

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

F I L E D
Clerk of the Superior Court

JUN 12 2007

By: K SANDOVAL, Deputy

**SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF SAN DIEGO**

Coordination Proceeding
Special Title (Rule 1550(b)):

JUDICIAL COUNCIL COORDINATION
PROCEEDING NOS. 4221, 4224, 4226 and
4228

The Honorable Ronald S. Prager
Coordination Trial Judge

**NATURAL GAS ANTI-TRUST CASES I,
II, III & IV**

~~PROPOSED~~ **JUDGMENT, FINAL
ORDER, AND DECREE GRANTING
FINAL APPROVAL TO CLASS ACTION
SETTLEMENT WITH AQUILA
MERCHANT SERVICES,
INC.**

Date: June 12, 2007
Time: 8:15 a.m.
Courtroom: Dept. 71

This Document Relates To:

THE FOLLOWING PRICE INDEXING
CASES ONLY:

*Team Design, et al. v. Reliant Energy, Inc., et
al.*, Los Angeles County Superior Court Case
No. BC294113

Uyeda, et al. v. Centerpoint Energy, Inc., et al.,
San Diego County Superior Court Case No.
GIC810580

*Oberti Wholesale Foods, Inc. v. Encana
Energy Services, Inc., et al.*, Alameda County

627693.1

1 Superior Court Case No. RG03098109
2 *Shanghai 1930 Restaurant Partners, L.P. v.*
3 *EnCana Energy Services, Inc., et al.*, San
4 Francisco County Superior Court Case No.
5 CGC-03-420785
6
7 *A.L. Gilbert Co. v. Coral Energy Resources,*
8 *L.P., et al.*, Alameda County Superior Court
9 Case No. RG03097835
10
11 *Brown v. Encana Energy Services, Inc., et al.*,
12 Alameda County Superior Court Case No.
13 RG03099036
14
15 *Podesta v. EnCana Energy Services Inc., et al.*,
16 San Joaquin County Superior Court Case
17 No. CV021175
18
19 *Lois the Pie Queen v. EnCana Energy Services*
20 *Inc., et al.*, Alameda County Superior Court
21 Case No. RG03104286
22
23 *Vittice Corp. v. EnCana Corp., et al.*, Alameda
24 County Superior Court Case No. RG04137797
25
26 *Benscheidt, et al. v. AEP Energy Services, Inc.,*
27 *et al.*, San Diego County Superior Court Case
28 No. GIC825011
Older v. Sempra Energy, et al., San Diego
County Superior Court Case No. GIC835457

1 This matter is before the Court on the motion for final class certification and final
2 approval of a proposed class action settlement (the "Settlement") of the above-captioned cases
3 (the "Class Actions") entered into between, on the one hand, plaintiffs A.L. Gilbert Company,
4 Mark and Susan Benschmidt dba Madera Wash Depot and Countrywood Laundromat, David C.
5 Brown, H & M Roses, Inc., Lois the Pie Queen, Celina Martinez, Oberti Wholesale Foods, Inc.,
6 Dan L. Older, Craig Podesta, Shanghai 1930 Restaurant Partners, L.P., Michael and Haleema
7 Silverman, Tom and Lynette Stevenson, Timothy Engeln, Inc. dba Team Design, Laurence
8 Uyeda, and Vittice Corporation (collectively, the "Class Representatives"), individually and on
9 behalf of the Settlement Classes (as defined below), and, on the other hand, defendant Aquila
10 Merchant Services, Inc. ("AMS," and, together with the Class Representatives, the "Settling
11 Parties"), as set forth in the Settlement Agreement attached hereto as Exhibit A.

12 By the Order Granting Preliminary Approval of Class Action Settlements entered on
13 March 6, 2007 (the "Preliminary Approval Order"), the Court: (a) conditionally certified the
14 Settlement Class and Subclasses defined therein (collectively, the "Settlement Classes"); (b)
15 appointed the Class Representatives and their counsel ("Class Counsel") to represent the
16 Settlement Classes, as set forth therein; (c) granted preliminary approval to the Settlement; and
17 (d) ordered that notice of the Settlement be disseminated to the Settlement Classes, as directed
18 therein, on or before April 13, 2007.

19 In compliance with the Preliminary Approval Order, notice was published and/or mailed
20 to the members of the Settlement Classes on or before April 13, 2007.

21 On June 12, 2007, the Settling Parties appeared before the Court at the final approval and
22 fairness hearing (the "Fairness Hearing"), represented by their respective attorneys. An
23 opportunity to be heard was given to all persons requesting to be heard. The Court has reviewed
24 and considered all of the pleadings filed in connection therewith, and all of the arguments and
25 evidence presented at the Fairness Hearing in support of the Settlement.

26 The entire matter of the proposed Settlement having been duly noticed, and having been
27 fully considered by the Court,

28 IT IS HEREBY ADJUDGED, ORDERED, AND DECREED that:

1 1. This Court has jurisdiction over the claims of the members of the Settlement
2 Classes asserted in this coordination proceeding, personal jurisdiction over the Settling Parties
3 (including the members of the Settlement Classes), and subject matter jurisdiction to approve the
4 Settlement.

5 2. Notice given to the members of the Settlement Classes was reasonably calculated
6 under the circumstances to apprise the class members of the pendency of the Class Actions, all
7 material elements of the proposed Settlement, and their opportunity to exclude themselves from,
8 to object to, or to comment on the Settlement and to appear at the Fairness Hearing. The notice
9 was reasonable and the best notice practicable under the circumstances; was due, adequate and
10 sufficient notice to all class members; and complied fully with the laws of the State of California,
11 the California Code of Civil Procedure, the California Rules of Court, due process, and any other
12 applicable statutes or rules. A full opportunity has been afforded to the members of the
13 Settlement Classes to participate in the Fairness Hearing, and all members of the Settlement
14 Classes and other persons wishing to be heard have been heard. Accordingly, the Court
15 determines that all members of the Settlement Classes are bound by this Judgment, Final Order,
16 and Decree.

17 3. The Court finds that the applicable requirements of the California Code of Civil
18 Procedure section 382 and California Rules of Court 1859 and 1860 have been satisfied with
19 respect to the Settlement Classes and the Settlement.

20 4. On March 6, 2007, this Court conditionally certified a Settlement Class, defined
21 as:

22 All individuals and entities in the State of California who between
23 January 1, 1999 and December 31, 2002, inclusive (the "Class
24 Period"), purchased natural gas in California for use. Excluded
25 from the Class are: individuals and entities who purchased natural
26 gas for resale or for generation of electricity for the purpose of
27 resale (to the extent of such purchases); Defendants and their
28 predecessors, affiliates, subsidiaries, officers, and directors; federal,
state and local governments and governmental agencies; any and all
judges and justices assigned to hear any aspect of this litigation,
along with their spouses and any minor children residing in their
households; any persons within the third degree of relationship of
any judge or justice assigned to hear any aspect of this litigation.

1 In addition, on that same date, this Court conditionally certified two Settlement Subclasses,
2 defined as:

3 **The Core Natural Gas Subclass**

4 All individuals and entities that were "core" or "core subscription"
5 natural gas customers of one or more of California's natural gas
6 utilities, including, without limitation, Southern California Gas
7 Company, Pacific Gas & Electric Company, San Diego Gas &
8 Electric Company, City of Long Beach Energy Department, and
9 Southwest Gas Corporation, at any time between January 1, 1999
10 and December 31, 2002.

11 **The Non-Core Natural Gas Subclass**

12 All individuals and entities that were "core" or "core subscription"
13 natural gas customers of one or more of California's natural gas
14 utilities, including, without limitation, Southern California Gas
15 Company, Pacific Gas & Electric Company, San Diego Gas &
16 Electric Company, City of Long Beach Energy Department, and
17 Southwest Gas Corporation, at any time between January 1, 1999
18 and December 31, 2002.

19 5. Membership in the two Subclasses is subject to the same limitations and
20 exclusions as the Settlement Class, including that purchases must have been made by members of
21 these subclasses for use and not for resale or generation of electricity for the purpose of resale,
22 and the exclusion of governmental entities. Settlement Class members who switched from "core
23 subscription" or "core elect" status to "non-core" natural gas status during the class period (or
24 vice-versa) are members of both the Core Natural Gas Subclass and the Non-Core Natural Gas
25 Subclass.

26 6. The Court appointed the Class Representatives as representatives of the Settlement
27 Class. The Court appointed Class Representatives Mark and Susan Benschmidt, David C. Brown,
28 Lois the Pie Queen, Celina Martinez, Oberti Wholesale Foods, Inc., Dan L. Older, Shanghai 1930
Restaurant Partners, L.P., Michael and Haleema Silverman, Tom and Lynette Stevenson, Timothy
Engeln, Inc. dba Team Design, Laurence Uyeda and Vittice Corporation as representatives of the
Core Natural Gas Subclass. The Court appointed Class Representatives A.L. Gilbert Company
and H&M Roses, Inc. as representatives of the Non-Core Natural Gas Subclass. The Court
appointed the law firm of Lieff, Cabraser, Heimann & Bernstein, LLP as Co-Lead Settlement
Class Counsel and Lead Settlement Subclass Counsel for the Core Natural Gas Subclass. The

1 Court appointed the law firm of Engstrom, Lipscomb & Lack as Co-Lead Settlement Class
2 Counsel and Lead Settlement Subclass Counsel for the Non-Core Natural Gas Subclass. The
3 Court appointed the members of the Plaintiffs' Executive Committee as additional Settlement
4 Class Counsel.

