ILLINOIS POLLUTION CONTROL BOARD

In The Matter of: **Proposed New 35 Ill. Adm. Code 225 Control of Emissions from Large Combustion Sources**	)))))	**No. R06-25** **(Rulemaking – Air)**

NOTICE OF FILING

TO: See attached Service List

PLEASE TAKE NOTICE that on September 20, 2006, I caused to be filed electronically with the Office of the Clerk of the Pollution Control Board, Participant KINCAID GENERATION, L.L.C.'s FINAL COMMENTS to the proposed rulemaking, a copy of which is hereby served upon you.

By: /s/ *Bill S. Forcade*
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BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

In The Matter of:	**)**	**No. R06-25**
	)	**(Rulemaking -Air)**
Proposed New 35 Ill. Adm. Code 225	**)**	
Control of Emissions from	**)**	
Large Combustion Sources	**)**	

FINAL COMMENTS OF KINCAID GENERATION, LLC

NOW COMES Participant KINCAID GENERATION, L.L.C. ("Kincaid"), by and through its attorneys, JENNER & BLOCK LLP, and respectfully submits its final comments to this rulemaking. Kincaid appreciates this opportunity to comment again on these important new rules. Kincaid has been an active participant throughout this long rulemaking process – attending all the "outreach" meetings convened by the Illinois Environmental Protection Agency (IEPA) in Springfield in January and February, participating in the Board hearings both in Springfield and Chicago, providing comment on the proposal on three separate occasions, and providing testimony at the Chicago hearing.

As we have witnessed this proceeding unfold, with the many changes, agreements, and other surprises, we want to emphasize how unfair this proposal is for the Kincaid facility and we offer the following comments as evidence of that claim.

I. Introduction

Kincaid maintains that the proposed Illinois mercury rule is unreasonable for several reasons. First, we do not have confidence that there currently exists commercially proven technology that will achieve a sustained 90% reduction in mercury emissions. We also believe the proposal unfairly disadvantages the Kincaid facility. As we explain in these comments, Kincaid is not eligible for the Averaging Demonstration under section 225.232 of the proposal or

the Temporary Technology-Based Standards (TTBS) under 225.234 of the proposal. The Multi-Pollutant Standards (MPS) that have been devised through agreements with Ameren and Dynegy have been designed to accommodate the needs of these two companies and do not provide any flexibility for plants like Kincaid that have already achieved in large part the SO_2 and NO_x reductions that are part of the MPS requirements. Further, we do not believe the proposed MPS has met the legal requirements that would allow such a dramatic addition to a previously proposed regulation. Finally, while Kincaid steadfastly recommends adoption of the federal CAMR (Clean Air Mercury Rule) in Illinois, we have included in this submittal a bona fide proposal that guarantees mercury controls at the Kincaid facility by July 2009, with no "averaging" among other facilities and no deadline extensions for smaller units.

II. Background

Dominion Resources, Inc. ("Dominion") owns and operates electric generating facilities in eleven states, including the 1250 megawatt coal-fired Kincaid Generation LLC power plant, located in Kincaid, Illinois. Dominion's position on the IEPA mercury proposal is well established. Though Dominion believes reductions of mercury emissions from coal-fired utility boilers are warranted, we also note that it is well documented that U.S. man-made emissions of mercury are small in comparison to other sources across the globe. We believe the IEPA proposal to reduce coal-fired electric utility mercury emissions 90% by July 2009 to be unreasonable. We do not believe that mercury-specific control technology is currently developed sufficiently to achieve a sustained 90% reduction. Further, we believe the proposal places Kincaid at a distinct competitive disadvantage with other electricity providers in Illinois.

Kincaid has compiled an exemplary environmental compliance record. Since Dominion purchased the plant in 1998, the plant has received no environmental violations, has cut sulfur

dioxide and nitrogen oxide emissions drastically from pre-1998 levels, and has taken steps to minimize opacity and particulate levels. Not only that, the Kincaid station's commitment to environmental stewardship goes beyond the air side of the business. For the second time in three years, Kincaid Station has been nominated by the IEPA for "Best Operated Wastewater Treatment Works." Kincaid Station was one of only four facilities nominated out of 1,594 facilities statewide.

III. Kincaid and other similarly situated facilities cannot achieve 90% mercury reduction (or 0.0080 lbs/GWH) on a consistent basis using the Activated Carbon Injection (ACI) approach. Therefore, this approach is not technically feasible.

The agreements struck by IEPA with Ameren and with Dynegy effectively allow more than 8000 megawatts – more than 50% - of coal-fired generation in Illinois to avoid the 90% reduction requirement until 2015. Furthermore, this MPS option would allow ten power plants to avoid mercury controls altogether until 2013, and, even then, there is no requirement that these units meet the 90% reduction or the emission rate restrictions. Generating units that are not part of these agreements get no relief from the July 2009 requirement for 90% mercury reduction or the .0080 pounds per gigawatt-hour emission limit (collectively the 90% or 0.0080 limit). Based on 1999 estimates, this allows more than 88 pounds of mercury to continue to be emitted in Illinois without any controls or restrictions until 2013.

In exchange for this "delay of the mercury emissions standards,"[1] these companies have agreed to additional SO_2 and NO_x reductions on an accelerated schedule as part of this MPS

[1] Illinois EPA document, "Analysis of Ameren's Multi-Pollutant Alternative (to Illinois' Proposed Mercury Rule)", July 27, 2006.

approach. These reductions would likely have eventually been required as part of these companies' requirements under the Clean Air Interstate Rule (CAIR) or as part of a Consent Decree with the USEPA. But the fact that these companies were so willing to accelerate their CAIR compliance plans in order to gain relief from what is generally acknowledged to be the most stringent mercury proposal in the nation is evidence of the uncertainty surrounding the feasibility of the technology required for a sustained 90% or 0.0080 limit mercury reduction**.**

The hearing record in many cases further supports the position that the technology to achieve a 90% or 0.0080 limit mercury reduction for long periods of time is not currently available. Nowhere in the hearing record is this made clearer than on the first day of the Board hearings in Chicago. "Some of them may not reach 90 percent," testified the IEPA staff,[2] "[the MPS] recognizes that potentially there may be difficulties. We'll give you more time in this broad multi-pollutant category."[3]

As Kincaid has stated in our comments and testimony, and as verified by others during the August hearings, we do not have confidence that, at the current state of technology, halogenated activated carbon injection (with bromine, iodine or chlorine) can achieve a sustained 90% or 0.0080 limit mercury reduction at the Kincaid facility. We do not believe this technology has been fully demonstrated and we do not believe "commercially offered" – as some vendors say – is the same as "commercially available." We agree with the conclusion of IEPA's consultant Dr. James Staudt in his March 2006 article in Environmental Science & Technology:

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[2] Transcript of cross-examination response of Jim Ross, IEPA, Illinois Pollution Control Board Mercury Rule Hearing, August 14, 2006, page 211.

[3] IBID, page 212.

"a broad and aggressive R&D program now under way will yield more experience and information in the next few years."[4] But such expectations do not provide guaranteed performance from which compliance would be measured. Absent performance guarantees, Kincaid cannot accept the realistic risk of potential non-compliance.

This position has been supported by many witnesses in their testimony and/or cross-examination at the August hearings of the Illinois Pollution Control Board. Mr. Ed Cichanowicz, expert witness on power plant controls, in his pre-filed testimony, stated, "…despite impressive results at selected demonstrations, the control technology that is the focal point of interest – activated carbon injection (ACI) – is not sufficiently developed to consistently deliver high Hg removal under the varied conditions in Illinois. For ACI within an existing ESP, several demonstrations recorded 90% or better Hg removal. However, these results reflect short-term tests and 30-day trials, thus the degree these controls can provide satisfactory 24/7/365 service is uncertain."[5]

The Ameren testimony at the Board hearing on August 14 provides evidence of that company's lack of confidence in halogenated activated carbon injection (HACI) to reliably achieve a long term 90% reduction in mercury. When asked if the company would rely solely on HACI if the proposed rule did not include the MPS option, the Ameren representative stated,

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[4] Ravi K. Srivastava, Nick Hutson, Blair Martin, Frank Princiotta, U.S. EPA; James Staudt, Andover Technology Partners, "Control of Mercury Emissions from Coal-Fired Utility Boilers", Environmental Science & Technology, March 1, 2006.

[5] Pre-filed testimony of J.E. Cichanowicz, Independent Consultant, "A Review of Status of Mercury Control Technology", July 28, 2006, page 3.

"No…we believe we would have to put at least fabric filters or baghouses on each one of our units in combination with ACI or a scrubber of some form."[6]

Furthermore, as a practical matter, compliance with a 90% mercury reduction restriction and the uncertainty in current mercury measurement technology will undoubtedly require the control systems to be designed to achieve a somewhat higher-than-90% reduction, just to account for fuel variability and equipment failures and to ensure compliance over the long haul. The Board hearings on August 16 bear this reasoning out: "…coal variability for periods would elevate the required removal to above 90 percent."[7] The pre-filed testimony of Mr. Ed Cichanowicz further clarifies this issue: "…I believe the cumulative effect of measurement uncertainty, variability in coal composition, and variability in process operation require a design Hg removal target of at least 93–95% to consistently deliver 90%."[8]

There are many researchers that agree with our position that the development of mercury-specific controls is not advanced enough to achieve a 90% reduction. A very recent (August 2006) EPRI report supports this position:

> "Mercury reductions/readiness:
>
> CTC (Chemically Treated Carbon): capture rates based on hourly averages ranged from 75% to 95% over one-month test periods at two PRB (Powder River Basin) – fired plants and one PRB/bituminous-coal-fired plant. All plants had large

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[6] Transcript of cross-examination response of Mike Menne, Ameren, Illinois Pollution Control Board Mercury Rule Hearing, August 14, 2006, page 159.

[7] Transcript of cross-examination response of J.E. Cichanowicz, Illinois Pollution Control Board Mercury Rule Hearing, August 16, 2006, page 616.

[8] Pre-filed testimony of J.E. Cichanowicz, Independent Consultant, "A Review of Status of Mercury Control Technology", July 28, 2006, page 2.

> ESPs, and the field trials were conducted under a testing environment (i.e., testing conducted under stable boiler conditions rather than under more variable, but normal, day-to-day conditions)."[9]

At the Board hearing of August 16, 2006, a representative of Sorbent Technologies, Corporation, a sorbent vendor, cross-examined Mr. Cichanowicz and produced data supposedly released by the Department of Energy on tests of HACI at the Midwest Generation Crawford station. The sorbent vendor claimed the data revealed a 90% reduction during the HACI test at the Crawford station. Mr. Cichanowicz cautioned against using such preliminary data: "…I'm finding that informal reports from field tests related to the results in a technical paper…sometimes it is not always the same."[10]

On August 25, 2006, the sorbent vendor submitted for the record a "corrected exhibit" of the data produced at the August 16 Board hearing. In that letter, the sorbent vendor stated,

> "Sorbent Technologies' data quality-control procedures just discovered a problem with three of the data points on one of the Exhibits that was entered into evidence in the recent Illinois power plant mercury regulation hearings…These readings came in a bit lower…denoting about 80-85% removal.
>
> "Indeed, we started our 30-day continuous C-PAC run at Crawford a week ago at an injection rate of 4 lb/MMacf and we are seeing average total Hg removal rates of around 80%…not 90%
>
> "However, this is an important difference because the difference between 90% Hg removal and 80% may be particularly key in Illinois"[11]

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[9] "Status of Mercury Controls for Coal-Fired Power Plants – An EPRI Assessment" August 2006, Electric Power Research Institute (EPRI)

[10] Transcript of cross-examination response of J.E. Cichanowicz, Illinois Pollution Control Board Mercury Rule Hearing, August 16, 2006, page 539.

[11] Corrected Exhibit #88 of Sid Nelson, Jr., President, Sorbent Technologies Corporation, PC#6287.

This captures the "rush to judgment" approach the development of new air pollution control technology sometimes takes. We all want to solve the problems as quickly as possible. However, the prudent investment of millions of dollars in capital for pollution controls demands that power companies take a carefully measured, well developed, or "proven" approach. From Mr. Cichanowicz' testimony:

> "The evolution of environmental controls for coal fired power plants has historically required an extended period for process development, testing and full-scale commercialization. The distinguishing feature of capital-intensive process equipment is that product lifetime is measured in decades, and not months or years as with consumer products. Further, the penalties for malperformance or failure of an environmental control system are not limited to a shortfall in environmental control capability or higher operating cost, but actually challenge the reliability of the plant."[12]

IV. If ACI will not work, it is not economically reasonable to require Kincaid and similarly situated facilities to install the next level of controls: Baghouses or Scrubbers.

IEPA representatives have stated several times during the February "outreach" meetings that capital costs for compliance with this 90% or 0.0080 limit mercury proposal will cost "$2 million per unit." IEPA witness Jim Staudt, in his oral testimony at the Springfield Board hearing in June, indicated that the "typical capital cost is around $2/KW" [13] (capital cost is the installation cost) for activated carbon injection (ACI) systems. Dr. Staudt estimates the cost of brominated PAC to be $.80/lb.[14] The capital cost for ACI systems referenced by Thomas J. Feeley in his April TV interview and later reaffirmed by the DOE/NETL in the April 28, 2006

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[12] Pre-filed testimony of J.E. Cichanowicz, Independent Consultant, "A Review of Status of Mercury Control Technology", July 28, 2006, page 17.

[13] Pre-filed testimony of James E. Staudt, Independent Consultant for Illinois Environmental Protection Agency, June 21, 2006, page 5.

[14] IBID, page 7.

paper "Clarification of the U.S. Department of Energy's Perspective on the Status of Mercury Control Technologies for Coal-Fired Power Plants " was $5-$7 per kilowatt (installed cost) which is substantially higher than Staudt's estimate.[15] For Kincaid, that difference is significant at $5,000,000 (installed cost). Using the DOE's $6/KW estimate, the cost is $7.5 million; using Staudt's $2/KW estimate, the cost is only $2.5 million. In the DOE/NETL's April 2006 report, "DOE/NETL's Phase II Mercury Control Technology Field Testing Program," on page 23, the cost of Brominated PAC is listed as: DARCO Hg-LH at $.95/lb., B-PAC at $.85/lb.[16] Again, Staudt's estimate is low. The difference between $.90/lb and $.80/lb may seem minor but, for Kincaid, this $.10/lb. difference would be significant at $1 million per year in increased operating costs (units- 80% capacity factor with a 5 lb. injection rate). This would be just normal ACI costs. At a 5 lb. injection rate, which IEPA desires, the annual operating costs would be considerable. Total annual operating costs for just the PAC would be - ($.90/lb PAC)(700lb./hr PAC for 625MW unit)(2 units)(7008 hrs (80% C.F))= $8.83 million/yr. However, this amount does not account for O&M on the maintenance of the two injection systems.

The previous section shows that ACI is not capable of reliably achieving the required emissions level all of the time. Therefore, Kincaid, and other Illinois utilities, must rely on fully demonstrated technologies for planning purposes. The IEPA technical document references the "TOXECON" project currently underway at WE Energies' Presque Isle plant in Michigan as the

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[15] U.S. Dep't of Energy National Energy Technology Laboratory, "Clarification of the U.S. Department of Energy's Perspective on the Status of Mercury Control Technologies for Coal-Fired Power Plants," April 25, 2006.

[16] Jones, A., et al., "DOE/NETL's Phase II Mercury Control Technology Field Testing Program: Preliminary Economic Analysis of Activated Carbon Injection," April, 2006.

next level of control technology capable of achieving the mercury reductions required by this proposed rule. [17] This application includes installation of an ACI system in addition to a fabric filter system. The IEPA document suggests capital costs for a TOXECON system would be "typically in the range of about $40-$60/KW." The document describes the Presque Isle project as "unusual" and fails to include the projected costs for the project, which, according to the recent design study conducted for WE Energies, are reported to be equivalent to a capital cost of $120/KW.[18]

The TOXECON II system (injection of PAC into back fields of an existing ESP) will not work on the Kincaid units due to the "marginal" size of the ESPs. The more expensive TOXECON system, with a separate baghouse, is the only option. The Kincaid units will not require the "dry" scrubbers for mercury removal. The capital cost for the WeEnergies Presque Isle ACI/TOXECON system listed on page 4 in the DOE/NETL's April 28, 2006 "Clarification of the U.S. Department of Energy's Perspective on the Status of Mercury Control Technologies for Coal-Fired Power Plants" paper was $126/KW. The IEPA suggested this same system would only cost $40-$60/KW. For Kincaid's 1250 MWs, the cost at $126/KW would be $157 million. This cost is not economically reasonable and no portion of the testimony in the record supports such excessive costs as being economically reasonable.

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[17] Illinois Environmental Protection Agency, "Technical Support Document for Reducing Mercury Emissions from Coal-Fired Electric Generating Units" (TSD), AQDSTR 06-02, March 14, 2006, page 130.

[18] Johnson, D. et al., "TOXECON Retrofit for Mercury and Multipollutant Control", 2005 NETL Mercury Review Control Technology Conference, July, 2005, Pittsburgh, PA.

The Agency continues to support a 90% or 0.0080 limit, premised on control costs of "$2 million per unit" or a "typical capital cost is around $2/KW", based on ACI injection rates not to exceed 5 lbs. What if achieving the 90% or 0.0080 limit requires ACI injection rates of 15 lbs, or installation of a TOXECON system? The range of possible control costs discussed in this proceeding is simply too large to validate the Agency requested absolute emission limitations, "regardless of costs." If the Board ultimately adopts a 90% or 0.0080 limit for some future compliance date it must provide a mechanism for regulatory relief at those facilities where control costs will dramatically exceed the Agency's expectations. Kincaid discusses this issue in Section XIV below.

V. Both Kincaid Units are identical. Therefore if ACI fails to achieve the standard, it would fail on both units. To have any relief Kincaid would need to have a reduced standard apply to both units.

The two Kincaid units are virtually identical – constructed side by side under identical engineering designs. The 'cyclone' firing boiler design was first developed by Babcock & Wilcox to promote more efficient coal firing. The design involves a series of horizontal combustion cylinders with crushed coal introduced with combustion air in a centrifugal motion that promotes higher temperatures and more complete combustion. Though we are not sure, because we have only tested emissions from one of the Kincaid units, we expect the emissions from both units to be identical. Therefore, whatever final mercury emissions limitations that the Kincaid units are ultimately subject to must be identical – we do not expect one Kincaid unit to be capable of meeting a more stringent emissions limit than the other. Thus, expanding the existing TTBS from the current proposal to a level that would make one unit at Kincaid eligible will not provide the expected relief we believe Kincaid will need to comply with the current

proposal – we do not expect either of the units at Kincaid to be capable of achieving 90% reduction or the emission limitation of 0.0080 pounds per gigawatt-hour.

VI. Kincaid believes the development of the MPS option has been too narrowly designed to meet the needs of two companies and unfairly excludes other companies that have already installed pollution controls and have far surpassed the emissions reductions of these companies.

The MPS alternative developed by Ameren, Dynegy and the IEPA has been designed only to accommodate the exclusive needs of these companies and makes no attempt at universal appeal or feasibility. It appears that the MPS is so clearly tailored to align with the Ameren and Dynegy plans for compliance with the CAIR 2015 NO_x and SO_2 emissions reductions; previous agreements signed by these companies; and their goals to exempt the applicability and potential compliance costs for several small units that it is not useful to the other companies.

In some respects, this multi-pollutant approach forces emissions reduction at the Ameren and Dynegy plants that are already well underway at other plants. For example, NO_x and SO_2 emissions at the Kincaid plant have been declining since Dominion purchased the plant in 1998. Installation of SCRs (Selective Catalytic Reduction) and other NO_x controls have reduced total annual NO_x emissions (expressed as tons per year) by 54% since 1998 with a cumulative reduction of over 70,000 tons over that period.

Annual NO_x emissions rates (expressed in pounds per million Btu of heat input) have been cut by 67%. The NO_x emissions rate from Kincaid during the ozone season (May through September), by IEPA's calculation, is the lowest coal-fired utility rate in Illinois – 50% below that of the Ameren plants and a third lower than the Dynegy plants. When the SCRs are operated on a year-round basis, beginning in 2009, we expect Kincaid's NO_x emission rate to be comparable to or lower than the NO_x limit of the MPS that would not be effective until 2012 –

three years later. Kincaid has already installed the NO_x controls needed to achieve the NO_x reductions contemplated in the MPS. But the MPS requires reductions from "present levels." It is unreasonable to require Kincaid to achieve additional reductions of this magnitude from our present low emissions rate.

The SO_2 story at Kincaid is even more impressive. As we have stated previously, the Kincaid switch to sub-bituminous coal in 1999 drastically reduced emissions of SO_2. Kincaid's total annual SO_2 emissions (tons per year) in 2005 were 62% lower than 1998. Over that seven-year period, SO_2 emissions rates (pounds per million Btu heat input) have been cut by more than 73%. The cumulative reduction in SO_2 emissions over that period is more than 190,000 tons. By IEPA's calculation, the Kincaid SO_2 emission rate for 2002-04 is also as low as any other coal-fired utility in Illinois during that period.

According to USEPA records, SO_2 emissions from the 8088 megawatts eligible for the MPS (the Ameren and Dynegy coal-fired units) were over 186,000 tons in 2005, with an SO_2 emission rate of about 0.70 pounds per million Btu of heat input (lbs/mmBtu).[19] Under terms of the MPS, these units have to achieve an SO_2 emission rate of 0.25 lbs/mmBtu by 2015. For comparison purposes, assuming the fuel consumption of these units is the same as 2005 data, these units would have SO_2 emissions of about 66,500 tons at an emission rate of .25 lbs/mmBtu, or a "per megawatt" reduction of about 14.8 tons (186,000 tons - 66,500 tons/8088 megawatts = 14.8 tons/megawatt).

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[19] USEPA Clean Air Markets Division (CAMD) website, http://www.epa.gov/airmarket/emissions/prelimarp/05q4/054_il.txt

The 190,000 tons in SO_2 reductions already achieved at the 1250-megawatt Kincaid station since 1998 represents a "per megawatt" reduction of about 152 tons**.** (190,000 tons/1250 megawatts = 152 tons per megawatt). For comparison purposes, for the per megawatt SO_2 reduction of the MPS units to increase from 14.8 tons per megawatt to the Kincaid per megawatt SO_2 reduction of 152 tons per megawatt, it would take these 8088 megawatts of MPS generation more than 10 years to achieve an equivalent reduction as the one that has been achieved at Kincaid since 1998 **(**152 tons per megawatt/14.8 tons per megawatt = 10.27 years). Furthermore, the Kincaid units will continue to operate at these lower SO_2 emissions rates and pile up thousands of tons of SO_2 reductions throughout the period leading up to full implementation of the MPS requirements in 2015 – a full eight years from now.

The MPS requires reductions of 48% of the Base Annual Rate for NO_x and 56% of the Base Annual Rate for SO_2. Proposed Section 225.233 (e). Such large percentage reductions may or may not be technically feasible and economically reasonable for EGUs at Dynegy and Ameren where prior reductions have not been made. For facilities like Kincaid, that have already made dramatic reductions in SO_2 and NO_x, additional percentage reductions in emissions of this magnitude from our present low emissions rates are neither technically feasible nor economically reasonable and nothing in the record supports a conclusion that they are.

VII. Kincaid is uniquely disadvantaged by the IEPA proposal, even with the MPS.

Kincaid is ineligible for any of the IEPA attempts at flexibility in the proposal. We cannot participate in the Averaging Demonstration under section 225.232 of the proposal as the pool of potential averaging partners consists of only two other, much smaller, generating plants. We cannot apply for the TTBS under section 225.234 of the proposal because the capacity of the

Kincaid plant exceeds the limit on the number of megawatts for which is option is available. And, as we have explained above, we further believe that a large part of the SO_2 and NO_x emissions reductions required of the MPS under proposed section 225.233 of the rule have already been achieved at Kincaid, thus making that option infeasible.

First, Section 225.232 of the proposed rule provides affected sources with a means for combining emissions from multiple units to average a 90% overall reduction in mercury emissions for the first few years of the program. However, the rule allows this averaging only among existing sources under common ownership, or among a very short list of single-facility companies. For the larger Illinois utility companies affected by this rule, this "Averaging Demonstration" could include as many as 19 different units. Kincaid, on the other hand, is given the opportunity to average among many fewer units, owned by other companies. Kincaid also is effectively forced into a "sellers' market," trying to strike a deal with companies that likely will have no incentive to enter into an agreement to average emissions other than to generate revenue. Because Kincaid would have to enter into some financial agreement with another company and because the pool of units that would be eligible for inclusion in an "Averaging Demonstration" is so much smaller than the pool available to the larger companies, this provision creates an unequal, unfair playing field for Kincaid.

Second, the IEPA testimony at the June 22 Board hearing confirms that the proposal specifically excludes Kincaid from one of the very few compliance options and thus places Kincaid at a severe competitive disadvantage (June 22 testimony of Dr. Staudt, page 159). The TTBS limits the availability of its use to no more than 25% of a company's capacity in the state. Since Dominion's coal-fired capacity in Illinois consists solely of the Kincaid plant with its two 625-megawatt units, seeking the TTBS for one of these units would exceed the 25% capacity

restriction and therefore preclude its eligibility. The IEPA testimony before the Board on June 22 shows that the IEPA proceeded to propose limited access to this TTBS against the advice of its technology expert. The agency has described the TTBS as a measure of "flexibility" but has limited availability of this flexibility to only the large utility companies in Illinois, which is unfair.

VIII. The IEPA mercury rule presents a profound economic hardship to the Kincaid facility.

Dominion purchased the Kincaid plant in 1998 from Commonwealth Edison. Under terms of that purchase, the companies signed a "power purchase agreement" ("PPA") in which all electricity generated at Kincaid is delivered to Commonwealth Edison and the price that Commonwealth Edison would pay Kincaid for electricity would be fixed for the term of the agreement, which in this case extends until February 2013.[20] This PPA does not allow Kincaid to recover the additional costs associated with compliance with many new requirements, including the costs for compliance with the IEPA proposed mercury rule during the term of the agreement.

After February 2013, Dominion will price the power generated at the Kincaid facility based on the actual production cost of that power and the prevailing market rate. Contractually, until 2013, Dominion cannot adjust the current production cost to account for installation of additional control technology.

[20] A copy of the PPA is attached to this final comment.

In 1997, the Illinois General Assembly passed legislation to restructure the electric utility industry in Illinois. The restructuring has been phased in over a 9-year period and included a 1997 electricity rate freeze. That rate freeze will expire at the end of 2006 and several Illinois electric companies are seeking approval for rate increases, reported to range from 20 to 35%, phased in over several years. There are a number of reasons given for this rate increase, including higher fuel costs, market prices for unregulated power and "environmental compliance expenditures."[21]

The Illinois legislature and the Commerce Commission (ICC) have had the foresight to pass and implement fair restructuring legislation that includes a built-in "correction" factor to ensure continued reliable, safe electricity service for the citizens of Illinois. It also allows Illinois utility companies to recover reasonable costs brought on by new regulatory requirements, such as the proposed IEPA mercury control rule.

As we have stated previously, we do not believe the Kincaid units can achieve the 90% mercury reduction for the long time periods required of this proposal. The "TOXECON" system, discussed above, appears at this point to be the only control option with the best chance of attaining reliable, long term 90% mercury reduction at Kincaid. TOXECON has been fully demonstrated under numerous full-scale tests, some for over a year.[22] Also, the first full-scale installation is underway under DOE contract at the Presque Isle plant in Michigan. Of course,

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[21]Gary Rainwater, "Earnings Guidance and Regulatory Update", Ameren, January 2006.

[22] TSD, page 129.

the question of whether or not this application will actually achieve the 90% reduction over the long haul will not be answered until this installation is up and running for several years.

The costs for installation of the TOXECON system have been discussed above – capital cost of $126/Kilowatt. For the 1250 megawatts at Kincaid, total capital would exceed $157 million. Annual costs would be as follows:

TOXECON Costs for Kincaid

Annualized Capital Charges =	$157,000,000 x 8.40%	= $13,188,000
Sorbent Costs = $1.00 x 2 lbs/mmACF x 1,622,219 mmACF/yr		= $ 3,244,438
Total Annual Cost = $16,432,438		

Should the ACI system work with a capital cost of $6 million for the two Kincaid units, annual costs would work out like this:

Activated Carbon Injection Costs for Kincaid

Annualized Capital Charges =	$6,000,000 x 8.40%	= $ 504,000
Sorbent Costs = $1.00 x 5 lbs/mmACF x 1,622,219 mmACF/yr		= $8,111,097
Total Annual Cost = $8,615,097		

Either option leaves the Kincaid plant facing a huge capital outlay as well as significant annual expenses – costs that will have a profound impact on the economics and profitability of the Kincaid plant. Kincaid's inability to recover these costs for compliance with the proposed IEPA mercury control rule presents another unfair advantage for Kincaid competitors. While most utility companies operating in Illinois will undoubtedly gain approval to increase rates to accommodate the costs for new mercury control technology, Dominion's Kincaid station will have no such opportunity.

IX. The Board cannot legally adopt the NO_x and SO_2 provision under Illinois and federal law since those provisions were never subject to First Notice.

It would violate Illinois and federal administrative law for the Board to adopt final regulations controlling the MPS pollutants where no First Notice disclosure has been presented to the public. The type of regulatory change being considered here, adopting a regulation controlling SO_2 and NO_x emissions in a regulatory proceeding that only provided public notice of mercury controls, was described by the United States District Court for the District of Columbia as a "flip-flop" that pulls, "a surprise switcheroo on regulated entities." *Environmental*

Integrity Project v. Environmental Protection Agency, 425 F.3d 992, 996 (D.C. Cir. 2005). The Board should not adopt a surprise switcheroo here.

In *Environmental Integrity Project v. Environmental Protection Agency*, an environmental group argued that the EPA's revised interpretation of its proposed rules required notice and comment, because it was not a "logical outgrowth" of its initially proposed interpretation. In its final rule the EPA had "switched course and adopted the opposite position." *Id.* at 995. The court concluded that a "logical outgrowth" of the proposal did not include EPA's decision to repudiate its proposed rule and adopt the inverse position; therefore, the final rule violated notice and comment requirements. *Id.* at 995-97.

The court discussed the well established and long standing law of the D.C. Circuit Court that "an agency's proposed rule and its final rule may differ only insofar as the latter is a 'logical outgrowth' of the former." *Id.* at 996. *See also Shell Oil Co. v. EPA*, 950 F.2d 741, 750-51 (D.C. Cir. 1991); and *Ne. Maryland Waste Disposal Auth.*, 358 F.3d 936, 952 (D.C. Cir. 2004) (stating that "a final rule is a 'logical outgrowth' of a proposed rule only if interested parties 'should have anticipated' that the change was possible, and thus reasonably should have filed their comments on the subject during the notice and comment period.") (quoting *City of Waukesha v. EPA*, 320 F.3d 228, 245 (D.C. Cir. 2003)). The court found that the doctrine does not extend to a final rule that "finds no roots in the agency's proposal" because "something is not a logical outgrowth of nothing." *Id.* at 996 (quoting *Kooritzky v. Reich*, 17 F.3d 1509, 1513 (D.C. Cir. 1994)). Also, a final rule is not a "logical outgrowth" of the proposed rule if the interested parties "would have had to 'divine [the agency's] unspoken thoughts'" to suspect the contents of the final rule. *Id.* (quoting *Arizona Pub. Serv. Co. v. EPA*, 211 F.3d 1280, 1299 (D.C. Cir. 2000)).

> "Thus, we have refused to allow agencies to use the rulemaking process to pull a surprise switcheroo on regulated entities. *Id.* The court makes clear that there is nothing wrong with an agency refusing to adopt proposed amendments; however, a 'flip-flop' complies with the Administrative Procedure Act only if it is preceded by the appropriate public notice and opportunity for public comment.

Id. at 997; *see Am. Iron & Steel Inst. v. EPA,* 886 F.2d 390, 400 (D.C. Cir. 1989); *see also Ne. Maryland,* 358 F.3d at 951-52. The court admonishes that if the notice requirements of the Administrative Procedure Act ("APA") mean anything, "they require that a reasonable commenter must be able to trust an agency's representations about which particular aspects of its proposal are open for consideration." *Id.* at 998.

In *International Union v. Mine Safety and Health Administration,* 407 F.3d 1250 (D.C. Circ. 2005), the proposed rule provided for a 300-foot per minute minimum air velocity to ventilate underground coal mines. *Id.* at 1259. However, in the final rule, there was a maximum air velocity of no greater than 500 feet per minute, despite the assertion by the agency that there would be no cap. *Id.* Ultimately, the court held that the maximum cap provision of the final rule was not a 'logical outgrowth' of the initially proposed rule. *Id.*

The *International Union* court quoted much of the language found in *Environmental Integrity.* In addition, the court stated that, "The 'logical outgrowth' doctrine does not extend to a final rule that is a brand new rule," nor does it apply when the final rule was "'surprisingly distant' from the proposed rule." *Id.* at 1260 (quoting *Kooritzky,* 17 F.3d. at1513; *Shell Oil Co.,* 950 F.2d at 751)). The premise of the doctrine is to alert interested parties to the possibility that the agency might adopt a different rule than the one the agency originally proposed. *Id.* (citing *Kooritzky,* 17 F.3d at 1513). However, "an unexpressed intention cannot convert a final rule into a 'logical outgrowth' that the public should have anticipated." *Id.* (quoting *Shell Oil Co,* 950 F.2d at 751). Interested parties are not given an opportunity to anticipate, criticize, or comment

on rules if they receive only "ambiguous comments and weak signals" from the agency as to what they should expect. *Id.* at 1261 (quoting *Shell Oil,* 950 F.2d at 751). Even when public comment raises a foreseeable possibility that the agency might act according to their suggestions, acting in this manner is at the "outer limits" of the "logical outgrowth" doctrine. *Id.* (citing *Natural Resources Defense Council, Inc. v. Thomas,* 838 F.2d 1224, 1243 (D.C.Cir. 1988)).

