

UNITED STATES
SECURITIES AND EXCHANGE COMMISSION
Washington, D.C. 20549

Amendment No. 1
on
FORM U-1/A

APPLICATION OR DECLARATION
UNDER THE
PUBLIC UTILITY HOLDING COMPANY ACT OF 1935

Sempra Energy	Bangor Pacific, Inc.
101 Ash Street	555 West Fifth Street, Suite 2900
San Diego, California 92101	Los Angeles, California 90013-1001

(Names of companies filing this statement and
addresses of principal executive offices)

None

(Name of top registered holding company parent)

John R. Light
Executive Vice President and General Counsel
Sempra Energy
101 Ash Street
San Diego, California 92101

(Name and address of agent for service)

The Commission is requested to send copies of all
notices, orders and communications in connection with
this Application or Declaration to:

Donald C. Liddell, Esq.	Richard M. Farmer, Esq.
Sempra Energy	Andrew F. MacDonald, Esq.
633 West Fifth Street, Suite 5200	Thelen Reid & Priest LLP
Los Angeles, California 90071	40 West 57th Street
	New York, New York 10019

The Application-Declaration filed in this proceeding on June 1, 1999, is hereby amended as follows:

1. References to KN Energy, Inc. and to File No. 70-9489 in ITEM 1.1 -- INTRODUCTION AND DESCRIPTION OF APPLICANT'S BUSINESS and to "KN" in ITEM 3.5 -- SECTION 3(A) (1) should be ignored as Sempra's proposal to acquire KN Energy, Inc. has been abandoned.

2. ITEM 6 -- EXHIBITS AND FINANCIAL STATEMENTS, is supplemented by the filing of the following exhibits:

- A-1 Articles of Organization of Bangor Gas Company LLC.
- A-2 Operating Agreement of Bangor Gas Company LLC.
- D-1 Consolidated Application dated October 27, 1997, of Bangor Gas Company LLC and Bangor Hydro-Electric Company to the Maine Public Utilities Commission for various approvals (MPUC Docket Nos. 97-795 and 97-796).
- D-2 Order of the MPUC granting a petition for gas service authority, dated June 30, 1998.
- D-3 Petition dated June 24, 1998, of Bangor Gas Company LLC to the

Maine Public Utilities Commission for approval to furnish gas service (MPUC Docket No. 98-468).

D-4 Order of the MPUC granting a petition for gas service authority, dated October 22, 1998.

E Map of natural gas pipelines interconnecting the service areas of SoCalGas, SDG&E, Frontier Energy and Bangor Gas, common supply basins and market centers and hubs. (Paper format filing).

F-1 Opinion of counsel to Sempra Energy.

F-2 Opinion of special Maine counsel to Sempra Energy.

SIGNATURE

Pursuant to the requirements of the Public Utility Holding Company Act of 1935, as amended, the undersigned companies have duly caused this statement filed herein to be signed on their behalf by the undersigned thereunto duly authorized.

SEMPRA ENERGY

By: /s/ Warren I. Mitchell

Name: Warren I. Mitchell

Title: Group President - Regulated
Business Units

BANGOR PACIFIC, INC.

By: /s/ Eric B. Nelson

Name: Eric B. Nelson

Title: President

Date: September 29, 1999

EXHIBIT INDEX

Exhibit -----	Description -----
A-1	Articles of Organization of Bangor Gas Company LLC.
A-2	Operating Agreement of Bangor Gas Company LLC.
D-1	Consolidated Application dated October 27, 1997, of Bangor Gas Company LLC and Bangor Hydro-Electric Company to the Maine Public Utilities Commission for various approvals (MPUC Docket Nos. 97-795 and 97-796)
D-2	Order of the MPUC granting a petition for gas service authority, dated June 30, 1998.
D-3	Petition dated June 24, 1998, of Bangor Gas Company LLC to the Maine Public Utilities Commission for approval to furnish gas service (MPUC Docket No. 98-468).
D-4	Order of the MPUC granting a petition for gas service authority, dated October 22, 1998.
F-1	Opinion of counsel to Sempra Energy.
F-2	Opinion of special Maine counsel to Sempra Energy.

FILING FEE \$250.00

DOMESTIC LIMITED LIABILITY COMPANY

STATE OF MAINE

ARTICLES OF ORGANIZATION OF LIMITED LIABILITY COMPANY

Deputy Secretary of State

(Check box only if applicable)

A TRUE COPY WHEN ATTESTED BY SIGNATURE

This is a professional limited liability company formed pursuant to 31 MRSA ss.611 and 13 MRSA Chapter 22.

Deputy Secretary of State

|_ |

Pursuant to 31 MRSA ss.622, the undersigned adopt(s) the following articles of organization:

FIRST: The name of the limited liability company is

Bangor Gas Company LLC

(The name must contain one of the following: "Limited Liability Company", "L.L.C." or "LLC"; ss.603.1.A)

SECOND: The name of its Registered Agent, an individual Maine resident or a corporation, foreign or domestic, authorized to do business or carry on activities in Maine, and the address of the registered office shall be Bangor Hydro-Electric Company

(name)

Attn: Mr. Frederick S. Samp, Vice President - Law and Finance, 33 State Street, Bangor, ME 04401

(physical location - street (not P.O. Box), city, state and zip code)

(mailing address if different from above)

THIRD: ("X" one box only)

|X| A. The management of the company is vested in a member or members.

|_ | B. 1. The management of the company is vested in a manager or managers. The minimum number shall be _____ managers and the maximum number shall be _____ managers.

2. If the initial managers have been selected, the name and business, residence or mailing address of each manager is:

NAME ADDRESS

|_ | Names and addresses of additional managers are ttached hereto as Exhibit _____, and made a part hereof.

FOURTH: ("X" one box only) These articles may be amended upon approval of the following: (ss.623.4.)

A. A majority of the members (if no box is checked, the statute requires that).

B. A majority in interest of the members.

C. Other

FIFTH: Other provisions of these articles, if any, that the members determine to include are set forth in Exhibit _____ attached hereto and made a part hereof.

ORGANIZER(S) *

DATED August 22, 1997

/s/Michael B. Peisner

Michael B. Peisner

(signature)

(type or print name)

(signature)

(type or print name)

(signature)

(type or print name)

FOR ORGANIZER(S) WHICH ARE ENTITIES

Name of Entity _____

By

(authorized signature)

(type or print name and capacity)

By

(authorized signature)

(type or print name and capacity)

By

(authorized signature)

(type or print name and capacity)

THE FOLLOWING SHALL BE COMPLETED BY THE REGISTERED AGENT UNLESS THIS DOCUMENT IS ACCOMPANIED BY FORM MLLC-18 (SS.607.2.).

The undersigned hereby accepts the appointment as registered agent for the above named limited liability company.

REGISTERED AGENT

DATED August 22, 1997

(signature)

(type or print name)

FOR REGISTERED AGENT WHICH IS A CORPORATION

Name of Corporation Bangor Hydro-Electric Company

By

Frederick S. Samp, Vice President
- Law and Finance

(authorized signature)

(type or print name and capacity)

*Articles must be signed by all ORGANIZERS (ss.627.1.A.). The execution of the articles constitutes an oath or affirmation, under the penalties of false swearing under Title 17-A, section 453, that, to the best of the signers' knowledge and belief, the facts stated in the articles are true (ss.627.3.).

SUBMIT COMPLETED FORMS TO: CORPORATE EXAMINING SECTION, SECRETARY OF STATE,
101 STATE HOUSE STATION, AUGUSTA, ME 04333-0101
TEL. (207) 287-4195

FORM NO. MLLC--6

Rev. 7/23/96

BANGOR GAS COMPANY LLC
AMENDED AND RESTATED OPERATING AGREEMENT

This AMENDED AND RESTATED OPERATING AGREEMENT made and entered into as of October __ 1997, is by and among Bangor Pacific ("Pacific"), a California corporation with a principal place of business at 633 West Fifth Street, Los Angeles, California, Bangor Hydro-Electric Company ("BHE"), a Maine corporation with a principal place of business at 33 State Street, Bangor, Maine, and Bangor Gas Company LLC, a Maine limited liability company (the "Company"). Capitalized terms used herein and not otherwise defined shall be used with the meanings given them in Exhibit A hereto.

WHEREAS, on August 27, 1997, Pacific and BHE formed the Company pursuant to the provisions of the Act, and on August 28, 1997 Pacific and BHE entered into an Operating Agreement (the "Original Operating Agreement") for the Company;

WHEREAS, the Company was formed for the purpose of designing, engineering, financing, constructing, testing, managing, marketing, owning and operating a local gas distribution company (the "Project" or the "System");

WHEREAS, Pacific is a wholly-owned subsidiary of Energy Pacific LLC, a California limited liability company ("Energy Pacific"), which is owned 50-50 by subsidiaries of each of Pacific Enterprises and Enova Corporation. As a condition to its execution of the Original Operating Agreement, BHE required Energy Pacific to execute and deliver to it an Agreement to Fund Certain Obligations, and to be Bound Under Certain Other Obligations Under Operating Agreement;

WHEREAS, subsections (e) (v) and (e) (vi) of Section 3.2 of the Original Operating Agreement permit either Member to be excused from making any further Capital Contributions, or at its election, to immediately terminate the Operating Agreement, upon the assertion by the United States Securities and Exchange Commission (the "SEC") that such Member's ownership interest in the System could affect the exemption of such Member or its parent entity from the Public Utility Holding Company Act of 1935, as amended ("PUHCA"; BHE and Pacific Enterprises are each exempt holding companies under PUHCA);

WHEREAS, under Section 9(a) (2) of PUHCA, the Members' participation in the Project in the manner contemplated in, and with the percentages of voting interest stated in, the Original Operating Agreement, may require SEC approval before commercial operation of the System may be commenced;

WHEREAS, the Members believe that BHE could obtain SEC approval as to its participation in the Project, but that Pacific may be unable to do so;

WHEREAS, the Members believe (a) that PUHCA may be repealed before the System's commencement of commercial operations, and (b) that even if PUHCA is not repealed by such date, Pacific's participation in the Project may be restructured so that SEC approval would not be required for Pacific to participate in a manner satisfactory to the Members (the "Restructuring", defined in Section 23.6 below);

NOW, THEREFORE, for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Members agree that the Original Operating Agreement is amended and restated in its entirety as follows:

SECTION 1 - DEFINITIONS

For the purposes of this Agreement, the definitions shall be as set forth in Exhibit "A" attached hereto and incorporated herein by reference.

SECTION 2 - CONTINUATION OF COMPANY

2.1. Continuation. Pacific and BHE confirm that they are Members of the Company, which was formed under the Maine Limited Liability Company Act for the purpose of designing, engineering, financing, constructing, testing, managing, marketing and operating the System.

2.2. Name. The Company shall operate under the name "Bangor Gas Company LLC", or such other name as the Board of Directors may select. Either Member shall execute any assumed or fictitious name certificate or certificates required by law to be filed in connection with the formation of the Company and shall cause such certificate or certificates to be filed in the appropriate offices as required by law.

2.3. Place of Business. The principal place of business for the Company

is 33 State Street, Bangor, Maine or such other place or places as shall be unanimously agreed upon by the Members.

2.4. Company Property. All Company Property shall be deemed owned by the Company as an entity, and no Member, individually, shall have any ownership of such property. The Members hereby expressly covenant and agree to waive any and all rights to partition the Company Property or cause a dissolution of the Company except to the extent provided in Section 5.10(c), below. A Member who breaches this covenant shall be liable to the non-breaching Members for damages, including, without limitation, reasonable costs and attorneys' fees. A Member's interest in the Company shall be considered personal property for all purposes.

2.5. No Other Agreement Or Restriction. Except as expressly provided herein, this Agreement does not limit the power or rights of any Member hereto to carry on its business for its own sole benefit.

SECTION 3 - MEMBERSHIP AND ECONOMIC INTERESTS; CAPITAL
CONTRIBUTIONS;
ADDITIONAL CAPITAL CONTRIBUTIONS

3.1. Membership and Economic Interests. The Membership and Economic Interests owned by the Members shall be as shown on Schedule 3.1 hereto, as it may be amended from time to time.

As soon as the necessary approval is obtained from the Maine Public Utilities Commission (the "PUC") and any other necessary governmental authority, the Membership Interests shall automatically change to 50% for each Member, subject to possible subsequent change in the event that the Restructuring occurs and is not rescinded, as provided in Section 23. The Members agree to amend Schedule 3.1 whenever necessary. Membership and Economic Interests shown on Schedule 3.1 may be changed only by amendment of Schedule 3.1, and as provided above. Until agreed otherwise by all of the Members, Economic Interests shall remain proportional to Capital Contributions.

3.2. Initial Capital Contributions; Conditions Precedent to Capital Contributions. (a) As of the date hereof, Pacific and BHE have made the Capital Contributions shown on Schedule 3.1.

(b) So long as BHE has first obtained all necessary approvals, including those from the PUC and BHE's lenders, on terms reasonably satisfactory to BHE, BHE agrees to transfer, within ninety (90) days after the date hereof, all of its interests hereunder to a wholly-owned subsidiary, which shall hereinafter be referred to as "Gassub". At such time, Pacific and Gassub will each contribute cash in an amount to be agreed upon, not less than \$50,000 and not greater than \$100,000, with the exact amount to be contributed by each Member being the amount which equalizes the Capital Contributions.

(c) The Members agree to make Capital Contributions, in addition to those referenced in subsections (a) and (b) above, at such time or times and in such portions as set forth in a capital contribution and construction budget, which the Members agree to finalize within thirty (30) days of the date hereof, which budget shall be attached hereto as Appendix 3.2 (the "Budget") or voted by the Board of Directors. In the event that Gassub is unable to make the entire amount of any such Capital Contribution at the time agreed to, Pacific shall advance the amount of Gassub's deficiency. So long as Gassub makes at least 20% of the agreed-upon contribution, it shall retain its 50% Membership Interest, so long as it pays in the deficiency within six (6) months after the date on which Pacific makes its Capital Contribution; when Gassub pays in the deficiency, the amount advanced by Pacific to make up Gassub's deficiency will be returned to Pacific. In the event that Gassub either (a) fails to make such 20% contribution, or (b) the 6-month period has expired without its making up the deficiency, its Membership Interest shall be reduced to a percentage equal to its Economic Interest. The foregoing shall apply until the second anniversary of the first Capital Contributions totaling \$500,000 or more to be made by both Members (the "Second Anniversary"). Starting on the Second Anniversary, the Membership Interest of each Member shall be a percentage equal to its Economic Interest. The foregoing provisions, as they affect Membership Interests, are subject to possible subsequent change in the event that the Restructuring occurs and is not rescinded, as provided in Section 23.

(d) Some of the Capital Contributions agreed to be made above will be in property and services (including the work of in-house personnel). Such Capital Contributions shall be valued at their book value, as determined by the written agreement of the Members.

(e) Notwithstanding the foregoing, either Member may, upon written notice to the other, elect to be excused from making any further Capital Contributions, or at its election, may immediately terminate this Agreement, upon the occurrence of any of the following:

- i. failure of the Company to secure satisfactory terms

and conditions of gas supply and transportation from Maritimes Northeast Pipeline LLC ("Maritimes");

- ii. failure of the Company to secure satisfactory terms and conditions of approval of the operations and rates of the Company by the PUC;
- iii. failure of the Maritimes pipeline to be installed on its FERC-approved route or such alternate route as provides comparable or better gas service at a comparable or better price;
- iv. an occurrence which makes unacceptable to either party any material assumption in the pro forma contained in the Project Implementation Plan, the effect of which occurrence is reasonably likely, in the opinion of such party, to materially change Project performance;
- v. except to the extent provided in Section 23.10, assertion by the SEC that Pacific's ownership interest in the System could affect the exemption from PUHCA of Pacific Enterprises or its successor in interest as a result of a merger which is pending as of the date hereof, or result in initiation of an enforcement action by the SEC; and
- vi. except to the extent provided in Section 23.9, assertion by the SEC that BHE's ownership interest in the System could affect BHE's exemption from PUHCA, or result in initiation of an enforcement action by the SEC.

Upon such election, such Member's interests hereunder shall be subject to the provisions of Sections 14.4 and 11.1, below.

3.3. Capital Calls.

- i. If the Board of Directors shall determine that (a) additional capital is needed immediately for the activities of the Company, beyond that which had been contemplated or projected by the Project Implementation Plan, (b) the Company would incur material liabilities or otherwise suffer serious harm if the capital were not made available, (c) the capital is not reasonably available from any other source, and (d) all Members have contributed to the capital of the Company in proportion to their Membership Interests, then the Board of Directors shall give each Member a written notice (the "Call Notice") setting forth (i) the aggregate amount of Additional Capital needed (the "Additional Capital"), (ii) each Member's proportionate share of such Additional Capital and (iii) the due date (the "Due Date") of such contribution, such Due Date to be not less than 15 days after the deemed delivery date of such Call Notice; provided however, that the amount of any such capital call made pursuant to this Section 3.3(i) shall not exceed the amounts set forth in the Budget. Not later than the Due Date, each Member shall contribute cash in an amount equal to the product of Additional Capital called times such Member's Membership Interest.
- ii. If any Member shall fail to make any contribution of Additional Capital within ten (10) days after the Due Date, the other Member or Members shall be given the opportunity to make the needed Capital Contributions on a pro rata basis determined in accordance with the ratio of the Member's Membership Interest to the total Membership Interests at such time, minus the Membership Interest of the Member not making an additional Capital Contribution, and upon any such Capital Contribution the Membership Interests of the contributing Members shall be adjusted to a level determined by the Board of Directors, based on the then-current Market Value of the Company.

3.4. Additional Capital.

Without imposing upon any Member any obligation to do so, any Member, upon approval of all the other Members, may make additional contributions to

Capital consisting of any combination of cash, equipment, or materials. For the purposes of this Section 3.4, "additional" means in addition to those provided for in Section 3.2, above. All such additional contributions to capital consisting of equipment or materials shall be valued at Market Value. If any Additional Capital Contribution is made by a Member, the Members' Membership Interest shall be adjusted accordingly, based on the then-current Market Value of the Company.

SECTION 4 - ALLOCATIONS AND DISTRIBUTIONS

4.1. Special Distribution to Gassub. The Company shall pay Gassub a special distribution equal to two percent (2%) of the Company's net income for the period starting on the second (2nd) anniversary of the date of the Original Operating Agreement and ending on the eighth (8th) anniversary of such date, payable no less frequently than quarterly. This special distribution shall be treated as a "guaranteed payment" under the Code. The amount of each distribution shall be based on the net income received during the quarter for which the distribution is being made. (For purposes of this Section 4.1, the Company's net income shall be as determined under generally accepted accounting principles. Payment of the special distribution to Gassub pursuant to this Section 4.1 shall at all times be subordinate to regular payments of principal and interest due under any loan or loans (the "Construction Loan") on terms acceptable to the Board of Directors and in a principal amount sufficient to fund that portion of the costs of constructing and developing the System which is not supplied by Capital Contributions, as estimated in the Project Implementation Plan. No such subordination shall require any deferral of any special distribution hereunder, so long as such principal and interest are paid when due. If any portion of any such special distribution is deferred for any reason, it shall remain an obligation of the Company until paid in full. Any such special distribution to Gassub shall be deducted from the amount, if any, to be allocated in accordance with Membership Interests. If the Company does not have Profits in the amount of such special distribution at such time, any resulting decrease in the Members' Capital Accounts shall be allocated pro rata to the Members in accordance with their Membership Interests, to the extent that such allocation is consistent with the other provisions of this Agreement, in order to achieve the intent that such special distributions not affect the relative amounts of the Members' Capital Accounts. The Company shall not make any regular distributions to Members unless all special distributions owed to Gassub under this Section 4.1 (including any deferred amounts) have been paid in full. If all or substantially all of the Company's assets are sold as a result of a deadlock as provided in Section 5.10(c), such assets shall remain subject after such sale to Gassub's rights to the special distribution under this Section 4.1, including both unpaid amounts then due and the right to future distributions for the maximum period permitted under applicable law; other sales, including on any foreclosure of the Construction Loan, shall be free and clear of such rights.

4.2. Profits. After giving effect to the special allocations set forth in Sections 4.1, 4.4 and 4.5 hereof, Profits for any fiscal year shall be allocated to the Members in proportion to their Membership Interests.

4.3. Losses. After giving effect to the special allocations set forth in Sections 4.1, 4.4 and 4.5 hereof, Losses for any fiscal year shall be allocated to the Members in proportion to their Membership Interests.

4.4. Special Allocations. The special allocations under Regulations Section 1.704-2(f) under the Code shall be made in the order set forth in Exhibit "B" attached hereto and specifically incorporated by reference as if separately set forth herein.

4.5. Tax Allocations: Code Section 704(c). If there is any variance between the adjusted basis (for federal income tax purposes) of any property contributed to the Capital of the Company and its initial Gross Asset Value, then income, gain, loss, and deductions with respect to such property shall, solely for tax purposes, be allocated among the Members in the manner which is most equitable to both Members, in accordance with Code Section 704(c) and the Regulations thereunder.

In the event the Gross Asset Value of any Company Asset is adjusted pursuant to the definition of Gross Asset Value, and such adjustment results in a variance between the adjusted basis of such asset for federal income tax purposes and its Gross Asset Value, then subsequent allocations of income, gain, loss, and deduction with respect to such asset shall similarly be made in the manner which is most equitable to both Members, in accordance with Code Section 704(c) and the Regulations thereunder.

Any elections or other decisions relating to such allocations shall be made by the CFO, subject to the limitations in Section 6.5, in any manner that

reasonably reflects the purpose and intention of this Agreement.

4.6. Distributions - Net Cash From Operations. After first making the special distribution provided in Section 4.1, and except as otherwise provided in Section 11 hereof, Net Cash From Operations, if any, shall be distributed, at such times as the Board of Directors may determine, to the Members in proportion to their Membership Interests.

4.7. Distributions - Net Cash From Sale, etc. Net cash from the sale, condemnation, casualty loss adjustment or other disposition of all or a substantial part of the Property or upon a termination of the Company shall be distributed as provided in Section 11.2 hereof.

4.8. Allocation of Profits and Losses from Sale, etc.

(a) The Profits arising from the sale, condemnation, casualty loss adjustment or other disposition of all or a substantial part of the Property or upon a termination of the Company shall be allocated among the Members as follows:

First, if the Capital Accounts of any Members have a negative balance, Profits shall be credited to the Capital Accounts of such Members in proportion to such negative balances until such time as the Capital Accounts of all such Members equal zero;

Second, Profits shall be allocated pro rata to the Members until the balance in each Member's Capital Account equals the amount of such Member's Capital Contribution; and

Third, the balance of such Profits shall be allocated to the Members pro rata in accordance with their respective Membership Interests.

(b) The Losses arising from the sale, condemnation, casualty loss or other disposition of all or a substantial part of the Company's assets or upon a termination of the Company shall be allocated among the Members as follows:

First, if the Capital Accounts of any Members have a positive balance, Losses shall be allocated to the Capital Accounts of such Members in proportion to such positive balances, until such time as the Capital Accounts of all such Members equal zero; and

Second, the balance of such Losses shall be allocated to the Members pro rata in accordance with their respective Membership Interests.

4.9. Amounts Withheld. All amounts withheld pursuant to the Code or any provision of any state or local tax law with respect to any payment or distribution to the Company or the Members shall be treated as amounts distributed to the Members pursuant to Section 4.5 for all purposes under this Agreement. The CFO, subject to the limitations in Section 6.5, may allocate any such amounts among the Members in any manner that is in accordance with applicable law.

SECTION 5 - MEMBERS; BOARD OF DIRECTORS

5.1. Voting Rights. All Members who have not Dissociated shall be entitled to vote on any matter submitted to a vote of the Members.

5.2. Management by Board of Directors. The business and affairs of the Company shall be managed under the direction and control of a Board of Directors, consisting of two directors appointed by Pacific and two appointed by BHE (Gassub, after the transfer provided for in Section 3.2); provided, however, that if Alternative Structure 1 is put in place and is not rescinded, (a) Pacific shall appoint only one director, (b) management shall be vested in a manager, and (c) further amendments to this Operating Agreement shall be necessary to implement the new management structure. Any Member, at any time and from time to time, may designate an individual to replace a Director previously serving as appointee of such Member. Neither Member may take any action on behalf of the Company, other than voting as a Member and appointing its Directors, without the approval of the Board of Directors, as provided below. Each Member delegates to the Board of Directors the exclusive authority to manage the Company's business except as to those matters as to which (a) the approval of the Members is expressly required by this Agreement or by the Act, (b) the Board of Directors refuses to act, or (c) the Board of Directors submits the matter for approval to the Members. The authority of the Board of Directors shall be delegated to officers to the extent provided in Section 6, subject to the limitations provided therein. Decisions of the Board of Directors within the

scope of its authority shall be binding on the Company and each Member. Any Member who takes any action or binds the Company in violation of this Section 5.2 shall be solely responsible for any loss and expense incurred as a result of the unauthorized action and shall indemnify and hold the Company harmless with respect to the loss or expense.

5.3. Chair. The Directors shall elect a chair for a one-year term. The chair shall alternate each year between Pacific and BHE (Gassub, after the transfer provided for in Section 3.2) Directors, provided that if Alternative Structure 1 is put in place and is not rescinded, the chair shall always be from Gassub. The chair shall preside at all meetings of the Board, and shall have the power to call meetings, but no other authority as chair.

5.4. Meetings; Minutes.

(a) Members. Meetings of the Members for any purpose may be called by the President appointed pursuant to Section 6 or any Member.

(b) Board of Directors. Meetings of the Board of Directors may be called by the President appointed pursuant to Section 6, the Chairman or any Director, provided that the Board of Directors as a group shall have the authority to establish a regular meeting schedule.

Attendance at meetings of either the Members or the Board of Directors may be by speaker telephone or other communications device whereby all those participating in the meeting may hear each other. The Board of Directors shall keep written minutes of all meetings, and the minutes of each meeting shall be signed by the Directors attending or participating by conference call on behalf of each Member. The minutes shall be included in the records of the Company.

5.5. Place of Meetings; Notice. The call for each meeting shall specify the location for the meeting, which may be either within or outside the State of Maine. If no designation is made, the place of meeting shall be the principal executive office of the Company. Written Notice stating the place, day and hour of the meeting and the purpose or purposes for which the meeting is called shall be sent not less than three (3) nor more than sixty (60) days before the date of the meeting, by or at the direction of the President or person calling the meeting, to each Member or Director entitled to vote at such meeting.

5.6. Meeting of All Members or Directors. If all of the Members or Directors shall meet at any time and place and consent to the holding of a meeting at such time and place, such meeting shall be valid without call or notice, and at such meeting lawful action may be taken.

5.7. Rules and Guidelines; Project Implementation Plan. The Board of Directors may adopt such rules and guidelines governing the operation of the Company and the construction of the System ("Rules and Guidelines") as it deems appropriate. The Board of Directors shall finalize a Project Implementation Plan within ninety (90) days of the receipt of the last of (a) PUC approval of BHE's application to carry out the intent of this Agreement, which approval must be satisfactory to the Members, and (b) all other approvals required as a prerequisite to the obligations of BHE and Gassub under Section 3.2(b), below. Any amendment to the Project Implementation Plan or material deviation therefrom shall require approval of the Board of Directors as provided in Section 6.4(p), below.

5.8. Record Date. For the purpose of determining Members entitled to notice of or to vote at any meeting of Members or any adjournment thereof, or Members entitled to receive payment of any distribution, or in order to make a determination of Members for any other purpose, the record date for the determination of Members shall be the date on which notice of the meeting is mailed or the date on which the resolution declaring such distribution is adopted, as the case may be. When a determination of Members entitled to vote at any meeting of Members has been made as provided in this Section, such determination shall apply to any adjournment thereof.

5.9. Quorum.

(a) Members. Attendance by both Members shall constitute a quorum at any meeting of Members.

(b) Directors. Attendance by three Directors shall constitute a quorum at any meeting of the Board of Directors.

5.10. Manner of Acting.

(a) Members. If a quorum is present, the affirmative vote of Members holding 51% of the Membership Interests represented in person or by proxy shall be the act of the Members, unless the vote of a greater or lesser proportion or number is otherwise required by the Act, by the Certificate, or by this Agreement. In no event shall the percentage of Membership Interests required to

be voted in favor of an issue be less than the percentage of Director votes that would be required if the same matter were submitted to the Board of Directors.

(b) Directors. The Directors shall vote as representatives of the Members, in the same proportion as Membership Interests. There shall be one hundred (100) voting points, and each Member shall have one point for each percentage point of Membership Interest. If two (2) Directors representing a Member are present at a meeting, each Director shall vote one-half (1/2) of the points allocated to such Member. If only one (1) such Director is present, that Director shall vote all of the points allocated to such Member. The affirmative vote of Directors voting 51 points shall be the act of the Board, except that if Alternative Structure 1 is put in place and is not rescinded, the affirmative vote of Directors voting 96 points shall be the act of the Board as to the matters listed in Section 23.4(b).

(c) Deadlocks. A deadlock shall be deemed to exist if, with respect to any material issue submitted to either the Members or the Board of Directors concerning the Company's affairs or management, there are not sufficient votes for resolving the issue as a result of each Member or its Director(s) voting differently from the other Member or its Director(s), or refusing to vote, on such issue. If a deadlock occurs and is not resolved, then the issue shall promptly, and in no event any later than thirty (30) days after the first occurrence of such deadlock, be submitted for resolution to the chief executive officer of the parent entity of each Member (as of the date of this Agreement, BHE and Pacific Parent), or, in lieu of either of them, an individual with the same authority as such chief executive officer to act on such matter. If they are unable to resolve the matter within thirty (30) days of submission, they shall try to agree on a neutral third party to whom the matter may be submitted for resolution, such decision to be binding on both Members. If the appointees are unable to agree on the selection of the neutral third party within thirty (30) days after the date on which the matter was originally referred to them, they shall either (i) agree to submit the matter to Arbitration, or (ii) if they cannot agree to submit the matter to arbitration, the Company shall be dissolved and its assets sold, as provided in Section 11.2, below. The Members agree that neither they nor any of their Affiliates nor any entities in which they have an ownership or controlling interest shall purchase, lease or otherwise acquire the assets of the Company in any sale resulting from the dissolution of the Company pursuant to option (ii) above in this subsection (c). Notwithstanding the foregoing, either Member or its Affiliate may purchase the assets of the Company or all of the Membership Interests of the other Member, on terms agreed to with such other Member, at any time before option (ii) is reached.

