

1 ARTHUR ANDERSEN LLP
Tassilo von Koch
2 Suite 3500, Spear Street Tower
One Market
3 San Francisco, CA 94105-1019
Telephone: (415) 546-8700
4
5 Special Tax Accountants and Consultants
for Debtor and Debtor in Possession

6 Debtor's Mailing Address:
KENETECH Windpower, Inc.
7 6952 Preston Avenue
Livermore, California 94550
8

FILED
JUN 2 1999 *gpe*
BANKRUPTCY COURT
OAKLAND, CALIFORNIA

9 UNITED STATES BANKRUPTCY COURT
10 NORTHERN DISTRICT OF CALIFORNIA

11 In re) Case No. 96 44426 T
12) Chapter 11
13)
14 KENETECH WINDPOWER, INC., fka) **AMENDED FINAL FEE APPLICATION OF**
15 U.S. WINDPOWER, INC.,) **ARTHUR ANDERSEN LLP FOR ALLOWANCE**
16) **AND PAYMENT OF COMPENSATION**
17)
18 Debtor.) Hearing
19)
20) Date: June 14, 1999
21) Time: 10:00 A.M.
22) Place: Courtroom 201
23) 1300 Clay Street
24) Oakland, CA 94612

25 TO THE HONORABLE LESLIE TCHAIKOVSKY, UNITED STATES BANKRUPTCY
26 JUDGE, THE UNITED STATES TRUSTEE, AND OTHER PARTIES IN INTEREST:

27 By this Application, Arthur Andersen LLP ("Arthur
28 Andersen"), special tax accountants and consultants to Kenetech
Windpower, Inc. ("KWI"), requests that the Court allow on an
final basis as an expense of administration in KWI's chapter 11
case, and authorize the payment of, Arthur Andersen's fees in the
amount of \$99,398.31 and expenses in the amount of \$504.00, which
fees and expenses relate to services rendered by Arthur Andersen
to KWI during the period from October 1, 1998 through April 7,
1999 and October 1, 1998 through December 31, 1998, for work

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1 performed related to property tax assessments and income tax
2 preparation, respectively. (the "Application Period").

3 Arthur Andersen has prepared this Application pursuant
4 to the amended intercompany tax sharing arrangement between
5 KENETECH Corporation and KWI whereby KENETECH Corporation would
6 bear all costs of income tax related work performed for KWI after
7 December 31, 1998. As a result, this final fee application
8 requests reimbursement for costs of preparing the 1998 tax return
9 prior to January 1, 1999. These costs include research and
10 analysis of major transactions through December 31, 1998 and
11 archiving of historical tax accounting information.

12 Arthur Andersen has prepared this Application pursuant
13 to the Court's "Order Establishing Procedures For Interim Payment
14 Of Fees And Reimbursement Of Expenses For Professionals And
15 Committee Members" (the "Interim Payment Order") and the Court's
16 generally-applicable "Guidelines For Compensation And Expense
17 Reimbursement Of Professionals And Trustees." In accordance with
18 the Interim Payment Order, KWI's reorganization counsel will
19 prepare and serve a notice of the hearing on this Application in
20 the second week of May 1999.

21
22 I.

23 INTRODUCTION

24 1. KWI filed a voluntary petition under chapter 11 of
25 the Bankruptcy Code on May 29, 1996 (the "Petition Date"), and
26 KWI continues to manage its affairs as a debtor and debtor in
27 possession. A summary of KWI's activities since the Petition
28 Date and a status report regarding this case is set forth in the

1 previously-filed "Final Application Of Stutman, Treister & Glatt
2 Professional Corporation For Allowance And Payment Of
3 Compensation And Reimbursement Of Expenses (For The Period From
4 October 1, 1998, Through April 7, 1999)."

