

Exhibit B

EXECUTION COPY

**SECOND AMENDED AND RESTATED
OPERATIONS AND MAINTENANCE AGREEMENT**

BY AND AMONG

PUBLIC SERVICE COMPANY OF COLORADO

AS OPERATOR

AND

EACH CO-OWNER OF THE COMANCHE UNIT 3 GENERATING FACILITY

COMANCHE UNIT 3 PROJECT

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This SECOND AMENDED AND RESTATED OPERATIONS AND MAINTENANCE AGREEMENT (as amended, supplemented or modified from time to time, the "Agreement"), dated as of May 31, 2006, by and among Public Service Company of Colorado, a Colorado corporation having its principal place of business at 1225 17th Street, Denver, CO 80202 (together with its successors and permitted assigns in such capacity under this Agreement, "PSCo" or "Operator"), Public Service Company of Colorado, in its capacity as a co-owner of the Facility and New Common Facilities and as the owner of the Existing Common Facilities (all as defined below), and each other party as set forth in Schedule 1 to this Agreement. PSCo and each other party are at times referred to individually herein as a "Party," and collectively as the "Parties."

RECITALS:

WHEREAS, PSCo owns and operates the Comanche Station, a two unit coal-fired electric generation facility (the "Existing Facility"), located near Pueblo, Colorado (the "Existing Facility Site");

WHEREAS, PSCo currently plans to (i) develop and construct an additional supercritical, pulverized-coal-fired electric generating facility with a net nominal capacity of approximately 750 MW (the "Facility") on a property adjacent to the Existing Facility Site (the "Facility Site"); (ii) construct the New Common Facilities (as defined below); and (iii) perform upgrades on the Existing Common Facilities (as defined below), such upgrades to the Existing Common Facilities, together with the Facility, the Facility Site and the New Common Facilities, comprising the "Project";

WHEREAS, PSCo and IREA have entered into that certain Operations and Maintenance Agreement, dated as of April 8, 2005 (the "Original O&M Agreement"), and amended and restated as of April 4, 2006 (the "First Amended and Restated O&M Agreement");

WHEREAS, the Parties have entered into that certain Second Amended and Restated Joint Ownership Agreement, dated as of the date hereof (the "Joint Ownership Agreement"), which provides the terms and conditions on which each Party other than PSCo (the "Non-PSCo Parties") may become co-owners of, among other things, the Facility, the Facility Site and the New Common Facilities;

WHEREAS, the Parties have entered into (i) that certain Second Amended and Restated Common Facilities Agreement, dated as of the date hereof (the "Common Facilities Agreement") and (ii) that certain Second Amended and Restated Property Rights Agreement, dated as of the date hereof (the "Property Rights Agreement");

WHEREAS, PSCo shall, as Operator, operate and maintain the Facility and Common Facilities and perform certain associated activities, including but not limited to the procurement of fuel and water; and

WHEREAS, the Parties desire to amend and restate the First Amended and Restated O&M Agreement as provided in this Agreement.

NOW, THEREFORE, in consideration of the foregoing premises, the mutual agreements herein contained, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties agree as follows:

ARTICLE 1 DEFINITIONS

Except as otherwise expressly provided elsewhere in this Agreement, each capitalized term used in this Agreement has the meaning assigned it in this Article 1.

"Accounting Practices" means requirements, practices, procedures, methodologies and principles as set forth in the "Uniform System of Accounts Prescribed for Public Utilities and Licensees subject to the provisions of the Federal Power Act" (18 C.F.R. Part 101), applicable to "major" utilities (as therein defined), as may be in effect from time to time, and consistent with the regulations, applicable rulings or requirements of the FERC and the CPUC and with GAAP.

"Affiliate" means, with respect to any Party, any entity which is a direct or indirect parent or subsidiary of such Party or which directly or indirectly (i) owns or controls such Party, (ii) is owned or controlled by such Party, or (iii) is under common ownership or control with such Party.

"Agreement" has the meaning set forth in the Preamble.