5 7. California Code of Civil Procedure section 382 provides for class certification
6 when there is an ascertainable class and a well defined community of interest among class
7 members. The Settlement Class and each Subclass continue to meet this standard for class
8 certification, so that final certification of the Settlement Class and Subclasses is appropriate.
9 There have been no objections to the propriety of class certification.

10 8. The Court finds for the purposes of settlement only that: (i) the members of the
11 Settlement Class are so numerous that joinder would be impractical; (ii) there is a commonality of
12 interests among the members of the Settlement Class; (iii) there are questions of law and fact that
13 are common to the Settlement Class, and the common questions predominate over individual
14 questions; (iv) the Class Representatives' claims are typical of the claims of absent Settlement
15 Class members; and (v) the Class Representatives and Co-Lead Settlement Class Counsel will
16 fairly and adequately represent the interests of the absent Settlement Class members.

17 9. The Court finds for the purposes of settlement only that: (i) the members of the
18 Core Natural Gas Subclass are so numerous that joinder would be impractical; (ii) there is a
19 commonality of interests among the members of the Core National Gas Subclass; (iii) there are
20 questions of law and fact that are common to the Core National Gas Subclass, and the common
21 questions predominate over individual questions; (iv) the claims of plaintiffs Mark and Susan
22 Benschmidt, David C. Brown, Lois the Pie Queen, Celina Martinez, Oberti Wholesale Foods, Inc.,
23 Dan L. Older, Shanghai 1930 Restaurant Partners, L.P., Michael and Haleema Silverman, Tom
24 and Lynette Stevenson, Timothy Engeln, Inc. dba Team Design, Laurence Uyeda, and Vittice
25 Corporation are typical of the claims of absent Core Natural Gas Subclass members; and (v) these
26 Class Representatives and Lead Settlement Subclass Counsel will fairly and adequately represent
27 the interests of the absent Core Natural Gas Subclass members.

28 10. The Court finds for the purposes of settlement only that: (i) the members of the

1 Non-Core Natural Gas Subclass are so numerous that joinder would be impractical; (ii) there is a
2 commonality of interests among the members of the Non-Core Natural Gas Subclass; (iii) there
3 are questions of law and fact that are common to the Non-Core Natural Gas Subclass, and the
4 common questions predominate over individual questions; (iv) the claims of plaintiffs A.L.
5 Gilbert Company and H&M Roses, Inc. are typical of the claims of absent Non-Core Natural Gas
6 Subclass members; and (v) these Class Representatives and Lead Settlement Subclass Counsel
7 will fairly and adequately represent the interests of the absent Non-Core Natural Gas Subclass
8 members.

9 11. Accordingly, pursuant to California Code of Civil Procedure section 382, the
10 Court makes final its conditional certification of the Settlement Class and each of the two
11 Subclasses for settlement purposes only, and confirms the appointment of the Class
12 Representatives and Class Counsel to represent the Settlement Classes, as set forth above.

13 12. The following persons and entities not represented by their own counsel in this
14 coordination proceeding timely requested exclusion: Southern California Edison Company,
15 Pacific Gas and Electric Company,; E. & J. Gallo Winery, Gallo Glass Company, and Barbaccia
16 Dryers. Each of these entities are excluded from the Settlement Classes.

17 13. The following persons and entities, represented by their own counsel in this
18 coordination proceeding, timely filed requests for exclusion: County of San Diego, County of
19 San Mateo, County of Santa Clara, County of Alameda, City and County of San Francisco, City
20 of Los Angeles, City of San Diego, Sacramento Municipal Utility District, The Board of Trustees
21 of The California State University, The Regents of the University of California, School Project
22 for Utility Rate Reduction (SPURR),; ABAG Publicly Owned Energy Resources; California Steel
23 Industries, Inc.; Hanson Permanente Cement, Inc.; TAMCO; Vista Metals Corp.; Nurserymen's
24 Exchange, Inc.; Owens-Brockway Glass Container, Inc.; PABCO Building Products, LLC and
25 Basalite Concrete Products, LLC. Each of these entities are excluded from the Settlement
26 Classes.

27 14. There have been no objections to the Settlement. The Coachella Valley Taxi
28 Owners Association has filed a comment in support of the Settlement.

1 15. The Court hereby grants final approval to the Settlement and finds that it is fair,
2 reasonable, and adequate, and in the best interests of the Settlement Classes.

3 16. The Settlement is entitled to a presumption of reasonableness, as it was negotiated
4 at arms'-length by experienced and well-prepared Class Counsel, and there have been no
5 objections to the Settlement. *7-Eleven Owners for Fair Franchising v. Southland Corp.* (2001)
6 85 Cal. App. 4th 1135, 1151.

7 17. The Settlement is also fair, reasonable, and adequate, as measured by the relevant
8 criteria. *See Dunk v. Ford Motor Co.* (1996) 48 Cal. App. 4th 1794, 1801 (listing and applying
9 factors).

10 18. Prior to entering into the proposed Settlement, Class Counsel, who have extensive
11 experience in class action and antitrust litigation, were well-informed about the potential risks and
12 rewards of continued litigation, having conducted extensive discovery and investigation, having
13 consulted extensively with experts concerning AMS's potential liability and Settlement Class
14 members' damages, having overcome numerous pleading challenges, and having moved for
15 certification of a litigation class. In a case as complex as this, continued litigation presents
16 serious risks for the Settlement Class at trial, and further risks on appeal, as the survival of any
17 judgment rendered in the Settlement Class' favor may turn on appellate resolution of a number of
18 legal defenses raised by defendants, such as federal preemption and the filed-rate doctrine.

19 19. Finally, the reaction of Settlement Class members strongly favors settlement
20 approval. While the Settlement Class contains millions of members, only a handful have opted-
21 out of the Settlement Class, and none have objected to the Settlement.

22 20. The allocation of Settlement proceeds as between the Core Natural Gas Subclass
23 and the Non-Core Natural Gas Subclass, as set forth in the notices disseminated to the Settlement
24 Class, is also hereby approved as fair, adequate, and reasonable.

25 21. Accordingly, the Settlement Agreement, attached hereto as Exhibit A, is approved
26 and made a part of this judgment as if fully set forth herein, and shall have the full force and
27 effect of an order of this Court. The parties shall consummate the Settlement Agreement
28 according to its terms.

1 22. Under California Code of Civil Procedure sections 578, 579, and 664.6, the Court,
2 in the interests of justice, there being no just reason for delay, expressly directs the Clerk of the
3 Court to enter this Judgment, Final Order, and Decree, and hereby decrees, that upon entry, it be
4 deemed as a final judgment and appealable with respect to all claims asserted by members of the
5 Settlement Classes against AMS.

6 23. In addition to the effect of this final judgment, the Released Parties (as defined in
7 the Settlement Agreement) are released and forever discharged by the Class Representatives and
8 by each and every member of the Settlement Class from any and all claims, causes of action,
9 demands, rights, actions, suits and requests for equitable, legal and administrative relief of any
10 kind or nature whatsoever arising now or in the future, out of, in connection with, or relating to (i)
11 the facts and claims alleged in any of the class actions made part of this coordination proceeding,
12 or (ii) the direct or indirect purchase of natural gas during the Class Period, including but not
13 limited to the purchase of physical natural gas, Financial Transactions (defined as any transaction
14 dependent upon or derivative of the price of physical natural gas, but which does not constitute
15 the purchase of, or result in the delivery of, physical natural gas), and/or any other transaction
16 relating to, dependent upon or derivative of the price of natural gas ("Claims"), including without
17 limitation any and all Claims that were, could have been, or might in the future be, asserted
18 against the Released Parties, in any forum, under any of state or federal antitrust laws, unfair
19 competition statutes and common law principles, unjust enrichment principles, constructive trust
20 principles, or any other common law, statutory or equitable theory, and including without
21 limitation the Claims alleged in each action made part of this coordination proceeding, and/or in
22 each action now pending in Federal Court as part of the proceeding known as MDL No. 1566 to
23 the extent such action is brought on behalf of Settlement Class member(s) (taken together,
24 "Released Claims"). Notwithstanding the foregoing, this final judgment does not release any
25 Claims that any member of the Settlement Class may have against any Released Party based
26 solely on the performance or non-performance of the parties under a contract between the
27 particular Settlement Class member and Released Party, but only to the extent such claim is not
28 based upon and does not depend upon any contention or proof that the rate or price charged was

1 affected in any way by any improper conduct relating to the price of natural gas. To the extent
2 any such contract-based claims would rely upon any conduct or matters released in this
3 paragraph, they are hereby waived, released and extinguished. Notwithstanding anything to the
4 contrary contained herein, this final judgment does not release a Released Party from any Claims
5 that any member of the Settlement Class may have arising out of or relating to their purchases of
6 natural gas to the extent such gas was resold or used to generate electricity for the purpose of
7 resale (including, without limitation, such purchases by cogenerators), or Financial Transactions
8 relating to such purchases. This final judgment does not release any Claim against any entity
9 other than the Released Parties, or any Claim or liability as between any Settlement Class
10 member and any other Settlement Class member.