In *City of Waukesha v. EPA,* 320 F.3d 228 (D.C. Cir. App. 2003), the court offers additional clarification as to what constitutes a "logical outgrowth." The Court explains that the test applies when an agency changes its final regulation "in some way from the proposed regulation for which it provided notice and requested comment." *Id.* at 245. "[I]f the final rule deviates too sharply from the proposal, affected parties will be deprived of notice and opportunity to respond to the proposal." *Id.* (quoting *Small Refiner v. EPA,* 705 F.2d 506, 546-47 (D.C. Cir. 1983)). The "key question" is whether commentators should have anticipated that the agency might change the originally proposed rule in the way in which the agency ultimately did change it. *Id.* One factor to consider is whether "a new round of notice and comment would provide the *first* opportunity for interested parties to offer comments that could persuade the agency to modify its rule." *Id.* at 246 (quoting *Ariz. Pub. Serv. Co.,* 211 F.3d 1280, 1299 (D.C. Cir. 2000) (emphasis in original)). However, even if the interested party fails to show that their comments would have differed if they had had adequate notice that does not necessarily mean that there is no claim for a lack of "logical outgrowth" between the proposed rule and the final rule. *Id.*

In *Northwest Tissue Center v. Shalala,* 1 F.3d 522 (1993), the original rule was to regulate replacement heart valves, including valves made of prosthetic materials, porcine valves, and valves constructed from a combination of the two. *Id.* at 525. However, the final rule

promulgated by the agency also subjected allographs (human heart valves) to regulation. *Id.* The relevant parties in the industry had no warning that these valves would be subject to this regulation, and they protested that this would cause extensive economic problems for them. *Id.* Plaintiffs argued that "the agency promulgated a back door amendment" to regulate allographs. *Id.* at 527. They claimed "this back door procedure denied them the right to notice and comment on the regulation of allographs which the FDC Act and the APA guarantee." *Id.*

The *Shalala* court quoted the *Shell Oil* rule that "it was the business of the [agency], not the public, to foresee that possibility [of potential regulation] and address it in its proposed regulations. . . . Ambiguous comments and weak signals from the agency gave petitioners no such opportunity to anticipate and criticize the rules or to offer alternatives." *Id.* (quoting *Shell Oil*, 950 F.2d at 751). The court then addressed the agency's argument that the interested parties should infer from the proposed rule what the final rule will entail stating,

> Implicit in this argument is the notion that a reference to a specific topic. . .can give rise to notice of the existence of a more general topic. . .and that the general topic, in turn can encompass notice of a second specific topic. . . only remotely related to the first specific one. Such reasoning, if accepted by the court, would turn notice and comment rulemaking into a guessing game in which the inclusion of one subject indicates that a distant cousin of that subject might be addressed. This reading of the APA cannot be sustained.

Id. at 529 (quoting *Fertilizer Institute v. EPA*, 935 F.2d 1303, 1311 (D.C. Cir. 1991)).

Ultimately, the *Shalala* court agreed that NAFR was a permissible interpretation of the older regulation, but found that the manner in which it was announced merits review. *Id.* at 532. The case was remanded to examine where the agency provided adequate notice of its intention to regulate allographs under these regulations. *Id.* at 536.

In *American Medical Association v. United States,* 887 F.2d 760 (7th Cir. App. 1989), the agency originally proposed a tax regulation that was a flexible, case by case, totality of the

circumstances type of rule. The final rule, however, was a limited set of precise rules that was to be applied to all cases. Although the ultimate determination was in favor of the promulgating agency, the case discussion does delve into the issue in depth and provides assistance regarding the 7th Circuit's approach to the logical outgrowth doctrine.

In *AMA*, the Court found the APA allows for two types of notice: notice that specifies the "terms or substance" of the contemplated regulation, and notice that identifies the "subjects and issues involved" in the proceeding. *Id.* at 767.

> "[N]otice is adequate if it apprises interested parties of the issues to be addressed in the rule-making proceeding with sufficient clarity and specificity to allow them to participate in the rulemaking in a meaningful and informed manner. Stated another way, a final rule is not invalid for lack of adequate notice if the rule finally adopted is 'a logical outgrowth' of the original proposal."

Id. An agency may "change its course" as long as the final rule is "generally consistent with the tenor of its original proposals" and indicates that the agency takes the requirement to give the public notice and opportunity for public comment seriously. *Id.*

In a discussion of what constitutes a "logical outgrowth," the *AMA* Court noted cases in which courts have upheld final rules, as well as cases in which the courts have found that notice is inadequate. *Id.* at 768. "[A] rule will be invalidated if no notice was given of an issue addressed by the final rules." *Id.* This has included (in other courts) times in which the issue was only generally addressed in the original proposal. *Id.* "The crucial issue, then, is whether parties affected by a final rule were put on notice that 'their interests were at stake;' in other words, the relevant inquiry is whether or not [sic] potential commentators would have known that an issue in which they were interested was 'on the table' and was to be addressed by a final rule." *Id.* (quoting, in part, *South Terminal Corp. v. EPA,* 504 F.2d 646, 659 (1st Cir. 1974)).

Most directly on point for the present mercury proceeding is *American Frozen Food Institute v. Train*, 539 F.2d 107 (D.C. Cir. 1976). The American Frozen Food Institute asserted the regulation originally proposed differed from the final regulation in that it regulated more pollutants than the proposed rule. The court restated previous rulings that found a mere difference between the proposed rule and the final rule does not *automatically* lead to a new opportunity for public notice and comment. *Id.* at 135. However, the court declared,

> In one instance, however, the EPA has clearly failed to solicit or allow for public comment. The Development Document identified only three pollutants as to which measures of control were proposed. In the final regulation for the industry . . . EPA added a fourth pollutant, fecal coli, and prescribed a limitation for it. No prior notice of intention to add fecal coli to the list of controlled pollutants had been given to the industry or to the public and, of course, no comment on any proposed standard had been solicited or received. This failure, we believe, was violative of the Administrative Procedure Act, 5 U.S.C. § 553 (1970). . . .

Id. As to the pollutant not mentioned in the original proposal, the court remanded to the Administrator for reconsideration "consistent with the notice and comment requirements" of the APA. *Id.*

American Frozen Food Institute was also mentioned by the First Circuit, which cautioned that although the question requires a case by case determination, "where the Agency adds a new pollution control parameter without giving notice of intention to do so or receiving comments, there must be a remand to allow public comment." *BASF Wyandotte Corp. v. Costle*, 598 F.2d 637, 642 (1st Cir. 1979) (citing *American Frozen Food Instit.*, 539 F.2d at 135). The *BASF Wyandotte* court cautioned that when the final rules result from "a complex mix of controversial and uncommented upon data and calculations," the court may remand the rule. *Id.* at 642 (quoting *Weyerhaeuser Co. v. Costle*, 590 F.2d 1011, 1031 (D.C. Cir. 1978)).

A search of federal and state cases endorsing the "logical outgrowth" doctrine provides over 150 cases, with 31 cases in the last five years. The federal cases come from the 1st, 2nd, 3rd, 4th, 5th, 6th, 7th and 10th United States Circuit Courts of Appeal and the U.S. District Courts of many states, including Illinois. *Center for Biodiversity*, 422 F.Supp. 2d 1115 (N.D. of CA 2005); *Earth Island*, 2005 U.S.Dist. LEXIS 34447 (2005); *Diamond Roofing Co. v. OSHRC*, 528 F. 2d 645, 649 (5th Cir. 1976) ("open-sided floor" could not be interpreted to include "open-sided roof"); *Riverkeeper v. United States EPA*, 358 F. 3d 174, 202 (2nd Cir. App. 2004); *Nat'l Black Media Coalition v. FCC*, 791 F.2d 1016, 1022 (2d Cir. 1986); *NVE, Inc. v. Department of Health and Human Servs.*, 436 F.3d 182, 191 (3d Cir. 2006); *see also Jerri's Ceramic Arts, Inc. v. Consumer Product Safety Commission*, 874 F.2d 205 (4th Cir. 1989); *Chocolate Mfrs. Ass'n v. Block*, 755 F.2d 1098, 1105 (4th Cir. 1985); *Brazos Elec. Pwr. Coop. v. Southwestern Pwr. Resources. Assoc.*, 819 F.2d 537 (5th Cir. 1987); *Usery v. Kennecott Copper Corp.*, 577 F.2d 1113, 1118-19 (10th Cir. 1977); and *Chrysler Corp. v. Dep't of Transp.*, 515 F.2d 1053, 1061 (6th Cir. 1975) (finding that a final rule is valid if it does not "embrace any major subjects that were not described in the notice of proposed rule making").

Several other states have confronted the issue and have referenced and followed the holdings in prominent federal court cases. *Collazuol v. Department of Natural Resources and Environ. Control*, 1996 Del. Super. LEXIS 453, *24-28 (1994); *Sullivan v. Evergreen Healthcare Ltd.*, 678 N.E.2d 129 (Ind. App. 1997); *Meier v. American Maize Prod. Co.*, 645 N.E.2d 662 (Ind. App. 1995); *Motor Vehicle Manufacturers Assoc. v. Jorling*, 577 N.Y.S.2d 346 (N.Y. Misc. 1991); *Bassett v. State Fish and Wildlife Commission*, 27 Ore. App. 639 (1976); *Western Oil & Gas Assn. v. Air Resources Board*, 37 Cal. 3d 502 (1984); *Texas Workers' Compensation Commission v. Patient Advocates of TX*, 136 S.W.3d 643 (Tex. 2004); *In re*

Petition of Dept. of Pub. Serv., 632 A.2d 1373 (Vt. 1993); and *American Bankers Life Assurance Co. v. Div. of Consumer Counsel,* 263 S.E.2d 867 (Va. 1980).

Although we have found no case law in Illinois that is directly on point with the issues here, the Illinois Administrative Procedure Act mirrors the federal act in all critical aspects including the requirement that all interested persons be given the opportunity to provide comments as to proposed rule changes. As a result, the same general principles of administrative law will apply. Moreover, in *Senn Park Nursing Center v. Miller,* 470 N.E.2d 1029, 1035 (Ill. 1984), in considering the necessity of providing notice and comment prior to changing a rule, the Illinois Supreme Court recognized that actual knowledge of the change by an appealing party was not sufficient to satisfy the agency's legal requirement for notice and comment as to the change, adding "[t]o hold that actual knowledge is sufficient to preclude a party's challenge to an agency's failure to comply with the rulemaking requirements of the Illinois Administrative Procedure Act would make the notice and comment requirement illusory."

Board adoption of the MPS would be violative of the fundamental and long-established tenet of administrative law that only changes to a proposed rule that are a logical outgrowth of the original proposed rule are valid without notice and opportunity to comment. The Board's proposed rule at First Notice did not contain any reference to regulation of SO_2 and NO_x. No aspect of the original proposal provided potentially interested parties with any inkling that SO_2 and NO_x might be addressed by the final rule. The fact that the MPS is just one method of achieving compliance with the overall mercury proposal does not relieve the Board from the requirements of the APA. Therefore, the Board cannot adopt a final rule that includes these pollutants.

Kincaid has been specifically prejudiced by the failure to identify the MPS in the Board's First Notice in the following manner. This proceeding began with the Illinois EPA's proposal filed on March 14, 2006 and published for First Notice on March 31, 2006 (30 Ill Reg. 5957), June 2, 2006 (30 Ill. Reg. 10193) and July 28, 2006 (30 Ill. Reg. 12705). That proposal only referenced emissions restriction on Mercury. The initial public hearings on the proposal lasted from Monday June 12, 2006 until Friday, June 23, 2006. Throughout those public hearings Kincaid participated and questioned the Agency's witnesses on a proposal that included only emissions limitations on mercury. The Board established a deadline of July 28, 2006 for affected entities, such as Kincaid, to submit their pre-filed testimony. Kincaid filed its testimony on that date, again, addressing a regulatory proposal that only restricted emissions of mercury.

On July 28, 2006, Ameren and the Agency filed a joint statement that for the first time introduced the concept of an MPS. This submission (filed 164 days after the proceedings began, on the very last day that formal testimony from the Utility industry was required to be submitted, and 10 business days before the hearing to receive questions regarding the Utility groups pre-filed testimony) was the first indication (to any of the non-Ameren participants) that pollutants other than mercury might be considered in this proceeding. No formal public notice for the concept of regulating SO_2 and NO_x was ever provided. Even at that late date, the impact of the MPS filing was unclear. The filing was not an amendment to the Agency's proposal, but merely a "joint statement" and the participants had no idea how the Board would consider the joint statement.

During the brief 10-business day window between filing of the joint statement and the commencement of the Utility portion of the hearings, Kincaid did not had an adequate opportunity to respond in any meaningful manner to the MPS. These are not minor concerns.

Controls on SO_2 and NO_x are highly technical and can cost tens or hundreds of millions of dollars. Those costs are in addition to the millions of dollars of costs for mercury controls which are described above. It is arbitrary and capricious for the Board to believe Kincaid could intelligently respond to such a significant departure from the original proposal in only 10 business days. Furthermore, any such testimony would have been beyond the scope of Kincaid's pre-filed testimony (testimony that was required to be submitted prior to any articulation of the MPS concept). By submitting such a dramatic change so late in the process and just before hearings, the Agency and the MPS proponents have sandbagged Kincaid and similar facilities.

If Kincaid had been allowed a reasonable opportunity to consider the MPS proposal, it would have been able to do the following things:

- Evaluate the technical feasibility of additional SO_2 and NO_x controls at Kincaid
- Evaluate the economic reasonableness of additional SO_2 and NO_x controls
- Determine what changes to the MPS proposal would be necessary to make additional SO_2 and NO_x controls at Kincaid technically feasible and economically reasonable
- Determine whether the existing MPS proposal provides an unfair economic advantage to some Illinois facilities compared to Kincaid
- Identify experts to review the MPS proposal and present testimony to the Board documenting Kincaid's evaluation of the benefits and disadvantages of the MPS
- Identify experts to review the MPS proposal and develop questions of the MPS proponents for hearings before the Board on the proposed regulatory language
- Identify alternatives to the MPS for Kincaid that would provide different, but equivalent environmental benefits without NO_x and SO_2 controls
- Present Kincaid's position to the Board in a rational and complete manner with supporting testimony and documentation

Because these issues require significant technical and economic analysis, Kincaid could not accomplish the tasks in the brief period of time between the submission of the MPS proposal and the conclusion of the hearings. Therefore, not only would Board adoption of the MPS violate fundamental and long established tenets of administrative law, Kincaid would be directly harmed by any such adoption.

X. Section 10 of the Illinois Environmental Protection Act prohibits the Board from adopting the MPS.

Section 10 the Illinois Environmental Protection Act (the "Act") prohibits the Board from adopting SO_2 regulations and emission standards for existing fuel combustion stationary emission sources located outside the Chicago, St. Louis and Peoria Metropolitan areas unless those regulations are necessary to attain and maintain the Primary National Ambient Air Quality Standards ("NAAQS') for sulfur dioxide. 415 ILCS 5110. There is no evidence in the record that the SO_2 portion of the MPS is necessary for attaining and maintaining the SO_2 NAAQS. The MPS purports to be available to all EGUs in the state and many of the Ameren and Dynegy plants are outside the three metropolitan areas.

The fact that the MPS is just one method of achieving compliance with the overall mercury proposal does not relieve the Board from the proscription of Section 10. Otherwise, the Board could avoid all statutory prohibitions on regulatory action simply by making the offending control "one option" in an otherwise broad range of controls. Second, there is no evidence in the record that the SO_2 limits contained in the MPS are necessary to attain and maintain the Primary National Ambient Air Quality Standards ("NAAQS") for sulfur dioxide as required by Section 10. Consequently, Section 10 prohibits the Board from adopting the SO_2 provisions of the MPS.

XI. Section 27 of the Illinois Environmental Protection Act prohibits the Board from adopting the MPS.

Section 27 requires the Board to take into account the "technical feasibility and economic reasonableness" of reducing the particular type of pollution for which controls are sought. There is no factual basis in the record that the MPS is technically feasible or economically reasonable for Ameren and Dynegy, except for their acquiescence to the language. There is absolutely no basis in the record that such controls would be technically feasible and economically reasonable

for any facility other than Dynegy and Ameren. Kincaid presented testimony that the MPS would not be technically feasible or economically reasonable at Kincaid, and expands on that testimony in earlier portions of this comment. As discussed earlier, the Board cannot avoid the Section 27 requirements for rule making simply by stating that the MPS requirement is only one option in an otherwise broad array of options. Otherwise the statutory rule making requirements could be avoided at an Agency's whim.

XII. Federal Constitutional considerations preclude adoption of the MPS.

The MPS also raises issues under federal law. The Supremacy Clause of the Constitution "invalidates state laws that 'interfere with, or are contrary to,' federal law." *Clean Air Markets Group v. Pataki*, 194 F. Supp. 2d 147, 157 (N.D.N.Y. 2002), affirmed 338 F.3d 82 (2d Cir. 2003). As such, federal law preempts state law to the extent state law actually conflicts with the federal law. Id. In *Clean Air Markets*, New York passed a law that placed a trading restriction on SO_2 allowances. Id. at 154. The court found that "New York's restrictions on transferring allowances to units in the Upwind States is contrary to the federal provision that allowances be tradable to any other person." Id at 158. As a result, the court held that New York's law was preempted by the Clean Air Act ("CAA) because it interfered with the CAA's "method for achieving the goal of air pollution control: a cap and nationwide SO_2 allowance trading system." Id.

Like New York's law in *Clean Air Markets*, the MPS mandates that a party opting into the MPS must surrender SO_2 allowances. As a result, the MPS effectively prohibits trading of SO_2 allowances and, as IEPA has indicated, it intends to retire the surrendered allowances and thus reduces the size of the market as expressly determined by Congress in Title IV of the CAA. Under the Supremacy Clause and Clean Air Markets, state laws cannot impede on the CAA's

cap and nationwide SO_2 allowance trading system. As such, the CAA may preempt the MPS, thus potentially invalidating, under federal law, its limitations on trading of SO_2 allowances.

The proposed amendment also may potentially violate the Commerce Clause of the Constitution. In *Clean Air Markets*, New York attempted to halt altogether "transfers of SO_2 allowances from New York units to units in Upwind States[,] . . . in spite of a federal system designed for free nationwide transferability of SO_2 allowances." Id at 162. Thus, New York's law imposed a burden on interstate commerce. Id And since New York failed to justify its law in terms of "local benefits flowing from the statute and the unavailability of nondiscriminatory alternatives adequate to preserve the local interests at stake", the court invalidated New York's law under the Commerce Clause. Id

Like *Clean Air Markets*, the MPS may prohibit sources in Illinois from transferring SO_2 allowances in spite of the free-market federal system. Further, as noted above, by taking allowances off the market the MPS would change the scope of that market, a scope that has been specifically defined by Congress. Even if there are local benefits from the MPS, there may be less discriminatory (as to interstate commerce) alternatives.

Under the Clean Air Mercury Rule ("CAMR"), each state must demonstrate that it will meet the mercury cap. How Illinois will demonstrate compliance with CAMR if the Board adopts the MPS is unclear. Evidence in the record shows that if Ameren alone opts-in to the proposed amendment, a 500 pound increase in mercury emissions will occur. See Testimony of Anne Smith, Ph.D., Figure 3. If other sources opt-in, that raises the question of whether Illinois will be able to demonstrate compliance with the mercury cap.

Finally, adoption of the MPS in this regulatory docket would not satisfy the federal requirements for public participation in adoption of state regulations submitted for USEPA approval. There has been no public notification that this docket will regulate NO_x and SO_2. Any state regulation submitted to USEPA for approval without adequate public participation must be rejected.

XIII. What Kincaid wants the Board to do.

At the Board hearing on August 23, 2006, Kincaid presented a bona fide offer that was not accepted by the IEPA. We withdraw that offer and present here for the Board's consideration another proposal.

Kincaid urges the Board to adopt the federal Clean Air Mercury Rule (CAMR). In the absence of that, we are prepared to revise our previous proposal before the Board. Because the IEPA proposed mercury rule provides no compliance flexibility for Kincaid, and because we cannot tolerate the risk of non-compliance and continue to fulfill our operational commitments for the Kincaid generating units, we are offering a mercury reduction proposal that we feel – though we are not certain – can be achieved at Kincaid. This proposal commits Kincaid to the installation of mercury controls on both Kincaid units in 2009, includes no provisions for trading with other plants and targets greater mercury reductions than required by the federal CAMR, several years before the federal deadlines. Our proposal surrenders all of the compliance flexibility provided under the CAMR rule and commits Kincaid to a substantial capital outlay as well as significant annual expenses – costs that will have a profound impact on the economics and profitability of the Kincaid plant.

> Phase 1 – July 1, 2009 - for cyclone-fired boilers, that have good "native" mercury reductions, Kincaid will install ACI systems on both units at the facility and operate the two systems at a maximum sorbent injection rate of 3 pounds per

million ACFM – or – achieve a plant-wide 90% mercury reduction from inlet levels.

Phase 2 – July 1, 2013 – operate the two ACI systems at a maximum sorbent injection rate of 5 pounds per million ACFM – or – achieve a plant-wide 90% mercury reduction from inlet levels.

We have discussed this approach with the staff of the IEPA. The IEPA has not dismissed this approach but were concerned that it did not include a multi-pollutant element. Kincaid believes that this proposal, combined with Kincaid's continuing NO_x and SO_2 reduction program, that has already resulted in hundreds of thousands of tons of reductions – and that will continue to provide a dramatic decline as the CAIR NO_x and SO_2 reductions become effective in 2009-2010, offers a very substantial emissions reduction – reductions that will be achieved at the Kincaid plant – with no averaging or trading among other plants and no deadline extensions designed to accommodate small units for the purpose of avoiding controls.

We have drafted the necessary regulatory language that can be easily inserted into the existing proposed rule should the Board approve this alternative:

Section 225.233 Alternative Emissions Standards for EGUs Electing Optional Control Plan

a) General

1. At a source with EGUs that began commercial operation on or before December 31, 2008, for an EGU that meets the eligibility criteria of subsection (b) of this Section, as an alternative to compliance with the emission standards of Section 225.230(a) of this Subpart, the owner or operator of an EGU may comply with the emission standards of this Subpart, by means of an Optional Control Plan. Such plan must show that the actual emissions of mercury from the EGU or EGUs electing such plan are less than the allowable emissions of mercury under subsection (b) of this Section on a rolling 12-month basis.

2. An EGU that is complying with the emission control requirements of this Subpart by operating under this Section may not be included in a compliance demonstration involving other EGUs during the period that it is operating under this Section.

3. The owner or operator of an EGU that is complying with this Subpart by means of this Section must comply with the applicable monitoring, recordkeeping, and reporting requirements in Sections 225.240 through 225.290 of this Subpart.

b) Eligibility

To be eligible to operate an EGU under this Section, the following criteria shall be met for the EGU:

1) The EGU is equipped and operated with air pollution control equipment or systems that can be demonstrated to achieve the mercury emission standards of this section.

2) The EGU is part of only a single existing source with EGUs (i.e., City, Water, Light & Power, City of Springfield, ID 167120AAO; Electric Energy, Inc., ID 127855AAC; Kincaid Generating Station, ID 021814AAB; and Southern Illinois Power Cooperative/Marion Generating Station, ID 199856AAC).

c) The EGUs at each source covered by an Optional Control Plan must comply with the following emission standards on a source-wide basis for the period covered by such plan:

> 1) by July 1, 2009, install ACI systems on all units and operate the systems at a maximum sorbent injection rate of 3 pounds per million ACFM, achieve an emission limit of 0.0080 lbs/GWH or achieve a plant-wide 90% mercury reduction from inlet levels.
>
> 2) by July 1, 2013, operate all ACI systems at a maximum sorbent injection rate of 5 pounds per million ACFM, achieve an emission limit of 0.0080 lbs/GWH or achieve a plant-wide 90% mercury reduction from inlet levels.

XIV. Kincaid's concerns with absolute emissions limitations.

Kincaid has repeatedly stated its profound concern that the technologies described during this proceeding will not be able to achieve the absolute emission limitations of 0.0080 lbs/GWH or achieve a plant-wide 90% mercury reduction from inlet levels at reasonable economic costs. For this reason, Kincaid cannot endorse the Agency's requested absolute emission limitation, even in 2015. Any adoption of such an absolute emission limitation is, at best, a guess by the Board that the technologies will work as described. The Agency's regulatory language makes no provision for situations where that guess is incorrect, and actual control costs are excessive. Dominion's corporate policy requires its facilities to operate in compliance with all regulatory requirements. Agreeing to an emission limit that we are not convinced that we can realistically achieve would put us at risk of non-compliance, an unacceptable outcome. This legitimate corporate concern could be minimized if the regulatory language contained a specific reference

to future options for relief from the Board where actual control costs will be excessive. Kincaid suggests the following language:

> Facilities that cannot achieve the 90% mercury reduction or 0.0080 lbs/GWH from ACI input levels of 5 pounds per million ACFM by July 1, 2015 may petition the Board for an adjusted standard or site specific regulation to address their specific technical and economic issues.

XIV. Conclusion

For the reasons listed above Kincaid requests this Board to adopt CAMR or reject the MPS and adopt the regulatory language suggested by Kincaid in Section XIII.

Respectfully submitted,

Kincaid Generation, L.L.C.

by:

/s/ *Bill S. Forcade*

One of Their Attorneys

Dated: September 20, 2006

Bill S. Forcade
Katherine M. Rahill
Jenner & Block LLP
One IBM Plaza
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ATTACHMENT TO COMMENTS

PART 1

ORIGINAL

McGUIREWOODS
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April 1, 1998

The Hon. David P. Boergers
Acting Secretary
Federal Energy Regulatory Commission
888 First Street, N.E.
Washington, DC 20426

ER 98-2401-000

Kincaid Generation L.L.C.
Docket No. ER98-__-000

Dear Mr. Boergers:

Kincaid Generation L.L.C. ("KGL") hereby submits for filing in the above-captioned docket six copies of the following agreement for the provision of electric service to Commonwealth Edison Company ("ComEd"):

> Power Purchase Agreement dated as of March 29, 1996 between Commonwealth Edison Company and Kincaid Generation L.L.C. (the "Power Purchase Agreement")

Reason for Filing

On October 4, 1996, as amended December 11, 1996, KGL filed with the Commission, pursuant to Section 205 of the Federal Power Act ("FPA"), an application authorizing it to engage in power sales at market-based rates to ComEd from the 1108 MW Kincaid Generating Station it had contracted to purchase from ComEd. (Rate Tariff). That rate schedule was conditionally accepted for filing in Docket No. ER97-30-000 on January 30, 1997. *Kincaid Generation, L.L.C.*, 78 FERC ¶ 61,082 (1997). KGL submitted a letter accepting the conditions set forth in the Commission's January 30, 1997 order on February 18, 1997.

Also on October 4, 1996, KGL submitted to the Commission an application to acquire the Kincaid Generating Station from ComEd pursuant to Section 203 of the FPA. KGL's Section 203 application was granted by an order issued pursuant to delegated authority in Docket

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Nos. EC97-1-000 and EC97-2-000 on January 30, 1997. *Kincaid Generation, L.L.C.*, 78 FERC ¶ 62,060 (1997).

On February 27, 1998, KGL closed on its acquisition of the Kincaid Generating Station from ComEd. On that date, service to ComEd commenced pursuant to terms of the Power Purchase Agreement. Pursuant to Section 205 of the FPA, and Part 35 of the Commission's regulations, KGL now files the Power Purchase Agreement as a long-term service agreement under its Rate Tariff.

Request for Waiver of Notice Requirement

KGL requests waiver of the 60-day requirement to allow the Power Purchase Agreement to become effective as of February 27, 1998. *See* 18 C.F.R. §§ 35.3 and 35.11. Such a waiver is consistent with the Commission's January 30, 1997 order in Docket No. ER97-30-000 granting KGL a waiver of notice to the extent necessary to allow Kincaid to commence service upon closing the purchase of the Kincaid Generating Station from ComEd. *See Kincaid Generation L.L.C.*, 78 FERC at 61,301.

Waiver of Filing Requirements

Many of the Commission's standard filing requirements are inapplicable to this filing since it involves a service agreement under a previously filed tariff. Therefore, to the extent that any filing requirement is not satisfied by this filing and the materials enclosed herewith, or referenced, herein, KGL requests the waiver of such requirement

List of Materials

This filing contains the following materials:

Attachment 1:	Notice of Filing
Exhibit A:	Power Purchase Agreement

Copies of all filings and correspondence in this matter should be addressed to:

Stephen H. Watts II
Patrick T. Horne
McGuire Woods Battle & Boothe, LLP
One James Center
901 East Cary Street
Richmond, Virginia 23219
(804) 775-4357

Malcolm G. Deacon, Jr.
Kincaid Generation, L.L.C.
c/o Dominion Energy, Inc.
901 East Byrd Street
Richmond, Virginia 23219
(804) 775-5868

Notice

Attached to this filing as Attachment 1 are a form of notice suitable for publication in the Federal Register and a computer diskette containing the notice of filing in the Wordperfect format.

Should you have any questions or require any further information, please do not hesitate to call me.

Very truly yours,

Stephen H. Watts, II
Attorney for Kincaid Generation, L.L.C.

cc: Christine M. Schwab, Esq.
Mr. Donald J. Gelinas

ATTACHMENT 1

UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Kincaid Generation L.L.C.) **Docket No. ER98-__-000**

Notice of Filing

Take notice that on April 1, 1998, Kincaid Generation L.L.C.("KGL") tendered for filing the following agreement for the provision of electric service to Commonwealth Edison Company:

> Power Purchase Agreement dated as of March 29, 1996 between Commonwealth Edison Company and Kincaid Generation L.L.C.

Any person desiring to be heard or to protest such filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's regulations (18 C.F.R. §§ 385.211 and 385.212). All such petitions or protests should be filed on or before _____. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a petition to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

David P. Boergers
Acting Secretary

Exhibit A

POWER PURCHASE AGREEMENT

Dated as of March 29, 1996

Between

Commonwealth Edison Company

and

Kincaid Generation, L.L.C.

ER 98-2401-000

Kincaid Generating Station

TABLE OF CONTENTS

POWER PURCHASE AGREEMENT

THIS POWER PURCHASE AGREEMENT (this "Agreement") dated as of March 29, 1996, between COMMONWEALTH EDISON COMPANY, an Illinois corporation ("ComEd"), and KINCAID GENERATION, L.L.C., a Virginia limited liability company ("Seller"; ComEd and Seller are sometimes referred to herein individually as a "Party" and collectively as "Parties");

W I T N E S S E T H:

WHEREAS, ComEd owns electric facilities and is engaged in the generation, purchase, transmission, distribution and sale of electric energy in the State of Illinois; and

WHEREAS, Seller intends to purchase and thereafter operate ComEd's existing Kincaid electric generation plant; and

WHEREAS, ComEd has included the electric generating capacity of such plant within its available, existing resources for least cost and other planning purposes and, therefore, requires assurances that the electric generating capacity of such plant will be maintained throughout the term of this Agreement; and

WHEREAS, ComEd desires to receive and purchase, and Seller desires to deliver and sell, electric capacity and energy; and

WHEREAS, ComEd desires to determine the dispatching of such plant and to provide the fuel for the generation of electric energy at such plant;

NOW, THEREFORE, in consideration of the mutual covenants and agreements herein set forth, the Parties hereto agree as follows:

1. Definitions and Interpretation

(a) Definitions. As used in this Agreement, (i) the terms set forth below in this Section 1(a) shall have the respective meanings so set forth, (ii) the terms defined elsewhere in this Agreement shall have the meanings therein so specified, and (iii) the terms "Equivalent Availability Factor" (or "EAF"), "Equivalent Forced Outage Rate" (or "EFOR"), "Forced Derating," "Forced Outage," "Maintenance Outage," "Net Dependable Capacity" and "Planned Outage," and the associated terms referred and used in the calculation of such terms, shall have the respective meanings assigned to such terms from time to time by the North American Electric Reliability Council (IEEE Standard 762) (the current version of such definitions being set forth in Appendix A for convenience of reference), except with respect to this clause (iii), (1) EFOR and EAF shall be calculated on a Base Facility-wide basis rather than per unit, (2) as modified by

Section 12(c)and (3) as modified by Sections 3.7(b), 5.7 and 5.8 of the Facilities Agreement. Other capitalized terms relating to compensation are defined in Appendix B.

"Affected Party" has the meaning specified in Section 12(a).

"Asset Sale Agreement" means the Asset Sale Agreement dated as of March 29, 1996, between ComEd and Seller, governing the transfer of the Base Facility from ComEd to Seller.

"Base Facility" means electric generating equipment and related structures and support equipment conveyed to Seller under the Asset Sale Agreement, located at the Site and having an electric energy generating capacity of 1,108 megawatts of Electric Energy under normal operating conditions. The term "Base Facility" shall not include improvements to the Facility after the Effective Date to the extent that such improvements result in an uprating above 1,108 megawatts.

