UNITED STATES OF AMERICA

NUCLEAR REGULATORY COMMISSION

In the matter of	:	
ARIZONA PUBLIC SERVICE COMPANY, et al.,	:	DOCKET NO. STN 50-528
(Palo Verde Nuclear Generating Station, Unit 1)	:	

BRIEF OF PUBLIC SERVICE COMPANY OF NEW MEXICO IN SUPPORT OF THE APPLICATION IN RESPECT OF A SALE AND LEASEBACK FINANCING TRANSACTION BY PUBLIC SERVICE COMPANY OF NEW MEXICO

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November 4, 1985

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I. INTRODUCTION

By application (the Application) filed on October 18, 1985, Arizona Public Service Company (APS) requested, on behalf of Public Service Company of New Mexico (PNM) and The First National Bank of Boston, as Owner Trustee (Owner Trustee), that an order be issued approving (i) the transfer by PNM to the Owner Trustee of the fee interest and (ii) the simultaneous transfer by the Owner Trustee back to PNM of a long-term (approximately 28 1/2 years) leasehold interest in a major portion of PNM's 10.2% ownership interest in Palo Verde Nuclear Generating Station (PVNGS) Unit 1.

The Application relates to the sale and leaseback financing transactions proposed by PNM with respect to its interest in PVNGS Unit 1, which transactions are described in detail in the Application and the memorandum (the Memorandum) in support thereof, also filed on October 18, 1985. PNM understands that this transaction would be the first such sale and leaseback financing of a nuclear power facility. Thus the issues raised by the Application have not heretofore been considered by the Commission.

A favorable decision by the Commission in response to the Application will serve the public interest. Substantial savings (on the order of $400 million) will accrue to PNM's electric ratepayers during the term of the lease transaction. In addition, a new and substantial source of financing would be made available to the nuclear power industry. Notwithstanding the formality of its structure, which formality is required for purposes of complying with the requirements of the Federal tax law, a sale and leaseback transaction is essentially a financing transaction, which, like other forms of financing, will not have an adverse impact on public health and safety. It should be noted, however, that PNM is pursuing the proposed financing in the belief that its financial health will be improved, for the reasons indicated in the Application and Memorandum. It seems clear that a financially stronger licensee is a net benefit for public health and safety.

II. ISSUE PRESENTED

The NRC Staff noted in a recent meeting with representatives of PNM that a question had arisen regarding the applicability of certain language used by the Atomic Safety and Licensing Appeal Board in deciding In the Matter of Public Service Company of Indiana, Inc. (Marble Hill Nuclear Generating Station, Units 1 and 2), 7 NRC 179 (1978) (hereinafter referred to as Marble Hill). There is broad language in Marble Hill which might be read to be contrary to the result sought by PNM in the Application: that is, to the effect that a license amendment or transfer is necessary to allow the proposed financing to proceed. A close reading of Marble Hill and its underlying facts, however, leads to the conclusion that it is distinguishable from the proposed financing transaction.

Marble Hill does not foreclose the grant of the relief requested in the Application. Like the interest of the lienholder under Section 50.81 (10 C.F.R. § 50.81), the interest of an equity investor or lessor in a sale and leaseback transaction is passive and too remote either to bring into question the public health or safety or to serve as a basis for meaningful regulation by the Commission. So long as the lease is in effect and PNM is not in default thereunder, the equity investors have no role in the operation of PVNGS Unit 1. During the lease term PNM will be, and continue to be, the sole representative of PNM's entire interest in PVNGS and the sole

participant in proceedings of the PVNGS committees. The equity investors have no right to control or influence PVNGS; extension of the Commission's jurisdiction is therefore not required. Furthermore, the public interest generally, and New Mexico ratepayers' interests particularly, will be substantially served by the result sought by PNM, and the public health and safety, which of course must be carefully guarded by the Commission, will be unaffected.

III. DISPOSITION OF ISSUES RAISED BY MARBLE HILL DECISION

Marble Hill is a lengthy decision, covering several topics. It includes, however, a brief discussion of the issue which is of concern to the Staff of the Commission in relation to the Application. In Marble Hill, the Appeal Board said:

> "The Company asserts that it has a 'right' to a Commission license to build a nuclear power plant without its co-owners as its co-applicants. The utility's thesis rests on its reading of Sections 101 and 103 of the Atomic Energy Act. Those provisions make it unlawful for any person to 'transfer', 'acquire,' or 'possess' a 'utilization or production facility' (which includes a nuclear power plant) without a Commission license.
>
> "Boiled down, Public Service's argument is that Sections 101 and 103 do not explicitly forbid one to 'own' a nuclear plant without a license, only to 'possess' it. The company insists that 'the class of "persons" subject to the NRC's licensing authority is defined [by the statute] in terms of possession, not ownership.' Pointing out that Congress used 'own' in other parts of the Atomic Energy Act, the utility relies on various canons of statutory construction to support its contention that 'possess' as used in Sections

101 and 103 therefore does not include 'own' and insists accordingly that a mere owner need not be an applicant or hold a Commission license.

"Our difficulty with Public Service's argument is that in ordinary parlance an accepted meaning of 'possess' is 'own.' We do not wish 'to make a fortress out of the dictionary.' We are prepared to discount the 'plain meaning' of a statute if need be to accommodate some Congressional purpose. But neither we nor any other tribunal ought to be expected to do so on the basis of a mechanical invocation of the canons of statutory construction. These are not 'Commandments,' merely aids to ascertaining legislative intent. Maxims like 'the very use of two separate words is an indication that some sort of different meaning is to be ascribed to them' are neither helpful nor persuasive without an accompanying explanation why Congress elected to use words in other than their ordinary meanings. At the minimum, one advocating a departure from common usage bears the burden of demonstrating what the legislature sought to achieve thereby.

"It is at precisely this point that Public Service's argument falters. It presents us with no reason why Congress would want to exempt owners of nuclear power plants from Commission regulation. And we can think of none ourselves. To the contrary, it takes little to appreciate that an owner can influence the actions and attitudes of its tenants and agents without technically being in 'possession' of the premises. Given the safety considerations with which Congress was primarily concerned in the Atomic Energy Act, it takes much more than bare assertion and imaginative statutory construction to convince us that those who would own a nuclear power plant do not need to apply for a license from the Commission.

"Both sides also refer us to legislative 'history'-some of it postenactment-to bolster their respective readings of the Act. We find it contradictory and inconclusive. But that very absence of evidence of a clear indication that the legislature deliberately meant 'possess' to convey some special meaning when it used the word in Sections 101 and 103 serves, in our judgment, to confirm that such usage was not intended.

> "The staff also contends that distinguishing owners from possessors would have the effect of hampering the Commission's regulatory authority. Public Service disputes this. It argues that the Commission could always exercise its authority effectively if indirectly by actions against licensees. We are not so certain. But we need not decide that the staff is right in its arguments to be able to agree with it that significant areas of the Commission's regulatory authority could be placed under a cloud by accepting Public Service's reading of the Act. As we have been offered no good reason why we should give the remedial and regulatory provisions of the Atomic Energy Act the crabbed interpretation the company suggests, for this reason, too, we decline to do so."

Marble Hill, 7 NRC 179, at 199-201 (footnotes omitted).

The Marble Hill factual situation is clearly distinguishable from the situation before the Commission, as discussed in detail below. The further question as to whether the broad language of the Appeal Board in Marble Hill should nevertheless reach the proposed financing transaction is also discussed in detail below. We conclude that Marble Hill is distinguisable and that its language should have no effect on the Application or the Commission's response to the relief requested therein.

The Appeal Board in Marble Hill provided the invitation for this discussion with its statement that, "[a]s we have been offered no good reason why we should give the remedial and regulatory provisions of the Atomic Energy Act the crabbed interpretation the company suggests, for this reason, too, we decline to do so."

It is submitted that very good reasons exist for the result sought herein, in contrast to the Appeal Board's perception of the arguments in Marble Hill.

In Marble Hill, Public Service Company of Indiana (hereinafter Indiana) argued that a co-owner/co-participant (Wabash Valley Power Association, a not-for-profit corporation)(hereinafter Wabash Valley) did not require a license under the Atomic Energy Act. The heart of the Appeal Board's rationale for its conclusion that a co-owner such as Wabash Valley required a license was as follows:

> " . . . it takes little to appreciate that an owner can influence the actions and attitudes of its tenants and agents without technically being in 'possession' of the premises. . . ."

This conclusion applies forcefully in Marble Hill and is quite analogous to the existing PVNGS situation in which PNM is a co-owner/co-participant with the operating agent and other utilities. PNM is licensed to "possess" PVNGS Unit 1 under Facility Operating License NPF-41, for the precise reasons enumerated in Marble Hill. PNM does exercise influence over the actions and attitudes of its operating agent, APS, through its participation on the various committees which are established in the ANPP Participation Agreement (See Appendix D to the Memorandum). As we will show, by virtue of the provisions of

the ANPP Participation Agreement (See Appendix E to the Memorandum), PNM will be and remain the sole ANPP Participant in respect of all PNM's interests in and to PVNGS Unit 1. PNM is not and will not be the agent of the lessors or equity investors; PNM is the sole principal in respect of its 10.2% interest in PVNGS Unit 1.

Review of the Marble Hill Nuclear Plant Purchase and Ownership Participation Agreement (a copy of which is attached hereto as **Exhibit A**)(the **Marble Hill Participation Agreement**) and the Marble Hill Nuclear Plant Operation and Maintenance Agreement (a copy of which is attached hereto as **Exhibit B**)(the **Marble Hill O&M Agreement**) shows that the arrangement with respect to **co-owners/co-participants** is similar to the PVNGS arrangement. As with PVNGS, an administrative Committee is established (Article XII of the Marble Hill Participation Agreement), with substantial responsibilities relating to administrative and technical matters. Wabash Valley has a member on such committee. In addition, Wabash Valley has, under Section 13.12 of the Marble Hill Participation Agreement, "the right of access to the Project at all reasonable times in order to oversee the program of design, construction, maintenance and operation of the Project." (Emphasis added.) Furthermore, under Section 4.7 of the Marble Hill Participation Agreement, Wabash Valley has the right to audit "all costs incurred, including but not limited to, the design,

engineering, procurement, insuring, licensing, construction, operation, fuel, maintenance, shutdown or disposal of the Project."

The Administrative Committee structure appears both in the Marble Hill Participation Agreement, as indicated, and in the Marble Hill O&M Agreement (Article X). The right to audit appears in both agreements as well, including in Section 3.3 of the Marble Hill O&M Agreement.

The most critical point to note is that Wabash Valley's participation in Marble Hill is clearly distinguishable from the situation of the Owner Trustee and the equity investors in the proposed financing transaction, in that:

- Wabash Valley is entitled to its ownership percentage (17%) of the power and energy from the plant (Section 2.1 of the Marble Hill Participation Agreement); the Owner Trustee and equity investors will not receive power and energy, all of which will go to the lessee, PNM; and

- Wabash Valley is obligated to pay its percentage share of all costs of the project, without limitation; the Owner Trustee and equity investors in a sale and leaseback financing have no obligation during the lease term with respect to such costs once the initial investment has been made.

The level of involvement by Wabash Valley in all aspects of Marble Hill pursuant to the Marble Hill project agreements is indicated in a 1982 Official Statement issued in connection with a

Wabash Valley pollution control revenue bond financing. Excerpts from such Official Statement are attached hereto as Exhibit D. On page 18 of the Official Statement, the following description appears:

> "The Marble Hill participation agreement between PSI and WVPA provides for an administrative committee composed of one representative from PSI and one representative from WVPA. WVPA has used this committee since the beginning of WVPA's participation in the project to monitor all aspects of the project including construction progress. Since the work stoppage, WVPA has taken steps to increase its monitoring of the construction progress at Marble Hill. Edward P. Martin, General Manager of WVPA, regularly attends the monthly on-site briefings for PSI's top management. At WVPA's request, PSI now provides a detailed monthly report of the construction progress at Marble Hill. In January 1981, the WVPA Board of Directors authorized substantial work by Southern Engineering Company of Georgia to review the construction progress at Marble Hill."

Such rights held by Wabash Valley must account for the conclusion of the Appeal Board in Marble Hill, and the subsequent involvement by Wabash Valley confirms that conclusion. Indeed, if the question before the Commission now were whether or not PNM is required to be a licensee, the obvious and almost indisputable response would be that PNM must be a licensee. However, PNM is a licensee and, as proposed, would continue as the licensee after consummation of the proposed financing. The issue as to whether the Owner Trustee or any equity investor, involved with PVNGS Unit 1 by

virtue only of the financing transaction, must be a licensee, requires a different result.

As described in the Application and Memorandum, neither the Owner Trustee nor any equity investor will become a "Participant" in PVNGS during the term of the lease. Thus, such parties will have no position on the Administrative Committee or any other PVNGS committee and, in every sense, will be truly "passive investors." In contrast to the non-passive position of Wabash Valley with respect to its participation in the Marble Hill plant, a lessor in a sale and leaseback transaction has only what one might call "bare" title to the asset. All other rights and obligations--dominion and control, use, operation, financial responsibility, regulatory compliance and disposition of power and energy--remain with the Lessee by virtue of such transaction. The lack of influence by the investors over the lessee was discussed in detail in a letter dated October 14, 1985, from Mudge Rose Guthrie Alexander & Ferdon to the NRC Staff in connection with an issue raised as to possible foreign ownership of an equity investor. A copy of such letter and the enclosures thereto are attached hereto for convenient reference as **Exhibit E.** As was stated in that letter:

1. The equity investors in the proposed financing will have no ownership interest in the licensee, PNM. This fact was important for the Commission in distinguishing the General

Electric Company and Southwest Energy Associates proceeding (the "SEFOR" case) from the determination requested on behalf of the Hoffman-LaRoche subsidiary (see page 9 of the memorandum attached to Chairman Palladino's letter, hereinafter the "Staff Memorandum"). The involvement of the equity investors does not, and cannot, affect the ultimate ownership or control of the PVNGS participants.

2. The equity investors will have (i) no ability to restrict or inhibit compliance with the security, safety or other regulations of the Commission, (ii) no capacity to control the use of nuclear fuel or to dispose of special nuclear material generated by PVNGS Unit 1, (iii) no voice in the financial affairs of PNM or any other Unit 1 licensee and (iv) no right to use or direct the use of the physical facilities constituting Unit 1. (See page 101 of the SEFOR case). Under the express terms of the lease, for example, the lessor will warrant to PNM that, so long as PNM is in compliance with the documents comprising the sale and leaseback transaction, PNM's use of, and rights with respect to, Unit 1 shall not be interrupted by the lessor or any person claiming under or through the lessor.

3. Arizona Public Service Company ("APS") has primary responsibility for ensuring that the business and activities of Unit 1 are conducted at all times in a manner consistent with the protection of the common defense and security of the United States. Pursuant to the terms of the ANPP Participation Agreement which governs Unit 1, APS, PNM and the other Unit 1 licensees, under the ANPP Participation Agreement which governs Unit 1, together exercise sole and exclusive authority in respect of the conduct of the business and activities of Unit 1.... Simply stated, the equity investors will be without power or authority, legal or otherwise, to direct any matters in this regard, unless and until a default under the financing occurs and the investors seek to exercise remedies. At that point, however, the exercise of remedies will be subject to compliance with the regulations of the Commission, including 10 C.F.R. § 50.33(d)(3)(iii) and § 50.38.

It is not necessary for health and safety reasons for the Commission to extend its licensing reach to passive investors. PNM

will remain, unchanged, as the licensee entitled to possession of the facility, consistent with its continuation, unchanged, as the Participant under the ANPP Participation Agreement. The Commission can readily conclude that its exercise of licensing jurisdiction over the party that is the "Participant" is all that is required, similar to the conclusion reached by the Federal Energy Regulatory Commission (FERC) in a similar financing involving PNM. The order in the FERC case is quoted in the Memorandum filed with the Application, and a copy is attached as Exhibit B to the Memorandum. The treatment of sale and leaseback financing transactions in the Federal Power Act and other statutory schemes is discussed in a memorandum dated October 9, 1985, which was provided earlier to the staff. A copy is attached hereto for ready reference as Exhibit F hereto. The results under such other statutory schemes are, by analogy, favorable to the result sought by PNM here.

The PVNGS Participants, including PNM, share many of the same concerns as the Commission. The ANPP Participation Agreement which governs the ownership and operation of PVNGS (see Appendices D and E to the Memorandum) provides that it is only utilities who share the benefits--power taken in kind--and the burdens--full financial responsibility and risk of loss--that are entitled to sit on the various committees which, together with APS as operating agent, have total control of and responsibility for PVNGS Units 1, 2 and 3. The

equity investors have no vote, no right to oversee construction or operation and no right to audit PVNGS. The equity investors have in advance of their participation thus signed away each and every possible source of influence over PNM and PVNGS Unit 1, except the attenuated influence of any creditor to whom one owes money. The PVNGS Participants will accept nothing less from any investor with title to Unit 1 assets and nothing more.

The Commission's decision on this issue is critical to sale and leaseback financings because such financings are simply that--financings. The investors are simply making an investment and have no intention or desire to be involved in a power plant's operation or functioning. Concomitantly, they have no desire or willingness to accept the risks of the plant's operation and functioning, again because they are simply investors. Thus, if the Commission takes action to impose more than an investor's risk on such investors, the result will be absolutely to make such financing arrangements unavailable to nuclear plants.

A further argument can be made for the result sought here, consistent with Marble Hill. As pointed out in the Memorandum (page 18), the Atomic Energy Act and the Commission's regulations recognize that the licensee's right to possession of a utilization facility may be founded on a leasehold interest rather than a fee title interest. Implicit in that conclusion, combined with the Marble Hill decision,

is the conclusion that the "ownership" interest may also be posited as the ownership of a leasehold interest. Viewed in this way, both possession and ownership are combined in the licensed lessee in a leveraged lease transaction, and the result sought here is quite consistent with Marble Hill.

The reference to "tenant" (although apparently superfluous to the decision there) in Marble Hill does not require a different result. The lessor in a sale/leaseback financing transaction simply does not exercise control over the tenant (lessee). This is in stark contrast to the influence exercised by Wabash Valley over the Marble Hill operating agent and by PNM over the PVNGS operating agent through the respective committee structures.