"Audit Committee" means the committee constituted pursuant to the Joint Ownership Agreement to: (i) establish accounting and other financial procedures as may be appropriate to assist each Party in performing its obligations under this Agreement and the other Project Agreements to which it is a party; (ii) establish accounting and other financial procedures as may be necessary for regulatory reporting or compliance with any Party's financing arrangements; (iii) review accounting, financial and internal control aspects of the Facility Assets (as defined in the Joint Ownership Agreement); (iv) advise and make recommendations to the E&O Committee and the Coordinating Committee on matters involving auditing and financial transactions; and (v) perform other tasks the E&O Committee assigns to it.

"Available Net Generating Capability" means Net Generating Capability adjusted for capacity not available, or additional capacity available, for any reason, including daily, monthly or seasonal rating changes, derates, Scheduled Maintenance, Unscheduled Maintenance, Operating Emergencies and Force Majeure.

"Bankruptcy Event" means, with respect to any entity, such entity: (i) voluntarily files a petition or otherwise commences, authorizes or acquiesces in the commencement of a proceeding or cause of action under any bankruptcy, insolvency, reorganization or similar law, or has any such petition filed or commenced against it by

its creditors and such petition is not dismissed within sixty (60) calendar days of the filing or commencement; (ii) makes an assignment or any general arrangement for the benefit of creditors; (iii) otherwise becomes insolvent, however evidenced; (iv) has a liquidator, administrator, receiver, trustee, conservator or similar official appointed with respect to it or any substantial portion of its property or assets; or (v) is generally unable to pay its debts as they fall due.

“Business Day” means any day on which commercial banks are not authorized or required to close in Denver, Colorado. For the avoidance of doubt, Saturday and Sunday shall not be Business Days.

“Capital Costs” means those costs incurred on or after the Commercial Operation Date required to be capitalized under Accounting Practices, without carrying charges (unless otherwise agreed) or markup, incurred by or on behalf of Operator at the Facility and the Common Facilities in connection with its performance under this Agreement.

“Claims” means any and all liabilities, damages, losses, demands, penalties, interest, fines, claims, actions, suits, judgments, settlements, and reasonable costs, fees, expenses and disbursements (including reasonable legal fees) and expenses and costs of investigation resulting from any claim brought by a third party, including any proceeding, investigation or inquiry initiated by or with a Governmental Authority.

“Coal Pile” means the coal pile(s) from which coal is supplied to the Facility.

“Coal Supply Agreements” has the meaning set forth in Section 6.1.1.

“Commercial Operation Date” means the date on which the Facility produces commercial amounts of Energy and has passed all acceptance tests under the Construction Agreements, and care and custody of the Facility is accepted by Operator.

“Common Facilities” means certain equipment, systems, facilities, structures, improvements and other property used in the commercial operation of both the Facility and the Existing Facility, including Existing Common Facilities and New Common Facilities.

“Common Facilities Agreement” has the meaning set forth in the Recitals.

“Confidential Information” has the meaning set forth in Section 19.1.1.

“Construction Agreements” means the agreement or agreements to be entered into between PSCo and the Construction Contractor(s) for the design and engineering of, procurement of materials and equipment for, and construction of the Project.

“Construction Contractor(s)” means the entity or entities charged with providing engineering, procurement and/or construction services in connection with all or part of the Project pursuant to the Construction Agreements.

“Coordinating Committee” means that committee of executives from each Party, constituted pursuant to the Joint Ownership Agreement to conduct informal resolution of disputes under this Agreement and the other Project Agreements.

“CPUC” means the Colorado Public Utilities Commission or any successor entity.

“Default Interest Rate” means, for any applicable day, the per annum prime lending rate published in *The Wall Street Journal* under “Money Rates” on that day, or for any day on which *The Wall Street Journal* is not published, the rate appearing in the most recently published edition, plus two percentage points (200 basis points). In no event shall the Default Interest Rate exceed the maximum rate permitted by applicable Laws.

“Delivery Point” means the point of interconnection between the Facility and the electrical transmission network of PSCo, located at the high side of the generator step-up transformer associated with the Facility.

“Dispute” has the meaning set forth in Section 20.1.