"Coal Supply Agreement" means the Coal Supply Agreement between Seller and ComEd in substantially the form attached hereto as Appendix C.

"ComEd Arranged Energy" has the meaning specified in Section 5(d)(iii).

"ComEd System" means the electric transmission system owned by ComEd and its affiliates.

"Contract Year" means any of (i) the First Contract Year, (ii) the Second Contract Year, and (iii) a twelve-calendar month period commencing on an anniversary of the commencement of the Second Contract Year and ending on the last day of the calendar month immediately proceeding the next such anniversary during the term of this Agreement.

"Design Limits" means the items listed in Appendix E.

"Dispatch" means ComEd's right to control the generating level of the Base Facility within and subject to the Design Limits and consistent with prudent utility practice and consistent with the Dispatch criteria employed by ComEd for units owned by ComEd.

"Effective Date" means the date on which the closing of the sale of the Base Facility by ComEd to Seller occurs under the Asset Sale Agreement.

"Electric Energy" shall have the meaning specified in Section 5(a) of this Agreement.

"Energy Charges" means the charges so identified in Item II of Appendix B.

"Facilities Agreement" means the Facilities Agreement dated as of the Effective Date between ComEd and Seller.

"Facility" means electric generating equipment and related structures and support equipment located at the Site and capable of producing Electric Energy. The term "Facility" shall include the Base Facility.

"First Contract Year" means the period commencing on the Effective Date and ending on the last day of the twelfth calendar month following the Effective Date.

"Guaranteed Heat Rates" shall be the heat rates shown in Appendices F-1 and F-2.

"Lender(s)" means (i) any person or entity that, from time to time, has made loans to Seller, its permitted successors or permitted assigns for the financing or refinancing of the Facility or which are secured by the Facility, (ii) the holders of indebtedness evidencing any such loans, or (iii) any person or entity acting on behalf of such lender(s) to whom any lenders' rights under financing documents have been transferred, any trustee on behalf of any such lenders, and any person or entity subrogated to the rights of the lenders.

"NO_x Compliance Cost" or "NCC" has the meaning specified in Appendix G.

"Nonsummer Month" means a calendar month in a Nonsummer Period.

"Nonsummer Period" means the portion of a Contract Year that is not the Summer Period.

"Person" means a corporation, company, partnership, association, trust, natural person, government or other political subdivision or other legal entity.

"Point of Delivery" means (i) with respect to Electric Energy delivered and received from the Facility, the point of interconnection between the Facility and the ComEd System specified in the Facilities Agreement, and (ii) with respect to Substitute Energy made available by Seller such point or points of interconnection with the ComEd System, if any, as may be established in accordance with Section 5(d)(ii) in connection with a particular proposed delivery of Substitute Energy.

"Rolling EFOR" means, with respect to a calendar month, the Equivalent Forced Outage Rate of the Base Facility for the twelve-month period ending prior to the beginning of such month. For purposes of this Agreement, the Equivalent Forced Outage Rate of the Base Facility for each calendar month during the First Contract Year and the Second Contract Year shall be deemed to be zero.

"Second Contract Year" means a twelve-calendar month period commencing on the first day of the first month following the First Contract Year and ending on the last day of such period.

"Site" means the Owned Real Property (as defined in the Asset Sale Agreement) located in Kincaid, Illinois.

"Specified EFOR" means, with respect to a Contract Year, the amount so identified below:

Contract Year	Specified EFOR (%)
1	Not Applicable
2	Not Applicable
3-15	10%

"Step-In Date" means a date on which ComEd steps-in and assumes operational control of the Facility under Section 11.

"Step-In Period" means a period, beginning on a Step-In Date and ending on a Step-Out Date, during which ComEd steps-in and assumes operational control of the Facility under Section 11.

"Step-Out Date" means a date on which ComEd relinquishes operational control of the Facility under Section 11(d).

"Stretch Facility" means the Base Facility plus electric energy output above the Base Facility from integrated equipment, but does not include any additional generating units installed by Seller after the Effective Date.

"Substitute Energy" means Electric Energy delivered from a source other than the Facility. The character of such Electric Energy shall be non-recallable (not interruptible) unless the Base Facility is operating at or above its minimum operating level as specified in the Design Limits, in which case such Electric Energy may be interruptible.

"Substitute Energy Notice" means a notice in substantially the form attached to the Facilities Agreement and containing the anticipated point(s) of receipt into the ComEd System of the Substitute Energy and the time and date on which the deliveries are proposed to begin and end and otherwise containing the information required to be so included by the North American Electric Reliability Council. Any such delivery shall be assumed to be made at a constant rate unless otherwise specified in such notice.

"Summer Month" means a calendar month in a Summer Period.

"Summer Period" means the period from June 1 until September 30 (inclusive).

"Termination Date" means the earlier of (i) the last day of the calendar month immediately preceding the fourteenth anniversary of the commencement of the Second Contract Year and (ii) the date on which this Agreement may be terminated by a Party pursuant to its terms.

(b) Interpretation. In this Agreement, unless a clear contrary intention appears:

(i) the singular number includes the plural number and vice versa;

(ii) reference to any Person includes such Person's successors and assigns but, if applicable, only if such successors and assigns are permitted by this Agreement, and reference to a Person in a particular capacity excludes such Person in any other capacity or individually;

(iii) reference to any gender includes each other gender;

(iv) reference to any agreement (including this Agreement), document or instrument means such agreement, document or instrument as amended or modified and in effect from time to time in accordance with the terms thereof and, if applicable, the terms hereof;

(v) reference to any Section, Appendix or Exhibit means such Section of this Agreement or such Appendix or Exhibit to this Agreement, as the case may be, and references in any Section or definition to any clause means such clause of such Section or definition;

(vi) "hereunder", "hereof", "hereto" and words of similar import shall be deemed references to this Agreement as a whole and not to any particular Section or other provision hereof or thereof;

(vii) "including" (and with correlative meaning "include") means including without limiting the generality of any description preceding such term;

(viii) relative to the determination of any period of time, "from" means "from and including", "to" means "to but excluding" and "through" means "through and including"; and

(ix) reference to any law (including statutes and ordinances) means such law as amended, modified, codified or reenacted, in whole or in part, and in effect from time to time, including rules and regulations promulgated thereunder.

(c) Legal Representation of Parties. This Agreement was negotiated by the Parties with the benefit of legal representation and any rule of construction or interpretation otherwise requiring this Agreement to be construed or interpreted against any Party shall not apply to any construction or interpretation hereof.

(d) Titles and Headings. Section titles and headings in this Agreement are inserted for convenience of reference only and are not intended to be a part of or to affect the meaning or interpretation of this Agreement.

2. Term

This Agreement shall have a term commencing on the Effective Date and ending on the Termination Date.

3. Regulatory Approvals

The Parties acknowledge that this Agreement and the Asset Sale Agreement are subject to the approval of federal or state regulatory authorities, and that, except as provided in this Section 3, all obligations and undertakings set forth herein are contingent upon receipt of such regulatory approvals. The Parties will cooperate with each other and perform all acts as may reasonably be required to obtain such regulatory approvals in accordance with the Asset Sale Agreement. In the event that the Asset Sale Agreement is terminated pursuant to Article 12 thereof, then either Party may terminate this Agreement by providing notice of such termination to the other Party. Such notice of termination shall be effective immediately, and neither Party shall thereafter have any further liability or obligation under this Agreement to the other Party.

4. Generating Capacity

Subject to the terms and conditions of this Agreement, during the term of this Agreement, Seller shall use reasonable efforts to cause the Base Facility's Net Dependable Capacity to be not less than 1,108 megawatts.

5. Electric Energy Supply

(a) Character. All electric energy which Seller shall sell and deliver to ComEd hereunder, whether generated at the Facility or procured by Seller from other sources (such electric energy being referred to herein as the "Electric Energy"), shall be in the form of three-phase alternating current having a nominal frequency of approximately sixty cycles per second, a harmonic content consistent with the requirements of the Institute of Electrical and Electronic Engineers Standard

No. 519, and a voltage content consistent with the guidelines applied by ComEd to the ComEd System.

(b) Supply. Subject to the terms and conditions of this Agreement, during the term of this Agreement, Seller shall make available at the Point of Delivery to ComEd for delivery and sale, and ComEd may receive and purchase from Seller, Electric Energy. ComEd shall not be obligated to receive or purchase any Electric Energy from Seller except such Electric Energy as is Dispatched by ComEd pursuant to Section 5(c). Except as provided in Section 5(d), such Electric Energy need not be generated at the Facility.

(c) Dispatch. During the term of this Agreement, ComEd shall have the sole right to Dispatch the delivery of Electric Energy from the Base Facility at a rate up to the Base Facility's Net Dependable Capacity (or such greater or lesser rate as Seller may from time to time declare to be available in accordance with Section 7(c)) at any time when the Base Facility is declared by Seller to be available in accordance with Section 7(c). ComEd shall Dispatch the delivery of Electric Energy from the Base Facility in accordance with the standards and methods that it uses in Dispatching its owned generating facilities and in a manner that does not discriminate between such ComEd-owned facilities and the Base Facility. ComEd shall not Dispatch the units of the Base Facility (1) during any Planned Outage, Maintenance Outage or period of a Force Majeure Event, (2) during any period that Seller has designated a Forced Outage, provided this clause (2) shall not relieve Seller from its obligation to deliver Substitute Energy in an amount equal to the Dispatched level up to the Net Dependable Capacity of the Base Facility under the circumstances specified in Section 5(d)(i)(2), or (3) above Seller's designated derated capacity level during the period of any Forced Derating, provided this clause (3) shall not relieve Seller from its obligation to deliver Substitute Energy in an amount equal to the Dispatched level up to the Net Dependable Capacity including the difference between the Net Dependable Capacity of the Base Facility and such derated level under the circumstances specified in Section 5(d)(i)(2).

(d) Substitute Energy.

(i) In the event that:

(1) subject to the requirements of Section 5(d)(ii), Seller desires to deliver, or

(2) as result of a Forced Outage or Forced Derating at the Base Facility during a calendar month when the Rolling EFOR for such month exceeds 0.10, Seller must deliver,

Substitute Energy to ComEd, it shall deliver a Substitute Energy Notice to ComEd. In the case of a Forced Outage or Forced Derating at the Facility, such Substitute Energy Notice shall be delivered as promptly as practicable following the occurrence of the Forced Outage or Forced Derating; and in all other cases, such Substitute Energy Notice shall be delivered prior to 12:00 p.m. (Noon) Chicago time on the calendar day preceding the day

on which delivery of such Substitute Energy is proposed to commence (unless ComEd's dispatchers shall allow a later time in a given situation).

(ii) Any delivery of Substitute Energy shall be subject to ComEd's reasonable determination that (1) access is available to the ComEd System at the proposed point(s) of delivery, (2) such access will not have a material adverse effect on the operational requirements of the ComEd System and (3) the requirements of the ComEd System and the transmission network to which it is connected do not require that the delivery be made from the Facility. If such access is determined by ComEd not to be available, ComEd shall so inform Seller and Seller may request ComEd to quote a cost to redispatch the delivery of Electric Energy on the ComEd System so as to make the proposed point(s) of delivery available. ComEd shall, if such redispatch is possible, promptly provide such a quote to Seller. If Seller agrees to pay such cost, then ComEd shall make the proposed point(s) of delivery available for the scheduled delivery. If access is determined not to be available, or ComEd is unable to redispatch the delivery of Electric Energy on the ComEd System or Seller is unwilling to pay the cost of such redispatch, then ComEd may refuse the proposed delivery of Substitute Energy.

(iii) In the event that:

(1) Seller shall fail to deliver Electric Energy Dispatched from the Base Facility for any reason other than [A] a Forced Outage or Forced Derating at the Base Facility during a calendar month when the Rolling EFOR for such month is 0.10 or less or [B] a Force Majeure Event,

(2) Seller shall fail to deliver Substitute Energy at the scheduled time specified in a Substitute Energy Notice at the point of delivery established pursuant to clause (ii), or

(3) Seller shall fail, or be unable (regardless of whether such inability is due to a determination by ComEd under clause (ii) of this Section 5(d)), to cause the commencement of delivery of Substitute Energy within ten minutes of the occurrence of a Forced Outage or Forced Derating at the Base Facility during a calendar month when the Rolling EFOR for such month exceeds 0.10,

then ComEd shall be entitled to arrange for the delivery of electric energy either from ComEd-owned generation sources or from other generation sources (such electric energy deliveries so arranged being referred to herein as the "ComEd Arranged Energy") during the period that Seller fails or is unable to deliver such Electric Energy or Substitute Energy, as the case may be; provided, however, that if Seller is subsequently able to arrange for the delivery of Electric Energy from the Facility, or Substitute Energy in accordance with the requirements of clauses (i) and (ii) above, then ComEd shall accept such delivery in lieu of any ComEd Arranged Energy commencing promptly following

receipt of a notice from Seller of such availability. Seller shall pay to ComEd for each megawatt hour of ComEd Arranged Energy an amount equal to (x), if generated by ComEd, the market price of electric power prevailing in the region, at the time such ComEd Arranged Energy is generated by ComEd, for a delivery of similar size, duration and timing, or, if ComEd purchases such electric power from others, the price paid for such electric power (subject to ComEd's obligation to mitigate damages, it being understood that such ComEd Arranged Energy may be subject to a minimum take-or-pay period) plus (y) one dollar ($1.00) minus (z) the costs ComEd would have incurred per megawatthour (including ComEd's costs for fuel that would have been consumed by Seller and payments ComEd would have made to Seller for Electric Energy) if Seller had delivered such Electric Energy as Dispatched by ComEd. ComEd agrees that it shall use reasonable commercial efforts to avoid, or where unavoidable, to minimize any take or pay obligations for ComEd Arranged Energy. If a Forced Derating or Forced Outage occurs at a time when ComEd is entitled to reimbursement for ComEd Arranged Energy, then initially ComEd shall not arrange for electric power beyond Midnight of the day following the day on which the Forced Outage or Forced Derating occurred, and as soon as possible within the twenty-four hour period following the start of the Forced Outage or Forced Derating, Seller shall provide a good faith estimate of the duration of the Forced Outage or Forced Derating. Thereafter, ComEd may commit to purchase ComEd Arranged Energy for the estimated duration of the Forced Derating or Forced Outage or, if shorter, the period ending at the time when Seller has notified ComEd that Seller will commence the delivery of Substitute Energy. If ComEd commits to purchase ComEd Arranged Energy beyond the estimated duration of the Forced Outage or Forced Derating and if the Forced Outage or Forced Derating ends within such estimated duration, Seller shall not be liable for any costs of ComEd Arranged Energy beyond the estimated duration of such Forced Derating or Forced Outage. If the Forced Outage or Forced Derating does not end within the estimated duration furnished by Seller, or if a delivery of Substitute Energy does not begin at the scheduled time, then ComEd may arrange for ComEd Arranged Energy in accordance with the preceding three sentences as if the Forced Outage or Forced Derating had just occurred.

6. Metering; Billing; Payment

(a) Metering. All Electric Energy delivered by Seller to ComEd from the Facility shall be metered at ComEd's billing meter installations provided, installed and maintained pursuant to the Facilities Agreement. Such meters shall be kept under seal, and such seals shall be broken only when the meters are to be tested or adjusted. ComEd shall provide Seller with information from the billing meter installations for Seller's use in preparing billing statements.

(b) Meter Testing and Inaccuracies. ComEd shall test meters at least once during any Contract Year. In addition, Seller shall have the right to request a test of, and ComEd shall test, such meters once during a Contract Year at a time reasonably selected by Seller. Seller shall be afforded a reasonable opportunity to have its representative attend and witness such tests. If any test of the billing meters by ComEd discloses an inaccuracy of more than 0.5% fast or 0.5% slow,

a billing adjustment shall be made to correct for the inaccuracy. For purpose of the billing adjustment, if the inaccuracy is traceable to a specific event or occurrence at a reasonably ascertainable time, then the adjustment shall extend back to that time; otherwise, it shall be assumed that the error has existed for a period equal to one-half of the time elapsed since the meter was installed or one-half of the time since the last meter test, whichever is later. At Seller's option and expense, back-up meters may be installed at the Facility. If available, such back-up meters shall be used, in accordance with practices and procedures established by the Parties, for billing adjustments of discovered billing meter inaccuracies in lieu of the above procedures. At any metering location, should the billing and back-up meters at any time both fail to register, the delivered Electric Energy shall be determined by ComEd from the best available data, unless Seller objects within 30 days. Such disagreements shall be resolved pursuant to Section 14, save that Seller shall have the burden of disputing ComEd's determination.

(c) Billing and Payment. As soon as practicable after the end of each calendar month during the term of this Agreement:

(i) Seller shall render a statement (the "Seller Monthly Statement") to ComEd with respect to such month for (1) the Monthly Capacity Charge due in respect of such month, (2) the Energy Charges owed for delivered Electric Energy, (3) with respect to adjustments for a NO_x compliance project, the NO_x Compliance Cost and additional fuel costs due, if any, (4) the charges specified in Part B, Item III of Appendix B in respect of start-ups of the units of the Base Facility (Hot, Warm and Cold Starts), (5) costs incurred under Part B, Items IV and V of Appendix B for electricity and natural gas, (6) any coal quality adjustment payment under Part B, Item VII of Appendix B and (7) any other costs due. On a quarterly basis, such Seller Monthly Statement also shall contain an invoice for the reward due, or a credit for the penalty payable, as the case may be, pursuant to Section 9(d)(ii). Such Seller Monthly Statement shall also contain reasonable detail showing the manner in which the Monthly Capacity Charge and the charges for delivered Electric Energy were determined; and

(ii) ComEd shall render a statement (the "ComEd Monthly Statement") to Seller with respect to such month for any charges due in respect of ComEd Arranged Energy, as provided in the last sentence of Section 5(d)(iii).

Billings for Electric Energy shall be based on meter information for deliveries made from the Facility. Billings for Substitute Energy shall be based on the amount of Substitute Energy scheduled for delivery. Billings for ComEd Arranged Energy shall be based on the amount of ComEd Arranged Energy scheduled for delivery. The amount due Seller as shown on any such Seller Monthly Statement shall be paid by ComEd by electronic means to an account specified by Seller within twenty business days after the date such Seller Monthly Statement is rendered to ComEd. The amount due ComEd as shown on any such ComEd Monthly Statement shall be paid by Seller by electronic means to an account specified by ComEd within twenty business days after the date such ComEd Monthly Statement is rendered to Seller. Any amounts not paid when due

shall bear interest until paid at the prime rate established by the First National Bank of Chicago at the close of business on the date the amount becomes past due, plus one percent.

(d) Audits. Throughout the term of this Agreement, ComEd and Seller shall keep proper books of record and account in which proper entries will be made to substantiate any charges to each other related to this Agreement in accordance with generally accepted accounting principles consistently applied. From time to time during the term of this Agreement, each Party shall have the right to conduct a review of the other Party's books and records on a confidential basis to the extent they relate to this Agreement, but solely to the extent such review is necessary to substantiate charges pursuant to this Agreement.

7. Operation of Facility

(a) Standard of Operation. Seller shall cause the Base Facility to be maintained in accordance with the requirements of Section 4. In addition, Seller shall operate the Facility in accordance with (i) the practices, methods, acts, guidelines or criteria of the Mid-America Interconnected Network and the North American Electric Reliability Council; (ii) all applicable laws, ordinances, rules and regulations; and (iii) the requirements of the Facilities Agreement. Seller will obtain all certifications, permits, licenses and approvals necessary to operate and maintain the Facility during the term of this Agreement. Seller will be responsible for the coordination and synchronization of the Facility's equipment with the ComEd System, and shall be solely responsible for any damage that may occur as a direct result of Seller's improper coordination or synchronization of such equipment with the ComEd System.

(b) Electric Energy Generation.

(i) During the term of this Agreement, ComEd shall have the sole and exclusive right to receive and purchase Electric Energy generated by the Base Facility; and the capacity represented by the Base Facility shall not be committed to, and Electric Energy generated by the Base Facility shall not be delivered or sold to, any individual or entity other than ComEd (unless otherwise approved in writing by ComEd).

(ii) In the event that (1) the Facility shall have electric generation capacity in excess of the Base Facility and (2) Seller shall propose to offer such capacity and associated electric energy on a firm, committed basis of seven days or more, Seller shall offer such capacity and associated electric energy to ComEd prior to offering it to any other individual or entity. In the case of any offer involving a firm, committed period of less than 90 days, ComEd shall have five business days from its receipt of such offer to determine whether it wishes to accept such offer. In the case of any such offer involving a firm, committed period of between 90 days and one year, ComEd shall have ten days from its receipt of such offer to determine whether it wishes to accept such offer. In the case of any offer involving a firm, committed period of one year or more, ComEd shall have twenty business days from its receipt of such offer to determine whether it wishes to accept such offer. If ComEd shall refuse such offer in whole or in part, Seller may market

and sell such capacity and/or electric energy to any other individual or entity on terms no more favorable than the terms offered to ComEd. Notwithstanding the foregoing, if ComEd shall have refused any such offer and shall subsequently determine to accept the portion so refused, it may do so provided (x) Seller has not entered into a binding commitment with another individual or person with respect thereto, (y) at least 180 days have elapsed since ComEd's original refusal, and (z) the offer has not expired by its terms.

(c) Communications. The Facilities Agreement provides for the installation and maintenance of a telecommunications link between Seller and ComEd, which shall be used by Seller and ComEd to exchange any necessary operating information with respect to the Facility and to implement the Dispatching of Seller's deliveries of Electric Energy to ComEd. Such link shall be compatible with the links to ComEd's other generating facilities. The Facilities Agreement also specifies the manner in which Seller shall declare the availability of the Facility and its Minimum Operating Level and Ramp Rate.

(d) Information Related to Outages. Seller shall provide to ComEd all information relating to outages of generating capacity at the Facility which would affect Seller's ability to deliver Electric Energy from the Facility.

(e) Outages

(i) Planned Outages. On or prior to the Effective Date, Seller shall submit to ComEd a proposed schedule of Planned Outages scheduled by Seller for the following three Contract Years at the Facility, which schedule shall be supplemented by Seller every six months following the Effective Date to extend the period covered by such schedule by six months. Such schedule, and each supplement thereto, shall indicate the planned start and completion dates for each Planned Outage shown during the period covered thereby and the amount of generating capacity that will be affected. Within thirty days of receipt of such schedule or any supplement thereto, ComEd may request reasonable modifications therein. Seller and ComEd shall work together to schedule Planned Outages to meet their mutual requirements; however, it is understood that in the event of a disagreement on such scheduling, (1) ComEd will have the right, exercisable at least six months prior to the scheduled start of a Planned Outage, to delay such Planned Outage proposed by Seller, as ComEd reasonably determines to be appropriate by not more than two months, and (2) ComEd may not accelerate the scheduled start or reduce the duration of any Planned Outage proposed by Seller without the consent of Seller. If within six months prior to the scheduled start of a Planned Outage, ComEd desires to change the scheduled start or duration of such Planned Outage, ComEd shall notify Seller of ComEd's requested change and Seller shall, in its sole discretion, propose compensation from ComEd to Seller for such change. ComEd shall then have the right to either direct such change and pay Seller such compensation, or withdraw the request for such change. In making or requesting modifications to any such schedule or supplement, ComEd shall apply the same procedures as it applies to its owned generating facilities and in a manner that does not discriminate between such owned facilities and the Base Facility. At least one week prior to any

Planned Outage, Seller shall orally notify ComEd of the expected start date of such Planned Outage, the amount of generating capacity at the Facility which will not be available to ComEd during such Planned Outage, and the expected completion date of such Planned Outage. Seller shall orally notify ComEd of any subsequent changes in such generating capacity not available or any subsequent changes in the Planned Outage completion date. As soon as practicable, all such oral notifications shall be confirmed in writing. Notwithstanding the foregoing, ComEd shall not request any changes to the schedule of Planned Outages during the First Contract Year and the Second Contract Year.

(ii) Maintenance Outages. To the extent that during any Contract Year Seller needs to schedule a Maintenance Outage, Seller shall notify ComEd of such proposed outage and the Parties shall plan such outage of generating capacity to mutually accommodate the reasonable requirements of Seller and service obligations of ComEd. Notice of a proposed Maintenance Outage shall include the expected start date of the outage, the amount of unavailable generating capacity and the expected completion date of the outage, and shall be given to ComEd at the time the need for the outage is determined by Seller. ComEd shall promptly respond to such notice and may request reasonable modifications in the schedule for the outage. In requesting modifications to any such Maintenance Outage, ComEd shall apply the same procedures as it applies to its owned generating facilities and in a manner that does not discriminate between such owned facilities and the Base Facility. Seller shall use all reasonable efforts to comply with such a request to reschedule a Maintenance Outage provided that it may do so in accordance with prudent electric utility practice as such practice relates solely to Seller's operation of the Facility. Seller shall notify ComEd of any subsequent changes in such generating capacity not available to ComEd or any subsequent changes in such Maintenance Outage completion date. As soon as practicable, any such notifications given orally shall be confirmed in writing.

(iii) Forced Outages or Forced Derating. Seller shall promptly provide to ComEd an oral report of any Forced Outage or Forced Derating at the Base Facility, which report shall include the amount of generating capacity at the Base Facility unavailable because of such Forced Outage or Forced Derating and the expected return date of such generating capacity, and shall update such report as necessary to advise ComEd of changed circumstances.

(f) Appointment of Independent Engineer. Seller shall undertake all necessary steps to maintain the Equivalent Forced Outage Rate of the Base Facility below the Specified EFOR. In the event that the Equivalent Forced Outage Rate for the Base Facility for any two consecutive Contract Years (neither of which may be the First or Second Contract Years) shall exceed the Specified EFOR for such Contract Years, then ComEd may appoint, and Seller shall retain and pay, a mutually acceptable consulting engineer who shall examine and inspect the Base Facility (including all equipment, structures, operating procedures and maintenance practices necessary for the generation and delivery of Electric Energy). The consulting engineer shall be required to promptly issue a written report regarding such examination and inspection (the "Inspection

Report") to Seller and ComEd. As soon as practicable, and in no event later than sixty days after receipt of the Inspection Report, Seller shall undertake substantial efforts toward the implementation of the recommendations contained in the Inspection Report regarding equipment, structures, operating procedures and maintenance practices necessary for the generation and delivery of Electric Energy to the extent consistent with prudent electric utility practice and standards for similar facilities.

(g) Operating Characteristics. Seller shall provide ComEd with information as to all of the Facility's operating characteristics which may affect the delivery of Electric Energy to the ComEd System, and as to any material changes in such information. Seller shall reduce, curtail or interrupt electrical generation at the Facility or take other appropriate action which in the reasonable judgment of ComEd may be necessary to operate, maintain and protect the ComEd System, however, such reduction, curtailment or interruption shall not be a Forced Outage or Forced Derating.

(h) Load Frequency Regulation. ComEd may, in its discretion, install and maintain equipment to regulate load frequency at the Facility. The costs of installing the necessary equipment shall be borne by ComEd; and ComEd shall have the right to remove any such equipment at its expense following any termination of this Agreement. Seller shall provide any necessary personnel to implement load frequency regulation at the Facility and shall provide access to the Facility for the purposes of this Section 7(h).

(i) Records of Seller. Seller shall keep and maintain all records as may be necessary or useful in performing or verifying any calculations made pursuant to this Agreement, or in verifying Seller's performance hereunder. All such records shall be retained by Seller for at least three calendar years following the calendar year in which such records were created. Seller shall make such records available to ComEd for inspection and copying at ComEd's expense, upon reasonable notice during Seller's regular business hours. ComEd shall have the right, upon thirty days written notice prior to the end of an applicable three calendar year period to request copies of such records. Seller shall provide such copies, at ComEd's expense, within thirty days of receipt of such notice. Unavailability of any record required to be kept and maintained pursuant to this Agreement shall create a rebuttable presumption that the data or information in such record would be adverse to Seller.

(j) Security Guaranty. On the Effective Date, Seller shall post an operational security guaranty (the "Security Guaranty") with ComEd in an aggregate amount equal to Twenty-Two Million Dollars ($22,000,000) to ensure timely performance by Seller of its obligations to deliver Electric Energy under this Agreement. Such Security Guaranty requirement shall be met by depositing with ComEd (1) cash or an unconditional and irrevocable direct pay letter of credit in the minimum amount of $5,000,000 plus (2) a corporate guaranty from Dominion Energy, Inc. with liquidity support for such guaranty to be provided by Dominion Resources, Inc. or other unconditional promise from such entity to pay an aggregate amount (excluding collection costs) equal to the difference between $22,000,000 and the amount deposited pursuant to clause (1) of this sentence; provided, however, that in the event that the guarantor on any such corporate

guaranty or the promisor under any such other promise to pay shall fail to pay any amount properly demanded by ComEd pursuant to the Security Guaranty, then Seller shall immediately deposit cash and/or an irrevocable direct pay letter of credit with ComEd such that the total of such cash and the face amount of such letters of credit so deposited with ComEd shall equal $22,000,000. The entity issuing any letter of credit, guaranty or promise, and the form of any such letter of credit, guaranty or promise, shall be reasonably acceptable to ComEd. ComEd may draw upon the Security Guaranty to reimburse itself for any damages incurred as a result of Seller's failure to deliver Electric Energy as required under this Agreement to the extent Seller would be liable for such damages pursuant to the terms of this Agreement. In the event that Seller objects to a draw made by ComEd upon the Security Guarantee, Seller shall be entitled to have the objection resolved in accordance with Section 14 of this Agreement. To the extent that it is determined pursuant to Section 14 that ComEd was not entitled to such draw, ComEd shall refund the drawn amount to which it was not entitled to Seller together with interest on such amount from the date of the draw until the date of the refund at an annual rate equal to the prime rate established by the First National Bank of Chicago as of the close of business on the date of such draw, plus one percent (1%). Upon the termination of this Agreement for any reason other than a breach or default by Seller, ComEd shall return the undrawn amount of any cash, letter of credit, corporate guaranty or other promise received by it hereunder. Upon any termination of this Agreement due to the breach or default of Seller, ComEd may retain and draw in full upon the Security Guaranty provided by Seller hereunder to the extent of ComEd's damages arising from such breach or default to the extent Seller would be liable for such damages pursuant to the terms of this Agreement.

8. Facilities Agreement

Prior to the Effective Date, ComEd and Seller shall enter into the Facilities Agreement.

9. Compensation and Fuel

(a) Capacity Charge. As the capacity payment, ComEd shall pay to Seller during the term of this Agreement a monthly amount equal to the Monthly Capacity Charge. During any period that (i) a coal test burn is being conducted at the Base Facility as provided in Article 7 of the Coal Supply Agreement or (ii) the Base Facility would be available for Dispatch but for the failure of ComEd to deliver coal as required under the Coal Supply Agreement, the Facility shall be considered available for purposes of calculating EAF and EFOR, and during such periods ComEd shall be liable for payment of Monthly Capacity Charges and Seller shall not be liable for the cost of ComEd Arranged Energy.

(b) Energy Charges. As the energy charge for Electric Energy, ComEd shall pay to Seller the Energy Charges identified in Part B, Item II in Appendix B.

(c) Rates Not Subject to Review. The rates for service specified herein (i.e., delivery of Electric Energy and capacity) shall remain in effect for the term of this Agreement, and shall not be subject to change through application to the Federal Energy Regulatory Commission ("FERC")

pursuant to the provisions of Section 205 of the Federal Power Act, absent agreement of the Parties.

(d) Coal Supply.

(i) ComEd shall provide coal to Seller in accordance with the Coal Supply Agreement for (1) the start-up of the units at the Base Facility and (2) the generation of Electric Energy at the Base Facility. At any time, Seller may propose to ComEd that Seller supply a specific quantity of coal to the Facility. If such supply would result in the Electric Energy being less costly to ComEd than would have resulted from ComEd supplied coal for the Facility, ComEd approves of such alternate supply and ComEd and Seller agree to make any necessary modifications to this Agreement and the Coal Supply Agreement to reflect such alternate source of supply, then Seller and ComEd shall divide such savings evenly (after due consideration of Seller's costs in procuring and delivering such coal).

(ii) ComEd and Seller have agreed that Seller should be rewarded for operating the Base Facility at a heat rate less than the Guaranteed Heat Rate and should be penalized for operating at a heat rate greater than the Guaranteed Heat Rate, which reward or penalty would be calculated as hereinafter provided and, on a quarterly basis, would be added to, or subtracted from, the payments for Electric Energy in accordance with Section 6(c). The amount of any such reward or penalty in respect of a Contract Quarter shall be calculated in accordance with the procedures and formulae set forth in Part B, Item VI of Appendix B.

(iii) There shall be an adjustment to the Guaranteed Heat Rate when the weighted average heat content of coal consumed during a month at the Base Facility is below 8600 Btu/lb. Such adjustment shall be made in accordance with the formulae set out in Part B, Item VII of Appendix B.

(iv) There shall be an adjustment to non-fuel energy charges (i.e., the Adjusted Variable O & M Charge) due to maintenance cost changes projected by the CQIM as provided in Sections 7.01 and 7.02 of the Coal Supply Agreement and as set forth in Part B, Item II.A.1 of Appendix B.