The Marble Hill decision also alludes, at page 201, to Public Service Company of New Hampshire (Seabrook Station, Units 1 and 2), 7 NRC 1 (1978) (hereinafter Seabrook), for the proposition that "[a]ny transfer of ownership would require commission approval" and "the filing of an application for a license amendment..." A review of the Seabrook case reveals, however, that the issue under discussion was a potential conventional transfer of ownership, with the subsequent utility owners to be subject to review as to financial qualification. As has been extensively discussed, the sale and leaseback transaction differs dramatically from a conventional sale in that the lessee retains ownership of a leasehold estate,

possession of the facility and financial responsibility. Furthermore, Section 184 of the Atomic Energy Act, which is specifically referenced in Seabrook (footnote 31 at 22) refers to transfer of a license or "transfer of control" of a license. There is simply no transfer of the license or transfer of control of a license involved in the proposed sale/leaseback financing.

It is also helpful to consider the Beaver Valley No. 2 financing by Ohio Edison Company, which was the subject of correspondence from Mudge Rose Guthrie Alexander & Ferdon to the NRC Staff dated October 4, 1985 (a copy of such correspondence and enclosures thereto is attached for convenient reference as Exhibit G hereto). Although the ultimate determination was made by the NRC staff on the basis of the creditor regulations, 10 C.F.R. § 50.81, it is clear from the correspondence that there was a transfer of legal title to the construction trustee without a license transfer or amendment.

IV. NO HEALTH AND SAFETY ISSUES ARE INVOLVED

As discussed in the Application and Memorandum, the financial responsibility for operation and maintenance of the leased portion of PVNGS Unit 1 will continue, under the "net lease" concept, with the lessee, PNM. Once the investors have paid the purchase price (which is a very substantial investment in this case) under the sale/leaseback structure, they are not obligated to pay for such costs during the term of the lease. Thus, the licensee (PNM) which

was financially responsible for health and safety related matters prior to the transaction will continue to be responsible for such matters after the transaction, resulting in no impact at all on health and safety. In fact, to the extent that the transaction helps in making the utility financially stronger, the health and safety issues may be positively affected by the transaction.

With respect to health and safety issues upon termination of the lease, the Commission will have PNM as the licensee for the term of the operating license, absent later action by the Commission to amend or transfer the license. Thus, the Commission will have the necessary opportunity at the appropriate time to consider such issues with respect to any later transferee.

Under Section 70.20 of the Commission's regulations (10 C.F.R. § 70.20), a general license is issued to "receive title to and own special nuclear material without regard to quantity".[1] It is on the basis of this general license that numerous utilities have engaged in sale and leaseback financings of nuclear fuel for power plants. Section 70.20 also confirms that the general license so

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1. Section 70.20 is responsive to Section 57 of the Atomic Energy Act (42 U.S.C. § 2077(a)) which expressly states no person, without a general or specific license from the Commission, may "own" or "receive...title to" special nuclear material. Section 101 of the Act (42 U.S.C. § 2131) uses neither of these concepts in addressing licensing requirements for utilization facilities. Both Section 57 and Section 101, however, prohibit "possession" without a license.

conferred does not confer authority to, among other things, "possess" or "use" special nuclear material.

Implicit in Section 70.20 is a finding by the Commission that mere "ownership" of or "receipt of title" to special nuclear material can never entail a threat to the public health and safety, otherwise Section 70.20 would have provided some additional safeguards. The Commission is being asked to do nothing greater here: the Commission is being asked to conclude that where a party has only ownership of and bare legal title to a utilization facility and actual possession resides in a licensee, then the public health and safety cannot be an issue.

V. APPROVAL IS IN THE PUBLIC INTEREST

The sale and leaseback financing transaction is a widely used financing mechanism, which has been used for a variety of equipment financings, including financing of nuclear fuel and undivided interests in coal-fired power plants. Heretofore, it has not been used in connection with the financing of a nuclear plant. The Application and Memorandum discuss the benefits of the proposed transaction to PNM and its ratepayers. Appendix F to the Memorandum shows in graphic form the expected savings to ratepayers under the proposed sale/leaseback scenario. These benefits have been quantified in the case filed by PNM with the New Mexico Public Service Commission, and, as shown on Exhibit C hereto, those benefits

are approximately $400 million over the life of the lease transaction. Making such benefits available to ratepayers in this era of "rate shock" from nuclear power plants coming on line is clearly in the public interest.

VI. EXPEDITIOUS RELIEF IS NECESSARY

The Application (pp. 7-8) details the schedule for the proposed financing transaction. As indicated therein, the viability of the proposed financing transaction hinges upon its consummation on or before December 31, 1985. The need to close prior to year end results from the fact that the proposed equity investors have priced their investment in the transaction based on closing prior to the end of their tax years. Allowing the closing to slip into 1986 results in a substantial decrease in the potential benefits to be derived from the proposed transaction. Indeed, the benefits may be so decreased as to make the transaction no longer economically viable. In addition, the viability of the transaction depends on certain tax results, which are rendered uncertain, in the judgment of PNM and the equity investors, as a result of pending tax legislation which could very well change the rules effective December 31, 1985. Because of the magnitude of the savings involved, it is prudent to proceed to close the transaction before year end.

These factors result in the need to close the transaction this year, if the substantial benefits to the ratepayers are to be

realized. It was indicated in the Application that a final order was needed by November 20, 1985, to allow for the transaction to close on December 18, 1985. This was based on the assumption that the Director of Nuclear Reactor Regulation would issue an order on that date (pursuant to 10 C.F.R. § 2.206), which would become the final action of the Commission 25 days later in the absence of Commission action. If the Commission itself acts, then the 25 days period would be irrelevant, so there would be some additional leeway for Commission action.

VII. CONCLUSION

As is demonstrated herein and in the other materials which have been filed with the Commission:

- The public health and safety is not compromised and may, in fact, be further enhanced by financially strong utilities;
- The proposed transaction is simply a refinancing transaction;
- There will be substantial benefits to the public as a result of such transaction;
- There is no legal or rational basis for denying the availability of this form of financing to the nuclear power industry, when it is available and used by a wide variety or other industries and, indeed, for coal-fired power plants;
- Other agencies have recognized sale and leaseback financings for what they truly are, financings, and have enabled such transactions

to go forward, through reasonable interpretations of their enabling statutes and regulations; and

° The Commission itself has recognized by granting a general license to own and hold title to nuclear fuel that passive ownership combined with the active responsibility of an actual possessor of the fuel is sufficient to allow the passive owner to remain outside the licensing requirements of the Atomic Energy Act and the regulatory jurisdiction of the Commission.

In light of the foregoing, PNM respectfully and urgently submits that the relief requested in the Application is justified and appropriate and that the same be granted in a timely manner.

Respectfully submitted,

PUBLIC SERVICE COMPANY OF NEW MEXICO

by its attorneys

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Joe D. Clayton, Esq.
Timothy Michael Toy, Esq.

by _____
Joe D. Clayton, Esq.

Dated: November 4, 1985

STATE OF NEW YORK)
) ss.
COUNTY OF NEW YORK)

I, Joe D. Clayton, represent that I am a member of the firm of Mudge Rose Guthrie Alexander & Ferdon, that I have read the foregoing brief and know its contents, and that to the best of my knowledge and belief, the statements made therein are true.

Joe D. Clayton

Sworn to before me this
fourth day of November,
1985.

Anna Marie Napoli
Notary Public

My Commission Expires:
ANNA MARIE NAPOLI
Notary Public, State of New York
No. 24-4759288
Qualified in Kings County
Certificate filed in New York County
Commission expires March 30, 1986


NOTARY
PUBLIC

UNITED STATES OF AMERICA

NUCLEAR REGULATORY COMMISSION

In the matter of	:	
ARIZONA PUBLIC SERVICE COMPANY, et al.,	:	DOCKET NO. STN 50-528
(Palo Verde Nuclear Generating Station, Unit 1)	:	

EXHIBIT A

BRIEF OF PUBLIC SERVICE COMPANY OF NEW MEXICO IN SUPPORT OF THE APPLICATION IN RESPECT OF A SALE AND LEASEBACK FINANCING TRANSACTION BY PUBLIC SERVICE COMPANY OF NEW MEXICO

Marble Hill Nuclear Plant
Purchase and Ownership Agreement
by and between Public Service Company
of Indiana, Inc., and Wabash Valley Power
Association, Inc., dated February 1, 1978

X

MARBLE HILL NUCLEAR PLANT

PURCHASE AND OWNERSHIP

PARTICIPATION AGREEMENT

By and Between

PUBLIC SERVICE COMPANY OF INDIANA, INC.
1000 East Main Street
Plainfield, Indiana 46168

and

WABASH VALLEY POWER ASSOCIATION, INC.
700 North High School Road
Suite 105
Indianapolis, Indiana 46224

February 1, 1978

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MARBLE HILL NUCLEAR PLANT

PURCHASE AND OWNERSHIP

PARTICIPATION AGREEMENT

This agreement made and entered into this 1st day of February, 1978, by and between Public Service Company of Indiana, Inc., (hereinafter referred to as "PSI") and Wabash Valley Power Association, Inc. (hereinafter referred to as "WVPA"), corporations organized under the laws of the State of Indiana;

WHEREAS, PSI is a corporation organized and existing pursuant to the General Corporation Act of the State of Indiana with its principal place of business being 1000 East Main Street, Plainfield, Indiana 46168; and

WHEREAS, PSI is engaged in the business of generating, transmitting and distributing electric power and energy in the State of Indiana; and

WHEREAS, WVPA is a corporation organized and existing pursuant to the Indiana Not-For-Profit Corporation Act with its principal place of business being 700 North High School Road, Suite 105, MW, Inc., Indianapolis, Indiana 46224; and

WHEREAS, WVPA is a power supplier for its member systems and is authorized and has for its purposes, the right to engage in the business of generating and transmitting electric power and energy for its member systems; and

WHEREAS, PSI proposes to build a nuclear generating plant (commonly referred to as the "Marble Hill Nuclear Generating Station" and referred to herein as the "Project") consisting of two (2) nuclear fuel electric 1130 MWe, nominally rated, generating units, the first of which is scheduled for commercial operation September 15, 1982, and the second January 1, 1984 (Such units being hereinafter collectively referred to as the "Initial Units"); and

WHEREAS, WVPA desires to participate with PSI as a joint owner in the construction and operation of such units and related facilities in proportion to the shares hereinafter set forth; and

WHEREAS, the Parties desire to establish the terms and conditions of their undivided ownership interest as tenants in common of such units and the respective obligations and benefits of the Parties; and

WHEREAS, PSI and WVPA will on or before closing execute, in addition to this Agreement, the "Marble Hill Nuclear Plant Operation and Maintenance Agreement," the "Transmission Participation Agreement," the "Transmission Facilities Operation and Maintenance Agreement" and the "Interconnection Agreement";

NOW, THEREFORE, in consideration of the mutual covenants and agreements of the Parties, each to the other, it is agreed as follows:

ARTICLE I

DEFINITIONS

The following terms, when used herein, shall have the following meanings:

1.1	Administrative Committee	The Administrative Committee shall be the Committee established pursuant to Article XII hereof.
1.2	Average System Costs	Average System Costs shall be based upon a fully distributed cost of service study.
1.3	Dates of Commercial Operation for Marble Hill Unit No. 1 and Unit No. 2	The Dates of Commercial Operation for Marble Hill Unit No. 1 and Unit No. 2 of the Project shall be the dates established by PSI when the respective Units are deemed to be a source of power. The Date of Commercial Operation is normally established by PSI to be the day following successful completion of performance tests deemed advisable by PSI and at the hour designated by PSI. PSI shall make such determination of the Date of Commercial Operation of each unit in the same manner as is customary for PSI in determining the Date of Commercial Operation of any other generating units of PSI.
1.4	Dates of Scheduled Commercial Operation	The Dates of Scheduled Commercial Operation for Unit No. 1 and Unit No. 2 shall be September 15, 1982, and January 1, 1984, respectively, or as such dates may be extended by intervening events of Force Majeure.
1.5	FERC	FERC shall be the Federal Energy Regulatory Commission or its successor agency.
1.6	Interconnection Agreement	Interconnection Agreement shall be the Interconnection Agreement by and between PSI and WVPA executed on or before closing.
1.7	Marble Hill Operation and Maintenance Agreement	Marble Hill Operation and Maintenance Agreement shall be the Marble Hill Nuclear Plant Operation and Maintenance Agreement by and between PSI and WVPA executed on or before closing.
1.8	NRC	NRC shall be the Nuclear Regulatory Commission or its successor agency.
1.9	Parties	Parties shall be PSI and WVPA.

1.10 Party

Party shall be PSI or WVPA.

1.11 Prime Rate

Prime Rate shall be the minimum commercial lending rate existing from time to time at Chase Manhattan Bank (NA), New York, or such other bank as may be selected by the Administrative Committee.

1.12 Project

The Project referred to in the recitals of this Agreement is hereinafter referred to as the "Project" and shall consist of:

1.12.1 The land described in the form of deed attached hereto as Exhibit "A", together with all such additional land, or rights therein, as may hereafter be acquired and which is necessary for the operation of the Project, all of such land being collectively referred to as "Land".

1.12.2 The Initial Units, and all such other facilities, inventories of fuel, materials and supplies, the construction or installation or acquisition of which is necessary for the operation and maintenance of the Initial Units, whether such acquisition, construction or installation takes place before or after the Dates of Commercial Operation of the Initial Units.

1.12.3 Facilities used for both Initial Units (Common Facilities) including, but not limited to, common discharge facilities, microwave facilities, emergency station service line on the Land, breakwaters, control facilities, fire system, shop facilities, substation equipment, laboratory equipment, waste processing systems, office facilities, access roads and rights-of-way, railroad and railroad right-of-way, sanitary facilities and shall also mean all those facilities and property which will be required for the operation of the Initial Units and which PSI shall designate from time to time by notice to WVPA and which facilities and property shall be identified on the books and records of PSI maintained for this Project.

1.12.4 Exclusions from "Project" – There shall be excluded from the Project the following:

1.12.4.a Nuclear Information Center – The structures and associated facilities designated as the Nuclear Information Center located within the City of Madison, Indiana, and any subsequent improvements of or additions to said structures and facilities are not included in the Project and shall be owned and financed solely by PSI.

1.12.4.b Easement and Transmission Facilities – Easements required and transmission facilities, including switchyard facilities, constructed and maintained for the transmission of electric energy. The switchyard facilities shall be considered as part of the Joint Transmission System.

1.13 Project Maximum Capability

Project Maximum Capability is the total Project capability based upon the NRC authorized rated nuclear core thermal output adjusted for plant efficiency and station use.

1.14 Transmission Facilities Operation and Maintenance Agreement

The Transmission Facilities Operation and Maintenance Agreement shall be the Transmission Facilities Operation and Maintenance Agreement by and between PSI and WVPA executed on or before closing.

1.15 Transmission Participation Agreement

Transmission Participation Agreement shall be the Transmission Participation Agreement by and between PSI and WVPA executed on or before closing.

1.16 Uniform System of Accounts

Uniform System of Accounts shall be the Federal Energy Regulatory Commission's "Uniform System of Accounts Prescribed for Public Utilities and Licensees (Class A and Class B)", in effect as of the date of this Agreement, or as such Uniform System of Accounts may be modified from time to time. References in this Agreement to any specific account number shall mean the account number in effect as of the effective date of this Agreement or as the same may be modified or amended.

ARTICLE II

OWNERSHIP PARTICIPATION AND INTEREST

2.1 Ownership – The Parties shall own the Project as tenants in common, PSI owning an eighty-three (83%) percent undivided interest and WVPA a seventeen (17%) percent undivided interest.

PSI and WVPA shall be entitled to eighty-three (83%) percent and seventeen (17%) percent, respectively, of the capability and hourly net energy output of the Project and any other benefits derived from their respective ownership interests in the Project.

2.2 Additional Generating Units and Related Facilities – PSI shall have the right to install and operate on the Land additional nonnuclear fueled generating units, together with necessary appurtenances thereto, and any such additional generating unit or units and related appurtenances shall be so installed and operated as to not unreasonably interfere with or burden the facilities of the Project herein or the ultimate full utilization of the Land. In the event PSI desires to install and operate additional facilities, as hereinabove described, which would require the relocation of previously installed facilities of the Project, it shall have the right to call for or accomplish such relocation, as the case may be, if PSI bears the cost thereof.

PSI shall also have the right to use any facilities installed as a part of this Project, and to modify such facilities for use, in connection with the installation and operation of such additional facilities, provided that such use does not unreasonably interfere with or burden this Project. In the event any such interference with the operation of this Project results in a direct and adverse cost to WVPA or shall result in a reduced output to WVPA, then WVPA shall be properly compensated by receiving at its option a higher percentage of the output of the Project or by PSI paying to WVPA a lump sum settlement. Such higher percentage of output or lump sum settlement shall be determined by negotiation between the Parties or by arbitration.

The construction by PSI of additional generating units shall result in an appropriate adjustment to WVPA for its share of the costs of the Land and common facilities associated with this Project. Such adjustment shall be determined by negotiation between the Parties or by arbitration.

The additional unit or units and related appurtenances described in this Section 2.2 concern only additional non-nuclear facilities and the addition of a nuclear unit or units and related appurtenances shall be governed by Article V, infra.

2.3 Facilities Solely Owned – All facilities and property installed for the sole use of a Party (unless a Party shall have exercised its rights under Article V hereof with respect to additional nuclear-fueled facilities to be installed by PSI) shall be and remain the sole property of the Party installing the same, and shall, where practicable, be identified by distinctive marking as the property of such Party and shall be considered tangible property other than real estate.

No such sole use facilities or property shall be constructed or installed on the Land without the consent of PSI.

The construction by either Party of sole use facilities shall result in an appropriate adjustment to the other Party's share of the cost of the Land and such adjustment shall be determined by negotiation between the Parties or by arbitration.

No provision of this Agreement shall give to the other Party, or anyone claiming by, through or under such other Party, any right, title or interest in such solely owned facilities and property. The undivided interests of the Parties in the Project, excepting the Land and common facilities, shall not be changed by the installation of any facilities, property or improvements pursuant to this Section 2.3.

ARTICLE III

PSI'S RESPONSIBILITY FOR CONSTRUCTION

3.1. General – PSI shall have sole responsibility for, and is fully authorized to act for the Parties with respect to the design, engineering, licensing, procurement, installation, and other matters relating to the construction of the Project and for any modifications or additions made to the Project. PSI will use its reasonably best efforts in accordance with prudent utility practice to fulfill its obligations pursuant to this Article III; provided, however, PSI shall not be liable for delays or accidents caused by Force Majeure.

In furtherance of its responsibility, PSI may select and employ design engineering services and may select and employ a construction-engineering firm and such other engineering and consulting firms as it deems desirable.