For the purposes hereof, "Arbitration" shall mean the following procedures: the dispute shall first be submitted to non-binding mediation in accordance with the rules established by the American Arbitration Association. If mediation does not result in the resolution of such dispute within thirty (30) days, the matter shall be submitted to binding arbitration administered by the American Arbitration Association under its Commercial Arbitration Rules, as further provided in Section 22 hereof. Both the mediation and the arbitration shall be held in Boston, Massachusetts. Judgment on any award rendered by either the neutral third party referenced in the second sentence of this subsection (c) or the arbitrator(s) may be entered in any court having jurisdiction.

(d) Votes by Interested Member or Director. Unless otherwise expressly provided herein or required under applicable law, a Member, or Directors appointed by a Member who have an interest (economic or otherwise) in the outcome of any particular matter upon which the Members or Directors vote or consent, may vote or consent upon any such matter.

5.11. Proxies. At all meetings of Members a Member may vote in person or by proxy executed in writing by the Member or by a duly authorized attorney-in-fact. Such proxy shall be filed with the President before or at the time of the meeting.

5.12. Action Without a Meeting. Action required or permitted to be taken at a meeting of Members or Directors may be taken without a meeting if the action is evidenced by one or more written consents describing the action taken, signed by each Member or Director, as the case may be, entitled to vote and delivered to the President for inclusion in the minutes or for filing with the Company records. Action taken under this Section is effective when all Members or Directors, as the case may be, entitled to vote have signed the consent, unless the consent specifies a different effective date. The record date for determining Members entitled to take action without a meeting shall be the date the first Member signs a written consent.

5.13. Waiver of Notice. When any notice is required to be given to any Member or Director, a waiver thereof in writing signed by the person entitled to such notice, whether before, at, or after the time stated therein, shall be equivalent to the giving of such notice.

5.14. Liability of Members. No Member shall be liable as such for the

liabilities of the Company. The failure of the Company to observe any formalities or requirements relating to the exercise of its powers or management of its business or affairs under this Agreement or the Act shall not be grounds for imposing personal liability on the Members for liabilities of the Company.

5.15. (a) Indemnification of Parties. The Company shall indemnify a Person who was or is a party or is threatened to be made a party to a threatened, pending or completed action, suit or proceeding, whether civil, criminal, administrative or investigative, because that Person is or was a Member, Director, employee or agent of the Company or is or was serving at the request of the Company as a director, officer, trustee, partner, fiduciary, employee or agent of another corporation, partnership, joint venture, trust, or other enterprise, against expenses, including reasonable attorneys' fees (subject to Section 5.15(e) below), judgments, fines and amounts paid in settlement actually and reasonably incurred by that Person in connection with such an action, suit or proceeding; provided that no indemnification may be provided for a Person with respect to a matter for which that Person is finally adjudicated:

- i. Not to have acted honestly or in the reasonable belief that that Person's action was in, or not opposed to, the best interests of the Company or its Members;
- ii. With respect to a criminal action or proceeding, to have had reasonable cause to believe that that Person's conduct was unlawful; or
- iii. To have acted in a grossly negligent or fraudulent manner, or to have engaged in wilful misconduct.

A final adjudication as to any one of items i, ii or iii above shall be sufficient to relieve the Company from any obligation to indemnify. The termination of an action, suit or proceeding by judgment, order or conviction adverse to that Person, or by settlement or plea of nolo contendere or its equivalent, does not of itself create a presumption that that Person did not act honestly or in the reasonable belief that that Person's action was in or not opposed to the best interests of the Company or its Members and, with respect to a criminal action or proceeding, had reasonable cause to believe that that Person's conduct was unlawful.

(b) Indemnification Prohibited if Party Liable to Company; Exception. Notwithstanding any provision of subsection (a), the Company shall not indemnify a Person with respect to a claim, issue or matter asserted by or in the right of the Company for which that Person is finally adjudicated to be liable to the Company unless the court in which the action, suit or proceeding was brought determines that, in view of all the circumstances of the case, that Person is fairly and reasonably entitled to indemnity for such amounts as the court determines reasonable.

(c) Indemnification Proper and in the Best Interests of the Company. Any indemnification under subsection (a), may be made by the Company only as authorized in the specific case upon a determination by the Board of Directors or Members, subject to the requirements of 31 M.R.S.A. ss.654.4, or any comparable successor provision, that indemnification of the Member, Director, employee or agent is proper in the circumstances and in the best interests of the Company.

(d) Payment of Expenses in Advance. Expenses incurred in defending a civil, criminal, administrative or investigative action, suit or proceeding shall be paid by the Company in advance of the final disposition of that action, suit or proceeding upon a determination made in accordance with the procedure established in subsection (c) that, based solely on the facts then known to those making the determination and without further investigation, the Person seeking indemnification satisfied the standard of conduct prescribed by subsection (a), and upon receipt by the Company of: (i) a written undertaking by or on behalf of the Member, Director, employee or agent to repay that amount if that Person is finally adjudicated not to be entitled to indemnification under this Agreement, and (ii) a written affirmation by the Member, Director, employee or agent that the Person has met the standard of conduct necessary for indemnification by the Company as authorized in this section. The undertaking required by subsection (i) must be an unlimited general obligation of the Person seeking the advance but need not be secured and may be accepted without reference to financial ability to make the repayment.

(e) Restrictions on Payment for Separate Counsel. The Company shall not pay for counsel for any Person when such counsel is not also counsel for the Company in the proceeding unless expressly approved in advance. The Company shall have no obligation to pay for such separate counsel for a Member if the only potential liability of the Member is, in the reasonable opinion of the Company and its counsel, a liability under an exception to 31 M.R.S.A. ss.645, or any comparable successor provision, the requirements of which exception are

unlikely, in the reasonable opinion of the Company and its counsel, to be met, even if there is an actual or potential conflict of interest between the Company and the Member on the relevant matter.

(f) Intent; Amendments. It is not the intent of the foregoing to provide for indemnification outside the scope of what is permitted under applicable law, including the Act, as it may be amended from time to time. If any future amendment to the Act or other applicable law reduces the scope of permitted indemnification, this Section 5.15 shall be deemed to be amended to eliminate any provision which is not thereafter permitted. The right to indemnification under this Section 5.15 shall be fully vested with respect to any matter occurring while this Section 5.15 was in effect in its current form.

5.16. Conflicts of Interest. A Member, a Director, or an Affiliate of either Member, does not violate a duty or obligation to the Company merely because the Member's or the Director's or such Affiliate's conduct -- which conduct may include lending money to, or transacting other business with, the Company -- furthers the Member's or the Director's or such Affiliate's own interest. A Member, Director or Affiliate of either Member may enter into agreements, transactions, contracts, instruments or other transactions with the Company so long as any agreement, contract, instrument or other transaction between the Company and the Member, Director or such Affiliate is either (i) entered into pursuant to BHE's (Gassub's, after the transfer provided for in Section 3.2) preferential bidding rights, as provided for in Section 5.20, or (ii) at no greater than market rates, on commercially reasonable terms and conditions such as are no less favorable to the Company than would be available in a bona fide arm's length transaction with a Person which is not an Affiliate, and has been approved by the Board of Directors or the Members (such approval not to be unreasonably withheld if it has been determined that the proposed transaction meets the other conditions of this subsection (ii))

The rights and obligations of a Member or a Director who thus lends money to or transacts business with the Company are the same as those of a person who is not a Member or Director, subject to other applicable law and the terms of this Agreement. No transaction with the Company shall be voidable solely because a Member, a Director or an Affiliate of either Member has a direct or indirect interest in the transaction if either the transaction is fair to the Company or the Board of Directors or the Members, in either case knowing the material facts of the transaction and the Member's or Director's or Affiliate's interest, authorize, approve, or ratify the transaction.

5.17. Pacific Responsibilities and Rights.

(a) Responsibilities. Pacific will provide at its expense, from its own resources or that of its parent, the services of its Directors. Pacific or its affiliates may provide other services pursuant to a Support Services Agreement, at the Company's expense. Until such time as the PUC approves the Support Services Agreement, Pacific will provide the services of its Officers pursuant hereto, from its own resources or that of its parent. Pacific will keep accurate and detailed records of such services. After such PUC approval, (a) Pacific will be credited with the value of such services, at the rates provided pursuant to the Support Services Agreement, as a Capital Contribution, and (b) thereafter, such services will be provided pursuant to the Support Services Agreement.

5.18. BHE Responsibilities and Rights.

(a) Matters to be Undertaken at BHE Expense; Name. BHE (Gassub, after the transfer provided for in Section 3.2) shall provide the services of its Directors. In addition, BHE will permit the Company to use a name popularly associated with BHE or some close approximation thereto. Such obligation shall continue after the transfer provided for in Section 3.2. Until such time as the PUC approves the Support Services Agreement, BHE will provide the services of its Officers pursuant hereto, at its own expense. BHE will keep accurate and detailed records of such services. After such PUC approval, (a) BHE will be credited with the value of such services, at the rates provided pursuant to the Support Services Agreement, as a Capital Contribution, and (b) thereafter, such services will be provided pursuant to the Support Services Agreement.

(b) Matters to be Undertaken by BHE at the Company's Expense. BHE may provide certain services pursuant to a Support Services Agreement, at the Company's expense.

5.19. Expansion to Future Markets;

- i. Expansion of the System will be determined by the Board of Directors after evaluation of market economics. If either Member, or any Affiliate, wishes to obtain any ownership interest in, or otherwise participate in any business venture

having as its purpose, in whole or in part, the construction or operation of gas distribution system in any portion of the Future Market, whether directly or indirectly, it may do so only if the Company does not, within ninety (90) days after such Member delivers written notice of such intent, elect to construct or operate such gas distribution system, either on its own or together with such Member or Affiliate.

- ii. BHE, Gassub and BHE's other Affiliates may bid for the construction of the System on a competitive bid basis without violating their obligations to the Company.
- iii. Each Member agrees that neither it nor any of its Affiliates will provide any gas distribution service in or to any community in either the Selected Market or the Future Market or to any entity providing such service without first complying with the provisions of Subsection (i) above.

5.20. Procurement of Goods and Services. BHE (Gassub, after the transfer provided for in Section 3.2, above) may elect to make available any of its assets and services, or those of its Affiliates to the Company. Except as provided herein for specific items, all goods and services acquired by the Company shall, whenever practical, be acquired on a competitive bid basis.

5.21 Notwithstanding any other provision of this Agreement, any services of either Member used by the Company whose pricing is not explicitly provided for elsewhere in this Agreement or in a Support Services Agreement will be purchased at Market Value.

SECTION 6 - OFFICERS

6.1. Appointment of Officers.

i. President. The day-to-day affairs of the Company shall be managed by a President and such other officers, appointed to such positions and on such terms as the Board of Directors determines; provided that no officer shall have a title that includes the word "manager", it being the intent that no person shall be a manager for purposes of the Act. Whenever in this agreement the word "President" is used, it shall also mean such other duly authorized officer as is appointed by the Board of Directors to act in the absence of the President. The President shall be a nominee of Pacific; provided that if Alternative Structure 1 is put in place and is not rescinded, the President shall be a nominee of Gassub.

ii. CFO. The Board of Directors shall also appoint a chief financial officer ("CFO"), who shall be a nominee of BHE (Gassub, after the transfer provided for in Section 3.2). The CFO shall have such duties as are provided by the Board of Directors and in this Agreement.

6.2. Budget. No later than ninety (90) days before the end of each fiscal year, the President shall prepare and send to the Board of Directors proposed annual budgets of operations, maintenance, administrative and marketing expenses, capital expenditures, revenues, and cash flows for the next fiscal year. Such budgets shall be acted on by the Board of Directors prior to the end of the fiscal year; provided that should the Board of Directors fail to approve any budget prior to the end of the fiscal year, then the budget as presented by the President shall be deemed approved, and shall remain in effect for the balance of the next fiscal year unless modified by action of the Board of Directors. The President shall manage the business of the Company in accordance with such budget and shall not take any action that materially varies from a budgeted item without the approval of the Board of Directors except upon compliance with the provisions of Section 6.4(g).

6.3. Authority and Duties of President.

(a) Authority. Subject to Section 5 and Section 6.4, hereof the President has the power, on behalf of the Company, to do all things necessary or convenient to carry out the business and affairs of the Company, including, without limitation:

- i. The institution, prosecution and defense of any Proceeding in the Company's name;
- ii. The purchase, receipt, lease or other acquisition, ownership, holding, improvement, use and other dealing with,

Property, wherever located;

- iii. The sale, conveyance, mortgage, pledge, lease, exchange, and other disposition of Property;
- iv. Entering into contracts and guaranties; incurring of liabilities; borrowing money, issuance of notes, bonds, and other obligations; and the securing of any of its obligations by mortgage or pledge of any of its Property or income;
- v. The lending of money, investment and reinvestment of the Company's funds, and receipt and holding of Property as security for repayment, including, without limitation, the lending of money to, and otherwise helping Members, officers, employees, and agents;
- vi. The conduct of the Company's business, the establishment of Company offices, and the exercise of the powers of the Company within or without the State;
- vii. The appointment of employees and agents of the Company, the defining of their duties and authority, the establishment of their compensation;
- viii. The payment of compensation, or additional compensation to any or all employees on account of services rendered to the Company, whether or not an agreement to pay such compensation was made before such services were rendered; and
- ix. The taking of any other action that furthers the business and affairs of the Company.

(b) Duties. The President, either individually or together with such other officers as are appointed by the Board of Directors, will have the following duties:

- i. evaluation, selection, and purchase of System equipment (pipes, etc.);
- ii. System design, engineering and walkout;
- iii. construction management;
- iv. timeline and budget management;
- v. capital procurement;
- vi. reporting (at scheduled or noticed meetings) to the Board of Directors on the construction and operation of the System;
- vii. all the work to be performed under the Project Implementation Plan to build the System and all matters relating thereto;
- viii. responsibility for the compliance by the Company with all applicable Maine and federal laws, rules and regulations relating to the construction, maintenance and operation of the System, including, without limitation, all laws, rules, regulations and licensing requirements relating to the provision of engineering advice and services in the State of Maine;
- ix. coordinating the activities undertaken by the Members and their Affiliates pursuant to Sections 5.17 and 5.18 with the other activities of the Company; and
- x. such other duties as the Board of Directors may, from time to time, designate.

6.4. Restrictions on Authority of the President. Notwithstanding anything to the contrary in Section 6.3 or elsewhere in this Agreement, neither the President nor any other officer shall have any authority to take any of the following actions without first obtaining the consent of the Board of Directors as provided in Section 5, above; for all matters listed below, the vote required shall be 51 voting points:

(a) Contracts with Members or Affiliates. Approval, pursuant to Section 5.16, of the terms of any material agreement, contract, instrument or other transaction between the Company and any Member or

any Affiliate of a Member, except as explicitly provided for elsewhere herein;

(b) Merger, Sale of Assets. Authorization of the merger or consolidation of the Company with any Person, any liquidation or dissolution of the Company, any change to the form of the organization of the Company or any sale, lease, exchange, transfer of all or substantially all of the assets of the Company (disagreement on such vote can trigger the "put" rights in Section 14.5);

(c) Indebtedness, Including System Loan and Bonds. Authorization of the incurrence, assumption or guaranty by the Company of, or suffering the existence by the Company of, the System Loan, the Bonds, and any other indebtedness in excess of the sum of (A) two hundred and fifty thousand dollars (\$250,000) in the aggregate during any one fiscal year and at any one time outstanding, (B) indebtedness secured by Permitted Liens and (C) any other indebtedness in an operating budget previously approved by the Board of Directors or otherwise permitted under subsection (g) below;

(d) Material Agreements.

(i) Approval of the terms of a "Material Agreement" (as defined below),

(ii) Amendment or modification of any Material Agreement,

(iii) Waiver of compliance with any material provision of a Material Agreement,

(iv) Termination, assignment of any material rights the Company may have under, or consenting to or permitting the assignment by any other Person of any material right such Person may have under a Material Agreement,

(v) Giving consents or exercising any other material rights under a Material Agreement.

"Material Agreement" shall mean any agreement for the construction, installation, operation, maintenance or provision of other services to the System with a value of over two hundred fifty thousand dollars (\$250,000), or the purchase of equipment with a value of over two hundred fifty thousand dollars (\$250,000), or any other material agreement to which the Company is a party:

(e) Liens. Creating or otherwise allowing any Lien to be on, or otherwise to affect, any of the Company's property, except Permitted Liens;

(f) Settlements. Confession of judgment or entry into any settlement of any dispute, where the amount of the resulting liability of the Company is greater than fifty thousand dollars (\$50,000).

(g) Budget and Capital Improvements. Approval of the annual budgets as provided in Section 6.2, and of capital expenditures exceeding the limits therein or as otherwise approved hereunder; notwithstanding the foregoing, the President may authorize capital expenditures or indebtedness arising out of an emergency which requires immediate action, so long as the President gives notice to the Directors as soon as possible of the incurrence of such expenditures and obtains any requisite consent to the continuation of any such expenditures after the immediate emergency has passed;

(h) Charges. Annual approval (at the same time as the budget is approved as per paragraph (g) above) of all charges under the agreements or contracts referenced in paragraphs (a), (d) or (g) above, and any exercise of any material rights or elections under such agreements or contracts;

(i) Bankruptcy Filing. (i) Taking, or causing the Company to commence any case, proceeding or other action (A) under any existing or future law of any jurisdiction, domestic or foreign, relating to bankruptcy, insolvency, reorganization or relief of debtors, seeking to have an order for relief entered with respect to it, or seeking to adjudicate it a bankrupt or insolvent, or seeking reorganization, arrangement, adjustment, winding-up, liquidation, dissolution, composition or other relief with respect to it or its debts, or (B) seeking appointment of a receiver, trustee, custodian or other similar official for it or for all or any substantial part of its assets, or

making a general assignment for the benefit of its creditors; or (ii) if there shall be commenced against the Company any case, proceeding or other action of a nature referred to in clause (i) above, taking any action in furtherance of, or indicating its consent to, approval of, or acquiescence, therein, or (iii) admitting in writing its inability to pay its debts as they become due;

(j) Sale of Valuable Assets. Sell, assign or otherwise transfer title to any asset, or any group of assets in the same transaction, or in related transactions, having an aggregate value in excess of fifty thousand dollars (\$50,000);

(k) Acts in Contravention of This Agreement. Knowingly do any act in contravention of this Agreement;

(l) Thwarting Ordinary Business. Knowingly do any act which would make it impossible to carry on the ordinary business of the Company, except as otherwise provided in this Agreement;

(m) Possessing Property for Non-Company Purpose. Possess property, or assign rights in specific property, for other than a Company purpose;

(n) Jeopardizing Tax Treatment. Knowingly take any steps which could jeopardize the treatment of the Company as a partnership under the Code;

(o) Deviating from Project Implementation Plan. Take any action which materially deviates from what is set forth in the Project Implementation Plan, or make any amendment to the Project Implementation Plan; and

(p) Usurpation of Board Function. Take any step within the realm normally governed by boards of directors of corporations, including but not limited to the setting of basic policies and the setting of the President's compensation and benefits.

6.5. Limitations on Authority of CFO. Any delegation of authority to the CFO in this Agreement with regard to tax matters shall be subject to the requirement that the CFO determine if any proposed action is likely to have a material adverse effect on either Member, and if it does, to obtain the approval of the Board of Directors or such Member before taking any such action.

6.6. Liability for Certain Acts. The President and other officers shall exercise their powers and discharge their duties in good faith with a view to the interests of the Company and its Members with that degree of diligence, care and skill that ordinarily prudent persons would exercise under similar circumstances in like positions. No officer shall be liable, responsible or accountable in damages or otherwise to the Company or to any Member for any action taken or any failure to act on behalf of the Company within the scope of the authority conferred on the officer by this Agreement or by law; provided that the officer shall be liable if it is reasonably determined by the Board of Directors that the relevant action or failure to act would disqualify the officer for indemnification under the provisions of Section 5.15.

6.7. Bank Accounts. The President or CFO may from time to time open bank accounts in the name of the Company. The manual signatures of two (2) officers shall be required for all disbursements over a level to be determined by the Board of Directors; in the absence of such determination, such level shall be five thousand dollars (\$5,000). Any withdrawal of funds in excess of one hundred fifty thousand dollars (\$150,000.00), other than transfers between Company accounts, shall require approval of the Board of Directors if the expenditure is not contemplated by the Project Implementation Plan or a budget approved as provided in Section 6.2.

6.8. Removal. At a meeting called expressly for that purpose, any officer may be removed at any time, with or without cause, by the vote of the Board of Directors.

SECTION 7 - BOOKS AND RECORDS; TAX RETURNS; INSURANCE

7.1. Books and Records. All books, records, and financial accounts of the Company shall be kept by the President and the CFO at the principal place of business of the Company (as provided in Section 2.3, above), or at such other location as is determined by the Board of Directors.

7.2. Audit. A periodic audit (or, if agreed upon, review) of the books and records of the Company shall be made by an independent firm of accountants or by such individuals and at such intervals as may be selected by the Board of Directors, and a like audit or review shall be made upon completion of the

System. The cost of any audits or reviews shall be borne by the Company. Upon the completion of the System, a true and correct accounting shall be rendered to the Members of all costs, expenses, and other data relating to the performance and affairs of the Company.

7.3. Inspection of Records. Each Member shall have the right at all reasonable times, during usual business hours, to have its independent accountant or any other agent or employee audit, examine, and, at such Member's expense, make confidential copies of or extracts from the books and records maintained in connection with the Company. Such Member shall bear all expenses incurred in its examination.

7.4. Maintenance of Records after Winding-up. To the extent that the books and records of the Company are required to be kept subsequent to its winding-up, they shall be kept at such place or places as the President or other Person responsible for such winding-up may from time to time determine. The cost of maintaining and storing the books and records after the winding-up of the Company shall be paid from the funds set aside pursuant to subsection (iii) of Section 11.2, below.

7.5. Fiscal Year. The fiscal year of the Company shall be the calendar year, except as otherwise required by the Code.

7.6. Income Tax Returns.

- i. All income tax returns of the Company shall be prepared by accountants selected by the Board of Directors.
- ii. Any provision hereof to the contrary notwithstanding, for federal income tax purposes, the Members hereby recognize and agree that the Company will be treated as a partnership in accordance with the provisions of the Code, as the same may from time to time be amended; provided, however, that the filing of partnership tax returns shall not be construed to extend the purposes of the Company or expand the obligations or liabilities of the Members.
- iii. The CFO shall cause to be prepared all tax returns and statements, if any, which are required to be filed on behalf of the Company with the appropriate taxing authorities. Such returns and statements shall be submitted by the CFO to the Members in draft, in time for the approval of the Board of Directors to be made by May 1 of each year, and in final form prior to filing, and when approved by the Board of Directors, shall be filed promptly.
- iv. Pacific shall serve as the tax matters Member of the Company for purposes of the Internal Revenue Code.

7.7. Insurance. The Company shall maintain such insurance as the Board of Directors deems appropriate.

SECTION 8 - BONDS

Pacific shall use its best efforts to obtain the performance and payment bonds (the "Bonds") and other security in the name of the Company that the Company may be required by any institutional lender in connection with the construction of the System. No Bond shall be binding on the Company until its terms and conditions shall have been approved or ratified by the Board of Directors pursuant to Section 6.4(c).

SECTION 9 - INVESTMENT OF FUNDS

All cash Capital Contributions made to the Company by the Members and all revenues received by the Company shall be deposited in an account or accounts in the name of the Company at such bank or other financial institution as the Board of Directors may select, or shall be invested in such short-term, investment quality investments as shall be selected by the Board of Directors. Such funds shall be withdrawn on such signatures as the Board of Directors shall determine as provided in Section 6.7, above.

SECTION 10 - DISSOCIATION OF A MEMBER

10.1. Dissociation. A Person shall cease to be a Member ("Dissociate") upon the happening of any of the following events:

- (a) an Insolvency Event occurs with respect to the Member or

any affiliate which directly or indirectly owns more than 50% of the Member's voting equity, as provided in Section 10.2 below;

(b) in the case of a Member who is a natural person, the death of the Member or the entry of an order by a court of competent jurisdiction adjudicating the Member incompetent to manage the Member's personal estate;

(c) in the case of a Member who is acting as a Member by virtue of being a trustee of a trust, the termination of the trust (but not merely the substitution of a new trustee);

(d) in the case of a Member that is a separate entity other than a corporation, the dissolution and commencement of winding up of the separate entity;

(e) in the case of a Member that is a corporation, the filing of a certificate of dissolution, or its equivalent, for the corporation or the revocation of its charter;

(f) in the case of an estate, the distribution by the fiduciary of the estate's entire interest in the Company; or

(g) change of control (control being defined as owning more than 50% of voting equity) of a Member, or of any affiliate which directly or indirectly owns more than 50% of the Member's voting equity.

10.2. Effect of Insolvency Event and Other Acts of Dissociation on Membership Interest.

(a) Effective at the time when an Insolvency Event occurs with respect to a Member or an affiliate described in Section 10.1(a), its Membership Interest shall automatically become an Economic Interest.

(b) The Membership Interest of any Dissociating Member shall be subject to Sections 14.4 (offer to the other Members) and 14.6 (sale of voting rights to the Company).

SECTION 11 -DISSOLUTION AND WINDING UP

11.1. Liquidating Events. The Company shall dissolve and commence winding up and liquidating upon the first to occur of any of the following (each a "Liquidating Event"):

- i. The sale of all or substantially all of the Company's Property;
- ii. The vote by the Members to dissolve, wind up, and liquidate the Company;
- iii. Either Member elects not to make further Capital Contributions under Section 3.2(e), and within 180 days thereafter, neither of the following occurs -- (A) the other Member buys all interests of the electing Member under Section 14.4, or (B) the electing Member sells all of its interests to another party who agrees to continue making Capital Contributions at the agreed-upon schedule, including making any Capital Contributions previously due; the foregoing is not intended to apply to Gassub inability to make Capital Contributions under Section 3.2(c);
- iv. A deadlock is reached, pursuant to the procedures described in Section 5.10(c) above, and the parties are unable to reach any resolution other than to dissolve the Company.

The Members hereby agree that, notwithstanding any provision of the Act, the Company shall not dissolve prior to the occurrence of a Liquidating Event. If it is determined by a court of competent jurisdiction that the Company has dissolved prior to the occurrence of a Liquidating Event, the Members hereby agree to continue the business of the Company without a winding up or liquidation. In the event of the occurrence of a Liquidating Event described in subparagraph (v) above, the Members agree that no dissolution shall be deemed to have occurred until forty-five (45) days after written notice of such failure is delivered by BHE (Gassub, after the transfer provided for in Section 3.2) to Pacific and only then if BHE or Gassub, as the case may be, during such forty-five (45) day period, has expended its good faith best efforts, consistent with commercial reasonableness, to cooperate with Pacific and the Company in an attempt to procure project financing.

11.2. Winding Up. Upon the occurrence of a Liquidating Event, the

Company shall continue solely for the purposes of winding up its affairs in an orderly manner, liquidating its assets, and satisfying the claims of its creditors and Members. No Member shall take any action that is inconsistent with, or not necessary to or appropriate for, the winding up of the Company's business and affairs. The President (or, in the event that at the time of such Liquidating Event, there is no President, any Member elected by the Members) shall be responsible for overseeing the winding up and dissolution of the Company and shall take full account of the Company's liabilities and Company Property and the Company Property shall be liquidated as promptly as is consistent with obtaining the fair value thereof, and the proceeds therefrom, to the extent sufficient therefor, shall be applied and distributed in the following order:

- i. First, to the payment and discharge of all of the Company's debts and liabilities to creditors other than Members;
- ii. Second, to the payment and discharge of all of the Company's debts and liabilities to Members, including but not limited to liability for the special distribution to Gassub under Section 4.1;
- iii. Third, the Company shall fund reserves for contingent liabilities to the extent deemed reasonable by the President or other Person responsible for the winding up;
- iv. Fourth, to each Member with a positive balance in its Capital Account (determined after taking into account all applicable allocations, including but not limited to those in Section 4.8, below), in proportion to such balances until such balances are reduced to zero; and
- v. Fifth, the balance, if any, to the Members in proportion to their Membership Interests.

No Member shall receive any additional compensation for any services performed pursuant to this Section 11.

11.3. Compliance With Timing Requirements of Regulations.

If any Member has a deficit balance in its Capital Account (after giving effect to all contributions, distributions and allocations for all taxable years, including those made pursuant to Section 11.2, above, and other distributions made in the year during which such liquidation occurs), such Member shall have no obligation to make any contribution to the capital of the Company with respect to such deficit, and such deficit shall not be considered a debt owed to the Company or to any other Member for any purpose whatsoever. In the discretion of the CFO, subject to the limitations in Section 6.5, a pro rata portion of the distributions that would otherwise be made to the Members pursuant to this Section 11 may be:

- i. distributed to a trust established for the benefit of the Members for the purposes of liquidating Company assets, collecting amounts owed to the Company, and paying any contingent or unforeseen liabilities or obligations of the Company or of the Members arising out of or in connection with the Company. The assets of any such trust shall be distributed to the Members, in the same proportions as the amount distributed to such trust by the Company would otherwise have been distributed to the Members pursuant to this Agreement; or
- ii. withheld to provide a reasonable reserve for Company liabilities (contingent or otherwise) and to reflect the unrealized portion of any installment obligations owed to the Company, provided that such withhold amounts shall be distributed to the Members as soon as practicable.