5 2. On January 22, 1997, this Court entered an "Order
6 Authorizing Kenetech Windpower, Inc. To Employ Arthur Andersen
7 LLP As Special Tax Accountants And Consultants" (the "Employment
8 Order"). During the Application Period, pursuant to the
9 Employment Order, Arthur Andersen performed for KWI 924.9 hours
10 of services, for which it would charge its similarly-situated,
11 regularly-paying clients \$99,398.31, and Arthur Andersen incurred
12 expenses in the amount of \$504.00 in connection with the
13 provision of such services. As described below, Arthur Andersen
14 also performed property-tax related services during the
15 Application Period, for which it is to be compensated on a
16 contingency-fee basis pursuant to the Employment Order and for
17 which it is entitled to be paid \$13,159.78. Copies of Arthur
18 Andersen's record of services rendered and expenses incurred in
19 the Application Period, as prepared and maintained in the
20 ordinary course of its business, are attached hereto as Exhibits
21 A, B, and C.

22 3. This Application is Arthur Andersen's final
23 request for allowance and payment of compensation in KWI's case.
24 The previous such requests resulted in the following orders of
25 the Court: (a) the "Order Granting First Interim Application Of
26 Arthur Andersen LLP For Allowance And Payment Of Compensation
27 (For The Period From January 22, 1997, Through April 30, 1997),"
28 entered on August 25, 1997, by which the Court allowed on an

1 interim basis Arthur Andersen's fees in an amount of \$28,093.69;
 2 (b) the "Order Granting Second Interim Application Of Arthur
 3 Andersen LLP For Allowance And Payment Of Compensation (With
 4 Respect To Income Tax Services) (For The Period From January 22,
 5 1997, Through September 15, 1997)," by which the Court allowed on
 6 an interim basis Arthur Andersen's fees in an amount of
 7 \$62,755.00 and expenses in an amount of \$420.00; (c) the "Order
 8 Granting Third Interim Application Of Arthur Andersen LLP For
 9 Allowance And Payment Of Compensation (With Respect To Income Tax
 10 Services) (For The Period From February 1, 1998, Through May 31,
 11 1998)," by which the Court allowed on an interim basis Arthur
 12 Andersen's fees in an amount of \$50,429.65 and expenses in an
 13 amount of \$730.00; and (d) the "Order Granting Fourth Interim
 14 Application Of Arthur Andersen LLP For Allowance And Payment Of
 15 Compensation (With Respect To Income Tax Services) (For The
 16 Period From June 1, 1998, Through September 30, 1998)," by which
 17 the Court allowed on an interim basis Arthur Andersen's fees in
 18 an amount of \$80,998.80 and expenses in an amount of \$158.00.

19 KWI has paid such allowed amount of fees of expenses to Arthur
 20 Andersen pursuant to those orders.

21 ///

	<u>F</u>	<u>E</u>
1) 28,093.69		0
2) 62,755.00		420.00
3) 50,429.65		730.00
4) 80,998.80		158.00
	<u>222,277.14</u>	<u>1,308</u>
5) 99,398.31		504
	<u>321,675.45</u>	<u>1812.00</u>

SUMMARY OF SERVICES RENDERED

24 4. As set forth in the previously-filed "Application
 25 Of Kenetech Windpower, Inc. To Employ Arthur Andersen LLP As
 26 Special Tax Consultants And Accountants" (the "Employment
 27 Application"), KWI has engaged Arthur Andersen to perform
 28

1 limited, tax-related services during the course of this chapter
2 11 case, including (a) preparation of KWI's federal, state, and
3 local income tax returns for the 1996, 1997, and 1998 tax years
4 (including preparation of any related estimated tax filings);
5 (b) assistance in responding to any federal or state audits or
6 examinations of KWI's previously-filed tax returns; (c) advice
7 regarding the tax aspects of proposed sale transactions;
8 (d) evaluation of tax assessments on KWI's real and personal
9 property; (e) negotiation with tax authorities (particularly the
10 Alameda County Assessor's Office) regarding resolution of
11 assessment valuation disputes; (f) representation of KWI at
12 assessment appeals hearings, if necessary; and (g) gathering,
13 cataloging, and archiving current and prior years' accounting
14 records and tax information to provide support for positions
15 taken on the income tax returns and to satisfy the Internal
16 Revenue Service record retention requirements. As reflected in
17 Exhibit D to this Application, which provides a summary of the
18 background and qualifications of the members of Arthur Andersen
19 who provided services to KWI in the Application Period, Arthur
20 Andersen has extensive experience in providing such services. We
21 have enclosed a copy of our 1998 job arrangement letter as
22 Exhibit E.