During design and construction of the Project or of any modifications or additions thereto, PSI shall provide WVPA with such information relating thereto as it may reasonably request, and in any event, during such period, PSI shall furnish reports, at least quarterly, to WVPA concerning the progress of design and construction.

If licensing, construction, or modification of, or addition to the Project results in an increase in the capital expenditures, fixed operation, maintenance or fuel costs of the Project, the costs of such modifications or additions or such increase in the capital expenditures, fixed operation, maintenance or fuel costs shall be shared by the Parties in proportion to their respective ownership interests.

PSI shall inform WVPA of significant decisions with respect to construction, modifications or additions to the Project and provide WVPA, upon request, the opportunity to consult with PSI concerning the same; provided, however, that such right of consultation shall not be allowed to delay work on the Project or to affect the sole discretion of PSI in making such decisions.

3.2 Regulatory Licenses and Approvals – PSI shall proceed on behalf of the Parties to use its best efforts to obtain all licenses, approvals or permits from NRC, ERDA and other

regulatory agencies as required for construction of the Project, and WVPA shall cooperate as reasonably requested in such process. Each Party shall exercise due diligence to secure any approvals required to be obtained by it from any regulatory agencies, and each Party shall cooperate and assist each other in obtaining the required regulatory approvals so that the purposes of this Agreement may be fulfilled.

3.3 Execution of Contracts – Contracts covering design, engineering, procurement, construction and installation services for the Project may be executed solely by PSI on behalf of the Parties, or at PSI's request, shall be executed by each Party.

Each contract entered into on behalf of the Parties shall provide for several, but not joint, liability in proportion to the Parties' respective ownership percentages, and may, in addition, provide for separate invoicing to the other Party in accordance with its ownership percentages. Whether or not a contract is entered into in the name of another Party, each Party shall be severally, but not jointly, responsible for its ownership percentage of all amounts which are payable under or with respect to such contract.

To the extent feasible and desirable, no contract contemplated by this Section 3.3 shall provide for retention by a supplier of title to major components purchased for the Project.

Contracts entered into by PSI either before or after the execution of this Agreement shall inure to the benefit of both Parties in accordance with their respective ownership interests.

3.4 Risk of Loss – The Parties shall share the risk of loss in accordance with each Party's ownership interest. Losses, damages or expenses resulting from the willful misconduct of the management of a Party shall not be shared by the Parties, but shall be the sole responsibility of the Party causing such losses, damages or expenses. In addition, PSI shall hold WVPA harmless for losses incurred as a result of PSI's failure to perform its responsibilities pursuant to Section 3.1.

No warranties, expressed or implied, shall be extended to WVPA by PSI for the design or performance of the Project, unless such warranties are expressly or impliedly contained in contracts PSI has entered into with third parties; provided, however, that this provision shall not be construed to relieve PSI of its obligations to exercise its best efforts and in accordance with prudent utility practice in the design, construction, operation and performance of the Project.

PSI shall have the sole responsibility to settle or defend all claims or disputes involving contractors, subcontractors, materialmen, governmental organizations, or any third party as a result of the design and construction of this Project.

PSI shall defend any claims, demands or causes of action instituted against either of the Parties, individually or collectively, by any contractor, subcontractor, materialmen, laborers or governmental organizations as a result of design and construction of the Project.

Nothing contained in this Section 3.4 shall prevent PSI from requesting WVPA's participation and assistance in the settlement of all defense of claims, demands or causes of action instituted against either of the Parties.

3.5 Claims of Parties – PSI shall have the responsibility to prosecute any claims or demands the Parties may have against any person, firm, partnership, corporation, governmental agency or any third party (including but not limited to warranties, expressed or implied, and project fitness) relating to the Project, for and on behalf of both the Parties. PSI shall notify WVPA of any such claim at the earliest opportunity after knowledge thereof.

In the event that PSI should fail or refuse to prosecute such claim, nothing herein contained shall prevent WVPA from prosecuting such claim or demand in its own name, for the benefit of both Parties. Costs and monies recovered are to be shared by the Parties in proportion to their ownership interests.

ARTICLE IV

FINANCIAL OBLIGATIONS OF PARTIES

4.1 Sharing of Costs – Except as otherwise provided in Article III or Section 4.2 herein or the Marble Hill Operation and Maintenance Agreement, each Party shall be responsible for its ownership share of all costs, obligations and liabilities incurred by PSI in carrying out the provisions of Article III, including all direct and properly allocated indirect costs of operation, maintenance, fuel, and shutdown to be provided for in the Marble Hill Operation and Maintenance Agreement and of demolition, decontamination or the disposal of the Project provided for elsewhere in this Agreement.

The Parties shall assume responsibility for capital costs (exclusive of allowance for funds used during construction), the costs of inventories of fuel, materials and supplies (exclusive of any interest capitalized on fuel) and all other costs, obligations and liabilities incurred in connection with the Project, and not otherwise expressly provided for, in proportion to the Parties' respective ownership interests as set forth in Section 2.1, or as may be modified by Article V, or Article VII, or any other provision of this Agreement applicable thereto, or by mutual agreement of the Parties.

4.2 Allowance For Funds Used During Construction (AFUDC) – No Party shall be called upon to reimburse the other for AFUDC on the Project and on fuel, except as the same has been incurred prior to closing or as hereinafter provided in Section 7.1, Section 7.2 and Article X.

4.3 Taxes and Indirect Costs – With respect to each Party's ownership interest in the Project, the cost of capital, including an allowance for funds used during construction, depreciation or amortization and all Federal, State and Local net or gross income or gross receipt, real estate, personal property, business, occupation, sales and excise taxes, all other and like taxes of each Party incurred prior to or following the closing, shall be borne directly by such Party, if applicable to such Party, and in proportion to the Party's ownership interest in the Project, if applicable to the Project.

Each Party shall pay its proportionate share of any new taxes imposed by any Local, State or Federal law or regulation in connection with a Party's ownership interest in the Project.

4.4 Purchase and Payment

4.4.1 Payment at Closing – At the time of closing, WVPA shall pay to PSI seventeen (17%) percent of the aggregate of all costs of construction of this Project paid by PSI prior to the closing.

4.4.2 AFUDC – The allowance for funds used during construction (AFUDC) charged to the Project on PSI's books and records prior to closing shall be included in costs of construction.

4.4.3 Costs of Construction – Costs of construction, as used herein, shall mean all costs paid by PSI for the Project with respect to the planning, design, licensing, acquisition, construction and completion of the Project, including, without limitation, the cost of Land, access roads and rights-of-way, railroad and railroad right-of-way, the nuclear steam supply system, the steam turbine generator and building housing the same; auxiliary buildings and equipment; pollution control facilities; the generator transformer; generator breaker(s); control and communications facilities; purchasing attributable to the Project; construction equipment, material, supplies, labor and overheads; Uranium concentrate; nuclear fuel procurement, enrichment, fabrication, storage and transportation; requirements for fuel, and the properly allocated portion of PSI's administrative and general costs; AFUDC, as provided for in Section 4.4.2 (accumulated through the end of the month preceding the date of the closing); taxes (as provided for in Section 4.3) and insurance.

4.4.4 Costs of Construction – Costs of construction shall also include, without limitation, the following:

FERC Account Number	Description
920	Administrative and General Salaries
921	Office Supplies and Expenses
923	Outside Services Employed
924	Property Insurance
925	Injuries and Damages
926	Employee Pensions and Benefits
928	Regulatory Commission Expenses
929	Duplicate Charges – Credit
930	Miscellaneous General Expenses
931	Rents
932	Maintenance of General Plant
408	Payroll Taxes Paid

184	Selected Stores Allocation
184	Selected Transportation Allocation
920 - 932	Selected Engineering Department Expenses
920 - 932	Selected Production Department Expenses
390 - 398	Charges for Selected General Plant

PSI shall account for and allocate to WVPA such costs in accordance with sound, acceptable, and prudent accounting practices and in a manner consistent with existing accounting practices of PSI.

4.4.5 Costs of Construction Prior to Closing – PSI has furnished WVPA a statement reflecting the costs of construction attributable to the Project to the month preceding closing date, together with a certificate stating that PSI maintains its books and records in conformity with the Uniform System of Accounts, and that the above amount is as recorded in the books and records of PSI as of the above date and is attributable to the Project. PSI shall furnish at closing an estimate of the total cost of construction of the Project.

4.4.6 Costs of Construction After the Closing – Subsequent to the closing, all costs of construction paid by PSI for the construction of the Project, excluding AFUDC, shall be shared by PSI and WVPA in proportion to their respective ownership interests.

4.4.7 Payments–After the Closing – Payments for the expenditures contemplated in Section 4.4.6 shall be payable as follows:

4.4.7.a On the fifteenth (15th) day of each month, PSI shall furnish WVPA an invoice showing the current estimate of the costs of construction required for the following month.

4.4.7.b These invoices shall be paid by WVPA so that PSI will receive the funds by the tenth (10th) day of the following month, or the first business day thereafter, if the payment date falls on other than a business day.

4.4.7.c Adjustments for the difference between the estimated costs of construction and actual costs of construction paid by PSI shall be made on the invoice submitted for the third (3rd) month following the month in which the payment of the actual costs of construction occurs. For example, the invoice submitted for the month of March on February 15 would include an adjustment for actual costs of construction incurred in December.

4.4.7.d All payments shall be made payable, in immediately available funds, to Public Service Company of Indiana, Inc., Attention: Treasurer, 1000 East Main Street, Plainfield, Indiana 46168.

4.4.7.e Any payment not made on or before the due date set forth in Section 4.4.7.b shall constitute an act of default under Article X herein.

4.4.8 Estimates – Quarterly estimates of payments required for the costs of construction during the remainder of the construction period shall be furnished by PSI to WVPA in reasonable detail for its use in anticipating its financing requirements. In addition, estimates for the immediate calendar year shall be prepared for monthly intervals and submitted to WVPA prior to the beginning of such calendar year. All estimates shall be subject to revision periodically to reflect more current information, which revision shall be submitted to WVPA.

4.5 Invoice Challenge – The Parties hereto shall not have the right to challenge any bill, invoice or statement, other than those containing estimates, rendered by PSI, invoke arbitration of the same or bring any court or administrative action of any kind questioning the propriety of the same after a period of twenty-four (24) months from the date of rendering.

In the case of a bill, invoice or statement containing estimates, the Parties hereto shall not have the right to challenge its accuracy after a period of twenty-four (24) months from the date of its adjustment to reflect the actual amounts due.

4.6 Payment and Settlement of Costs – PSI shall be responsible for making arrangements for payment and the payment of all costs and obligations incurred in connection with the Project whether by PSI or, pursuant to PSI's request, by WVPA.

4.7 Right to Audit – At least annually, or more frequently as agreed by the Parties, PSI shall account to WVPA, in such form as the latter reasonably requests, for all costs incurred, including but not limited to, the design, engineering, procurement, insuring, licensing, construction, operation, fuel, maintenance, shutdown or disposal of the Project. Any reasonable requests by WVPA for an additional accounting in a different form required by it shall be granted at the expense of WVPA. WVPA may, at any time and at its own expense, cause the accuracy of any costs charged to it to be verified by an examination of the accounts and records kept by PSI with respect to the Project by employees, representatives or accountants of WVPA or any independent certified public accountant retained by WVPA and PSI shall make such accounts and records available at its offices at reasonable times for such purpose.

4.8 Retirement–Units of Property – PSI shall have sole authority in decisions regarding retirement from service of Units of Property. Cost of removal and salvage credits, if any, shall be shared by the Parties in proportion to their respective ownership interests.

4.9 Lien on Project – PSI and WVPA shall not permit any liens or encumbrances to remain unsatisfied against their respective ownership interests in the Project, other than mortgages or indentures or deeds of trust, liens for taxes and assessments not yet delinquent and liens for labor and material not yet perfected.

ARTICLE V

ADDITIONAL UNITS, ADDITIONAL INTEREST, TRANSFER, AND RIGHT OF FIRST REFUSAL

5.1 Right of Other Parties to Participate–Notice – In the event that PSI determines to install and operate on the Land, one or more additional nuclear-fueled generating units, it shall notify WVPA of the proposed type, planned net electric generating capacity, estimated cost, and such financial and other data as may be required for WVPA to assess the feasibility of participation in the unit or units to be installed.

WVPA shall have the right of first refusal to participate in the additional unit or units. If, within one hundred eighty (180) days of the date of such notice, WVPA herein determines that it desires to participate in the additional unit or units, it shall so advise PSI by written notice.

Participation by WVPA as an owner in the additional unit or units may be as follows:

5.1.1 WVPA shall have the right to participate in the additional unit or units up to the same percentage as its ownership percentage in the Project.

5.1.2 In the event PSI determines to install, construct and operate an additional nuclear-fueled unit or units upon the Land, the "Statement of Bulk Power Supply Policies," together with the conditions set forth therein, which Statement has previously been submitted to the Department of Justice, United States of America, to become a provision of an Operating License to be issued by the NRC shall be binding upon the Parties. The percentage of ownership to which WVPA would be entitled pursuant to Section 5.1.1 above may be reduced proportionately and consistent with the conditions contained in said Operating License.

5.1.3 In the event that a Third Party or Neighboring Entity, as set forth in the "Statement of Bulk Power Supply Policies," does not notify PSI of its intent to participate, then and in that event, WVPA may participate to the extent set forth in Section 5.1.1.

5.2 Right of Party to Transfer Ownership Interest – Except as otherwise provided in Sections 5.6 and 5.8 hereof or as may be requested by a Trustee under a Party's Indenture or Deed of Trust, or by a mortgagee under a Party's mortgage, should either Party desire to assign, transfer, convey, or sell all or a portion of its right, title, or interest (hereinafter called "Transfer Interest") to any person, company, corporation, governmental agency, or any other Party (hereinafter referred to as "Third Party"), the remaining Party shall have the right of first refusal to purchase for itself such Transfer Interest.

5.3 Notice of Party's Intent to Transfer Ownership Interest – Either Party to this Agreement desiring to assign, transfer, convey, or sell a Transfer Interest, except under Sections 5.6 and 5.8, shall give written notice to the remaining Party of its desire to transfer a

Transfer Interest. The notice shall contain the terms and conditions of the proposed transfer, which terms and conditions shall be at least as favorable to the remaining Party as the terms and conditions would be to a Third Party.

5.4 Notice of Intent to Purchase – After receipt of notice of intent to transfer given by a Party to this Agreement, the remaining Party shall have one hundred eighty (180) days to give the selling Party notice of its intent to purchase all of the Transfer Interest.

5.5 Obligations of Parties – When an intent to purchase a Transfer Interest has been indicated by notice to the selling Party, then the Parties shall respectively incur the following obligations:

5.5.1 The Party desiring to transfer and the Party desiring to purchase the Transfer Interest shall be obligated to proceed in good faith and with diligence to obtain all required authorizations and approvals to transfer.

5.5.2 The Party desiring to transfer shall be obligated to obtain a release of any liens imposed by or through it upon any part of the Transfer Interest and to transfer said Party's interest at the earliest practicable date thereafter.

5.6 Assignment – Either Party shall have the right to assign at any time its respective right, title, and interest in the Project, without the need for prior written consent of the other Party and without complying with Sections 5.1 through 5.5, inclusive, to the following:

5.6.1 Any private corporation acquiring all or a substantial portion of all of the property of such Party.

5.6.2 Any private corporation into which, or with which, such Party may be merged or consolidated.

5.6.3 A wholly or partially owned subsidiary or a parent or an entity owned or controlled by an entity which also owns or controls the assignor.

5.6.4 A Trustee or Mortgagee taking as a result of foreclosure of a security interest conveyed or created under a mortgage, an indenture or deed of trust.

5.6.5 Any governmental or political subdivision financing pollution control facilities.

5.7 Third Parties – In the event a third party should acquire an ownership interest in the Project or additional units, then such third party or third parties must be an entity or entities which operate electric generating or distribution systems or both and which are lawfully empowered to plan, finance, own and maintain an undivided ownership interest in the Project, and any offer by a third party to purchase and any acceptance thereof, shall be governed by the following:

5.7.1 Each third party must demonstrate to the satisfaction of the Parties herein its financial and operational ability to carry out its obligations.

5.7.2 Each third party shall execute a supplement to this Agreement, pursuant to which the third party shall become a Party to this Agreement and share ownership in the Project with PSI and WVPA.

5.7.3 Each Party shall, prior to its execution of the supplement to this Agreement referred to in Section 5.7.2, deliver to PSI and WVPA an opinion of counsel satisfactory to the Parties stating that such third party is lawfully organized and legally empowered to engage in the business of generating, transmitting, and distributing electric energy as a public utility under the laws of the State of Indiana; is subject to regulation of the Public Service Commission of Indiana; is legally empowered to execute such supplement to this Agreement and to meet all of its obligations hereunder, and that such supplement and this Agreement do not violate any contract, ordinance, resolution, or other legal obligation or limitation of such third party.

5.8 PSI's Right to Sell – Notwithstanding any other provisions of this Article V, PSI shall have the right to sell, convey, transfer or assign, within two (2) years after closing, up to an aggregate eighteen (18%) percent undivided ownership interest in the Project to any other third party without the consent of WVPA; provided, however, that such third party shall comply with the provisions of this Article V and execute all documents required herein.

ARTICLE VI

WAIVER OF PARTITION AND COVENANTS RUNNING WITH THE LAND

6.1 Right of Partition – The Parties, for themselves and successors and assigns, for the useful life of this Project, waive the right to seek partition of this Project. Each of the Parties agrees that it will not resort to any action at law or in equity to partition the Project and to that extent waives the benefits of all laws that may now or hereafter authorize such partition.

6.2 Covenants Running with the Land – Except as otherwise provided in Section 6.4 hereof, all of the respective covenants and obligations of the Parties set forth and contained in this Agreement, the Marble Hill Operation and Maintenance Agreement and the Interconnection Agreement shall also bind and shall be and become the respective obligations of:

6.2.1 All mortgagees, trustees and secured Parties under all present and future mortgages, indentures and deeds of trust, and security agreements which are or may become a lien upon any of the properties of the Parties.

6.2.2 All receivers, assignees for the benefit of creditors, bankruptcy trustees and referees.

6.2.3 All other persons, firms, partnerships or corporations, assignees or successors in interest claiming through or under either of the Parties or foregoing.

Such covenants and obligations shall run with the Parties' rights, titles and interests in the Project. It is the specific intention of this provision that all of such covenants and obligations contained in this Agreement, the Marble Hill Operation and Maintenance Agreement and the Interconnection Agreement shall be binding upon any Party which acquires any of the rights, titles or interests of the Parties in the Project and that each such Party shall be obligated to use such rights, titles and interests for the purpose of discharging such covenants and obligations.