(v) Coal supplied to the Base Facility by ComEd as of the Effective Date through the date of conversion to Powder River Basin Coal ("PRB Coal") shall conform to the specifications set forth in the Coal Supply Agreement unless the Parties mutually agree to utilize other coal as therein provided. ComEd shall convert to PRB Coal before December 1, 1997, and such coal shall conform to the specifications set forth in the Coal Supply Agreement, unless the parties mutually agree to utilize other coal as provided in the Coal Supply Agreement. In addition, ComEd agrees that the financial costs and returns of Seller should not be impacted significantly by a switch to PRB Coal. As such, if Seller and ComEd reasonably agree that blending of a higher quality coal ("Blending Coal") is

necessary to maintain the Net Dependable Capacity of the Base Facility at not less than 1,108 megawatts, ComEd shall provide such Blending Coal to Seller on the same basis as it provides other coal to Seller under the Coal Supply Agreement and to begin such deliveries within fifteen (15) days after the Seller first orders Blending Coal from ComEd. Seller shall make its first order for Blending Coal (if any) within one year after the Base Facility begins to consume PRB Coal.

(vi) In the event that there is a Forced Derating or Forced Outage at the Base Facility as a result of the use of ComEd supplied coal that does not conform to the applicable specifications, such Forced Derating or Forced Outage shall be excluded from the calculation of the EAF and the EFOR of the Base Facility under this Agreement. In addition, Base Facility performance during any period between Seller's first order of Blending Coal and ComEd's first delivery thereof shall not be included in the calculation of the EAF and EFOR of the Base Facility.

(e) Other Charges. ComEd shall pay Seller the costs specified in Part B, Items III, IV and V of Appendix B.

(f) NO_x Compliance Cost. If additional NO_x emission requirements are imposed upon the Facility, Seller shall make any necessary capital improvements and shall be entitled to a monthly NO_x Compliance Cost payment calculated in accordance with Item I of Appendix G. ComEd shall either provide Seller with the additional fuel required as a result of, or compensate Seller for the additional fuel costs that result from, any such additional NO_x emission requirements. The Guaranteed Heat Rates also shall be reasonably adjusted by the Parties as required. The selection of equipment and methodology for complying with such NO_x requirements will conform to industry practice for similar facilities within reasonable parameters responding only to emission limitations actually imposed. The selection will be made in consultation with ComEd, but the final decision is solely within the discretion of Seller. If, (i) ComEd disagrees with Seller's selected compliance strategy, (ii) ComEd suggests an alternative strategy that is commercially available for use at other cyclone units similar to the Facility in the United States and is consistent with prudent electric utility practice, (iii) Seller does not agree to such alternative strategy and (iv) NO_x capital costs for Seller's planned strategy exceed $20,000,000, ComEd shall have the right to repurchase the Facility from Seller at a price determined in accordance with Item II of Appendix G, unless Seller decides to waive its right to receive the NCC payment.

(g) Real Property Taxes. The Monthly Capacity Charge shall be subject to adjustment as provided in Appendix H.

(h) Allowances for ComEd Supplied Coal. Transfer of SO_2 Allowances from ComEd to Seller are addressed in Appendix D.

10. Testing

In order to grant ComEd certain rights for testing so that ComEd may have the information it may need to enforce certain other rights or remedies granted elsewhere in this Agreement, and without granting in this Section any rights or remedies to ComEd not specifically granted elsewhere in this Agreement, the Parties agree as follows:

(a) Testing of the Facility. Capability evaluations of the Base Facility may be conducted by ComEd at reasonable intervals during which ComEd shall request the Base Facility to generate Electric Energy for delivery to the ComEd System at Net Dependable Capacity. In addition, ComEd may request not more than once per Contract Year that the Base Facility undergo a generating test as specified in Guide No. 3 of the Mid-America Interconnected Network. No tests will be conducted or continued which, in the opinion of Seller, could result in significant degradation of the Facility.

(b) Testing of Protective Equipment. In addition, ComEd shall have the right to operate and test any of the Facility's protective equipment to assure proper accuracy and operation. Any such testing shall not relieve Seller of the responsibility to assure proper operation of its equipment and to perform routine maintenance and testing.

11. ComEd's Temporary Step-in Rights.

(a) Triggering of ComEd's Rights. If

(i) Seller fails to retain any consulting engineer appointed by ComEd under Section 7(f),

(ii) Seller fails to undertake substantial efforts toward the implementation of the recommendations contained in any Inspection Report issued under Section 7(f) within the time periods set forth in Section 7(f) and the Rolling EFOR continues to exceed 0.10 after the ninety (90) day period following delivery of the Inspection Report,

(iii) the EFOR of the Base Facility exceeds 0.10 for three consecutive years,

(iv) a proceeding is filed by Seller seeking the protection of any bankruptcy or insolvency law,

(v) a proceeding is filed against Seller, and is not subsequently dismissed within 60 days of its filing, seeking to declare Seller a bankrupt or to appoint a receiver for any part of its property or

(vi) Seller is dissolved and not reinstated within sixty (60) days of the dissolution (or discovery of such dissolution if such dissolution was inadvertent),

then ComEd shall have, as a remedy (which remedy, if exercised by ComEd, shall be its exclusive remedy for events that have occurred prior to the Step-In Date (other than any failure by Seller to pay any amounts due and owing hereunder to ComEd as of such date) with respect to the event(s) giving rise to the exercise of such remedy and any and all loss or damage suffered or incurred by ComEd arising from such event(s) and for any other loss or damage suffered or incurred by ComEd in connection with its operation of the Facility during the Step-In Period), the right during the continuance of such events, upon notice to Seller as set forth in Section 11(b), to step-in and operate the Facility in accordance with the terms of this Section.

(b) Exercise of ComEd's Rights. ComEd shall give Seller notice sixty (60) days in advance of ComEd's exercise of its right to step-in and operate the Facility, which notice shall state which of the events set forth in Section 11(a) is the basis for the exercise of such step-in right. During a Step-In Period, ComEd shall operate and maintain the Facility in accordance with prudent electric utility practice using and directing the site personnel of Seller. ComEd shall indemnify, defend and hold harmless Seller for any loss, damage or expense (including reasonable attorneys' fees and litigation expenses) for property damage or bodily injury occurring at the Facility arising from the exercise by ComEd of its step-in rights or from or in connection with the operation of the Facility by ComEd during a Step-In Period; provided, however, the foregoing indemnity shall not apply to any such loss, damage or expense arising from the negligence or wilful misconduct of the site personnel or Seller's or Lenders' agents. Seller, Lender and their respective agents shall be given reasonable access to the Facility during a Step-In Period to analyze the condition of the Facility, monitor ComEd's activities and to coordinate the implementation of corrective measures with ComEd to improve the performance of the Facility. In addition, during a Step-In Period, ComEd shall, subject to the provisions of Section 5(c), purchase Electric Energy from the Base Facility, and any additional capacity as to which it has accepted an offer described in Section 7(b), in accordance with the prices established under this Agreement. If Seller has contracted with a third party for energy or energy and capacity from the Stretch Facility, ComEd shall be responsible for the performance of Seller's obligations under such third party contract except to the extent that (i) such energy or energy and capacity is to be delivered from facilities other than the Stretch Facility and (ii) the Stretch Facility is not capable of producing such energy or energy and capacity.

(c) Payments during Step-in. For purposes of calculating payments by ComEd to Seller during a Step-In Period, the Base Facility shall be deemed to have operated with the following EAFs and ComEd shall pay Monthly Capacity Charges based on such deemed operating levels: (i) during the first six months following the Step-In Date, the EAF of the Base Facility during the most recently ended full Summer Period and full Nonsummer Period, as applicable, immediately preceding such Step-In Date, and (ii) thereafter until the Step-Out Date, the Specified Equivalent Availability Factor for such month. ComEd shall apply any Monthly Capacity Charges and the proceeds from the sale(s) of Electric Energy so purchased by it, which would otherwise be payable to Seller, first to satisfy any principal, interest and other charges payable by Seller to any Lender

for or with respect to a loan or loans secured in whole or part by a lien on or security interest in the Facility or this Agreement, and second to reimburse ComEd for any and all expenses reasonably incurred by it in operating the Facility and exercising its step-in rights pursuant to this Section 11. Seller shall be responsible for, and shall pay prior to any return of the Facility, any such expenses of ComEd which are not so paid. Any balance of payments remaining after application as provided in the preceding sentence shall be paid to Seller on a current basis.

(d) Step-Out by ComEd. Subject to the payment of any expenses incurred by ComEd during a Step-In Period that have not been reimbursed in full as provided in Section 11(c), ComEd shall relinquish its right to operate, and Seller shall resume operation of, the Facility on the Step-Out Date, which shall be 30 days following the earliest to occur of:

(i) the last day of any consecutive twelve (12) month period, if the Base Facility's Equivalent Forced Outage Rate calculated over such twelve (12) month period is 0.10 or less;

(ii) the last day of any consecutive twelve (12) month period beginning at least one year after the Step-In Date, if the Base Facility's Equivalent Forced Outage Rate calculated for such twelve (12) month period equals or exceeds the Equivalent Forced Outage Rate for the immediately preceding consecutive twelve (12) month period,

(iii) the last day of any consecutive twelve (12) month period beginning after the Step-in Date, if the Equivalent Forced Outage Rate for such twelve (12) month period equals or exceeds the Equivalent Forced Outage Rate for the twelve (12) month period immediately preceding the commencement of the Step-In Period;

(iv) the Termination Date; or

(v) the date on which a Lender has taken possession of the Facility, foreclosed on the Facility or had a receiver appointed therefor, if ComEd's exercise of step-in rights under this Section 11 was in respect of an event described in Section 11(a)(vi) above.

Following a Step-Out Date, ComEd may reassume operation and possession of the Base Facility pursuant to this Section 11 if the EFOR of the Base Facility exceeds 0.10 for two consecutive years. For the purposes of determining whether an event described in Section 11(a) has occurred after the Step-Out Date, entitling ComEd again to step-in and operate the Facility, there shall be excluded from such determination any period or events occurring prior to the Step-Out Date.

(e) Documentation of ComEd Rights. Prior to the Effective Date, Seller will grant to ComEd the rights, licenses and easements set forth in Appendix I, which will be irrevocable

during the term of this Agreement, to enter the Facility for the purpose of operating the Facility as provided herein, and shall deliver evidence of the consent to this Section 11 of any Lenders having a security interest in the Facility, and their agreement to acknowledge that their exercise of remedies is subject to ComEd's rights in this Section 11. Seller shall make and prosecute such filings as necessary to effectuate ComEd's rights to step-in and operate as provided herein.

12. Force Majeure Event

(a) Definition. For the purposes of this Agreement, "Force Majeure Event" means an event, condition or circumstance beyond the reasonable control of the Party affected (the "Affected Party") which, despite all reasonable efforts of the Affected Party to prevent it or mitigate its effects, prevents the performance by such Affected Party of its obligations hereunder. Subject to the foregoing, "Force Majeure Event" shall include, as to Seller, shortage of fuel of appropriate quality or quantity, and as to either Party, shall include:

(i) explosion and fire (in either case to the extent not attributable to the negligence of the Affected Party);

(ii) flood, earthquake, storm, or other natural calamity or act of God;

(iii) strike or other labor dispute;

(iv) war, insurrection or riot;

(v) actions or failures to act by governmental entities or officials, failure to obtain governmental permits or approvals despite due diligence (collectively, "Governmental Action"); and

(vi) changes in laws, rules, regulations, orders or ordinances affecting operation of the Facility.

(b) Obligations Under Force Majeure.

(i) If either Party is rendered unable, wholly or in part, by a Force Majeure Event, to carry out some or all of its obligations under this Agreement (other than obligations to pay money) despite all reasonable efforts of such Party to prevent or mitigate its effects, then, during the continuance of such inability, the obligation of such Party to perform the obligations so affected shall be suspended.

(ii) A Party relying on a Force Majeure Event shall give written notice of such Force Majeure Event to the other Party as soon as practicable after such event occurs, which notice shall include information with respect to the nature, cause and date of commencement of the occurrence(s), and the anticipated scope and duration of the delay. Upon the conclusion of the Force Majeure Event, the Party heretofore relying on such

Force Majeure Event shall, with all reasonable dispatch, take all steps reasonably necessary to resume the obligation(s) previously suspended.

(iii) Notwithstanding the foregoing, a Party shall not be excused under this Section 12 (x) for any non-performance of its obligations under this Agreement having a greater scope or longer period than is justified by the Force Majeure Event, (y) for the performance of obligations that arose prior to the Force Majeure Event or (z) if and to the extent that the cumulative period since the Effective Date of excused performance hereunder of such Party as a result of Force Majeure Events (other than due to shortages of coal of appropriate quality or quantity, which shall not be included in the computation of such cumulative period) exceeds 720 days.

(c) Force Majeure Not Forced Outage. Any periods of Forced Outage or Forced Derating caused by Force Majeure Events shall not be included as Forced Outage Hours, Equivalent Unplanned Derating Hours, or Forced Derating Hours and during such periods, Seller shall not be liable for the cost of ComEd Arranged Energy under Section 5(d).

(d) Continued Payment Obligation. Any Party's obligation to make payments already owing shall not be suspended by a Force Majeure Event.

(e) Payment of Monthly Capacity Charges. ComEd shall not be relieved of its obligation to pay the Monthly Capacity Charges provided for in Section 9(a) as a result of the occurrence, and the continuance, of a Force Majeure Event; provided, however, if Seller is the Affected Party and (i) the Force Majeure Event is caused by a strike or other labor dispute and continues for a period of more than (1) 365 days, during the first three Contract Years, or (2) 150 days, during the last twelve Contract Years, or (ii) the Force Majeure Event is caused by an explosion or fire and continues for a period of more than 150 days, then ComEd may suspend or reduce the payment of Monthly Capacity Charges under Section 9(a).

13. Liability

(a) Defaults. Any of the following shall constitute an "Event of Default" if not cured in all material respects within the applicable cure period provided herein. Cure of such failure or action must be initiated within sixty (60) days after receipt of notice from the non-defaulting Party describing the Event of Default and if such cure efforts are initiated within such sixty (60) day period, the defaulting Party shall receive a reasonable period of time in which to cure such default:

(i) permanent abandonment of operation of the Facility by Seller;

(ii) Seller directed or endorsed acts by its employees, contractors or subcontractors of any tier, of tampering with the interconnection facilities or metering;

(iii) either Party's failure to discharge or perform any material duty or obligation under this Agreement; and

(iv) ComEd's failure to pay any amount due and payable under this Agreement, and such failure shall have continued for a period of 20 days after notice thereof has been given by Seller to ComEd.

(b) Consequential Damages. In no event or under any circumstance shall either Party be liable to the other for any special, incidental, exemplary, indirect, punitive or consequential damages, whether such loss is based on contract, warranty or tort (including intentional acts, errors or omissions, negligence, indemnity, strict liability or otherwise).

(c) Disclaimer. EXCEPT AS SET FORTH IN SECTION 5(a), SELLER MAKES NO WARRANTIES (EXPRESS OR IMPLIED) WITH REGARD TO THE SALE OF ELECTRIC ENERGY OR CAPACITY PURSUANT TO THIS AGREEMENT, INCLUDING ANY WARRANTY OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE.

(d) Remedies. If an Event of Default has occurred, the non-defaulting Party, at its discretion, may take one or more of the following actions:

(i) proceed against the defaulting Party pursuant to Section 14;

(ii) by written notice to defaulting Party suspend its obligations hereunder until such failure is cured, and if such failure continues for sixty (60) days after such notice of suspension, the non-defaulting Party may terminate this Agreement by notice to the defaulting Party and sue for direct damages.

The rights and remedies herein provided in case of an Event of Default or other breach shall be exclusive and in lieu of all other rights and remedies existing at law or in equity. Furthermore, Seller's sole remedies under this Agreement for failure by ComEd to deliver coal of the appropriate quantity or quality shall be that ComEd shall pay and Seller shall receive the Monthly Capacity Charge as provided in Section 9(a) and that the Base Facility shall be considered fully available for purposes of calculating EFOR and EAF for any period during which operation of the Base Facility is affected by lack of fuel of appropriate quantity or quality.

14. Disagreements

(a) Administrative Committee Procedure. If any disagreement arises on matters concerning this Agreement, the disagreement shall be referred to representatives of each Party, who shall attempt to timely resolve the disagreement. If such representatives can resolve the disagreement, such resolution shall be reported in writing to and shall be binding upon the Parties. If such representatives cannot resolve the disagreement within a reasonable time, or a Party fails to appoint a representative within ten days of written notice of the existence of a disagreement, then the matter shall proceed to arbitration as provided in Section 14(b).

(b) Arbitration. If pursuant to Section 14(a), the Parties are unable to resolve a disagreement arising on a matter pertaining to this Agreement, such disagreement shall be settled by arbitration and any award issued pursuant to such arbitration may be enforced in any court of competent jurisdiction. Either Party may commence arbitration by serving written notice thereof on the other Party, which notice shall designate the issue(s) to be arbitrated, the specific provisions of this Agreement under which such issues arose and such Party's proposed resolution of such issue(s). Representatives from ComEd and Seller shall meet for the purpose of jointly selecting an arbitrator within ten days after the date of such notice. If no arbitrator has been selected within 20 days of the date of such notice, then an arbitrator shall be selected in accordance with the procedures of the American Arbitration Association. Any such arbitration shall be conducted in accordance with the commercial arbitration rules of the American Arbitration Association in effect on the date of such notice other than as specifically modified herein. The arbitrator shall be bound by the provisions of this Agreement, where applicable, and shall have no authority to modify such provisions in any manner. The arbitrator may only pick the resolution of an issue proposed by one Party or the other Party, and shall have no authority to fashion any other type or form of relief. The decision of the arbitrator shall be final and binding upon both Parties, and a Party may have any court having jurisdiction over the Parties enter judgment in accordance with the arbitrator's award.

(c) Obligations to Pay Charges. If a disagreement should arise on any matter which is not resolved as provided in Section 14(a), then, pending the resolution of the disagreement by arbitration, Seller shall continue to operate the Facility in a manner consistent with the applicable provisions of this Agreement and ComEd shall continue to pay all charges required in accordance with the applicable provisions of this Agreement.

15. Assignment; Transfer of Facility

(a) Assignment. Except as set forth in this Section 15, neither Party may assign its rights or obligations under this Agreement without the prior written consent of the other Party; provided, in the event that, as a result of any change in applicable laws or regulations occurring after the Effective Date, ComEd is not allowed to exercise its Dispatch rights under Section 5(c), ComEd shall have the right to assign its rights and obligations hereunder to any entity that (i) is allowed to exercise such Dispatch rights under Section 5(c), (ii) has a net worth of greater than $500 million, and (iii) has a credit rating for its senior unsecured debt of BBB-/Baa3 or better. If ComEd makes a permitted assignment pursuant to the previous sentence, and the Lender(s) cannot reasonably and objectively demonstrate that circumstances (other than as set forth in clauses (i), (ii) and (iii) of the previous sentence) exist that would have a material adverse effect upon the ability of the proposed assignee to perform its obligations under this Agreement, then ComEd shall be released from its obligations under this Agreement (other than any obligations which have accrued prior to the effective date of such assignment). For the purposes of this Section 15(a), any direct or indirect transfer, or series of direct or indirect transfers, of a majority of the outstanding voting equity interests of Seller shall be deemed an assignment of this Agreement.

(b) Consent to Assignment to Lender. Notwithstanding the above, ComEd hereby consents to the assignment by Seller of a security interest in this Agreement to any Lenders. ComEd further agrees to execute documentation to evidence such consent, provided it shall have no obligation to waive any of its rights under this Agreement. ComEd recognizes that such consent may grant certain rights to such Lenders, which shall be fully developed and described in the consent documents, including (i) this Agreement shall not be amended or terminated (except for termination pursuant to the terms of this Agreement) without the consent of Lenders, (ii) without extending the cure periods set forth in this Agreement, Lenders shall be given notice of, and the same opportunity to cure, any Seller breach or default of this Agreement, (iii) if a Lender forecloses, takes a deed in lieu or otherwise exercises its remedies pursuant to any security documents, that ComEd shall, at Lender's request, continue to perform all of its obligations hereunder (subject to ComEd's rights under Section 13), and Lender or its nominee may perform in the place of Seller, and may assign this Agreement to another party in place of Seller (provided either (i) such proposed assignee is creditworthy and possesses experience and skill in the operation of electric generation plants similar in nature to the Base Facility or (ii) ComEd consents to the assignment to such proposed assignee, which consent shall not be unreasonably withheld (it being understood that ComEd may, in deciding whether to grant such consent, take into account the creditworthiness and the electric generation plant experience and skill of the proposed assignee)), and enforce all of Seller's rights hereunder, (iv) the coordination of Lender's rights with ComEd's step-in rights, (v) that Lender(s) shall have no liability under this Agreement except during the period of such Lender(s)' ownership and/or operation of the Facility, (vi) that ComEd shall accept performance in accordance with this Agreement by Lender(s) or its (their) nominee, (vii) that ComEd shall make all payments to an account designated by Lender(s), and (viii) that ComEd shall make representations and warranties to Lender(s) as Lender(s) may reasonably request with regard to (A) ComEd's corporate existence, (B) ComEd's corporate authority to execute, deliver, and perform this Agreement, (C) the binding nature of this Agreement on ComEd, (D) receipt of regulatory approvals by ComEd with respect to its performance under this Agreement, and (E) whether any defaults by Seller are known by ComEd then to exist under this Agreement.

(c) Transfer of Facility. Except as set forth in Section 15(a), Seller shall not sell or otherwise transfer any interest in the Facility without first obtaining ComEd's written consent, which consent may be conditioned upon the transferee's assumption of the obligations of Seller under this Agreement; provided, however, that Seller may transfer up to a forty-nine percent interest in the Facility to any other Person or Persons as long as Seller retains a fifty-one percent interest in the Facility and remains the operator of the Facility. No such assignment shall relieve Seller from its obligations hereunder or the owner of the Facility from the provisions of this Agreement. Any such sale or transfer without consent under this Section 15 shall be null and void.

16. Right of First Offer

In the event that, during the period beginning on the Termination Date and ending on the tenth anniversary of the Termination Date, Seller shall desire to enter into an electric energy

capacity or supply agreement with a third party pursuant to which Electric Energy produced at the Facility will be available or will be delivered and sold under an agreement with a term of at least 90 days, then Seller shall notify ComEd of such fact and shall extend to ComEd an offer to sell to ComEd or to any wholly owned subsidiary of Unicom Corporation, electric energy and capacity on the terms and conditions therein described (the "Offer"). Any such Offer so delivered to ComEd shall be in writing. ComEd shall have ten business days, if such Offer involves a term of less than one year, and twenty business days, if such Offer involves a term of one year or more, following its receipt of the Offer to decide whether to accept the Offer; and any such acceptance shall be accomplished by forwarding a written notice of acceptance to Seller. Notwithstanding such acceptance, the obligation of ComEd to purchase shall not become effective until after any necessary regulatory approvals have been received, and Seller shall be free during the pendency of any such regulatory approval to offer the capacity and electric energy that is the subject of the Offer to others on an uncommitted basis. Unless previously exercised as aforesaid, the Offer shall expire upon the expiration of the Offer period or at such earlier time as Seller and ComEd may agree in writing. If ComEd shall refuse such offer in whole or in part, Seller may market and sell such capacity and/or electric energy to any other individual or entity on terms no more favorable than the terms offered to ComEd.

17. Governing Law

This Agreement shall be deemed to be an Illinois contract and shall be construed in accordance with and governed by the laws of Illinois without regard to its conflicts of laws provisions.

18. Notices

Unless otherwise provided in this Agreement, any notice, consent or other communication required to be made under this Agreement shall be in writing and shall be delivered to the address set forth below or such other address as the receiving Party may from time to time designate by written notice:

If to ComEd, to:

Commonwealth Edison Company
One First National Plaza, 37th Floor
10 South Dearborn Street
Chicago, Illinois 60690-0797
Attention: Senior Vice President--Fossil Division

with a copy to the same address, Attention: General Counsel

If to Seller, to:

Kincaid Generation, L.L.C.
c/o Dominion Energy, Inc.
901 East Byrd Street
Richmond, Virginia 23219
Attention: Malcolm G. Deacon, Jr.

with a copy to the same address, Attention: General Counsel

All notices shall be effective when received.

19. Confidentiality

Each Party agrees that it will treat in confidence this Agreement and all documents, materials and other information which it shall have obtained regarding the other Party during the course of the negotiations leading to, and its performance of, this Agreement (whether obtained before or after the date of this Agreement), and, in the event that this Agreement shall be terminated prior to the Effective Date, each Party shall return to the other Party all copies of any nonpublic documents and materials which may have been furnished in connection herewith. Such documents, materials and information shall not be communicated to any third party (other than, in the case of Seller, to its counsel, accountants, financial advisors, corporate parents, affiliates, officers, directors or employees thereof, or in connection with the financing of the Facility, or, if Seller has given prior notice to ComEd and entered into an appropriate confidentiality agreement with the proposed recipient of the information, potential permitted assigns or purchasers of the Facility, and in the case of ComEd, to its counsel, accountants or financial advisors). The obligation of each Party to treat such documents, materials and other information in confidence shall not apply to any information which (i) is or becomes available to such Party from a source other than the other Party, (ii) is or becomes available to the public other than as a result of disclosure by such Party or its agents, (iii) is required to be disclosed under applicable law or judicial process, but only to the extent it must be disclosed, or (iv) such Party reasonably deems necessary to disclose to obtain any of the consents or approvals contemplated hereby or the Asset Sale Agreement.

20. Over Compliance.

ComEd and Seller shall mutually evaluate opportunities to coordinate between the Facility and the ComEd System in order to achieve compliance with future environmental requirements for either the Plant or the ComEd System on a more cost effective basis than if such compliance were accomplished separately. In the event that ComEd and Seller mutually determine that over compliance with applicable environmental law (a) at the Facility can eliminate the need for installation of equipment at ComEd stations, or (b) at ComEd stations can eliminate installation of equipment at the Facility, Seller and ComEd shall undertake such over compliance on mutually agreeable terms.

21. Miscellaneous Provisions.

(a) Non-Waiver. The failure of either Party to insist in any one or more instances upon strict performance of any provisions of this Agreement, or to take advantage of any of its rights hereunder, shall not be construed as a waiver of any such provisions or the relinquishment of any such right or any other right hereunder, which shall remain in full force and effect.

(b) Third Party Beneficiaries. This Agreement is intended solely for the benefit of the Parties hereto. Nothing in this Agreement shall be construed to create any duty to, or standard of care with reference to, or any liability to, any person not a Party to this Agreement.

(c) Relationship of Parties. This Agreement shall not be interpreted or construed to create an association, joint venture, or partnership between the Parties or to impose any partnership obligation or liability upon either Party. Seller is an independent contractor and neither Party shall have any right, power or authority to enter into any agreement or undertaking for, or to act on behalf of, or to act as or be an agent or representative of, or to otherwise bind, the other Party.

(d) Survival. Cancellation, expiration or earlier termination of this Agreement shall not relieve the Parties of obligations that by their nature should survive such cancellation, expiration or termination, including without limitation, exclusion of warranties and remedies, exclusions of consequential damages, promises of indemnity, confidentiality, and ComEd's Right of First Offer.

(e) Successors and Assigns. This Agreement shall inure to the benefit of and be binding upon the successors and permitted assigns of the Parties.

22. Entire Agreement and Amendments

Except as provided in the Asset Sale Agreement, this Agreement supersedes all previous representations, understandings, negotiations and agreements either written or oral between the Parties hereto or their representatives with respect to the subject matter hereof and constitutes the entire agreement of the Parties with respect to the subject matter hereof. No amendments or changes to this Agreement shall be binding unless made in writing and duly executed by both Parties.

IN WITNESS WHEREOF, the Parties hereto have executed this Agreement as of the date set forth at the beginning of this Agreement.

COMMONWEALTH EDISON COMPANY

By _____
Dennis F. O'Brien
Treasurer

KINCAID GENERATION, L.L.C.

By _____
Thomas N. Chewning
President

ATTACHMENT TO COMMENTS

PART 2

APPENDIX A

Calculation of EAF and EFOR

I. Definitions

A. Operation and Outage States

Actual Unit Starts
Number of times the unit was synchronized.

Age
The number of years the unit(s) has been in commercial service.

Attempted Unit Starts
Number of attempts to synchronize the unit after being shut down. Repeated failures to start for the same cause, without attempting corrective action, are considered a single attempt.

Available
State in which a unit is capable of providing service, whether or not it is actually in service, regardless of the capacity level that can be provided.

Forced Derating (D1, D2, D3)
An unplanned component failure (immediate, delayed, postponed) or other condition that requires the load on the unit be reduced immediately, within six hours, or before the end of the next weekend.

Forced Outage (U1, U2, U3, SF)
An unplanned component failure (immediate, delayed, postponed, startup failure) or other condition that requires the unit be removed from service immediately, within six hours, or before the end of the next weekend.

Maintenance Derating (D4)
The removal of a component for scheduled repairs that can be deferred beyond the end of the next weekend, but requires a capacity reduction before the next planned outage.

Maintenance Outage (MO)
The removal of a unit from service to perform work on specific components that can be deferred beyond the end of the next weekend, but requires the unit be removed from service before the next planned outage. Typically, MOs may occur any time during the year, have flexible start dates, and may or may not have predetermined durations.

Maintenance Outage Extension (SE of MO)
The extension of a Maintenance Outage (MO).

Planned Derating (PD)
The removal of a component for repairs that is scheduled well in advance and has a predetermined duration.

Planned Outage (PO)
The removal of a unit from service to perform work on specific components that is scheduled well in advance and has a predetermined start date and duration (e.g., annual overhaul, inspections, testing).

Planned Outage Extension (SE of PO)
The extension of a Planned Outage (PO).

Reserve Shutdown (RS)
A state in which the unit was available for service but not electrically connected to the transmission system for economic reasons.

Scheduled Deratings (D4, PD)
A combination of maintenance and planned deratings.

Scheduled Derating Extension (DE)
The extension of a maintenance or planned derating.

Scheduled Outages (MO, PO)
A combination of maintenance and planned outages.

Scheduled Outage Extension (SE)
The extension of a maintenance or planned outage.

Unavailable
State in which a unit is not capable of operation because of the failure of a component, external restriction, testing, work being performed, or some other adverse condition.

B. Time

Available Hours (AH)
Sum of all Service Hours (SH), Reserve Shutdown Hours (RSH), Pumping Hours, and Synchronous Condensing Hours, or:

Period Hours (PH) less Planned Outage Hours (POH), Forced Outage Hours (FOH), and Maintenance Outage Hours (MOH).

Equivalent Forced Derated Hours (EFDH)*
The product of Forced Derated Hours (FDH) and Size of Reduction, divided by Net Maximum Capacity (NMC).

Equivalent Forced Derated Hours During Reserve Shutdowns (EFDHRS)*
The product of Forced Derated Hours (FDH) (during Reserve Shutdowns (RS) only) and Size of Reduction, divided by Net Maximum Capacity (NMC).

Equivalent Planned Derated Hours (EPDH)*
The product of Planned Derated Hours (PDH) and Size of Reduction, divided by Net Maximum Capacity (NMC).

Equivalent Scheduled Derated Hours (ESDH)*
The product of Scheduled Derated Hours (SDH) and Size of Reduction, divided by Net Maximum Capacity (NMC).

Equivalent Seasonal Derated Hours (ESEDH)*
Net Maximum Capacity (NMC) less Net Dependable Capacity (NDC), multiplied by Available Hours (AH) and divided by Net Maximum Capacity (NMC).

Equivalent Unplanned Derated Hours (EUDH)*
The product of Unplanned Derated Hours (UDH) and Size of Reduction, divided by Net Maximum Capacity (NMC).

Forced Derated Hours (FDH)
Sum of all hours experienced during Forced Deratings (D1, D2, D3).

Forced Outage Hours (FOH)
Sum of all hours experienced during Forced Outages (U1, U2, U3, SF).

Maintenance Derated Hours (MDH)
Sum of all hours experienced during Maintenance Deratings (D4) and Scheduled Derating Extensions (DE) of any Maintenance Deratings (D4).

Maintenance Outage Hours (MOH)
Sum of all hours experienced during Maintenance Outages (MO) and Maintenance Outage Extensions (SE of MO).

Period Hours (PH)
Number of hours a unit was in the active state. A unit generally enters the active state on its service date.

Planned Derated Hours (PDH)
Sum of all hours experienced during Planned Deratings (PD) and Scheduled Derating Extensions (DE) of any Planned Deratings (PD).

Planned Outage Hours (POH)
Sum of all hours experienced during Planned Outages (PO) and Planned Outage Extensions (SE of PO).

Pumping Hours
The total number of hours a turbine/generator unit was operated as a pump/motor set (for hydro and pumped storage units only).

Reserve Shutdown Hours (RSH)
Total number of hours the unit was available for service but not electrically connected to the transmission system for economic reasons.

Some classes of units, such as gas turbines and jet engines, are not required to report Reserve Shutdown (RS) events. If not reported, Reserve Shutdown Hours (RSH) for these units are computed by subtracting the reported Service Hours (SH), Pumping Hours, Synchronous Condensing Hours, and all the outage hours, from the Period Hours (PH).

Scheduled Derated Hours (SDH)
Sum of all hours experienced during Planned Deratings (PD). Maintenance Deratings (D4) and Scheduled Derating Extensions (DE) of any Maintenance Deratings (D4) and Planned Deratings (PD).