23 5. As described more fully in Exhibits A, B, and C,
24 in the Application Period Arthur Andersen performed substantial
25 work with respect to (a) preparation of KWI's 1997 California
26 Form 100 Combined Corporate Income Tax Return which was filed in
27 September of 1998, and preparation of KWI's 1998 Form 1120
28 Corporate Income Tax Return, which was filed in April of 1999;

1 (b) archiving of relevant accounting records used to prepare
2 KWI's income tax returns and required to be properly maintained
3 under the Internal Revenue Code; and (c) negotiating on KWI's
4 behalf with the Alameda County assessor regarding a reduction in
5 the amount of property taxes that KWI previously had paid with
6 respect to the 1998/99 tax year.

7
8 **A. Services Relating to Preparation of the 1997 California**
9 **Income Tax Return and Preparation of the 1998 Federal**
10 **Income Tax Return.**

11
12 6. With respect to its California income tax services
13 for 1997, Arthur Andersen conferred with KWI personnel, completed
14 the California apportionment factors, and reviewed the California
15 combined tax return for completeness and accuracy.

16 7. With respect to its federal income tax services for
17 1998, Arthur Andersen performed a number of discrete tasks during
18 the Application Period in the course of preparing KWI's 1998 Form
19 1120 Corporate Income Tax Return, which services are described in
20 Exhibit A to this Application. Arthur Andersen first reviewed
21 KWI's work papers and tax return for the prior year and then
22 determined the scope, nature, and budget for the 1998 tax year
23 work program.

24 8. Among other things, Arthur Andersen (i) conferred
25 with KWI personnel, reviewed sales agreements, and gathered
26 support for its compilation of 1998 book/tax differences
27 including, but not limited to, gain/loss on fixed asset and other
28 dispositions, depreciation, capitalized project development

1 costs, and unearned revenue; (ii) researched provisions of the
2 Internal Revenue Code and related Regulations that might apply to
3 KWI; (iii) reviewed KWI's general ledger for applicable tax
4 adjustments; and (iv) prepared workpapers to store all book/tax
5 differences support.

6 9. In the aggregate, as set forth in the time records
7 attached hereto as Exhibit A, Arthur Anderson professionals
8 rendered 146.9 hours of income tax services and general tax
9 consultation, for which Arthur Andersen would charge its
10 similarly-situated, regularly-paying clients \$30,563.00.

11
12 **B. Services Relating to Cataloging of KWI Accounting and**
13 **Tax Information to Prepare KWI's Income Tax Returns and**
14 **Properly Maintain Accounting Records Required Under the**
15 **Internal Revenue Code.**

16
17 10. Among other things, Arthur Andersen (i) physically
18 inspected, identified, and moved relevant KWI accounting files to
19 be cataloged in appropriate storage areas; (ii) gathered and
20 cataloged the relevant accounting information to document the
21 names, dates, and sources of all files stored within boxes so
22 that they could be documented on a readily accessible database;
23 and (iii) designed the electronic database and graphic user
24 interface so that relevant tax accounting information could be
25 easily retrieved.

26 11. In the aggregate, as set forth in the time records
27 attached hereto as Exhibit B, Arthur Andersen professionals and
28 temporary staff supervised by Arthur Andersen professionals

1 rendered 763.9 hours of services, for total fees of \$55,675.53,
2 attributable to the tax information archiving project.