11 24. To the fullest extent permitted by law, the Class Representatives, on behalf of
12 themselves and each and every member of the Settlement Class, expressly waive the benefits of
13 any statutory provision or common law rule that provides, in sum or substance, that a release does
14 not extend to claims which the releasor does not know or suspect to exist in its favor at the time
15 of executing the release, which if known by it, would have materially affected its settlement with
16 the other party. In particular, but without limitation, the Class Representatives, on behalf of
17 themselves and each and every member of the Settlement Class, understand the provisions of
18 California Civil Code Section 1542, which provides:

19 A general release does not extend to claims which the creditor does
20 not know or suspect to exist in his or her favor at the time of
21 executing the release, which if known by him or her must have
materially affected his or her settlement with the debtor.

22 The Class Representatives, on behalf of themselves and each and every member of the Settlement
23 Class, with the advice of counsel, have agreed that (i) the provisions of California Civil Code
24 Section 1542 are hereby knowingly and voluntarily waived and relinquished, and (ii) the
25 provisions of all similar federal or state laws, rights, rules, or legal principles of any other
26 jurisdiction, to the extent that they are found to be applicable herein, also are hereby knowingly
27 and voluntarily waived and relinquished. Notwithstanding the foregoing waiver of California
28 Civil Code Section 1542, the releases set forth in this final judgment are specific to the matters set

1 forth in the releases and are not intended to constitute general releases as to all claims, or
2 potential claims, between the releasing and Released Parties.

3 25. Without affecting the finality of this Judgment, Final Order, and Decree, the
4 Settling Parties, including the members of the Settlement Classes, have submitted to the exclusive
5 and continuing jurisdiction of this Court, and this Court reserves exclusive and continuing
6 jurisdiction over the Settlement, including the administration and consummation of the
7 Settlement.

8 26. Nothing in this Order shall be construed to expand the obligations of AMS under
9 the Settlement Agreement or to impose obligations on AMS other than those contained in the
10 Settlement Agreement.

11 27. As to AMS, the Class Actions are hereby dismissed with prejudice, and, except as
12 provided in the Settlement Agreement, without costs.

13
14 SO ORDERED, this 10 day of June, 2007.



15
16 _____
17 Hon. Ronald S. Prager
18 Coordination Trial Judge
19 Superior Court of the State of California
20
21
22
23
24
25
26
27
28

EXHIBIT A

SETTLEMENT AGREEMENT

THIS SETTLEMENT AGREEMENT ("Agreement") is made and entered into as of March 2, 2007, by and among, on the one hand, Aquila Merchant Services, Inc. ("AMS"), and, on the other hand, plaintiffs A.L. Gilbert Company, Mark and Susan Benschmidt dba Madera Wash Depot and Countrywood Laundromat, David C. Brown, H & M Roses, Inc., Lois the Pie Queen, Celina Martinez, Oberti Wholesale Foods, Inc., Dan L. Older, Craig Podesta, Shanghai 1930 Restaurant Partners, L.P., Michael and Haleema Silverman, Tom and Lynette Stevenson, Timothy Engeln, Inc. dba Team Design, Laurence Uyeda, and Vittice Corporation (collectively, "Plaintiffs"), individually and on behalf of the plaintiff Class (as defined below).

1. DEFINITIONS

The following terms, which are in addition to other terms defined in the body of this Agreement, shall have the following meanings when used in this Agreement:

1.1 "Court" means Department 71 of the Superior Court of the State of California, County of San Diego, or such other department or court to which the Class Actions may hereafter be transferred or reassigned.

1.2 "Class" shall mean the Settlement Class defined in Section 3 of this Agreement.

1.3 "Class Actions" means the *Bustamante v. The McGraw-Hill Companies, Inc.*, Los Angeles Superior Court Case No. BC235598, *Uyeda, et al. v. Centerpoint Energy, Inc., et al.*, San Diego Superior Court Case No. GIC810580 ("Uyeda"); *A.L. Gilbert Company v. AMS Energy Resources, et al.*, Alameda Superior Court Case No. RG03097835 ("A.L. Gilbert"); *Oberti Wholesale Foods, Inc. v. Encana Energy Services, Inc., et al.*, Alameda Superior Court Case No. RG03098109 ("Oberti"); *Shanghai 1930 Restaurant Partners, L.P. v. Encana Energy Services, Inc., et al.*, San Francisco Superior Court Case No. GGC-03-420785 ("Shanghai 1930"); *David Brown v. Encana Energy Services, Inc., et al.*, Alameda Superior Court Case No. RG03099036 ("Brown"); *Benschmidt v. AEP Energy Services, et al.*, San Diego Superior Court Case No. GIC 825011 ("Benschmidt"); *Lois the Pie Queen v. Encana Energy Services, Inc., et al.*, Alameda Superior Court Case No. RG03104268 ("Lois the Pie Queen"), *Vittice Corporation v. Encana Energy Services, Inc., et al.*, Alameda Superior Court Case No. RG04137797 ("Vittice"); *Podesta v. Encana Energy Services, Inc., et al.*, San Joaquin Superior Court Case No. CV 021175 ("Podesta"); *Team Design a d/b/a of Timothy Engeln, Inc., et al. v. AMS Energy, Inc.*, Los Angeles County Superior Court Case No. BC 294133 ("Team Design"), and *Older v. Sempra Energy, et al.*, San Diego Superior Court Case No. GIC835457 ("Older") actions, and any other actions brought on a class basis that have been coordinated as part of the Natural Gas Anti-Trust Cases I, II, III & IV, California Judicial Council Coordination Proceeding Nos. 4221, 4224, 4226, & 4228, in which AMS is a party.

1.4 “Class Counsel” means counsel for Plaintiffs in the Class Actions.

1.5 “Effective Date” means the date this Settlement becomes effective in accordance with the provisions of paragraph 5.9.

1.6 “Final” means, with respect to any court order, including but not limited to the Judgment, that either (a) the time to appeal therefrom has expired (i.e., 60 days after entry of the Court’s judgment and order approving the Settlement) and no appeal has been taken, or (b) an appeal therefrom has been taken or other challenge thereto has been made, and that all such appeals or challenges have been finally disposed of in a manner that affirms the judgment or order in its entirety and the time for further appeal or challenge, including petition for a writ of certiorari, has expired.

1.7 “Non-Class Cases” means any case, other than the Class Actions, which has been ordered coordinated as part of the Natural Gas Anti-Trust Cases I, II, III, & IV, California Judicial Council Coordination Proceeding Nos. 4221, 4224, 4226, & 4228, including, without limitation, *County of Alameda v. Sempra Energy, et al.*, Alameda County Superior Court Case No. RG04182878; *Owens-Brockway Glass Container Inc. v. Sempra Energy, et al.*, Alameda County Superior Court Case No. RG04192046; *TAMCO, et al. v. Sempra Energy, et al.*, San Diego County Superior Court Case No. GIC 840587; *School Project for Utility Rate Reduction v. Sempra Energy, et al.*, Alameda County Superior Court Case No. RG04180958; *Sacramento Municipal Utility District v. Sempra Energy, et al.*, Sacramento County Superior Court Case No. 04-AS-04689; *City of San Diego v. Sempra Energy, et al.*, San Diego County Superior Court Case No. GIC 839407; *County of San Mateo v. Sempra Energy, et al.*, San Mateo County Superior Court Case No. CIV 443882; *The Regents of the University of California v. AMS Energy Services, Inc., et al.*, Alameda County Superior Court Case No. RG04183086; *Nurserymen’s Exchange of Half Moon Bay v. Sempra Energy, et al.*, San Mateo County Superior Court Case No. CIV 442605; *Association of Bay Area Governments v. Sempra Energy, et al.*, Alameda County Superior Court Case No. RG04186098; *County of San Diego v. Sempra Energy, et al.*, San Diego County Superior Court Case No. GIC 833371; *County of Santa Clara v. Sempra Energy, et al.*, San Diego County Superior Court Case No. GIC 832538; *City and County of San Francisco v. Sempra Energy, et al.*, San Diego County Superior Court Case No. GIC 832539; *City of Los Angeles, Department of Water and Power v. AMS Energy Services, Inc., et al.*, Los Angeles County Superior Court Case No. BC309392; *The Board of Trustees of the California State University v. Dynegy, Inc.*, San Diego Superior Court Case No. GIC 856188; and *Pabco Building Products, LLC v. Dynegy, Inc., et al.*, San Diego Superior Court Case No. GIC 856187.