11.4. Deemed Distribution and Recontribution.

Notwithstanding any other provision of this Section 11, in the event the Company is liquidated within the meaning of Regulations Section 1.704-1(b)(2)(ii)(g) but no Liquidating Event has occurred, the Company Property shall not be liquidated, the Company's liabilities shall not then be paid or discharged, and the Company's affairs shall not be wound up. Instead, the Company shall be deemed to have distributed the Company Property in kind to the Members, who shall be deemed to have assumed and taken subject to all Company liabilities, all in accordance with their respective Capital Accounts. Immediately thereafter, the Members shall be deemed to have recontributed the Company Property in kind to the Company, which shall be deemed to have assumed and taken subject to all such liabilities.

11.5. Rights of Members.

Except as otherwise provided in this Agreement, (a) each Member shall look solely to the assets of the Company for the return of its Capital Contribution and shall have no right or power to demand or receive property other than cash from the Company, and (b) no Member shall have priority over any other Member as to the return of its Capital Contributions, distributions, or allocations.

11.6. Notice of Dissolution.

In the event a Liquidating Event occurs or an event occurs that would, but for provisions of Section 11.1, above, result in a dissolution of the Company, the President shall, within thirty (30) days thereafter, provide written notice thereof to each of the Members and to all other parties with whom the Company regularly conducts business (as determined in the discretion of the President) and shall publish notice thereof in a newspaper of general circulation in each place in which the Company regularly conducts business (as determined in the discretion of the President).

SECTION 12 -CROSS-INDEMNIFICATION BY MEMBERS

12.1. Cross-Indemnification by Members.

Each Member (the "Indemnifying Party") agrees to hold harmless, indemnify, protect and defend each other Member (the "Indemnified Party") and its officers, directors, employees, shareholders and agents, against any and all liabilities, damages, claims, costs, decrees, judgments, suit, actions, and expenses suffered or incurred by the Indemnified Party (collectively, the "Liabilities"), including reasonable attorneys' fees and court costs, arising out of or in connection with (a) the failure by the Indemnifying Party or its personnel to perform the Indemnifying Party's obligations, representations or covenants under this Agreement, or (b) any business conducted or operated by the Indemnifying Party or any Affiliate of such Indemnifying Party other than the business affairs of the Company. Notwithstanding the foregoing, neither Gassub nor BHE shall have any liability hereunder arising from or in connection with the sale, production, or delivery of electrical power by BHE, or the maintenance and operation of its systems and equipment used therefor.

12.2. Other Provision.

Nothing contained in this Agreement with regard to the sharing of the losses and liabilities of the Company shall in any way limit the Indemnifying Party's liability to the Indemnified Party for liabilities arising out of (i) the intentional breach by the Indemnifying Party or its personnel of (x) this Agreement or (y) the obligations assigned to the Indemnifying Party under this Agreement or (ii) actions taken by the Indemnifying Party or its personnel in bad faith or constituting willful misconduct.

SECTION 13 -PRIOR COSTS

Each party shall bear all costs incurred by it prior to the execution of this Agreement except for costs specifically permitted in this Agreement to be recovered by a Member from the Company.

SECTION 14 -TRANSFER OF INTERESTS

14.1. Limitation on Transfers; Pacific Consent to Transfer to Gassub. Except to the extent provided in Sections 3.2 and 14.3(iv) hereof, no Member shall transfer, sell, assign, or convey all or any portion of its Membership Interests (the "Offered Interest") unless such Member (the "Seller") (a) first offers to sell the Offered Interest pursuant to the terms of this Section 14 and (b) obtains the prior written consent of the other Members to a transfer of the Offered Interest. Any purported transfer of Membership Interests that is not effected pursuant to the terms of this Section 14 shall be null and void and of no effect whatever. So long as BHE shall have executed and delivered to Pacific an Agreement to Fund Certain Obligations, and to Remain Bound Under Certain Other Obligations Under Operating Agreement substantially in the form of Exhibit 14.1 hereto, Pacific hereby consents to the transfer of BHE's Membership Interest to Gassub as provided in Section 3.2, and to Gassub thereafter becoming a full Member instead of BHE for all purposes of this Agreement.

14.2. Right of First Refusal. No transfer may be made under this Section unless the Seller has received a bona fide written offer (the "Purchase Offer") from a Person (the "Purchaser") to purchase the Offered Interest for a purchase price (the "Offer Price") denominated and payable in United States dollars at closing or according to specified terms, with or without interest, which offer shall be in writing signed by the Purchaser and shall be irrevocable for a period ending no sooner than the day following the end of the Offer Period, as hereinafter defined.

14.3. Offer Notice. Prior to making any transfer that is subject to the terms of this Section 14, the Seller shall give to the Company and each other Member written notice (the "Offer Notice") which shall include a copy of the Purchase Offer and an offer (the "First Offer") to sell the Offered Interest to the other Members (the "Offerees") for the Offer Price, payable according to the same terms as (or more favorable terms than) those contained in the Purchase Offer, provided that the First Offer shall be made without regard to the requirement of any earnest money or similar deposit required of the Purchaser prior to closing, and without regard to any security (other than the Offered Interest) to be provided by the Purchaser for any deferred portion of the Offer Price.

- i. Offer Period. The First Offer shall be irrevocable for a period (the "Offer Period") ending at 11:59 p.m., local time at the Company's principal office, on the ninetieth day following the day of the Offer Notice.
- ii. Acceptance of First Offer. At any time during the first 60 days of the Offer Period, any Member may accept the First Offer as to that portion of the Offered Interest that corresponds to the ratio of its Membership Interests to the total Membership Interests held by all Members, by giving written notice of such acceptance to the Seller and the other Members. In the event that Offerees ("Accepting Offerees"), in the aggregate, accept the First Offer with respect to all of the Offered Interest, the First Offer shall be deemed to be accepted. If Accepting Offerees do not accept the First Offer as to all of the Offered Interest during the Offer Period, the First Offer shall be deemed to be rejected in its entirety.
- iii. Closing of Purchase Pursuant to First Offer. In the event that the First Offer is accepted, the closing of the sale of the Offered Interest shall take place within thirty (30) days after the First Offer is accepted or, if later, the date of closing set forth in the Purchase Offer. The Seller and all Accepting Offerees shall execute such documents and instruments as may be necessary or appropriate to effect the sale of the Offered Interest pursuant to the terms of the First Offer and this Section 14.
- iv. Sale Pursuant to Purchase Offer If First Offer Rejected. If the First Offer is not accepted in the manner herein above provided, the Seller may sell the Offered Interest to the Purchaser at any time within 60 days after the last day of the Offer Period, provided that such sale shall be made on terms no more favorable to the Purchaser than the terms contained in the Purchase Offer, and provided that if the Seller has not received the prior written consent of the other Members to transfer the Offered Interest as provided in Section 14.1, only an Economic Interest may be sold to the Purchaser. In the event that the Offered Interest is not sold in accordance with the terms of the preceding sentence, the Offered Interest shall again become subject to all of the conditions and restrictions of this Section 14.

14.4. Option to Purchase on Certain Events: Upon (i) the death of any Member or Economic Interest Owner, (ii) any inter vivos gift of an Economic Interest or Membership Interest, (iii) any event described in Section 10.1(a) or 10.1(g) (certain Insolvency Events and changes of control), or (iv) a Member electing not to make further Capital Contributions under Section 3.2(e), the other Members shall have an option to purchase all of the Membership Interest or Economic Interest owned by such Person or such Person's predecessor in interest (or, in the case of the debtor in possession, owned by such Person), for a period of one hundred and eighty (180) days after such triggering event. If the Company does not receive a notice of such triggering event or the related offer, the rights of the other Members shall accrue upon the receipt of actual notice by the Company of the event triggering the rights hereunder. In the event that there is no such notice, the Company shall send the other Members a notice of their rights hereunder within sixty (60) days after the Company receives actual notice. The purchase price for such interest shall be fair market value, as agreed to by the Company and the holder of such Membership Interest or Economic Interest; if they are unable to agree to such value or to an independent appraiser to determine such value within thirty (30) days of submission, such value shall be determined in accordance with the provisions of Section 22 hereof. The provisions of Section 14.1 above shall also govern in the event that the options under this Section 14.4 are not fully exercised.

14.5. Option to Sell on Certain Events: Upon a vote described in Section 6.4(b) (merger, dissolution, etc.) any Member disagreeing with the vote

and having voting power of less than 50% (a "Minority Member") shall have an option to sell to the other Member, and the other Member shall have the obligation to buy, all of the Minority Member's Membership Interest or Economic Interest owned by such Person or such Person's predecessor in interest (or, in the case of the debtor in possession, owned by such Person), by sending notice to the other Member within fifteen (15) days after such triggering event. The purchase price for such interest shall be fair market value, as agreed to by the Members; if they are unable to agree to such value or to an independent appraiser to determine such value within thirty (30) days of submission, such value shall be determined in accordance with the provisions of Section 22 hereof. Closing on such sale shall take place within sixty (60) days after determination of the price. Payment shall be, at the option of the other Member, in cash or partly in cash and partly by note, but in any event not less than one-fourth in cash. Any promissory note shall be dated as of the effective date of the purchase, shall mature in not more than three (3) years, shall be payable in equal installments of principal and interest that come due monthly, shall bear interest at the Prime Rate, plus two (2) percentage points per annum. The Minority Member shall retain a security interest in such interest until pay-off.

14.6. Sale of Remaining Membership Rights to the Company. Upon and contemporaneously with any sale or other disposition, including a sale or disposition resulting from an Act of Dissociation, of a Member's Economic Interest in the Company which does not at the same time transfer the balance of the rights associated with the Economic Interest transferred by the Member (including, without limitation, the rights of the Member to participate in the management of the business and affairs of the Company), the Company shall have an option, which shall remain effective for the maximum period under applicable law, to purchase from such Member or the executor or other successor in interest to such Member, and such Member or the executor or other successor in interest to such Member shall, upon exercise of such option, sell to the Company for a purchase price of one hundred dollars (\$100.00), all remaining rights and interests retained by such Member or the executor or other successor in interest to such Member which immediately prior to such sale or other transfer were associated with the transferred Economic Interest. No other writing, in addition to this Agreement, shall be necessary to evidence such option.

SECTION 15 -ADMISSION OF ADDITIONAL PARTIES

The Board of Directors may determine to issue Membership Interests in the Company in return for cash or in-kind capital contributions, and on such other terms as the Board of Directors may approve, provided, however, that no such issuance of Membership Interests shall have the effect of reducing BHE's (Gassub's, after the transfer provided for in Section 3.2) Membership Interests; and provided further that no Membership Interests will be issued to any Member or any Affiliate of such Member who, directly or indirectly, sells energy on a wholesale or retail basis, without the written consent of BHE (Gassub, after the transfer provided for in Section 3.2).

SECTION 16 -CHOICE OF LAW

This Agreement shall be governed by and interpreted in accordance with the laws of the State of Maine.

SECTION 17 -INTEGRATION

This Agreement is the complete and final agreement of the parties and supersedes any prior agreements or understandings with respect to the subject matter hereof.

SECTION 18 -OWNERSHIP OF DESIGNS, PLANS AND SPECIFICATIONS

Notwithstanding any other provision of this Agreement, all Designs that have been developed by or for a party hereto shall be the property of the Company, except that if the Company has not paid in full therefor, the Designs shall remain the property of the party that developed the Designs and shall be deemed Confidential for purposes of Section 19, below. At all times during the term of the Company, each party hereto shall have full and complete right and license, free of charge, to use the Designs in connection with the construction and operation of the System. Upon and after the termination of the Company pursuant to Section 11, above, the Designs shall be an asset of the Company that shall be sold to the purchaser of the System or distributed to either or both Members as part of a liquidating distribution.

SECTION 19 -CONFIDENTIALITY AGREEMENT

19.1. Confidential Information. With respect to a party hereto (the "Disclosing Party"), "Confidential Information" shall mean technical, business and financial information including, where appropriate and without limitation, any information, business and financial data, software, structures, models,

techniques, processes, compositions, formulas, inventions, schematics, and apparatus relating to the same disclosed by the Disclosing Party to another party hereto (the "Receiving Party") or obtained by the Receiving Party through observation or examination of information, but only to the extent that such information is maintained as confidential by the Disclosing Party and is marked or otherwise identified as confidential when disclosed to the Receiving Party or, in the case of information given verbally, is identified as confidential to the Receiving Party at the time of such verbal disclosure to the Receiving Party. Confidential Information shall not be deemed to be or include promotional materials prepared and approved by the Board of Directors.

19.2. Receiving Party. Each of the Members agrees that the Disclosing Party is the owner or licensee of the Confidential Information. The Receiving Party shall not use any of the Confidential Information of the Disclosing Party at any time except for the purposes of constructing and operating the System and evaluating the desirability of a mutually beneficial business relationship. The Receiving Party shall not disclose any of the Confidential Information other than on a need-to-know basis, as reasonably necessary for such evaluation, to his or its directors, officers, employees, attorneys, accounts, bankers, financial advisors or consultants who are bound by written agreements with the Receiving Party to maintain the Confidential Information in confidence or who are otherwise under obligations of confidentiality to the Receiving Party. Each of the Members agrees to hold the Confidential Information disclosed to it by the Disclosing Party in strict confidence and to take reasonable precautions to protect such Confidential Information (including, without limitation, all precautions the Receiving Party employs with respect to its own Confidential Information).

19.3. Liability. Notwithstanding anything to the contrary in this Agreement, the Receiving Party shall have no liability to the Disclosing Party for the use or disclosure of (1) such information as required by applicable law or regulation, provided that the Receiving Party shall give the Disclosing Party prompt written notice and sufficient opportunity to object to such use or disclosure, or to request confidential treatment to the Confidential Information; or (2) such information as the Receiving Party can establish by written documentation to:

- i. have been publicly known prior to disclosure by the Disclosing Party of such information to the Receiving Party;
- ii. have become publicly known without fault on the part of the Receiving Party, subsequent to disclosure to the Disclosing Party of such information to the Receiving Party;
- iii. have been received by the Receiving Party at any time from a source, other than the Disclosing Party, lawfully having possession of and the right to disclose such information;
- iv. have been otherwise known by the Receiving Party prior to disclosure by the Disclosing Party to the Receiving Party of such information; or
- v. have been independently developed by the Receiving Party without use of such information.

19.4. No Adequate Remedy at Law. Each of the Members acknowledges and agrees that due to the unique nature of the Disclosing Party's Confidential Information, there can be no adequate remedy at law for any breach of its obligations hereunder, that any such breach may allow the Receiving Party or third parties to unfairly compete with the Disclosing Party, and therefore, that upon any such breach or any threat thereof, the Disclosing Party shall be entitled to appropriate equitable relief in addition to whatever remedies it might have at law. The Receiving Party will notify the Disclosing Party in writing immediately upon the occurrence of any such unauthorized release or other breach of which it is aware.

SECTION 20 -NO RECOURSE

Neither party hereto shall have any recourse under this Agreement for any breach hereof by the other party against any officer, employee, director, shareholder or agent of such other party or against any party related to or affiliated with such other party, recourse of each party hereunder for breach of this Agreement being strictly limited to recourse against the other party that is a signatory hereto and to any successors or permitted assigns of such party.

SECTION 21 -SURVIVAL; BENEFIT

The provisions of Sections 5.10(c), 12, 18, 19, 20 and 22 of this Agreement shall survive any termination hereof. This Agreement is solely for the benefit of the parties hereto and their successors and permitted assigns. No third party is granted or shall have any rights hereunder.

SECTION 22 -DISPUTE RESOLUTION

22.1. Arbitration. Except for matters covered under Section 5.10(c), all claims, disputes and other matters in question arising out of or pertaining to this Agreement or the breach thereof shall be decided by arbitration in accordance with the Arbitration Rules of the American Arbitration Association, to be conducted in Portland, Maine. Arbitration shall be before a single arbitrator if the parties can agree on such an arbitrator within five (5) business days of submission. If the parties cannot so agree within such period, then each party shall choose a single arbitrator, and the two arbitrators thus chosen shall choose the third arbitrator. If the first two arbitrators cannot agree on the third arbitrator within ten (10) business days of submission, such arbitrator shall be chosen by the American Arbitration Association. Should the arbitrator find the non-prevailing party's claim(s) or defense(s) to be frivolous, the arbitrator may compel as part of the award the non-prevailing party to pay all fees and costs of arbitration, including but not limited to the reasonable attorneys' fees of the prevailing party. This Agreement to arbitrate shall be specifically enforceable. The award rendered by the arbitrators shall be final, and judgment may be entered upon it in accordance with applicable law.

22.2. Demand for Arbitration. Written demand for arbitration shall be filed by a party hereto requesting the same with the American Arbitration Association, with notice to all other parties. The demand for arbitration must be filed within a reasonable period of time after the claim, dispute or other matter in question has arisen, and in no event shall it be made after institution or legal or equitable proceedings based on such a claim, dispute or other matter in question would be barred by the applicable statute of limitations.

SECTION 23 - POTENTIAL RESTRUCTURING

The provisions of this Section 23 are intended to address the situation described in the 4th through 7th "Whereas" clauses. The parties desire to address now several potential future scenarios by agreeing to the basic terms of a preferred form of restructuring, an alternate form of restructuring and a worst case form of restructuring in recognition that some form of restructuring may ultimately be determined by agreement of the parties taking account of the relevant factors including, without limitation, PUHCA, the PUC, financing for the System, and the mutual interests of the parties in developing an optimum capital structure for the System. It is the intent of the parties to maintain the economic interests of the Members while modifying the voting and management structure of the Company in order to avoid the application of PUHCA Section 9(a)(2) as to Pacific.

23.1. Legislative Monitoring. Pacific agrees to monitor closely the progress of legislation to repeal or amend PUHCA, and to keep BHE apprised of material developments from time to time.

23.2. Construction Monitoring. The Company agrees to keep Pacific and BHE apprised, no less frequently than once a month, of the progress of construction and development of the System with each report to contain an estimate of the amount of time remaining before the System commences commercial operations (the "Completion Period"); if the Company is not doing so, BHE shall assume the responsibility of reporting to Pacific.

23.3. Financing Schedule. The Company agrees to keep Pacific and BHE apprised, no less frequently than once a month, of the progress of obtaining the System Loan, with each report to contain an estimate of the amount of time remaining before a lender or group of lenders reasonably would require assurances on any PUHCA-related issues which implicate the future structure of the Company (the "Financing Period"); if the Company is not doing so, Pacific shall assume the responsibility of reporting to BHE.

23.4 Alternative Structures (in general); Alternative Structure 1. The Members agree that if PUHCA is not repealed, or amended in relevant part, before the commencement of commercial operations of the System as a public utility, there are at least three alternative structures that would be acceptable to them, under the conditions set forth below. The first such structure ("Alternative Structure 1") contains the following elements:

(a) Assuming all necessary governmental approvals, including but not limited to that from the PUC (if required), the Membership Interests shall change to what is shown under "Situation B" in Schedule 3.1 -- 4.9% to Pacific and 95.1% to Gassub. An amendment to the Company's articles of organization shall be filed, changing the form of management to manager-run, and Gassub shall be named as the first manager. The Members agree to amend this Operating Agreement to reflect the change in management authority (including the removal of all apparent authority from the Members), and the other changes required by this Section 23.

(b) This Operating Agreement shall be amended to provide that the manager may be removed for cause, which shall include failure to seek approval of major matters materially affecting the business of the Company in the manner provided in subsection (c) below. In the event of such removal, a new manager, not affiliated with either Member, shall be appointed by agreement of the Members.

(c) Approval of major matters materially affecting the business of the Company shall require the affirmative vote of Directors voting 96 points or of Members holding 96% of all Membership Interests. Such matters shall include, but not be limited to, the following:

- (i) the sale, exchange, lease, mortgage, or other disposition of 25% or more of the fair market value of the business or assets of the Company, or the merger or the consolidation with another entity;
- (ii) incurring or prepaying indebtedness (or providing guaranties of another entity's indebtedness) other than in the ordinary course of business or, if in the ordinary course of business, in an amount in excess of \$1,000,000;
- (iii) admitting any additional Member;
- (iv) dissolving or liquidating the Company or appointing a liquidating Member other than BHE;
- (v) commencing a voluntary, or admitting a material allegation in an involuntary, proceeding in bankruptcy in the name of the Company;
- (vi) entering into or amending any material provision of the gas purchase agreements or other material contracts used and useful in the business of the Company;
- (vii) making any capital expenditure in excess of \$500,000;
- (viii) amending any material government permit, amending any filing with any governmental body, or seeking any governmental action other than is ordinarily required in the ordinary conduct of business;
- (ix) making a determination with respect to the disposition of insurance proceeds in excess of \$500,000 or the repair or rebuilding of any material portion of the System in the event of substantial damage or destruction;
- (x) settling a dispute or litigation involving the Company that would materially adversely affect the Company or require payment by the Company or more than \$1,000,000;
- (xi) engaging in any transaction with a Member or any affiliate of either Member except where such transaction is effectuated on terms no less favorable to the Company in an arm's-length transaction with an unaffiliated entity;
- (xii) adopting and operating a maintenance budget that includes an increase of 10% or more for any category of expenses over the amount included in the prior year's budget, or an aggregate increase of 15%; or
- (xiii) modifying the budget to result in a material increase for any category or expense or an aggregate increase of 15%.

(d) Pacific or an affiliate with equal or greater experience and expertise in the business of operating a local gas distribution company shall at all times be party to a Support Services Agreement with the Company pursuant to which it makes available to the Company, at commercially reasonable rates, the services of its employees on matters involving the day-to-day operations of the Company. Such services shall be provided as agent for the Board of Directors and shall be subject to the exclusive direction and control of the Board of Directors and the officers of the Company.

23.5 Alternative Structure 2. "Alternative Structure 2" would be one by which the Company would merge into and become a division of Southern California Gas Company. This would be acceptable to the Members, but only if (a) both Members agree that the potential extra costs involved in this alternative outweigh the risks of the other alternatives, (b) both Members agree to enter into agreements that they reasonably determine would preserve the division of profits and losses (after all taxes, if any, on distributions), and the other

benefits, burdens and voting power set forth in this Operating Agreement, and (c) all necessary governmental approvals are obtained, including but not limited to that from the PUC.

23.6 Alternative Structure 3. "Alternative Structure 3" contains the following elements:

(a) Assuming all necessary governmental approvals, including but not limited to that from the PUC (if required), the Company shall be converted to a limited partnership (the "Partnership") with Gassub as the general partner and Pacific as the limited partner. Pacific will have no role in managing the business and affairs of the Company.

(b) The Partnership's agreement of limited partnership (the "Partnership Agreement") shall provide that the general partner may be removed for cause, which shall include failure to seek approval of major matters materially affecting the business of the Partnership in the manner provided in subsection (c) below. In the event of such removal, Gassub's interest shall be converted to that of a limited partner and a new general partner, not affiliated with either partner, shall be appointed by agreement of the partners. The Members agree that in such event they shall each, in their capacities as partners of the Partnership, (i) transfer to such new general partner such partnership interest as is necessary, each partner transferring an equal portion, and (ii) provide such new general partner (or its parent entity) with such assurances (which may include indemnification) as are necessary to induce such person to incur the liability of a general partner.

(c) Approval of major matters materially affecting the business of the Partnership shall require the affirmative vote of partners holding at least 51% of all partnership interests. Such matters shall include, but not be limited to, the following:

(i) the sale, exchange, lease, mortgage, or other disposition of 25% or more of the fair market value of the business or assets of the Partnership, or the merger or the consolidation with another entity;

(ii) incurring or prepaying indebtedness (or providing guaranties of another entity's indebtedness) other than in the ordinary course of business or, if in the ordinary course of business, in an amount in excess of \$1,000,000;

(iii) admitting any additional partner;

(iv) dissolving or liquidating the Partnership or appointing a liquidating partner other than BHE;

(v) commencing a voluntary, or admitting a material allegation in an involuntary, proceeding in bankruptcy in the name of the Partnership;

(vi) entering into or amending any material provision of the gas purchase agreements or other material contracts used and useful in the business of the Partnership;

(vii) making any capital expenditure in excess of \$500,000;

(viii) amending any material government permit, amending any filing with any governmental body, or seeking any governmental action other than is ordinarily required in the ordinary conduct of business;

(ix) making a determination with respect to the disposition of insurance proceeds in excess of \$500,000 or the repair or rebuilding of any material portion of the System in the event of substantial damage or destruction;

(x) settling a dispute or litigation involving the Partnership that would materially adversely affect the Partnership or require payment by the Partnership or more than \$1,000,000;

(xi) engaging in any transaction with a partner or any affiliate of either partner except where such transaction is effectuated on terms no less favorable to the Partnership in an arm's-length transaction with an unaffiliated entity;

(xii) adopting and operating a maintenance budget that includes an increase of 10% or more for any category of expenses over the amount included in the prior year's budget, or an aggregate increase of 15%; or

(xiii) modifying the budget to result in a material increase for any category or expense or an aggregate increase of 15%.

The term "Restructuring" as used in this Operating Agreement is a generic term meaning any of the Alternative Structure 1, Alternative Structure 2, Alternative Structure 3 or the Targeted Restructuring (as defined in Section 23.9 below).

23.7 Submissions to the SEC. At any time when the Members agree that further assurances are necessary, whether for financing purposes or otherwise, Pacific agrees promptly to submit to the SEC a request for a "no-action letter" under Section 9(a)(2) of PUHCA for a Restructuring alternative agreed to by the Members for purposes of obtaining such no-action letter, and BHE agrees promptly to submit to the SEC a request for approval of its participation in the Company. Each Member agrees to diligently pursue its submission, and to cooperate to the fullest extent reasonable to assist the other Member upon request.

23.8 Determination of Approval Period. For the purposes hereof, if the Members agree to implement either Alternative Structure 3 or Alternative Structure 1, then "Approval Period" shall mean two (2) months. If it appears reasonably likely that the Members will agree to a different structure, then the Members shall have their attorneys determine the estimated amount of time needed to obtain all necessary regulatory approvals to permit the Members to participate in the Project following the System's commencement of commercial operations, without requiring further SEC action under Section 9(a)(2) of PUHCA in the event that PUHCA is not timely repealed. Changes to statutes shall not be included within the scope of necessary approvals, but such attorneys shall be instructed to include any possible regulatory procedures, including but not limited to an SEC no-action letter and approvals of the PUC. Based on the report of such attorneys, the Members shall agree on an amount of time to obtain the necessary approvals which shall be a substitute "Approval Period".

23.9 Implementation of Restructuring. In the event that, by the time (the "Activation Date") that the estimated Completion Period is no more than three months greater than the Approval Period, PUHCA has not been repealed or amended in relevant part, and Pacific in good faith determines (i) that its participation in the Project in the manner contemplated in this Operating Agreement (assuming no Restructuring) would require SEC approval under Section 9(a)(2), and (ii) that such approval is not likely to be obtained, the Members shall meet to attempt to determine which structure to pursue. If they are unable to agree within ten (10) days after the Activation Date, then they shall pursue Alternative Structure 3. The structure determined in accordance with this Section 23.9 shall be referred to as "Targeted Restructuring." Thereafter, the Members and the Company shall initiate and diligently pursue all governmental approvals (or no-action letters) necessary to implement the Targeted Restructuring, and thereafter, subject to such approvals (or no-action letters) having been obtained, shall take all steps necessary or prudent to effect the Targeted Restructuring.

23.10 Suspension of Rights to Withdraw or Withhold Capital Contributions. So long as both Members are complying with the foregoing provisions of this Section 23 in all material respects, neither Member shall invoke the provisions of subsections (e)(v) and (e)(vi) of Section 3.2 hereof.

23.11 No Commencement of Commercial Operations Before Receiving All Necessary SEC Approvals. Notwithstanding anything to the contrary in this Operating Agreement or in any other document or instrument relating to the System, the Company will not commence commercial operations of the System unless and until any and all approvals required under Section 9(a)(2) of PUHCA have been obtained or no-action letters have been received to the effect that some of such approvals will not be required; such commencement is expressly conditioned on such approvals and no-action letters having been obtained.

23.12 Rescission of Restructuring. In the event that PUHCA is repealed, any and all steps theretofore taken to effect the Targeted Restructuring shall be rescinded as quickly as is reasonably possible, and the structure of the Company shall be returned to what it was before such restructuring, without affecting any changes made which are not related to the Targeted Restructuring. The Company and the Members shall cooperate to obtain all governmental approvals required.

23.13 Transfers of Membership Interests After Restructuring. In the event that after the Targeted Restructuring is fully implemented, (a) Pacific transfers its Membership Interest (or partnership interest) in a manner that permits the transferee to become a Member under this Operating Agreement (or a partner under the Partnership Agreement), and (b) such transferee is permitted, under all applicable law and regulations, to participate in the Project with a Membership Interest equal to its Economic Interest, then, if the Company is still a limited liability company, the Membership Interests of all Members shall thereafter be what they would have been if the Targeted Restructuring had not taken place. The Members agree to vote for and implement such changes as are necessary, in such event, to return the structure of the Company or the

Partnership to what it would be if the Targeted Restructuring had not taken place, including having the voting interest of Pacific's transferee be equal to its economic interest.

SECTION 24 -GENERAL

24.1. Project Finance: Limitation on Obligations of BHE and Gassub. With respect to the terms and conditions of the System Loan, or any other debt of the Company, the Members agree that neither BHE nor Gassub will provide any guarantee or other financial accommodation to the Company or to any lender, nor will it provide any pledge, mortgage, or other security interests in its assets, and (b) that parties holding security interests in BHE's assets will not be requested to enter into non-disturbance agreements regarding the use by the Company of any of BHE's assets.