6.3 Relationship of Parties – The duties, obligations and liabilities of the Parties are intended to be several and not joint or collective, and nothing herein contained shall ever be construed to create an association, trust or partnership or impose a trust or partnership duty, obligation or liability on or with regard to the Parties. The Parties shall be individually responsible for their own obligations as herein provided. Neither of the Parties shall have the right or power to bind the other except as expressly provided in this Agreement.

6.4 Duration of Limitations – Each provision of this Article VI shall be effective to the full extent permitted by law, now or hereafter applicable, until abandonment of the use on the Land (whether or not as part of the Project) of all of the property, real or personal, now or hereafter a part of the Project, for the generation and transmission of electric energy. If the rule against perpetuities or any other rule of law limits the time during which any provision of this Article VI or any other provision in this Agreement shall be effective, then each such provision shall continue to be effective for the life of the Project or until all financial obligations directly assignable to the Project are satisfied, whichever occurs last.

ARTICLE VII

CESSATION OF CONSTRUCTION, TERMINATION, SUSPENSION OR SHUTDOWN

7.1 PSI's Sole Benefit Delay – If for the sole benefit of PSI, PSI does not place Unit No. 1 or Unit No. 2 into commercial operation by such unit's Date of Scheduled Commercial Operation, then WVPA shall have the option to purchase capacity and energy then expected for WVPA from the Project from PSI. PSI shall make available such capacity and energy from the Dates of Scheduled Commercial Operation. The rate for such sale shall be based upon PSI's Average System Costs, excluding PSI's investment in the Project.

In the event of PSI's cessation of construction of the Project, PSI shall provide WVPA a written statement of the estimated total cost of placing the Project into commercial operation; said estimate shall be as of the date of cessation of construction.

If, and when, construction is resumed, WVPA shall have the option to make monthly payments in an aggregate amount not to exceed seventeen (17%) percent of the costs of construction of the Project, as estimated on the date of cessation, less WVPA's additional

AFUDC due to the delay of completion of the Project and receive seventeen (17%) percent ownership interest in the Project or to make monthly payments of seventeen (17%) percent of the actual costs of construction of the Project and receive a percentage ownership interest in the Project equal to the sum of WVPA's total payments and WVPA's additional AFUDC due to the delay of the Project divided by the total cost of construction of the Project as estimated on the date of cessation.

WVPA shall give PSI notice of the option selected.

WVPA shall have the option to obligate PSI to purchase WVPA's interest in the Project five (5) years from the date PSI makes the decision unilaterally to delay the Dates of Scheduled Commercial Operation for Marble Hill Unit No. 1 and Unit No. 2.

7.2 PSI's Inability to Finance – In the event of financial inability on the part of PSI to complete construction of Unit No. 1 or Unit No. 2 by the Dates of Scheduled Commercial Operation, PSI shall promptly notify WVPA in writing of such condition.

Upon receipt of such written notification, WVPA shall have the right, subject to all governmental and regulatory approval, to invest additional funds in sufficient amount to complete the Project.

In the event WVPA invests the additional funds to complete the Project, because of PSI's inability to so do, the ownership interest of WVPA shall be adjusted from the percentage specified in Section 2.1 hereof so that its percentage ownership in the Project shall be equal to its proportionate share of the investment in the total cost of the Project.

In the event WVPA invests additional funds, pursuant to the immediately preceding paragraph, PSI shall purchase from WVPA, at WVPA's option, the additional capacity and energy entitlement to which WVPA became entitled because of its additional investment and PSI shall pay for such output a rate, reflecting the average of all costs of PSI and WVPA applicable to the output of the Project, including without limitation, cost of capital, income taxes as appropriate, depreciation expenses, operation and maintenance expenses, insurance, taxes (other than income), nuclear fuel, and administrative and general expenses. All such expenses shall be based upon the actual cost of operating the Project.

WVPA shall have the option to retain such additional ownership interest, resulting from additional funds invested, by giving written notice to PSI not later than the fifth (5th) anniversary of the Dates of Commercial Operation of Unit No. 2. If such written notice is not given within the five (5) year period, PSI shall purchase from WVPA the portion of its ownership interest which resulted from the additional investment made by WVPA under this section, at a price equal to the total original cost, including AFUDC, of WVPA's additional ownership interest in the Project less related accumulated depreciation to the date of such transfer of ownership, determined in accordance with the rates of depreciation approved for WVPA by the Public Service Commission of Indiana. Upon receipt of such payment, WVPA shall execute such instruments as may be necessary to perfect the ownership interest to which PSI is entitled hereunder.

7.3 Additional Ownership Interest – In the event WVPA obtains an additional ownership interest in the Project pursuant to Section 7.1 or Section 7.2, then PSI shall execute any and all documents necessary to convey and transfer to WVPA the additional interest, free and clear of liens and encumbrances.

7.4 Force Majeure – PSI and WVPA shall not be liable or responsible for any delay in the performance of, or the ability to perform, any duties or obligations required by this Agreement in the event of a Force Majeure occurrence. The obligation to pay money in a timely manner is absolute and shall not be subject to the Force Majeure provisions. Force Majeure as used herein shall mean, without limitation, the following: Acts of God, strikes, lockouts or other industrial disturbances; acts of public enemies; orders, or absence of necessary orders, or absence of necessary orders and permits of any kind which have been properly applied for, from the Government of the United States, or from the State of Indiana, or any of their departments, agencies or officials, or from any civil or military authority pertaining to the Project; extraordinary delay in transportation; unforeseen soil conditions; equipment, material, supplies, labor or machinery shortages; epidemics; landslides; lightning; earthquakes; fires; hurricanes; tornadoes; storms; floods; washouts; drought; arrest; war; civil disturbances; explosions; breakage or accident to machinery, transmission lines, pipes or canals; partial or entire failure of utilities; breach of contract by any supplier, contractor, subcontractor, laborer or materialman; sabotage; injunction; blight; famine; blockade; quarantine; or any other similar cause or event not reasonably within the control of PSI.

PSI and/or WVPA suffering an occurrence of Force Majeure shall remedy with all reasonable dispatch the cause or causes preventing PSI and/or WVPA from carrying out their agreements; provided, that the settlement of strikes, lockouts and other industrial disturbances shall be entirely within the discretion of PSI, and it shall not be required to make settlement of strikes, lockouts and other industrial disturbances by acceding to the demands of the opposing party or parties when such course is unfavorable in the judgment of PSI.

7.5 Permanent Shutdown – If at any time the Project is permanently shutdown, WVPA shall, if requested by PSI, convey and transfer to PSI all its right, title and interest in the Project, free and clear of any mortgages, attachments or other encumbrances, granted, made or imposed during the period of WVPA's ownership thereof upon payment to WVPA by PSI of a fair and reasonable price not to exceed WVPA's original cost depreciated (assuming a life expectancy of 30 years or such other depreciation rate as may be approved by any regulatory authority having jurisdiction thereof) of the Project less any amounts received by WVPA under Article IX, plus the fair and reasonable residual value. Such conveyance or transfer shall be subject to receipt of any necessary regulatory approvals and mortgage indenture releases, which the Parties agree to use their best efforts to obtain.

If PSI does not exercise its option under this Section 7.5, then the permanent shutdown shall be deemed a termination under Section 7.6.

7.6 Termination – This Agreement shall terminate upon the issuance of a lawful and enforceable order from the Government of the United States or from the State of Indiana or any of the departments, agencies, or officials thereof, terminating the operation of the Project,

or upon a determination by the Parties that the Project has reached the end of its usefulness for the generation of electric energy. In either event, PSI shall retain such powers hereunder as shall be necessary for the disposition of all tangible and intangible property excluding the Land constituting a part of the Project and shall dispose of such property as promptly as practicable. Upon such disposition, PSI shall distribute the proceeds thereof to the Parties in accordance with their respective ownership interests hereunder; provided, however, that if any determinable portion of the proceeds is received from property the cost of which was borne by the Parties disproportionately to their interests, the distribution of proceeds of such portion shall reflect the proportions in which the costs of the property in question were borne and, provided, further, that termination of this Agreement shall not discharge any Party of any obligation it owes to the other as a result of any transaction occurring prior to such termination. Any costs related to the Project, which continue beyond permanent shutdown of the Project, shall be borne by the Parties in proportion to their respective ownership interests.

PSI shall have the right to purchase WVPA's interest in the Land at a price to be mutually agreed upon by the Parties and in the absence of such mutual agreement at a price to be determined by arbitration.

ARTICLE VIII

DESTRUCTION

8.1 Destruction –

8.1.1 If the Project or any portion thereof should be damaged or destroyed to the extent that the cost of repairs or reconstruction is estimated to be more than the aggregate amount of insurance coverage (including any deductible), then upon pursuant to Article IX hereof, then PSI shall cause such repairs or reconstruction to be made so that the Project shall be restored to substantially the same general condition, character or use as existed prior to such damage or destruction, and PSI and WVPA shall share the cost not reimbursed by insurance in proportion to their ownership interests.

8.1.2 If the Project or any portion thereof should be damaged or destroyed to the extent that the cost of rrepairs or reconstruction is estimated to be more than the aggregate amount of insurance coverage (including any deductible), then upon agreement of PSI and WVPA, PSI shall cause such repairs or reconstruction to be accomplished. The Parties shall share such costs proportionately to their ownership interests; provided, however, that should WVPA not agree to restore or reconstruct the damaged portion of this Project and PSI desires to, then the ownership interest of WVPA in the Project shall revert to PSI for a price to be mutually agreed upon by the Parties and in the event of failure to mutually agree, then the price shall be determined by arbitration.

ARTICLE IX

INSURANCE

9.1 Obligation to Maintain Insurance – PSI shall maintain for the benefit of PSI and WVPA, as their ownership interests shall appear, as costs of construction or operation and maintenance costs as appropriate, such insurance as is usually carried by utilities constructing and operating nuclear generating facilities, but not less than will satisfy the requirements of the Atomic Energy Act of 1954, as amended from time to time, and the regulations thereunder and in such amounts as will conform to prudent utility practice. PSI will provide WVPA a schedule of such insurance policies. WVPA shall be named insured on such insurance policies. PSI shall furnish WVPA an endorsement to such insurance policy evidencing WVPA as an additional insured.

9.2 Allocation of Insurance Proceeds – It is recognized that the amount of physical damage insurance applicable to nuclear generating units at the generating site may be subject to an overall site limitation. In this event, insurance proceeds received on account of damage shall be allocated in the following manner:

9.2.1 In the event that any unit or units or the Land or any property thereon ("Insured Facility or Facilities") sustains damages that are less than the insurance policy limit of coverage, all proceeds payable on account of such damages shall be wholly allocated to the damaged Insured Facility or Facilities as damages may have been sustained thereby.

9.2.2 If damages to Insured Facilities are greater than the insurance policy limit of coverage, then proceeds payable on account of such damages shall be allocated to each damaged Insured Facility in the proportion that the total investment (excluding AFUDC) in such damaged Insured Facility bears to the total investment, excluding AFUDC, in all damaged Insured Facilities; provided, however, that if the insurance proceeds so allocated to any damaged Insured Facility are in excess of damages sustained by such Insured Facility then the difference shall be reallocated on the basis of proportionate total investment (excluding AFUDC) in the remaining damaged Insured Facility or Facilities.

9.2.3 All such reallocations shall be repeated until all insurance proceeds have been allocated or reallocated in the manner described in Section 9.2.2 above.

9.3 Authority to Settle – PSI shall have authority on behalf of the Parties to settle any loss covered by any policy of insurance.

9.4 Mutual Insurance Companies – In the event that PSI determines that all or a portion of such property insurance shall be provided through a mutual insurance company organized by electric utilities or otherwise, it may require, following consultation with WVPA, and subject to the receipt of necessary regulatory approvals, WVPA, to become a member of such company, if WVPA may lawfully do so.

9.5 Allocation of Premiums – If policies obtained pursuant to this Article cover more than one unit of the Project, the premium and any refunds of premium, shall be allocated among all such units on the basis of gross investments in the respective units unless the policies

divide such premiums among the units, in which case premiums will be allocated as indicated on the policies.

9.6 Additional Insurance and Assessments – Any additional assessments made or required liabilities imposed by any Act of Congress relating to a nuclear incident or additional insurance coverage required of a licensee under the Atomic Energy Act of 1954, as amended from time to time shall be borne by the Parties as their ownership interests shall appear.

ARTICLE X

DEFAULT

10.1 Other Party May Cure Defaults – If a default occurs at any time, the nondefaulting Party shall give the defaulting Party notice to remedy the default. In addition, the nondefaulting Party may, but shall not be required to, undertake the remedy of such default and give notice of its intent to do so to the defaulting Party.

The defaulting Party in order to remedy its default shall be obligated to reimburse the nondefaulting Party for (a) the money paid, (b) the reasonable equivalent in money for services or property provided, (c) the other costs reasonably incurred by the nondefaulting Party in attempting to remedy such default, and, (d) interest on the unpaid balance of such total at a rate of two (2%) percent per annum above the Prime Rate, and until so paid, the amount due the nondefaulting Party shall constitute a lien upon the defaulting Party's title to its ownership interest in the Project. The failure of the defaulting Party to reimburse the nondefaulting Party as required by the preceding sentence shall, in itself, constitute a default under this Agreement.

10.2 Default Prior to Dates of Commercial Operation of the Project by WVPA – If prior to the Dates of Commercial Operation of the Project, WVPA defaults and said default continues for a period of One Hundred Eighty (180) days after notice to remedy the default as provided in Section 10.2, or until WVPA admits in writing its inability to remedy the default, whichever occurs first, then PSI shall have available the following remedies on account of such default:

10.2.1 The option, after giving notice to WVPA at any time while the default continues, but in any event, before the Dates of Commercial Operation of the Project, to cancel construction of the Project and to liquidate the same thereafter, with reasonable diligence, for the benefit of the Parties. In such an event, each of the Parties shall diligently seek all authorizations, approvals, consents and commitments for release of liens, from regulatory authorities, lenders or others, and shall execute and deliver such agreements, deeds and other instruments and documents, and do all such other things as reasonably may be required to carry out such cancellation and liquidation.

10.2.2 The option, exercisable by giving notice to WVPA at any time, while the default continues, within sixty (60) days after the expiration of the aforementioned One Hundred Eighty (180) day period to acquire WVPA's ownership in the Project, for a

purchase price equal to the total of WVPA's investment therein, including a reasonable allowance for funds used during construction, upon the following additional terms and conditions:

10.2.2.a Promptly, after the notice of exercise of the option is given to WVPA, PSI and WVPA shall each diligently seek all authorizations, approvals, consents, and commitments for the release of liens from regulatory authorities, lenders and others, as may be required for consummation of the transaction, and will notify each other when the same have been obtained.

When all such authorizations, approvals, consents and commitments have been obtained, the transaction shall be closed within ninety (90) days thereafter.

10.2.2.b At such closing, PSI shall pay to WVPA the purchase price provided for in Section 10.2.2. In exchange for such payment, WVPA shall convey and transfer its ownership in the Project to PSI free and clear of liens and encumbrances, other than liens attributable to unpaid costs of construction and liens for real estate taxes which are not delinquent.

At the closing, PSI shall assume the executory portions of WVPA's obligations under this Agreement, other agreements applicable to the Project and other agreements entered into by or on behalf of the Parties for, or in connection with the design, construction, operation and maintenance of the Project.

10.3 Default Prior to Dates of Commercial Operation of the Project by PSI – If prior to the Dates of Commercial Operation of the Project, PSI defaults, then WVPA shall give PSI notice to remedy said default, and in the event PSI does not remedy the default within ninety (90) days after notice to remedy the default, or PSI admits in writing its inability to remedy the default, whichever occurs first, then WVPA shall have available the following remedies on account of such default:

10.3.1 WVPA shall have the option, exercisable by giving notice to PSI at any time while the default occurs, but in any event before the Dates of Commercial Operation of the Project, to cancel construction of the Project and to liquidate the same thereafter with reasonable diligence, for the benefit of the Parties; and in such event, the Parties shall diligently seek all authorizations, approvals, consents and commitments for release of liens, from regulatory authorities, lenders and others, and shall execute and deliver such agreements, deeds and other instruments and documents, and do all such other things as reasonably may be required to carry out such cancellation and liquidation.

10.3.2 In the event WVPA does not exercise the option set forth in Section 10.3.1, then WVPA may exercise any and all options, rights and privileges set forth in Sections 7.1 and 7.2 hereof. Notice of the option selected by WVPA shall be given PSI within thirty (30) days after expiration of the aforesaid ninety (90) day period.

10.3.3 If WVPA does not exercise the options, rights and privileges set forth in Sections 10.3.1 and 10.3.2 above, then WVPA shall have the option to acquire PSI's ownership interest in the Project for a purchase price equal to the total of PSI's investment therein, including a reasonable allowance for funds used during construction upon the following additional terms and conditions:

10.3.3.a Promptly, after notice of exercise of option given to PSI, the Parties shall diligently seek all authorizations, approvals, consents and commitments for release of liens from regulatory authorities, lenders and others, as may be required for consummation of the transaction. When all such authorizations, approvals, consents and commitments have been obtained, a closing date within ninety (90) days thereafter shall be fixed.

10.3.3.b At such closing, WVPA shall pay such purchase price. In exchange for such payment, PSI shall convey and transfer to WVPA its ownership in the Project, free and clear of liens and encumbrances, other than liens attributable to unpaid costs of construction, and liens for real estate taxes which are not delinquent as to payment. At such closing, WVPA shall assume PSI's executory obligations under this Agreement except as provided in Section 10.3.3.c. WVPA shall also assume PSI's obligation in other agreements applicable to this Project.

10.3.3.c In addition, WVPA may appoint PSI its agent to complete all of its obligations provided in this Agreement for the design, engineering and construction and placing into operation the Project, and WVPA shall reimburse PSI for all direct and indirect costs for the completion of construction and placing the Project into Commercial Operation.

ARTICLE XI

ARBITRATION

11.1 Controversies Subject to Arbitration – Any controversy, claim, counterclaim or dispute arising out of or relating to this Agreement, shall be submitted to arbitration upon the request of either Party in the manner provided herein.

11.2 Notice of Arbitration – The Party submitting a request for arbitration shall serve notice upon the other Party setting forth in detail the matter or matters to be arbitrated, including a statement of the facts or circumstances giving rise to the controversy, claim, counterclaim or dispute involved, and the Party's contention with respect to the correct resolution thereof.