“E&O Committee” means the engineering and operating committee constituted pursuant to the Joint Ownership Agreement to discuss material decisions, actions, events and capital expenditures undertaken by PSCo concerning the construction, operation and maintenance of the Facility and the Common Facilities.

“Energy” means the net measured amount of electric energy generated by the Facility and delivered to the Delivery Point for any period.

“Environmental Law” means any and all Laws, now or hereafter in effect, and any judicial or administrative judgment, relating to pollution or protection of human health or the environment, including without limitation, laws relating to Releases or threatened Releases of Hazardous Materials or otherwise relating to the manufacture, processing, distribution, use, treatment, storage, disposal, transport, or handling of Hazardous Materials.

“Existing Common Facilities” means those Common Facilities owned by PSCo, as more fully described in Schedule 2 to the Common Facilities Agreement.

“Existing Facility” has the meaning set forth in the Recitals.

“Existing Facility Site” has the meaning set forth in the Recitals.

“Facility” has the meaning set forth in the Recitals.

"Facility Fuel Costs" means the costs recorded in Account 501 of the FERC's Uniform System of Accounts for the Facility during a month.

"Facility Ownership Interest" means each Owner's ownership interest in the Facility, as set forth in Schedule 1.

"Facility Percentage Share" means, for each Owner, a pro rata allocation consistent with such Owner's Facility Ownership Interest.

"Facility Site" has the meaning set forth in the Recitals.

"FERC" means the Federal Energy Regulatory Commission, and any successor entity.

"First Amended and Restated O&M Agreement" has the meaning set forth in the Recitals.

"First Meeting Deadline" has the meaning set forth in Section 20.2.

"Force Majeure" has the meaning set forth in Section 17.1.

"GAAP" means Generally Accepted Accounting Principles in the United States of America as in effect from time to time, applied on a consistent basis with PSCo's other utility operations.

"Government Approval" means any authorization, consent, approval, license, lease, ruling, permit, tariff, rate, certification, concession, grant, franchise, exemption, variance, order, judgment, decree, publication, declaration or registration issued by any Governmental Authority.

"Governmental Authority" means any authority, official or representative of the government of any nation or of any state or political subdivision thereof, whether foreign or domestic, having jurisdiction over the Facility, the Common Facilities, the Parties or their respective subcontractors or suppliers, including, without limitation, any city, municipality, township, and county, and any person or entity exercising executive, legislative, judicial, regulatory or administrative functions of or pertaining to any such government.

"Hazardous Material" means the wastes described in 42 U.S.C. Section 6921(b)(3)(A)(i)-(iii), and all substances defined as Hazardous Substances, Oils, Pollutants or Contaminants in the National Oil and Hazardous Substances Pollution Contingency Plan, 40 C.F.R. § 300.5, or defined as such by, or regulated as such under, any Environmental Law.

"Holy Cross" means Holy Cross Electric Association, Inc., a Colorado corporation, together with its successors and permitted assigns in such capacity.

"Indemnified Party" has the meaning set forth in Section 14.3.

“Indemnifying Party” has the meaning set forth in Section 14.3.

“IREA” means Intermountain Rural Electric Cooperative, a Colorado corporation, together with its successors and permitted assigns in such capacity.

“Joint Ownership Agreement” has the meaning set forth in the Recitals.

“Law” means any statute, regulation, ordinance, Government Approval, agreement, directive, guideline, policy, requirement, or other governmental restriction or any similar form of decision of or determination by, or any interpretation or administration of any of the foregoing by, any Governmental Authority, whether now or hereafter in effect (including any Environmental Law).

“Minimum Net Generation” means the lowest net electrical output at which the Facility can be reliably maintained in service on a continuous basis using coal as the only boiler fuel, measured at the Delivery Point.

“Net Generating Capability” means that amount of kilowatts or megawatts, less station use (including the Facility’s share of power usage by Common Facilities), that the Facility will supply at the Delivery Point, taking into account transformer losses between the Facility and the Delivery Point, consistent with Prudent Utility Practice, as determined on a quarterly basis for the prospective quarter in accordance with the testing standards applied by the Western Systems Coordinating Council or the Rocky Mountain Reserve Group, as applicable, or any successor or other entity that replaces the Western Systems Coordinating Council or the Rocky Mountain Reserve Group in providing such testing standards.