24.2. Further Cooperation. The Parties hereto agree to execute and furnish any and all papers and documents which may reasonably be necessary to carry out the terms of this Agreement and to further the interests of the Company, including, without limitation, any financial statements, corporate resolutions, and other documentation and information as may be required by bonding companies, insurers, depositories of funds of the Company, construction and permanent lenders and public agencies involved in the funding of the Project Implementation Plan and to permit granting authorities relative to permits required for the performance of the Project Implementation Plan.

24.3. Counterparts. This Agreement may be executed in any number of counterparts, each of which shall be deemed to be an original as against any party whose signature appears thereon, and all of which shall together constitute one and the same instrument. This Agreement shall become binding when one or more counterparts hereof, individually or taken together, shall bear the signatures of all of the parties reflected hereon as the signatories.

24.4. Notices. All notices, request, demands and other communications required hereunder shall be in writing and shall be deemed to have been duly given or made if delivered personally, sent by facsimile transmission or telex confirmed in writing within two (2) business days, or sent by registered or certified mail, postage prepaid, as follows:

In the event of notice to Pacific:

Bangor Pacific
633 W. Fifth Street, Suite 5200
Los Angeles, CA 90071-2071
Attention: President
Fax: 213-629-9651

and with a copy to:

Donald C. Liddell, Esq.
Law Department
Pacific Enterprises
633 W. Fifth Street, Suite 5200
Los Angeles, CA 90071-2071
Fax: 213-629-9647

and in the event of a notice to BHE (Gassub, after the transfer provided for in Section 3.2) to:

Mr. Frederick S. Samp
Bangor Hydro-Electric Company
Vice President, Law and Finance
P.O. Box 932
Bangor, Maine 04402-0932
Fax: 207-990-6990

and with a copy to:

Kimball L. Kenway, Esq.
Curtis Thaxter Stevens Broder & Micoleau LLC
One Canal Plaza
P.O. Box 7320
Portland, ME 04112-7320
Fax: 207-775-0612

and in the event of a notice to the Company:

Bangor Gas LLC
33 State Street
Bangor, Maine 04402-0932

and with a copy to:

Bangor Pacific
633 W. Fifth Street, Suite 5200
Los Angeles, CA 90071-2071
Attention: President
Fax: 213-629-9651

Any Party may change the address to which such communications are to be sent to it by giving written notice of change of address to the other party in the manner provided above for giving notice.

24.5. Attorneys Fees. The prevailing party shall be entitled to reasonable attorneys' fees and expenses in the event of any litigation arising out of or related to this Agreement or the System.

24.6. Authorization; Enforceability. This Agreement has been duly authorized by all corporate and other action required by Pacific and BHE, respectively, and constitutes the valid, binding and enforceable obligation of such party.

24.7. Amendments. The provisions of this Agreement may not be amended, modified or waived except by a written instrument executed by each Member.

24.8. Severability. Any provision of this Agreement which is prohibited or unenforceable in any jurisdiction shall not invalidate the remaining provisions hereof, and any such prohibition or unenforceability in any jurisdiction shall not invalidate or render unenforceable such provision in any other jurisdiction.

24.9. Counterparts. This Agreement may be signed in any number of counterparts with the same effect as if the signatures thereto and hereto were upon the same instrument.

IN WITNESS WHEREOF the parties have entered this Agreement as of the date hereinbefore set forth.

BANGOR PACIFIC

ATTEST:

Donald C. Liddell

By: /s/Andrew R. Rea
Name: Andrew R. Rea
Title: Vice President

BANGOR HYDRO-ELECTRIC
COMPANY

ATTEST

Karen L. LaPlante

By: /s/Robert S. Briggs
Name: Robert S. Briggs
Title: President & CEO

BANGOR GAS COMPANY LLC
By its Members:

BANGOR PACIFIC

Alan G. Stone

By: /s/Andrew R. Rea
Name: Andrew R. Rea
Title: Vice President

and

BANGOR HYDRO-ELECTRIC
COMPANY

Alan G. Stone

By: /s/Douglas S. Morrell
Name: Douglas S. Morrell
Title: Vice President - Bangor Office

EXHIBIT "A"

DEFINITIONS

"Accepting Offerees" has the meaning set forth in Section 14.3 hereof.

"Act" shall mean the Maine Limited Liability Company Act, 31 M.R.S.A. ss.601 et. seq.

"Additional Capital" has the meaning set forth in Section 3.3(i) hereof.

"Adjusted Capital Account Deficit" means, with respect to any Member, the deficit balance, if any, in such Member's Capital Account as of the end of the relevant fiscal year, after giving effect to the following adjustments:

i. Credit to such Capital Account any amounts which such Member is obligated to restore pursuant to any provision of this Agreement or is deemed to be obligated to restore pursuant to Sections 1.704-2(g)(1) and 1.704-2(i)(5) of the Regulations; and

ii. Debit to such Capital Account the items described in Sections 1.704-1(b)(2)(ii)(d)(4), 1.704-1(b)(2)(ii)(d)(5) and 1.704-1(b)(2)(ii)(d)(6) of the Regulations. The foregoing definition of Adjusted Capital Account Deficit is intended to comply with the provisions of Section 1.704-1(b)(2)(ii)(d) of the Regulations and shall be interpreted consistently therewith.

"Affiliate" shall mean, as to any party to this Agreement, any Person controlling, controlled by or under common control with, such Person.

"Agreement" shall mean this Operating Agreement, as the same may be amended from time to time hereafter.

"Alternative Structure 1" has the meaning set forth in Section 23.4 hereof.

"Alternative Structure 2" has the meaning set forth in Section 23.5 hereof.

"Alternative Structure 3" has the meaning set forth in Section 23.6 hereof

"Approval Period" has the meaning set forth in Section 23.8 hereof.

"Arbitration" has the meaning set forth in Section 5.10(c) hereof.

"Assumption Agreement" means any agreement among the Company, any of the Members, and any Person to whom the Company is indebted pursuant to a loan agreement, any seller financing with respect to an installment sale, a reimbursement agreement, or any other arrangement (collectively referred to as a "loan" for purposes of this Agreement) pursuant to which any Member expressly assumes any personal liability with respect to such loan. The amount of any such loan shall be treated as assumed by the Members for all purposes under this Agreement in the proportions set forth in such Assumption Agreement and their respective amounts so assumed shall be credited to their respective Capital Accounts. To the extent such loan is repaid by the Company, the Members' Capital Accounts shall be debited with their respective shares of the repayments. To the extent such loan is repaid by some or all of the Members from their own funds, there shall be no adjustments to their Capital Accounts.

"Board of Directors" shall mean the body established in Section 5.2 to govern the Company to the extent provided therein and thereafter.

"Bonds" has the meaning set forth in Section 8 hereof.

"Budget" has the meaning set forth in Section 3.2(c) hereof.

"CFO" means the chief financial officer of the Company, as provided in Section 6.1(ii).

"Call Notice" has the meaning set forth in Section 3.3(i) hereof.

"Capital Account" shall mean, with respect to any Member, the Capital Account maintained for such Member in accordance with the following provisions:

i. To each Member's Capital Account there shall be credited such Member's Capital Contributions, such Member's distributive share of Profits, the amount of any Company liabilities assumed by such Member or

which are secured by any Property distributed to such Member, and any amounts actually paid by such Member to any Company lender pursuant to the terms of any Assumption Agreement; and

ii. To each Member's Capital Account there shall be debited the amount of cash and the Gross Asset Value of any Property distributed to such Member pursuant to any provision of this Agreement, such Member's distributive share of Losses, and the amount of any liabilities of such Member assumed by the Company or which are secured by any property contributed by such Member to the Company.

iii. In the event all or a portion of an Economic Interest is transferred in accordance with the terms of this Agreement, the transferee shall succeed to the Capital Account of the transferor to the extent it relates to the transferred Economic Interest. In determining the amount of any liability for purposes of this definition, there shall be taken into account Code Section 752(c) and any other applicable provisions of the Code and Regulations.

The foregoing provisions and the other provisions of this Agreement relating to the maintenance of Capital Accounts are intended to comply with Regulations Section 1.704-1(b) and shall be interpreted and applied in a manner consistent with such Regulations. In the event the CFO, subject to the limitations in Section 6.5, shall determine that it is prudent to modify the manner in which the Capital Accounts, or any debits or credits thereto (including, without limitation, debits or credits relating to liabilities which are secured by contributed or distributed property or which are assumed by the Company or the Members) are computed in order to comply with such Regulations, the CFO, subject to the limitations in Section 6.5, may make such modification, provided that it is not likely to have a material effect on the amounts distributable to any Member pursuant to Section 11 hereof upon the dissolution of the Company. The CFO, subject to the limitations in Section 6.5, also shall (i) make any adjustments that are necessary or appropriate to maintain equality between the Capital Accounts of the Members and the amount of capital reflected on the Company's balance sheet, as computed for book purposes, in accordance with Regulations Section 1.704-1(b)(2)(iv)(q), and (ii) make any appropriate modifications in the event unanticipated events might otherwise cause this Agreement not to comply with Regulations Section 1.704-1(b).

"Capital Contributions" means, with respect to any Member, the amount of money and the Market Value, as of the date of contribution, of any property (other than money) contributed to the Company with respect to the interest in the Company held by such Member, all as shown on Schedule 3.1 hereto. The principal amount of a promissory note which is not readily traded on an established securities market and which is contributed to the Company by the maker of the note shall not be included in the Capital Account of any Member until the Company makes a taxable disposition of the note or until (and to the extent) principal payments are made on the note, all in accordance with Regulations Section 1.704-1(b)(2)(iv)(d)(2).

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

"Company Property" means all real and personal property acquired by the Company and any improvements thereto, and shall include both tangible and intangible property.

"Completion Period" has the meaning set forth in Section 23.2 hereof.

"Confidential Information" has the meaning set forth in Section 19.1 hereof.

"Depreciation" means, for each fiscal year or other period, an amount equal to the depreciation, amortization, or other cost recovery deduction allowable with respect to an asset for such year or other period.

"Designs" shall mean all designs, plans, drawings, models, procedures, and specifications produced for the Project Implementation Plan or operation of the System.

"Director" shall mean a member of the Board of Directors.

"Disclosing Party" has the meaning set forth in Section 19.1 hereof.

"Dissociate" has the meaning set forth in Section 10.1 hereof.

"Due Date" has the meaning set forth in Section 3.3(i) hereof.

"Economic Interest" shall mean a Member's or Economic Interest Owner's share of one or more of the Company's Profits, Losses and distributions of the Company's assets pursuant to this Agreement and the Act, but shall not include

any right to participate in the management or affairs of the Company.

"Economic Interest Owner" shall mean the owner of an Economic Interest who is not a Member.

"Financing Period" has the meaning set forth in Section 23.3 hereof.

"First Offer" has the meaning set forth in Section 14.3 hereof.

"Future Market" shall mean the State of Maine other than the Selected Market..

"Gassub" has the meaning set forth in Section 3.2 hereof.

"Gross Asset Value" means, with respect to any asset, the asset's adjusted basis for federal income tax purposes, except as follows:

i. The initial Gross Asset Value of any asset contributed by a Member to the Company shall be the gross fair market value of such asset, as determined by the contributing Member and the Company;

ii. The Gross Asset Values of all Company assets shall be adjusted to equal their respective gross fair market values, as determined by the CFO, subject to the limitations in Section 6.5, as of the following times: (a) the acquisition of an additional interest in the Company by any new or existing Member in exchange for more than a de minimis Capital Contribution; (b) the distribution by the Company to a Member of more than a de minimis amount of Property as consideration for an interest in the Company; and (c) the liquidation of the Company within the meaning of Regulations Section 1.704-1(b) (2) (ii) (g); provided, however, that adjustments pursuant to clauses (a) and (b) above shall be made only if the CFO, subject to the limitations in Section 6.5, reasonably determines that such adjustments are necessary or appropriate to reflect the relative economic interests of the Members in the Company;

iii. The Gross Asset Value of any Company asset distributed to any Member shall be the gross fair market value of such asset on the date of distribution; and

iv. The Gross Asset Values of Company assets shall be increased (or decreased) to reflect any adjustments to the adjusted basis of such assets pursuant to Code Section 734(b) or Code Section 743(b), but only to the extent that such adjustments are taken into account in determining Capital Accounts pursuant to Regulations Section 1.704-1(b) (2) (iv) (m); provided, however, that Gross Asset Values shall not be adjusted pursuant to this subsection (iv) to the extent the CFO, subject to the limitations in Section 6.5, determines that an adjustment pursuant to subsection (iii) hereof is necessary or appropriate in connection with a transaction that would otherwise result in an adjustment pursuant to this subsection (iv). If the Gross Asset Value of an asset has been determined or adjusted pursuant to subsections (i), (ii) or (iv) hereof, such Gross Asset Value shall thereafter be adjusted by the Depreciation taken into account with respect to such asset for purposes of computing Profits and Losses.

"Indemnified Party" has the meaning set forth in Section 12.1 hereof.

"Indemnifying Party" has the meaning set forth in Section 12.1 hereof.

"Insolvency Event" shall mean, as to any party hereto, the occurrence of any of the following with respect to such party: such party shall (a) be determined by any court to be insolvent, (b) file for bankruptcy, (c) have a petition in bankruptcy filed against it that is not discharged within one hundred eighty (180) days, (d) be declared bankrupt, (e) dissolve, (f) liquidate, (g) make an assignment for the benefit of creditors, or (h) otherwise cease to do business.

"Issuance Items" has the meaning set forth in subsection (viii) of Exhibit B hereto.

"Liabilities" has the meaning set forth in Section 12.1 hereof.

"Lien" shall mean any mortgage, deed of trust, security interest, pledge, hypothecation, encumbrance, lien (statutory or other), or other security agreement and the filing of any financing statement under the Uniform Commercial Code or comparable law of any jurisdiction in respect of any of the foregoing).

"Liquidating Event" has the meaning set forth in Section 11.1 hereof.

"Losses" has the meaning set forth below under the definition of "Profits" and "Losses".

"Market Value" means fair market value, as determined by the Board of Directors, or, if they are unable to agree, as determined by an independent appraisal.

"Material Agreement" has the meaning set forth in Section 6.4(d) hereof.

"Members" shall mean the signatories to this Agreement.

"Membership Interest" shall mean each Member's percentage ownership interest in the Company, and all related rights and obligations of such Member in such capacity hereunder.

"Net Cash From Operations" shall mean the gross cash proceeds from Company operations less the portion thereof used to pay or establish reserves for all Company expenses, debt payments, capital improvements, replacements, and contingencies. "Net Cash From Operations" shall not be reduced by depreciation, amortization, cost recovery deductions, or similar allowances, but shall be increased by any reductions of reserves previously established.

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

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

"Offered Interest" has the meaning set forth in Section 14.1 hereof.

"Offerees" has the meaning set forth in Section 14.3 hereof.

"Offer Notice" has the meaning set forth in Section 14.3 hereof.

"Offer Period" has the meaning set forth in Section 14.3 hereof.

"Pacific Parent" means (i) after the merger between Pacific Enterprises and Enova Corporation, the entity which will result from or survive such merger, and (ii) before such merger, Energy Pacific LLC, a California limited liability company.

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

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

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

"Partnership" has the meaning set forth in Section 23.6 hereof.

"Partnership Agreement" has the meaning set forth in Section 23.6 hereof.

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

"Permitted Liens" shall mean (a) Liens created by the security documents in connection with a loan from any lender which provides financing for the purchase and installation of any portion of the System and/or any extension or refinancing thereof; (b) materialmen's, mechanics', workers', repairmen's, employees' or other like Liens in favor of any Person which arise in the ordinary course of business of the Company but not (unless otherwise permitted by this Agreement) in connection with any indebtedness or guarantee obligation; (c) Liens arising out of judgments, awards or appeals with respect to which at the time an appeal or proceeding for review is being prosecuted in good faith and which have been bonded or for the payment of which adequate reserves shall have been provided; (d) any Lien securing indebtedness permitted under Section 6.4; and (e) minor defects, irregularities, encumbrances and clouds on title and statutory liens which do not materially impair the property affected thereby and which do not individually or in the aggregate materially impair the performance, cost efficiency, value, utility, remaining economic useful life, reliability or residual value of the Property or the use thereof for its intended purpose.

"Person" shall mean any individual, partnership, limited liability company, corporation, trust or other entity.

"Prime Rate" shall mean the "prime rate" quoted by the Wall Street Journal as the base rate on corporate loans posted by at least 75% of the thirty

(30) largest commercial banks in the United States.

"Proceeding" shall mean any administrative, judicial, or other adversary proceeding, including, without limitation, litigation, arbitration, administrative adjudication, mediation, and appeal or review of any of the foregoing.

"Project Implementation Plan" shall mean the Project Implementation Plan approved by the Board of Directors pursuant to this Agreement, which Plan shall serve as a guide for the construction and operation of the System in the Selected Market and specify the timing of construction and the construction budget for the Selected Market.

"Property" shall mean any property real or personal, tangible or intangible, including money and any legal or equitable interest in such property, but excluding services and promises to perform services in the future.

"Profits" and "Losses" means, for each fiscal year or other period, or as applied to any applicable transaction, an amount equal to the Company's taxable income or loss for such year, period, or transaction determined in accordance with Code Section 703(a) (for this purpose, all items of income, gain, loss, or deduction required to be stated separately pursuant to Code Section 703(a) (1) shall be included in taxable income or loss), with the following adjustments:

i. Any income of the Company that is exempt from federal income tax and not otherwise taken into account in computing Profits or Losses shall be added to such taxable income or loss;

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

iii. In lieu of the depreciation, amortization, and other cost recovery deductions taken into account in computing such taxable income or loss, there shall be taken into account Depreciation for such fiscal year or other period, computed in accordance with the definition of Depreciation.

"Project" has the meaning set forth in the second "Whereas" clause hereof.

"PUC" means the Maine Public Utilities Commission.

"PUHCA" means the Public Utility Holding Company Act of 1935, as amended.

"Purchase Offer" has the meaning set forth in Section 14.2 hereof.

"Purchaser" has the meaning set forth in Section 14.2 hereof.

"Receiving Party" has the meaning set forth in Section 19.1 hereof.

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

"Regulatory Allocations" has the meaning set forth in subsection (ix) of Exhibit B hereto.

"Alternative Structure 1" has the meaning set forth in Section 23.4 hereof.

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

"Selected Market" shall mean that portion of BHE's service area in which the Company will be constructing the initial portion of the System. The Selected Market is hereby designated to be those portions of Bangor, Brewer, Old Town, Veazie and Orono, Maine which can be served economically by a gas distribution system, provided that the Selected Market may be modified in the Project Implementation Plan, as adopted by the Board of Directors.

"Seller" has the meaning set forth in Section 14.1 hereof.

"System" shall mean the system for distributing natural gas to be constructed by the Company in the Selected Market, and possibly in portions of the Future Market.

"System Loan" shall be a loan or loans on terms acceptable to the

Board of Directors and in a principal amount used to fund a portion of the Total Capital Need as estimated in the Project Implementation Plan.

"Restructuring" is a generic term meaning any of Alternative Structures 1, 2 or 3.

"Total Capital Need" shall mean the total amount of capital needed to carry out the initial phase of the Company's business activities, as identified and agreed to by the Board of Directors in the Project Implementation Plan. Total Capital Need shall include, without limitation, the Company's construction budget for the initial build-out plus its initial working capital needs.

EXHIBIT "B"

SPECIAL ALLOCATIONS

i. Minimum Gain Chargeback. Except as otherwise provided in Section 1.704-2(f) of the Regulations, notwithstanding any other provision of Section 4 or this Exhibit B, if there is a net decrease in Partnership Minimum Gain during any fiscal year, each Member shall be specially allocated items of Company income and gain for such fiscal year (and, if necessary, subsequent fiscal years) in an amount equal to such Member's share of the net decrease in Partnership Minimum Gain, determined in accordance with Regulations Section 1.704-2(g). Allocations pursuant to the previous sentence shall be made in proportion to the respective amounts required to be allocated to each Member pursuant thereto. The items to be so allocated shall be determined in accordance with Sections 1.704-2(f) (6) and 1.704-2(j) (2) of the Regulations. This subsection (i) is intended to comply with the minimum gain chargeback requirement in Section 1.704-2(f) of the Regulations and shall be interpreted consistently therewith.

ii. Partner Minimum Gain Chargeback. Except as otherwise provided in Section 1.704-2(i) (4) of the Regulations, notwithstanding any other provision of Section 4 or this Exhibit B, if there is a net decrease in Partner Nonrecourse Debt Minimum Gain attributable to a Partner Nonrecourse Debt during any Company fiscal year, each Member who has a share of the Partner Nonrecourse Debt Minimum Gain attributable to such Partner Nonrecourse Debt, determined in accordance with Section 1.704-2(i) (5) of the Regulations, shall be specially allocated items of Company income and gain for such fiscal year (and, if necessary, subsequent fiscal years) in an amount equal to such Member's share of the net decrease in Partner Nonrecourse Debt Minimum Gain attributable to such Partner Nonrecourse Debt, determined in accordance with Regulations Section 1.704-2(i) (4). Allocations pursuant to the previous sentence shall be made in proportion to the respective amounts required to be allocated to each Member pursuant thereto. The items to be so allocated shall be determined in accordance with Sections 1.704-2(i) (4) and 1.704-2(j) (2) of the Regulations. This subsection (ii) is intended to comply with the minimum gain chargeback requirement in Section 1.704-2(I) (4) of the Regulations and shall be interpreted consistently therewith.

iii. Qualified Income Offset. In the event any Member unexpectedly receives any adjustments, allocations, or distributions described in Section 1.704-1(b) (2) (ii) (d) (4), Section 1.704-1(b) (2) (ii) (d) (5) or Section 1.704-1(b) (2) (ii) (d) (6) of the Regulations, items of Company income and gain shall be specially allocated to each such Member in an amount and manner sufficient to eliminate, to the extent required by the Regulations, the Adjusted Capital Account Deficit of such Member as quickly as possible, provided that an allocation pursuant to this subsection (iii) shall be made only if and to the extent that such Member would have an Adjusted Capital Account Deficit after all other allocations provided for in Section 4 and this Exhibit B have been tentatively made as if this subsection (iii) were not in this Agreement.

iv. Gross Income Allocation. In the event any Member has a deficit Capital Account at the end of any Company fiscal year which is in excess of the sum of (i) the amount such Member is obligated to restore pursuant to any provision of this Agreement, and (ii) the amount such Member is deemed to be obligated to restore pursuant to the penultimate sentences of Regulations Sections 1.704-2(g) (1) and 1.704-2(i) (5), each such Member shall be specially allocated items of Company income and gain in the amount of such excess as quickly as possible, provided that an allocation pursuant to this subsection (iv) shall be made only if and to the extent that such Member would have a deficit Capital Account in excess of such sum after all other allocations provided for in Section 4 and this Exhibit B have been made as if subsection (iii) hereof and this subsection (iv) were not in the Agreement.

v. Nonrecourse Deductions. Nonrecourse Deductions for any fiscal year shall be specially allocated in proportion to Membership Interests.

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

vii. Section 754 Adjustments. To the extent an adjustment to the adjusted tax basis of any Company asset pursuant to Code Section 734(b) or Code Section 743(b) is required, pursuant to Regulations Section 1.704-1(b) (2) (iv) (m) (2) or Regulations Section 1.704-1(b) (2) (iv) (m) (4), to be

taken into account in determining Capital Accounts as the result of a distribution to a Member in complete liquidation of its interest in the Company, the amount of such adjustment to Capital Accounts shall be treated as an item of gain (if the adjustment increases the basis of the asset) or loss (if the adjustment decreases such basis) and such gain or loss shall be specially allocated to the Members in accordance with their interests in the Company in the event that Regulations Section 1.704-1(b)(2)(iv)(m)(2) applies, or to the Member to whom such distribution was made in the event that Regulations Section 1.704-1(b)(2)(iv)(m)(4) applies.

viii. Allocations Relating to Taxable Issuance of Membership Interests. Any income, gain, loss or deduction realized as a direct or indirect result of the issuance of an interest by the Company to a Member (the "Issuance Items") shall be allocated among the Members so that, to the extent possible, the net amount of such Issuance Items, together with all other allocations under this Agreement to each Member, shall be equal to the net amount that would have been allocated to each such Member if the Issuance Items had not been realized.

ix. Curative Allocations. The allocations set forth in subsections (i) through (viii) hereof (the "Regulatory Allocations") are intended to comply with certain requirements of the Regulations. It is the intent of the Members that, to the extent possible, all Regulatory Allocations shall be offset either with other Regulatory Allocations or with special allocations of other items of Company income, gain, loss or deduction pursuant to Section 4 or this Exhibit B. Therefore, notwithstanding any other provision of Section 4 or this Exhibit B (other than the Regulatory Allocations), the CFO, subject to the limitations below and in Section 6.5, shall make such offsetting special allocations of Company income, gain, loss or deduction in whatever manner it determines appropriate so that, after such offsetting allocations are made, each Member's Capital Account balance is, to the extent possible, equal to the Capital Account balance such Member would have had if the Regulatory Allocations were not part of the Agreement and all items were allocated pursuant to Sections 4.1, 4.2, and 4.3. In exercising its discretion under this subsection (ix), the CFO shall take into account future Regulatory Allocations under subsections (i) and (ii) that, although not yet made, are likely to offset other Regulatory Allocations previously made under subsections (v) and (vi). No allocation shall be made under this subsection (ix) if such allocation is reasonably likely to jeopardize the treatment of the Company as a partnership under the Code, cause the Internal Revenue Service to reallocate Membership Interests for tax purposes, or have any other adverse tax or economic consequences to either Member.

x. Other Allocation Rules.

a. For purposes of determining the Profits, Losses, or any other items allocable to any period, Profits, Losses, and any such other items shall be determined on a daily, monthly, or other basis, using any permissible method under Code Section 706 and the Regulations thereunder.

b. All allocations to the Members pursuant to Section 4 or this Exhibit B shall, except as otherwise provided, be divided among them in proportion to the Membership Interests held by each.

c. The Members are aware of the income tax consequences of the allocations made by Section 4 and this Exhibit B and hereby agree to be bound by the provisions of Section 4 and this Exhibit B in reporting their shares of Company income and loss for income tax purposes.

d. To the extent permitted by Section 1.704-2(h)(3) of the Regulations, the CFO, subject to the limitations in Section 6.5, shall endeavor to treat distributions of Net Cash From Operations or Net Cash from Sales or Refinancings as having been made from the proceeds of a Nonrecourse Liability or a Partner Nonrecourse Debt only to the extent that such distributions would cause or increase an Adjusted Capital Account Deficit for any Member.

SCHEDULE 3.1
TO OPERATING AGREEMENT OF
BANGOR GAS COMPANY LLC

Situation A: As of the date hereof

Name and address of Member	Capital Contribution	Economic Interest	Membership Interest*
Bangor Pacific 633 West Fifth Street Los Angeles, California	\$50	50%	95%
Bangor Hydro-Electric Company 33 State Street Bangor, Maine	\$50	50%	5%

- - - - -
* As provided in Section 3.1, as soon as the necessary approval is obtained from the PUC and any other necessary governmental authority, the Membership Interests shall automatically change to 50% for each Member.
- - - - -

Situation B: If the structure is changed as provided in Section 23.4

Name and address of Member	Capital Contribution	Economic Interest	Membership Interest*
Bangor Pacific 633 West Fifth Street Los Angeles, California	\$50	50%	4.9%
[Gassub] 33 State Street Bangor, Maine	\$50	50%	95.1%

- - - - -
* This structure will not go into effect without all necessary governmental approvals, including but not limited to that from the PUC.

STATE OF MAINE
PUBLIC UTILITIES COMMISSION

CONSOLIDATED PETITIONS OF BANGOR GAS COMPANY, L.L.C.
AND BANGOR HYDRO-ELECTRIC COMPANY

BANGOR GAS COMPANY, L.L.C.
Docket No. 97-795

Petition for Approval to Furnish Gas Service in
the State of Maine
35-A MRSA ss.ss. 2104, 2105

Application for Approval of Financing
35-A MRSA ss. 902

Application for Approval of
Affiliated Transactions Between Bangor Gas
and Bangor Hydro and Bangor Pacific; and/or Request for
Exemption of Provisions with Regard to Bangor Pacific
35-A MRSA ss.707

Request for Order Exempting Bangor Pacific From
the Provisions of Reorganization Approval
35-A MRSA ss.708(2) (A)

Request for Advisory Opinion With
Regard to Limited Liability Co.

BANGOR HYDRO-ELECTRIC COMPANY
Docket No. 97-796

Petition for Reorganization Approvals and Exemptions
35-A MRSA ss. 708

Application for Approval of Affiliated Transactions and
Exemptions
35-A MRSA ss. 707

I. COUNT I: BANGOR GAS COMPANY, L.L.C. PETITIONS, APPLICATIONS AND
REQUESTS. (DOCKET NO. 97-795)

Pursuant to Sections 2104 and 2105 of 35-A MRSA, Bangor Gas Company, L.L.C. ("Bangor Gas" or "Applicant") hereby files this Petition for Approval to Furnish Gas Service, and related authorizations necessary to finance, construct, install, own, operate and maintain certain new natural gas pipelines and ancillary facilities, and to operate as a local distribution company ("LDC") in the following Maine municipalities: Bangor, Brewer, Old Town, Orono and Veazie. These municipalities are not currently receiving natural gas service from any supplier.

Bangor Gas also files for approval of proposed financing pursuant to 35-A MRSA ss.902, and for approval of certain affiliated transactions pursuant to 35-A MRSA ss.707.

Bangor Hydro-Electric Company has also filed, as Count II of this Pleading, a Petition for Reorganization Approvals and Exemptions and For Affiliated Interest Transaction Approvals and Exemptions (35-A MRSA ss.ss. 707-708), Docket 97-796, to enable it, through a wholly-owned subsidiary, to participate in the Bangor Gas venture, and to enter into certain transactions with Bangor Gas, all as more fully set forth therein. Bangor Gas and Bangor Hydro respectfully ask that these Petitions, Applications and Requests be consolidated and considered together because they are related, involving the same operative facts and issues.