11.3 Selection of Arbitrators – Within thirty (30) days following the date of the written notice provided for in Section 11.2, the Parties, acting through their representatives on the Administrative Committee, shall meet for the purpose of selecting arbitrators. Each Party shall select one (1) arbitrator. The two (2) arbitrators so selected shall meet within twenty (20) days following their appointment and shall mutually agree upon the selection of an additional arbitrator.

If the arbitrators selected by the Parties shall fail or refuse to mutually agree upon one (1) additional arbitrator within such twenty (20) day period, then and in that event, the Parties, or either of them, shall within the next ten (10) days thereafter request the American Arbitration Association (or any similar organization if the American Arbitration Association does not then exist) to appoint the one (1) additional arbitrator.

11.4 Conduct of Arbitration – The arbitration shall be conducted in accordance wih the rules of the American Arbitration Association then in effect, to the full extent that such rules are not inconsistent with Indiana Law.

11.5 Scope of Arbitration – The Parties agree that any arbitrator serving hereunder shall give full force and effect to all of the provisions of this Agreement.

11.6 Evidence – The arbitrators shall hear evidence submitted by the respective Parties and may call for additional information, which additional information shall be furnished by the Party or Parties having such information.

11.7 Findings and Award – The findings and award of arbitration shall be binding and conclusive with respect to the matter or matters submitted to arbitration, except as the same may be modified, corrected or vacated in accordance with the Indiana statutes then in effect governing arbitration.

It is understood by and between the Parties that the findings and award of arbitration is subject to appeal in accordance with the Indiana statutes.

In the event that a Party to the dispute should, subsequent to the hearing, discover new evidence and such evidence could not have previously been discovered in the exercise of due diligence, then the arbitrators may reopen the hearing for the admission of such newly discovered evidence in the same manner as matters are reopened pursuant to the Trial Rules of the State of Indiana.

11.8 Enforcement – The agreement to arbitrate shall be specifically enforceable and the findings and award of the arbitrators shall be final and binding upon the Parties to the extent provided by applicable statutes governing arbitration. In addition, the award may be enforced pursuant to said statutes governing arbitration.

11.9 Costs – The costs of arbitration shall be shared equally by the Parties.

ARTICLE XII

ADMINISTRATIVE COMMITTEE

12.1 Administrative Committee – It is recognized that from time to time various administrative and technical matters may arise in connection with the terms and conditions of this Agreement, the Marble Hill Operation and Maintenance Agreement, the Transmission Participation Agreement, the Transmission Facilities Operation and Maintenance Agreement

and the Interconnection Agreement, as well as other ancillary agreements, which will require the cooperation and consultation of the Parties and the interchange of information. As a means of providing for such consultation and interchange, an Administrative Committee is hereby established.

12.2 Membership – The Administrative Committee shall have two (2) members. Within sixty (60) days following the execution of this Agreement, each Party shall designate its representatives by written notice thereof to the other Party. Thereafter, each Party shall notify the other Party promptly of any change of its representative on the Administrative Committee. The Chairman of the Administrative Committee shall be alternated between the representatives of the Parties. The Chairman shall be responsible for calling meetings and establishing the agenda. Each Party shall designate an alternate who shall be authorized to act on behalf of a Party and in the absence of a Party representative.

12.3 Meetings – The Administrative Committee shall meet quarterly on a date and at a location to be announced by the Chairman thirty (30) days prior to said meeting. Such other meetings as are reasonably required may be called by the Chairman of said Committee with at least ten (10) days written notice of the time and place of said meeting. Members of the Administrative Committee may be accompanied at said meeting by consultants or other representatives of a Party.

12.4 Functions – The functions of the Administrative Committee shall include, but not be limited to, the following:

12.4.1 Provide liaison between the Parties at management level and exchange information with respect to significant matters, such as licensing, design, construction, operation and maintenance of the Project.

12.4.2 Appoint subcommittees, the members of which need not be members of the Administrative Committee, as necessary to perform detailed work and conduct studies regarding matters requiring investigation.

12.4.3 Review and discuss significant matters arising under this Agreement, the Marble Hill Operation and Maintenance Agreement, the Transmission Participation Agreement, the Transmission Facilities Operation and Maintenance Agreement, the Interconnection Agreement and other ancillary agreements.

12.4.4 Review and discuss disputes arising under this Agreement, the Marble Hill Operation and Maintenance Agreement, the Transmission Participation Agreement, the Transmission Facilities Operation and Maintenance Agreement, the Interconnection Agreement and other ancillary agreements.

12.4.5 Provide liaison between the Parties with respect to the financial and accounting aspects of the Project.

12.4.6 Perform such other functions and duties as may be necessary and beneficial to the Parties.

12.5 Records – The Administrative Committee shall keep minutes of its meetings and all other records necessary and beneficial to the Parties.

12.6 Expenses – Each Party shall be responsible for the expenses of its representative and other persons attending such meetings on behalf of a Party. All other expenses incurred in connection with the performance by the Administrative Committee of its duties and functions shall be allocated and paid as determined by the Committee.

ARTICLE XIII

MISCELLANEOUS

13.1 Governing Law – The validity, interpretation and performance of this Agreement and each of its provisions shall be governed by the law of the State of Indiana.

13.2 Notice – Any notice, request, consent or other communication permitted or required by this Agreement shall be given to the Parties in writing and shall be addressed to:

Hugh A. Barker
President
Public Service Company of Indiana, Inc.
1000 East Main Street
Plainfield, Indiana 46168

Edward P. Martin
General Manager
Wabash Valley Power Association, Inc.
700 North High School Road
Suite 105, MW, Inc.
Indianapolis, Indiana 46224

unless a different officer or address shall have been designated by either of the Parties by written notice.

13.3 Historic Places – PSI shall not, without approval in writing by the Administrator of the Rural Electrification Administration, ("Administrator"), use any portion of the funds made available to PSI by WVPA pursuant to the terms of this Agreement to construct any facilities which will involve any district, site, building, structure or object which is included in the National Register of Historic Places, maintained by the Secretary of the Interior pursuant to the Historic Sites Act of 1935 and the National Historic Preservation Act.

13.4 Public Officials Not to Benefit – No member of or delegate to the Congress of the United States shall be admitted to any share or part of this Agreement or to benefit herefrom other than the receiving of electric service on the same terms accorded other consumers.

13.5 Equal Opportunity Clause – During the performance of those parts of this

Agreement relating to the construction by PSI of the Project or any additions, betterments or improvements thereto, PSI agrees as follows:

13.5.1 PSI will not discriminate against any employee or applicant for employment because of race, color, religion, sex or national origin. PSI will take affirmative action to ensure that applicants are employed, and that employees are treated during employment without regard to their race, color, religion, sex or national origin. Such action shall include, but not be limited to the following: employment, upgrading, demotion or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. PSI agrees to post in conspicuous places, available to employees and applicants for employment, notices setting forth the provisions of this nondiscrimination clause.

13.5.2 PSI will, in all solicitations or advertisements for employees placed by or on behalf of PSI, state that all qualified applicants will receive consideration for employment without regard to race, color, religion, sex or national origin.

13.5.3 PSI will send to each labor union or representative of workers with which it has a collective bargaining agreement or other contract or understanding, a notice, to be provided, advising the said labor union or workers' representative, of PSI's commitments under this section, and shall post copies of the notice in conspicuous places available to employees and applicants for employment.

13.5.4 PSI will comply with all provisions of Executive Order No. 11246 of September 24, 1965, and of the rules, regulations and relevant orders of the Secretary of Labor.

13.5.5 PSI will furnish all information and reports required by Executive Order 11246 of September 24, 1965, and by the rules, regulations and orders of the Secretary of Labor, or pursuant thereto, and will permit access to his books, records and accounts by the administering agency and the Secretary of Labor for purposes of investigation to ascertain compliance with such rules, regulations and orders.

13.5.6 In the event of PSI's noncompliance with the nondiscrimination clauses of the Agreement or with any of the said rules, regulations or orders, this Agreement may be cancelled, terminated or suspended in whole or in part, and PSI may be declared ineligible for further Government contracts or federally assisted construction contracts in accordance with procedures authorized in Executive Order No. 11246 of September 24, 1965, and such other sanctions may be imposed and remedies invoked as provided in said Executive Order or by rule, regulation or order of the Secretary of Labor, or as otherwise provided by law.

13.5.7 PSI will include the words "During the performance of this contract, the contractor agrees as follows:" followed by the provisions of Section 13.5.1 through 13.5.6 of this Article in every subcontract or purchase order unless exempted by rules,

regulations or orders of the Secretary of Labor issued pursuant to Section 204 of Executive Order 11246 of September 24, 1965, so that such provisions will be binding upon each subcontractor or vendor. PSI will take such action with respect to any subcontract or purchase order as the administering agency may direct as a means of enforcing such provisions, including sanctions for noncompliance; provided, however, that in the event PSI becomes involved in, or is threatened with, litigation by a subcontractor or vendor as a result of such direction by the administering agency, PSI may request the United States to enter into such litigation to protect the interests of the United States.

13.5.8 For purposes of this Agreement, the term "this Agreement" as used in Section 13.5.6 hereof shall mean those parts of this Agreement relating to the construction by PSI of the Project, or any additions, betterments or improvements thereto.

Nothing in this Section 13.5 shall be construed to prevent PSI from resisting, challenging, contesting or appealing any law, statute, regulation or decision of any federal, state or local government or agency which PSI claims to be invalid, unlawful, arbitrary or capricious.

13.6 Nonsegregated Facilities – PSI certifies that it does not maintain or provide for its employees any segregated facilities at any of its establishments, and that it does not permit its employees to perform their services at any location, under its control, where segregated facilities are maintained.

PSI certifies further that it will not maintain or provide for its employees any segregated facilities at any of its establishments, and that it will not permit its employees to perform their services at any location, under its control, where segregated facilities are maintained. PSI agrees that a breach of this certification is a violation of the Equal Opportunity Clause in this Agreement. As used in this certification, the term "segregated facilities" means any waiting rooms, work areas, restrooms and washrooms, restaurants, and other eating areas, time clocks, locker rooms and other storage or dressing areas, parking lots, drinking fountains, recreation or entertainment areas, transportation, and housing facilities provided for employees which are segregated by explicit directive or are in fact segregated on the basis of race, color, religion, or national origin, because of habit, local custom, or otherwise. PSI agrees that (except where it has obtained identical certifications from proposed subcontractors for specific time periods) it will obtain identical certifications from proposed subcontractors prior to the award of subcontracts exceeding $10,000 which are not exempt from the provisions of the Equal Opportunity Clause, and that it will retain such certifications in its files.

Nothing in this Section 13.6 shall be construed to prevent PSI from resisting, challenging, contesting or appealing any law, statute, regulation or decision of any federal, state or local government or agency which PSI claims to be invalid, unlawful, arbitrary or capricious.

13.7 Flood Insurance Act – Notwithstanding anything contained in this Agreement,

WVPA shall be under no obligation to advance any funds to PSI to finance the construction or acquisition of any building in any area identified by the Secretary of Housing and Urban Development, pursuant to the Flood Disaster Protection Act of 1973 (the "Flood Insurance Act") or any rules, regulations or orders issued to implement the Flood Insurance Act ("Rules"), as an area having special flood hazards, or to finance any facilities or materials to be located in any such building, or in any building owned or occupied by PSI or WVPA and with all other conditions of this Agreement which are precedent to such advances, and the Administrator has determined, that (i) the community in which such area is located is then participating in the National Flood Insurance Program, as required by the Flood Insurance Act and any Rules and (ii) the Parties have obtained flood insurance coverage with respect to such building and contents as may then be required pursuant to the Flood Insurance Act and any Rules.

13.8 Environment – PSI shall comply with (1) all applicable water and air pollution control standards and other environmental requirements imposed by federal or state statutes or regulations and (2) the provisions of any Environmental Impact Statement issued by the United States of America with respect to the Project pursuant to the National Environmental Policy Act; and PSI shall take all steps necessary to assure that all actions undertaken pursuant to this Agreement by PSI or others are in compliance with the provisions of this section.

Nothing in this Section 13.8 shall be construed to prevent PSI from resisting, challenging, contesting or appealing any law, statute, regulation or decision of any federal, state or local government or agency which PSI claims to be invalid, unlawful, arbitrary or capricious.

13.9 Safety – In the acquisition, construction and completion of the Project pursuant to this Agreement, PSI shall at all times take all reasonable precautions for the safety of employees on the work site and of the public, and shall comply with all applicable provisions of Federal, State and Municipal Safety laws and building and construction codes, including, without limitation, all regulations of the Occupational Safety and Health Administration.

Nothing in this Section 13.9 shall be construed to prevent PSI from resisting, challenging, contesting or appealing any law, statute, regulation or decision of any Federal, State or Local government or agency which PSI claims to be invalid, unlawful, arbitrary or capricious.

13.10 "Kick-Backs" – In the acquisition, construction and completion of the Project pursuant to this Agreement, PSI shall comply with all applicable statutes, ordinances, rules, and regulations pertaining to the work. PSI acknowledges that it is familiar with the Rural Electrification Act of 1936, as amended, the so-called "Kick-Back" Statute (48 Stat. 948), and regulations issued pursuant thereto, and 18 U.S.C. 287, 1001, as amended. PSI understands that the obligations of the Parties hereunder are subject to the applicable regulations and orders of Governmental Agencies having jurisdiction in the premises.

13.11 Buy American – (a) PSI convenants that, in the performance of this Agreement (1) at least seventeen (17%) percent in cost of the unmanufactured articles, materials and

supplies used or to be used in connection with the Project shall have been mined or produced in the United States and (2) at least seventeen (17%) percent in cost of the manufactured articles, materials and supplies used or to be used in connection with the Project shall have been manufactured in the United States and all substantially from articles, materials or supplies mined, produced or manufactured, as the case may be, in the United States. If any article, material or supplies are partially mined, produced or manufactured in the United States (said part being hereinafter called the "American Made Portion") and partially mined, produced or manufactured somewhere other than in the United States, then only the cost of the American Made Portion shall be used in determining whether the requirements of the preceding sentence have been satisfied.

(b) At the Closing and from time to time thereafter, when requested by WVPA or the Administrator, PSI shall supply the Administrator or the Party so requesting with information and documentation demonstrating that the Project is being constructed in accordance with the requirements of Subsection (a) of this Section 13.11. Upon completion of construction of the Project, PSI shall certify to the Administrator that the Project was constructed in accordance with the requirements of Section 13.11(a).

13.12 Right of Access – Authorized representatives of WVPA shall have the right of access to the Project at all reasonable times in order to oversee the progress of design, construction, maintenance and operation of the Project. The right of access shall also be extended by PSI to WVPA to include other facilities of PSI, including but not limited to, PSI's headquarters, so that WVPA may exercise the rights and privileges granted hereby, such as, the right to audit.

WVPA shall exercise the right of access in a reasonable manner so as not to substantially interfere with the operation of PSI.

The right of access granted herein shall, at all times, be exercised in compliance with any and all rules and regulations of any governmental body having jurisdiction over the Project and in compliance with security rules of PSI.

13.13 Further Assurances – From time to time after the execution of this Agreement, the Parties shall execute such instruments of conveyance and other documents, upon the request of the other, as may be necessary or appropriate to carry out the intent of this Agreement.

13.14 Article and Section Headings Not to Affect Meaning – The descriptive headings of the various Articles and Sections of this Agreement have been inserted for convenience of reference only and shall in no way modify or restrict any of the terms or provisions hereof.

13.15 Execution Date of Agreement – The execution date of this Agreement shall be the date appearing at the beginning of this Agreement.

13.16 Effective Date – This Agreement and any amendment hereto shall become effective when approved by the Administrator of the Rural Electrification Administration and

when the Parties have obtained necessary consents, approvals, permits and licenses from NRC or its successor agency for the Project.

13.17 Computation of Time – In computing any period of time prescribed or allowed by this Agreement, the day of the act, event or default from which the designated period of time begins to run shall not be included. The last day of this period so computed shall be included unless it is a Saturday, Sunday or legal holiday, in which event the period shall run until the end of the next business day which is neither a Saturday, Sunday or legal holiday.

13.18 Closing – The closing of this Agreement shall take place on the date and at the time and place mutually agreed upon by and between the Parties.

Closing shall include, but not be limited to, the following:

13.18.1 WVPA shall pay to PSI the sum set forth in Section 4.4.1.

13.18.2 PSI shall execute and deliver to WVPA a Corporate Warranty Deed for the Land as defined in Section 1.1.1 together with any other necessary instruments of conveyance for WVPA's seventeen (17%) percent undivided interest in the Project.

13.18.3 The conveyance by PSI to WVPA of a seventeen (17%) percent undivided interest as set forth in Section 13.18.2 above shall be free and clear of any liens or encumbrances and PSI shall have caused The First National Bank of Chicago to release any lien or encumbrance or security interest it may have by way of an indenture or deed of trust for the portion conveyed to WVPA.

13.18.4 Immediately following closing, the Parties shall promptly record this Agreement and the Corporate Warranty Deed with the Recorder of Jefferson County, State of Indiana.

13.19 Assignment of Wholesale Power Contracts – Following the execution of this Agreement, PSI shall, at the request of WVPA, consent to assignment of the Wholesale Power Contracts which have previously been entered into with member systems of WVPA.

13.20 Document Review – Prior to the execution of this Agreement, PSI has entered into written agreements for the purchase of the nuclear steam supply systems and certain related components, written agreements for Uranium and fuel fabrication for the first core and first reload batch for each unit, "ERDA" agreements and other agreements for the design, construction and purchase of other equipment and nuclear fuel. PSI shall make all such agreements available to WVPA for its inspection and review. Subsequent to execution of this Agreement, PSI shall make available to WVPA all agreements entered into by PSI on behalf of the Parties.

13.21 Cooperation – The Parties will assist each other in fulfilling and discharging their respective responsibilities assumed under this Agreement. This general undertaking of mutual assistance shall not be deemed to replace or modify in any respect the specific responsibilities

and obligations of the Parties as described in this Agreement. It is understood that WVPA will file a Petition before the Public Service Commission of the State of Indiana for a Certificate of Convenience and Necessity and that PSI will support and assist WVPA in obtaining such Certificate of Convenience and Necessity.

13.22 Counterparts – This Agreement may be executed simultaneously in two (2) or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument.

13.23 No Delay – No disagreement or dispute of any kind between the Parties concerning any matter, including without limitation, the amount of any payment due from a Party or the correctness of any charge made to a Party shall permit a Party to delay or withhold any payment or the performance of any other obligation pursuant to this Agreement.