Scheduled Outage Extension Hours (SOEH)
Sum of all hours experienced during Scheduled Outage Extensions (SE) of any Maintenance Outages (MO) and Planned Outages (PO).

Scheduled Outage Hours (SOH)
Sum of all hours experienced during Planned Outages (PO), Maintenance Outages (MO), and Scheduled Outage Extensions (SE) of any Maintenance Outages (MO) and Planned Outages (PO).

Service Hours (SH)
Total number of hours a unit was electrically connected to the transmission system.

Synchronous Condensing Hours
Total number of hours a unit was operated in the synchronous condensing mode.

Unavailable Hours (UH)
Sum of all Forced Outage Hours (FOH), Maintenance Outage Hours (MOH), and Planned Outage Hours (POH).

Unplanned Derated Hours (UDH)
Sum of all hours experienced during Forced Deratings (D1, D2, D3), Maintenance Deratings (D4), and Scheduled Derating Extensions (DE) of any Maintenance Deratings (D4).

Unplanned Outage Hours (UOH)
Sum of all hours experienced during Forced Outages (U1, U2, U3, SF), Maintenance Outages (MO), and Scheduled Outage Extensions (SE) of any Maintenance Outages (MO).

C. Capacity and Energy

Gross Actual Generation (GAG)
Actual number of electrical megawatthours generated by the unit during the period being considered.

Gross Available Capacity (GAC)
Greatest capacity (MW) at which a unit can operate with a reduction imposed by a derating.

Gross Dependable Capacity (GDC)
GMC modified for seasonal limitations over a specified period of time.

Gross Maximum Capacity (GMC)

Maximum capacity (MW) a unit can sustain over a specified period of time when not restricted by seasonal or other deratings.

Net Actual Generation (NAG)

Actual number of electrical megawatthours generated by the unit during the period being considered less any generation (MWh) utilized for that unit's station service or auxiliaries.

Net Availability Capacity (NAC)

GAC less the unit capacity (MW) utilized for that unit's station service or auxiliaries.

Net Dependable Capacity (NDC)

GDC less the unit capacity (MW) utilized for that unit's station service or auxiliaries.

Net Maximum Capacity (NMC)

GMC less the unit capacity (MW) utilized for that unit's station service or auxiliaries.

II. Equations

Age
[Years in commercial service/Number of units]

Availability Factor (AF)
[AH/PH] x 100 (%)

Average Run Time (ART)
[SH/Actual Unit Starts]

Equivalent Availability Factor (EAF)
[(AH - (EUDH + EPDH + ESEDH))/PH] x 100 (%)

Equivalent Forced Outage Rate (EFOR)
[(FOH + EFDH)/(FOH + SH + EFDHRS)] x 100 (%)

Forced Outage Factor (FOF)
[FOH/PH] x 100 (%)

Forced Outage Rate (FOR)
[FOH/(FOH + SH)] x 100 (%)

Gross Capacity Factor (GCF)
[GAG/(PH x GMC)] x 100 (%)

Gross Output Factor (GOF)
[GAG/(SH x GMC)] x 100 (%)

Net Capacity Factor (NCF)
[NAG/(PH x NMC)] x 100 (%)

Net Output Factor (NOF)
[NAG/(SH x NMC)] x 100 (%)

Scheduled Outage Factor (SOF)
[SOH/PH] x 100 (%)

Service Factor (SF)
[SH/PH] x 100 (%)

Starting Reliability (SR)
[Actual Unit Starts/Attempted Unit Starts] x 100 (%)

Average Number of Occurrences Per Unit-Year

$$\text{AVG NO OCC PER UNIT-YR} = \frac{\sum \textit{Outage and/or Derating Occurrences}}{\textit{Unit-Years}}$$

Average MWh Per Unit-Year

$$\text{AVG MWh PER UNIT-YR} = \frac{\sum \text{Hours for Each Outage and/or Derating Type} \times \text{NMC (MW)}}{\text{Unit Years}}$$

Average MWh Per Outage

$$\text{AVG MWh PER OUTAGE} = \frac{\sum \text{Hours for Each Outage and/or Derating Type} \times \text{NMC (MW)}}{\text{Occurrences}}$$

Average Hours Per Unit-Year

$$\text{AVG HRS PER UNIT-YR} = \frac{\sum \text{Hours for Each Outage and/or Derating Type}}{\text{Unit Years}}$$

Average Equivalent Hours Per Unit-Year

Computed the same way as Average Hours Per Unit-Year shown above, except deratings are converted to equivalent full outage hours. Equivalent hours are computed for each derating event experienced by each unit. These equivalent hours are then summarized and used in the numerator of the Average Hours Per Unit-Year equation.

Computation Method

Each of the statistics presented is computed from summaries of the basic data terms required in each equation. Each term is totaled and then divided by the number of unit-years in that data sample. This unit-year averaged term is then used in computing the statistics shown. Examples of these computations are shown below.

$$EFOR = \frac{FOH + EFDH}{FOH + SH + EFDHRS} \times 100(\%)$$

Where: $FOH = \frac{\sum_{i=1}^{N} FOH_i}{N}$ $\quad SH = \frac{\sum_{i=1}^{N} SH_i}{N}$

$EFDH = \frac{\sum_{i=1}^{N} EFDH_k}{N}$ $\quad EFDHRS = \frac{\sum_{i=1}^{N} EFDHRS_k}{N}$

$$FOF = [FOH/PH] \times 100\%$$

$$\text{Where: } FOH = \frac{\sum_{i=1}^{N} FOH_i}{N} \qquad PH = \frac{\sum_{i=1}^{N} PH_i}{N}$$

$$NCF = \frac{NAG}{PH \times NMC} \times 100(\%) = \frac{\text{Net Energy Produced}}{\text{Maximum Potential Energy (MPE)}} \times 100(\%)$$

$$\text{Where: } NAG = \frac{\sum_{i=1}^{N} NAG_i}{N} \qquad MPE = \frac{\sum_{i=1}^{N} PH \times NMC_i}{N}$$

i = individual unit in any individual year
k = individual derating occurrences
N = unit-years

APPENDIX B

COMPENSATION

PART A. DEFINITIONS

"Adjusted Capital Charge" means the Capital Charge as adjusted for (i) changes in interest rates between the date of this Agreement and the Effective Date, (ii) increases in the Purchase Price as defined and provided in Section 3.1(iii) of the Asset Sale Agreement, and (iii) changes in real estate taxes as provided in Appendix H to this Agreement. The adjustments specified in clauses (i) and (ii) shall be made as provided in *Part B.I.A.1 of this Appendix B.*

"Adjusted Monthly Fixed O&M Charge" means (i) with respect to the First Contract Year, $2.168/kW-month (to be escalated monthly for increases in the PPI Index between September 1, 1996 and the Effective Date) and (ii) with respect to any Contract Year after the First Contract Year, the Adjusted Monthly Fixed O&M Charge for the prior Contract Year multiplied by the O&M Adjustment Factor for the current Contract Year.

"Adjusted Variable O&M Charge" has the meaning specified in *Part B.II.A.1 of this Appendix B.*

"Availability Adjustment Factor" means, with respect to a particular month, the quotient (expressed as a decimal and carried to four places) obtained by dividing (i) the Rolling EAF Adjusted for such month by (ii) the Specified Equivalent Availability Factor for such month. *See Part B.I.B of this Appendix B.*

"Base Coal" means coal produced at or from the Bench Mark Mine, as defined in the Coal Supply Agreement.

"Capital Charge" means $2.1645/kW-month for the First and Second Contract Years, and $2.886/kW-month for the remaining term of the Agreement.

"COIM" means the software modeling program known as the "Coal Quality Impact Model," designed for the Electric Power Research Institute in the form thereof most recently used by ComEd at the time such model is used hereunder. This software program models the effect of coal quality on the boiler and all of its subsystems, and calculates the differential costs as compared to a base coal.

"Cold Start" means a start-up of either unit of the Base Facility before which the applicable unit has been off-line for 100 hours or more.

"Employment Cost Index" or "ECI" means "The Employment Cost Index:

Compensation - Union Workers" as published from time to time by the United States Department of Labor, Bureau of Labor Statistics in *The Monthly Labor Review* or any successor index (or any substantially similar index as the parties shall mutually select in the event that no successor index is published) published by such Bureau or any successor agency or department.

"Energy Charge" means the sum of (i) the Non-Fuel Energy Charge plus (ii) the Substitute Energy Fuel Charge. *See Part B.II.A and B of this Appendix B.*

"Gross Capacity Charge" means, with respect to a calendar month, (i) the Adjusted Capital Charge plus (ii) the Adjusted Monthly Fixed O&M Charge in effect for the Contract Year containing such calendar month. *See Part B.I.A of this Appendix B.*

"Hot Start" means a start-up of either unit of the Base Facility before which the applicable unit has been off-line for less than eight hours.

"Monthly Capacity Charge" means, with respect to a Summer Month or a Nonsummer Month, the product of: (i) the Gross Capacity Charge for such Summer Month or Nonsummer Month, as the case may be, multiplied by (ii) (a) if the Availability Adjustment Factor for such calendar month is one or less, the Availability Adjustment Factor for such month; or (b) if the Availability Adjustment Factor for such calendar month is greater than one, the sum of one plus one-half of the difference obtained by subtracting one from such Availability Adjustment Factor, multiplied by (iv) 1,108,000kW. *See Part B.I of this Appendix B.*

"Non-Fuel Energy Charge" means the product of (i) the Adjusted Variable O&M Charge multiplied by (ii) the Net Electric Energy delivered during the applicable billing period. *See Part B.II.A of this Appendix B.*

"O&M Adjustment Factor" means, with respect to a given Contract Year, the sum of (1) the product of (a) the Weighting Of Materials multiplied by (b) the quotient (expressed as a decimal and carried to four places) obtained by dividing (i) the PPI Index value most recently announced as of the commencement of such Contract Year by (ii) the PPI Index value most recently announced as of the commencement of the immediately preceding Contract Year plus (2) the product of (a) the Weighting Of Labor multiplied by (b) the quotient (expressed as a decimal and carried to four places) obtained by dividing (i) the ECI Index value most recently announced as of the commencement of such Contract Year by (ii) the ECI Index value most recently announced as of the commencement of the immediately preceding Contract Year. *See Part B.I.A.2(a) of this Appendix B.*

"PPI Index" means the final published value of the "Producer Price Index for Industrial Commodities excluding Fuels & Related Products, and Power" as published from time to time by the United States Department of Labor, Bureau of Labor Statistics in *The Producer Price Index* under "Producer Price Indices for Special Commodity Groupings" - Table 8 or any successor index (or any substantially similar index as the parties shall mutually select in the event that no successor index is published) published by such Bureau or any successor agency

or department. *See B.I.A.2(a) of this Appendix B.*

"Rolling EAF" means (i) with respect to a Summer Month, the Equivalent Availability Factor of the Base Facility for a four-month period comprised of such Summer Month and the three most recently completed Summer Months ending prior to the beginning of such Summer Month, and (ii) with respect to a Nonsummer Month, the Equivalent Availability Factor of the Base Facility for an eight-month period comprised of such Nonsummer Month and the seven most recently completed Nonsummer Months ending prior to the beginning of such Nonsummer Month. For purposes of this Agreement, the Rolling EAF for a Summer Month shall be deemed equal to the Summer Month Specified Equivalent Availability Factor (as set forth in *Part B.I.B.2. of this Appendix B*) until such time as four Summer Months have elapsed since the Effective Date; the Rolling EAF for a Nonsummer Month shall be deemed equal to the Nonsummer Month Specified Equivalent Availability Factor (as set forth in *Part B.I.B.2. of this Appendix B*) until such time as eight Nonsummer Months have elapsed since the Effective Date; for the calculation of the Equivalent Availability Factor for each Summer Month following the date (the "Adjustment Date") that the Summer Month Specified Equivalent Availability Factor increases as set forth in this Appendix B, the Equivalent Availability Factor for each Summer Month prior to the Adjustment Date shall be deemed to be equal to 0.9 and for the calculation of the Equivalent Availability Factor for each Nonsummer Month following the Adjustment Date, the Equivalent Availability Factor for each Nonsummer Month prior to the Adjustment Date shall be deemed to be equal to 0.75. For the purposes of this Agreement, when ComEd either provides or agrees to the use of coal(s) other than the Base Coal and such coal(s) is predicted by the COIM to cause a capacity derating at the Base Facility, then the actual Equivalent Availability Factor for any such month shall be adjusted upward in an amount equivalent to the maximum derating as predicted by the COIM for the worst case coal used during the month. The adjusted monthly Equivalent Availability Factor shall be deemed to be the Equivalent Availability Factor used for subsequent calculations of the Rolling EAF Adjusted.

"Substitute Energy Fuel Charge" means the product of: (i) the Substitute Energy, multiplied by (ii) 11,000 BTU/KWh, multiplied by (iii) the monthly incremental coal cost. *See Part B.II.B of this Appendix B.*

"Specified Equivalent Availability Factor" is as identified in *Part B.I.B.2 of this Appendix B.*

"Warm Start" means a start-up of either unit of the Base Facility before which the applicable unit has been off-line for more than eight hours, but less than 100 hours.

PART B. FORMULAS

I. MONTHLY CAPACITY CHARGE

MCC = GCC * X * 1,108,000 kW

where:

MCC = Monthly Capacity Charge ($)
GCC = Gross Capacity Charge ($/kW-Mo)
X = Availability Adjustment Factor, if the Availability Adjustment Factor is one or less; or 1 + 1/2 * (Availability Adjustment Factor - 1), if the Availability Adjustment Factor is greater than one

A. Gross Capacity Charge:

GCC = ACC + AMFOMC

where:

GCC = Gross Capacity Charge ($/kW-Mo)
ACC = Adjusted Capital Charge ($/kW-Mo)
AMFOMC = Adjusted Monthly Fixed O&M Charge ($/kW-Mo)

1. **Adjusted Capital Charge** ($/kW-month) is to reflect as adjustments to the Capital Charge, in addition to the adjustments for changes in real estate taxes as provided in Appendix H, (a) an adjustment to the Capital Charge for changes in interest rates between the date of this Agreement and the Effective Date that produces the "Adjusted Capital Charge (Before Adjustments for Increase in Purchase Price Under Section 3.1 (iii) of the Asset Sale Agreement or Changes in Real Estate Taxes ($/kW-Month)," shown in Column 2 of the following table, corresponding to the six-month LIBOR Rate as of the Effective Date under "LIBOR RATE (%)," shown in Column 1 of the following table, and (b) an adjustment for increases in the Purchase Price as defined and provided in Section 3.1(iii) of the Asset Sale Agreement equal to the "Incremental Capital Charge Adjustment Per $1 Million Increase In Purchase Price ($/kW-Month)," shown in Column 3 of the following table; and, if required for either or both of the adjustments described in (a) and (b) above, further adjusted by linear interpolation as noted in the example shown below the table.

LIBOR RATE (%)	ADJUSTED CAPITAL CHARGE (BEFORE ADJUSTMENTS FOR INCREASE IN PURCHASE PRICE UNDER SECTION 3.1(iii) OF THE ASSET SALE AGREEMENT OR CHANGES IN REAL ESTATE TAX ($/kW-Month)	INCREMENTAL CAPITAL CHARGE ADJUSTMENT PER $1 MILLION OF INCREASE IN PURCHASE PRICE ($/kW-Month)
4.37	2.691	0.0117
4.62	2.723	0.0118
4.87	2.756	0.0119
5.12	2.788	0.0121
5.37	2.821	0.0122
5.62	2.853	0.0124
5.87	2.886	0.0125
6.12	2.918	0.0126
6.37	2.951	0.0128
6.62	2.983	0.0129
6.87	3.016	0.0131

For example: Assume that six-month LIBOR Rate as of the Effective Date equals 5.5%, and that there has been a $3.5 million increase in the Purchase Price under Section 3.1(iii) of the Asset Sale Agreement; then by linear interpolation:

ACC ($/kW-Mo) =

$$(2.821 + 3.5 * 0.0122) + \frac{(5.5 - 5.37)}{(5.62 - 5.37)} * [(2.853 + 3.5 * 0.0124) - (2.821 - 3.5 * 0.0122)]$$

ACC = $2.881/kW-Month

2. Adjusted Monthly Fixed O&M Charge:

$$AMFOMC_t = AMFOMC_o * OMAF$$

where:

$AMFOMC_t$ = Adjusted Monthly Fixed O&M Charge ($/kW-Mo) for the current Contract Year = $2.168 (to be escalated monthly for increases in PPI Index between September 1, 1996 and the Effective Date) for First Contract Year

$AMFOMC_o$ = Adjusted Monthly Fixed O&M Charge ($/kW-Mo) for the prior Contract Year

OMAF = O & M Adjustment Factor

(a) O&M Adjustment Factor:

$$OMAF = W_M * (PPI_t / PPI_0) + W_L * (ECI_t / ECI_0)$$

where:

OMAF = O&M Adjustment Factor

W_M = Weighting Of Materials (%) = 40%

PPI_t = PPI Index - Most recently announced as of the commencement of current Contract Year

PPI_0 = PPI Index - Most recently announced as of the commencement of the immediately preceding Contract Year

W_L = Weighting Of Labor (%) = 60%

ECI_t = ECI Index - Most recently announced as of the commencement of current Contract Year

ECI_0 = ECI Index - Most recently announced as of the commencement of the immediately preceding Contract Year

B. Availability Adjustment Factor:

$AAF = REAF_A / SEAF$

where:

AAF = Availability Adjustment Factor

$REAF_A$ = Rolling EAF Adjusted

SEAF = Specified Equivalent Availability Factor

1. Rolling EAF Adjusted:

$$REAF_A = \frac{\text{(Prior months' } EAF_A \text{ + this month's } EAF_A\text{)}}{\text{Number of months to be averaged}}$$

where:

this month's EAF_A =

$$[(AH - (EUDH + EPDH + ESEDH - CQIM_DH))/PH] * 100$$

(a) AH, EUDH, EPDH, ESEDH and PH have the respective meanings assigned to such terms in Appendix A.

(b) $CQIM_DH$ = [(Derating estimated by CQIM (MW)) * (SH)] + [1,108 MW]

SH (Service Hours) has the meaning assigned such term in Appendix A.

2. Specified Equivalent Availability Factor:

Contract Year In Which Month Occurs	Summer Month Specified Equivalent Availability Factor	Nonsummer Month Specified Equivalent Availability Factor
1	0.50	0.50
2	0.50	0.50
3-15	0.90	0.75

II. ENERGY CHARGE

EC = NFEC + SEFC

where:

EC = Energy Charge ($)
NFEC = Non-Fuel Energy Charge ($)
SEFC = Substitute Energy Fuel Charge ($)

A. Non-Fuel Energy Charge:

NFEC = AVOMC * EE

where:

NFEC = Non-Fuel Energy Charge ($)

AVOMC = Adjusted Variable O&M Charge ($/kWh)

EE = Net Electric Energy delivered from the Base Facility during the applicable billing period (NkWh)

1. Adjusted Variable O&M Charge:

AVOMC = UVOMC * OMAF + (CQIM$_C$ - CQIM$_B$) * HR/1,000,000

where:

AVOMC = Adjusted Variable O&M Charge ($/kWh)

UVOMC = Unit Variable O&M Charge ($/kWh) = $0.00086/kWh (to be escalated monthly for increases in PPI Index between September 1, 1996 and the Effective Date)

OMAF = O&M Adjustment Factor

CQIM$_C$ = CQIM maintenance cost per MMBTU for the worst case non-specified coal consumed during the billing period ($/MMBTU)

CQIM$_B$ = CQIM maintenance cost per MMBTU for the Base Coal ($/MMBTU)

HR = Average net heat rate for the billing period

(BTU/NkWh)

Note: ($CQIM_C$ - $CQIM_B$) cannot be a negative number.

B. Substitute Energy Fuel Charge:

SEFC = SE * CHR * MICC/1,000,000

where:

SEFC = Substitute Energy Fuel Charge ($)

SE = Substitute Energy purchased by Seller during the applicable billing period (kWh)

CHR = 11,000 BTU/kWh

MICC = Monthly Incremental Coal Cost ($/MMBTU) as reported in ComEd's Incremental Fuel Cost Report. (This will be a weighted cost if more than one incremental coal cost is in effect for dispatch during the period that Substitute Energy is supplied.)

III. START-UP CHARGES

SUC = {(USUE(Hot)*NOS(Hot)) + (USUE(Warm)*NOS(Warm)) + (USUE(Cold)*NOS(Cold))}*USUER + {(USUG(Hot)*NOS(Hot)) + (USUG(Warm)*NOS(Warm)) + (USUG(Cold)*NOS(Cold))}*USUGR

where:

SUC = Start-Up Charges ($)
USUE = Unit Start-Up Electrical Energy (MWh/Start-Up)
NOS = Number of Starts
USUER = Electric Energy Rate ($/MWh)
USUG = Unit Start-up Gas Energy (Therms)
USUGR = Gas Energy Rate ($/Therm)

	Cold	Warm	Hot
Gas	1000 MMBTU	800 MMBTU	500 MMBTU
Electricity	1000 MWh	700 MWh	400 MWh
Coal	9000 MMBTU	6000 MMBTU	4000 MMBTU

A. Electric Start-up Costs:

ComEd shall provide start-up power to the Facility, which shall be provided at a price no less than ComEd's incremental cost. Subject to the provisions of Part B.III.D of this Appendix B, ComEd shall reimburse Seller for the cost of the amounts of electricity indicated in the preceding table per unit start-up.

B. Coal Start-up Costs:

Subject to the provisions of Part B.III.D of this Appendix B, ComEd shall provide the amount of coal indicated in the preceding table per unit start-up at no cost to Seller.

C. Natural Gas Start-up Costs:

Subject to the provisions of Part B.III.D of this Appendix B, ComEd shall reimburse Seller for the cost of the amount of natural gas indicated in the preceding table per unit start-up. Seller shall provide ComEd with documentation supporting Seller's actual costs for such gas.

D. Adjustments to Start-up Costs:

The Parties will evaluate the adequacy of the amounts set out in the preceding table during the First Contract Year and mutually agree on revisions (up or down), if any, necessary to more accurately reflect the actual amounts required for start-up in accordance with prudent electric utility practice. Any revisions in start-up amounts set out in the preceding table agreed upon pursuant to this Section D shall be effective at the beginning of the Second Contract Year and shall remain effective for the remaining term of the Agreement.

IV. STANDBY ELECTRIC POWER WHEN BOTH UNITS ARE OUT OF SERVICE

ComEd shall provide standby power to the Facility, which shall be provided at a price no less than ComEd's incremental cost. Standby (including station service and maintenance) power costs shall be reimbursed 100% by ComEd to Seller in Contract Years 1 through 3. For Contract Years 4 through 15, the Parties shall negotiate a mutually acceptable payment reimbursement for such power, it being the intent of the Parties that such payments shall fully reimburse Seller for all costs of the amount of standby power required to operate the Base Facility in accordance with prudent electric utility practice. Such negotiations shall take place in Contract Year 3. Each Party shall appoint two representatives to the negotiating committee.

V. NATURAL GAS FOR FLAME STABILIZATION AND AUXILIARY BOILERS

A. Flame Stabilization:

During the First Contract Year, ComEd shall reimburse Seller for Seller's actual costs for 20 MMBTU per hour per burner of natural gas for flame stabilization consumed by Seller in accordance with prudent electric utility practice. Seller shall provide ComEd with documentation supporting Seller's actual costs for, and quantity in MMBTU of, such gas. The amounts payable by ComEd pursuant to this Section A are subject to adjustment in accord with Part B.V.C of this Appendix B.

B. Auxiliary Boilers:

During the First Contract Year, ComEd shall reimburse Seller for Seller's actual costs for up to 46 MMBTU per hour of operation of each auxiliary boiler of natural gas consumed by Seller in accordance with prudent electric utility practice. Seller shall provide ComEd with documentation supporting Seller's actual costs for, and quantity in MMBTU of, such gas. The amounts payable by ComEd pursuant to this Section B are subject to adjustment in accord with Part B.V.C of this Appendix B.

C. *Adjustments to Flame Stabilization and Auxiliary Boiler Payments:*

The Parties will evaluate the adequacy of the amounts set out in Sections V.A and V.B during the First Contract Year and mutually agree on revisions (up or down), if any, necessary to more accurately reflect actual amounts required for flame stabilization and operation of auxiliary boilers in accordance with prudent electric utility practice. Any revisions to the amounts stated in Sections V.A or V.B agreed upon pursuant to this Section C shall be effective at the beginning of the Second Contract Year and shall remain effective for the remaining term of this Agreement.

VI. GUARANTEED HEAT RATE QUARTERLY TRUE UP

The Guaranteed Heat Rate Quarterly True Up, GHRQ, as discussed below, is comprised of several factors which will be modeled in ComEd's System Power Supply Office database and reporting program, **SPSO GENR**. The following formulations are presented as descriptions of the modeling of those factors and parameters within that program. Some factors, as stated, are calculated external to that program; therefore, the final GHRQ is also calculated external to that program.

GHRQ = QAICC*(GQCHI - AQHI)

where:

QAICC = Quarterly BTU Weighted Average Incremental Coal Cost ($/MMBTU)

GQCHI = Guaranteed Quarterly Coal Heat Input (MMBTU)

AQHI = Actual Quarterly Heat Input (MMBTU)

A. Quarterly BTU Weighted Average Incremental Coal Cost:

$$QAICC = \Sigma(AMCHI_m * MICC_m)/\Sigma AMCHI_m$$

where:

$AMCHI_m$ = Actual Monthly Coal Heat Input (MMBTU) as obtained from ComEd's Monthly Fuel Consumption Report and presented in the SPSO GENR program for all months, m, in the quarter

$MICC_m$ = Monthly Incremental Coal Cost ($/MMBTU) for all months, m, of the quarter as reported in the Incremental Fuel Cost Report. (This will be a weighted cost for all months when more than one incremental coal cost is in effect for dispatching.)

B. Guaranteed Quarterly Coal Heat Input:

$$GQCHI = \Sigma HGCHI_h + \Sigma SGCHI_s$$

where:

1. $\Sigma HGCHI_h$ = Total Hourly Guaranteed Coal Heat Inputs (MMBTU) for all hours, h, in the quarter where the unit is "on system" and not in start-up as reported in SPSO GENR.

The unit will be considered to be "on system" and a start-up completed when auxiliary power for the unit is being taken from the unit's auxiliary transformer rather than the system transformer. HGCHI will be calculated by SPSO GENR, as shown below, based on Seller's guaranteed heat rate curves set forth in Appendix F.

Kincaid 1 Hourly Guaranteed Coal Heat Input YEARS 1 & 2 NON-SUMMER
If Hourly Generation <= 100 Net MWH: HGCHI = [16.901 X (Hourly Net MWH - 000 MWH) + 0000 MMBTU]
If 100 Net MWH <= Hourly Generation < 150 Net MWH: HGCHI = [5.783 X (Hourly Net MWH - 100 Net MWH) + 1690 MMBTU]
If 150 Net MWH <= Hourly Generation < 208 Net MWH: HGCHI = [7.6866 X (Hourly Net MWH - 150 Net MWH) + 1979 MMBTU]
If 208 Net MWH <= Hourly Generation < 264 Net MWH: HGCHI = [9.9006 X (Hourly Net MWH - 208 Net MWH) + 2425 MMBTU]
If 264 Net MWH <= Hourly Generation < 344 Net MWH: HGCHI = [10.4174 X (Hourly Net MWH - 264 Net MWH) + 2980 MMBTU]
If 344 Net MWH <= Hourly Generation < 450 Net MWH: HGCHI = [10.4132 X (Hourly Net MWH - 344 Net MWH) + 3813 MMBTU]
If 450 Net MWH <= Hourly Generation < 531 Net MWH: HGCHI = [10.5392 X (Hourly Net MWH - 450 Net MWH) + 4917 MMBTU]
If 531 Net MWH <= Hourly Generation < 554 Net MWH: HGCHI = [10.6261 X (Hourly Net MWH - 531 Net MWH) + 5770 MMBTU]
If Hourly Generation >=554 Net MWH : HGCHI = [10.6261 X (Hourly Net MWH - 554 Net MWH) + 6015 MMBTU]

Kincaid 2 Hourly Guaranteed Coal Heat Input YEARS 1 & 2 NON-SUMMER
If Hourly Generation <= 100 Net MWH: HGCHI = [16.635 X (Hourly Net MWH - 000 MWH) + 0000 MMBTU]
If 100 Net MWH <= Hourly Generation < 150 Net MWH: HGCHI = [5.517 X (Hourly Net MWH - 100 Net MWH) + 1664 MMBTU]
If 150 Net MWH <= Hourly Generation < 208 Net MWH: HGCHI = [7.4206 X (Hourly Net MWH - 150 Net MWH) + 1939 MMBTU]
If 208 Net MWH <= Hourly Generation < 264 Net MWH: HGCHI = [9.6346 X (Hourly Net MWH - 208 Net MWH) + 2370 MMBTU]
If 264 Net MWH <= Hourly Generation < 344 Net MWH: HGCHI = [10.1514 X (Hourly Net MWH - 264 Net MWH) + 2909 MMBTU]
If 344 Net MWH <= Hourly Generation < 450 Net MWH: HGCHI = [10.1472 X (Hourly Net MWH - 344 Net MWH) + 3721 MMBTU]
If 450 Net MWH <= Hourly Generation < 531 Net MWH: HGCHI = [10.2732 X (Hourly Net MWH - 450 Net MWH) + 4797 MMBTU]
If 531 Net MWH <= Hourly Generation < 554 Net MWH: HGCHI = [10.3601 X (Hourly Net MWH - 531 Net MWH) + 5629 MMBTU]
If Hourly Generation >=554 Net MWH : HGCHI = [10.3601 X (Hourly Net MWH - 554 Net MWH) + 5867 MMBTU]

Kincaid 1 Hourly Guaranteed Coal Heat Input YEARS 1 & 2 SUMMER
If Hourly Generation <= 100 Net MWH: HGCHI = [17.096 X (Hourly Net MWH - 000 MWH) + 0000 MMBTU]
If 100 Net MWH <= Hourly Generation < 150 Net MWH: HGCHI = [5.867 X (Hourly Net MWH - 100 Net MWH) + 1710 MMBTU]

If	150 Net MWH <= Hourly Generation < 208 Net MWH: HGCHI = [7.7908 X {Hourly Net MWH - 150 Net MWH} + 2003 MMBTU]
If	208 Net MWH <= Hourly Generation < 264 Net MWH: HGCHI = [9.8173 X {Hourly Net MWH - 208 Net MWH} + 2455 MMBTU]
If	264 Net MWH <= Hourly Generation < 344 Net MWH: HGCHI = [10.3877 X {Hourly Net MWH - 264 Net MWH} + 3005 MMBTU]
If	344 Net MWH <= Hourly Generation < 450 Net MWH: HGCHI = [10.3774 X {Hourly Net MWH - 344 Net MWH} + 3836 MMBTU]
If	450 Net MWH <= Hourly Generation < 531 Net MWH: HGCHI = [10.5353 X {Hourly Net MWH - 450 Net MWH} + 4936 MMBTU]
If	531 Net MWH <= Hourly Generation < 554 Net MWH: HGCHI = [10.5407 X {Hourly Net MWH - 531 Net MWH} + 5789 MMBTU]
If	Hourly Generation >=554 Net MWH : HGCHI = [10.5407 X {Hourly Net MWH - 554 Net MWH} + 6031 MMBTU]

Kincaid 2 Hourly Guaranteed Coal Heat Input YEARS 1 & 2 SUMMER	
If	Hourly Generation <= 100 Net MWH: HGCHI = [16.83 X {Hourly Net MWH - 000 MWH} + 0000 MMBTU]
If	100 Net MWH <= Hourly Generation < 150 Net MWH: HGCHI = [5.601 X {Hourly Net MWH - 100 Net MWH} + 1683 MMBTU]
If	150 Net MWH <= Hourly Generation < 208 Net MWH: HGCHI = [7.5248 X {Hourly Net MWH - 150 Net MWH} + 1963 MMBTU]
If	208 Net MWH <= Hourly Generation < 264 Net MWH: HGCHI = [9.5513 X {Hourly Net MWH - 208 Net MWH} + 2399 MMBTU]
If	264 Net MWH <= Hourly Generation < 344 Net MWH: HGCHI = [10.1217 X {Hourly Net MWH - 264 Net MWH} + 2934 MMBTU]
If	344 Net MWH <= Hourly Generation < 450 Net MWH: HGCHI = [10.1114 X {Hourly Net MWH - 344 Net MWH} + 3744 MMBTU]
If	450 Net MWH <= Hourly Generation < 531 Net MWH: HGCHI = [10.2693 X {Hourly Net MWH - 450 Net MWH} + 4816 MMBTU]
If	531 Net MWH <= Hourly Generation < 554 Net MWH: HGCHI = [10.2747 X {Hourly Net MWH - 531 Net MWH} + 5648 MMBTU]
If	Hourly Generation >=554 Net MWH : HGCHI = [10.2747 X {Hourly Net MWH - 554 Net MWH} + 5884 MMBTU]