Bangor Gas is a Maine limited liability company that was formed on August 27, 1997 pursuant to an agreement between Bangor Hydro-Electric Company ("Bangor Hydro"), and Bangor Pacific ("Pacific") for the purpose of designing, engineering, financing, constructing, testing, managing, marketing and operating a local gas distribution company (the "System").1/

In support of this Petition, Bangor Gas would show as follows:

I
EXECUTIVE SUMMARY

In December 1996, Bangor Hydro Electric Co. and Pacific Enterprises began to study the construction and operation of an LDC in the Bangor area. This was prompted by the proposal of Maritimes and Northeast Pipeline, LLC ("Maritimes") to build a natural gas pipeline from the Sable Offshore Energy Project near Sable Island, Nova Scotia through Maine to an interconnect with the Tennessee Gas pipeline at Dracut, Massachusetts - a project which is scheduled to be completed in late 1999. Because the pipeline would run seven miles from Bangor, it was believed that construction and operation of a natural gas LDC in the Bangor area would, for the first time, be possible and economically feasible.

The combination of Bangor Hydro's years of public service, dedication, and experience in providing electric service to the Bangor area, Pacific Enterprises' expertise, experience, resources and excellent reputation and

- - - - -

1/ The original Operating Agreement between Bangor Hydro and Bangor Pacific envisioned that a member's ownership interest in the System might affect the exemption of such Member or its parent entity from the Public Utility Holding Company Act of 1935 ("PUHCA") upon commencement of actual operation (Bangor Hydro and one of Pacific's parent entities, Pacific Enterprises are each exempt holding companies under PUHCA). To address this issue, the members have amended and restated the Operating Agreement to provide for an alternative structure for Pacific's participation in the project, and the structure of ownership, control and management by the parties, upon commencement of commercial operation, in the event that PUHCA is not repealed by Congress by that date. The implication of PUHCA and the alternative structure of Pacific's participation is discussed in the Prefiled Direct testimony of Andrew Rea, attached as Exhibit F. Bangor Gas seeks unconditional approval of the application as structured in the Operating Agreement as Amended and Restated on October 27, 1997 (attached as Exhibit B).

respect in the gas industry (throughout the nation and internationally), and the prior excellent relationship between the parties as partners in the West Enfield hydroelectric project, made for a perfect match to accomplish this goal. The result will be to provide a low cost and clean alternative source of energy to the Bangor area and to foster economic development.

Phase I of the Maritimes project has now been approved by FERC, and the project is becoming a reality. Bangor Gas seeks unconditional authority to provide LDC service at this time, so that construction can begin according to a schedule that will enable Maine customers in the greater Bangor area to receive the benefits of natural gas service when the Maritimes pipeline becomes operational in 1999.

In order to provide a reasonable opportunity for Bangor Gas, a startup utility, to successfully engage in this project, which will involve the investment of approximately \$33 million, it has designed and proposed a multi-year rate plan for approval and implementation as part of this authorization. This plan is based on an alternative form of rate regulation pursuant to enabling legislation that has been introduced in the State Legislature. The rate plan is more fully described in the Prefiled Direct Testimony of Johannes Van Lierop, attached hereto as Exhibit I.

Applicant has filed an application for financing approval. Financing of the project is described more fully in the Prefiled Direct Testimony of Frederick S. Samp, attached hereto as Exhibit G.

Bangor Gas also seeks approval of certain affiliated transactions, and exemptions from others, pursuant to Maine Statutes. In this regard it has attached, as Exhibit C, for review and approval a Support Services Agreement between Bangor Gas and Energy Pacific LLC and Bangor Hydro, created pursuant to the Operating Agreement as amended and restated ("the Support Services Agreement"). The Support Services Agreement attempts to incorporate policies of the Commission as reflected in similar Commission approved agreements by other utilities in Maine. Bangor Gas also seeks an exemption of the Support Services Agreement between Bangor Gas and Energy Pacific, LLC from the provisions of 35-A MRS.A ss.707. (35-A MRS.A ss.707(3)(C)). Energy Pacific is an unregulated out-of-state affiliate that will be providing services in a competitive market. Exemption of such classes of transactions as set forth in the Support Services Agreement will not be adverse to the public interest. See e.g. MAINECOM SERVICES, Order Granting Authority to Provide Local and Interexchange Telephone Services, Docket No. 97-249, p. 4-5 (Sept. 19, 1997 MPUC). The affiliated transactions are described more fully in the Prefiled Direct Testimony of Frederick S. Samp.

Bangor Gas also seeks exemption, pursuant to 35-A MRSA ss.708(2)(A) of approval of any reorganization relating to the creation of an affiliated interest, or otherwise, with regard to Bangor Gas and its non-Bangor Hydro affiliates, including Pacific Enterprises, Bangor Pacific, and Energy Pacific LLC. See MAINECOM, supra.

In 1995 the Maine Legislature passed the Limited Liability Company Law, 31 MRSA, Section 601 et seq., thus joining nearly 40 other states that have passed similar legislation. Such entities are common today, including those involved in the provision of energy resources. For example, Maritimes is a Limited Liability Company. Although we believe that the Maine Statutes permit a public utility to be a limited liability company, and, indeed, there is no legitimate reason not to so construe the statute, the statutes have not, since 1995 directly addressed this change in the law.

Accordingly, Bangor Gas respectfully seeks a determination that a gas utility may be a limited liability company under Maine Law. Concurrent with this application, Bangor Gas has proposed legislation to specifically recognize that gas companies can be limited liability company's under Maine law.

Bangor Gas desires to obtain unconditional authority to serve the five communities listed above, and is looking forward to working with the Commission, the State and localities, potential customers, and others to accomplish the construction of the facilities and the provision of local natural gas service to the greater Bangor area in the most efficient and expeditious manner.

II

GENERAL

The exact legal name of the applicant is Bangor Gas Company, L.L.C. ("Bangor Gas"). Bangor Gas is a limited liability company organized and existing under the laws of the State of Maine and has its principal place of business at 33 State Street, Bangor, Maine. Bangor Gas will be operated pursuant to an Operating Agreement, as Amended and Restated, dated October 27, 1997.

The names, titles, and mailing addresses of the persons to whom correspondence and communications concerning this Petition should be addressed are:

Donald C. Liddell, Esq.
Pacific Enterprises
633 W. Fifth Street, Ste. 5200
Los Angeles, CA 90051
(213) 895-5166

Alan G. Stone, Esq.
Clifford, Stone & Herman
640 Main St.
Lewiston, Maine 04243-0590
(207) 784-7381

Frederick S. Samp, Vice President
Bangor Hydro-Electric Company
P. O Box 932
Bangor, Maine 04402-0932
(207) 941 6653

Petitioner also requests that the following persons be placed on the service list:

Andrew Rea
Pacific Enterprises
633 W. Fifth Street, Ste. 5200
P.O. Box 4690
Los Angeles, CA 90051
(213) 895-5734

Douglas S. Morrell
Bangor Hydro Electric Company
P.O. Box 932
Bangor, Maine 04402-0932
(207) 990-6980

Kimball L. Kenway, Esq.
Curtis Thaxter Stevens Broder & Micoleau LLC
One Canal Plaza
P.O. Box 7320
Portland, ME 04112-7320
207-775-2361

III

THE MEMBERS

Pursuant to the Operating Agreement, Pacific and Bangor Hydro constitute the Members of Bangor Gas under the Maine Limited Liability Company Act for the purpose of designing, engineering, financing, constructing, testing, managing, marketing and operating the system. The provisions of the Operating Agreement, including the respective ownership interests of the parties, are explained in the prefiled direct testimony of Frederick S. Samp.

Bangor Hydro is a public utility engaged in the generation, purchase, transmission, distribution and sale of electric energy to its customers in east and east coastal Maine. It is a Maine corporation with a principal place of business at 33 State Street, Bangor, Maine. Today it provides electric power to more than 110,000 residents in over 4,900 square miles, and is the second largest electric utility in Maine. It has been providing such service since 1924. Bangor Hydro plays a significant role in the local economy of the region, and is committed to the municipalities, businesses and people it serves.

Pacific is a California corporation with a principal place of business at 633 West Fifth Street, Los Angeles, California. Pacific is a wholly owned subsidiary of Energy Pacific LLC, a California limited liability company, which is owned 50-50 by subsidiaries each of Pacific Enterprises and Enova Corporation. (Pacific Enterprises and Enova are in the process of a merger). Pacific Enterprises is a California-based utility holding company, with \$5.4 billion in assets, whose principal subsidiary is Southern California Gas Company (SoCalGas). SoCalGas is the nation's largest natural gas distribution utility with over 4.8 million customers, a service territory population based of approximately 17 million, and annual gas throughput of one trillion cubic feet. Energy Management Services, a business unit of Pacific Enterprises, provides customer-focused value-added energy products and services. Pacific Enterprises and its subsidiaries are described more fully in the Prefiled Direct testimony and exhibits of Andrew Rea attached hereto as Exhibit F.

IV

DESCRIPTION OF PROPOSED OPERATION AND SERVICE

Bangor Gas requests authority to construct, install, own, operate and maintain pipelines and ancillary facilities in Bangor, Brewer, Old Town, Orono and Veazie, Maine where natural gas service is currently not being provided to Maine municipalities, businesses and residents.

Bangor Gas will be a LDC, providing a full range of distribution, customer and energy services to provide safe, reliable and adequate natural gas service to customers in the greater Bangor area, including sale, transportation, scheduling, balancing, metering and billing. These facilities will be used to transport gas from the Maritimes & Northeast Pipeline LLC ("Maritimes"), at receipt points and to distribute gas and provide local natural gas service in its service area, as depicted in the engineering plans. Through contractual relationships with Maritimes, those areas not currently being served with natural gas will have a new reliable and competitively priced energy supply and service. Bangor Gas has also proposed to engage in a limited form of unbundling at the present time, subject to further investigation of this issue by the PUC.

V

DESCRIPTION OF PROPOSED FACILITIES

Bangor Gas has developed engineering studies and plans in support of the construction and operation of the LDC in the Bangor area. The Bangor Gas system will consist of Transmission (high pressure operating near 800 psig) and Distribution (medium pressure operating near 50 psig) pipelines. This pipeline network would bring Natural Gas into the homes and businesses in the greater Bangor area, for space heating, cooking, clothes drying and water heating. Originating outside the Brewer, the Transmission Backbone would bring gas supplies into the area with the proposed termination of the system being in the Old Town area to the north of Bangor. The source pipeline for the Bangor Gas system will be the Old Town/Millinocket Lateral which originates from the Maritimes main pipeline outside of the City of Brewer. However, if savings on gas cost warrant it the source for the Bangor Gas system may be the Maritimes main pipeline. The Bangor Gas pipeline will be installed through Brewer, Bangor and north to its termination in the Old Town area. The engineering and construction of the system is described more fully in the prefiled direct testimony of Andrew Rea and David G. Schiller, both of which are attached hereto.

It is estimated that the Maritimes Pipeline will be in service by November of 1999. Assuming all regulatory approvals for Bangor Gas are in place, Bangor Gas estimates commencing construction in the summer of 1998, with completion of the majority of system to occur by the fall of 1999. It is Bangor Gas' objective to begin servicing its initial customers in time for the start of the 1999-2000 heating season, with the complete system in place by the following heating season. The cost of these facilities is estimated to be approximately \$33 million dollars.

VI

SUPPLY

Bangor Gas proposes to obtain its supply of gas from marketers of natural gas from the Sable Island project. Bangor Gas' resource plan, and the experience of Pacific Enterprises, and its affiliates including Energy Pacific, the Southern California Gas Company, and AIG Trading Corporation in purchasing and managing gas supply, is described in the prefiled direct testimony of Andrew Rea, attached hereto.

VII

ABILITY TO MEET STATUTORY STANDARDS FOR AUTHORIZATION; APPROVAL FOR FINANCING; OTHER REQUIRED APPROVALS

1. Application for Authority to Serve

Bangor Gas seeks unconditional approval to provide natural gas service in Bangor, Brewer, Old Town, Orono and Veazie, pursuant to 35-A MRSA ss.ss. 2104, 2105. Bangor Gas also requests that its Petition be placed on an expedited track. Expeditious processing of this Application is in the overall public interest of the State of Maine and its residents in having immediately available a new, reliable, low cost, and environmentally sound energy source. Such processing will be consistent with Maine's energy and economic policies, by providing an attractive mix of energy resources, and will attract businesses to Maine.

This Commission has recently set forth the legal standards and evidentiary showing necessary to obtain authority under 35-A MRSA ss.ss.2104 and 2105. Mid Maine Gas Utilities Inc. Request for Approval to Furnish Gas Service, Docket No. 96-465 (MPUC March 7, 1997 (hereinafter, "Mid Maine")). The Commission has established a three part test to evaluate whether a petition to provide service is in the public interest and should be approved. Id. p. 9. Petitioner satisfies all three parts of the test:

A. There is a public need for the proposed service. This is met by the fact that no such service is being provided in the areas Bangor Gas is seeking authority to serve.

B. The applicant has the technical ability to provide the service. The Applicant has provided pertinent descriptions and summaries of qualifications of its experience and expertise to construct, operate and service the proposed natural gas facilities.

The Members have substantial experience in constructing facilities and providing service similar to that being proposed, and possess general and relevant educational and engineering qualifications. Pacific Enterprises is the parent of the largest natural gas distribution company in the United States, and has been involved in the construction and operation of LDC systems in the United States and throughout the world. Bangor Hydro has been engaged in the energy business and has been constructing facilities and operating an electric system in the Bangor area for over seventy years.

The Members have demonstrated competence, through involvement in regulatory proceedings at the federal level and throughout the United States, in recognizing the need for and selecting consulting, engineering and construction assistance, or affiliation with competent and experienced providers. Bangor Hydro has regularly appeared in practically all administrative regulatory agencies in Maine, and has been involved in Federal regulatory proceedings, as part of its operation as a public utility. Pacific, likewise, has similar experience elsewhere in the nation and internationally. They have an expert knowledge of industry practice and understanding of local conditions and requirements, and have established reputations for credibility and accuracy relating to such subjects. They have established and developed company standards of conduct or procedures to be implemented to assure safety and reliability of service.

Bangor Gas is technically capable of providing safe and reliable service at just and reasonable rates, and meets the standard of technical capability to provide the service.

C. The Applicant possesses adequate financial resources to complete the project.

Bangor Gas is financially capable of providing safe and reliable service at just and reasonable rates. The Members have substantial experience and ability in financing projects of similar size and complexity. The ability and plans of the applicant to finance the project is described in the prefiled direct testimony and exhibits of Andrew Rea and Frederick S. Samp, attached hereto.

D. Unconditional Authorization to Serve

In Mid Maine, supra, the Commission granted "conditional" authority to the

applicant, by requiring, prior to providing service to any customer, commencing construction or obtaining financing, that applicant file for Commission review and approval:

- (1) Its proposed financing for the project pursuant to 35-A MRSA ss. 902.
- (2) Construction plans and cost estimates for its proposed facilities.
- (3) A resource plan indicating its sources(s) of supply or the availability of unbundled service and demonstrating such source or unbundled supply option is adequate to serve the needs of its proposed customers.

Bangor Gas does not seek conditional approval to provide LDC service, but rather seeks unconditional approval. Accordingly, it has provided, as part of this filing and for Commission review and approval the material required by the Commission in the Mid Maine case. Because of the sensitive nature of material being provided, certain information is or will be provided pursuant to Protective Order.^{2/}

2. Application for Financing Authorization, Affiliated Transactions and Other Required Approvals:

A. Application for Financing Authorization, Pursuant to 35-A MRSA ss.902, Bangor Gas respectfully asks that the Commission issue an order authorizing the financing described in the Application (attached hereto and incorporated herein as Exhibit E), the amount of the issuances, and stating that in the opinion of the Commission the proceeds of the issuances of the L.L.C. membership interests and the indebtedness are required in good faith for purposes enumerated in 35-A MRSA ss.901. This request for financing approval is discussed in the prefiled direct testimony of Frederick S. Samp.

B. Application for Affiliated Transaction Approval Pursuant to 35-A MRSA ss.707, Bangor Gas is seeking approval (or, as stated below, exemption from approval) of the following transactions: (a) Support Services Agreement (Exhibit C), and (b) the Operating Agreement (Exhibit B). Bangor Hydro has similarly requested approval of these agreements in its Application. As noted previously, Bangor Gas respectfully asks that the Commission issue an order either (a) exempting all affiliated interest transactions between Bangor Gas and its non-Bangor Hydro affiliates from the requirements of Section 7, or (b) finding that said agreements are not adverse to the public interest and giving them its written approval. Energy Pacific (and its affiliates Pacific, Southern California Gas Company Pacific Enterprises and Enova) are out of state

- - - - -
2/ See Motion for Protective Order dated and filed in these Docket on October 20, 1997 and Proposed Protective Order No. 1.

affiliates that will or may be providing services in a competitive market. Exemption of such classes of transactions, including those set forth in the Support Services Agreement, will not be adverse to the public interest. See e.g. MAINECOM SERVICES, Order Granting Authority to Provide Local and Interexchange Telephone Services, Docket No. 97-249, p. 4-5 (Sept. 19, 1997 MPUC).

C. Application for Exemption from Reorganization Approval for the Non-BHE Affiliates of Bangor Pacific. Bangor Gas respectfully asks that the Commission issue an order determining that approval for reorganization need not be obtained with respect to any activity to be undertaken by any non-BHE related affiliate of Bangor Gas. The effect of this exemption would be to eliminate any requirement that Pacific, Energy Pacific, Pacific Enterprises, Southern California Gas Company obtain approval of this Commission prior to engaging in any reorganization activities described in Section 708. The reasons for this exemption is the same as those discussed in the previous section of this Application.

IX

RATES (MULTI-YEAR RATE PLAN)

Bangor Gas' application is premised on its being able to implement and maintain the proposed multi-year rate plan ("the Plan") as described in the prefiled direct testimony of Jan Van Lierop. The Plan incorporates a price cap using a standard rate indexing formula. The starting point to set the initial rate for the first year of the Plan would be the gas-equivalent cost of the primary competitive fuel (No. 2 heating oil). The term of the rate plan is ten (10) years. This type of rate structure is necessary to afford reasonable financial certainty and protection to Bangor Gas during the period of start up, initial investment, and a reasonable period of initial operation (10 years).

Following the issuance of its certificate of need and authorization to serve, Bangor Gas respectfully plans to file initial schedules pursuant to 35-A MRSA ss.304, and cost of gas adjustment charges pursuant to 35-A MRSA ss.4703, for Commission review and approval as an integral part of its approval of authority in this case.

X

SUMMARY OF PREFILED DIRECT TESTIMONY
LIST OF EXHIBITS AND ATTACHMENTS

Prefiled Direct Testimony:

Bangor Gas has filed in support of this Petition, the Prefiled Direct Testimony of the following individuals.

1. Andrew Rea. Mr. Rea is Vice President of Energy Pacific, a joint venture of Pacific Enterprises and Enova Corporation. Mr. Rea is Executive Vice President and Chief Operating Officer of Bangor Gas Company. Mr. Rea will outline the business plan of Bangor Gas, a venture between and through affiliates of Bangor Hydro and Energy Pacific, and describe the project, including the market analysis, qualifications of the participants. Mr. Rea will also describe the Company's resource plan, and Energy Pacific's interests and involvement in financing the project.
2. Frederick S. Samp. Mr. Samp is Vice President and Chief Financial Officer of Bangor Hydro. Mr. Samp is also the Chief Financial Officer of Bangor Gas. Mr. Samp will discuss the financing of Bangor Gas and Bangor Hydro's investment in Bangor Gas. Mr. Samp will explain the details of the Bangor Gas Company LLC Operating Agreement, including the organizational and financial structure of Bangor Gas, its initial capitalization and matters regarding voting control. He will also testify about the project costs and explain project financing. Mr. Samp will also address the Support Services Agreement.
3. Carroll R. Lee. Mr. Lee is Executive Vice President at Bangor Hydro. He is also a Director and Executive Vice President of Bangor Gas Company LLC. Mr. Lee provides an overview of the project, describes Bangor Hydro's excellent relationship with Pacific Enterprises and how this relationship and Pacific's experience in the gas industry foster a solid partnership for the development, construction and operation of a local gas system in the Bangor area. Mr. Lee also discusses the benefits of the project to Bangor Hydro and the community. He will also describe the project schedule and scope of the project. Mr. Lee addresses how the Applicant has satisfied the criteria for the issuance of a certificate of need, as set forth by the Maine Public Utilities Commission in the Mid Maine case. Carroll Lee discusses the proposed multi-year rate plan and the need for and principles underlying such a plan; he also addresses the development of multi-year contractual arrangements with customers.
4. Johannes Van Lierop. Mr. Van Lierop is the Director of Governmental and PUC Regulatory Affairs of Southern California Gas Company, an affiliate of Pacific Enterprises. Mr. Van Lierop will testify about the general ratemaking framework (alternative form of regulation) that is appropriate in light of the fact that Bangor Gas is a startup utility and will be operating in a market that will be sharply competitive with alternative fuels. In this regard, he will also describe Bangor Gas' multi-year rate proposal, including initial rates, escalation factors, rate flexibility and rate design. Mr. Van Lierop will discuss projected capital investments for the project, and projected costs of service. He will also discuss Bangor Gas' position on unbundling, as reflected in this application. Bangor Gas will be filing separate generic comments relating to unbundling, and addressing issues raised by Commission's Notice of Inquiry in Maine PUC Docket No. 97-267.
5. David G. Schiller. Mr. Schiller is employed by Energy Pacific as Technical Operations Manager. One of his responsibilities in this capacity is to evaluate and develop pipeline and other technical requirements for new and expanding gas utility projects. Mr. Schiller will describe the technical aspects of the proposed Bangor Gas pipeline infrastructure, including the cost of construction and also the expected capacity of the system. Mr. Schiller will explain the engineering and construction of the project, including pipeline installation and safety.

List of Exhibits:

- Exhibit A Organizational Documents
- Exhibit B Operating Agreement
- Exhibit C Support Services Agreement
- Exhibit D Funding Agreement

Exhibit E Application for Approval of Financing
Exhibit F Prefiled Direct Testimony and Exhibits of Andrew Rea
Exhibit G Prefiled Direct Testimony and Exhibits of Frederick S. Samp
Exhibit H Prefiled Direct Testimony and Exhibits of Carroll R. Lee
Exhibit I Prefiled Direct Testimony and Exhibits of Johannes Van Lierop
Exhibit J Prefiled Direct Testimony and Exhibits of David G. Schiller

XL

RELIEF REQUESTED BY BANGOR GAS

WHEREFORE, for the reasons set forth herein above, Bangor Gas respectfully requests the Commission to:

(1) Grant Bangor Gas, pursuant to 35-A MRSA ss.2104 and 2105, unconditional authority to construct and operate necessary facilities and to furnish natural gas service in the following municipalities,

(2) Issue an Order approving the proposed financing described herein, pursuant to 35-A MRSA ss.902, the affiliated contracts or arrangements described herein, pursuant to 35-A MRSA ss.707, and other approvals and exemptions requested herein,

(3) Approve the multi-year rate plan described herein, and

(4) Issue such other authority and/or exemptions and waivers, and such other relief as may be deemed necessary the Commission to facilitate implementation of the proposals contained herein.

II. COUNT II: BANGOR HYDRO ELECTRIC COMPANY PETITIONS, APPLICATIONS AND REQUESTS. (DOCKET NO. 97-796)

I
INCORPORATION BY REFERENCE OF COUNT I

Bangor Hydro adopts and incorporates herein the allegations and statements, and references to Prefiled Direct Testimony and Exhibits, contained in Count I, Sections I, II, III, IV, V, VI, and X of this Consolidated Petition.

II
SUMMARY OF BANGOR HYDRO FILING

Bangor Hydro seeks all necessary approvals for it to participate, through a wholly-owned subsidiary, in Bangor Gas, and to enter into certain transactions with Bangor Gas, which will become and affiliated interest of Bangor Hydro. Pursuant to the Operating Agreement (Exhibit B, attached hereto), Bangor Pacific owns 95% of Bangor Gas, and Bangor Hydro owns 5%. As contemplated in the Operating Agreement, Bangor Hydro plans to participate in Bangor Gas through a corporate subsidiary, tentatively called "Gassub", and will be making investments in Bangor Gas, through Gassub. It will also permit Bangor Gas to make limited use of Bangor Hydro's name and associated goodwill. Bangor Hydro has also entered into the Support Services Agreement with Bangor Gas (Exhibit C, attached hereto).

Accordingly, Bangor Hydro files for reorganization approvals and exemptions pursuant to 35-A MRSA ss.708, and for affiliated interest transaction approvals pursuant to 35-A MRSA ss.707, including Section 707 (3)(G) relating to the value of the goodwill assets. Bangor Hydro will also be asking for exemptions, where appropriate, from the provisions of Section 707.

In summary:

1. Bangor Hydro seeks the following Section 708 Reorganization Approvals :

(1) Bangor Hydro's formation and initial capitalization of Gassub, including authorization for Gassub to hold up to a fifty percent (50%) membership and economic interest in Bangor Gas without having to obtain further Commission approval. Bangor Hydro also requests that the Commission exempt from the operation of Section 708 any changes in Bangor Hydro's interest in Bangor Gas (through Gassub) and Gassub's interest in Bangor gas, so long as Bangor Hydro's interest (through Gassub), and, thus, Gassub's interest, does not exceed 50%.

(2) Bangor Hydro's capital contributions to Bangor Gas, through Gassub, in an amount up to a total of \$2,500,000. This amount includes the initial expenditures made to date of approximately three hundred seventy-five thousand dollars (\$375,000) associated with the formation of Bangor Gas and the approval process. As explained in Mr. Samp's prefiled testimony, Bangor Hydro also proposes to infuse an additional \$5,750,000 in Gassub, for investment in Bangor

Gas, but will return to the Commission for authority to do so at the appropriate time.

(3) Gassub's investment and participation in Bangor Gas. Bangor Hydro also requests that Gassub be permitted to invest an unlimited amount of capital in Bangor Gas (beyond what it invests through infusions from Bangor Hydro). The sources of such investments would be (1) distributions from Bangor Gas, and (2) borrowings by Gassub. Any such borrowings would be on a non-recourse basis as to Bangor Hydro.

(4) Bangor Hydro becoming an affiliate of Gassub and Bangor Gas.

2. Bangor Hydro seeks the following Section 707 Affiliated Interest Approvals:

(1) Approval of Bangor Hydro's participation in the Operating Agreement, including those provisions of the Operating Agreement relating to the provision of officer and director services and authorization, upon the creation of Gassub, to enter into the form Funding Agreement attached as Schedule 14.1 to the Operating Agreement.

(2) Approval of the Support Services Agreement.

(3) Required determinations and approvals under Section 707(3)(G), regarding the value to Bangor Gas of the limited use of Bangor Hydro's name.

III

COMPLIANCE WITH THE STANDARDS OF SECTIONS 707 AND 708

The relief requested by Bangor Hydro should be granted because the transactions will be in the public interest, will be consistent with the interests of Bangor Hydro's ratepayers and investors, and will not impair Bangor Hydro's credit nor its ability to attract capital on reasonable terms nor its ability to provide safe, reasonable and adequate electric service. The transactions, including the formation and operation of, and Bangor Hydro's participation in, Gassub will be structured and carried out in accordance with the Commission's findings in Robert D. Cochrane v. Bangor Hydro-Electric Company, Docket No. 96-053, Order (MPUC January 28, 1996) (hereinafter referred to as "Cochrane"), and with the newly enacted LD 502 (35-A MRSA Section 707(3)(G)).

Consistent with Cochrane, Bangor Hydro's electric utility ratepayers will be insulated from any financial risks associated with the creation, existence or activities of Gassub, a separate wholly owned subsidiary created for the purposes of carrying on a non-core activity. Gassub will not impact at all on Bangor Hydro's core electric utility business. All costs associated with Bangor Hydro's and Gassub's activities in Bangor Gas will be treated "below the line." Gassub will serve only to hold Bangor Hydro's interest in Bangor Gas; it will own no assets other than its membership in Bangor Gas. Gassub will not engage in any other activities without first securing the permission of the Commission under the affiliated interest statute, nor will it create or participate in the formation of any new entities without first securing the permission of the Commission under the reorganization statute. The Commission will have access to Gassub's books and records for inspection and review, subject to reasonable protective arrangements as may be necessary to protect the confidentiality of information.

IV

RELIEF REQUESTED BY BANGOR HYDRO

WHEREFORE, for the reasons set forth herein above, Bangor Hydro respectfully requests the Commission to:

- (1) Grant Bangor Hydro Reorganization approval and exemptions, pursuant to 35-A MRSA ss.708 as described in Section II, above.
- (2) Issue an Order approving affiliated contracts or arrangements as described in Section II, pursuant to 35-A MRSA ss.707, and other approvals and exemptions requested herein.
- (3) Issue such other authority and/or exemptions and waivers, and grant such further relief, as may be deemed necessary the Commission to facilitate implementation of the proposals contained herein.

DATED: October 27, 1997

Respectfully submitted,

Bangor Gas Company, L.L.C.