“New Common Facilities” means those Common Facilities co-owned by the Owners, as more fully described in Schedule 5 to the Joint Ownership Agreement.

“Non-Performing Party” has the meaning set forth in Section 17.1.

“Non-PSCo Parties” has the meaning set forth in the Recitals.

“O&M Costs” means those costs and expenses, excluding Capital Costs and Facility Fuel Costs, incurred by or on behalf of Operator in connection with its performance under this Agreement.

“O&M Services” has the meaning set forth in Section 2.1.1.

“Operating Account” means the bank account established by PSCo to hold funds contributed by each Owner for the benefit of the Owners and for the purpose of paying (i) its Percentage Shares of all O&M Costs and Capital Costs and (ii) its respective Facility Fuel Costs and other amounts due and payable under this Agreement.

“Operating Emergency” means a sudden and unplanned event or circumstance that reduces or may reduce the availability of capacity from, or generation of Energy by, the Facility.

“Operating Manuals” means manuals and procedures developed by Operator or the Construction Contractor(s) in accordance with Prudent Utility Practice, which shall describe the procedures to be used to ensure the proper operation, maintenance, implementation of repairs and the like for the Facility and the Common Facilities, including equipment manufacturer's manuals. The Operating Manuals shall include:

- (a) a staffing plan including job descriptions and an organizational chart;
- (b) a list and description of all logs, records, books and charts to be kept and maintained by Operator;
- (c) standard management, administration, operating and maintenance procedures;
- (d) safety and fire prevention measures and procedures;
- (e) security and safety measures and procedures; and
- (f) plans and procedures for compliance with all applicable Government Approvals and applicable Laws relating to the operation and maintenance of the Facility and the Common Facilities.

“Operator” has the meaning set forth in the Preamble.

“Operator Indemnified Party” has the meaning set forth in Section 14.1.1.

“Original O&M Agreement” has the meaning set forth in the Recitals.

“Owners” means (i) PSCo, in its capacity as an owner of undivided ownership interests in the Facility, the Facility Site and the New Common Facilities and as sole owner of the Existing Common Facilities and (ii) each Non-PSCo Party, as set forth in Schedule 1 from time to time, that has purchased an undivided ownership interest in the Facility, the Facility Site and the New Common Facilities pursuant to and in accordance with the Joint Ownership Agreement. Schedule 1 shall be revised upon the Closing Date (as defined in the Joint Ownership Agreement) for each Non-PSCo Party to reflect such Non-PSCo Party's purchased Facility Ownership Interest.

“Owner Indemnified Party” has the meaning set forth in Section 14.1.2.

“Party” has the meaning set forth in the Preamble.

“PPA” means, with respect to each Non-PSCo Party, its power purchase agreement or power supply agreement, as applicable, with PSCo and in effect as of the

date of the Agreement, as such agreement may from time to time thereafter be amended, supplemented or modified in accordance with the terms thereof.

“Prime Rate” means for any applicable day, the per annum prime lending rate published in *The Wall Street Journal* under “Money Rates” on such day or, for any day on which *The Wall Street Journal* is not published, the rate appearing in the most recently published edition. In no event shall the Prime Rate be permitted to exceed the maximum rate permitted by applicable Law.

“Project” has the meaning set forth in the Recitals.

“Project Agreements” means all agreements between the Parties relating to the ownership, development, construction and/or operation of all or any part of the Facility and the Common Facilities, including this Agreement, the Joint Ownership Agreement, the Property Rights Agreement and the Common Facilities Agreement, but excluding the financing documents of any Party.

“Property Rights Agreement” has the meaning set forth in the Recitals.

“Prudent Utility Practice” means the practices, methods, conduct and actions (including, but not limited to, the practices, methods, conduct and acts engaged in or approved by a significant portion of the power industry) that, at a particular time, in the exercise of reasonable judgment at the time a decision was made, could have been expected to accomplish the desired result in a manner consistent with applicable Law, standards, reliability, safety, environmental protection, good business practices, economy, and expedition. Prudent Utility Practice is not intended to be limited to the optimum practice, method or act to the exclusion of all others, but rather is a spectrum of possible practices, methods or acts which can fall within this description. In applying the standard of Prudent Utility Practice to any matter under this Agreement, equitable consideration shall be given to the circumstances, requirements and obligations of each of the Parties.