Kincaid 1 Hourly Guaranteed Coal Heat Input YEARS 3 - 15 NON-SUMMER	
If	Hourly Generation <= 100 Net MWH: HGCHI = [16.53 X {Hourly Net MWH - 000 MWH} + 0000 MMBTU]
If	100 Net MWH <= Hourly Generation < 150 Net MWH: HGCHI = [5.412 X {Hourly Net MWH - 100 Net MWH} + 1653 MMBTU]
If	150 Net MWH <= Hourly Generation < 208 Net MWH: HGCHI = [7.3156 X {Hourly Net MWH - 150 Net MWH} + 1924 MMBTU]
If	208 Net MWH <= Hourly Generation < 264 Net MWH: HGCHI = [9.5296 X {Hourly Net MWH - 208 Net MWH} + 2348 MMBTU]
If	264 Net MWH <= Hourly Generation < 344 Net MWH: HGCHI = [10.0464 X {Hourly Net MWH - 264 Net MWH} + 2882 MMBTU]
If	344 Net MWH <= Hourly Generation < 450 Net MWH: HGCHI = [10.0422 X {Hourly Net MWH - 344 Net MWH} + 3685 MMBTU]
If	450 Net MWH <= Hourly Generation < 531 Net MWH: HGCHI = [10.1682 X {Hourly Net MWH - 450 Net MWH} + 4750 MMBTU]
If	531 Net MWH <= Hourly Generation < 554 Net MWH: HGCHI = [10.2551 X {Hourly Net MWH - 531 Net MWH} + 5573 MMBTU]
If	Hourly Generation >=554 Net MWH : HGCHI = [10.2551 X {Hourly Net MWH - 554 Net MWH} + 5809 MMBTU]

Kincaid 2 Hourly Guaranteed Coal Heat Input YEARS 3 - 15 NON-SUMMER	
If	Hourly Generation <= 100 Net MWH: HGCHI = [16.432 X {Hourly Net MWH - 000 MWH} + 0000 MMBTU]
If	100 Net MWH <= Hourly Generation < 150 Net MWH: HGCHI = [5.32 X {Hourly Net MWH - 100 Net MWH} + 1643 MMBTU]
If	150 Net MWH <= Hourly Generation < 208 Net MWH: HGCHI = [7.2124 X {Hourly Net MWH - 150 Net MWH} + 1909 MMBTU]
If	208 Net MWH <= Hourly Generation < 264 Net MWH: HGCHI = [9.3844 X {Hourly Net MWH - 208 Net MWH} + 2328 MMBTU]
If	264 Net MWH <= Hourly Generation < 344 Net MWH: HGCHI = [9.9814 X {Hourly Net MWH - 264 Net MWH} + 2853 MMBTU]
If	344 Net MWH <= Hourly Generation < 450 Net MWH: HGCHI = [9.9442 X {Hourly Net MWH - 344 Net MWH} + 3652 MMBTU]
If	450 Net MWH <= Hourly Generation < 531 Net MWH: HGCHI = [10.0702 X {Hourly Net MWH - 450 Net MWH} + 4706 MMBTU]
If	531 Net MWH <= Hourly Generation < 554 Net MWH: HGCHI = [10.1571 X {Hourly Net MWH - 531 Net MWH} + 5521 MMBTU]
If	Hourly Generation >=554 Net MWH : HGCHI = [10.1571 X {Hourly Net MWH - 554 Net MWH} + 5755 MMBTU]

Kincaid 1 Hourly Guaranteed Coal Heat Input YEARS 3 - 15 SUMMER	
If	Hourly Generation <= 100 Net MWH: HGCHI = [16.725 X (Hourly Net MWH - 000 MWH) + 0000 MMBTU]
If	100 Net MWH <= Hourly Generation < 150 Net MWH: HGCHI = [5.496 X (Hourly Net MWH - 100 Net MWH) + 1673 MMBTU]
If	150 Net MWH <= Hourly Generation < 208 Net MWH: HGCHI = [7.4198 X (Hourly Net MWH - 150 Net MWH) + 1947 MMBTU]
If	208 Net MWH <= Hourly Generation < 264 Net MWH: HGCHI = [9.4463 X (Hourly Net MWH - 208 Net MWH) + 2378 MMBTU]
If	264 Net MWH <= Hourly Generation < 344 Net MWH: HGCHI = [10.0167 X (Hourly Net MWH - 264 Net MWH) + 2907 MMBTU]
If	344 Net MWH <= Hourly Generation < 450 Net MWH: HGCHI = [10.0084 X (Hourly Net MWH - 344 Net MWH) + 3708 MMBTU]
If	450 Net MWH <= Hourly Generation < 531 Net MWH: HGCHI = [10.1643 X (Hourly Net MWH - 450 Net MWH) + 4769 MMBTU]
If	531 Net MWH <= Hourly Generation < 554 Net MWH: HGCHI = [10.1697 X (Hourly Net MWH - 531 Net MWH) + 5592 MMBTU]
If	Hourly Generation >=554 Net MWH : HGCHI = [10.1697 X (Hourly Net MWH - 554 Net MWH) + 5826 MMBTU]

Kincaid 2 Hourly Guaranteed Coal Heat Input YEARS 3 - 15 SUMMER	
If	Hourly Generation <= 100 Net MWH: HGCHI = [16.627 X (Hourly Net MWH - 000 MWH) + 0000 MMBTU]
If	100 Net MWH <= Hourly Generation < 150 Net MWH: HGCHI = [5.398 X (Hourly Net MWH - 100 Net MWH) + 1663 MMBTU]
If	150 Net MWH <= Hourly Generation < 208 Net MWH: HGCHI = [7.3218 X (Hourly Net MWH - 150 Net MWH) + 1933 MMBTU]
If	208 Net MWH <= Hourly Generation < 264 Net MWH: HGCHI = [9.3483 X (Hourly Net MWH - 208 Net MWH) + 2357 MMBTU]
If	264 Net MWH <= Hourly Generation < 344 Net MWH: HGCHI = [9.9187 X (Hourly Net MWH - 264 Net MWH) + 2881 MMBTU]
If	344 Net MWH <= Hourly Generation < 450 Net MWH: HGCHI = [9.9084 X (Hourly Net MWH - 344 Net MWH) + 3674 MMBTU]
If	450 Net MWH <= Hourly Generation < 531 Net MWH: HGCHI = [10.0663 X (Hourly Net MWH - 450 Net MWH) + 4725 MMBTU]
If	531 Net MWH <= Hourly Generation < 554 Net MWH: HGCHI = [10.0717 X (Hourly Net MWH - 531 Net MWH) + 5540 MMBTU]
If	Hourly Generation >=554 Net MWH : HGCHI = [10.0717 X (Hourly Net MWH - 554 Net MWH) + 5772 MMBTU]

2. $\Sigma SGCHI_k$ = Total Start-up Guaranteed Coal Heat Input (MMBTU) for all startups, k, in the quarter calculated by the SPSO GENR using the coal allowance specified in Part B.III of this Appendix B.

C. Actual Quarterly Heat Input:

$$AQHI = \Sigma AMCHI_m + \Sigma AMGHI_m$$

where:

$\Sigma AMCHI_m$ = Total Actual Monthly Coal Heat Input (MMBTU) as obtained from ComEd's Monthly Fuel Consumption Report and presented in the SPSO GENR program for all months, m, in the quarter

$\Sigma AMGHI_m$ = Total Actual Monthly Gas Heat Input (MMBTU) used for flame stabilization, as reported by Seller, for all

months, m, in the quarter

If GHRQ is negative, the absolute value of the GHRQ will be subtracted from the amount ComEd owes to Seller at the next billing date. If GHRQ is positive, the value of GHRQ will be added to the amount ComEd owes to Seller at the next billing date.

VII. COAL QUALITY ADJUSTMENT PAYMENT

The Coal Quality Adjustment Payment (CQAP) is made to Seller when the weighted average heat content of coal consumed during the month as calculated by the ComEd Monthly Fuel Consumption Report for the Base Facility is less than 8600 BTU/lb. The CQAP is comprised of two components. The first component is based on an increase in the Guaranteed Heat Rate of 13 BTU/NkWh for each 100 BTU/lb difference between the weighted average coal heat content and 8600 BTU/lb. The second component is based on an increase in coal unloading costs. The formula for calculating the CQAP is as follows:

CQAP = GHRA + CHA

where: CQAP is always equal to or greater than 0, and

A. **GHRA = Guaranteed Heat Rate Adjustment ($)**
= [((8600-WAHC)/100) * 13 * EE]/1,000,000 * MICC

where:

WAHC = Weighted-Average Heat Content (BTU/lb) of coal consumed during the month

EE = Net Electrical Energy delivered from the Base Facility during the month (NkWh)

MICC = Monthly Incremental Coal Cost ($/MMBtu)

B. **CHA = Coal Handling Adjustment ($)**
= (GMCHI + $\Sigma SGCHI_k$)*(1,000,000)*(1/WAHC-1/8600)*CHC

where:

GMCHI = Total Hourly Guaranteed Monthly Coal Heat Inputs (MMBTU) for all hours in the month where the unit is "on system" and not in start-up, as reported in SPSO GENR.

$\Sigma SGCHI_k$ = Total Start-up Guaranteed Coal Heat Input (MMBTU) for all startups, k, in the quarter

calculated by the SPSO GENR using the coal allowance specified in Part B.III of this Appendix B.

CHC = Coal handling charge based upon Pawnee contract terms ($/lb)

APPENDIX C

COAL SUPPLY AGREEMENT

APPENDIX D

SO_2 ALLOWANCES

In view of the dispatch rights granted to ComEd in Section 5(c) of this Agreement with respect to the generating units constituting the Base Facility, and the interconnection of those units to the ComEd System, the parties acknowledge that such units shall be treated as part of the "ComEd Dispatch System" for purposes of the Acid Rain Program under 40 CFR Part 72 (or any successor regulation) promulgated by the U.S. Environmental Protection Agency ("USEPA"), and Seller shall take no action inconsistent with that treatment unless the Parties otherwise agree. ComEd shall be responsible for the transfer of sufficient allowances needed for the emission of SO_2 from the units at the Base Facility resulting from such units' consumption of ComEd supplied coal. Such transfers shall be made by ComEd in accordance with the following paragraph to the account for such purpose maintained at the USEPA in respect of the units. It is understood that such transfer may involve more such allowances than required by the following paragraph (the "Allowance Surplus") and that, in such event, ComEd shall be entitled to a credit against the allowances otherwise required to be transferred in the following year for the amount of the Allowance Surplus. In the event that there shall be an Allowance Surplus following the Termination Date, Seller shall purchase the allowances constituting such Allowance Surplus at their then current fair market value.

During each Contract Year during the term of this Agreement, ComEd will transfer to Seller the number of allowances needed for the emission of SO_2 during such Contract Year resulting from the consumption of ComEd supplied coal at the Base Facility. Such number of allowances shall be reasonably determined by ComEd. Seller shall supply ComEd all information reasonably requested for the purpose of making such determination. Such quantity of allowances shall not be diminished or in any manner affected by any allowance surrender required under 40 CFR Part 73 arising from operation of ComEd dispatched facilities, for which ComEd shall remain solely responsible. The allowances will be transferred when needed under applicable law. In December (or the immediately following January) of each Contract Year and in the month following the Termination Date, ComEd shall render a statement to Seller indicating the number of allowances so transferred during the period since the immediately preceding January 1.

APPENDIX E

DESIGN LIMITS

The Design Limits listed below shall be applicable to any Dispatch of the Base Facility by ComEd:

(1) Minimum Operating Level shall be the minimum Electric Energy output to the ComEd System below which each unit of the Base Facility cannot operate its electric generating equipment in a stable manner with or without support fuel and with no detrimental impact on the Facility; provided, however, that such minimum for each unit shall not be less than 100 megawatts. ComEd shall not Dispatch either unit of the Base Facility between zero MW and the Minimum Operating Level. The Minimum Operating Level will be reevaluated at the time of the switch to PRB coal and verified through testing.

(2) Minimum Time Between Dispatched Starts shall be thirty-six hours for each unit, except during ComEd System emergencies.

(3) Net Dependable Capacity shall be 1,108 MW.

(4) Ramp Rates for each unit of the Base Facility are such that once synchronized at the Minimum Operating Level, each unit may be increased at an average rate of 8 MW per minute and decreased at 8 MW per minute over the operating range.

(5) Number of Dispatched starts (excluding restarts following a unit trip) in any Contract Year shall not exceed the average number of dispatched starts (excluding restarts following a unit trip) by ComEd of its own coal-fired units during the immediately preceding thirty-six months.

APPENDIX F-1

GUARANTEED HEAT RATES

YEARS 1 and 2

This Appendix F shows heat rates for both units for summer (i.e., June-September) and Non-Summer (i.e., October-May) for years 1 and 2. The contents are as follows:

Kincaid Units 1 & 2
Net Unit Heat Rate vs. Net Output
Years 1 and 2

Actual Net Unit Heat Rate						
Unit 1				Unit 2		
Net Output	Net Unit Heat Rate	Net Unit Heat Rate		Net Output	Net Unit Heat Rate	Net Unit Heat Rate
	non Sum	Summer			non Sum	Summer
MW	Btu/kWhr	Btu/kWhr		MW	Btu/kWhr	Btu/kWhr
554	10857	10887		554	10591	10621
500	10884	10919		500	10618	10653
450	10926	10968		450	10660	10702
400	10968	11017		400	10702	10751
350	11072	11135		350	10806	10869
300	11182	11261		300	10916	10995
250	11331	11433		250	11065	11167
200	11721	11872		200	11455	11606
175	12252	12407		175	11986	12141
150	13195	13353		150	12929	13087
125	14738	14917		125	14472	14651
100	16901	17096		100	16635	16830

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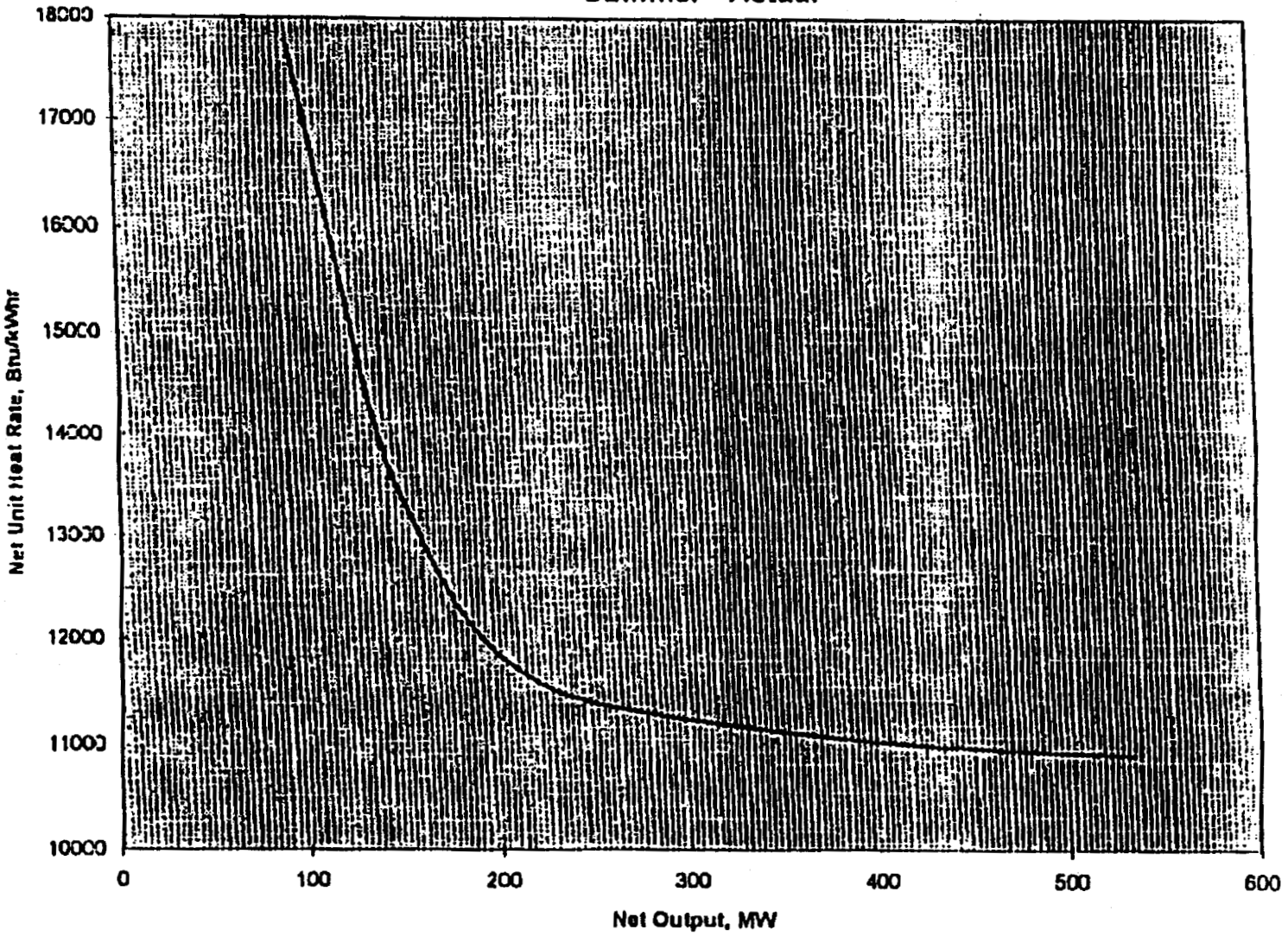
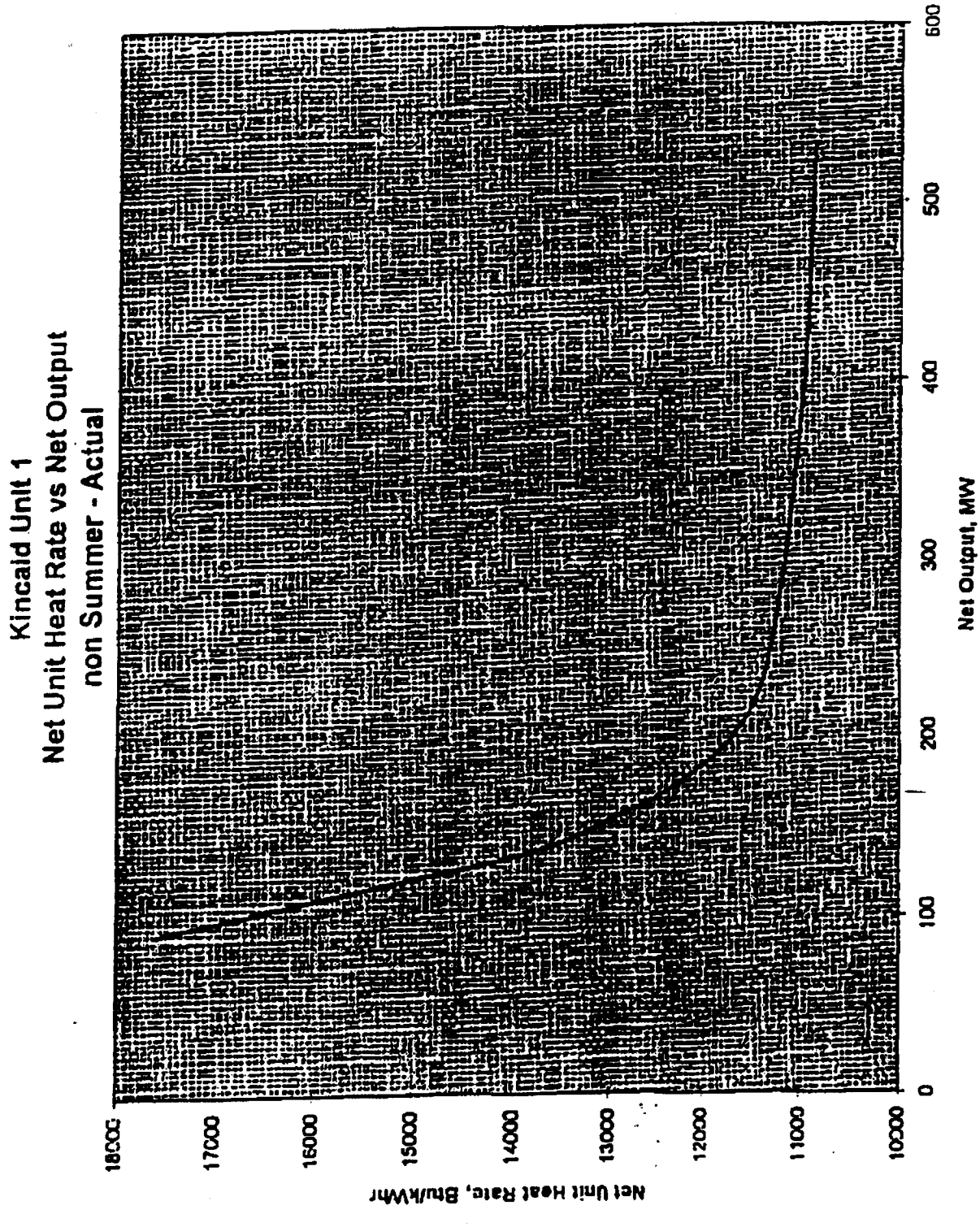
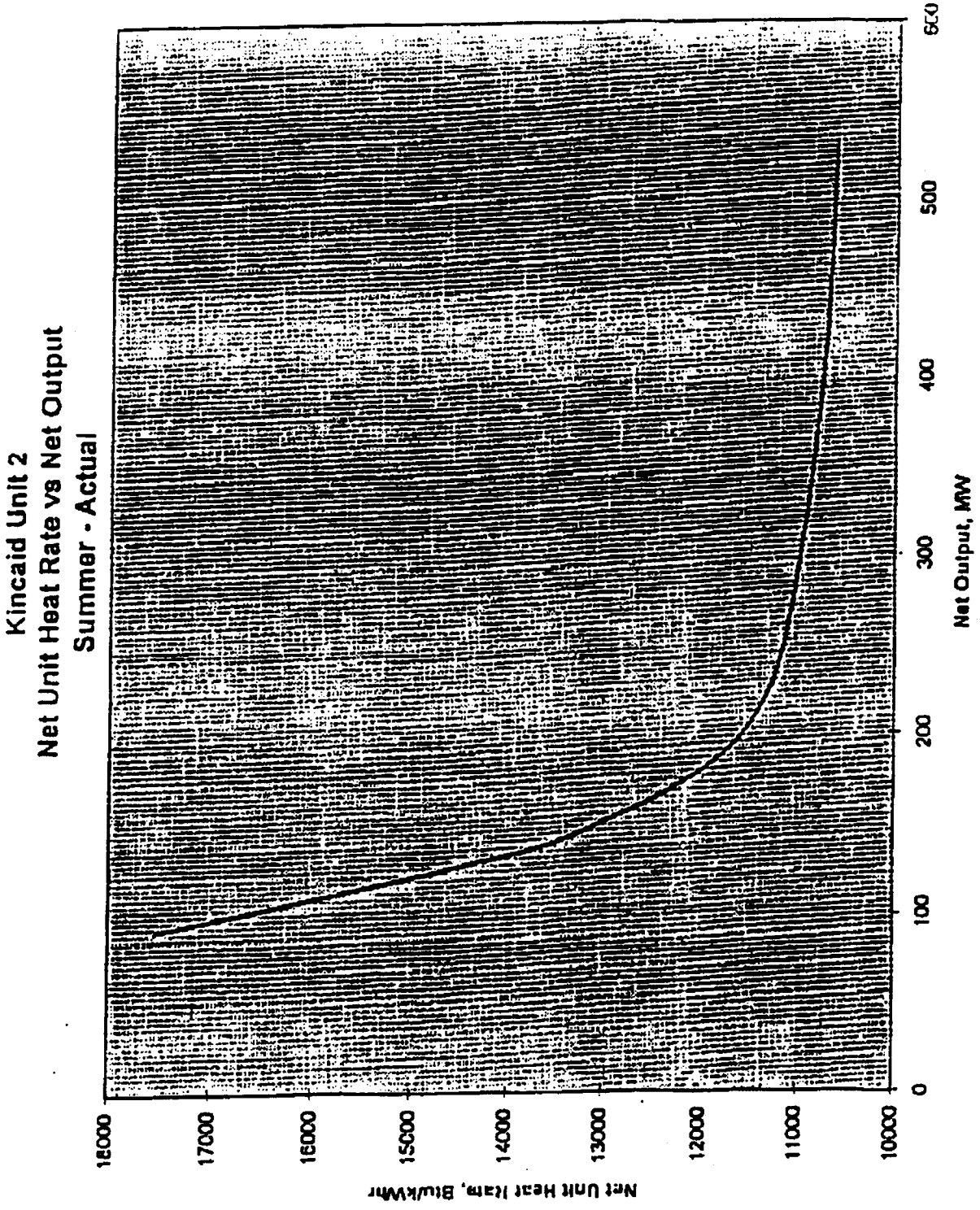
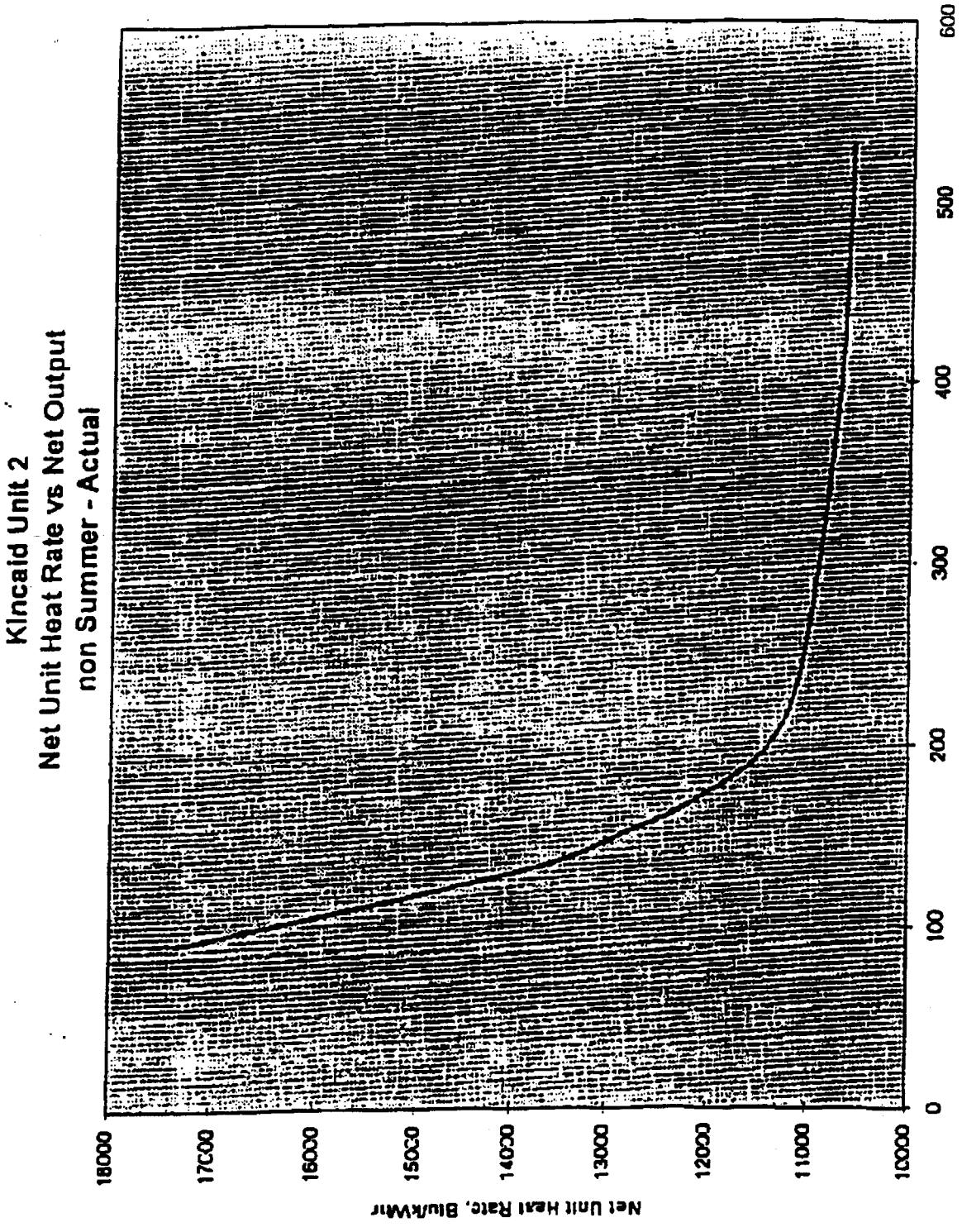
Kincaid Unit 1
Net Unit Heat Rate vs Net Output
Summer - Actual




Kincaid Unit 1
Net Unit Heat Rate vs Net Output
non Summer - Actual
Net Unit Heat Rate, Btu/kWhr
18000
17000
16000
15000
14000
13000
12000
11000
10000
Net Output, MW
0
100
200
300
400
500
600


Kincaid Unit 2
Net Unit Heat Rate vs Net Output
Summer - Actual
Net Unit Heat Rate, Btu/kWhr
18000
17000
16000
15000
14000
13000
12000
11000
10000
0
100
200
300
400
500
600
Net Output, MW


Kincaid Unit 2
Net Unit Heat Rate vs Net Output
non Summer - Actual
Net Unit Heat Rate, Btu/kWhr
18000
17000
16000
15000
14000
13000
12000
11000
10000
0
100
200
300
400
500
600
Net output, MW

APPENDIX F-2

GUARANTEED HEAT RATES

YEARS 3 through 15

This Appendix F-2 shows heat rates for both units for summer (i.e., June-September) and Non-Summer (i.e., October-May) for years 3 through 15. The contents are as follows:

Kincaid Units 1 & 2
Net Unit Heat Rate vs. Net Output
Years 13 through 15

Actual Net Unit Heat Rate						
Unit 1				Unit 2		
Net Output	Net Unit Heat Rate	Net Unit Heat Rate		Net Output	Net Unit Heat Rate	Net Unit Heat Rate
	non Sum	Summer			non Sum	Summer
MW	Btu/kWhr	Btu/kWhr		MW	Btu/kWhr	Btu/kWhr
554	10486	10516		554	10388	10418
500	10513	10548		500	10415	10450
450	10555	10597		450	10457	10499
400	10597	10646		400	10499	10548
350	10701	10764		350	10603	10666
300	10811	10890		300	10713	10792
250	10960	11062		250	10862	10964
200	11350	11501		200	11252	11403
175	11881	12036		175	11783	11938
150	12824	12982		150	12728	12884
125	14367	14546		125	14269	14448
100	16530	16725		100	16432	16627

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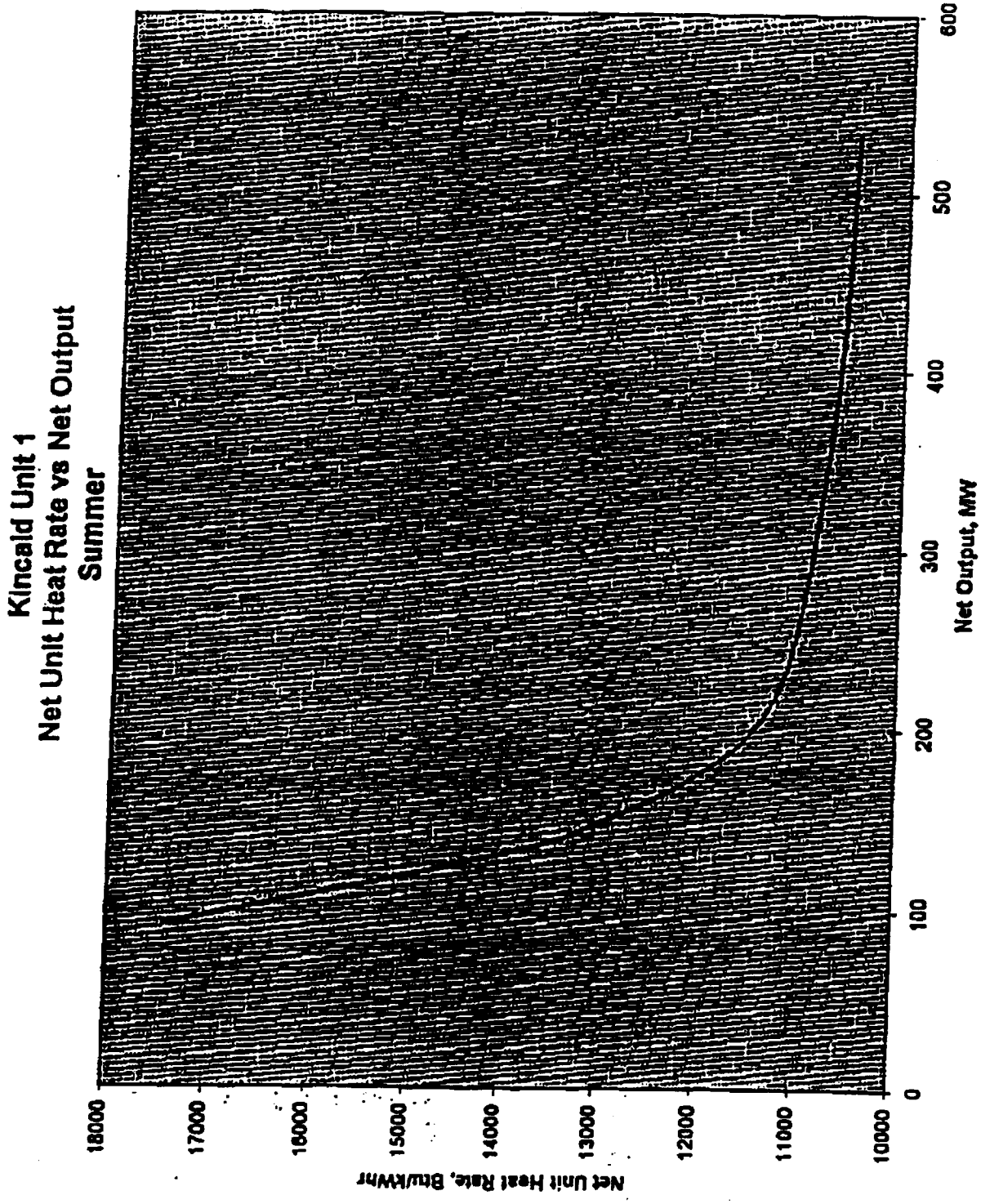
10/1/95