/s/Alan G. Stone
By: Alan G. Stone, Esq.
Clifford, Stone & Herman
640 Main Street
Lewiston, Maine 05243-0590
(207) 784-7381
Its Attorneys

Bangor Hydro Electric Company

/s/Kimball L. Kenway
By: Kimball L. Kenway, Esq.
Curtis, Thaxter, Stevens, Broder
Micoleau L.L.C.
1 Canal Plaza
Portland, Maine 04112-7320
(207) 774-9000
Its Attorneys

STATE OF MAINE
PUBLIC UTILITIES COMMISSION

DOCKET NO. 97-795

JUNE 30, 1998

BANGOR GAS COMPANY
PETITION FOR APPROVAL TO PROVIDE
GAS SERVICE IN THE GREATER BANGOR AREA

ORDER GRANTING
UNCONDITIONAL SERVICE
AUTHORITY

WELCH, CHAIRMAN; NUGENT AND HUNT, COMMISSIONERS

TABLE OF CONTENTS

I. SUMMARY.....2

II. PROCEDURAL HISTORY.....2

III. INTRODUCTION.....2

IV. CONTENTS OF THE RECORD.....3

V. MOTION IN LIMINE TO STRIKE OR EXCLUDE PORTIONS OF SCOTT RUBIN'S
TESTIMONY.....3

VI. ANALYSIS OF BANGOR GAS'S APPLICATION.....4

 1. Standard of Review.....4

 a. Motion for Partial Summary Judgement.....4

 b. Evidence Considered by the Commission.....6

 2. Financing Plan.....6

 3. Engineering Plans and Safety.....8

 4. Resource Plan.....9

 5. Ability to Provide Service at Just and Reasonable Rates ...11

 6. Summary and Conclusion12

VII. REORGANIZATION AND AFFILIATED INTERESTS.....12

VIII. STIPULATION.....13

IX. CONCLUSION.....14

APPENDIX A: PROCEDURAL HISTORY.....16

APPENDIX B: RATE COMPARISON.....19

I. SUMMARY

We grant Bangor Gas Company LLC (Bangor Gas) authority to begin construction of a local distribution company and to provide natural gas service as a public utility in Bangor, Brewer, Old Town, Orono, and Veazie, subject to the requirements contained herein.

II. PROCEDURAL HISTORY

The Procedural History is contained in Appendix A to this Order.

III. INTRODUCTION

When the March 9th Examiner's Report was issued, we had before us two interrelated motions. The first was Bangor Gas's Motion for Partial Summary Judgment (MSJ) and to Strike or Exclude Portions of the Testimony of Scott Rubin on behalf of the Public Advocate (Motion to Strike) and Incorporated Memorandum. Bangor Gas filed with these motions a Statement of Facts Not in Dispute and a Stipulation executed by it and two of the other parties to this proceeding, Bangor Hydro Electric Company (BHE) and Maritimes and Northeast Pipeline Inc. (MNE). Bangor Gas sought a determination that it was entitled to a grant of full service authority for the greater Bangor area as a matter of fact and law.

The second was the Public Advocate's Motion for Expedited Comparative Proceeding as amended on February 19, 1998. The Public Advocate (OPA) requested that the Commission conduct a comparative proceeding in order to select the best applicant to serve the greater Bangor area.

We considered each motion separately, deliberating the OPA's Motion for Comparative Proceeding on April 28, 1998 and deferring consideration of Bangor Gas's Motion. After hearings and briefs on certificate issues, we considered the Bangor Gas application on its merits in conjunction with our determination of Bangor Gas's proposed rate plan on May 18, 1998.¹

As discussed further in Section VI. below, because we considered Bangor Gas's application for unconditional service authority after a supplemental evidentiary hearing and briefs on this subject, this order does not address Bangor Gas's application under the legal standards for summary judgment as presented in the March 9th Examiner's Report but, rather, addresses the application fully on its merits.

In this order we also deny Bangor Gas's Motion in Limine to Strike or Exclude Portions of the Testimony of Scott Rubin on behalf of the Public Advocate and reject Bangor Gas's proposed stipulation.

- -----

1 See Order Approving Bangor Gas Company Rate Plan dated June 26 1998.

IV. CONTENTS OF THE RECORD

The evidentiary record includes all prefiled testimony, data responses, hearing transcripts and exhibits in this proceeding. In addition, as requested by Bangor Gas, we include its response to Advisors' Data Request No.1, Question 9 (Confidential) in Docket No. 97-796,2 as well as the technical conference transcripts of January 26 and February 25th.³

V. MOTION IN LIMINE TO STRIKE OR EXCLUDE PORTIONS OF SCOTT RUBIN'S TESTIMONY

In its Motion to Strike, Bangor Gas moves to exclude from the record portions of the testimony of Scott Rubin in which he addresses engineering plans, financing plans, and source of supply, and in which he recommends that the Commission conduct a contested certification proceeding. Bangor Gas argues that Mr. Rubin's testimony on the technical adequacy of Bangor Gas's filing is not admissible pursuant to Maine Rules of Evidence 702-704 because Mr. Rubin, a lawyer, is not qualified and competent as an expert witness on these matters.⁴

In addition, Bangor Gas argues that Mr. Rubin's testimony recommending a comparative proceeding⁵ is not the proper subject for expert testimony under Rule 702 because it is not based on "scientific, technical, or other specialized knowledge" which will assist the trier of fact to understand the evidence or to determine a fact in issue. Finally, Bangor Gas argues that Mr. Rubin's testimony

- -----

2 Bangor Hydro Electric Company, Petition for Affiliated Interest and Reorganization Approval Needed in Connection with Bangor Gas Company Transaction.

3 No party objected to the admission of these materials as allowed by the March 9th Examiner's Report, note 3.

4 The testimony regarding the adequacy of Bangor Gas's financial, engineering and gas supply plans that Bangor Gas seeks to exclude appears on page 7, lines 11-20, as follows:

Q. Has Bangor Gas provided this additional information?

A. Bangor Gas has provided some, but not all, of this information. Bangor Gas has provide a general financing plan, but without any specific information concerning the source of financing, actual capital structure, and actual interest rates or other terms and conditions. While Bangor Gas has indicated the range of financing options that it considers to be reasonable and available, there is no specific financing proposal at this point. Similarly, Bangor Gas has provided general construction plans and cost estimates, but has not provided a specific construction schedule or time line. Its resource plan for gas supply again consists of general statements concerning the options that it is examining. As of this point, however, Bangor Gas has not entered into any definitive agreements ensuring the supply of natural gas.

5 The testimony appearing on pages 8-16 addresses Mr. Rubin's assessment of

the need for a comparative proceeding.

is outside the scope of this proceeding as established by our Mid-Maine Order and in the Examiners preheating conference report.

We will address each of these arguments in turn.

We deny Bangor Gas's Motion to strike on grounds that Mr. Rubin is not qualified to render an expert opinion on the matters contained in his testimony. Mr. Rubin's testimony primarily regards policy and regulatory considerations. While it may be true that Mr. Rubin is not qualified as an engineer, a financier or a gas supply procurer, he has sufficient experience to qualify him to provide an opinion generally regarding the regulatory determinations we are considering in this case. Mr. Rubin has demonstrated his expertise in other recent proceedings before this Commission. We will take Mr. Rubin's experience and limitations into account when we consider his testimony. As we have often recognized, as an expert adjudicatory body, we are competent to assess the weight and credibility of the witnesses and evidence before us.

We also decline to exclude Mr. Rubin's testimony recommending a comparative proceeding on the grounds that it is beyond the scope of this proceeding as established in Mid-Maine and by the Examiner's Post-Conference Report in this case. It is always within our discretion to consider policies and issues as they arise in cases before us. Notwithstanding our statements in the Mid-Maine case, we chose not to restrict the scope of issues on this case to exclude OPA's request for a comparative proceeding because of the importance of this issue to establishing sound public policies in the development of the natural gas industry in Maine.

VI. ANALYSIS OF BANGOR GAS'S APPLICATION

1. Standard of Review

a. Motion for Partial Summary Judgement

Prior to hearings in this case, Bangor Gas requested that the Commission grant it, as a matter of partial summary judgment,⁶ an unconditional certificate of public convenience and necessity to provide natural gas service in the greater Bangor area. Bangor Gas also requested that the Commission approve its related affiliated interest transactions and all other applications and requests for exemptions contained in its October 29, 1997 filing, except for its multi-year rate plan proposal.⁷

- - - - -

⁶ Bangor Gas's Motion was made pursuant to Maine Rules of Civil Procedure Rule 56. These rules are made applicable to MPUC proceedings by Chapter 110, section 101 of the Commission's Rules of Practice and Procedure.

⁷ Bangor Gas proposed to have its multi-year rate plan considered within the full remaining schedule for this case.

Bangor Gas claimed that there were no genuine issues of material fact and that it had otherwise met the legal requirements entitling it to a grant of unconditional authority to provide service as a public utility in the greater Bangor area. Bangor Gas also argued that expeditious resolution of service authority and related issues in this manner would promote administrative economy and would allow Bangor Gas to prepare for and begin construction of the system to coincide with local street opening projects scheduled to occur during the upcoming construction season of 1998. Finally, Bangor Gas requested that, for the same reasons, the Commission grant it all related approvals and exemptions.

Bangor Gas further claimed that it had met the standards for a grant of conditional service authority as established by this Commission in Mid-Maine Gas Utilities, Inc., Request for Approval to Furnish Gas Service, Docket No. 96-465 (Mid-Maine), Order dated March 7, 1997, citing Standish Telephone Co. v. PUC, 499 A.2d 458. Under these standards, applicants must establish that 1) public need for the proposed service exists, 2) the applicant has the technical ability to provide the service, and 3) that the applicant has adequate financial resources to complete the project. In addition, these standards must be met in a manner consistent with providing safe and reliable service at just and reasonable rates, to ensure that the project will be in the overall public interest. Mid-Maine at 9.

Bangor Gas provided with its Motion its Statement of Material Facts Not in Dispute with citations to portions of the record in this case.⁸ OPA opposed the Motion, arguing that Bangor Gas had not supplied sufficiently complete information regarding its financing proposal, resource plan, and

construction plans and cost estimates to support a grant of unconditional authority at this time. OPA conceded, however, that Bangor Gas has met the standards to merit a conditional grant of authority.⁹ Specifically, Mr. Rubin stated that Bangor Gas can be found to have the requisite technical and financial fitness to operate a public utility in Maine. Furthermore, Mr. Rubin concluded that there is a need for the service in the greater Bangor area because the area is not presently served, numerous segments of the public would be interested in obtaining natural gas, and no other utility currently holds an unconditional certificate of public convenience and necessity to provide service in the area.

- -----

8 Bangor Gas argued that it was entitled to a favorable decision because no party had submitted a contravening list of issues in dispute as required under the rule. However, both OPA and CMP contested the grant of unconditional authority to Bangor Gas, and the Examiner ultimately conducted a hearing on factual issues later raised by CMP. The Commission may liberally construe its rules "to secure just, speedy and economic determination of all issues presented to the Commission." See Ch. 110, ss.102. Here, the Examiner recognized that there were disputed matters, even though not raised in a manner and time frame set out in the rules of court. See also 35-A M.R.S.A. ss.104.

9 OPA later filed a letter stating its "agreement not to contest Bangor Gas on the issues of engineering, financing and gas supply" for purposes of awarding unconditional service authority, while continuing to advocate a comparative selection process.

No other party offered testimony or responses challenging the findings proposed by Bangor Gas.

Consequently, on the record at the time of Bangor Gas's MSJ, there were no disputed facts as to Bangor Gas's overall competence to provide service as a public utility under the Mid-Maine standards for conditional authority. However, there was an apparent dispute as to whether Bangor Gas, on the basis of that record, should be granted unconditional, or full, authority to serve.

Bangor Gas argued that the requirements stated in the Mid-Maine order provide the standard for whether an entity merits a grant of full authority. In Mid-Maine, we granted conditional authority to serve and required Mid-Maine Gas, prior to providing service to any customer, commencing construction or obtaining financing, to file for Commission review and approval its (1) proposed financing for the project pursuant to ss.902, (2) construction plans and cost estimates for its proposed facilities, and a (3) resource plan indicating its source(s) of supply or the availability of unbundled service and demonstrating such source or unbundled supply option is adequate to serve the needs of its proposed customers.

Bangor Gas argued in its MSJ that it had met these standards on the basis of the record to that date. Bangor Gas also argued that Mr. Rubin's testimony should be excluded,¹⁰ making these issues uncontroverted, and that the Commission alone must decide the adequacy of the case presented on these matters.

b. Evidence Considered by the Commission

The Maine Rules of Civil Procedure Rule 56 requires the Commission to determine whether or not there is any genuine issue of material fact before granting summary judgement. Our review of the evidence presented at the time of Bangor's motion, including Mr. Rubin's testimony, revealed that the case did contain factual issues in dispute. Moreover, CMP requested an opportunity to cross-examine Bangor Gas's witnesses at hearing on these issues. A hearing was held for that purpose and parties submitted briefs.

In making our dispositions of the issues in this case we have thus considered all the evidence and argument presented to us, and not only the "uncontroversial facts" submitted by Bangor Gas. We set forth below our conclusions concerning Bangor Gas's financial and technical abilities, resource plan, and ability to serve customers at just and reasonable rates.

2. Financing Plan

- -----

10 See section IV of this Report denying Bangor Gas's Motion to Strike or Exclude Testimony of Scott Rubin.

Bangor Gas Company seeks approval of the financing needed to construct the gas distribution system. The Company has indicated that after construction is complete it will repay the construction loan by arranging for

permanent financing that would be supported by the distribution system as its collateral.

Bangor Gas seeks authority to issue membership interests of up to \$17,500,000 in itself as a Limited Liability Company (LLC) in accordance with the terms of the Operating Agreement between the members, that is, Gassub, a wholly owned subsidiary of BHE, and Bangor Pacific. These membership interests would constitute the equity in the new company. Bangor Gas also seeks authority to borrow up to \$21,000,000 in secured construction loans for a period of up to 18 months. Security for the loans would be the assets of the system as it is constructed. In Mr. Samp's testimony on behalf of BHE, he states that Bangor Gas would like to have an interest rate cap of 11% in any Commission order, but that the Company felt that financing could be obtained for about 8%. Mr. Rea, on behalf of Bangor Gas, concurred with Mr. Samp's assessment that 8% was a plausible assumption for the debt cost, but that the Company would accept a not-to-exceed rate of 9%. Of course, the final loan rate will depend on market conditions existing when Bangor Gas actually seeks financing. Nevertheless, we observe that interest rates have remained relatively stable during the course of this proceeding, and we have no reason to doubt the Company's predictions about the cost of construction debt financing, given its relatively recent experience in arranging financing for a startup gas operation in North Carolina.

Bangor Gas has indicated that it would pursue construction financing from commercial banking sources, but if the terms of such loans were not acceptable to the Company, Bangor Gas would seek to borrow the funds from an affiliate of Energy Pacific. In the latter case, the transaction would require our approval as an affiliated interest transaction, or require an exemption from the requirements of 35-A M.R.S.A. ss. 708.

Bangor Gas has stated that because its rates will not be linked directly to cost of service under its rate proposal, the Commission should not be overly concerned about the actual cost of capital for Bangor Gas. Further, if at some later point Bangor Gas's rates are set on a cost of service basis, the Commission will have the ability to examine the Company's cost rates and its capital structure. Finally, given the size and experience of Energy Pacific's parent company, Pacific Enterprises, Bangor Gas claims there is little doubt that the project can be financed in a cost-effective manner.

The Company has stated that although it has not finalized its financing plans, the Commission should grant authority for Bangor Gas to enter into financing arrangements, because lenders may be reluctant to provide financing if the Company only possesses a conditional right to serve. For the reasons stated by Mr. Samp, the Company believes there is little risk of harm to Bangor Gas's eventual ratepayers from allowing it the flexibility to pursue the best financing deal it can obtain.

The OPA has questioned whether some of terms that might be included in any proposed financing would be in the public interest. Specifically, nothing is currently known about what covenants might be placed on any financing, given the fact that this is a startup operation. OPA believes we should examine any loan agreements prior to approval, or state what terms and conditions would be acceptable in any financing agreement.

In Mid-Maine, the Commission set forth five criteria that it would examine in determining whether to grant financing approval for the project. Those factors are:

- 1) the past experience of the principles in financing similar projects
- 2) the level of equity investment
- 3) the entity's current assets and liabilities
- 4) any existing commitments from lenders, and
- 5) the entity's credit history where relevant.

We find that Bangor Gas has satisfied the standard we established in Mid-Maine. We are confident that the Company will be able to obtain debt financing on reasonable terms. However, because this is a new company with no track record in Maine, we will not grant the debt financing approval sought by Bangor Gas. We will approve the equity portion of the Company's application, allowing Bangor Gas to make capital calls as provided for in the Operating Agreement.

As for the debt financing authority, we find that the Company's proposed use of debt financing meets the criteria of 35-A M.R.S.A. ss. 901, but that we will not approve the actual debt instrument until the Company is able to provide more specific information about the terms and conditions of the loan. We envision a prompt examination of any proposed financing, unless it were to

contain a number of nonstandard terms, conditions or covenants. We would allow the Company to bring us alternative proposals that contained more specificity regarding the proposed terms of the instrument, if it wishes to pursue commercial financing or financing from an affiliate. We have no intention of delaying the project, but we cannot approve borrowing without knowing more about the conditions which will attach. Nor will we rely on the rate plan as a basis to defer a closer examination of the Company's proposed financing.

3. Engineering Plans and Safety

In his prefiled testimony, Mr. Rubin argues that Bangor Gas has not provided sufficient detail of its construction schedule or time line. We disagree.

The engineering plans submitted by Bangor Gas are adequate for us to evaluate the technical merits of the project. Bangor Gas proposes a three-phase approach to system development and provides a "Gantt" type chart showing the development of each phase along with the preparation activities for each. The cost estimates submitted by Bangor Gas are quite detailed. The estimated construction costs provided by Bangor Gas are also similar to those that can be found in the "R.S. Means, Construction Cost estimation" handbooks. Bangor's system development cost projections resemble those we have observed regionally and they appear to be realistic. Finally, Bangor Gas has provided detailed month-by-month construction budget.

Natural gas pipeline safety is guided by Chapter 420 of the MPUC rules and Part 192 of the Code of Federal Regulations. Bangor Gas proposes to construct its system and train its personnel in accord with these rules and standards. Bangor Gas's proposed plan includes an eight month training program for local employees on gas pipeline safety issues.

The information provided by Bangor Gas provides us a sufficient information on the construction plans and costs of their proposed distribution system. We do not require more for purposes of this application.

4. Resource Plan

The Office of Public Advocate argues Bangor Gas should not receive an unconditional certificate because it has not provided an actual gas supply plan ensuring that it will be able to provide gas consumers in the Bangor service territory with an adequate, competitively priced supply of natural gas. According to the OPA, the Commission should require Bangor Gas to enter "into supply contracts definitive enough to show that all of its future customers will have gas service on the coldest January day." Mr. Rubin cites ordering paragraph 1.c of the Commission's Order in Mid-Maine, which required this Mid Maine Gas to provide

A resource plan indicating its source(s) of supply or the availability of unbundled service and demonstrating such source or unbundled supply option is adequate to serve the needs of its proposed customers.

Before applying verbatim the requirements of the Mid-Maine Order to Bangor Gas, we believe it instructive to review the circumstances under which we issued Mid-Maine Gas's certificate. The conditions faced by Bangor Gas are different from those faced by Mid-Maine Gas and the application itself is substantially different. Under the circumstances now presented to us, a different assessment is warranted.

Mid-Maine Gas filed its petition on August 16, 1996, at a time when there was a greater level of regulatory uncertainty associated with the MNE pipeline project. Regulatory agencies in both the United States and Canada were in the early stages of reviewing the MNE application. In Canada, a competing pipeline application was also under review. The TransMaritimes Gas Transmission (TMGT) and TransQuebec and Maritimes (TQM) extension projects were considered to be mutually exclusive with the MNE project. Had these projects been permitted they would have completely circumvented the Bangor area, and the MNE project would not have been built. In the United States, the Maritimes pipeline facilities was faced with a sequence of reviews by the Federal Energy Regulatory Commission (FERC). In addition to uncertainty about whether the pipeline would be approved and constructed, there was concern about whether there would be adequate resources available for Maine consumers¹¹ on the MNE facilities. In fact, so uncertain were the prospects for the MNE facilities in the Mid-Maine proceeding the OPA questioned the need to rule on the Mid-Maine petition.¹² Under such uncertain circumstances, it was appropriate for the Commission to condition the Mid-Maine certificate on the production of a more definite resource plan than it was able to provide at that time.

A second distinguishing characteristic is the nature of the applications themselves. The testimony and application put forth by Mid-Maine Gas Company were devoid of any discussion of gas supply issues, contained little

detail Mid-Maine's rate structure, and discussed unbundled rates for large customers only. By contrast, Bangor Gas described in some detail its approach to gas supply. Bangor Gas has determined that preliminarily, it will be more economical to contract for gas supply at the city gate instead of contracting for gas supplies at the wellhead and reserving pipeline capacity. The Company has satisfied (and us) that sufficient capacity and gas supplies will be available to operate this way. During the technical conference of January 26, Mr. Rea, representing Bangor Gas, explained that discussions with MNE were in progress, that there was adequate capacity and supply available to serve the Company's needs, and that Bangor Gas had received a precedent agreement from MNE. These statements were later corroborated by Mr. Harwood, representing MNE. In addition, Mr. Van Lierop provided city gate gas prices quoted from marketers. The applications of Mid-Maine and Bangor Gas are further distinguished by the level of detail provided regarding rate plans. Bangor Gas proposes a specific inflation based index for the non-gas component of its rates, and commits to provide unbundled transportation service for all classes of customers. Combining the indexed non-gas rate with the city gate prices quoted to Mr. Van Lierop provides an estimate for initial burner tip gas costs to Bangor customers that is competitive with the estimated fuel oil price.

In summary, we do not believe it is necessary for Bangor Gas to provide executed precedent agreements or contracts prior to the issuance of a certificate. What is important is whether customers of Bangor Gas will receive

- - - - -

11 See Maritimes and Northeast Pipeline L.L.C., Application for Certificate of Public Convenience and Necessity, Docket No. 97-809-000 and 97-810-000.

12 At the Public Advocate's request, the Commission took official notice of its findings in Northern Utilities, Inc., Proposed Precedent Agreement with Portland Natural Gas Transmission System for Transportation Service, Docket No. 96-558, Order dated December 19, 1996, that there was substantial uncertainty surrounding the timing and availability of various gas supply projects including MNE. See Mid-Maine Order at p. 15, n. 3.

safe and reliable service at reasonable rates. Prior to the unbundling of rates into transportation and commodity service in the gas industry and competitive retail access in the electric industry, utility resource plans were reviewed to assure that monopoly services were being provided to consumers at the lowest possible cost, and that the sources of supply were reliable. With the advent of competitive retail access in the electric and gas industries, consumers are no longer required to purchase supplies from a single monopoly entity. If the prices for bundled service are unreasonable, consumers may purchase supplies from competitive suppliers. What remains is to ensure that the supply of resources provided to consumers will be safe and reliable. The level of regulatory uncertainty associated with the Maritimes and Northeast Pipeline has diminished substantially in the year and a half since Mid-Maine Gas filed its application with this Commission. Discussions with the Bangor Gas witnesses and with Mr. Harwood in the technical conferences have provided ample assurance that adequate capacity to serve the needs of the Bangor area will be available on the MNE facilities. In addition, commodity supplies of gas and storage services will be available to Bangor Gas (and presumably to marketers) through back haul from sources other than the Sable Offshore Energy Project (SOEP). Given the current state of the gas industry in Maine, we believe Bangor Gas has provided the necessary demonstration required in Mid Maine:

A resource plan indicating its source(s) of supply or the availability of unbundled service and demonstrating such source or unbundled supply option is adequate to serve the needs of its proposed customers.

See Mid-Maine Order at 20.

5. Ability to Provide Service at Just and Reasonable Rates

Finally, we review Bangor Gas's proposal to determine whether Bangor Gas has adequately shown that it will be able to provide service at just and reasonable rates. The Bangor Gas proposal is unusual in one regard: under its multi-year rate plan, Bangor Gas proposes to charge customers not on the basis of cost of service, but with a rate capped at an estimated price of alternative fuel. Consequently, rates do not depend on the start-up company's cost structure. Since Bangor Gas's multi-year rate plan does not tie cost to rates, our review of these aspects of Bangor Gas's proposal is not as critical as if rates were directly related to cost; the issue of whether Bangor Gas will be able to provide service at just and reasonable rates depends on the price cap structure it has proposed. OPA's arguments concerning the rate plan submitted by Bangor Gas (which we have approved in our order dated June 26, 1998 imply that rates for Bangor Gas must be linked directly to cost regardless of the practical

limitation on prices imposed by competition from other fuels, especially oil. We disagree. Applying traditional rate of return regulation to a start-up gas utility, whose costs and markets are at best uncertain, might easily discourage the investment in gas distribution infrastructure that is likely to bring significant benefits to the Bangor area and ultimately throughout Maine. Under the Bangor Gas approach, the Commission will, after ten years, have the opportunity to assess whether costs and prices should be linked more directly. In the meantime, customers will have the benefits of competition from a new energy source, and will be assured (by the operation of the price cap) that they will be no worse off than they are today.

The price of competitive fuels provides a market-related limit to how high Bangor Gas will be able to price its service. Bangor Gas's proposal to price its service on an attractive comparative basis to those fuels with which it will compete for customers is designed to assist it in developing its customer base. Growth of the utility's customer base will enable the venture to recover its investment in the system over time.

Finally, Mr. Van Lierop demonstrates that Bangor Gas's rates compare favorably with gas rates elsewhere in New England. Rate comparisons done by Commission Advisory Staff using readily available data confirm that, under its proposal, Bangor Gas is capable of serving Maine customers at rates that are comparable to others existing and imposed in the region. See Appendix B to this Order: Rate Comparison.

6. Summary and Conclusion

Bangor Gas has clearly met and exceeded the standards articulated in Mid-Maine to receive a conditional certificate. Bangor Gas's engineering plan is sufficiently complete to satisfy the requirement for a grant of full authority. Bangor Gas's resource plan is sufficiently complete at this state of the planning process and is also adequate in the context of Bangor Gas's proposed rate plan, which we have also approved.¹³

Finally, as discussed above, while Bangor Gas's financing capability is clear and its options are reasonable, we will await the Company's specific financing proposal before granting 35-A M.R.S.A. ss. 902 approval.

We conclude that Bangor Gas has made an adequate showing on the whole for us to grant it full service authority, subject to further review of those elements noted herein.

VI. REORGANIZATION AND AFFILIATED INTERESTS

Bangor Gas seeks approval of certain affiliated transactions and exemptions from others. Specifically, the Company seeks approval of a Support Services Agreement (SSA) between Bangor Gas, Energy Pacific LLC and Bangor Hydro. The SSA was created pursuant to the Operating Agreement entered into among the companies, and is designed to enunciate the terms under which certain services needed to operate the business will be provided to Bangor Gas by BHE or Energy Pacific. The Company states that the agreement attempts to incorporate

- - - - -

¹³ See Order dated June 26, 1998. We do not require, nor is it realistic to expect, at this point in time, signed supply agreements. However, if Bangor Gas begins charging bundled rates based on cost of service, we may require such agreements.

the policies of the Commission as evidenced in prior Commission approvals of similar instruments.

Bangor Gas also seeks an exemption of the SSA between itself and Energy Pacific from the provisions of ss.707. The Company states that Energy Pacific is an unregulated out-of-state affiliate that will be providing services in a competitive market, and the Company asserts that granting an exemption will not be adverse to the public interest. In addition, the Company seeks an exemption from the requirements of 35-A M.R.S.A. ss. 708 for any reorganization relating to the creation of an affiliated interest with regard to Bangor Gas and its non-Bangor Hydro affiliates, including Pacific Enterprises, Bangor Pacific and Energy Pacific LLC.

We find that the affiliated interest approvals and exemptions requested by the Company are reasonable and we approve them. Consistent with our past practice, we grant exemptions of certain categories of affiliate interest dealings. Consistent with Chapter 820 of our Rules, we grant no exemption to any affiliated interest transaction that involves an arrangement with Bangor Gas, that is, one that would result in an accounting entry on Bangor Gas's books of account. Similarly, while we grant a limited exemption from the reorganization requirements contained in ss.708 as explained below, we grant no exemption for any reorganization involving Bangor Gas or any affiliate that is likely to

provide any goods or services to Bangor Gas.

The SSA generally follows the principles set forth in the proposed Chapter 820, and the Agreement contains a clause that indicates it will be modified, if necessary, in order to remain in compliance with Chapter 820 as it is finally adopted. We find that the SSA is reasonable, and it provides a reasonable basis for the charges for the services that are to be provided under it, and we approve it with the caveat that it must be modified, if necessary, to remain in compliance with Chapter 820 as it is finally adopted.

Because the record is not well developed as to the nature of the transactions for which Bangor Gas seeks an exemption, we will allow only those exemptions that are consistent with our regulatory practice to date.¹⁴ Specifically, we will not grant a ss.707 exemption for any transaction or arrangement that involves the provision of goods or services between Bangor Gas and Energy Pacific, or between Bangor Gas and Bangor Hydro, unless the service provided is utility service that is provided at a tariffed rate. This is consistent with the proposed SSA which we approve.

Finally, we grant a limited exemption from 35-A M.R.S.A. ss. 708 for any reorganization undertaken by Energy Pacific and its affiliates or by BHE that does not involve Bangor Gas.¹⁵ This limited exemption does not apply to any reorganization that involves an affiliate that is likely to enter into a

- - - - -

14 Our ruling does not prohibit Bangor Gas from seeking additional exemptions if it so desires.

15 As an electric utility operating in Maine, BHE is currently required to obtain section 708 approval for its reorganizations.

transaction or arrangement with Bangor Gas. Further, this exemption does not apply to any affiliate that becomes a public utility or would otherwise be subject to our jurisdiction in Maine.

VIII. STIPULATION

Bangor Gas filed a stipulation among three of the parties to this case with its Motion. The signatories were Bangor Gas, BHE, and MNE. The stipulation recommends that the Commission approve Bangor Gas's requests for approvals and exemptions relating to granting it full (unconditional) authority to serve in the greater Bangor area. The OPA and CMP opposed the Stipulation.