“PSCo” has the meaning set forth in the Preamble.

“PSCo Loan” has the meaning set forth in Section 9.4.2.

“Scheduled Commercial Operation Date” means the scheduled date for commencement of commercial operations of the Facility as may be provided in or pursuant to the Construction Agreements.

“Scheduled Maintenance” means routine corrective maintenance, preventive maintenance and equipment overhauls to the Facility or the Common Facilities that have been identified and scheduled by Operator.

“Scheduling Protocol” means the Scheduling Protocol attached as Schedule 6 to the Joint Ownership Agreement.

“Settlement Agreement” has the meaning set forth in Section 20.2.

"Shared O&M Costs" has the meaning set forth in Section 8.2.

"Site" means the Facility Site and the areas of the Existing Facility Site on which the Common Facilities are located.

"Term" has the meaning set forth in Article 18.

"Total Facility Percentage Share" means, as to any Owner, the ratio of such Owner's name plate capacity entitlement (measured in megawatts) in the Facility to the aggregate name plate capacity (measured in megawatts) of the Facility and the Existing Facility, which ratio shall be recalculated by the E&O Committee (i) upon the Commercial Operation Date to reflect any adjustment to the name plate capacity of the Facility arising through commissioning and testing, (ii) upon the retirement of either unit of the Existing Facility and (iii) upon any permanent derate or upgrade to the capacity (measured in megawatts) of the Facility or the Existing Facility. As of the date of this Agreement, the name plate capacity of the Facility shall be deemed to be 750 megawatts and the aggregate name plate capacity of the Facility and the Existing Facility shall be deemed to be 1410 megawatts.

"Unscheduled Maintenance" means maintenance or repairs not scheduled by Operator but required for the proper operation and maintenance of the Facility or the Common Facilities.

"Xcel Energy" means Xcel Energy Inc., a Minnesota corporation and the parent company of PSCo.

"Year" means a calendar year or portion thereof occurring after the Commercial Operation Date and prior to the last day of the Term of this Agreement.

ARTICLE 2 OPERATOR'S OBLIGATIONS

2.1 General Description of Operator's Role.

2.1.1 From and after the Commercial Operation Date, unless otherwise expressly provided in this Agreement, Operator shall operate and maintain the Facility and the Common Facilities and shall perform its duties under this Agreement (collectively, the "O&M Services") for the benefit of the Owners and in accordance with this Agreement, applicable Laws, all applicable Government Approvals, Prudent Utility Practice and without adverse distinction as between and among the Parties.

2.1.2 Operator shall have care, custody and operating control of the Facility and the Common Facilities from and after the Commercial Operation Date.

2.1.3 Operator shall perform and execute the O&M Services as an independent contractor. Operator shall not be deemed an employee, partner or joint venturer of any other Party or the agent of any Party. Nothing contained in this

Agreement shall be construed as constituting an association, joint venture, trust, cooperative action, or partnership between or among the Parties.

2.1.4 For the avoidance of doubt, the operation and maintenance of the Existing Common Facilities prior to the Commercial Operation Date shall be as provided in the Common Facilities Agreement. Except as otherwise expressly stated in this Agreement, the rights and obligations of the Parties with respect to the Existing Common Facilities under this Agreement shall become effective as of the Commercial Operation Date.