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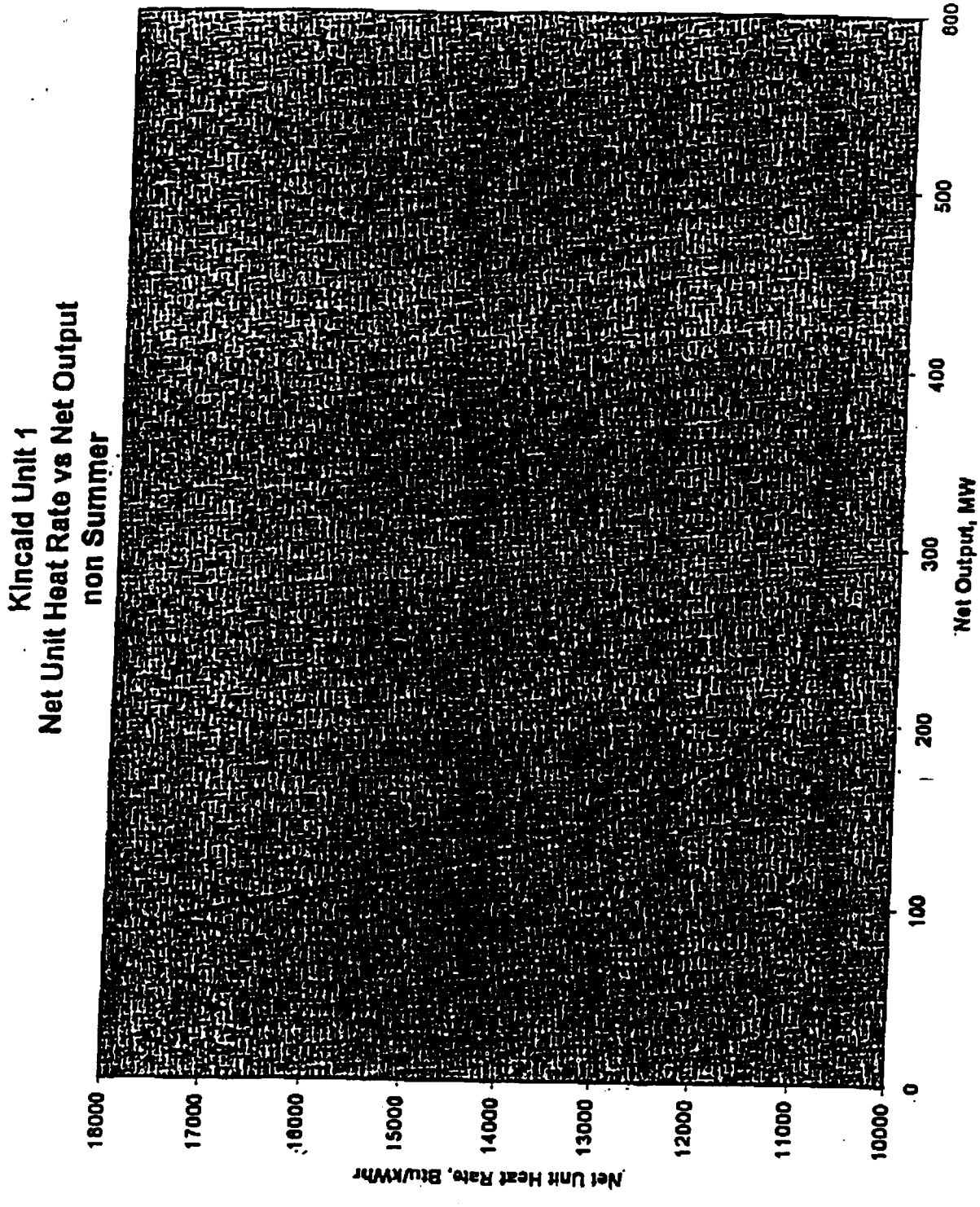
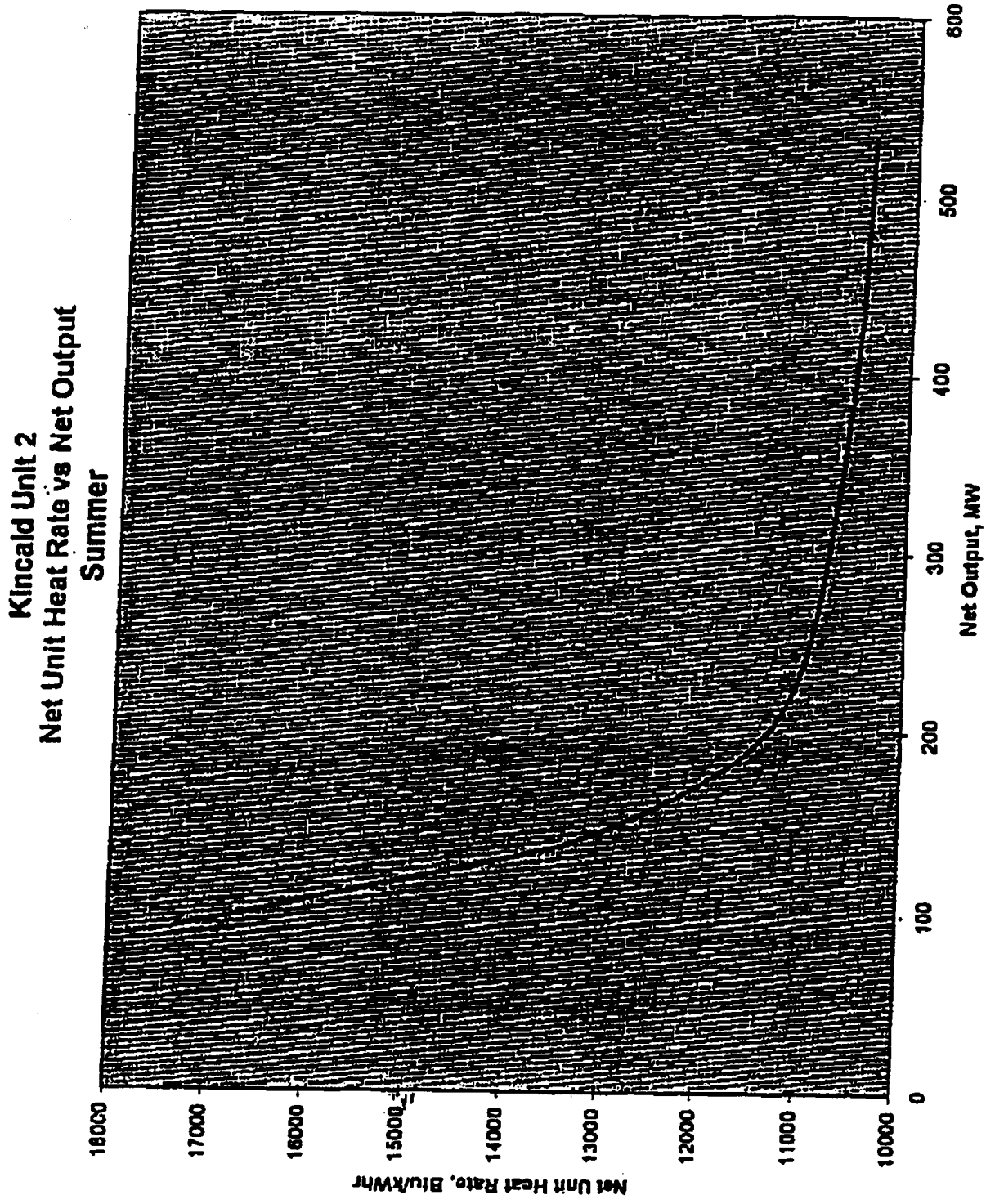
10/1/95



NPHR.XLSUnit 1 n

10/1/95



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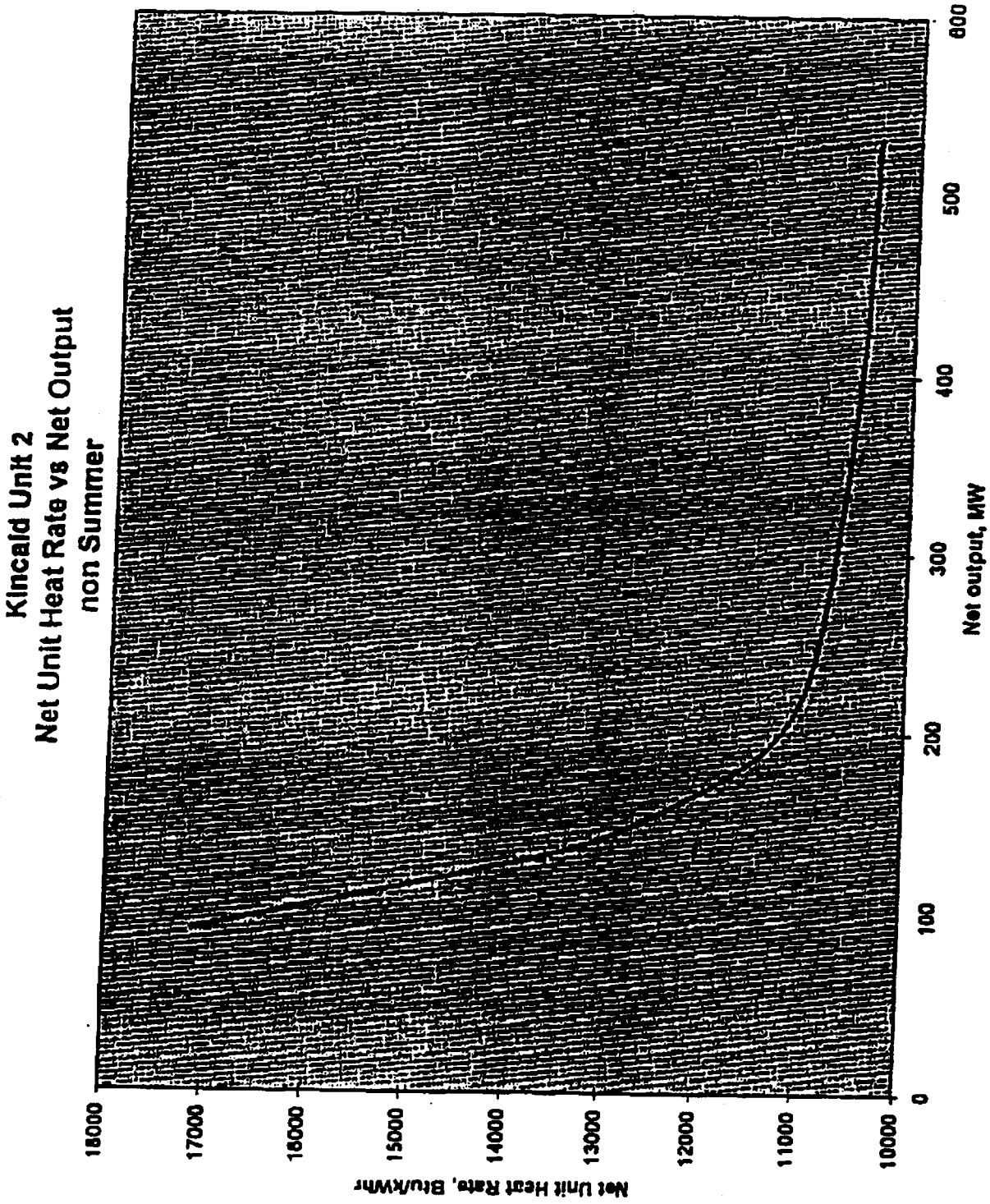
10/1/85



NPHR.XLSUnit 2 n

APPENDIX G

NO_x COMPLIANCE COST

Item I:

No_x Compliance Cost (NCC): The monthly payment made beginning at the "in-service date" of the NO_x compliance project and ending on the Termination Date. The NCC will be paid during the term of this Agreement beginning on the in service date of the new NO_x compliance project.

$$NCC = ICRP + IF + IV$$

Incremental Capital Recovery Payment (ICRP)

$$ICRP = (I_{Nox} * PF)/12$$

where:

I_{NOx} = Total capital cost of NO_x compliance project

Total capital cost includes equipment, installation and any other associated costs and interest during construction (IDC). IDC will be calculated at LIBOR at the "in-service date" plus 0.50%.

$$PF = \text{Payment factor} = \frac{(1+wacc)^n * wacc}{(1+wacc)^n - 1}$$

where:

wacc = 30 year Treasury Bond rate at the "in-service date" + 250 basis points

n = Number of years between-in-service date of NO_x compliance project and the calendar year 25 years from the Effective Date

Incremental Fixed O&M (IF): A pass through reimbursement of the estimated incremental fixed O&M NO_x costs to Seller determined at the in-service date and paid as a function of the availability levels as defined by the Agreement.

Incremental Variable O&M (IV): A pass through reimbursement of the actual incremental

variable O&M NO_x costs to Seller.

Under any nitrogen oxide (NO_x) emissions trading system as may be created by the United States Congress or by any cognizant administrative entity, including the United States Environmental Protection Agency, the Northeast Ozone Transport Commission and the Ozone Transport Assessment Group, any NO_x property interests, credits, allowances, entitlements or emission rights, however denominated, as may created on the account of the Facility, shall run with the unit in perpetuity. If not accomplished by operation of law, Seller and ComEd hereby mutually agree to take all necessary steps to assure that any such NO_x property interests, credits, allowances, entitlements or emission rights, however denominated, will be promptly transferred to Seller for application to electric generation in support of this Agreement. Seller further agrees to apply any such NO_x property interests, credits, allowances, entitlements or emission rights, however denominated, to electric generation in support of this Agreement before initiating any expenditures that will be passed on in whole or in part to ComEd to limit, reduce or otherwise control NO_x emissions.

Item II:

The repurchase price for the Facility shall be determined from the following table based upon the year in which the repurchase right arises, and shall equal the result obtained by multiplying total assets (*i.e.*, all current and long-term assets of Seller constituting the Facility, less accumulated depreciation and amortization determined in accordance with generally accepted accounting principles consistently applied) by the applicable multiple indicated in the column labeled "Multiple of Assets."

Year	Multiple of Total Assets
1997	1.22
1998	1.23
1999	1.24
2000	1.26
2001	1.28
2002	1.31
2003	1.33
2004	1.37
2005	1.40
2006	1.45
2007	1.49
2008	1.55
2009	1.60

Kincaid Station Confidential

2010	1.68
2011	1.75

APPENDIX H

REAL ESTATE TAX ADJUSTMENTS

Item I:

The Monthly Capacity Charge shall be adjusted on the Effective Date for the difference, if any, in the aggregate amount of real estate property taxes assessed against the Owned Real Property (as defined in the Asset Sale Agreement) between the date of the Asset Sale Agreement and the Effective Date as the result of changes in law. The adjustment shall be $0.0000752/kW-month for each $1,000 of additional or reduced annual real estate taxes.

Item II:

The Monthly Capacity Charge shall be subject to further adjustment, either up or down, depending upon the result of the 1991 property tax case affecting the Owned Real Property. If the decision results in an increase in real estate taxes above $160,000, then the Monthly Capacity Charge shall be subject to upward adjustment by $0.0000752/kW-month per $1,000 above $160,000; and if the increase is less than $160,000, then the Monthly Capacity Charge shall be subject to downward adjustment by $0.0000752/kW-month per $1,000 below $160,000. No adjustment shall be made until a final non-appealable order has been entered in the 1991 property tax case, or the decision in such proceeding has otherwise become final.

APPENDIX I

FORM OF STEP-IN EASEMENT

GRANT OF STEP-IN EASEMENT

Kincaid

THIS GRANT OF STEP-IN EASEMENT ("Agreement") is made as of the ___ day of _____, 199_, by KINCAID GENERATION, L.L.C., a Virginia limited liability company ("Grantor"), to COMMONWEALTH EDISON COMPANY, an Illinois corporation ("Grantee").

WITNESSETH

WHEREAS, by virtue of a certain special warranty deed from Grantee dated as of the date hereof (the "Deed"), Grantor is the owner of that certain real property located in the City of Kincaid, Counties of Christian and Sangamon, State of Illinois described more particularly on Exhibit A attached hereto and made a part hereof, together with all improvements, structures, buildings, hereditaments, appurtenances, rights and privileges pertaining thereto (hereinafter referred to as the "Burdened Parcel" or "Easement Area"); and

WHEREAS, Grantee is the owner of those certain lands located in the City of _____, County of _____, State of Illinois, which are more particularly described on Exhibit B attached hereto and made a part hereof (the "Benefitted Parcels"); and

WHEREAS, Grantor and Grantee have entered into that certain Power Purchase Agreement dated as of _____ ___, 199__ (the "PPA"); and

WHEREAS, the PPA provides, in part, that Grantee shall have the right to step-in, use and operate the "Base Facility" (as defined in the PPA) upon the occurrence of certain events more particularly described in Section 11 of the PPA; and

WHEREAS, in furtherance of effectuating the terms and provisions of the PPA, Grantee requires an easement for access to and over all of the Burdened Parcel for the purpose of stepping-in, using and operating the Base Facility;

NOW, THEREFORE, in consideration of the Deed and the mutual covenants herein contained and other good and valuable consideration, the receipt and sufficiency of which is hereby expressly acknowledged, Grantee and Grantor hereby agree as follows:

1. All initially-capitalized terms used herein which are not defined herein shall have the respective meanings assigned to such terms in the PPA.

2. Grantor does hereby give, grant and convey to Grantee (including its successors and assigns) as an easement appurtenant to the Benefitted Parcels, upon the terms and conditions hereinafter set forth, a non-exclusive easement across, upon, in, to, over, through and under all of the Burdened Parcel for the purposes of (i) allowing Grantee and its employees, agents, contractors and servants to gain vehicular and pedestrian access, ingress and egress to and over all of the Burdened Parcel, (ii) allowing Grantee and its employees, agents, contractors and servants to operate the Base Facility and (iii) allowing Grantee and its employees, agents, contractors and servants to step-in and use the Base Facility, provided however, that Grantee agrees that it shall not enforce any of its rights under this Agreement (including, without limitation, the rights conferred upon Grantee pursuant to this Paragraph 2) unless and until Grantee is or becomes entitled to step-in, use and operate the Base Facility as provided in Section 11 of the PPA, and provided further, that Grantor shall have reasonable access to the Facility during a Step-In Period in order to analyze the condition of the Facility, monitor Grantee's activities and to coordinate the implementation of corrective measures with Grantee to improve the performance of the Facility.

3. During any Step-In Period, Grantor shall not take any action which may be inconsistent with or impair the rights conferred upon Grantee hereby, including, without limitation, Grantee's right to step-in, use and operate the Base Facility as set forth in Section 11 of the PPA and Paragraph 2 hereof (except as set forth in the second proviso of the last sentence of said Paragraph 2). Without limiting the generality of the foregoing, during any Step-In Period, Grantor shall not undertake any action which may have the affect of increasing the costs payable by Grantee in connection with the use or operation of the Base Facility.

4. Subject to the terms and provisions of this Agreement (including, without limitation, the terms and provisions of Paragraphs 2 and 3 hereof), Grantor shall be entitled to use the Burdened Parcel for such uses and purposes as Grantor may deem fit in Grantor's sole discretion.

5. This Agreement shall terminate upon the termination of the PPA, provided that, if upon such termination date, there shall be a Step-In Period in effect, this Agreement shall continue until such time as such Step-In Period shall end (the date on which this Agreement terminates being referred to herein as the "Termination Date"). On the Termination Date, all rights conferred upon or granted to Grantee hereunder shall automatically terminate, and Grantee shall have no further rights or privileges with respect to the Burdened Parcel or Base Facility under this Agreement.

6. The terms, conditions and easement rights contained herein shall be covenants running with the land until the Termination Date. This Agreement shall be recorded against the Benefitted and Burdened Parcels and the terms and conditions contained herein shall bind, inure to

the benefit of, and be enforceable by, the parties hereto and their respective successors and assigns until the Termination Date. In addition, the rights reserved to Grantor hereunder shall be enforceable by Grantor's mortgagee.

7. Whenever notice is required to be given pursuant to this Agreement, the same shall be either personally delivered, sent by a nationally recognized overnight delivery service, postage prepaid or sent via United States certified mail, return receipt requested, postage prepaid, and addressed to the parties at their respective addresses as follows:

(a) If to Grantee:

Commonwealth Edison Company
10 South Dearborn Street - 37th Floor
Chicago, Illinois 60603
Attn.: Senior Vice President - Fossil Division

with a copy to the same address, Attention: General Counsel

(b) If to Grantor:

Kincaid Generation, L.L.C.
c/o Dominion Energy, Inc.
901 East Byrd Street
Richmond, Virginia 23219
Attn.: Malcolm G. Deacon, Jr.

with a copy to the same address, Attention: General Counsel

or at such other address or addresses as any party, by written notice in the manner specified above to the other party hereto, may designate from time to time. Unless otherwise specified to the contrary in this Agreement, notice shall be deemed to have been given on the date the notice is received, if personally delivered, on the business day after the date the notice is properly sent, if sent by nationally recognized overnight delivery service, or four (4) business days after the notice is properly sent, if sent by United States certified mail.

8. If any term, provision or condition in this Agreement shall, to any extent, be invalid or unenforceable, the remainder of this Agreement (or the application of such term, provision or condition to persons or circumstances other than in respect of which it is invalid or unenforceable) shall not be affected thereby, and each term, provision and condition of this Agreement shall be valid and enforceable to the fullest extent permitted by law.

9. Grantee shall indemnify and hold harmless Grantor, its officers, employees and representatives (collectively, the "Grantor Indemnitees") from and against any and all damages, losses, liabilities, costs and expenses (including, without limitation, reasonable attorneys' fees and expenses) incurred by any of the Grantor Indemnitees arising out of or in connection with any and all claims and demands of third persons including, without limitation, claims and demands for death, for property damages, and for personal injuries, arising out of the use by Grantee or by its officers, agents, employees, representatives, contractors, subcontractors or their employees, or by others with the consent of any of the foregoing persons, of the easements granted hereunder. If so directed by Grantor, Grantee shall, at its own cost and expense, defend any suit based upon any such claim or demand even if such suit, claim or demand is groundless, false or fraudulent. The foregoing indemnity shall not apply to any such claims and demands to the extent that such claims and demands arise out of or with respect to (i) any gross negligence or wilful misconduct by any of the Grantor Indemnitees or (ii) any contracts with third parties for energy or energy and capacity from the Facility (except as otherwise provided in Section 11(b) of the PPA). Without limiting the foregoing indemnification, or any other indemnification provisions contained in this Agreement, Grantee covenants and agrees that, during any Step-In Period, Grantee shall not store (other than as incidental to the use and operation of the Base Facility), discharge, spill or otherwise release or allow a threatened release of Hazardous Substances (as hereinafter defined) in, on, under or from the Easement Area. Grantee, its successors and assigns shall indemnify and hold harmless Grantor, its directors, officers, employees, agents, successors and assigns from and against any and all Costs (as hereinafter defined) arising out of or resulting from the storage, discharge, spill or other release of Hazardous Substances (as hereinafter defined) by Grantee during any Step-In Period in, on, under or from the Easement Area in violation of the terms of this Agreement, except to the extent that the Costs associated with such storage, discharge, spill or other release of such Hazardous Substances (as hereinafter defined) are caused or exacerbated by the negligence or willful misconduct of Grantor or Grantor's directors, officers, contractors, employees, agents, invitees, successors or assigns. For purposes of this Agreement, the term "Costs" shall mean losses, liabilities (including, without limitation, strict liability to third parties for toxic torts and personal injury claims), damages, injuries, fines, penalties, assessments, expenses (including, without limitation, reasonable attorneys' fees and disbursements and fees and expenses of expert witnesses and litigation consultants), costs (including, without limitation, remediation, investigation and monitoring costs) and claims of any and every kind whatsoever; and the term "Hazardous Substances" shall mean all toxic or hazardous substances, materials or waste, petroleum or petroleum products, petroleum additives or constituents or any other waste, contaminant or pollutant regulated under any applicable federal, state or local law, rule, regulation or ordinance concerning protection of human health, safety or the environment.

10. Grantor shall indemnify and hold harmless Grantee, its officers, employees and representatives (collectively, the "Grantee Indemnitees") from and against any and all damages, losses, liabilities, costs and expenses (including, without limitation, reasonable attorneys' fees and expenses) incurred by any of the Grantee Indemnitees arising out of or in connection with any and all claims and demands of third persons (except for claims and demands relating to the title of Grantee to the Burdened Parcel or Grantee's lack of authority to convey title to the Burdened Parcel)

including, without limitation, claims and demands for death, for property damages, and for personal injuries, arising out of Grantor's acts or omissions which affect the easements herein granted and which result in expense or liability to any of the Grantee Indemnitees as aforesaid. If so directed by Grantee, Grantor shall, at its sole cost and expense, defend any suit based upon any such claim or demand even if such suit, claim or demand is groundless, false or fraudulent. The foregoing indemnity shall not apply to any such claims and demands to the extent the same arise out of or with respect to any gross negligence or wilful misconduct by any of the Grantee Indemnitees. Without limiting the foregoing indemnification, or any other indemnification provisions contained in this Agreement, Grantor covenants and agrees that Grantor shall not store (other than as incidental to the use and operation of the Facility), discharge, spill or otherwise release or allow a threatened release of Hazardous Substances (as hereinafter defined) in, on, under or from the Easement Area. Grantor, its successors and assigns shall indemnify and hold harmless Grantee, its directors, officers, employees, agents, successors and assigns from and against any and all Costs arising out of or resulting from the storage, discharge, spill or other release of Hazardous Substances by Grantor in, on, under or from the Easement Area in violation of the terms of this Agreement, except to the extent that the Costs associated with such storage, discharge, spill or other release of such Hazardous Substances (as hereinafter defined) are caused or exacerbated by the negligence or willful misconduct of Grantee or Grantee's directors, officers, contractors, employees, agents, invitees, successors or assigns.

11. The terms and provisions of this Agreement shall be governed by and construed in accordance with the laws of the State of Illinois.

12. The rights granted pursuant to this Agreement shall not terminate or be in any way impaired by reason of a change of the present uses of the Benefitted Parcels, the present buildings thereon, or present means of transportation.

13. If the Burdened Parcel is hereafter divided into two or more parts by separation of ownership or lease, each party shall be subject to the burdens of the easements created hereby.

14. Whenever a transfer of ownership of either the Burdened Parcel, the Benefitted Parcels, or any portion thereof, takes place, the liability of the transferor for any default or breach of any of the terms and provisions of this Agreement which shall occur after such transfer, shall automatically terminate. Nothing contained in this Paragraph shall be deemed to abrogate or otherwise limit the liability of any owner of the Burdened Parcel, the Benefitted Parcels, or any portion thereof, for any default or breach of any of the terms and provisions of this Agreement by such owner which shall occur within the period during which such owner owns either the Burdened Parcel, the Benefitted Parcels, or any portion thereof.

15. Either party hereto (or their respective representatives, successors and assigns) may enforce this Agreement by appropriate action and the prevailing party in such action shall be entitled to recover as part of its costs reasonable attorneys' fees and expenses.

16. The rule of strict construction does not apply to the grant of easements contained herein. These grants shall be given a reasonable construction in order that the intention of the parties to confer a commercially useable right of enjoyment to Grantee with respect to such easements shall be effectuated.

17. Upon reasonable notice and at reasonable intervals, the owners of the property affected hereby shall, at any time and from time to time, execute, acknowledge, and deliver to the owner requesting such statement (the "Requesting Owner"), a statement in writing addressed to the Requesting Owner certifying that this Agreement is unmodified and in full force and effect (or, if there have been modifications, that this Agreement is in full force and effect as modified and stating the modifications), stating any sums which the Requesting Owner owes to the owner which receives the request for such statement (the "Receiving Owner"), and stating whether or not to the best knowledge of the Receiving Owner, there exists any default by the Requesting Owner in the performance of any covenant, agreement, term, provision or condition contained in this Agreement, and, if so, specifying each such default of which the Receiving Owner may have knowledge, it being intended that any such statement delivered pursuant hereto may be relied upon by the Requesting Owner and by any mortgagee or ground lessee of the Requesting Owner or by a purchaser or prospective purchaser of the property, or a portion thereof, of the Requesting Owner.

18. This Agreement may be executed in several counterparts, each of which shall be deemed an original; further the signature of the parties hereto on this Agreement may be executed and notarized on separate pages, and when attached to this Agreement shall constitute one complete document.

19. None of the terms and provisions of this Agreement shall be deemed to create a partnership between or among the parties hereto in their respective businesses or otherwise, nor shall any terms or provisions of this Agreement cause them to be considered joint venturers or members of any joint enterprise.

20. In all situations arising out of this Agreement, each of the parties hereto, and their respective representatives, successors and assigns shall attempt to avoid and minimize the damages resulting from the conduct of any other party.

21. It is expressly agreed that no breach of this Agreement shall entitle any party to cancel, rescind or otherwise terminate this Agreement.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed as of the date and year first above written.

GRANTEE

COMMONWEALTH EDISON COMPANY,
an Illinois corporation

By:_____
Its:_____

GRANTOR

KINCAID GENERATION, L.L.C.,
a Virginia limited liability company

By:_____
Its:_____

STATE OF ILLINOIS)
)SS
COUNTY OF _____)

I, _____, a Notary Public in and for the County and State aforesaid, DO HEREBY CERTIFY that _____, personally known to me to be the _____ of COMMONWEALTH EDISON COMPANY, an Illinois corporation, and personally known to me to be the same person whose name is subscribed to the foregoing instrument, appeared before me this day in person and acknowledged that as such _____, (s)he signed and delivered such instrument pursuant to authority given by the Board of Directors of such corporation, as his/her free and voluntary act and deed, and as the free and voluntary act and deed of such corporation, for the uses and purposes therein set forth.

Given under my hand and official seal this __ day of _____, 199_.

_____
Notary Public

My Commission Expires:

_____

STATE OF ILLINOIS)
)SS
COUNTY OF _____)

I, _____, a Notary Public in and for the County and State aforesaid, DO HEREBY CERTIFY that _____, personally known to me to be the _____ of KINCAID GENERATION, L.L.C., a Virginia limited liability company, and personally known to me to be the same person whose name is subscribed to the foregoing instrument, appeared before me this day in person and acknowledged that as such _____, (s)he signed and delivered such instrument pursuant to authority given by the_____ of such limited liability company, as his/her free and voluntary act and deed, and as the free and voluntary act and deed of such limited liability company, for the uses and purposes therein set forth.

Given under my hand and official seal this __ day of _____, 199_.

_____
Notary Public

My Commission Expires:

_____

EXHIBIT A

BURDENED PARCEL

All of that area designated as Parcel 1 on Attachment A to Schedule 6.4 of the Asset Sale Agreement, except the area designated as "Area to be retained in fee by ComEd" on Attachment 1 to Exhibit P to the Asset Sale Agreement.

EXHIBIT B

BENEFITTED PARCELS

The area designated "Area to be retained by ComEd in fee" on Attachment 1 to Exhbit P of the Asset Sale Agreement.

COAL SUPPLY AGREEMENT

KINCAID GENERATING STATION

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COAL SUPPLY AGREEMENT

THIS COAL SUPPLY AGREEMENT (this "Agreement"), dated as of _____, 199_, between Kincaid Generation, L.L.C., a Virginia limited liability company ("Power Seller"), and COMMONWEALTH EDISON COMPANY, an Illinois corporation ("ComEd").

W I T N E S S E T H:

WHEREAS, Power Seller has purchased substantially all of the assets constituting the Kincaid Generating Station from ComEd; and

WHEREAS, Power Seller has agreed to sell to ComEd, and ComEd has agreed to purchase from Power Seller, pursuant to the provisions of that certain Power Purchase Agreement dated as of March 29, 1996 (the "PPA") between Power Seller and ComEd, electrical energy output of the Base Facility (as defined in the PPA); and

WHEREAS, as a condition to entering into the PPA, ComEd will continue to supply coal for the generation of electric energy from the Base Facility by Power Seller under the terms and conditions set forth in this Agreement; and

WHEREAS, ComEd and Power Seller have agreed upon certain procedures for the sampling and analysis of such coal pursuant to the provisions of the Facilities Agreement (as defined in the PPA);

NOW, THEREFORE, in consideration of the foregoing, and the mutual agreements set forth herein and in the PPA, the Parties hereby agree as follows:

ARTICLE 1.
Definitions and Interpretation

Section 1.01. The terms defined in this Section shall have the meanings herein ascribed.

a. "Additional Mine" means any Mine added to Schedule 1 pursuant to Article 7 that was not on Schedule 1 as of the effective date of this Agreement.

b. "Bench Mark Mine" means the Mine designated as such pursuant to Article 7.

c. "CQIM" means the Coal Quality Impact Model developed for the Electric Power Research Institute, in the form thereof most recently used by ComEd at the time such model is used hereunder.

d. "CQIM Cost" means maintenance costs per million Btu associated with the use of a given quality of coal as measured by CQIM.

e. "Mine" means a coal mine from which coal supplied hereunder was mined.

f. "Rejection Standard Analysis" means an analysis performed by or for the operator of a Mine or ComEd.

g. "Specifications" means, with respect to each Mine identified in Schedule 1, the coal specifications therefor set forth in Schedule 1, or in the case of a Test Burn Mine, the coal specifications set forth in Schedule 5.

h. "Test Burn Coal" means coal supplied for a test burn pursuant to Article 7.

i. "Test Burn Mine" means the Mine that produced the Test Burn Coal.

j. "Third Party" means a Person that is not a party to this Agreement.

k. "Third Party Coal Contract" means a contract between ComEd and a Third Party pursuant to which ComEd obtains coal supplied hereunder.

l. "Third Party Contract" means a Third Party Coal Contract or a Third Party Transportation Contract.

m. "Third Party Transportation Contract" means a contract between ComEd and a Third Party pursuant to which coal supplied by ComEd hereunder is transported to the Base Facility.