We will not independently consider the stipulation. The fact that the stipulation is contested requires us to determine whether there is a genuine issue of material fact with respect to the conclusions contained in the stipulation. See Chapter 110, section 744(d). If we determine that there are disputed issues of material fact, we may hold a hearing or reject the stipulation and resume the adjudicatory process. See Ch. 110, section 744(e). Because we have considered, and resolved, all disputed issues of fact raised here, further review of the stipulation is unnecessary.

Furthermore, as we have previously stated,¹⁶ we are not inclined to approve stipulations made solely among parties holding the same or very similar interests. We are more likely to conclude that stipulations among parties with a broad cross-section of interests do justice to the competing public and private interests in the case. The stipulation presented here falls within the former category; the interests of Bangor Gas, BHE and MNE are not sufficiently diverse. See Central Maine Power Company, Re: Proposed Increase in Rates, Docket No. 92-345(II), Detailed Opinion and Subsidiary Findings (January 10, 1995) at 2-3.

IX. CONCLUSION

For the foregoing reasons, we

O R D E R

1. That Bangor Gas Company L.L.C.'s Motion to Strike or Exclude Portions of the Testimony of Scott Rubin on behalf of the Public Advocate is denied;

2. That Bangor Gas Company L.L.C.'s petition for approval of full service authority to provide service in the municipalities of Bangor, Brewer,

- - - - -

16 See Central Maine Power Company, Petition for Approval of Affiliated Interest Transactions and Reorganization of FiveCom Entities, Docket No. 98-319, Order (June 11, 1998) at p. 5.

Veazie, Old Town and Orono is granted, subject to the filing and approval of its actual financing proposal pursuant to 35-A M.R.S.A. ss.902 and any other requirements of this Commission;

4. That the Support Services Agreement between Bangor Gas Company L.L.C. and Bangor Hydro Electric and Energy Pacific is approved;

5. That certain reorganizations among affiliates of Energy Pacific and Bangor Hydro Electric Company are exempted from Commission review under 35-A M.R.S.A. ss.708, as described herein;

6. That Bangor Gas may commence construction prior to receiving financing approval; and

7. That this Order does not confer on Bangor Gas guaranteed ratemaking treatment of costs it incurs in developing its distribution system, obtaining gas supply commitments, and does not constitute a finding of prudence for any act or practice in which it engages in its endeavor to establish a local distribution company.

Dated at Augusta, Maine this 30th day of June, 1998.

BY ORDER OF THE COMMISSION

Dennis L. Keschl
Administrative Director

COMMISSIONERS VOTING FOR: WELCH
 NUGENT

COMMISSIONER HUNT DID NOT PARTICIPATE IN THIS DECISION.

This document has been designated for publication.

APPENDIX A: PROCEDURAL HISTORY

On October 20, 1997, Bangor Gas Company, L.L.C. (Bangor Gas) filed a request for a protective order to allow it to file confidential information with the Commission, initiating this docket. The Examiners issued a Procedural Order Issuing Temporary Protective Order on October 28, 1997.

On October 29, 1997, Bangor Gas and Bangor Hydro Electric Company (BHE) filed their Consolidated Petitions consisting of Bangor Gas' Petition for Approval to Furnish Gas Service in the State of Maine, pursuant to 35-A ss.ss. 2104 and 2105, and BHE's Application for approval of or exemption from various affiliated transactions and reorganization, pursuant to 35-A M.R.S.A. ss.ss. 707 and 708. Bangor Gas seeks authority to provide natural gas service in the municipalities of Bangor, Brewer, Old Town, Orono and Veazie.

Bangor Gas's filing contains the prefiled testimonies of Andrew Rea, Vice President of Energy Pacific; Frederick S. Samp, Vice President - Finance and Law, for BHE; Carroll R. Lee, Senior Vice President and Chief Operating Officer, BHE; Johannes Van Lierop, Director of Governmental and PUC Regulatory Affairs for Southern California Gas Company (SoCalGas); and David G. Schiller, Technical Operations Manager for Energy Pacific, a joint venture between SoCalGas and Enova (parent company of San Diego Gas and Electric).

In the filing, Bangor Gas and BHE requested that their petitions be consolidated into one proceeding. On November 18, 1997, the Examiners in both dockets jointly issued a Procedural Order Denying Request for Consolidation of the two cases but did commit to scheduling the hearings and technical conferences in both proceedings in a manner that would avoid the need for Bangor Pacific personnel to travel to Maine on different dates.

On November 21, 1997, the Commission issued a Notice of Proceeding and scheduling a preheating conference for December 9, 1997 in this docket. At the prehearing conference, the Examiner granted the interventions of the Office of the Public Advocate (OPA), Bangor Hydro- Electric Company (BHE), Northern Utilities, Inc. (Northern), Mid-Maine Gas Utilities Inc. (Mid-Maine), Central Maine Power Company (CMP), Maritimes & Northeast Pipeline, L.L.C., and the Maine Oil Dealers Association (MODA).

On January 2, 1998, the Examiner issued a Prehearing Conference Report and Procedural Order establishing a schedule for this case. That Report also established the scope of this proceeding, following the policy stated by the Commission in Mid-Maine Gas Utilities Inc., Request for Approval to Furnish Gas Service, Docket No. 95-465, Order (March 7, 1997). The Examiner also issued a Clarifying Procedural Order on January 12, 1998 regarding scope and intervention.

The OPA filed the prefiled direct testimony of its consultant, Scott J. Rubin, on February 3, 1998.

On February 6, 1998, the Examiners in Docket Nos. 97-795 and 97-796 jointly issued a Procedural Order Revising Schedules.

On February 11, 1998, Bangor Gas filed a Motion for Partial Summary Judgment and to Strike or Exclude Portions of the Testimony of Scott Rubin on Behalf of the Public Advocate and Incorporated Memorandum, as well as its Statement of Material Facts Not in Dispute, pursuant to Rule 7 and 56 of the Maine Rules of Civil Procedure. In addition, a stipulation among Bangor Gas, BHE and MNE was filed with the motion. On February 13, 1998, the OPA filed a Motion for Expedited Comparative Certificate Proceeding requesting that the Commission render a decision by April 10, 1998. The Examiners issued a Procedural Order requesting that parties responses to these motions be filed by February 23, 1998. On February 19, 1998, the OPA filed an amendment to its motion to suggesting that the comparative proceeding be a 120- or 180- day proceeding to allow adequate time in which to conduct the proceeding. OPA, CMP, and Northern filed comments regarding the motions on February 23rd. CMP and Northern took no position on the OPA's motion. CMP opposed Bangor Gas's motion.

On February 20, 1998, Bangor Gas filed the original sworn affidavits of Frederick S. Samp, Andrew R. Rea, Johannes Van Lierop, Carroll R. Lee, David G. Schiller and Douglas S. Morrell in support of Bangor Gas's Motion for Partial Summary Judgment, placing under oath the testimony, exhibits, data responses, and testimony at discovery conferences.

Technical conferences for the purpose of oral discovery were held on January 26 and February 25, 1998.

Bangor Gas filed a request to have Protective Order No. 1 extended to cover certain financing documents which it intended to file to support its

request for ss.902 financing approval. The Examiner granted Bangor Gas's request by procedural order dated February 27, 1998. Bangor Gas filed the confidential financing documents on March 4, 1998.

On March 3, 1998, the Bangor City Manager filed a letter with attached Bangor City Council Resolve 98-104, urging the Commission to select Bangor Gas to serve the greater Bangor area.

On February 27, 1998, the Examiners issued a Procedural Order inviting further comments of the parties on issues raised by the pending motions. Bangor Gas, CMP, Northern, OPA, BHE and MNE filed responsive comments on March 5, 1998.

An Examiners Report on the pending motions and stipulation was issued March 9, 1998, exceptions were due March 12, 1998, and deliberations on the Report were scheduled for March 13, 1998. The March 13th deliberations on the OPA's Motion were rescheduled for April 28, 1998.

On March 16, 1998, OPA filed a letter indicating that it had agreed not to contest Bangor Gas on the issues of engineering, financing and gas supply, although OPA continued to support the comparative proceeding selection process.

On March 17, 1998, Bangor Gas submitted an earnings sharing proposal as an alternative to its original rate plan proposal. A hearing was held on March 18, 1998 on issues regarding Bangor Gas's rate plan proposals; Bangor Gas explained its alternative earnings sharing proposal. In addition, CMP conducted cross-examination on issues relating to Bangor Gas's fitness to receive service authority (i.e. non-rate plan issues).

On March 27, 1998, CMP filed a brief on the certificate (non-rate plan) issues that were explored in the hearing. Bangor Gas filed its reply brief on non-rate plan issues on April 1, 1998. Rate plan briefs and reply briefs were filed on April 1st and 10th, respectively, by OPA, CMP and Bangor Gas.

The Commission held Oral Argument on the motions on April 2, 1998 and subsequently requested further comment from parties on issues raised by Northern regarding service territory boundaries and finding need in areas with differing degrees of service and service authority.¹⁷ Bangor Gas, CMP, OPA, MNE and Northern filed further comments on these issues on April 17th and 21st.

The Commission held deliberations on April 28, 1998 on the OPA's Amended Motion for Comparative Proceeding.

An Examiners' Report on the rate plan was issued May 4, 1998. Exceptions were filed by OPA and CMP. Bangor Gas filed a letter suggesting a compliance proceeding to develop the rate change notice requirement. The Commission deliberated and approved the certificate issues and proposed rate plan on May 18, 1998.

- - - - -

17 Northern had also raised these issues in its Motion for Reconsideration of Award of Conditional Authority in Central Maine Power Company, Petition for Approval to Furnish Gas Service in and to Areas Not Currently Receiving Natural Gas Service, Docket No. 96-786.

APPENDIX B: RATE COMPARISONS

Note: Rate class definitions may differ.

BANGOR GAS

Customer Class	Bundled Rate	Non-gas Rate
R	70.8 cents per therm	35.9
Small C&I	59.7	24.8
Large C&I	57.5	23.7

(Source: Van Lierop, p. 11-13. Assumes gas cost of 35.0 cents per therm. Includes customer charge, unitized for standard size customer.)

NORTHERN UTILITIES (Non-gas rate, exclusive of customer charge (from tariffs).)

R	42.45	(50)	29.98		
C	37.84	(100)	27.70	(1000)	23.88
I	20.52	(5000)	19.51	(20000)	16.90
XLV Summer	6.93		Winter		16.43

NORTHERN UTILITIES (Non-gas rates, including non-gas portion of customer charge, applied to BGC's standard size customer.)

R	37.2
C	33.7
I	27.9

NORTHERN UTILITIES (Bundled rate (average effective))

R	78.8
C	71.4
I	53.1

(Source: EIA, 1996 data. I includes interruptible sales.)

NEW ENGLAND (Bundled rate (average effective - calculated by EVM from same EIA data)).

R	90.7
C	69.4
I	51.5

REED MAINE MARKET STUDY (Non-gas rate)

R	47.5
C	45.5
I	20.0

STATE OF MAINE
PUBLIC UTILITIES COMMISSIONCONFIDENTIAL
PETITION OF BANGOR GAS COMPANY, L.L.C.
FOR APPROVAL TO FURNISH GAS SERVICE IN THE
MUNICIPALITIES OF HAMPDEN, HERMON, MILFORD,
BRADLEY, ORRINGTON, EDDINGTON AND BUCKSPORT, IN THE
STATE OF MAINE.
35-A MRSA ss.2104, 2105

MAINE PUC DOCKET NO. 98- 468

INTRODUCTION

Pursuant to Sections 2104 and 2105 of 35-A MRSA, Bangor Gas Company, L.L.C. ("Bangor Gas" or "Applicant") hereby files this Petition for Approval to Furnish Gas Service, and related authorizations necessary to construct, install, own, operate and maintain certain new natural gas pipelines and ancillary facilities, and to operate as a local distribution company ("LDC") in the following Maine municipalities: Hampden, Hermon, Milford, Bradley, Orrington, Eddington and Bucksport, in the State of Maine (the "Surrounding Communities"). These municipalities are not currently receiving natural gas service from any supplier.

On May 18, 1998, in Docket 97-795 Bangor Gas received full authority and unconditional certification from the Maine Public Utilities Commission to construct, install, own, operate and maintain a local gas distribution company in Bangor, Brewer, Old Town, Orono and Veazie (the "Core Communities") (hereinafter referred to as "Authorization."

In support of this Petition, Bangor Gas will show as follows:

I
EXECUTIVE SUMMARY

In December 1996, Bangor Hydro-Electric Co. and Pacific Enterprises began to examine the feasibility of constructing and operating an LDC in the Core Communities. This was prompted by Maritimes and Northeast Pipeline, LLC's ("Maritimes") proposal to build a natural gas pipeline from the Sable Offshore Energy Project near Sable Island, Nova Scotia through Maine to an interconnect with the Tennessee Gas pipeline at Dracut, Massachusetts -- a project which is scheduled to be completed in late 1999. Because the pipeline would run very close to Bangor, it was believed that construction and operation of a natural gas LDC in the Bangor area would, for the first time, be economically feasible. The study prepared by Bangor Hydro-Electric and Pacific Enterprises confirmed this belief. Consequently, on August 27, 1997, Bangor Gas Company, L.L.C. was formed as a Maine limited liability company pursuant to an agreement (amended on October 27, 1997) between Bangor Hydro-Electric Company ("Bangor Hydro"), and Bangor Pacific ("Pacific") for the purpose of designing, engineering, financing, constructing, testing, managing, marketing and operating an LDC in the greater Bangor area.

On October 29, 1997 Bangor Gas filed, inter alia, a Petition for unconditional authority to provide LDC service in the Core Communities. After discovery, technical conferences and hearings, on May 18, 1998 the Maine Public Utilities Commission granted the Petition. In its Authorization, the Commission also authorized Bangor Gas to charge rates to customers in the Core Communities pursuant to a ten-year rate plan (the "Rate Plan"). Bangor Gas has commenced construction of the LDC. Service to the Core Communities will commence in the late fall of 1999, assuming timely completion of the Maritimes pipeline.

At this time, Bangor Gas desires to obtain unconditional authority to construct a gas system in, and full authority to provide service to, the Surrounding Communities. These communities are adjacent to or in close proximity to the Core Communities. This proposal represents a logical and economical extension of the LDC service previously authorized by the Commission. In addition, depending on the ultimate location of the Maritimes pipeline Bangor Gas proposes to construct a lateral directly to the Maritimes pipeline in Orrington.1

As it has in the past, Bangor Gas looks forward to working with the Commission, the State and municipalities, potential customers, and others to accomplish the construction of the facilities and the provision of local natural gas service to the Surrounding Communities in the most efficient and expeditious manner.

In light of the fact that the Commission has, in its Authorization, resolved most all of the issues relevant to the issuance of an unconditional certification to Bangor Gas as requested in this Petition, (including all issues relevant to the Rate Plan), and in light of the Commission's previously stated position regarding standards for approving LDCs in areas in which there is no gas service, there are few, if any, issues for litigation in this case.

- -----

1 On or about June 18, 1998, FERC issued its final environmental impact statement on the proposed Maritimes pipeline. Bangor Gas will study the EIS and evaluate construction of a lateral from Orrington in light of the EIS. Bangor Gas intends to file an update to the supporting material by July 8, 1998.

For this reason, and in order to promote administrative efficiency, Bangor Gas has proposed a procedure and schedule for this case that would screen out those issues that have already been resolved by the Commission, and would require any party to identify in good faith any genuine issues of material fact in dispute. This proposed procedure and schedule is described in Exhibit A, hereto. Bangor Gas believes that proceeding in this fashion would expedite the processing of this case, save costs and result in administrative efficiency. Because Bangor Gas believes that there are no or very few genuine issues of material fact in this case, it has also filed with this Petition a Motion for Full or Partial Summary Judgment.

II GENERAL

The exact legal name of the applicant is Bangor Gas Company, L.L.C. Bangor Gas is a limited liability company organized and existing under the laws of the State of Maine and has its principal place of business at 33 State Street, Bangor, Maine. Bangor Gas is being operated pursuant to an Operating Agreement, as Amended and Restated, dated October 27, 1997.

The names, titles, and mailing addresses of the persons to whom correspondence and communications concerning this Petition should be addressed are:

Donald C. Liddell, Esq.
Pacific Enterprises
633 W. Fifth Street, Ste. 5200
Los Angeles, CA 90051
(213) 895-5166

Alan G. Stone, Esq.
Clifford, Stone & Hermon
640 Main Street
Lewiston, Maine 04243-0590
(207) 784-7381

Frederick S. Samp, Vice President
Bangor Hydro-Electric Company
P. O Box 932
Bangor, Maine 04402-0932
(207) 941 6653

Petitioner also requests that the following persons be placed on the service list:

Andrew R. Rea
Sempra Energy Utility Ventures
633 W. Fifth Street, Ste. 56K
P.O. Box 4690
Los Angeles, CA 90051
(213) 895-5734

Douglas S. Morrell
Bangor Hydro-Electric Company
P.O. Box 932
Bangor, Maine 04402-0932
(207) 990-6980

Kimball L. Kenway, Esq.
David P. Silk, Esq.
Curtis Thaxter Stevens Broder & Micoleau LLC
One Canal Plaza
P.O. Box 7320
Portland, Maine 04112-7320
207-775-2361

III THE MEMBERS

Bangor Pacific, a wholly-owned subsidiary of Sempra Energy Utility Ventures, formerly Energy Pacific and Penobscot Gas Company Inc., a wholly-owned subsidiary of Bangor Hydro-Electric Company, are the Members of Bangor Gas.

IV DESCRIPTION OF PROPOSED OPERATION AND SERVICE

Bangor Gas requests authority to construct, install, own, operate and

maintain pipelines and ancillary facilities in and provide natural gas service in and to Hampden, Hermon, Milford, Bradley, Orrington, Eddington and Bucksport, Maine (the Surrounding Communities). Natural gas service is currently not being provided to any portion of these municipalities.

V
DESCRIPTION OF PROPOSED FACILITIES

Bangor Gas has developed engineering studies and plans in support of the construction and operation of the LDC in the Surrounding Communities. The engineering and construction of the system is described more fully in the prefiled direct testimony of Andrew R. Rea and David G. Schiller, both of which are submitted herewith.

It is estimated that the Maritimes Pipeline will be in service by November of 1999. Bangor Gas has filed a construction schedule as part of its engineering report relating to the Surrounding Communities. The cost of these facilities is estimated to be approximately \$10.9 million dollars.

VI
SUPPLY

Bangor Gas' resource plan, and the experience of Pacific Enterprises, and its affiliates including Sempra Energy Utility Ventures (formerly Energy Pacific), the Southern California Gas Company, and Sempra Energy Trading (formerly AIG Trading Corporation) in purchasing and managing gas supply, is described in the prefiled direct testimony of Andrew Rea, attached hereto. This is the same gas supply plan the Commission found to be reasonable in its Authorization.

VII
COMPLIANCE WITH STATUTORY STANDARDS FOR AUTHORIZATION

1. Application for Authority to Serve

This Commission has recently set forth the legal standards and evidentiary showing necessary for an LDL to obtain authority under 35-A MRSA ss.2104 and 2105, and in its Authorization has made findings and conclusions relative to Bangor Gas which effectively resolve, as a matter of law, many of the issues in this case.

Bangor Gas satisfies all of the following standards for unconditional certification:

A. There is a public need for the proposed service.

This is met by the fact that no natural gas distribution service is being provided in the Surrounding Communities. Although in the late 1960's the Commission authorized Northern Utilities Inc. ("Northern") to provide gas service to the Surrounding Communities, Northern is not serving those areas, and has not taken the position in other cases that its authority in these particular municipalities raises the bar to a second applicant seeking authority. See Central Maine Power Company, Docket 96-786, Phase II, Order on Reconsideration (March 11, 1998). Accordingly, the need standard has been met.

B. The applicant has the technical ability to provide the service.

The Commission has made the determination that Bangor Gas has the technical ability to provide natural gas service in the Core Communities. Authorization, supra. This resolves the issue of Bangor Gas's technical ability to provide the service to the surrounding communities.

Bangor Gas' members have substantial experience in constructing facilities and providing service similar to that being proposed, and possess general and relevant educational and engineering qualifications. Pacific Enterprises is, in turn, the parent of Southern California Gas Company, one of the largest natural gas distribution companies in the United States, and has been involved in the construction and operation of LDC systems in the United States and internationally. Penobscot Gas Company's parent, Bangor Hydro, has been engaged in the energy business and has been constructing facilities and operating an electric system in the Bangor area for over seventy years.

The Members' parents have demonstrated competence, through involvement in regulatory proceedings at the federal level and throughout the United States, in recognizing the need for and selecting consulting, engineering and construction assistance, or affiliation with competent and experienced providers. Bangor Hydro has regularly appeared before practically all administrative regulatory agencies in Maine, and has been involved in Federal regulatory proceedings, as part of its operation as a public utility. Pacific Enterprises, likewise, has similar experience elsewhere in the nation and

internationally. They have expert knowledge of industry practice and understanding of local conditions and requirements, and have established reputations for credibility and accuracy relating to such subjects. Pacific Enterprises has established and developed company standards of conduct or procedures to be implemented to assure safety and reliability of service.

C. Bangor Gas possesses adequate financial resources to complete the project.

Bangor Gas is financially capable of providing safe and reliable service at just and reasonable rates. The Members' parents have substantial experience and ability in financing projects of similar size and complexity. The ability and plans of the applicant to finance the project is described in the prefiled direct testimony and exhibits of Andrew R. Rea and Frederick S. Samp, attached hereto. The Commission has made the determination that Bangor Gas has adequate financial resources to complete the project in the Core Communities, which resolves the issue of financial ability to complete the project in this case. Authorization.

D. The Financing Plan is reasonable.

Bangor Gas' financing plans for construction and operation of the system in the Surrounding Communities are discussed by Mr. Rea and Mr. Samp in their prefiled testimony. Bangor Gas is seeking financing approval in the same manner as authorized in 97-795. As discussed in the prefiled testimony of Mr. Rea and Mr. Samp, through either internal financing or third party financing Bangor Gas will raise up to \$10.9 M to pay for the construction costs for extending the system to the Surrounding Communities. In Docket 97-795, Bangor Gas received approval to issue up to \$21M in debt (subject to review of the actual debt instrument) and also to obtain capital contributions up to \$17.5M. Bangor Gas seeks approval to increase the debt ceiling to \$27.54 M and the capital contribution ceiling to \$22.95M. Included in this filing is an Application for Financing Authority submitted pursuant to 35-A M.R.S.A. ss. 902.

E. Bangor Gas' Engineering Plans are reasonable.

The engineering plans and issues of safety are discussed in the prefiled testimony and exhibits of Mr. Schiller. These plans follow those which the Commission found to be reasonable in Docket 97-795. Accordingly, Bangor Gas seeks similar approval here.

F. Bangor Gas' Resource Plan is reasonable.

The Resource Plan is discussed in the prefiled testimony and exhibits of Mr. Rea. It is the same resource plan as was approved by the Commission as reasonable in Docket 97-795. Accordingly, Bangor Gas seeks similar approval as that issued by the Commission in 97-795.

4. Bangor Gas has the ability to serve at just and reasonable rates.

Bangor Gas proposes to provide service pursuant to the Rate Plan approved by the Commission in Docket 97-795. In that Docket, the Commission found that Bangor Gas Company has the ability to provide service at just and reasonable rates

VII
SUMMARY OF PREFILED DIRECT TESTIMONY
LIST OF EXHIBITS AND ATTACHMENTS

Prefiled Direct Testimony:

Bangor Gas has filed in support of this Petition, the Prefiled Direct Testimony of the following individuals.

1. Andrew R. Rea. Mr. Rea is Vice President of Sempra Energy Utility Ventures, formerly Energy Pacific, a joint venture of Pacific Enterprises and Enova Corporation, and Senior Vice President and Chief Operating Officer of Bangor Gas Company. Mr. Rea will outline the business plan of Bangor Gas relative to the Surrounding Communities. Mr. Rea will also describe the Company's resource plan, and Sempra Energy Utility Ventures' interest and involvement in financing the project. Mr. Rea addresses how the Applicant has satisfied the criteria for the issuance of a certificate of need, as set forth by the Maine Public Utilities Commission in the Bangor Gas case. He further explains that Bangor Gas intends to charge the same rates in the Surrounding Communities as those to be charged in the Core Communities, all subject to the multi-year rate plan recently approved by the Commission.

2. Frederick S. Samp. Mr. Samp is Vice President and Chief Financial Officer of Bangor Hydro and Chief Financial Officer of Bangor Gas. Mr. Samp will discuss Bangor Gas' plan for financing the construction and operation of an LDC

in the Surrounding Communities. He will also testify about the project costs and explain project financing.

3. David G. Schiller. Mr. Schiller is employed by Sempra Energy Utility Ventures as Technical Operations Manager. Mr. Schiller will explain the engineering and construction of the project in the Surrounding Communities.

VII
RELIEF REQUESTED BY BANGOR GAS

WHEREFORE, for the reasons set forth herein above, Bangor Gas respectfully requests the Commission to:

- (1) Grant Bangor Gas, pursuant to 35-A M.R.S.A. ss.ss.2104 and 2105, unconditional certification and full authority to construct and operate necessary facilities and to furnish natural gas service in Hampden, Hermon, Milford, Bradley, Orrington, Eddington and Bucksport, in the State of Maine, and
- (2) Confirm the applicability of the Bangor Gas multi-year rate plan to the rates to be charged in the above municipalities, and
- (3) Grant approval to the proposed financing as described herein, pursuant to 35 M.R.S.A. ss.901, and
- (4) Grant such other and further relief as shall be just and reasonable.

DATED: June 24, 1998.

Respectfully submitted,
Bangor Gas Company, L.L.C.

/s/ Alan G. Stone

By: Alan G. Stone, Esq.
Clifford, Stone & Herman
640 Main Street
Lewiston, Maine 05243-0590
(207) 784-7381
Its Attorneys

REDACTED VERSION

STATE OF MAINE
PUBLIC UTILITIES COMMISSION

DOCKET NO. 98-468

OCTOBER 22, 1998

BANGOR GAS COMPANY, L.L.C.,
PETITION FOR APPROVAL TO PROVIDE GAS
SERVICE IN THE MUNICIPALITIES OF HAMPDEN,
HERMON, MILFORD, BRADLEY, EDDINGTON,
ORRINGTON, AND BUCKSPORT

ORDER

WELCH, CHAIRMAN; NUGENT AND DIAMOND, COMMISSIONERS

I. SUMMARY

We grant Bangor Gas Company, L.L.C.'s (Bangor Gas) authority to provide natural gas service in the municipalities of Hampden, Hermon, Milford, Bradley, Eddington, Orrington, and Bucksport as proposed.

II. PROCEDURAL HISTORY

On June 24, 1998, Bangor Gas filed its petition for authority to provide service to seven municipalities: Hampden, Hermon, Milford, Bradley, Eddington, Orrington, and Bucksport (Surrounding Communities). These seven municipalities are located adjacent to five municipalities in the greater Bangor where we previously authorized Bangor Gas to serve, i.e. Bangor, Brewer, Orono, Old Town and Veazie (Core Communities). See Bangor Gas Company, L.L.C., Petition to Provide Gas Service in the Greater Bangor Area, Docket No. 97-795, Order Granting Unconditional Service Authority (June 30, 1998) (June 30th Order). Bangor Gas provided copies of its filing to the Office of the Public Advocate (OPA) and counsel for CMP Natural Gas (CMP NG), Northern Utilities, Inc. (Northern), Maritimes & Northeast Pipeline LLC (MNE), and the Maine Oil Dealers Association (MODA), all intervenors in Docket No. 97-795.

Bangor Gas included in its filing the prefiled direct testimonies and exhibits of Andrew Rea, Frederick S. Samp and David G. Schiller. Bangor Gas filed both confidential and redacted versions of these testimonies and exhibits. In addition, Bangor Gas filed a proposed schedule for the proceeding and a Motion for Summary Judgment with its petition.

The Hearing Examiner issued Protective Order No. 1 on June 23, 1998 granting confidential treatment to certain business information contained in Bangor Gas's filing. Specifically, information relating to system design or engineering of the proposed system, market research or marketing information, projected costs, revenues, and earnings, and its proposed terms of debt capital, are afforded confidential treatment in this proceeding. In addition, similar confidential information provided in Docket No. 97-795 that may be used in this proceeding is also afforded confidential treatment under this protective order.

The Examiner issued a Notice of Proceeding and Prehearing Conference on July 1, 1998 by mail to parties in Docket Nos. 97-795 and 96-786 and by publication in newspapers of general circulation in the Bangor area.

A Prehearing Conference was held on July 14, 1998. The Hearing Examiner granted the intervention of the OPA, Bangor Hydro Electric Company (BHE), MODA, Northern, CMP NG, and Maritimes. The Examiner established the schedule for this proceeding by Procedural Order dated July 23, 1998. The schedule included a date for parties to respond to Bangor Gas's Motion for Summary Judgment for disposition in advance of the filing date for intervenor testimony.

On July 13, 1998, Bangor Gas filed affidavits of its witnesses in support of its motion for summary judgment. On July 8th and 23rd respectively, Bangor Gas filed the Supplemental Confidential and Redacted Prefiled Testimony and Exhibits of David G. Schiller and two corrected pages to the Confidential Engineering Report, Exhibit A thereto. On August 6, 1998, Bangor Gas filed Revised Confidential Tables 1 through 5, attachments to the testimony of Andrew Rea.

On August 20, 1998, Northern, CMP, and OPA filed comments in response to Bangor Gas's Motion for Summary Judgment. No party raised any outstanding issues of fact requiring further testimony and hearing. Bangor Gas filed responsive comments on August 24th. By Procedural Order issued on September 1, 1998, the schedule was modified to eliminate further litigation of this case and to allow for the preparation of an Examiner's Report, parties' exceptions, and Commission

decision.

The Examiner's Report was issued on October 5th. OPA filed a letter offering no exceptions and supporting a policy that places the risk of start-up ventures on shareholders on October 13th. The Commission deliberated on October 19, 1998.