1.8 “Notice Administrator” means an independent entity appointed by the Court to assist in the dissemination of notice to the Class, and to receive exclusion requests and correspondence from members of the Class. The Notice Administrator will be selected by Plaintiffs’ Liaison Counsel, subject to AMS’s approval, which shall not be unreasonably withheld.

1.9 “Parties” means AMS and plaintiffs in the Class Actions.

1.10 "Plaintiffs' Liaison Counsel" means the law firm of Lieff, Cabraser, Heimann & Bernstein, LLP, and/or such other law firm(s) as may be appointed by the Court

1.11 "Preliminary Approval Order" means the order entered by the Court pursuant to the motion set forth in section 5.2.

1.12 "Price Indexing Cases Settlement Fund" means an income-generating account at Citibank, N.A. established by Plaintiffs' Liaison Counsel pursuant to paragraph 4.1 of this Agreement and maintained under supervision of the Court. No amounts deposited to that account by AMS, or earned on those amounts, shall be withdrawn from that account except pursuant to paragraph 7(a) of this Agreement or an order of the Court.

1.13 "Released Claims" shall mean all of the claims and other matters released by the Class as set forth in Section 6 of this Agreement.

1.14 "Released Parties" means AMS, Aquila, Inc., and their current or former directors, officers, employees, parents, subsidiaries, affiliates, joint ventures, predecessors, successors, agents, attorneys and assigns. The term "Released Parties" does not include any presently named defendant in the Class Actions, or any affiliate of any presently named defendant in the Class Actions, other than AMS, Aquila, Inc., or their wholly-owned subsidiaries.

1.15 "Settlement" means the agreement between the Parties embodied in this Agreement.

1.16 "Settlement Fund Administrator" means an independent administrator selected by Class Counsel and appointed by the Court to administer the Settlement Fund. AMS shall have no responsibility for, and under no circumstances may be subjected to any claim based upon, the conduct of the Settlement Fund Administrator or the distribution of any amounts pursuant to this Settlement.

2. RECITALS

2.1 On or about May 9, 2003, plaintiffs Laurence Uyeda and H&M Roses, Inc. filed a class action complaint in the California Superior Court for San Diego County, captioned Uyeda, et al. v. Centerpoint Energy, Inc., et al., Case No. GIC810580, alleging, among other things, that defendants or unnamed parties conspired to manipulate natural gas prices by falsely representing to the publishers of natural gas price indices the prices and/or volumes of natural gas transactions, by engaging in sham "wash trades," and/or engaging in "churning" or rapid burst trading, in violation of the Cartwright Act and California Business and Professions Code, § 17200, *et seq.* ("UCL").

2.2 On or about May 22, 2003, plaintiff A.L. Gilbert Company filed a class action complaint in the California Superior Court for Alameda County, captioned A.L. Gilbert Company v. AMS Energy Resources, L.P., et al., Case No. RG03097835, alleging, among other things, that defendants conspired to manipulate natural gas prices

by falsely representing to the publishers of natural gas price indices the prices and/or volumes of natural gas transactions, and/or by engaging in sham “wash trades,” in violation of the Cartwright Act and the UCL, and were unjustly enriched thereby.

2.3 On or about May 23, 2003, plaintiff Oberti Wholesale Foods, Inc. filed a class action complaint in the California Superior Court for Alameda County, captioned Oberti Wholesale Foods, Inc. v. EnCana Energy Services, Inc., et al., Case No. RG03098109, alleging, among other things, that defendants conspired to manipulate natural gas prices by falsely representing to the publishers of natural gas price indices the prices and/or volumes of natural gas transactions, and/or by engaging in sham “wash trades,” in violation of the Cartwright Act and the UCL.

2.4 On or about May 23, 2003, plaintiff Shanghai 1930 Restaurant Partners, L.P. filed a class action complaint in the California Superior Court for San Francisco County, captioned Shanghai 1930 Restaurant Partners, L.P. v. EnCana Energy Services, Inc. et al., Case No. CGC-03-420785, alleging, among other things, that defendants conspired to manipulate natural gas prices by falsely representing to the publishers of natural gas price indices the prices and/or volumes of natural gas transactions, and/or by engaging in sham “wash trades,” in violation of the Cartwright Act and the UCL.

2.5 On or about May 30, 2003, plaintiff David C. Brown filed a class action complaint in the California Superior Court for Alameda County, captioned David C. Brown v. EnCana Energy Services, Inc., et al., Case No. RG0399036, alleging, among other things, that defendants conspired to manipulate natural gas prices by falsely representing to the publishers of natural gas price indices the prices and/or volumes of natural gas transactions, and/or by engaging in sham “wash trades,” in violation of the Cartwright Act and the UCL.

2.6 On or about May 30, 2003, plaintiffs Mark and Susan Benschmidt dba Madera Wash Depot and Countrywood Laundromat filed a class action complaint in the California Superior Court for San Diego County, captioned Benschmidt v. AEP Energy Services, Inc., et al., Case No. GIC825011, alleging, among other things, that defendants or unnamed parties conspired to manipulate natural gas prices by falsely representing to the publishers of natural gas price indices the prices and/or volumes of natural gas transactions, by engaging in sham “wash trades,” and/or engaging in “churning” or rapid burst trading in violation of the Cartwright Act and the UCL.

2.7 On or about July 7, 2003, plaintiff Lois the Pie Queen filed a class action complaint in the California Superior Court for Alameda County, captioned Lois the Pie Queen v. Encana Energy Services Inc., et al., Case No. 03104286, alleging, among other things, that defendants conspired to manipulate natural gas prices by falsely representing to the publishers of natural gas price indices the prices and/or volumes of natural gas transactions, and/or by engaging in sham “wash trades,” in violation of the Cartwright Act and the UCL.

2.8 On or about February 18, 2004, plaintiff Vittice Corporation filed a class action complaint in the California Superior Court for Alameda County, captioned Vittice

Corporation, et al. v. Encana Corporation, et al., Case No. RG04137797, alleging, among other things, that defendants conspired to manipulate natural gas prices by falsely representing to the publishers of natural gas price indices the prices and/or volumes of natural gas transactions, and/or by engaging in sham “wash trades,” in violation of the Cartwright Act and the UCL.

2.9 On or about July 16, 2003 plaintiff Craig Podesta filed a class action complaint in the California Superior Court for San Joaquin County, captioned Podesta v. Encana Energy Services, Inc., et al., Case No. CV021175, alleging, among other things, that defendants conspired to manipulate natural gas prices by falsely representing to the publishers of natural gas price indices the prices and/or volumes of natural gas transactions, and/or by engaging in sham “wash trades,” in violation of the Cartwright Act and the UCL.

2.10 On or about April 16, 2003, plaintiff Team Design a d/b/a of Timothy Engeln, Inc., filed a class action complaint in the California Superior Court for the County of Los Angeles, captioned Team Design a d/b/a of Timothy Engeln, Inc., et al. v. AMS Energy, Inc., Case No. BC 294133, alleging, among other things, that defendants or unnamed parties conspired to manipulate natural gas prices by engaging in “churning” or rapid burst trading in violation of the Cartwright Act and the UCL.

2.11 On or about November 2, 2004, plaintiff Dan L. Older filed a class action complaint in the California Superior Court for San Diego County, captioned Older v. Sempra Energy, et al., Case No. GIC835457, alleging, among other things, that defendants or unnamed parties conspired to manipulate natural gas prices by falsely representing to the publishers of natural gas price indices the prices and/or volumes of natural gas transactions, by engaging in sham “wash trades,” “churning” or rapid burst trading in violation of the Cartwright Act and the UCL.

2.12 On or about March 9, 2005, plaintiffs in the Class Actions filed a Master Class Action Complaint (the “Master Complaint”) alleging, among other things, that defendants or unnamed parties conspired to manipulate natural gas prices by falsely representing to the publishers of natural gas price indices the prices and/or volumes of natural gas transactions, by engaging in sham “wash trades,” “churning” or rapid burst trading in violation of the Cartwright Act and the UCL.

2.13 On or about March 22, 2005, the Court entered an order granting various requests to coordinate the Class Actions and the Non-Class Cases as “add-on cases” in Natural Gas Anti-Trust Cases I, II, III, & IV, California Judicial Council Coordination Proceeding Nos. 4221, 4224, 4226, & 4228, and designating the add-on cases the “Price Indexing Cases.”

2.14 On or about November 20, 2002, plaintiff Cruz Bustamante filed a class action complaint alleging, among other things, that AMS’ parent, Aquila, Inc., conspired with other defendants or unnamed parties to manipulate natural gas prices by falsely representing to the publishers of natural gas price indices the prices of natural gas in violation of California Penal Code section 395 and the UCL. On or about August 13,

2003, plaintiff Bustamante filed a first amended complaint that, among other things, added claims for alleged violations of the Cartwright Act. On or about November 22, 2005, the Court entered an order granting plaintiffs' request to coordinate the *Bustamante* action as a Price Indexing "add-on" case in the Natural Gas Anti-trust Cases I, II, III & IV.