13.24 No Adverse Distinction – Notwithstanding any other provision of this Agreement, PSI, in discharging its responsibilities hereunder, shall make no adverse distinction, because of WVPA's co-ownership of the Project, between this Project and any other generating units in which PSI has an ownership interest.

13.25 Amendment – This Agreement may be amended from time to time upon mutual agreement of the Parties hereto by an instrument in writing executed by the Parties. In the event any provision of this Agreement is determined to be invalid under or in conflict with any applicable statute or any regulation or order of any regulatory agency having jurisdiction, the Parties shall attempt by mutual agreement to arrive at an amendment to this Agreement which eliminates such invalidity or conflict while at the same time permitting the accomplishment of the objectives of this Agreement.

13.26 Severability – In the event any of the terms, covenants or conditions of this Agreement, or amendments therefor, or the application of any such term, covenant or condition shall be held invalid as to any Party or circumstance by any Court having jurisdiction, all other terms, covenants and conditions of this Agreement shall not be affected thereby and shall remain in full force and effect.

13.27 Waivers – A Waiver by either Party of the other Party's defaults shall not be deemed a waiver of any other or subsequent default.

13.28 Successors and Assigns – This Agreement shall inure to the benefit of and be binding upon the Parties and their respective successors and assigns.

WITNESS our hands and seals on the date first above mentioned.

PUBLIC SERVICE COMPANY OF INDIANA, INC.

ss:

PUBLIC SERVICE COMPANY OF INDIANA, INC.

By: Hugh A. Barker
President

ss:

Attest:

Joe E. Rogers
Secretary

ss:

WABASH VALLEY POWER ASSOCIATION, INC.

By: Ronald J. Fix
President

ss:

Attest:

Darrell E. Gilbert
Secretary

APPROVED:

ss:

UNITED STATES OF AMERICA

By: _____
Administrator,
Rural Electrification
Administration

UNITED STATES OF AMERICA

NUCLEAR REGULATORY COMMISSION

In the matter of	:	
ARIZONA PUBLIC SERVICE COMPANY, et al.,	:	DOCKET NO. STN 50-528
(Palo Verde Nuclear Generating Station, Unit 1)	:	

EXHIBIT B

BRIEF OF PUBLIC SERVICE COMPANY OF NEW MEXICO IN SUPPORT OF THE APPLICATION IN RESPECT OF A SALE AND LEASEBACK FINANCING TRANSACTION BY PUBLIC SERVICE COMPANY OF NEW MEXICO

Marble Hill Nuclear Plant
Operation and Maintenance Agreement
by and between Public Service Company
of Indiana, Inc., and Wabash Valley Power
Association, Inc., dated February 27, 1978

MARBLE HILL NUCLEAR PLANT

OPERATION AND MAINTENANCE AGREEMENT

By and Between

PUBLIC SERVICE COMPANY OF INDIANA, INC.
1000 East Main Street
Plainfield, Indiana 46168

and

WABASH VALLEY POWER ASSOCIATION, INC.
700 North High School Road
Suite 105
Indianapolis, Indiana 46224

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MARBLE HILL NUCLEAR PLANT

OPERATION AND MAINTENANCE AGREEMENT

This Agreement made and entered into this 27th day of February, 1978, by and between Public Service Company of Indiana, Inc., (hereinafter referred to as "PSI") and Wabash Valley Power Association, Inc., (hereinafter referred to as "WVPA") corporations organized under the laws of the State of Indiana, (both sometimes hereinafter collectively referred to as "Parties"), WITNESSETH:

WHEREAS, PSI is a corporation organized and existing pursuant to the General Corporation Act of the State of Indiana with its principal place of business being 1000 East Main Street, Plainfield, Indiana 46168; and

WHEREAS, PSI is engaged in the business of generating, transmitting and distributing electric power and energy in the State of Indiana; and

WHEREAS, WVPA is a corporation organized and existing pursuant to the Indiana Not-For-Profit Corporation Act with its principal place of business being 700 North High School Road, Suite 105, MW, Inc., Indianapolis, Indiana 46224; and

WHEREAS, WVPA is authorized and has for its purposes, the right to engage in the business of generating and transmitting electric power and energy for its member systems; and

WHEREAS, PSI proposes to build a nuclear generating plant (commonly referred to as the "Marble Hill Nuclear Generating Station" and referred to herein as the "Project") consisting of two (2) nuclear fuel electric 1130 MWe, nominally rated, generating units, the first of which is scheduled for commercial operation September 15, 1982, and the second, January 1, 1984 (such Units being hereinafter collectively referred to as the "Initial Units"); and

WHEREAS, PSI and WVPA entered into an agreement on February 1, 1978, entitled "Marble Hill Nuclear Plant Purchase and Ownership Participation Agreement" providing for the ownership by WVPA of a seventeen (17%) percent undivided interest in the Project; and

WHEREAS, PSI and WVPA desire to enter into an agreement providing for the operation and maintenance of the Project and the sharing of Project capability and hourly net energy output in proportion to their respective ownership interest; and

WHEREAS, PSI and WVPA will concurrently herewith execute the "Transmission Participation Agreement," the "Transmission Facilities Operation and Maintenance Agreement" and the "Interconnection Agreement;"

NOW, THEREFORE, in consideration of the mutual covenants and agreements of the Parties, each to the other, it is agreed as follows:

ARTICLE I

DEFINITIONS

The following terms, when used herein or in amendments or addendums hereto, shall have the following meanings:

1.1 Administrative Committee — The Administrative Committee shall be the committee established pursuant to Article XII of

		the Marble Hill Nuclear Plant Purchase and Ownership Participation Agreement by and between PSI and WVPA executed on February 1, 1978.
1.2	Average System Costs	Average System Costs shall be based upon a fully distributed cost of service study.
1.3	Contract Year	The Contract Year shall begin on January 1 of each year and end on December 31 of such year; provided, however, that the first Contract Year shall begin on the Dates of Commercial Operation for Marble Hill Unit No. 1 and Unit No. 2 and end on the following December 31.
1.4	Dates of Commercial Operation for Marble Hill Unit No. 1 and Unit No. 2	The Dates of Commercial Operation for Marble Hill Unit No. 1 and Unit No. 2 of the Project shall be the dates established by PSI when the respective Units are deemed to be a source of power. The Date of Commercial Operation is normally established by PSI to be the day following successful completion of performance tests deemed advisable by PSI and at the hour designated by PSI. PSI shall make such determination of the Date of Commercial Operation of each unit in the same manner as is customary for PSI in determining the Date of Commercial Operation of any other generating units of PSI.
1.5	Dates of Scheduled Commercial Operation	The Dates of Scheduled Commercial Operation for Unit No. 1 and Unit No. 2 shall be September 15, 1982, and January 1, 1984, respectively, or as such dates may be extended by intervening events of Force Majeure.
1.6	FERC	FERC shall be the Federal Energy Regulatory Commission or its successor agency.
1.7	Force Majeure	Force Majeure as used herein shall mean, without limitation, the following: Acts of God, strikes, lockouts or other industrial disturbances; acts of public enemies; orders, or absence of necessary orders, or absence of necessary orders and permits of any kind which have been properly applied for, from the Government of the United States, or from the State of Indi

or any of their departments, agencies or officials, or from any civil or military authority pertaining to the Project; extraordinary delay in transportation; unforeseen soil conditions; equipment, material, supplies, labor or machinery shortages; epidemics; landslides; lightning, earthquakes, fires; hurricanes; tornadoes, storms; floods; washouts; drought; arrest; war; civil disturbances; explosions; breakage or accident to machinery, transmission lines, pipes or canals; partial or entire failure of utilities; breach of contract by any supplier, contractor, subcontractor, laborer or materialman; sabotage; injunction; blight; famine; blockade; quarantine; or any other similar cause or event not reasonably within the control of PSI.

1.8 Interconnection Agreement

Interconnection Agreement shall be the Interconnection Agreement between PSI and WVPA executed concurrently herewith.

1.9 Joint Transmission System

The Joint Transmission System shall consist of those PSI facilities functionally serving as Transmission Facilities and WVPA's facilities physically connected to PSI's Transmission Facilities, having an operating voltage of 34.5 KV or higher, as defined in the Uniform System of Accounts.

1.10 NRC

NRC shall be the Nuclear Regulatory Commission or its successor agency.

1.11 Nuclear Fuel Agreement

Nuclear Fuel Agreement shall be any agreement entered into by PSI on behalf of the Parties relating to, without limitation, the purchase, sale, lease, transfer, disposition, storage, transportation, mining, milling, conversion, enrichment, processing, fabrication, reprocessing and waste disposal of any nuclear fuel for use in, used in or removed from the Project.

1.12 Operation and Maintenance Costs

Operation and Maintenance Costs shall be all operation and maintenance costs and taxes, other than income taxes, incurred by PSI which are attributable and allocable to the Project and

properly recordable in accordance with the instructions and in appropriate accounts as set forth in the Uniform System of Accounts.

These costs, excluding nuclear fuel expenses, shall include, without limitation, production expenses, production supervision, insurance premium payments and liability payments, employee pension and benefits, payroll taxes and taxes, other than income taxes, and appropriate allocations of expenses, classified as administration and general expenses. Such administration and general expenses included in accounts 920 through 932 (after being reduced by credits included in accounts 920 and 929 and expenses recorded in accounts 923, 924, 925, 926, 927, 928 and 931) shall be allocated to the Project by applying a percentage factor derived by dividing the operation and maintenance expenses, excluding fuel, for the Project by PSI's total operation and maintenance expenses, excluding fuel, included in accounts 500 through 916.

1.13 Ownership Participation Agreement

Ownership Participation Agreement shall be the Marble Hill Nuclear Plant Purchase and Ownership Participation Agreement by and between PSI and WVPA executed on February 1, 1978.

1.14 Parties

The Parties shall be PSI and WVPA.

1.15 Party

A Party shall be PSI or WVPA.

1.16 Prime Rate

Prime Rate shall be the minimum commercial lending rate existing from time to time at Chase Manhattan Bank (NA), New York, or such other Bank as may be selected by the Administrative Committee.

1.17 Project

The Project referred to in the recitals of this Agreement is hereinafter referred to as the "Project" and shall consist of:

1.17.1 The land described in the form of deed attached to the Ownership Participation Agreement, together with all such additi

land or rights therein as may hereafter be acquired and which is necessary for the operation of the Project, all of such land being collectively referred to as "Land."

1.17.2 The Initial Units, and all other facilities, inventories of fuel, materials and supplies, the construction or installation or acquisition of which is necessary for the operation and maintenance of the Initial Units, whether such acquisition, construction or installation takes place before or after the Dates of Commercial Operation of the Initial Units.

1.17.3 Facilities used in connection with both Initial Units (Common Facilities) including, but not limited to, common discharge facilities, microwave facilities, emergency station service line on the Land, breakwaters, control facilities, fire system, shop facilities, substation equipment including generator step-up transformers and associated breakers, laboratory equipment, waste processing systems, office facilities, access roads and rights-of-way, railroad and railroad right-of-way, sanitary facilities and shall also mean all those facilities which will be required for the operation of the Initial Units and which PSI shall designate from time to time by notice to WVPA and which facilities and property shall be identified on the books and records of PSI maintained for this Project.

1.17.4 Exclusions from "Project" – There shall be excluded from the Project the following:

1.17.4.a Nuclear Information Center – The structures and associated facilities designated as the Nuclear Information Center located within the City of Madison, Indiana, and any subsequent improvements of or additions to said structures and facilities are not included in the Project and shall be owned and financed solely by PSI.

1.17.4.b Easement and Transmission Facilities – Easements required and Transmission Facilities, including switchyard

facilities constructed and maintained for the transmission of electric energy. The switchyard facilities, except generator step-up transformers and associated breakers, shall be considered as part of the Joint Transmission System.

1.18 Project Maximum Capability — Project Maximum Capability shall be the total Project capability based upon the NRC authorized rated nuclear core thermal output adjusted for plant efficiency and station use.

1.19 Transmission Facilities Operation and Maintenance Agreement — Transmission Facilities Operation and Maintenance Agreement shall be the Transmission Facilities Operation and Maintenance Agreement by and between PSI and WVPA executed concurrently herewith.

1.20 Transmission Participation Agreement — Transmission Participation Agreement shall be the Transmission Participation Agreement by and between PSI and WVPA executed concurrently herewith.

1.21 Uniform System of Accounts — Uniform System of Accounts shall be the Federal Energy Regulatory Commission's "Uniform System of Accounts Prescribed for Public Utilities and Licensees (Class A and Class B)," in effect as of the date of this Agreement, or as such Uniform System of Accounts may be modified from time to time. References in this Agreement to any specific account number shall mean the account number in effect as of the date of execution of this Agreement or as the same may be modified or amended.

ARTICLE II

OPERATION OF PROJECT

2.1 Responsibility for Operation and Management – PSI shall be responsible for the management, control, maintenance and operation of the Project in accordance with prudent utility practices.

2.2 Cooperation – The Parties shall cooperate with each other in all matters and actions to be taken in connection with the Project including, without limitation, the execution and filing of applications for authorizations, permits and licenses and the execution of such other documents, as may be reasonably necessary, to confirm authority of PSI to act for and o

behalf of WVPA in connection with its interest in the Project. WVPA shall not, unless otherwise requested by PSI in writing, incur any obligation in connection with the Project which would or could obligate PSI to any third party.

2.3 Liability – Except as herein provided in this Article 2.3, PSI shall have no liability for any loss, damage or expense suffered by WVPA or for any damage to its interest in the Project or any portion of the Project arising out of or resulting from the operation, maintenance and related activities of the Project by PSI or any employee of PSI pursuant to this Section 2.3; provided, however, in the event WVPA suffers any loss, damage or expense, or is prevented from using its proportionate share of the capability and hourly net energy output of the Project, when the Project is operating at Project Maximum Capability, as a result of the willful misconduct of PSI's management or the failure of PSI to exercise prudent utility practice in discharging its obligations under this Agreement, then and in that event, WVPA shall not bear the risk of such losses, and PSI shall be liable for such losses, damages or expenses.

The Parties shall share in proportion to their respective ownership interests in the Project losses or damages caused by events of Force Majeure.

In the event PSI in the performance of its duties pursuant to this Section 2.3 incurs any liability to any third party, the amount paid by PSI on account of such liability shall be considered Operation and Maintenance Costs of the Project and apportioned between the Parties pursuant to Article III hereof.

2.4 No Adverse Distinction – Notwithstanding any other provision of this Agreement, PSI, in discharging its responsibilities hereunder, shall make no adverse distinction, because of WVPA's co-ownership of the Project, between this Project and any other generating units in which PSI has an ownership interest.

ARTICLE III

FINANCIAL OBLIGATIONS OF PARTIES

3.1 Sharing of Costs–General – PSI and WVPA shall be responsible for eighty-three (83%) percent and seventeen (17%) percent, respectively, of all Operation and Maintenance Costs of the Project incurred by PSI in carrying out the provisions of Article II, except as said percentage of responsibility may be adjusted by reason of adjustment of ownership interests as provided in the Ownership Participation Agreement and Article IV herein.

Except as limited by Section 2.3 and Article IV, PSI and WVPA shall share, in proportion to their respective ownership interests, all cost items, obligations and liabilities incurred in connection with the Project, other than financing, AFUDC and income taxes.

3.2 Payment and Settlement of Costs

3.2.1 PSI shall be responsible for making payment to third parties of all costs, obligations and liabilities, direct and indirect, with respect to Operation and Maintenance Costs.

3.2.2 At least fifteen (15) days prior to the end of each calendar quarter, PSI shall furnish WVPA an estimate of the anticipated Operation and Maintenance Costs of the Project for the next succeeding four (4) calendar quarters.

3.2.3 On the fifteenth (15th) of each month PSI shall furnish WVPA an invoice showing the current estimate of the Operation and Maintenance Costs required for the following month.

3.2.4 The invoices submitted by PSI shall be paid by WVPA so that PSI will receive the funds by the tenth (10th) of the following month, or the first working day thereafter, if the payment date falls on any other day than a working day.

3.2.5 Adjustments for the difference between the estimated Operation and Maintenance Costs and actual Operation and Maintenance Costs paid by PSI shall be made on the invoice submitted for the third (3rd) month following the month in which the actual Operation and Maintenance Costs were paid. For example, the invoice submitted for the month of March on February 15 would include an adjustment for the actual Operation and Maintenance Costs paid in December.

3.2.6 All payments shall be made payable, in immediately available funds, to Public Service Company of Indiana, Inc., Attention: Treasurer, 1000 East Main Street, Plainfield, Indiana 46168.

3.2.7 Any payment not made on or before the due date set forth in Section 3.2.4 shall constitute an act of default under Article VIII.

3.2.8 The Parties hereto shall not have the right to challenge any bill, invoice or statement rendered by PSI, invoke arbitration of the same or bring any court or administrative action of any kind questioning the propriety of the same after a period of twenty-four (24) months from the date of rendering. In the case of a bill, invoice or statement containing estimates, the Parties hereto shall not have the right to challenge its accuracy after a period of twenty-four (24) months from the date of its adjustment to reflect the actual amounts due.

3.2.9 PSI shall make available to WVPA all records regarding plant operations and Operation and Maintenance Costs sufficient to allow WVPA to determine that such costs allocated to the Project by PSI are proper.

3.3 Right to Audit – At least annually, or more frequently as agreed by the Parties, PSI shall account to WVPA, in such form as the latter reasonably requests, for all costs incurred, including but not limited to, the design, engineering, procurement, insuring, licensing, construction, operation, fuel, maintenance, shutdown or disposal of the Project. Any reasonable requests by WVPA for an additional accounting in a different form required by it shall be granted at the expense of WVPA. WVPA may, at any time and at its own expense, cause the accuracy of any costs charged to it to be verified by an examination of the accounts and records kept by PSI with respect to the Project by employees, representatives or

accountants of WVPA or any independent certified public accountant retained by WVPA and PSI shall make such accounts and records available at its offices at reasonable times for such purpose.

ARTICLE IV

NUCLEAR FUEL

4.1 Investments in and Accounting for Nuclear Fuel – The cost of nuclear fuel in any form, including all costs to obtain such fuel incurred up to the time of its delivery to the Project site, in a form ready to use in a feactor, but excluding AFUDC from such costs, shall be shared by the Parties in accordance with their respective ownership interests in the Project.

Each of the Parties shall pay its proportionate share of such investments when the same become due under any Nuclear Fuel Agreement.

