaction of business.

"Voting Ownership Percentage" shall mean, calculated at a particular point in time, the Voting Power represented by the Voting Securities Beneficially Owned by the Person whose Voting Ownership Percentage is being determined.

"Voting Power" shall mean, calculated at a particular point in time, the ratio, expressed as a percentage, of (a) the votes represented by the Voting Securities with respect to which the Voting Power is being determined to (b) Total Voting Power.

"Voting Securities" shall mean the Common Stock and shares of any class of capital stock of the Corporation then entitled to vote generally in the election of any member of the Board of Directors, as elected in accordance with the provisions of the By-laws and Charter of the Corporation and shall not include the shares of the 7.5% Series prior to its conversion into Common Stock.

10. Conflicts. In the event of a conflict between any provision of this Certificate and the Charter, the Charter shall take precedence and shall control the resolution of such conflict.

IN WITNESS WHEREOF, Western Resources, Inc. has made this Certificate under its seal and the hand of the President and Chief Executive Officer, an officer authorized to exercise the duties ordinarily exercised by a Vice President, and an Assistant Secretary this ____ day of _____, 20__.

HVOLT ENTERPRISES, INC.

By: _____
Name: _____
Title: _____

ATTEST:

Name: _____
Title: _____