2.15 AMS and other defendants have responded to the Master Complaint by denying all material allegations and all liability.

2.16 Class Counsel have represented that, before commencing the Class Actions, and during the course of the litigation and settlement negotiations, Class Counsel conducted a thorough examination and evaluation of the relevant law and facts to assess the merits of their Claims and to determine how best to serve the interests of Plaintiffs and the Class. Class Counsel also have represented that they have retained and consulted with experts concerning the facts discovered in this matter, the merits of Plaintiffs' Claims, and the defenses raised by AMS.

2.17 Based upon their discovery, investigation and evaluation of the facts and law relating to the matters alleged in the pleadings, Plaintiffs and Class Counsel have agreed to a settlement pursuant to the provisions of this Agreement, after considering such factors as (a) the substantial benefits to Plaintiffs and the Class under the terms of this Agreement, (b) the substantial expense, burdens and uncertainties associated with continued litigation of the Claims, including the possibility of losing the Class Actions before the trial court or on appeal, and (c) the desirability of consummating this Agreement promptly, in order to benefit Plaintiffs and the Class. Plaintiffs and Class Counsel each agree that this Agreement is fair, reasonable, and adequate because it provides substantial benefits to the Class, eliminates the risk of continued litigation and is in the best interests of the Class.

2.18 AMS and the Released Parties deny any wrongdoing alleged in any of the Class Actions, and further deny any actual or potential fault, wrongdoing or liability in connection with any fact or Claim that has been or could have been alleged in any of the Class Actions or otherwise relating to the alleged misconduct asserted in the Class Actions. Nevertheless, AMS and the Released Parties consider it desirable for the Class Actions to be settled, resolved, and dismissed at this time, without any admission of liability whatsoever or any adjudication of the merits of any allegations, because such settlement will (a) avoid the further expense and disruption of the management and operation of the business of AMS and the Released Parties due to the pendency and defense of the allegations in the Class Actions, (b) finally put Plaintiffs' claims and the other matters to rest, and (c) avoid the substantial burdens and uncertainties associated with continued litigation of those claims. This Settlement shall in no event be construed as or deemed to be evidence of an admission or concession by AMS or the Released Parties with respect to any claim of any fault or liability or wrongdoing or damage whatsoever.

NOW, THEREFORE, in consideration of the foregoing, the mutual covenants contained herein, and for other good and valuable consideration, the receipt and

sufficiency of which are hereby acknowledged, it is agreed between and among the Parties as follows:

3. Settlement Class. For purposes of effectuating this Agreement only, the Parties agree to jointly request that the Court certify a Class (the "Settlement Class") consisting of:

All individuals and entities in the State of California who between January 1, 1999 and December 31, 2002, inclusive, purchased natural gas in California for use (the "Class Period"). Excluded from the Class are: individuals and entities who purchased natural gas for resale or for generation of electricity for the purpose of resale (to the extent of such purchases); Defendants and their predecessors, affiliates, subsidiaries, officers, and directors; federal, state and local governments and governmental agencies; any and all judges and justices assigned to hear any aspect of this litigation, along with their spouses and any minor children residing in their households; any persons within the third degree of relationship of any judge or justice assigned to hear any aspect of this litigation.

3.1 Settlement Subclasses. For purposes of effectuating this Agreement only, the Parties agree that Plaintiffs may request certification of one or more subclasses, subject to Court approval, if necessary to effectuate the terms of this Settlement, and that AMS shall not oppose any such request if necessary to effectuate the terms of this Settlement.

3.2 Settlement Class Vacated. If, for any reason, this Agreement is terminated, or the Effective Date for any reason does not occur, the certification of the Settlement Class shall automatically be vacated, *nunc pro tunc*. In such case, neither this Agreement nor any preliminary or final order of the Court certifying the Settlement Class will be binding on any of the Parties, the Class Actions shall proceed as though the Settlement Class had never been certified, and AMS may oppose and assert all objections to certification of any class or subclass by any party to the Class Actions.

4. Settlement Consideration.

4.1 Cash Consideration. In full and complete settlement of all of the Released Claims against all of the Released Parties, AMS shall wire transfer the sum of \$6,590,000 (Six Million Five Hundred Ninety Thousand Dollars) (the "Settlement Amount") to the Price Indexing Cases Settlement Fund, pursuant to wire transfer instructions provided by Plaintiffs' Liaison Counsel, within 10 (ten) calendar days after entry by the Court of an order complying with the provisions of Paragraph 5.2. If for any reason AMS fails to transfer the aforementioned sum within the time allowed, AMS shall pay interest on the amount of the shortfall at the rate provided by California law for interest on money judgments and, in addition, in such case Plaintiffs shall have the right to enforce this payment obligation against AMS. This paragraph sets forth AMS's sole financial

obligation under this Settlement, and under no circumstances shall AMS or any other Released Party have any obligation to make any other or greater payment for any purpose pursuant to this Settlement. Except as expressly provided herein, AMS's payment of the Settlement Amount into the Price Indexing Cases Settlement Fund shall completely discharge any and all liability of AMS and the Released Parties to Plaintiffs and the Class.

4.2 Allocation. No Released Party shall have any responsibility for, and no liability whatsoever with respect to, the allocation of the settlement consideration between or among the Plaintiffs, the Class, Class Counsel, and/or any other person or entity that may assert a claim thereto, or the payment or non-payment from the Price Indexing Cases Settlement Fund to any of them. The Released Parties shall take no position with respect to such matters.

4.3 Cooperation. Plaintiffs acknowledge that AMS and certain of the Released Parties remain defendants in the Non-Class Cases, which assert claims similar or identical to the Released Claims, which limits the ability to cooperate with Plaintiffs in pursuing the Class Actions against other defendants. Neither AMS nor any Released Party shall have any obligation to cooperate with Plaintiffs in connection with their prosecution of claims against any other defendants. Following the Effective Date, the Released Parties will be subject to discovery requests from the Plaintiffs only to the extent that any other non-party would be subject to such discovery, and no Released Party shall forego any right to object on any ground.

4.4 Tax Treatment of Settlement Fund.

(a) The Price Indexing Cases Settlement Fund shall be treated as being at all times a "qualified settlement fund" within the meaning of Treas. Reg. § 1.468B-1. The Parties shall timely make such elections as necessary or advisable to carry out the provisions of this Paragraph B, including the "relation-back election" (as defined in Treas. Reg. § 1.468B-1), back to the earliest permitted date. Such elections shall be made in compliance with the procedures and requirements contained in such regulations. It shall be the sole responsibility of Plaintiffs to timely and properly prepare and deliver the necessary documentation for signature by all necessary parties, and thereafter to cause the appropriate filings to occur.

(b) For the purpose of Section 468B of the Internal Revenue Code of 1986, as amended, and the regulations promulgated thereunder, the "administrator" shall be the Settlement Fund Administrator. The Settlement Fund Administrator shall timely and properly file all informational and other tax returns necessary or advisable with respect to the Price Indexing Cases Settlement Fund (including without limitation the returns described in Treas. Reg. § 1.468B-2(k)). Such returns (as well as the election described in Paragraph 4.4(a) herein) shall be consistent with this Paragraph 4.4, and in all events shall reflect that all Taxes (including any estimated Taxes, interest or penalties) on the income earned by the Price Indexing Cases Settlement Fund shall be paid out of the Price Indexing Cases Settlement Fund as provided in Paragraph 4.4(c) hereof.

(c) All: (i) Taxes (including any estimated Taxes, interest or penalties) arising with respect to the income earned by the Price Indexing Cases Settlement Fund, including any Taxes or tax detriments that may be imposed upon AMS, their insurers or their counsel with respect to any income earned by the Price Indexing Cases Settlement Fund for any period during which the Price Indexing Cases Settlement Fund does not qualify as a "qualified settlement fund" for federal or state income tax purposes (the "Taxes"), and (ii) expenses and costs incurred in connection with the operation and implementation of this Paragraph 4.4 (including, without limitation, expenses of tax attorneys and/or accountants and mailing and distribution costs and expenses relating to filing (or failing to file) the returns described in this Paragraph 4.4 (the "Tax Expenses"), shall be paid out of the Price Indexing Cases Settlement Fund; in all events neither Plaintiffs or their counsel shall have any liability or responsibility for the Taxes or the Tax Expenses, except as specifically set forth herein. Further, Taxes and Tax Expenses shall be treated as, and considered to be, a cost of administration of the Price Indexing Cases Settlement Fund and shall be timely paid by the Settlement Fund Administrator of the Price Indexing Cases Settlement Fund without prior order from the Court, and the Settlement Fund Administrator shall be obligated (notwithstanding anything herein to the contrary) to withhold from distribution out of the appropriate Price Indexing Cases Settlement Fund any funds necessary to pay such amounts, including the establishment of adequate reserves for any Taxes and Tax Expenses (as well as any amounts that may be required to be withheld under Treas. Reg. § 1.468B-2(1)(2)); neither the Plaintiffs nor their counsel are responsible nor shall they have any liability therefore, except as specifically set forth herein. Neither AMS nor any other Released Party shall be liable or have any liability any expense or cost under Section 4.4 of this Agreement, including without limitation, any Taxes or Tax Expenses.