III. CONTENTS OF THE RECORD

We incorporate in the record all prefiled testimony and exhibits, discovery, and other filings made in this case, as well as transcripts of the prehearing conference.

IV. STANDARD OF REVIEW

A. MOTION FOR SUMMARY JUDGMENT

Bangor Gas seeks authority to serve in the seven additional municipalities by means of a Commission ruling on its Motion for Summary Judgment that, as a matter of both fact and law, Bangor Gas is entitled to be granted unconditional service authority. CMP argues that a decision on summary judgment is not an appropriate means for the Commission to grant service authority because the Commission must also consider matters other than fact and law, specifically public interest issues, in making its decision. We agree. Public interest issues are an important part of the consideration of whether an entity should be authorized to serve any particular area. See Central Maine Power Company, Petition for Approval to Furnish Gas Service In and To Areas Not Currently Receiving Natural Gas, Docket No. 96-786, Order (August 17, 1998) (CMP).1

In this case, no party has raised issues of fact or law in opposition to Bangor Gas's application for service authority to the surrounding communities. Rather, CMP has raised several public interest issues for our consideration with Bangor Gas's application. See CMP's Comments in Response to Bangor Gas's Motion for Summary Judgment dated August 20, 1998.

Consequently, herein we will address Bangor Gas's application on its merits, not only to allow consideration of public interest matters but also to provide a clearer indication of the basis on which we grant service authority.

B. STATUTORY PROVISIONS

Bangor Gas seeks approval pursuant to 35-A M.R.S.A. ss.2104-ss.2105. Title 35- A Section 2104 requires every gas utility to obtain commission approval before furnishing service in or to any municipality even if no other gas utility is furnishing or is authorized to furnish gas service therein. Section 2102(1) requires a public utility to obtain the approval of the Commission before it may furnish service "in or to any municipality in or to which another public utility is furnishing or is authorized to furnish service ..."

Section 2105(1) further requires the commission to find that public convenience and necessity require a second public utility where a public utility is already authorized to serve. Both sections 2104 and 2105 require us to determine, as a public interest matter, that the proposed service will be provided in a safe and adequate manner at rates that are just and reasonable. See Mid-Maine Gas Utilities, Inc., Request for Approval to Furnish Gas Service, Docket No. 96-465 (Mid-Maine), Order at 6 (March 7, 1997).

An applicant generally has the burden of proof to show that there is a need for service in areas in which it proposes to serve and that it is able to, in a timely manner, provide safe and adequate service at just and reasonable rates. See 35-A M.R.S.A. ss. 1314. However, a previously authorized utility contesting an application can present evidence to the contrary. See 35-A M.R.S.A. ss. 2105(2).

- - - - -

1 In granting Bangor Gas service authority in Docket No. 97-795, we considered the application on its merits rather than on Bangor Gas's Motion for Summary Judgment, finding that there were matters of fact in dispute. Those matters were taken up at a hearing.

C. THE MID-MAINE PRECEDENT

For a grant of conditional service authority for gas utilities, an applicant must establish that 1) public need for the proposed service exists, 2) the applicant has the technical ability to provide the service, and 3) that the applicant has adequate financial resources to complete the project. In addition, these standards must be met in a manner consistent with providing safe and reliable service at just and reasonable rates, to ensure that the project will

be in the overall public interest. For a grant of unconditional service authority, gas applicants must file and receive approval of detailed plans for construction, engineering, and financing before commencing service. See CMP at 9.

V. ANALYSIS OF BANGOR GAS'S APPLICATION

A. CONDITIONAL AUTHORITY

Bangor Gas argues that it has met the standards for a grant of conditional service authority in the surrounding communities as established by this Commission in Mid-Maine. Bangor Gas's overall competence to provide service as a public utility under the Mid-Maine standards for conditional authority to serve is not disputed by any party. The question of whether Bangor Gas has sufficient financial and technical capability to provide service as a public utility was resolved by our findings in Docket No. 97-795. Nothing has been raised in this proceeding to suggest that that conclusion should be changed.

Similarly, a need for service exists because no natural gas service is currently being provided in these municipalities. Northern and CMP Natural Gas also have authority to serve in the surrounding municipalities, but, to date, they are not providing service. In both Mid-Maine and CMP we determined that we would authorize multiple entities to serve an area, thereby promoting the public benefit by encouraging competition among potential providers. Neither Northern nor CMP has raised any issues in this proceeding to suggest that harm will occur if we authorize an additional entity (or, more specifically, Bangor Gas) to provide service to the surrounding municipalities.

B. UNCONDITIONAL AUTHORITY

The remaining elements presented for our review in determining whether to grant Bangor Gas unconditional authority for the surrounding communities involve the specifics of its proposal to construct and operate a system to serve seven additional municipalities. We must determine whether Bangor Gas's engineering proposal, financing plan, and resource plan support a conclusion that Bangor Gas can provide safe and reliable service at just and reasonable rates under the terms of its proposal. We consider these matters below.

Because the proposal in this proceeding simply incorporates additional municipalities into the overall proposal presented and approved in Docket No. 97-795, our review of this petition builds on our review in Docket No. 97-795. Consequently, our review of each aspect of the current proposal begins with a summary of what was proposed and approved in the prior proceeding.

1. FINANCING PLAN

In Docket No. 97-795, Bangor Gas sought authority to issue total membership interests of up to \$17,500,000 in itself as a Limited Liability Company (LLC) in accordance with the terms of the Operating Agreement between the members, that is, Gassub, a wholly owned subsidiary of BHE and Bangor Pacific. These membership interests would constitute the equity in the new company. Bangor Gas also sought authority to borrow up to \$21,000,000 in secured construction loans for a period of up to 18 months. Security for the loans would be the assets of the system as it is constructed. The Company disclosed anticipated loan rates which we found acceptable and indicated that it would pursue construction financing from commercial banking sources or would seek to borrow the funds from an affiliate of Energy Pacific.²

In this petition, Bangor Gas requests authority to increase both its debt and equity components. It requests approval to obtain capital contributions of up to \$22,950,000 from its members and up to \$27,540,000 in secured construction debt. See "Application for Approval of Issue of Securities," appended as Exhibit 3 to the June 23, 1998 filing, at para. 17. The difference between the amounts we approved in Docket No. 97-795 and those contained in this petition is the additional financing amount necessary for the construction of a system into the seven additional municipalities.

In Docket No. 97-795, the Commission approved a securities issuance of up to \$17,500,000 in capital contributions. Bangor Gas is incorrect, however, that we approved \$21,000,000 in secured construction debt for Bangor Gas in Docket No. 97-795, subject to later review of the actual debt instrument. In Docket No. 97-795, we found that Bangor Gas had satisfied the standard we established in Mid-Maine and were confident that the Company would be able to obtain debt financing on reasonable terms. However, we did not grant the debt financing approval sought by Bangor Gas. Rather, we approved the equity portion of the Company's application, allowing Bangor Gas to make capital calls as provided for in the Operating Agreement. We also found that the Company's proposed use of debt financing met the criteria of 35-A M.R.S.A. ss. 901, but stated that we would not approve the actual debt instrument until the Company provides more specific information about the terms and conditions of the loan.

2 This transaction would require our approval as an affiliated interest transaction, or require an exemption from the requirements of 35-A M.R.S.A. ss. 708.

We approve Bangor Gas's request to be allowed an additional \$5,450,000 in capital contributions, up to a total of \$22,950,000. Further, we generally approve Bangor Gas's debt financing plan for up to \$27.54 million as proposed in the current petition. That is, we find Bangor Gas's proposal meets the criteria in 35-A M.R.S.A. ss. 901 but, as we stated in Docket No. 97-795, we will not finally approve the debt financing until we receive the actual debt instrument pursuant to 35-A M.R.S.A. ss. 902.

In sum, we approve Bangor Gas's financing plan for the surrounding communities although we have not finally approved the debt component.

2. ENGINEERING PLANS AND SAFETY

In our June 30th Order in Docket No. 97-795, we found that the engineering plans and cost estimates provided by Bangor Gas in support of its first certificate application provided us sufficient information to find that its engineering plans were reasonably designed to provide safe and adequate service. The support provided here for its certificate application to serve the surrounding communities is of a similar nature and is likewise sufficient for our purposes here. No party to this proceeding has disputed any aspect of its engineering or safety proposal.

Bangor Gas proposes to provide local distribution company (LDC) service in the towns of Hampden, Hermon, Milford, Bradley, Orrington, Eddington, and Bucksport. The engineering studies, system maps and models, construction diagrams and technical discussion, cost estimates, and construction schedule for this proposal are found in the Prefiled Testimony and Exhibits of David Schiller.

Bangor Gas provided cost estimates for the . enumerating quantities and costs for various sizes of pipe, as well as costs for meters and services, regulator stations and pressure limiting stations, and for engineering, permits and rights of way. Total costs for this project, including the Bucksport lateral, are estimated in these schedules to be about \$10.9 million. A construction schedule, by month, for each of these projects is provided with work beginning in

As discussed in our June 30th Order, gas pipeline safety is guided by Chapter 420 of Commission's rules and by Part 192 of the Code of Federal Regulations. Bangor Gas has proposed to construct its system and train its personnel in accord with these rules and standards.

We find that the information provided by Bangor Gas regarding engineering, costs and safety is sufficient to enable us to determine Bangor Gas's engineering plan is reasonable and adequately designed to provide safe and adequate service.

3. RESOURCE PLAN

Bangor Gas's resource plan for serving the surrounding communities is discussed in the Confidential Prefiled Testimony and Exhibits of Andrew R. Rea. It is the same plan that was approved in Docket No. 97-795. See June 30th Order at 12-15. Primary potential sources of supply include Sprague Energy (Shell Sable Island Gas), Duke Energy, and Sempra Energy Trading. All would supply Bangor Gas with Sable Island gas via the Maritimes pipeline. Other resources would also be available on the Maritimes system.

Because Bangor Gas's non-gas rates are set independently of the actual cost of gas and the risks of under-pricing falls on shareholders under Bangor Gas's 10-year rate plan, we need not inquire into the details and cost of Bangor Gas's supply portfolio, other than to determine that supply will be reliable and adequate.³ The named suppliers are well-established vendors and Bangor Gas will have ample incentive to supply its system with reliable and adequate supplies of gas in order to maintain consumer confidence and to protect its investment in the construction of the natural gas system. Finally, as we noted in Docket No. 97-795, Bangor Gas's rate proposal adequately ensures that rates will be just and reasonable.

Consequently, we believe Bangor Gas has demonstrated that it will have adequate resources to provide safe and reliable service at just and reasonable rates.

4. ABILITY TO PROVIDE SERVICE AT JUST AND REASONABLE RATES: UNCHANGED RATES AND RATE PLAN

Next, we review Bangor Gas's expanded proposal to determine whether Bangor Gas has adequately shown that it will be able to provide service at just and reasonable rates. Bangor Gas proposes to provide service to the surrounding communities under the same rate plan, rate schedules, and terms and conditions

- - - - -

3 Prior to the unbundling of rates into transportation and commodity service in the gas industry and competitive retail access in the electric industry, utility resource plans were reviewed to assure that monopoly services were being provided to consumers at the lowest possible cost, and that the sources of supply were reliable. With the advent of competitive retail access in the electric and gas industries, consumers are no longer required to purchase supplies from a single monopoly entity. If the prices for unbundled service are unreasonable, consumers may purchase supplies from competitive suppliers. What remains is to ensure that the supply of resources provided to consumers will be safe and reliable.

See June 30th Order at 13-14. Consumers may also convert to alternative energy sources, including fuel oil and propane.

used or approved for the core communities. We discussed and analyzed rate issues in our June 30th Order, p. 13-14 and more extensively in our June 26th Order where we approved Bangor Gas's rates and rate plan, subject to approval of final tariffs. See Order Approving Rate Plan, Docket No. 97-795 (June 26, 1998) (June 26th Order) p. 13-14.

In Docket No. 97-795, we noted that the Bangor Gas proposal is unusual in one regard: under its multi-year rate plan, Bangor Gas proposes to charge customers not on the basis of cost of service, but with a rate capped at an estimated price of alternative fuel. Consequently, we found that rates do not depend on the start-up company's cost structure. We determined in Docket No. 97-795, that since Bangor Gas's multi-year rate plan does not tie rates to costs, our review of this aspect of Bangor Gas's proposal is not as critical as if rates were directly related to costs; the issue of whether Bangor Gas will be able to provide service at just and reasonable rates depends on the price cap structure it has proposed.

Nevertheless, in support of its first application Bangor Gas provided a 12-year forecast of financial performance to demonstrate that its proposal was financially sound. See Table 5, in the Prefiled Testimony and Exhibits of Johannes Van Lierop. This forecast showed negative returns in the early years, offset by high returns in later years, for an average return of _____ . We found in our June 26th order, that this exhibit supported the justness and reasonableness of Bangor Gas's rates and rate plan.

In support of its second application, Bangor Gas filed an update of Table 5, adding the results of its cost and revenue projections for the surrounding communities to the . . . same data for the core communities. The average rate of return for the combined system was . . . No parties disputed the facts in the updated exhibit.

Despite the uncertainty of such projections, we find that addition of the surrounding communities results in the financial performance of the original and the expanded LDC being largely the same. Moreover, ratepayers will not be subject to risk of inadequate earnings over the 10-year term of the rate plan.

In Docket No. 97-795, Mr. Van Lierop demonstrated, and Advisory Staff confirmed, that Bangor Gas's rates compare favorably with gas rates elsewhere in New England. Consequently, we found that under its proposed rate plan, Bangor Gas was capable of serving Maine customers at rates that are comparable to others existing and imposed in the region. In addition, we noted that the Commission will, after ten years, have the opportunity to assess whether costs and prices should be linked more directly. In the meantime, we held that customers will have the benefits of competition from a new energy source, and that the price of competitive fuels provides a market-related limit to how high Bangor Gas will be able to price its service. Bangor Gas's proposal to price its service attractively, compared to those fuels with which it will compete for customers, is designed to assist it in developing its customer base. Growth of the utility's customer base will enable the venture to recover its investment in the system over time.

Bangor Gas has not proposed to modify its proposed rates or rate plan. Therefore, based on the same reasoning as in our approval of Bangor Gas's prior proposal, we find that the extension of Bangor Gas's rates and rate plan to the surrounding communities will result in just and reasonable rates.

V. PUBLIC INTEREST ISSUES

CMP requests that we consider three policy or public interest issues before

acting on Bangor Gas's application. CMP states that its principal concern is in ensuring fair competition and that it is necessary to subject both CMP Natural Gas and Bangor Gas the same regulatory treatment.

The public interest issues raised by CMP and its requested relief are as follows:

A. REQUIRE BANGOR GAS TO PROVIDE TRANSPORTATION SERVICE TO COMPETING UTILITIES

CMP requests that we require Bangor Gas to provide transportation service to competing gas utilities as one method of avoiding "dual trenching" in areas where LDC service territories overlap. CMP states that Northern has represented it would provide transportation service under its tariffs. CMP has stated that it would consider negotiating special arrangements to provide transportation service to competing utilities, but Bangor Gas stated at technical conference that it had not considered providing this service to a competing LDC. CMP also points out that requiring LDCs to provide transportation service to one another is consistent with our statements at deliberations in Docket No. 96-786 encouraging utilities to consider joint projects or other methods for avoiding duplication of facilities. CMP also asks us to require Bangor Gas to identify whether it will do so through negotiated special contracts or tariffs.

Bangor Gas argued that we can address "dual trenching" if it becomes an actual problem.

We decline to require the provision of transportation service to competing utilities. This issue has not been fully developed in this case. While we do not wish to discourage the negotiation of such arrangements between authorized utilities, we decline to impose that as a condition of Bangor Gas's service authority in this docket. We would prefer to address such policy issues in an investigation, inquiry, or rulemaking that would be applicable to all LDCs in Maine.

B. MAKE IT EXPLICIT THAT BANGOR GAS'S SHAREHOLDERS BEAR THE RISK OF STARTUP AND UNECONOMIC EXPANSION, AS ORDERED FOR CMP IN DOCKET NO. 96-786

CMP argues that the Commission must apply the same standard to both Bangor Gas and CMP NG. CMP requests that we state that project startup and uneconomic expansion risk will be borne by Bangor Gas's shareholders. In its response, Bangor Gas states that its plan has been approved and there is no need to expand beyond that.

In our recent holding in Docket No. 98-786, we made clear that the shareholder risk standard does apply to all LDCs operating in Maine from here forward. We stated

. . . the risks associated with a distribution company's startup and uneconomic expansion in this competitive circumstance must fall on the utility's shareholders, not ratepayers. Setting this as a ground rule for all Maine gas utilities for future system expansion to unserved areas places all LDCs on equal footing.

See CMP at 14. (emphasis added) we intend to implement this policy in our rate making decisions going forward for all Maine utilities.⁴

C. DO NOT CHARACTERIZE SERVICE AUTHORITY APPROVALS AS "CONDITIONAL" OR "UNCONDITIONAL"

CMP argues that the way we characterize its service authority approval is used to maximum competitive effect by competing utilities and our current designations influence or even mislead customers about a utility's ability to provide service.⁵

CMP notes that this distinction is not made in the statute. CMP notes that we granted Bangor Gas "unconditional" authority yet required it to file tariffs for approval before providing service, thereby imposing a condition. Yet, our order denying CMP Natural Gas unconditional authority until such time as it files and receives approval of a further submission puts CMP in a similar regulatory posture as Bangor Gas. CMP urges us not to use the terms

- - - - -

4 See also order dated October 5, 1998, in Docket No. 96-786.

5 CMP notes that the language in the CMP order's summary and conclusion appears inconsistent. The introductory summary states: "We grant CMP unconditional authority to serve ... subject to submission and approval of a revised proposal. . .". The conclusion states: "we do not grant CMP

[Natural Gas] unconditional authority to serve . . . at this time, but will do so upon submission and approval of an acceptable revised proposal..\" While the statements in their entirety are essentially consistent, we recognize that the wording difference could be confusing to some and could be played to advantage in marketing strategies. We will not issue a modified order to attempt to resolve any possible confusion at this point in time because CMP Natural Gas's revised proposal is now before us and will be acted upon very soon.

"conditional" or "unconditional", but to let the final orders speak for themselves. Bangor Gas argues that the terms were coined and defined in the Mid-Maine case and everyone knows what they mean at this point.

We note the potential for ambiguity and confusion with the use of this terminology and will endeavor to clarify these terms as we continue to use them. We developed the distinction between "conditional" and "unconditional" service authority in an effort to assist fledgling natural gas utilities obtain early preliminary approval of their efforts to develop distribution infrastructure within the state. See Mid-Maine. We regret any confusion that our use of these terms may have created, particularly for potential customers, given that competitors may exploit these terms to their maximum advantage.

CMP is correct that the terms are not legally necessary, i.e. they do not appear in statutory language or in Commission orders prior to Mid-Maine. They also have limited value in describing the nature of the authority, because the need for additional regulatory approvals may vary in each instance. On the other hand, the terms have been in use in a number of recent decisions, and parties are familiar with them.

On the whole, we would prefer to retain the terms for continuity in this area of law and practice before us. They are useful insofar as having an preliminary level of regulatory approval can assist nascent ventures in obtaining credibility with financial lenders.

Finally, we emphasize that a prospective gas utility need not apply in a two-step process (i.e. first for conditional authority, followed by application for unconditional authority). Rather, if it is sufficiently prepared, a utility can simply file a complete application for full authority.

VI. SUMMARY AND CONCLUSION

We grant Bangor Gas authority to provide service to the surrounding communities. Bangor Gas's engineering plan for the additional seven municipalities satisfies our requirement for a grant of full authority. Bangor Gas's resource plan is sufficiently complete at this state of the planning process and is also adequate in the context of Bangor Gas's proposed rate plan. Its rates and rate plan are unchanged, and were previously found reasonable.

In addition, as discussed above, while Bangor Gas's financing capability is clear and its options are reasonable, we will await the Company's specific financing proposal before granting 35-A M.R.S.A. ss. 902 approval.

We have addressed CMP's public interest issues in our order above. None of these issues requires us to suspend approval of Bangor Gas's application for service authority to the surrounding communities.

We conclude that Bangor Gas has made an adequate showing on the whole for us to grant it full service authority.

Dated at Augusta, Maine this 22nd day of October, 1998.

BY ORDER OF THE COMMISSION

Dennis L. Keschl
Administrative Director

COMMISSIONERS VOTING FOR: WELCH
NUGENT
DIAMOND

NOTICE OF RIGHTS TO REVIEW OR APPEAL

5 M.R.S.A. ss. 9061 requires the Public Utilities Commission to give each party to an adjudicatory proceeding written notice of the party's rights to review or appeal of its decision made at the conclusion of the adjudicatory proceeding. The methods of adjudicatory proceedings are as follows:

1. Reconsideration of the Commission's Order may be requested under Section 6(N) of the Commission's Rules of Practice and Procedure (65-407 C.M.R.11) within 20 days of the date of the Order by filing a petition with the Commission stating the grounds upon which consideration is sought.
2. Appeal of a final decision of the Commission may be taken to the Law Court by filing, within 30 days of the date of the Order, a Notice of Appeal with the Administrative Director of the Commission, pursuant to 35-A M.R.S.A. ss. 1320 (1)-(4) and the Maine Rules of Civil Procedure, Rule 73 et seq.
3. Additional court review of constitutional issues or issues involving the justness or reasonableness of rates may be had by the filing of an appeal with the Law Court, pursuant to 35-A M.R.S.A. ss. 1320 (5).

Note: The attachment of this Notice to a document does not indicate the Commission's view that the particular document may be subject to review or appeal. Similarly, the failure of the Commission to attach a copy of this Notice to a document does not indicate the Commission's view that the document is not subject to review or appeal.

September 27, 1999

Exhibit F-1

Securities and Exchange Commission
450 Fifth Street, N.W.
Washington, D.C. 20549

RE: Sempra Energy, et al.
Application on Form U-1
SEC File No. 70-9511

Dear Ladies and Gentlemen:

On behalf of Sempra Energy and Bangor Pacific, Inc. ("Bangor Pacific") (jointly, the Applicants) and Bangor Gas L.L.C., I have examined the Application on Form U-1, dated June 1, 1999, under the Public Utility Holding Company Act of 1935 (the "Act"), filed by the Applicants with the Securities and Exchange Commission (the "Commission") and docketed by the Commission in SEC File NO. 70-9511 of which this opinion is to be a part. The Application is hereinafter referred to as the "Application." Capitalized terms not defined herein have the meanings set forth in the Application.

As set forth in the Application, the Applicants have acquired a 50% membership interest of Bangor Gas Company, L.L.C. ("Bangor Gas"), which will become a "gas utility company" within the meaning of the Act (the "Proposed Transaction").

I am an attorney licensed in the State of California and am counsel for the Applicants. I am familiar with the issuance of securities by Sempra Energy and its associate companies. I have examined copies, signed, certified or otherwise proven to my satisfaction, of the Application. In addition, I have examined such other instruments, agreements and documents and made such other investigation as I have deemed necessary as a basis for this opinion.

For the purposes of the opinions expressed below, I have assumed (except, and to the extent set forth in my opinions below, as to the Applicants) that all of the documents referred to in this opinion letter will have been duly authorized, executed and delivered by, and will constitute legal, valid, binding

and enforceable obligations of, all of the parties to such documents, that all such signatories to such documents will have been duly authorized, that all such parties are duly organized and validly existing and will have the power and authority (corporate, partnership or other) to execute, deliver and perform such documents and that such authorization, execution and delivery by each such party will not, and such performance will not, breach or constitute a violation of any law of any jurisdiction. Based upon the foregoing, I am of the opinion, insofar as the laws of California are concerned that:

- a) all California laws applicable to the Proposed Transaction will have been complied with.
- b) Sempra Energy is a corporation validly organized and duly existing under the laws of the State of California.
- c) The Applicants will legally acquire the membership interests of Bangor Gas being acquired.
- d) Consummation of the Proposed Transaction will not violate the legal rights of the holders of any securities issued by the Applicants or any associate company thereof.

The opinions expressed above are subject to the following assumptions or conditions:

- a) The Commission shall have duly entered an appropriate order or orders granting and permitting the Application to become effective with respect to the Proposed Transaction.
- b) The Proposed Transaction shall be effected in accordance with required approvals, authorizations, consents, certificates and orders of any state or federal commission or regulatory authority with respect to the

Proposed Transaction and all such required approvals, authorizations, consents, certificates and orders shall have been obtained and remain in full force and effect.

I hereby consent to the filing of this opinion as an exhibit to the Application and in any proceedings before the Commission that may be held in connection therewith.

Sincerely,

Donald C. Liddell

August 16, 1999

Jonathan G. Katz
Secretary
Securities and Exchange Commission
450 Fifth Street, N.W.
Washington, DC 20549

Re: Sempra Energy et al
Application on Form U-1
SEC File No. 70-9511

Dear Mr. Katz:

On behalf of Sempra Energy and Bangor Pacific, Inc. ("Bangor Pacific") (jointly, the Applicants) and Bangor Gas Company, L.L.C. we have examined the Application on Form U-1 dated June 1, 1999 under the Public Utility Holding Company Act of 1935 (the "Act"), filed by the Applicants with the Securities and Exchange Commission (the "Commission") and docketed by the Commission in SEC file No. [70-9511] of which this opinion is to be a part. The Application is hereinafter referred to as the "Application". Capitalized terms not defined herein have the meanings set forth in the Application.

As set forth in the Application, the Applicants have acquired a 50% membership interest of Bangor Gas Company, L.L.C. ("Bangor Gas") which will become a "gas utility company" within the meaning of the Act (the "Proposed Transaction").

The attorneys signing this letter on behalf of Clifford, Stone & Herman are attorneys licensed in the State of Maine and are counsel for the Applicants regarding state regulatory matters. We have examined copies, signed, certified or otherwise proven to my satisfaction, of the Application. In addition, we have examined such other instruments, agreements and documents and made such other investigation related to Maine state approvals, certificates, and licenses as we have deemed necessary as a basis for this opinion. We have also relied upon representations and statements of officials and agents of Sempra Energy, Bangor Pacific and Bangor Gas Company L.L.C. regarding the Proposed Transaction that is the subject of the Application.

Jonathan G. Katz
August 16, 1999
Page 2

For the purposes of the opinions expressed below, we have assumed (1) (a) that all of the documents referred to in this opinion letter will have been duly authorized, executed and delivered by, and (b) will constitute legal, valid, binding and enforceable obligations of all of the parties to such documents, (2) that all such signatories to such documents will have been duly authorized, (3) that all such parties are duly organized and validly existing and will have the power and authority (corporate, partnership or other) to execute, deliver and perform such documents, and (4) (a) that such authorization, execution and delivery by each such party will not, and (b) that such performance pursuant to such documents will not, breach or constitute a violation of any laws of any jurisdiction. Based upon the foregoing, we are of the opinion, insofar as the laws of Maine are concerned, that:

(a) All Maine laws applicable to the Proposed Transaction will have been complied with.

(b) Bangor Gas Company L.L.C. is validly organized and duly existing.

(c) The Applicants will legally acquire the membership interests being acquired.

(d) Consummation of the Proposed Transaction will not violate the legal rights of the holders of any securities issued by the Applicants or any associate company thereof, to the extent any such rights are subject to Maine law.

The opinions expressed above are subject to the following assumptions

or conditions:

(a) The Commission shall have duly entered an appropriate order or orders granting and permitting the Application to become effective with respect to the Proposed Transaction.

(b) The Proposed Transaction shall be effected in accordance with required approvals, authorizations, consents, certificates and orders of any state or federal commission or regulatory authority with respect to the Proposed Transaction and all such required approvals, authorizations, consents, certificates and orders shall have been obtained and remain in full force and effect.

(c) No act or event other than as described herein shall have occurred subsequent to the date hereof which could change the opinion expressed above.

In addition, we express no opinion regarding the effectiveness or enforceability of any particular terms, commitments, warranties, guarantees, or other provisions of the underlying contracts, understandings, agreements, or other documents between or among the parties to the Proposed Transaction that may be separate or severable from the specific right and authority to acquire the membership interest that are the subject of the Application and that are the sole subject of this opinion letter. Further, this opinion herein is qualified by and is subject to, and we render no opinion with respect to, the limitations and exceptions to the enforceability of contracts and obligations generally, including without limitation: (a) the effect of bankruptcy, insolvency, reorganization, arrangement, moratorium, fraudulent transfer or conveyance, preference, equitable subordination (whether arising under State laws or the U.S. Bankruptcy Code), bulk sales or bulk transfer laws and other similar laws relating to or affecting the rights of creditors generally; (b) the effect of general principles of equity and similar principles, including, without limitation, concepts of materiality, reasonableness, unconscionability, good faith and fair dealing and the possible unavailability of specific performance, injunctive relief or other equitable remedies, regardless of whether considered in a proceeding in equity or at law, and the effect of public policy; (c) the enforceability of the indemnification and contribution provisions of the Agreement and any ancillary agreements; (d) compliance or noncompliance with antifraud provisions of applicable state and federal statutes, rules and regulations concerning the issuance and sale of securities; and (d) the effect of Maine, federal or other laws relating to usury or permissible rates of interest or other charges for loans, forbearances or the use of money.

Our opinion is limited to the laws of the State of Maine and we express no opinion with respect to the laws of any other state or jurisdiction, including, but not limited to, federal securities, tax, trade regulation, or antitrust laws or regulations, or to any local laws or ordinances. By rendering our opinion, we do not undertake to advise you of any changes in the law that may occur after the date hereof. These opinions have been prepared at your request and they are intended solely for your use in connection with the Proposed Transaction that is the subject of the Application and may not be relied upon by any other party or entity.

We hereby consent to the filing of this opinion as an exhibit to the Application and in any proceedings before the Commission that may be held in connection therewith.

Sincerely,

CLIFFORD, STONE & HERMAN

Alan G. Stone