4.2 Nuclear Fuel Procurement – PSI shall be obligated to procure for both Parties the nuclear fuel and to enter into all Nuclear Fuel Agreements for and on behalf of the Parties.

ARTICLE V

ENERGY ENTITLEMENT, SCHEDULING AND DISPATCHING

5.1 Sharing Energy – As owners, PSI and WVPA shall each be entitled to eighty-three (83%) percent and seventeen (17%) percent, respectively, of the hourly net energy output of the Project at any given time unless the ownership percentages are modified pursuant to the Ownership Participation Agreement.

5.2 Scheduling and Dispatching – Notice – PSI shall have sole authority for the hourly scheduling and dispatching of Project generation. PSI's scheduling and dispatching procedure shall conform to prudent utility practices.

PSI shall promptly notify WVPA and Northern Indiana Public Service Co., Inc. (NIPSCO) of forced outages or reductions in the hourly net energy output from the Project due to Force Majeure.

5.3 Transactions with Other Systems – PSI and WVPA shall each be entitled to dispose of their proportionate share of the capacity and energy generated by the Project through scheduled transactions with other systems; provided, however, PSI shall have sole responsibility for the scheduling, dispatching and accounting therefor, without adverse distinction, and shall not refuse any reasonable scheduled transactions for WVPA.

5.4 Maintenance and Refueling Outages – Notice – PSI shall schedule maintenance outages and refueling of the generating units at the Project without adverse distinction to the system requirements of PSI and WVPA.

PSI shall promptly notify WVPA and NIPSCO of scheduled maintenance and refueling outages as soon as such schedules are established.

5.5 Economic Dispatch – In the event PSI voluntarily ceases to operate or reduces output from the Project, because the cost per unit of energy that could have been generated by the Project would have been more expensive to PSI than energy available to PSI from other sources, then PSI shall make available to WVPA an amount of energy equal to the amount of energy reasonably anticipated to have been available to WVPA from the Project. The cost of such energy shall be the lesser of the cost of the energy from other sources or the estimated cost that would have been incurred if the Project had continued in operation at Project Maximum Capability.

5.6 Test Energy – The hourly net energy output prior to the Dates of Commercial Operation for Marble Hill Unit No. 1 and Unit No. 2 shall be classified as test energy. As an owner, WVPA shall be entitled to seventeen (17%) percent of such test energy. Such test energy shall be credited to, or offset against, the wholesale energy purchased by WVPA from PSI.

5.7 Surplus Energy – PSI shall purchase from WVPA each hour all the energy associated with WVPA's actual entitlement from the Project in excess of that required to supply WVPA's demand. PSI shall pay for such energy a rate which shall be the arithmetic average of the monthly average system energy related costs experienced by PSI and the monthly costs of energy from the Project experienced by WVPA.

ARTICLE VI

ACCESS AND TOURS

6.1 Right of Access to Project – Authorized representatives of WVPA shall be permitted the right of access at all reasonable times, but in compliance with provisions of licenses or other regulatory requirements, to visit the Project to observe operation and maintenance, including refueling activities being performed by PSI, and to examine and copy all records and papers maintained by PSI with respect to the ownership, operation and maintenance of the Project. The right of access shall also be extended by PSI to include other facilities of PSI, including but not limited to, PSI's headquarters, so that WVPA may exercise its rights and privileges granted hereby, such as, the right to audit.

WVPA shall exercise the right of access in a reasonable manner so as not to substantially interfere with the operation of PSI.

The right to access granted herein shall, at all times, be exercised in compliance with any and all rules and regulations of any governmental body having jurisdiction over the Project and in compliance with any security rules of PSI.

6.2 Plant Tours – Upon prior approval of PSI, WVPA may conduct plant tours and visits at the Project subject to the rules and regulations of regulatory authorities and compliance with the security rules of PSI.

ARTICLE VII

ASSIGNMENT AND TERMINATION

7.1 Limitation on Assignability – If, pursuant to the Ownership Participation Agreement, either Party makes a sale, transfer or assignment of its interest in the Project, other than in connection with a secured interest, such Party shall also assign and shall cause the transferee to assume the rights and obligations of such Party hereunder. No assignment of this Agreement shall be made, other than in connection with a secured interest, except in connection with a transfer of a Party's interest in the Project pursuant to the Ownership Participation Agreement.

7.2 Term – This Agreement shall terminate upon, but only upon, termination of the Ownership Participation Agreement; provided, however, that termination shall not discharge either Party from any obligation it owes to the other Party as a result of any transaction or event occurring prior to such termination. In the event of termination of this Agreement, PSI shall retain such powers hereunder as shall be necessary to dispose of the property included in the Project at the time of such termination, and the rights and obligations of the Parties hereunder shall continue with respect to any action taken in connection with such disposition.

ARTICLE VIII

DEFAULTS

8.1 Party May Cure Defaults – If a default occurs at any time, after the Dates of Commercial Operation of Marble Hill Unit No. 1 and Unit No. 2, the nondefaulting Party shall give the defaulting Party notice to remedy the default. In addition, the nondefaulting Party may, but shall not be required to, undertake the remedy of any default to third parties after giving notice of its intent to do so to the defaulting Party.

The defaulting Party in order to remedy its default to the nondefaulting Party shall be obligated to reimburse the nondefaulting Party for the total of (a) the money paid, (b) the reasonable equivalent in money for services or property provided, (c) the other costs reasonably incurred by such nondefaulting Party in attempting to remedy such default, together with, (d) interest on the unpaid balance of such total at a rate of two (2%) percent per annum above the Prime Rate, and until so paid, the amount due the nondefaulting Party shall constitute a lien upon the defaulting Party's title to its ownership interest in the Project. The failure of the defaulting Party to reimburse the nondefaulting Party as required by the preceding sentence shall in itself constitute an act of default under this Agreement.

8.2 Suspension of Entitlement for Nonpayment – In addition to any other rights or remedies, legal or equitable, available to PSI, in the event WVPA at any time defaults in making any payment due under this Agreement, PSI shall have the right to give written notice of such default to WVPA, and in the event such default continues for a period of one hundred twenty (120) days after the giving of such notice then: (a) PSI may withhold from WVPA the use of its ownership share of the capacity of the Project until such payment has been made, but with appropriate credit being given to WVPA for the capacity withheld; and (b) PSI shall

receive interest on the net unpaid balance of the overdue payments, from the date due until paid, at a rate of two (2%) percent per annum above the Prime Rate. In the event that credit for WVPA's capacity exceeds the payment due, PSI shall pay WVPA monthly for the difference therefor.

8.3 Suspension of Entitlement for Other Defaults – If, after the Dates of Commercial Operation of Marble Hill Unit No. 1 and Unit No. 2, a default occurs which is not covered by Section 8.2, the nondefaulting Party shall have the right to give written notice of such default to the defaulting Party and in the event such default continues for a period of one hundred twenty (120) days, after the giving of such notice, then the defaulting Party may not use its ownership share of the capacity from the Project for the duration of the default and nondefaulting Party may use the defaulting Party's ownership share of capacity, with appropriate credit being given to the defaulting Party for such use. When the default is remedied, the use of the defaulting Party's ownership share of the capacity of the Project shall be promptly restored to such Party.

8.4 Option to Acquire – If after the Dates of Commercial Operation of Marble Hill Unit No. 1 and Unit No. 2, a default occurs and continues for a period of one hundred twenty (120) days after notice to remedy the default has been given to the defaulting Party by the nondefaulting Party, or until the defaulting Party admits in writing its inability to remedy the default, whichever occurs first, then the nondefaulting Party shall have the option, exercisable by giving written notice of such exercise to the defaulting Party while the default continues and within ninety (90) days after the expiration of the aforementioned one hundred twenty (120) day period, to acquire the defaulting Party's ownership and participation in the Project in accordance with the procedure and upon the terms and conditions set forth in Section 10.6.3 of the Ownership Participation Agreement, except that the purchase price shall be an amount equal to the purchase price under Section 10.6.3 of the Ownership Participation Agreement less depreciation of the defaulting Party's interest in the Project at the maximum straight-line rates then applicable under the Federal Income Tax Law, unless the Rural Electrification Administration shall have approved different rates of depreciation for WVPA's ownership interest in the Project, in which event the rates approved by the Rural Electrification Administration shall be used for such price determination.

ARTICLE IX

ARBITRATION

9.1 Controversies Subject to Arbitration – Any controversy, claim, counterclaim or dispute arising out of or relating to this Agreement, shall be submitted to arbitration upon the request of either Party in the manner provided herein.

9.2 Notice of Arbitration – The Party submitting a request for arbitration shall serve notice upon the other Party setting forth in detail the matter or matters to be arbitrated, including a statement of the facts or circumstances giving rise to the controversy, claim, counterclaim or dispute involved and the Party's contention with respect to the correct resolution thereof.

9.3 Selection of Arbitrators – Within thirty (30) days following the date of the written notice provided for in Section 9.2, the Parties, acting through their representatives on the Administrative Committee, shall meet for the purpose of selecting arbitrators. Each Party to this Agreement shall select one (1) arbitrator. The two (2) arbitrators so selected shall meet within twenty (20) days following their appointment and shall mutually agree upon the selection of one (1) additional arbitrator.

If the arbitrators selected by the Parties shall fail or refuse to mutually agree upon the additional arbitrator within such twenty (20) day period, then and in that event, the Parties, or either of them, shall, within the next ten (10) days thereafter, request the American Arbitration Association (or any similar organization if the American Arbitration Association does not then exist) to appoint the one (1) additional arbitrator pursuant to its then existing rules.

9.4 Conduct of Arbitration – The arbitration shall be conducted in accordance with the rules of the American Arbitration Association then in effect, to the full extent that such rules are not inconsistent with Indiana Law.

9.5 Scope of Arbitration – The Parties agree that any arbitrator serving hereunder shall give full force and effect to all of the provisions of this Agreement.

9.6 Evidence – The arbitrators shall hear evidence submitted by the respective Parties and may call for additional information, which additional information shall be furnished by the Party or Parties having such information.

9.7 Findings and Award – The findings and award of arbitration shall be binding and conclusive with respect to the matter or matters submitted to arbitration, except as the same may be modified, corrected or vacated in accordance with the Indiana statutes then in effect governing arbitration.

It is understood by and between the Parties that the findings and award of arbitration is subject to appeal in accordance with the Indiana statutes.

In the event that a Party should, subsequent to the hearing, discover new evidence and such evidence could not have previously been discovered in the exercise of due diligence, then the arbitrators may reopen the hearing for the admission of such newly discovered evidence in the same manner as matters are reopened pursuant to the Trial Rules of the State of Indiana.

9.8 Enforcement – The agreement to arbitrate shall be specifically enforceable and the findings and award of the arbitrators shall be final and binding upon the Parties to the extent provided by applicable statutes governing arbitration. In addition, the award may be enforced pursuant to said statutes governing arbitration.

9.9 Costs – The costs of arbitration shall be shared equally by the Parties.

ARTICLE X

ADMINISTRATIVE COMMITTEE

10.1 Administrative Committee – It is recognized that from time to time various administrative and technical matters may arise in connection with the terms and conditions of this Agreement, which will require the cooperation and consultation of the Parties and the interchange of information. As a means of providing for such consultation and interchange of information, the Administrative Committee established pursuant to Article XII of the Ownership Participation Agreement shall be applicable to matters arising in connection with this Agreement.

ARTICLE XI

INSURANCE

11.1 Obligation to Maintain Insurance – PSI shall maintain for the benefit of PSI and WVPA, as their ownership interests shall appear, as Operation and Maintenance Costs, such insurance as is usually carried by utilities constructing and operating nuclear generating facilities, but not less than will satisfy the requirements of the Atomic Energy Act of 1954, as amended from time to time, and the regulations thereunder and in such amounts as will conform to prudent utility practice. PSI will provide WVPA a schedule of such insurance policies. WVPA shall be named insured on such insurance policies. PSI shall furnish WVPA an endorsement to such insurance policies evidencing WVPA as an additional insured.

11.2 Allocation of Insurance Proceeds – It is recognized that the amount of physical damage insurance applicable to nuclear generating units at the generating site may be subject to an overall site limitation. In this event, insurance proceeds received on account of damage shall be allocated in the following manner:

11.2.1 In the event that any unit or units or the Land or any property thereon ("insured facility or facilities") sustains damages that are less than the insurance policy limit of coverage, all proceeds payable on account of such damages shall be wholly allocated to the damaged insured facility or facilities as damages may have been sustained thereby.

11.2.2 If damages to insured facilities are greater than the insurance policy limit of coverage, then proceeds payable on account of such damages shall be allocated to each damaged insured facility in the proportion that the total investment (excluding AFUDC) in such damaged insured facility bears to the total investment, excluding AFUDC, in all damaged insured facilities; provided, however, that if the insurance proceeds so allocated to any damaged insured facility are in excess of damages sustained by such insured facility then the difference shall be reallocated on the basis of proportionate total investment (excluding AFUDC) in the remaining damaged insured facility or facilities.

11.2.3 All such reallocations shall be repeated until all insurance proceeds have been allocated or reallocated in the manner described in Section 11.2.2 above.

11.3 Authority to Settle – PSI shall have authority on behalf of the Parties to settle any loss covered by any policy of insurance.

11.4 Mutual Insurance Companies – In the event that PSI determines that all or a portion of such property insurance shall be provided through a mutual insurance company organized by electric utilities or otherwise, it may require, following consultation with WVPA, and subject to the receipt of necessary regulatory approvals, WVPA to become a member of such company, if WVPA may lawfully do so.

11.5 Allocation of Premiums – If policies obtained pursuant to this Article cover more than one unit of the Project, the premium and any refunds of premium, shall be allocated among all such units on the basis of gross investments in the respective units unless the policies divide such premiums among the units, in which case premiums will be allocated as indicated on the policies.

11.6 Additional Insurance and Assessments – Any additional assessments made or required liabilities imposed by any Act of Congress relating to a nuclear incident or additional insurance coverage required of a licensee under the Atomic Energy Act of 1954, as amended from time to time shall be borne by the Parties as their ownership interests shall appear.

ARTICLE XII

GENERAL

12.1 Governing Law – The validity, interpretation, and performance of this Agreement and each of its provisions shall be governed by the laws of the State of Indiana.

12.2 Execution Date of Agreement – The execution date of this Agreement shall be the date appearing at the beginning of this Agreement.

12.3 Notice – Any notice, request, consent or other communication permitted or required by this Agreement shall be in writing and shall be deemed delivered when deposited in the United States Mail, first class postage prepaid, and if given to PSI shall be addressed to:

Hugh A. Barker, President
Public Service Company of Indiana, Inc.
1000 East Main Street
Plainfield, Indiana 46168

and if given to WVPA shall be addressed to:

Edward P. Martin, General Manager
Wabash Valley Power Association
700 North High School Road
Suite 105
Indianapolis, Indiana 46224

unless a different officer or address shall have been designated by a Party by notice in writing.

12.4 Headings Not to Affect Meaning – The descriptive headings of the various Sections of this Agreement have been inserted for convenience of reference only and shall in no way modify or restrict any of the terms or provisions hereof.

12.5 Cooperation – The Parties shall assist each other in fulfilling and discharging the responsibilities assumed under this Agreement. This general undertaking of mutual assistance shall not be deemed to replace or modify in any respect the specific responsibilities and obligations of the Parties as described in this Agreement.

12.6 Effective Date – This Agreement and any amendment hereto shall become effective when approved by the Administrator of the Rural Electrification Administration.

12.7 Counterparts – This Agreement may be executed simultaneously in two (2) or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument.

12.8 Amendment – This Agreement may be amended from time to time upon mutual agreement of the Parties hereto by an instrument in writing executed by the Parties. In the event any provision of this Agreement is determined to be invalid under or in conflict with any applicable statute or any regulation or order of any regulatory agency having jurisdiction, the Parties shall attempt by mutual agreement to arrive at an amendment to this Agreement which eliminates such invalidity or conflict while at the same time permitting the accomplishment of the objectives of this Agreement.

12.9 Good Utility Practices – In discharging its obligations under this Agreement, PSI will use its best efforts to conform to prudent utility practices.

12.10 Force Majeure – PSI and/or WVPA suffering an occurrence of Force Majeure shall remedy with all reasonable dispatch the cause or causes preventing PSI and/or WVPA from carrying out their agreements; provided, that the settlement of strikes, lockouts and other industrial disturbances shall be entirely within the discretion of PSI, and it shall not be required to make settlement of strikes, lockouts and other industrial disturbances by acceding to the demands of the opposing party or parties when such course is unfavorable in the judgment of PSI.

12.11 Further Assurances – From time to time PSI and WVPA will execute such instrument of conveyance and other documents, upon the request of the other, as may be necessary or appropriate, to carry out the intent of this Agreement.

12.12 Severability – In the event any of the terms, covenants or conditions of this Agreement, or amendments therefor, or the application of any such term, covenant or condition shall be held invalid as to any Party or circumstance by any Court having jurisdiction, all other terms, covenants and conditions of this Agreement shall not be affected thereby and shall remain in full force and effect.

12.13 Successors and Assigns – This Agreement shall inure to the benefit of and be binding upon the Parties and their respective successors and assigns.

WITNESS our hands and seals on the date first above mentioned.

ss:

PUBLIC SERVICE COMPANY OF INDIANA, INC.

By: Hugh A. Barker
President

ss:

Attest:

Joe E. Rogers
Secretary

ss:

WABASH VALLEY POWER ASSOCIATION, INC.