(d) The Parties agree to cooperate with the Settlement Fund Administrator, each other, and their respective tax attorneys and accountants to the extent reasonably necessary to carry out the provisions of this Paragraph 4.4.

4.5 Attorneys' Fees, Expenses and Costs. Upon entry of an order of the Court awarding attorneys' fees, expenses and costs to Class Counsel (the "Fee Order"), such amount(s) may be withdrawn by Plaintiffs' Liaison Counsel from the Price Indexing Cases Settlement Fund. However, no such funds may be withdrawn at any time prior to the entry of the Judgment as set forth in Section 5.7 hereof. If the Fee Order or Judgment has not become Final, then prior to such withdrawal, an authorized representative of each law firm receiving such payment (and each of such firm's equity partners, members or shareholders as individual guarantors) shall have executed and provided to AMS an undertaking providing that:

The law firm of _____ (and each of its equity partners, members or shareholders agrees to individually guarantee the repayment of) agrees to repay \$ _____ in fees, and \$ _____ in costs if the attorneys' fee and cost order entered on _____ in Natural Gas Anti-Trust Cases I, II, III & IV, J.C.C.P. No. 4221, 4224, 4226 & 4228 is reduced (to the extent of any

such reduction) or overturned on appeal within ten calendar days of the order on appeal, plus interest at the [rate earned by the Price Indexing Cases Settlement Fund] on the amounts repaid. This law firm and the individual guarantors also agree to be subject to the jurisdiction of the San Diego Superior Court in this matter and agrees that failure to repay fees and costs may be enforced by motion. I am authorized to sign this agreement on behalf of the principals (partners, shareholders, etc.) of the above-named law firm.

Within ten calendar days after entry of an order on appeal reducing or overturning the Fee Order or reversing or vacating the Judgment, each such law firm shall repay to the Price Indexing Cases Settlement Fund the amount of attorneys' fees and costs paid to that law firm that are impacted by the successful appeal, with interest at the rate earned by the Price Indexing Cases Settlement Fund from the date of initial payment to and including the date of repayment. Any order by the Court on any application for attorneys' fees and costs, or any appeal from such an order, shall not affect the finality of any approval by the Court of the Settlement.

4.6 Disbursements of Settlement Fund. Except as expressly set forth herein, no amount may be disbursed from the Price Indexing Cases Settlement Fund prior to the Effective Date, other than by Order of the Court.

5. SETTLEMENT PROCEDURES

5.1 Best Efforts. The Parties agree to recommend approval of this Agreement to the Court and to undertake their best efforts, including all steps and efforts contemplated by this Agreement and any other steps and efforts that may be reasonably necessary or appropriate, by order of the Court or otherwise, to carry out the terms of this Agreement.

5.2 Preliminary Approval. As soon as practical after execution of this Agreement, Plaintiffs shall submit a motion pursuant to Rule 1859 of the California Rules of Court, for entry of an order in a form to be mutually agreed upon by the parties (the "Preliminary Approval Order"):

(a) certifying, for settlement purposes only, the Class as defined above, designating Plaintiffs as representatives of the Class, and designating Class Counsel as counsel for the Class;

(b) granting preliminary approval of the proposed Settlement;

(c) directing the form, manner, and timing of providing notice of the proposed Settlement (including but not limited to the Release of Claims in Section 6 hereof) to the Class in a manner that complies with the requirements of due process and California law;

(d) specifying procedures for members of the Class to follow to exclude themselves from the Class and proposed Settlement (including but not limited to the Release of Claims in Section 6 hereof), and the deadline for excluding themselves;

(e) specifying procedures for members of the Class to follow in objecting to or commenting upon the proposed Settlement, and the deadline for such comments or objections;

(f) setting a hearing to consider whether the Settlement should be approved and whether the Judgment should be entered; and

(g) staying all proceedings in the Class Actions as against AMS, and prohibiting Class members from instituting or prosecuting any further actions against AMS asserting claims that are Released Claims under this Agreement, until the Court has ruled on final approval of the Settlement and entered a final judgment.

5.3 Class Notice. Notice of the proposed Settlement (including but not limited to the Release of Claims in Section 6 hereof) shall be provided to the Class in the form and manner and at the time(s) directed by the Court in the Order to be entered pursuant to Section 5.2. above. The cost of providing notice shall be paid out of the Price Indexing Cases Settlement Fund ("Notice Expenses"). Should Plaintiffs enter into any additional settlements with other defendants in the Class Actions, subject to approval of the Court, notice of the Settlement may be combined with notice of such additional settlements, provided that (i) such combined notice does not unreasonably delay the final approval hearing and (ii) the costs of such combined notice are allocated in proportion to the amounts contributed to the Price Indexing Cases Settlement Fund by all such defendants ("Allocated Notice Expenses").

5.4 Opt-Out Procedures. Any person or entity, acting solely on his, her or its own behalf, may exclude themselves from the Class by submitting a written request for exclusion, signed by each individual member of the Class so requesting, in accordance with the Order to be entered by the Court pursuant to Section 5.2, above. In the motion and form of order to be submitted to the Court pursuant to Section 5.2, above, the parties will provide that any request for exclusion must be mailed to the Notice Administrator and post-marked no later than a date to be fixed by the Court, which shall provide putative members of the Class with at least thirty (30) days to do so. Any member of the Class who files a timely request for exclusion and whose request for exclusion is accepted by the Court shall not be bound by the terms of the Settlement Agreement, shall not be entitled to any of its benefits, and will not be bound by any final judgment or other order of the Court entered pursuant to this Agreement. Within ten (10) calendar days after the last date by which members of the Class must provide notification of their election to exclude themselves from the Class, the Notice Administrator shall serve on counsel for AMS and Plaintiffs' Liaison Counsel a list of all members of the Class who have requested exclusion from the Class.

5.5 Opt-Out Threshold. Should the number of persons or entities who have timely excluded themselves from the Class exceed the threshold set forth in Exhibit A to

this Agreement (which is confidential and shall not be filed with Court, or, if required to be filed, shall be filed under seal), AMS may, within ten (10) business days following receipt from the Notice Administrator of the list of Class members who have requested to exclude themselves from the Class as provided in the preceding paragraph, terminate this Agreement as provided in paragraph 7.2.

5.6 Objection Procedures. Any member of the Settlement Class who has not timely requested exclusion may appear at the final approval hearing and show cause why the Court should not approve this Settlement and dismiss with prejudice as to AMS the Class Actions, and may appear at the hearing to support or oppose Class Counsel's application for attorneys' fees, expenses and costs, provided, however that no member of the Class shall be heard unless his, her or its objection or opposition is made in writing, signed by each individual member of the Settlement Class so objecting, and is filed, together with any papers or briefs in support of such objections, with the Court on or before the deadline to be fixed by the Court for members of the Class to exercise their right to exclude themselves from the Settlement Class. All such written objections and papers shall be copied to Plaintiffs' Liaison Counsel and counsel for AMS by first-class mail, postage prepaid. The objection shall include: (i) the complete name and residence or business address of the individual member of the Class so objecting (giving the address of any lawyer who represents the member of the Class is not sufficient); (ii) a statement, signed under penalty of perjury by the objecting member of the Class, that the member of the Class purchased Natural Gas in California for use during the Class Period; and (iii) each ground for comment or objection and any supporting papers the member of the Class desires the Court to consider. The filing of any objection shall not extend the time within which a member of the Class may file a request for exclusion from the Class. These provisions shall be included in the form of order to be provided to the Court pursuant to Section 5.2, above.

5.7 Final Approval. If the Court finally approves the Settlement, then the parties hereto shall seek entry of an order and judgment in a form to be mutually agreed upon by the parties (the "Judgment"):

(a) determining that AMS and the Plaintiffs and members of the Class have submitted to the jurisdiction of the Court for purposes of the proposed Settlement, and that the Court has subject matter jurisdiction to approve the Agreement;

(b) finding that the proposed Class satisfies the requirements for a class action under section 382 of the California Code of Civil Procedure and applicable case law, taking into account as permitted under applicable precedent the fact that the Class is being certified for settlement purposes only;

(c) finding that the notice given pursuant to this Agreement satisfies the requirements of Rule 1856 of the California Rules of Court and the requirements of due process;

(d) approving finally this Settlement and its terms as being in good faith and a fair, reasonable and adequate settlement as to Plaintiffs and the members of the Class, and directing the Settlement's consummation pursuant to its terms;

(e) finding that each member of the Class who has not filed a request to opt out of the Settlement that has been accepted by the Court is bound by the terms of this Settlement including the Release of Claims set forth in Section 6 hereof, regardless of whether any such member of the Class ever seeks or obtains by any means, including, without limitation, by submitting a proof of claim, any distribution from the Price Indexing Cases Settlement Fund;

(f) dismissing with prejudice as to AMS the Class Actions, without attorneys' fees or costs except as provided for herein;

(g) determining pursuant to section 877.6 of the California Code of Civil Procedure that this Settlement was made in good faith and barring claims for indemnity or contribution against AMS (such application to be made by AMS);

(h) providing that the Court shall retain jurisdiction to enforce this Agreement until performance in full of its terms, including the administration and distribution of the Price Indexing Cases Settlement Fund, pursuant to section 664.6 of the California Code of Civil Procedure;

(i) determining that there is no just reason for delay and ordering that the judgment of dismissal of the Class Actions as to AMS shall be final and appealable; and

(j) incorporating the release set forth below (in Section 6 of this Agreement) and forever releasing and discharging the Released Parties from the Released Claims.