2.2 Operator's Duties. Without limiting the generality of Section 2.1, commencing on the Commercial Operation Date, unless otherwise expressly provided in this Agreement, Operator shall perform the following specific services:

2.2.1 employ and supervise the personnel necessary for performance of the O&M Services and be exclusively responsible for all operating personnel matters, including labor contract negotiations, hiring, compensation, disciplining, employee grievances and claims, discharging, training and promoting;

2.2.2 provide all operating personnel and coordinate with the Construction Contractors to conduct all performance testing, under the supervision and control of the Construction Contractors, in connection with achieving the Commercial Operation Date and final completion under the Construction Agreements;

2.2.3 operate and maintain the Facility and the Common Facilities in a manner consistent with appropriate safety procedures, the Operating Manuals, the plan for Scheduled Maintenance and operating budgets prepared by Operator under this Agreement;

2.2.4 maintain the Facility and the Common Facilities in a good, clean and orderly condition, in accordance with Prudent Utility Practice and all insurance policies required to be maintained by Operator pursuant to this Agreement;

2.2.5 make all necessary repairs and replacements of equipment and parts, including all Scheduled Maintenance and Unscheduled Maintenance;

2.2.6 procure, contract for, and furnish the services and materials, including equipment, apparatus, machinery, spare parts, tools and supplies necessary for the performance of the O&M Services, and administer and comply with all contracts entered into by Operator with third parties that relate to the performance of this Agreement;

2.2.7 procure and administer all fuel supply and fuel transportation contracts applicable to the Facility, including arrangements to receive, handle and store all fuel delivered for the Facility;

2.2.8 procure and administer combustion waste and other waste disposal contracts applicable to the Facility, including arrangements to handle, store and dispose of all waste produced by the Facility;

2.2.9 use commercially reasonable efforts to comply with any and all Laws relating to the O&M Services, the Facility, the Common Facilities, and the Site, and with any applicable Government Approvals;

2.2.10 procure all water resources required to operate and maintain the Facility and the Common Facilities;

2.2.11 establish operating and performance parameters, including Minimum Net Generation, Net Generating Capability, Available Net Generating Capability, ramp rates and heat rates for the Facility from time to time;

2.2.12 prepare and distribute monthly bills to the Owners for O&M Costs, Facility Fuel Costs and Capital Costs incurred by Operator under this Agreement;

2.2.13 expend funds in the Operating Account in accordance with this Agreement;

2.2.14 establish and maintain an information system to manage operating data for the Facility and the Common Facilities, including such information, assumptions, measurements and methodologies necessary to verify calculations required to be made by Operator pursuant to this Agreement. The information system will be available for access by the E&O Committee and the Audit Committee or any Party as the case may be;

2.2.15 prepare and maintain books and records and accounts in accordance with Article 10;

2.2.16 purchase any supplies, equipment, spare parts or other materials required for Operator to perform the O&M Services, in a manner that will enable the Parties to achieve or retain material benefits, such as exemption from sales taxes, if attainable;

2.2.17 bring suit, file or settle any type of legal action on behalf of the Parties, to protect the Owners' rights under this Agreement and/or to enforce agreements entered into by Operator pursuant to this Agreement. Prior to bringing or settling any such action, Operator shall provide each of the Owners with notice and a description of such suit or settlement, provide each of the Owners with a reasonable opportunity to comment on such suit or settlement, and consider all such comments in good faith;

2.2.18 investigate, adjust, defend, and settle Claims arising out of or in connection with the O&M Services. Operator shall provide each of the Owners

with notice and a description of such suit or any good faith settlement that Operator is considering, provide each of the Owners with a reasonable opportunity to comment on such suit or settlement, and consider all such comments in good faith. However, prior to settling any such Claim which would result in an aggregate payment by the Owners in excess of four million dollars (\$4,000,000), Operator shall receive the prior written consent of each Owner;

2.2.19 operate and dispatch the Facility in accordance with each Owner's schedules and in accordance with the procedures for the delivery of capacity and Energy from the Facility as may be established;

2.2.20 procure such auxiliary services, including startup and auxiliary power and water, as are required from time to time in connection with the operation of the Facility and the Common Facilities;

2.2.21 maintain the necessary metering equipment to determine the amounts of net capacity and Energy from the Facility at the Delivery Point; and

2.2.22 such other activities as the E&O Committee may delegate to Operator.