By: Ronald J. Fix
President

ss:

Attest:

Darrell E. Gilbert
Secretary

APPROVED:

ss:

UNITED STATES OF AMERICA

By: _____
Administrator
Rural Electrification
Administration

UNITED STATES OF AMERICA

NUCLEAR REGULATORY COMMISSION

In the matter of	:	
ARIZONA PUBLIC SERVICE COMPANY, et al.,	:	DOCKET NO. STN 50-528
(Palo Verde Nuclear Generating Station, Unit 1)	:	

EXHIBIT C

BRIEF OF PUBLIC SERVICE COMPANY OF NEW MEXICO IN SUPPORT OF THE APPLICATION IN RESPECT OF A SALE AND LEASEBACK FINANCING TRANSACTION BY PUBLIC SERVICE COMPANY OF NEW MEXICO

Economic Analysis - Revenue Requirements
Palo Verde Sale/Leaseback

ECONOMIC ANALYSIS - REVENUE REQUIREMENTS
PALO VERDE SALE/LEASEBACK

SALE PRICE	$400,000	LEASE RATE	10.271%
ANNUAL LEASE	$41,084	ITC AMORT IN LEASE	$18,640
- PAYMENT		DEF LEASE PMT	$1,530
DEFERRAL (MO)	3	DISCOUNT RATE	14.645%
AMT DEFERRED	$10,271	BOOK VALUE	$338,000

INVENTORY RATEMAKING

YEAR	PNM OWNERSHIP	LEASE	ACCUMULATED SAVINGS	ACCUMULATED NPV
1985	$0	$0	$0	$0
1986	$0	$0	$0	$0
1987	$0	$0	$0	$0
1988	$0	$0	$0	$0
1989	$0	$0	$0	$0
1990	$0	$0	$0	$0
1991	$0	$0	$0	$0
1992	$0	$0	$0	$0
1993	$0	$0	$0	$0
1994	$0	$0	$0	$0
1995	$0	$0	$0	$0
1996	$59,355	$41,909	$17,446	$3,880
1997	$120,721	$85,901	$52,266	$10,634
1998	$117,500	$84,723	$85,043	$16,179
1999	$114,280	$83,540	$115,782	$20,716
2000	$111,059	$82,362	$144,479	$24,410
2001	$107,838	$81,179	$171,138	$27,403
2002	$104,618	$80,001	$195,754	$29,814
2003	$101,397	$78,819	$218,332	$31,743
2004	$98,176	$77,640	$238,868	$33,273
2005	$94,956	$76,458	$257,366	$34,476
2006	$91,735	$75,279	$273,822	$35,409
2007	$88,515	$74,097	$288,239	$36,122
2008	$85,294	$72,918	$300,615	$36,655
2009	$82,073	$71,736	$310,952	$37,044
2010	$78,853	$70,557	$319,248	$37,317
2011	$75,632	$69,375	$325,505	$37,496
2012	$72,412	$68,197	$329,719	$37,601
2013	$69,191	$67,014	$331,896	$37,648
2014	$65,970	$65,836	$332,030	$37,651
2015	$62,750	$64,653	$330,127	$37,619
2016	$59,528	$47,388	$342,267	$37,795
2017	$56,307	$40,842	$357,733	$37,990
2018	$53,087	$39,664	$371,156	$38,137
2019	$49,866	$38,549	$382,473	$38,246
2020	$46,703	$37,459	$391,717	$38,323
2021	$43,558	$36,369	$398,906	$38,376
2022	$40,414	$35,278	$404,041	$38,409
2023	$37,269	$34,188	$407,122	$38,426
2024	$34,124	$33,097	$408,150	$38,431
2025	$30,980	$32,007	$407,123	$38,426
2026	$2,520	$5,856	$403,788	$38,414
TOTALS	$2,256,681	$1,852,894		
NPV	$162,980	$124,566		

Table 3

UNITED STATES OF AMERICA

NUCLEAR REGULATORY COMMISSION

In the matter of	:	
ARIZONA PUBLIC SERVICE COMPANY, et al.,	:	DOCKET NO. STN 50-528
(Palo Verde Nuclear Generating Station, Unit 1)	:	

EXHIBIT D

BRIEF OF PUBLIC SERVICE COMPANY OF NEW MEXICO IN SUPPORT OF THE APPLICATION IN RESPECT OF A SALE AND LEASEBACK FINANCING TRANSACTION BY PUBLIC SERVICE COMPANY OF NEW MEXICO

Excerpt from the Official Statement
dated December 8, 1982, with respect to $24,000,000
of Princeton, Indiana Pollution Control Revenue Bonds
(Wabash Valley Power Association, Inc. Project)

OFFICIAL STATEMENT

In the opinion of Messrs. Chapman and Cutler, Bond Counsel, under existing laws, including current rulings and official interpretations of law by the United States Internal Revenue Service, interest on the 1982Z Bonds will be excludable from the gross income of the recipients thereof for Federal income tax purposes, except in the circumstances described under the caption "Tax Exemption" herein. Also, in the opinion of Bond Counsel, under existing Indiana law, the 1982Z Bonds and the interest thereon are exempt from all present taxation by the State of Indiana, except Indiana inheritance taxes.

$24,000,000

Princeton, Indiana

POLLUTION CONTROL REVENUE BONDS

Wabash Valley Power Association, Inc. Project

Series 1982Z

unconditionally guaranteed by

National Rural Utilities Cooperative Finance Corporation

Dated: December 1, 1982 **Due: As shown below**

$3,080,000 Serial Bonds due December 1, as shown below:

Year	Principal Amount	Interest Rate	Year	Principal Amount	Interest Rate
1985	$185,000	7.00%	1990	$265,000	9.00%
1986	195,000	7.50	1991	290,000	9.25
1987	210,000	7.75	1992	315,000	9.50
1988	230,000	8.00	1993	345,000	9.75
1989	245,000	8.50	1994	380,000	9.90
			1995	420,000	10.00

$ 4,470,000 10.75 % Term Bonds due December 1, 2002

$16,450,000 10.875% Term Bonds due December 1, 2012

All Bonds priced at 100% (plus accrued interest, if any, from December 1, 1982)

The Bonds are offered by the several Underwriters subject to prior sale when, as and if issued and accepted by them, subject to the approval of legality by Messrs. Chapman and Cutler, Bond Counsel, the approval of certain legal matters by Messrs. Cravath, Swaine & Moore, counsel to the Underwriters, and certain other conditions. It is expected that delivery of the Bonds will be made on or about December 22, 1982, at the office of Lehman Brothers Kuhn Loeb Incorporated, New York, New York.

Lehman Brothers Kuhn Loeb
Incorporated

Blyth Eastman Paine Webber
Incorporated

Goldman, Sachs & Co.

December 8, 1982

enerating Facilities

The following table provides information relating to the generating facilities owned or to be owned by WVPA:

Name	% Owned or to be Owned	Type of Fuel Used	Year Installed or to be Installed	Unit Capacity (mw-net)
To be Acquired:				
Gibson Unit No. 5	25	Coal	1982*	625
Under Construction:				
Marble Hill Nuclear Generating Station				
Unit No. 1	17	Nuclear	1986	1,130
Unit No. 2	17	Nuclear	1988	1,130

* To be acquired at the time of the sale of the Bonds offered hereby.

Gibson Unit No. 5

Gibson No. 5 is a 625 mw coal-fired steam generating unit which is the fifth unit of its type at the Gibson Generating Station, one of the largest coal-fired electric generating stations in the United States. PSI completely owns and operates the other four units at the Gibson Generating Station. Gibson No. 5 differs from the other four units in that the boiler has been modified to reduce nitrogen oxide emissions, larger coal pulverizers have been installed to allow for lower than anticipated coal quality and a flue gas desulphurization system has been installed for the control of sulphur dioxide emissions. WVPA will, on or about December 22, acquire a 25% undivided interest in Gibson No. 5 pursuant to an agreement with PSI and Indiana Municipal Power Agency which will own 50.05% and 24.95% interests, respectively. The common ownership will extend to the common facilities, the initial fuel stock and the materials and supplies. PSI will operate and maintain Gibson No. 5 and each party will be responsible for its ownership share of all costs. The ownership agreement will remain in effect for the life of Gibson No. 5. PSI is obligated to sell back-up energy to WVPA during periods of either scheduled maintenance or forced outage of Gibson No. 5 at the average cost of the PSI system for the month in which the outage occurs.

Marble Hill Nuclear Generating Station

In 1978, WVPA purchased from PSI a 17% ownership interest in Marble Hill pursuant to participation and related agreements under which PSI has sole responsibility for the construction of the plant and, upon completion, responsibility for operating and maintaining the plant. Each party is responsible for its ownership share of all construction, operation and maintenance costs. By September 1982, the construction of Marble Hill Unit No. 1 was approximately 46% completed and the construction of Unit No. 2 was approximately 25% completed. If PSI reduces the output of the project for PSI's benefit, then PSI has agreed to make available to WVPA an amount of energy equal to the amount reasonably anticipated to have been otherwise available to WVPA from the project. PSI will purchase all the energy associated with WVPA's actual entitlement from the project in excess of that required to supply WVPA's demand. PSI will be responsible for obtaining the nuclear fuel for the plant. The participation agreement will remain in effect unless the parties determine that Marble Hill has reached the end of its usefulness. Marble Hill will use two pressurized water reactor units and two tandem-compound 1800 rpm turbines manufactured by Westinghouse. Fuel used at Marble Hill will be in the form of uranium dioxide ceramic pellets.

All safety-related work was suspended at Marble Hill by PSI in August 1979. The same month, NRC issued a stop-work order requiring PSI to submit a report to the NRC describing revisions in PSI's quality

assurance program and other steps to be taken by PSI to assure that future construction would conform to the NRC's requirements. In March 1980, PSI submitted a request to resume safety-related inspections on materials already received on site, the first phase of safety-related work. In May 1980 the NRC found that PSI's response to the NRC confirming order was acceptable and established a series of checkpoints involving NRC review and approval prior to restart of safety-related constuction. In May 1981 the NRC granted a partial lifting of the stop-work order. In February 1982 the NRC removed its stop-work order for safety-related construction at Marble Hill. Since that time, all restrictions on safety-related work have been lifted.

The Marble Hill participation agreement between PSI and WVPA provides for an administrative committee composed of one representative from PSI and one representative from WVPA. WVPA has used this committee since the beginning of WVPA's participation in the project to monitor all aspects of the project including construction progress. Since the work stoppage, WVPA has taken steps to increase its monitoring of the construction progress at Marble Hill. Edward P. Martin, General Manager of WVPA, regularly attends the monthly on-site briefings for PSI's top management. At WVPA's request, PSI now provides a detailed monthly report of the construction progress at Marble Hill. In January 1981, the WVPA Board of Directors authorized substantial work by Southern Engineering Company of Georgia to review the construction progress at Marble Hill.

In July 1980, PSI revised its estimation of the construction cost of the plant to $4.3 billion and the scheduled commercial operation dates to December 1986 for Unit No. 1 and December 1987 for Unit No. 2. After a review of the alternatives available, the WVPA Board authorized submission of a loan application to REA in the amount of $588,000,000 to provide the financing required for WVPA to continue its participation in Marble Hill. WVPA submitted a study to support its loan application for a deficiency loan. On September 4, 1981, REA approved a loan guarantee commitment in the amount of $588,000,000 to finance WVPA's continued participation in the Marble Hill Nuclear Plant.

In July 1982, PSI again revised its estimated schedule and cost of Marble Hill. Marble Hill Unit No. 1 continues to be planned for commercial operation by December 31, 1986, but Unit No. 2 has been delayed six months from December 1987 to June 1988. Based upon these estimated completion dates, the cost of the plant by PSI's estimate has increased from $4.3 billion to $5.1 billion. Approximately $480 million of the current estimate of cost increase is for labor and materials. The remainder reflects PSI's estimate of its additional financing costs. The resulting cost increase to WVPA is estimated to be $39 million above the present REA guaranteed loan commitment of $948 million for a total estimate of $987 million. This difference is within normal bounds of engineering accuracy and, in WVPA's judgment, no further REA loan commitment is warranted for the Marble Hill Nuclear Plant at this time due to the time frame involved and the uncertainty of future interest costs for the project. Through October 31, 1982, WVPA had spent $320,080,500 on construction and nuclear fuel for Marble Hill. WVPA will continue to monitor the cost increases of Marble Hill as the project progresses and the WVPA Board of Directors will determine, when required, if an additional REA loan commitment is warranted. This decision is not expected before late 1984.

Other Power Supply Arrangements

WVPA and PSI have further expanded their business relationship by executing a power coordination agreement designed to reduce the cost increase to WVPA's Members when Marble Hill Unit No. 1 begins commercial operation. The agreement will have an initial term ending on January 1, 2007, and may be terminated thereafter by either party upon five years' written notice. Under the agreement, WVPA has the right, as of the date of commercial operation of Marble Hill and for 11 years thereafter, to initially purchase a maximum amount of 150 mw of PSI's Gibson Unit No. 4 and such amount will be gradually decreased so that at the end of the 11 year period PSI has full use of all the Gibson Unit No. 4 power for its consumers. The cost of power for this unit is estimated to be 38% less than PSI's estimated average system costs when Marble Hill Unit No. 1 begins commercial operation. The result of this agreement will be to mitigate the rate increases that will be needed by WVPA at such time.

UNITED STATES OF AMERICA

NUCLEAR REGULATORY COMMISSION

In the matter of	:	
ARIZONA PUBLIC SERVICE COMPANY, et al.,	:	DOCKET NO. STN 50-528
(Palo Verde Nuclear Generating Station, Unit 1)	:	

EXHIBIT E

BRIEF OF PUBLIC SERVICE COMPANY OF NEW MEXICO IN SUPPORT OF THE APPLICATION IN RESPECT OF A SALE AND LEASEBACK FINANCING TRANSACTION BY PUBLIC SERVICE COMPANY OF NEW MEXICO

Letter from Mudge Rose-Guthrie Alexander & Ferdon to Edwin J. Reis, dated October 14, 1985, and enclosures thereto

MUDGE ROSE GUTHRIE ALEXANDER & FERDON

180 MAIDEN LANE
NEW YORK, N. Y. 10038
212-510-7000
CABLE ADDRESS: BALTUCHINS-NEW YORK
TELEX: WU 703729; WU 127669
TELECOPIER: 212-248-2655

2121 K STREET, N.W.
WASHINGTON, D.C. 20037
202-429-9355

SUITE 2020
333 SOUTH GRAND AVENUE
LOS ANGELES, CALIF. 90071
213-613-1112

12, RUE DE LA PAIX
75002 PARIS, FRANCE
261-57-71

October 14, 1985

Edwin J. Reis, Esq.
Assistant Chief Hearing Counsel
Nuclear Regulatory Commission
7735 Old Georgetown Road
Bethesda, Maryland 21930

PUBLIC SERVICE COMPANY OF NEW MEXICO
Palo Verde Nuclear Generating Station,
Unit 1

Dear Mr. Reis:

Since my letter to you of October 9, 1985, enclosing a short memoranda concerning foreign ownership aspects of Burnham Leasing Corporation, I have received and reviewed other material relating to foreign ownership issues: (i) an exchange of letters in September, 1983 between U.S. Senator Alan K. Simpson and Chairman Palladino of the Nuclear Regulatory Commission (the Chairman's letter also encloses a staff legal analysis of Sections 103d and 104d of the Atomic Energy Act), (ii) the Commission's decision in In the matter of Commonwealth Edison Company (Zion Station Units 1 and 2) and (iii) the Commission's decision in In the Matter of General Electric Company and Southwest Atomic Energy Associates. This material shows

why considerations of foreign ownership should not present a significant problem in the context of the proposed financing. A copy of this material is enclosed.

In connection with the sale and leaseback financing currently being considered by PNM, it is useful to note a number of matters:

1. The equity investors in the proposed financing will have no ownership interest in the licensee, PNM. This fact was important for the Commission in distinguishing the General Electric Company and Southwest Energy Associates proceeding (the "SEFOR" case) from the determination requested on behalf of the Hoffman-LaRoche subsidiary (see page 9 of the memorandum attached to Chairman Palladino's letter, hereinafter the "Staff Memorandum"). The involvement of the equity investors does not, and cannot, affect the ultimate ownership or control of the PVNGS participants.

2. The equity investors will have (i) no ability to restrict or inhibit compliance with the security, safety or other regulations of the Commission, (ii) no capacity to control the use of nuclear fuel or to dispose of special nuclear material generated by PVNGS Unit 1, (iii) no voice in the financial affairs of PNM or any other Unit 1 licensee and (iv) no right to use or direct the use of the physical facilities constituting Unit 1. (See page 101 of the SEFOR case). Under the express terms of the lease, for example, the lessor will warrant to PNM that, so long as PNM is in compliance with the documents comprising the sale and leaseback transaction, PNM's use of, and rights with respect to, Unit 1 shall not be interrupted by the lessor or, any person claiming under or through the lessor.

3. Arizona Public Service Company ("APS") has primary responsibility for ensuring that the business and activities of Unit 1 are conducted at all times in a manner consistent with the protection of the common defense and security of the United States. Pursuant to the terms of the ANPP Participation Agreement which governs Unit 1, APS, PNM and the other Unit 1

licensees, under the ANPP Participation Agreement which governs Unit 1, together exercise sole and exclusive authority in respect of the conduct of the business and activities of Unit 1. See license transfer condition (3) imposed on General Atomic Company as described at pages 7 and 8 of the Staff Memorandum. Simply stated, the equity investors will be without power or authority, legal or otherwise, to direct any matters in this regard, unless and until a default under the financing occurs and the investors seek to exercise remedies. At that point, however, the exercise of remedies will be subject to compliance with the regulations of the Commission, including 10 C.F.R. § 50.33(d)(3)(iii) and § 50.38.

Although the Commission has considered legal title to the physical assets of a licensed facility to be a factor (see page 101 of the SEFOR case and page 9 of the Staff Memorandum), the Commission has responded favorably where the "foreign" entity has no right to use or direct the use of the physical assets (see numbered paragraph 3 above). Control of, and supervision over, Unit 1 remains with the PVNGS participants, notwithstanding, "legal" title to an interest in Unit 1 residing for purposes of the financing with one or more equity investors. The issue is not legal title, but are, control, supervision and licensee responsibility, all of which remains unaltered by the proposed transaction.

In summary, the possible "foreign" status of one or more equity investors in the proposed financing should not prevent the proposed sale and leaseback of PNM's interest in PVNGS Unit 1. Although a foreign "flavor" may be imparted to PVNGS Unit 1 by virtue of the proposed financing, the equity investors have no right to use, or direct the use of, PNM's interest in Unit 1. Similarly, control of Unit 1 and policy decisions with respect thereto are the exclusive

preserve of the PVNGS participants (all of whom licensees) with no involvement by the equity investors. Furthermore, no license transfer is requested and it is not contemplated that none of the equity investors (or the owner trustee) will be named on the Unit 1 license. All "foreign" status issues are fully addressed by conditioning the exercise by equity investors of their remedies upon compliance with applicable law and regulation, including the Atomic Energy Act and the Commission's regulations.

Sincerely,

Timothy Michael Toy /DH

Timothy Michael Toy

Copy with Enclosures

Lee Dewey, Esq.
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Betheseda, Maryland 21930

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Nuclear Regulatory Commission
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Betheseda, Maryland 20814

Arthur C. Gehr, Esq.
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Albuquerque, New Mexico 87102

Mr. Richard Markowitz
Kidder, Peabody & Co.
Incorporated
10 Hanover Square
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