(k) barring, enjoining and prohibiting any member of the Class who has not filed a request to opt out of the Settlement from instituting or prosecuting, as a class member or otherwise, any further action or proceeding, in any jurisdiction, against the Released Parties asserting Claims that are released under this Agreement.

5.8 Effect of Disapproval. If the Court for any reason determines not to approve this Settlement and enter the Judgment in substantially the form agreed upon by the parties pursuant to Section 5.7, or conditions its approval on any modification of this Agreement that is not acceptable to all parties, or if the Court's approval is reversed or set aside by appeal, then: a) this Agreement shall terminate and become null and void except as otherwise provided in this Agreement; b) the Court's certification of any Settlement Class shall be rescinded; and c) the Parties shall revert to their respective positions before this Agreement was executed. Any order by the Court rejecting or modifying Class Counsel's request for attorneys' fees or costs shall not entitle the Plaintiffs or Class to terminate this Agreement.

5.9 Effective Date. the Effective Date of the Settlement shall be deemed to be the date upon which all of the following conditions precedent have occurred or been satisfied:

(a) the payment to the Price Indexing Cases Settlement Fund required by Section 4.1 of this Agreement shall have been made;

(b) the Court shall have entered a Preliminary Approval Order in accordance with Section 5.2 of this Agreement and the Class shall have been provided with notice and an opportunity to opt-out or object in accordance with such notice;

(c) the time for AMS to exercise its right of termination under Section 7.2 below has expired, or AMS has given written notice to the other Parties that it will not exercise such right;

(d) the Court shall have entered the Judgment in accordance with Section 5.7 of this Agreement, which Judgment shall have become Final; and

(e) the Court shall have determined, pursuant to California Code of Civil Procedure Section 877.6, that this Agreement was made in good faith, have entered an order barring any claims against AMS (and the other Released Parties, insofar as applicable law allows) for contribution or indemnity, and such determination shall have become Final. The Parties contemplate that this will be determined in conjunction with the hearing before the Court on final approval of the Settlement and will be included in the Final Judgment.

6. RELEASES AND COVENANTS

6.1 Releases. Upon the Effective Date, the Released Parties shall be released and forever discharged by all Plaintiffs and Class Members (other than those who have filed a valid request to opt out of this Settlement) from any and all claims, causes of action, demands, rights, actions, suits and requests for equitable, legal and administrative relief of any kind or nature whatsoever arising now or in the future, out of, in connection with, or relating to (i) the facts and claims alleged in any of the Class Actions, or (ii) the direct or indirect purchase of natural gas during the Class Period, including but not limited to the purchase of physical natural gas, Financial Transactions (as defined below), and/or any other transaction relating to, dependent upon or derivative of the price of natural gas ("Claims"), including without limitation any and all Claims that were, could have been, or might in the future be, asserted against the Released Parties, in any forum, under any of state or federal antitrust laws, unfair competition statutes and common law principles, unjust enrichment principles, constructive trust principles, or any other common law, statutory or equitable theory, and including without limitation the Claims alleged in each Class Action identified in paragraphs 1.3 and 2.1 – 2.14 above, in each Non-Class Case identified in paragraph 1.7 above, and/or in each action now pending in Federal Court as part of the proceeding known as MDL No. 1566 to the extent such action is brought on behalf of Class Member(s) (taken together, "Released Claims").

6.2 Exclusions from Releases. Notwithstanding anything to the contrary contained herein, this Agreement does not release a Released Party from:

(a) any claims that any Class member may have arising out of or relating to their purchases of natural gas to the extent such gas was resold or used to generate electricity for the purpose of resale (including, without limitation, such purchases by cogenerators), or Financial Transactions relating to such purchases;

(b) any claims that any Class member may have against such Released Party based solely on the performance or non-performance of the Parties under a contract between the particular Class member and Released Party, but only to the extent such claim is not based upon and does not depend upon any contention or proof that the rate or price charged was affected in any way by any improper conduct relating to the price of natural gas. To the extent any such contract-based claims would otherwise rely upon any conduct or matters contemplated in paragraph 6.1, Plaintiffs and the Class hereby waive, release and extinguish such Claims by this Agreement.

For purposes of this paragraph 6.2, "Financial Transactions" means any transaction dependent upon or derivative of the price of physical natural gas, but which does not constitute the purchase of, or result in the delivery of, physical natural gas.

Neither this Agreement, nor anything contained herein, nor any judgment entered thereon shall be construed to modify, extinguish or otherwise affect any argument by AMS that any Claims excluded from the Released Claims by this paragraph are barred under the rule against splitting the cause of action, or any equivalent or analogous rule of state or federal law.

6.3 No Release Between Class Members. Nothing in this Agreement shall constitute or be construed as a release of any claim or liability as between any Class member and any other Class member.

6.4 Third Party Beneficiaries. No person or entity other than the Released Parties shall be entitled to the benefits of, or entitled to enforce, the releases provided for in this Agreement.

6.5 Section 1542 Waiver. To the fullest extent permitted by law, Plaintiffs, on behalf of themselves and each and every member of the Class, expressly waive the benefits of any statutory provision or common law rule that provides, in sum or substance, that a release does not extend to claims which the releasor does not know or suspect to exist in its favor at the time of executing the release, which if known by it, would have materially affected its settlement with the other party. In particular, but without limitation, Plaintiffs, on behalf of themselves and each and every member of the Class, understand the provisions of California Civil Code Section 1542, which provides:

A general release does not extend to claims which the creditor does not know or suspect to exist in his or her favor at the time of executing the release, which if known

by him or her must have materially affected his or her settlement with the debtor.

Plaintiffs, on behalf of themselves and each and every member of the Class, with the advice of counsel, hereby agree that (i) the provisions of California Civil Code Section 1542 are hereby knowingly and voluntarily waived and relinquished, and (ii) the provisions of all similar federal or state laws, rights, rules, or legal principles of any other jurisdiction, to the extent that they are found to be applicable herein, also are hereby knowingly and voluntarily waived and relinquished. Notwithstanding the foregoing waiver of California Civil Code Section 1542, each Party acknowledges that the releases set forth in this Agreement are specific to the Released Claims, and are not intended to create general releases as to all claims, or potential claims, between the releasing and released Parties.

6.6 Covenant Not to Sue. Upon the Effective Date, each member of the Class who has not effectively excluded itself, covenants and agrees that it shall not hereafter seek to establish liability or institute, maintain, collect, proceed, or otherwise assert any claims, demands, actions, or causes of action of any nature under federal or state law, on behalf of itself or any other person, entity or class, against any of the Released Parties, in whole or in part, for any of the Released Claims. The Parties agree that this covenant may be pled as a full and complete defense to any action, suit or other proceeding that may be instituted, prosecuted or attempted with respect to any of the Released Claims.

7. TERMINATION

7.1 Events of Termination. AMS shall have the right and option to terminate this settlement agreement in the event that any of the following events (each an "Event of Termination") shall have occurred.

(a) The Court does not enter the Judgment in the form required by Section 5.7, or the Judgment is modified after entry; or

(b) There is a material change to the terms of this Settlement Agreement not agreed to by AMS; or

(c) AMS, after the date set by the Court for members of the Settlement Class to request exclusion, and after having been provided with all information reasonably necessary to determine whether the opt-out threshold has been exceeded, concludes that the opt-out threshold has been exceeded.

7.2 Exercise of Right of Termination.

(a) Following an Event of Termination, AMS may terminate this Settlement Agreement by providing written notice ("Notice of Termination") to Plaintiffs' Liaison Counsel within 20 calendar days following: (i) in the case of Events of Termination 7.1(a) or 7.1(b), AMS's receipt of notice of such Event of Termination; and (ii) in the case of Event of Termination 7.1(c), the date that AMS concludes the opt-out threshold has been exceeded.

(b) Notice of Termination will be deemed to have been timely provided to Plaintiffs' Liaison Counsel upon any of the following actions: (i) service of Notice of Termination upon Plaintiffs' Liaison Counsel delivered personally or (ii) deposit by AMS of Notice of Termination with the courier if delivered by Federal Express or (iii) transmission of Notice of Termination to Plaintiffs' Liaison Counsel by facsimile transmission (if given by facsimile transmission followed by certified mail, return receipt requested).