Section 1.02. Capitalized terms used herein without definition and defined in the PPA or other portions of this Agreement shall have the respective meanings therein provided.

Section 1.03. a. In this Agreement, unless a clear contrary intention appears:

(i) the singular number includes the plural number and vice versa;

(ii) reference to any Person includes such Person's successors and assigns but, if applicable, only if such successors and assigns are permitted by this Agreement, and reference to a Person in a particular capacity excludes such Person in any other capacity or individually;

(iii) reference to any gender includes each other gender;

(iv) reference to any agreement (including this Agreement), document or instrument means such agreement, document or instrument as amended or modified and in effect from

time to time in accordance with the terms thereof and, if applicable, the terms hereof;

(v) reference to any Article, Section or Schedule means such Article or Section of this Agreement or such Schedule to this Agreement, as the case may be, and references in any Article, Section or definition to any clause means such clause of such Article, Section or definition;

(vi) "hereunder", "hereof", "hereto" and words of similar import shall be deemed references to this Agreement as a whole and not to any particular Article, Section or other provision hereof or thereof;

(vii) "including" (and with correlative meaning "include") means including without limiting the generality of any description preceding such term;

(viii) relative to the determination of any period of time, "from" means "from and including", "to" means "to but excluding" and "through" means "through and including"; and

(ix) reference to any law (including statutes and ordinances) means such law as amended, modified, codified or reenacted, in whole or in part, and in effect from time to time, including rules and regulations promulgated thereunder.

b. This Agreement was negotiated by the Parties with the benefit of legal representation and any rule of construction or interpretation otherwise requiring this Agreement to be construed or interpreted against any Party shall not apply to any construction or interpretation hereof.

c. Article and Section titles and headings in this Agreement are inserted for convenience of reference only and are not intended to be a part of or to affect the meaning or interpretation of this Agreement.

ARTICLE 2.
Quantities and Source of Coal

Section 2.01. ComEd will provide all coal required for the generation of Electric Energy at the Base Facility during the Term.

Section 2.02. ComEd will make all determinations with respect to the source of coal supplied hereunder, in consultation with Power Seller. Such determinations shall be made in a manner that complies with prudent electric utility practice, the Specifications and the other terms of this Agreement.

ARTICLE 3.
Quality of Coal

Section 3.01. a. Coal delivered by ComEd hereunder shall meet the Specifications.

b. For purposes of determining the adequacy of coal supplied hereunder it shall be sampled and analyzed for conformance to the Specifications in accordance with the sampling and analysis provisions of the applicable Third Party Coal Contract, except as otherwise provided herein with respect to the Rejection Standard Analysis. For heat rate calculations coal will be sampled and analyzed in accordance with the Facilities Agreement. The Rejection Standard Analysis may be performed under the applicable Third Party Coal Contract or by or for ComEd in accordance with prudent electric utility practice. All of the sampling and analysis shall be performed in accordance with ASTM Standards. The Rejection Standard Analysis will be faxed to Power Seller as soon as practicable after the coal is loaded at the Mine. Upon request of Power Seller, and at Power Seller's expense, ComEd will arrange to have samples collected for and provided to Power Seller for independent testing to verify sampling and analysis performed by ComEd and Mine operator.

Section 3.02. a. Coal transported by ComEd by rail shall be delivered at the unloading facility in use prior to the date coal supply hereunder begins, or if Power Seller ceases to use that facility, such other unloading facility at or near the Base Facility as Power Seller may reasonably designate. Coal transported by ComEd by truck shall be delivered to the coal pile at the Base Facility. Power Seller shall unload coal so delivered in a timely manner. Except as otherwise provided herein, Power Seller shall be liable for any demurrage or similar charges incurred under a Third Party Transportation Contract in respect of any failure to unload coal in a timely manner; provided that such unloading shall be deemed timely if a train containing no more than 120 railcars is unloaded within 24 hours of arrival or constructive placement. When Power Seller is so liable for demurrage charges incurred in respect of a train containing railcars supplied by ComEd, Power Seller shall also be liable for a demurrage charge payable to ComEd of $100 per hour per train, subject to adjustment as provided for in Schedule 2.

b. Notwithstanding the foregoing, Power Seller shall not be required to unload a train or a truck before it has received a copy of the Rejection Standard Analysis therefor and has had time to review the same. Power Seller will review the copy of the Rejection Standard Analysis as soon as practicable and, in any event, within 2 hours of receipt thereof. Power Seller shall not be liable for, and ComEd shall pay or reimburse Power Seller (as the case may be), any demurrage charges to the extent that the delay in unloading giving rise to such charges is caused by frozen coal (whether or not as a result of a Force Majeure Event), delivery of coal in railcars or trucks not meeting the requirements of this Agreement, or unavailability to Power Seller of the

Rejection Standard Analysis for the train or truck, if the Rejection Standard Analysis shows that coal in the train or truck does not conform to the Specifications.

c. If the Rejection Standard Analysis does not show failure to conform to the Specifications, Power Seller shall be liable for 50% of any demurrage or similar charges incurred under a Third Party Transportation Contract to the extent that the delay in unloading giving rise to such charges is caused by failure of Power Seller to unload because of unavailability to Power Seller of the Rejection Standard Analysis for the train or truck, plus 50% of the demurrage charge payable to ComEd attributable to such delay.

d. The provisions of this Section 3.02 only apply to coal shipped by or for ComEd.

ARTICLE 4.
Quantities Consumed; Title

Section 4.01. Power Seller will advise ComEd daily of the amount of coal utilized at the Base Facility during the preceding day. Power Seller will sample such coal and ComEd will determine the quality thereof in accordance with the sampling and analysis procedures set forth in Article VI of the Facilities Agreement.

Section 4.02. Title and risk of loss to coal shall remain with ComEd until the coal is converted to Electric Energy at the Base Facility. Immediately following conversion, title shall pass to Power Seller.

Section 4.03. Coal shipped by or for ComEd will be delivered in railcars and trucks that meet the requirements of Schedule 3. ComEd will cause Power Seller to be advised of the arrival of rail deliveries at the Base Facility, as provided in Schedule 4.

Section 4.04. After unloading the coal from the railcars or trucks, Power Seller will convey it to the storage pile maintained at the Base Facility or to the bunkers for immediate conversion. Power Seller shall act as custodian of the coal pending its conversion to Electric Energy and shall use reasonable efforts consistent with prudent electric utility practice to minimize loss of coal, including from wind or storm run-off, and shall be liable for any loss thereof caused by any failure to use prudent electric utility practice in the exercise of that custodial responsibility. Power Seller shall be responsible for the maintenance and control of the coal in the storage pile and the bunkers and compliance with any applicable regulations regarding the handling and holding of such coal. Power Seller shall remove coal from the storage pile as needed to produce Electric Energy.

Section 4.05. Power Seller shall have title to, and shall be responsible for the proper disposal of, all ash, slag, and other products or byproducts of coal converted to Electric Energy by Power Seller and will indemnify and hold ComEd harmless from any and all claims with respect thereto. Power Seller shall be entitled to retain any proceeds from disposal of such ash, slag, other products or byproducts.

ARTICLE 5.
Force Majeure

Section 5.01. "Force Majeure Event" as used herein shall mean an event reasonably beyond the control of: (i) ComEd, which wholly or in substantial part prevents the mining, loading, or delivery of coal at or, if ComEd is shipping the coal, from the Mine to the Base Facility or (ii) Power Seller, which wholly or in substantial part prevents the unloading of coal at the Base Facility. Examples (without limitation) of Force Majeure Events, but only if reasonably beyond the control, and not attributable to the negligence, of Power Seller or ComEd, as the case may be, include: acts of God, acts of the public enemy, insurrections, riots, strikes, labor disputes, work stoppages, fires, explosions, floods, electric power failures, interruptions to or contingencies of transportation, frozen coal, embargoes, acts or failure to act of or by any governmental authority, or any other act, failure to act, or occurrence irrespective whether similar to the foregoing enumerated acts, failure to act or occurrences.

If because of a Force Majeure Event either ComEd or Power Seller is unable to carry out the obligations specified in clauses (i) or (ii), respectively, of the first sentence of this Section 5.01, and if such party promptly gives the other party written notice of the conditions giving rise to such Force Majeure Event, such obligations of the party giving such notice and any corresponding obligations of the other party shall be suspended to the extent made necessary by and during the continuance of such Force Majeure Event; provided, however, that the party suffering the disabling effects of such Force Majeure Event shall make reasonable efforts to eliminate, as soon as and to the extent practical, the effects of the events giving rise thereto, except that either party may settle any of its own labor disputes or strikes or terminate any of its own lockouts at its sole discretion; and ComEd shall not be required to make arrangements for alternate sources of coal or the shipment therefor. No Force Majeure Event shall suspend the obligation of a party hereto to pay money otherwise owing to the other party under this Agreement or the PPA (including but not limited to ComEd's obligation to pay Power Seller under Section 9(a) of the PPA).

Section 5.02. For purposes of this Article references to (i) "ComEd" shall be deemed to include any party to a Third Party Contract, or assignee, successor or subcontractor (regardless of tier) of such a party; and (ii) "Power Seller" shall be deemed to include any party to a contract to unload coal at the Base Facility, or assignee, successor or subcontractor (regardless of tier) of such a party.

ARTICLE 6.
Warranties, Remedies and Limitations of Liability

Section 6.01. a. ComEd will hold Power Seller harmless from any claim of a Third Party to any interest in the title to the coal, except to the extent any such claim arises out of any act or omission of Power Seller.

b. ComEd warrants that coal supplied hereunder will meet the Specifications applicable to the producing Mine. If the Rejection Standard Analysis for any train or truck shows that the coal therein does not meet such Specifications, Power Seller may, prior to unloading the coal, reject such coal.

If more than four trainloads of the coal shipped to the Base Facility from one Mine and unloaded in any quarterly period of a Contract Year that begins and ends during the Term does not meet the Specifications, Power Seller may, within ninety days of the end of such quarterly period require ComEd to cease supplying coal from the Mine or Mines that produced such non-conforming coal, such cessation to take effect no later than seven days after notice from Power Seller that it has elected this remedy.

c. Any coal supplied hereunder, other than Test Burn Coal, shall be produced by the Mines listed in Schedule 1. Power Seller may, prior to unloading, reject any train or truck containing coal not so produced.

d. THE WARRANTIES SET FORTH IN THIS AGREEMENT ARE EXCLUSIVE. COMED MAKES NO OTHER WARRANTY, EXPRESSED OR IMPLIED, WITH RESPECT TO THE COAL TO BE SUPPLIED HEREUNDER, INCLUDING ANY WARRANTY OF THE MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE OF SUCH COAL OR AS TO THE RESULTS TO BE OBTAINED FROM THE USE OF SUCH COAL.

Section 6.02. Except as otherwise set forth herein, the PPA or the Asset Sale Agreement, in no event, whether based on contract, indemnity, warranty, tort (including negligence), strict liability or otherwise, shall either Party or its affiliates or its or their respective directors, officers, employees or agents, be liable for special, incidental, indirect, punitive or consequential damages, including, but not limited to, loss of sales, profits or revenue, loss of use of equipment, cost of substitute equipment or facilities, downtime costs or injury to property or persons (including death).

Section 6.03. ComEd shall have the right to recover direct damages for any breach of this Agreement. However, ComEd's right to recover for damage to or destruction of railcars by Pawnee Transportation Company ("PTC") in the course of its performance under the Coal Transfer Contract (the "Unloading Contract") dated as of November 30, 1993, between PTC and ComEd and assigned by ComEd to Power Seller, shall be limited to the damages recoverable by

Power Seller under the Unloading Contract, provided that (i) the Unloading Contract has not been changed after assignment to Power Seller in a manner that impairs Power Seller's ability to recover such damages; (ii) Power Seller has used all commercially reasonable means to recover such damages; (iii) Power Seller has exercised its rights to have the Chicago and Illinois Midland Railway Company ("C&IM") provide unloading services, to the extent available under the Unloading Contract including the agreement with C&IM appended thereto; and (iv) has exercised its rights to operate the Facility (as defined in the Unloading Contract) to the extent available under the Unloading Contract. ComEd's and Power Seller's express remedies provided in this Agreement are their exclusive remedies for any breach of this Agreement, but are not in lieu of remedies in other agreements for events which may be both a breach of this Agreement and such other agreements. Without limiting the generality of the foregoing, ComEd shall have no liability for failure to deliver coal, irrespective of whether excused, but Power Seller shall be entitled to payments as provided in the PPA notwithstanding its inability to generate due to lack of coal.

ARTICLE 7.
Test Burn Coal

Section 7.01. To determine the suitability of coal for use at the Base Facility, ComEd may require Power Seller to conduct test burns of coal from Mines that have not been listed in Schedule 1 prior to the start of such test burn. All Test Burn Coal shall meet the minimum Specification therefor set forth in Schedule 5. ComEd may not require Power Seller to conduct such test burns more frequently than four times in any calendar year. All test burns shall be conducted in accordance with the requirements of Schedule 5. If the CQIM Cost for a Test Burn Mine is greater than the CQIM Cost for the Bench Mark Mine and the CQIM Cost for any Additional Mine that produced coal converted to Electric Energy in a month, the price of Electric Energy sold under the PPA in the month produced in whole, or in part, by converting Test Burn Coal from that Mine to Electric Energy, shall include an adder to the Non-Fuel Energy Charge to reflect the difference between the CQIM Cost for the Test Burn Mine and the CQIM Cost for the Bench Mark Mine, such adder to be determined as provided in the PPA. If the test burn is successful, Schedule 1 shall be supplemented to add the Mine that produced such coal and the specifications for such coal, unless ComEd elects not to do so.

Section 7.02. Powder River Coal Company's Rochelle Mine is the Bench Mark Mine. If the CQIM Cost for an Additional Mine that produced coal converted to Electric Energy sold under the PPA in a month is greater than the CQIM Cost for the Bench Mark Mine and the CQIM Cost for any Test Burn Mine that produced coal so converted, the price of Electric Energy sold under the PPA in the month shall include an adder to the Non-Fuel Energy Charge to reflect the difference between the CQIM Cost for the Additional Mine that produced coal so converted that has the highest CQIM Cost and the CQIM Cost for the Bench Mark Mine, such adder to be determined as provided the PPA. ComEd shall have the right to remove any Additional Mine from Schedule 1.

Section 7.03. CQIM Cost determinations shall be based on the specifications for the Bench Mark Mine set forth in Schedule 6 and the average or typical specifications agreed upon for this

purpose for any Additional Mine; provided that CQIM Cost determinations for a Test Burn Mine shall be based on the weighted average quality of all coal from such Mine unloaded in the month, shown in the Rejection Standard Analyses thereof, unless and until it becomes an Additional Mine. If the parties fail to agree on such specifications for any Additional Mine, such specifications shall be determined by arbitration as provided for in Article 10 hereof, except that all amounts to be paid to the arbitrator shall be borne by the loser of such arbitration. For purposes of determining the origin and CQIM Cost of any coal, coal converted to electricity in any month shall be deemed to be used on a last in, first out basis.

Section 7.04. If Power Seller believes that use of coal from an Additional Mine (i) produces a substantial increase in Power Seller's costs of maintaining the Base Facility that is not reflected in the CQIM Cost, or (ii) causes problems that justify cessation of deliveries from that Mine and, in either event so notifies ComEd within one year of the start of the Test Burn thereof, the parties shall meet to determine whether (x) an equitable adjustment in the compensation under the PPA, (y) cessation of deliveries from that Mine or (z) no change is appropriate. If the parties fail to agree on the matter within 90 days of such notice from Power Seller, the matter shall be determined by arbitration as provided for in Article 10 hereof, except that all amounts to be paid to the arbitrator shall be borne by the loser of such arbitration. The arbitrator shall consider long term effects of use of such coal.

ARTICLE 8.
Notices

All notices required or permitted to be given hereunder shall be in writing and shall be deemed properly given when delivered in person to the party to be notified, or when received by facsimile or other delivery means by the person to be notified, at its address set forth below, or such other address as the party to be notified may have designated prior thereto by written notice to the other party:

As to ComEd:

Commonwealth Edison Company
_____
_____
_____
Attention: _____
Fax: _____
Confirmation: _____

As to Power Seller:

_____
_____
_____
Attention: _____
Fax: _____
Confirmation: _____

ARTICLE 9.
Waivers

Failure of Power Seller or ComEd to insist upon strict performance of any of the terms and conditions hereof, or failure or delay to exercise any right or remedies provided herein, or to properly notify either party in the event of breach or the acceptance of payment for any goods hereunder, shall not release either party from any of its obligations under this Agreement, and shall not be deemed a waiver of any right by either party to insist upon performance hereof, nor shall any purported oral modification operate as a waiver of any of this Agreement's terms.

ARTICLE 10.
Disputes

Section 10.01. If any disagreement arises on matters concerning this Agreement, the disagreement shall be referred to representatives of each Party, who shall attempt to timely resolve the disagreement. If such representatives can resolve the disagreement, such resolution shall be reported in writing to and shall be binding upon the Parties. If such representatives cannot resolve the disagreement within a reasonable time, or a Party fails to appoint a representative within ten days of written notice of the existence of a disagreement, then the matter shall proceed to arbitration as provided in Section 10.02.

Section 10.02. If the Parties are unable to resolve a disagreement arising on a matter pertaining to this Agreement, such disagreement shall be settled by arbitration. Either Party may commence arbitration by serving written notice thereof on the other Party, which notice shall designate the issue(s) to be arbitrated, the specific provisions of this Agreement under which such issues arose and such Party's proposed resolution of such issue(s). Representatives from ComEd and Power Seller shall meet for the purpose of jointly selecting an arbitrator within ten days after the date of such notice. If no arbitrator has been selected within 20 days of the date of such notice, then an arbitrator shall be selected in accordance with the procedures of the American Arbitration Association. Any such arbitration shall be conducted in accordance with the commercial arbitration rules of the American Arbitration Association in effect on the date of such

notice other than as specifically modified herein. The arbitrator shall be bound by the provisions of this Agreement, where applicable, and shall have no authority to modify such provisions in any manner. The arbitrator may only pick the resolution of an issue proposed by one Party or the other Party, and shall have no authority to fashion any other type or form of relief. The decision of the arbitrator shall be final and binding upon both Parties, and a Party may have any court having jurisdiction over the Parties enter judgment in accordance with the arbitrator's award.

ARTICLE 11.
Coal Sale

Section 11.01. In lieu of providing the coal for conversion as provided above. ComEd may, at any time, elect to sell the coal to Power Seller under the terms and conditions set forth or incorporated in Section 11.02.

Section 11.02. a. Coal furnished hereunder shall be delivered f.o.b. railcars or trucks at the Mine. Title and, unless Power Seller elects to have ComEd ship the coal to the Base Facility, risk of loss thereto shall pass to Power Seller f.o.b. railcars or trucks at the Mine. If Power Seller elects to have ComEd ship the coal to the Base Facility, risk of loss thereto shall pass to Power Seller f.o.b. railcars or trucks at the Base Facility.

b. Power Seller may elect to have ComEd ship all of the coal supplied hereunder to the Base Facility. Shipments to the Base Facility by ComEd shall be made by carriers selected by ComEd. If Power Seller does not elect to have ComEd transport the coal, delivery thereof to Power Seller shall be scheduled as provided herein and in the Third Party Coal Contract.

c. The price of coal f.o.b. railcars or trucks at the Mine shall be equal to the amount paid therefor under the applicable Third Party Coal Contracts.

d. The price for shipment of coal from the Mine by ComEd shall be equal to the amount paid therefor under the applicable Third Party Transportation Contracts.

e. In addition, Power Seller shall pay or reimburse ComEd for any and all taxes imposed upon ComEd or Power Seller arising out of, or relating to, transactions under this Agreement.

f. Except as otherwise provided in Article 12, payment of amounts due pursuant to sub-sections c, d and e of this Section shall be due after the coal has been consumed. For purposes of this subsection f, coal shall be deemed to be consumed on an average cost basis. Such payments shall be made by set off against the amounts due under the PPA; and Section 9 of the PPA shall be amended to include the following provisions:

In addition to the other charges provided for herein, Power Seller shall be entitled to:

(i) an amount equal to the amount it is obligated to pay ComEd for coal pursuant to the Coal Supply Agreement;

(ii) an amount equal to the amount it is obligated to pay ComEd for shipment of coal if Power Seller elects to have ComEd ship coal pursuant to the Coal Supply Agreement;

(iii) an amount equal to any taxes for which Power Seller is liable under Section 11.02e of the Coal Supply Agreement;

(iv) a delivery credit in an amount equal to 80% of the savings, if any, achieved by ComEd as a result of Power Seller's shipment of the coal; and

(v) an amount equal to any other cost incurred by Power Seller that is not recoverable under items (i) through (iv), is incurred solely because of ComEd's election to sell coal under Section 11.01 of the Coal Supply Agreement, and is not attributable to (1) shipment of coal by Power Seller or (2) any payment by Power Seller to any employee, agent or independent contractor engaged by or for Power Seller.

The amounts referred to in items (i), (ii) and (iii) above shall be payable after the coal has been consumed. The amount referred to in item (iv) shall be determined by ComEd within 30 days after the end of the Contract Year in question. All such amounts other than delivery credits and amounts invoiced under the last sentence of this paragraph shall be paid by credits against amounts paid or payable to ComEd for the coal; provided that a cash settlement shall be made at the end of the Term pursuant to Article 12. The delivery credit shall be paid by check mailed to Power Seller within 20 Business Days of ComEd's determination of the amount, thereof. If Power Seller directly pays any tax referred to in item (iii) or any cost recoverable under item (v), ComEd shall reimburse Power Seller therefor 20 Business Days following receipt of an appropriately documented invoice therefor.

g. Power Seller may bill ComEd for a delivery credit as provided in the PPA for coal not shipped by ComEd hereunder.

h. The terms and conditions of Articles 1 through 10, inclusive, and Articles 12 and 13 of this Agreement shall apply to all coal so sold, to the extent consistent with the preceding provisions of this Article 11.

ARTICLE 12.
Sale of Coal Remaining at Termination

Any coal remaining at the Base Facility on the Termination Date shall be purchased by Power Seller for a price equal to its fair market value (inclusive of transportation costs and applicable taxes), based upon a physical inventory conducted as provided in this Section, notwithstanding anything to the contrary in Article 11. For purposes of determining the amount and quality of coal in the storage pile, (i) an aerial "three-dimensional" survey of the storage pile shall be performed to determine its dimensions and volume in cubic feet (or equivalent), and (ii) test core borings shall be made into the storage pile to determine its density and average characteristics (i.e., heating value, and ash and sulfur content). Such procedures shall be performed in a manner acceptable to both parties, who shall have the right to have representatives observe the same. The parties shall share equally the costs of such procedures. If the parties are unable to reach agreement as to such fair market value the question shall be resolved as provided in Section 10.02 of this Agreement. Payment of such price shall be made no later than 20 Business Days after determination of the amount thereof.

ARTICLE 13.
Miscellaneous Provisions

Section 13.01. Each Party agrees that it will treat in confidence this Agreement and all documents, materials and other information which it shall have obtained regarding the other Party during the course of the negotiations leading to, and its performance of, this Agreement (whether obtained before or after the date of this Agreement), and, in the event that this Agreement shall be terminated prior to the Effective Date, each Party shall return to the other Party all copies of any nonpublic documents and materials which may have been furnished in connection herewith. Such documents, materials and information shall not be communicated to any third party (other than, in the case of Power Seller, to its regulators, counsel, accountants, financial advisors, corporate parents, affiliates, officers, directors or employees thereof, or in connection with the financing of the Facility, or, if Power Seller has given prior notice to ComEd and entered into an appropriate confidentiality agreement with the proposed recipient of the information, potential permitted assigns or purchasers of the Facility, and in the case of ComEd, to its regulators, counsel, accountants or financial advisors). The obligation of each Party to treat such documents, materials and other information in confidence shall not apply to any information which (i) is or becomes available to such Party from a source other than the other Party, (ii) is or becomes available to the public other than as a result of disclosure by such Party or its agents, (iii) is required to be disclosed under applicable law or judicial process, but only to the extent it must be disclosed, or (iv) such Party reasonably deems necessary to disclose to obtain any of the consents or approvals contemplated hereby or the Asset Sale Agreement.

Section 13.02. This Agreement shall be deemed to be an Illinois contract and shall be construed in accordance with and governed by the laws of Illinois without regard to its conflicts of laws provisions.

Section 13.03. This Agreement is intended solely for the benefit of the Parties hereto. Nothing in this Agreement shall be construed to create any duty to, or standard of care with reference to, or any liability to, any person not a Party to this Agreement.

Section 13.04. This Agreement shall not be interpreted or construed to create an association, joint venture, or partnership between the Parties or to impose any partnership obligation or liability upon either Party. Power Seller is an independent contractor and neither Party shall have any right, power or authority to enter into any agreement or undertaking for, or to act on behalf of, or to act as or be an agent or representative of, or to otherwise bind, the other Party.

Section 13.05. Cancellation, expiration or earlier termination of this Agreement shall not relieve the Parties of obligations that by their nature should survive such cancellation, expiration or termination, including without limitation, exclusion of warranties and remedies, exclusions of consequential damages and confidentiality.

Section 13.06. The rights of any party under this Agreement may be assigned with the consent of the other parties hereto (which consent shall not be unreasonably withheld or delayed) provided, however, that either party shall have the right to assign this Agreement in connection with an assignment of the PPA in accordance with the terms thereof. This Agreement shall be binding upon and inure to the benefit of the parties hereto and their successors and permitted assigns.

Section 13.07. Except as provided in the Asset Sale Agreement, this Agreement supersedes all previous representations, understandings, negotiations and agreements either written or oral between the Parties hereto or their representatives with respect to the subject matter hereof and constitutes the entire agreement of the Parties with respect to the subject matter hereof. No amendments or changes to this Agreement shall be binding unless made in writing and duly executed by both Parties.

Section 13.08. This Agreement shall terminate upon any termination of the PPA.

IN WITNESS WHEREOF, the parties have executed this Appendix effective as of the date first written above.

COMMONWEALTH EDISON COMPANY

By: _____

KINCAID GENERATION, L.L.C.

By: _____

Schedule 1
Approved Mines Coal Quality

Reject Parameter		Rochelle	Antelope	Co-op	Skyline	SUFCo	White Oak	Black Thunder
Heating value (Btu/lb.) - as received	Min.	8,600	8,450	11,800	10,800	10,800	11,300	8,560
Ash (%) - as received	Max.	5.2	8.0	10.0	14.0	12.0	10.0	5.7
Sulfur (%) - as received	Max.	0.28	0.5	0.6	0.7	0.3	0.65	0.43
lbs. SO_2/MMBtu	Max.	0.62	1.2	1.2	1.3	1.2	1.21	0.95
Moisture (%) - as received	Max.	28.8	30.0	10.0	13.0	11.0	12.0	28.9
Na_2O (%of ash) ASTM, ignited basis	Min.	0.8	2.0	2.5	0.6	2.0	0.2	0.7
Slag Viscosity - T250 (B&W, °F)	Max.	2,375[1]	2,300	2,400	2,450	2,450	2,450	2,251
Base to Acid Ratio	Min.	0.37	0.37	0.37	0.25[2]	0.37	0.37	0.37

[1] In the event that Seller encounters significant operating problems as a result of the use of this coal due to the fact that the slag viscosity of the delivered coal exceeds 2300°F, then the maximum slag viscosity for such coal shall be reduced to 2300°F.

[2] In the event that notwithstanding fluxing Seller encounters significant operating problems as a result of the use of this coal due to the fact that the base to acid ratio of the delivered coal is less than 0.37, then the minimum base to acid ratio for such coal shall be increased to 0.37.

Schedule 2

Demurrage Rate = \$100 x I_D/I_B

Where: I_B is the U.S. Gross Domestic Product Implicit Price Deflator Index (U.S. GDPIPD) (final value) published by the U.S. Department of Commerce, Washington, D.C., "Survey of Current Business"; Table 7.5 for the First quarter of 1996.

I_D is the U.S. GDPIPD Index for the calendar quarter immediately preceding shipment (first published value).

If the U.S. GDPIPD is discontinued or substantially modified, the Parties shall adopt a suitable substitute index which most nearly produces the same result. If the Parties fail to agree upon a suitable index within thirty (30) days of either Party notifying the other of such discontinuance or modification, the matter shall be decided by arbitration pursuant to Section 4 of the PPA.

If, pending agreement or arbitration decision regarding a substitute index, it becomes necessary to calculate demurrage, the last published U.S. GDPIPD (whether preliminary or final) prior to cessation or modification shall be applied. Seller shall pay to ComEd, or ComEd shall refund to Seller, as appropriate, the difference between demurrage calculated using such

last published U.S. GDPIPD and demurrage using the substitute index, within 30 days following determination of the suitable substitute index.

Schedule 3
Delivery Equipment Requirements

Railcars

Type:
Unit train quantities of Conventional open top hoppers (45° or greater slope sheets) or Rapid Discharge open top hoppers acceptable for interchange service in accordance with Association of American Railroads regulations. Cars must be shaker compatible. In-line rotary couplers preferred.

Maximum Length	53' 1"
Maximum Width	10' 8"
Maximum Height above rail	13' 8"
Minimum cubic capacity	4000 cu. ft.
Design Gross Rail Load Capacity	286,000 lb. maximum

Trucks

Type	Open top dump with cover
Maximum loading	Legal weight for each state traveled

Schedule 4
Rail Delivery Notification Procedure

Within 12 hours of train arrival notify ComEd Fuel Department:

1. Time of railroad placement of train on station receiving tracks.

2. Start of train unloading operations.

3. Estimated completion of train unloading operations.

Upon completion of train unloading operations notify ComEd Fuel Department:

1. Time of completion of train unloading operations.

2. Notification time of release of empty train to railroad.

3. Individual car numbers and weight of coal per car unloaded, if available, or per train unloaded, if available.

4. Any problems or incidents which occurred during coal unloading operations such as railcar derailments, damage to railcars, frozen coal, mechanical breakdowns, noticeable railcar defects, etc.

5. Any other relevant information.

Schedule 5

Test Burn Procedure

Subject to the limitations in Section 6 of this Agreement, ComEd may, from time to time, require that a test burn be conducted of a coal from a mine which has not previously been listed in Schedule 1. The coal to be tested shall meet the following specifications:

Coal Quality Specifications

Heat Content (as received)	8200 Btu/lb. minimum
Volatile matter (dry)	20% minimum
Ash Content	4 lb. / MMBtu minimum 23 lb. / MMBtu maximum
Sulfur	Legal maximum
Na_2O	10% maximum
Ash viscosity (T_{250} °F - B&W method)	2450°F maximum

Base / Acid Ratio	0.37 minimum
Hardgrove grindability	45 minimum

A schedule for the test will be developed which takes into account planned outages, peak periods and other operating conditions; provided that a test shall start no later than 30 days after ComEd has exercised its right to require that test. Prior to the start of the test, the parties will meet to plan how the test will be conducted. ComEd shall have the right to observe the test. A test burn shall cover a minimum test burn period of 30 days on at least one unit at the Facility and shall include all normal operating ranges. If a problem develops during the test, Seller may stop the test and call for a meeting of the parties to discuss the difficulties with burning the test coal. The parties may:

1) agree to permanently halt the test declaring it unsuccessful;

2) agree to make adjustments to either the coal supply from the mine or the methods for burning it and continue the test; or

3) if they fail to agree to either of the foregoing, temporarily halt the test and submit

the question of conclusion of the test to arbitration as provided below.

A test will be declared successful or unsuccessful based upon the test results.

If the parties are unable to agree with respect to (i) a plan for the conduct of the test and their respective responsibilities for support services therefor, (ii) whether a test should be concluded, or (iii) whether the test was successful, the matter shall be resolved by arbitration as provided in Section 9 of this Agreement, except that all amounts to be paid to the arbitrator shall be borne by the loser of such arbitration.

Schedule 6
Benchmark Rochelle Mine Typical Coal Quality

Heat Content (as received)	8793 Btu/lb.
Moisture (as received)	27.4%
Volatile matter (as received)	30.9%
Ash Content (as received)	4.5%
Sulfur (as received)	0.2%
Na_2O (percent of ash)	1.8%
Ash viscosity (T_{250} °F - B&W method)	2220°F
Base / Acid Ratio	0.66
Hardgrove grindability	56