3

4 C. Services Relating to Appeal of Property-Tax
5 Assessments For the 1998/99 Fiscal Years.

6

7 12. Arthur Andersen negotiated on KWI's behalf with the
8 Alameda County Assessor's Office regarding property taxes that
9 had been levied with respect to KWI's commercial building and
10 accompanying real property in Livermore, California for the
11 1998/99 tax year. As a result of those negotiations, the
12 Assessor agreed to a reduction of the assessed value of the
13 subject property that will result in a tax refund to KWI in an
14 amount of \$18,626.84 plus interest.

15 13. As set forth in the Employment Application, Arthur
16 Andersen's compensation for its property-tax related services to
17 KWI is limited to a contingency fee equal to forty-five percent
18 (45%) of the tax savings that Arthur Andersen achieves on KWI's
19 behalf. Thus, Arthur Andersen is entitled to a fee of \$8,382.00
20 (forty-five percent of \$18,626.84)

21 14. Additionally, Arthur Andersen performed
22 miscellaneous additional work related to Alameda County property
23 tax claims/statements and assessment appeals, as explained in
24 Exhibit C, totaling \$4,777.78.

25 15. In the aggregate, services relating to appeal of
26 property-tax assessments for the 1996 and 1998 fiscal years and
27 other miscellaneous property tax work rendered produced total
28 fees of \$13,159.78.

1 16. Finally, Arthur Andersen expended 16.5 hours for
2 total fees of \$4,148.50 and 6.2 hours for total fees of \$1,267.00
3 in preparing its fourth interim and final fee applications,
4 respectively, relating to income tax preparation (as evidenced at
5 Exhibit A, page 15). Arthur Andersen also expended 8.2 hours for
6 total fees of \$1,334.00 in preparing its final fee application
7 relating to cataloging of KWI accounting and tax information (as
8 evidenced at Exhibit B, page 32). In the aggregate, Arthur
9 Andersen expended 30.9 hours for total fees of \$6,749.50, in
10 preparing its fourth interim and final fee applications.
11

12 **III.**

13 **SUMMARY OF EXPENSES INCURRED**

14 17. Arthur Andersen's policy is to pass along to its
15 clients its actual, out-of-pocket expenses, without markup or
16 interest charges. In KWI's case, such expenses consist of
17 automotive transportation expenses, calculated at a rate of
18 \$0.325/mile plus actual toll and parking charges, meals and pier
19 diem, supplies, and other transportation incurred in connection
20 with travel between Arthur Andersen's San Francisco offices and
21 KWI's Livermore offices.

22 18. Specifically, in the Application Period Arthur
23 Andersen incurred an aggregate amount of \$504.00 of such expenses
24 in connection with the services that are the subject of this
25 Application. A record of those expenses is attached hereto as
26 Exhibit B.
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28 **IV.**

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REQUEST FOR FINAL COMPENSATION

19. Section 331 of the Bankruptcy Code provides that professionals employed by order of the Court in a chapter 11 case may apply for interim compensation and that, "[a]fter notice and a hearing, the court may allow and disburse to such applicant such compensation." 11 U.S.C. § 331. By this Application, pursuant to section 331, Arthur Andersen requests that the Court allow as an expense of administration, and authorize the payment of, fees in the amount of \$99,398.31 and expenses in the amount of \$504.00.

20. Except as noted above, no payments have been made or promised to Arthur Andersen for services rendered or to be rendered in any capacity whatsoever in connection with this case. Neither Arthur Andersen nor any member of Arthur Andersen has any agreement or understanding of any kind or nature to divide, pay over, or share any portion of the fees to be awarded to it with any other person except as among members and associates of Arthur Andersen, and there are no claims against or stock of KWI in which a beneficial interest has been acquired by or transferred to Arthur Andersen or any members for its or their account after the filing of this case.

WHEREFORE, Arthur Andersen respectfully requests that the Court allow on a final basis as an expense of administration in KWI's chapter 11 case, and authorize the payment of, Arthur Andersen's fees in the amount of \$99,398.31 and expenses in the amount of \$504.00, as attributable to Arthur Andersen's services to KWI during the Application Period.

WHEREFORE, Arthur Andersen respectfully requests that