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PSC NO: 12 GAS LEAF: 427.43 COMPANY: THE BROOKLYN UNION GAS COMPANY REVISION: 0 INITIAL EFFECTIVE DATE: 11/03/06 SUPERSEDING REVISION: STAMPS:

Form of Facilities Construction and Reimbursement Agreement For Electric Generation (continued)

- 14.2 Independent Contractor. At all times during the term of this Agreement, each Party shall be considered an independent contractor.
- 14.3 Choice of Law, Venue and Jurisdiction. This Agreement shall be governed by and construed in accordance with the laws of the State of New York without regard to conflicts of law provisions thereof. Each of the Parties hereby agrees to submit to the nonexclusive jurisdiction of the United States District Court for the Eastern District of New York and/or any New York State Court sitting in Kings County, New York or Nassau County, New York for the purposes of all legal proceedings arising out of or relating to this Agreement. Each of the Parties hereby irrevocably waives, to the fullest extent permitted by law, any objection to the selection of this venue and any claim that any proceeding brought in such a court has been brought in any inconvenient forum. Each of the Parties further irrevocably waives, to the fullest extent permitted by law, any and all rights to a trial by jury with regard to any matter or dispute arising out of or in connection with this Agreement.
- 14.4 Force Majeure. Notwithstanding anything to the contrary contained herein, a Party shall not be liable for its failure to perform obligations set forth in this Agreement if and to the extent such failure has been occasioned by the occurrence of a force majeure event. The term "force majeure event" as used herein shall include acts of God, fires, floods, storms, hurricanes, strikes, labor disputes, riots, insurrections, acts of war (whether declared or otherwise), unforeseeable acts of governmental or judicial bodies, inability to obtain necessary governmental authorizations and permits applicable to the proposed construction, the breakdown, malfunctioning or failure of all or any part of the subject facilities or necessary equipment caused by an event of force majeure, or any other unforeseeable causes beyond the reasonable control of and which do not involve the fault, negligence or willful misconduct of the Party claiming force majeure. The Parties understand and agree that a failure or inability by either Party to obtain and/or maintain sufficient funds to perform their obligations shall not constitute a force majeure event. If either Party because of an event of force majeure is rendered wholly or partly unable to perform its obligations hereunder, that Party shall be excused from whatever performance is prevented by the force majeure to the extent so prevented, provided that such suspension of performance shall be of no greater scope and of no longer duration than is required by the force majeure, and further provided that (a) the Party claiming force majeure gives the other Party written notice describing the particulars of the occurrence within three (3) days of its occurrence, and (b) the Party claiming force majeure uses reasonable diligence to remedy its inability to perform.

Issued by: John J. Bishar, Jr., Executive Vice President, General Counsel, and Secretary, Brooklyn, NY

Cancelled by supplement No. 44 effective 01/01/2008 Suspended to 01/01/2008 by order in Case 06-G-1185. See Supplement No. 43. The supplement filing date was 08/30/2007 Suspended to 09/03/2007 by order in Case 06-G-1185. See Supplement No. 42. The supplement filing date was 02/27/2007 Suspended to 03/03/2007 by order in Case 06-G-1185. See Supplement No. 41. The supplement filing date was 11/01/2006