7.3 Effect of Termination. Unless otherwise ordered by the Court, in the event that the Effective Date does not occur or this Agreement should terminate, or be cancelled, or otherwise fail to become effective for any reason, including, without limitation, in the event that the Settlement is not approved by the Court or the Judgment is reversed or vacated following any appeal taken therefrom, or AMS exercises its right to terminate this Agreement pursuant to Section 7.2 above, then:

(a) within ten business days after written notification of such event is sent by counsel for AMS to the Plaintiffs' Liaison Counsel, the Settlement Amount and all interest paid by or on behalf of AMS or earned on the Price Indexing Cases Settlement Fund, excluding only Allocated Notice Expenses that have either been properly disbursed or are owing pursuant to Section 5.3, above, and Taxes and Tax Expenses that have been paid or that have accrued and will be payable at some later date, will be refunded, reimbursed and repaid to AMS. If said amount or any portion thereof is not returned within such ten (10) day period, then interest shall accrue at the rate earned on the Price Indexing Cases Settlement Fund until the date that amount is returned;

(b) at the written request of counsel for AMS, Plaintiffs' Liaison Counsel, or its designee shall apply for any tax refund owed to the Price Indexing Cases Settlement Fund and pay the proceeds to AMS, after deduction of any fees or expenses reasonably incurred in connection with such application for refund, pursuant to such written request;

(c) the Parties shall be restored to their respective positions in the Class Actions as of March 2, 2007, with all of their respective claims and defenses (including all opposition and objections to certification of any class or subclass in the Class Actions), preserved as they existed on that date;

(d) the terms of this Agreement, with the exception of Sections 3.2, 8.1, and 8.3 (which shall continue in full force and effect), shall be null and void and shall have no further force or effect with respect to the Parties, and neither the existence nor the terms of this Agreement (nor any negotiations preceding this Agreement nor any acts performed pursuant to, or in furtherance of, this Agreement) shall be used or offered in evidence in the Class Actions or in any other action or proceeding for any purpose (other than to enforce the terms remaining in effect);

(e) any judgment or order entered by the Court in accordance with the terms of the Agreement shall be treated as vacated, *nunc pro tunc*; and

(f) the Settlement Class, if it has been certified, shall be vacated, *nunc pro tunc*.

8. GENERAL PROVISIONS

8.1 No Admission. It is expressly understood and agreed that this Agreement does not, in any way, embody, reflect, or imply any wrongdoing on the part of any of the Released Parties, and the Parties may not represent or claim that it does in any public statement and may not use it for that purpose in any subsequent legal proceeding or otherwise. This Agreement reflects a compromise of matters that are disputed and neither this Agreement nor any actions or proceedings undertaken in accordance with the terms of this Agreement, shall be construed as or deemed to be evidence or an admission or concession of any wrongdoing by any of the Released Parties or of the validity of any of the Released Claims. Neither this Agreement, nor any of its provisions, nor any statement made, document filed or action undertaken in connection with this Settlement, shall be filed, offered, received in evidence or otherwise used for any purpose in any action or other proceeding, except in connection with the Parties' application for approval or an application for enforcement of this Agreement and all proceedings incident thereto.

8.2 No Penalty or Fine. The Parties agree and acknowledge that nothing paid in respect of this Agreement constitutes or shall in any way be deemed a payment of a penalty or a fine of any kind. All payments made by AMS pursuant to this Agreement constitute compensation to the Class for the Released Claims.

8.3 No Prejudice to Parties. In the event that this Agreement does not become final in accordance with its terms, or that AMS elects to terminate the Settlement pursuant to Section 7, the Parties expressly reserve all of their rights and preserve all applicable defenses. The Class Actions shall revert to their respective procedural and substantive status prior to the date of execution of this Agreement and shall proceed as if this Agreement, and all other related orders and papers, had not been executed. All matters leading up to or related to the Settlement are confidential settlement communications inadmissible under Section 1152 of the California Evidence Code, Rule 408 of the Federal Rules of Evidence, and any and all other applicable federal and state laws. The provisions of this paragraph shall survive and continue to apply to each Party, even if the Court does not approve the Settlement, or the Court's approval of the Settlement is set aside, or AMS terminates the Agreement pursuant to the provisions of Section 7 of this Agreement.

8.4 Binding Effect. The terms of this Agreement shall be binding on, and inure to the benefit of, the Parties and their respective successors and assigns. The Parties expressly disclaim any intention to create rights under this Agreement that may be enforced by any other person under any circumstances whatsoever, except as provided in this Agreement.

8.5 Entire Agreement. This Agreement contains the entire, complete and integrated statement of each and every term and provision agreed to by the Parties, and is not subject to any conditions not provided for in this Agreement. There are no additional

promises, understandings or terms of the Settlement other than those contained herein. This Agreement supersedes and renders of no effect all other oral or written communications concerning the subject matter hereof. Each Party represents and warrants to the others that, in entering into this Agreement, it has not relied upon any representations or promises not contained in this Agreement.

8.6 Modification and Waiver. After entry of the Court's order preliminarily approving the Settlement, the terms and provisions of this Agreement may not be changed, waived, modified, or varied in any manner whatsoever unless in a writing duly signed by all Parties with the consent of the Court. Any failure by any Party to insist upon the strict performance by any other Party of any of the provisions of this Agreement shall not be deemed a waiver of any of the provisions hereof, and that Party, notwithstanding that failure, shall have the right thereafter to insist upon the strict performance of any and all of the provisions of this Agreement to be performed by the other Party.

8.7 Governing Law. This Agreement, including, but not limited to, the releases contained herein, shall be governed by and construed in accordance with, the laws of the State of California without regard to its choice of law or conflict of laws principles.

8.8 No Party is the Drafter. This Agreement shall be deemed to have been mutually prepared by the Parties and shall not be construed against any of them solely by reason of authorship.

8.9 Authority. Each person signing this Agreement hereby represents and warrants that he or she is authorized to enter into this Agreement on behalf of that Party.

8.10 Execution in Counterparts. The signatories to this Agreement may execute this Agreement in counterparts, and the execution of counterparts shall have the same effect as if all counsel had signed the same instrument. Facsimile signatures shall be considered as valid signatures as of the date of this Agreement, but the original signature pages shall subsequently be appended to this Settlement Agreement and copies thereof filed with the Court.

8.11 Jurisdiction. The Court shall have exclusive jurisdiction over all provisions and terms of this Agreement, including the administration of the Settlement and the Price Indexing Cases Settlement Fund and the acts to be undertaken pursuant to this Agreement and any and all disputes of any kind relating to or arising out of this Agreement.

8.12 Enforcement. Once effective, this Agreement may be pleaded as a full and complete defense to any action, suit or other proceeding that has been or may be instituted, prosecuted or attempted with respect to any of the Released Claims. The Parties agree that for any such proceeding, the Court or any court of competent jurisdiction may enter an injunction restraining prosecution of such proceeding. The

Parties further agree that this Agreement may be pleaded as necessary for the purpose of enforcing the Agreement.

8.13 Notice. Any and all notices, requests, consents, directives, instructions or communications by any Party intended for any other Party shall be in writing and shall, unless expressly provided otherwise herein, be delivered personally, or sent by Federal Express, or facsimile transmission followed by U.S. Mail, first-class postage prepaid, and shall be addressed as follows:

If to AMS:

Charles A. Moore
Sean Gorman
LeBoeuf, Lamb, Greene & MacRae LLP
Reliant Energy Plaza
1000 Main Street, Suite 2550
Houston, TX 77002
Telephone: (713) 287-2000
Facsimile: (713) 287-2100

If to Plaintiffs:

William Bernstein
Barry Himmelstein
LIEFF, CABRASER, HEIMANN & BERNSTEIN, LLP
275 Battery Street, 30th Floor
San Francisco, CA 94111-3339
Telephone: (415) 956-1000
Facsimile: (415) 956-1008

- and -

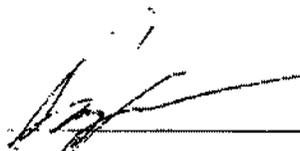
Walter J. Lack
Paul A. Traina
ENGSTROM, LIPSCOMB & LACK, PC
10100 Santa Monica Boulevard, 16th Floor
Los Angeles, CA 90067-4107
Telephone: (310) 552-3800
Facsimile: (310) 552-9434

Any of the Parties may, from time to time, change the address to which such notices, requests, consents, directives or communications are to be delivered, by giving the other Parties prior written notice of the changed address, in the manner herein above provided, ten (10) calendar days before the change is effective.

IN WITNESS WHEREOF, the Parties hereto through their fully authorized representatives have agreed to this Agreement, on the date first above herein written.

On Behalf of Plaintiffs:

By:



Barry Himmelstein
LIEFF, CARRASER, HEIMANN & BERNSTEIN, LLP
Co-Lead and Liaison Counsel for Plaintiffs

On Behalf of Aquila Merchant Services, Inc.

By: J. Culp
Jodi Culp, AMS President