2.3 Operating Emergencies. Notwithstanding any other provision of this Agreement, in the event of an Operating Emergency, Operator shall take such actions and make such expenditures as it deems necessary to ensure the safety of the Facility and the Common Facilities and all personnel at the Facility and the Common Facilities. As soon as is practicable following the occurrence of an Operating Emergency, Operator shall notify each of the Owners of the Operating Emergency. Operator shall account for any expenses and costs incurred by Operator in responding to an Operating Emergency and shall bill such expenses and costs to the Owners as O&M Costs in accordance with Article 9. Following the termination of an Operating Emergency, Operator shall prepare and submit to the E&O Committee a report summarizing the actions taken, the costs and expenses incurred and such other information as the E&O Committee may reasonably request.

2.4 Operation Beyond Maximum Design Capability. The Parties intend that Operator will operate the Facility to maximize its useful life and preserve its ability to operate as a high-availability base-load power supply resource and to avoid high maintenance costs that may be incurred due to operation of the Facility above its maximum design capabilities. The Parties further recognize that during testing or in the event of foreseeable or implemented firm-load-obligation interruptions, after taking all other prudent actions to avoid such interruptions, Operator may find it necessary or appropriate to operate the Facility for short periods of time (generally not to exceed four (4) hours) above its maximum design capabilities. Consistent with Prudent Utility Practice, Operator shall keep such operations to a minimum and contemporaneously communicate with all of the Owners regarding such operations. If reasonably practicable and consistent with Prudent Utility Practice, Operator shall permit each Owner to schedule its Facility Percentage Share of the excess Energy arising from operating the

Facility above its maximum design capabilities. Otherwise, PSCo shall take one hundred percent (100%) of such excess Energy and shall pay to each Non-PSCo Party an amount equal to the product of (i) the amount of such excess Energy, on a MWh basis, multiplied by (ii) such Non-PSCo Party's Facility Percentage Share of such excess Energy, multiplied by (iii) the price per MWh provided in each Non-PSCo Party's PPA for the purchase by PSCo of Energy that such Non-PSCo Party is entitled to schedule but does not schedule.

ARTICLE 3 OWNERS' OBLIGATIONS

3.1 Payment of Costs. The Owners shall pay for all O&M Costs, Facility Fuel Costs and Capital Costs in accordance with the allocation methods set forth in Article 8 and in accordance with the payment procedures set forth in Article 9.

3.2 Payment of Taxes. The Owners shall pay all applicable taxes, if and to the extent imposed upon the Owners, the O&M Services, the Facility or the Common Facilities pursuant to and in accordance with the Joint Ownership Agreement. Any Non-PSCo party may advise Operator of exemptions from taxation available to such Non-PSCo party, and Operator shall take such exemptions into account in determining applicable taxes.

3.3 Provision of Information. Each Owner shall timely provide to Operator such other information as Operator reasonably requires to prepare budgets, plans for Scheduled Maintenance and any other documents Operator is required to prepare under this Agreement.

3.4 Receipt of Power. Each Owner shall be responsible for arranging the delivery of the Energy it is entitled to from the Delivery Point.

3.5 Government Approvals. The Owners shall obtain and maintain all Government Approvals necessary for, as applicable, the ownership, operation or maintenance of the Facility and the Common Facilities, for any Capital Costs, or as may otherwise be required for the performance of the Owners' obligations under this Agreement, except for those Government Approvals to be obtained by Operator under this Agreement.

ARTICLE 4 E&O COMMITTEE ACTIVITIES

4.1 Scope of Activities. The E&O Committee shall consult with and receive information from Operator on any matters related to Operator's performance of its obligations under this Agreement. Each Owner may, through the E&O Committee, request information from Operator and, subject to Operator's obligation not to act with adverse distinction to any Owner, Operator shall, in response to all reasonable requests, provide the requested information to each Owner through the E&O Committee. The

review and consultation functions of the E&O Committee with respect to this Agreement shall be:

4.1.1 to provide liaison among the Parties with respect to the provisions of this Agreement;

4.1.2 to monitor the work of Operator and consult with Operator in connection with Operator's performance of its obligations, duties and responsibilities under this Agreement and Operator shall take into account the reasonable requests and recommendations of the E&O Committee members in performing its duties under this Agreement. In order to facilitate such monitoring and consultation, the E&O Committee may from time to time request Operator to conduct (or cause to be conducted) assessments or studies, the results of which shall be provided to the E&O Committee and the costs of which shall be recoverable as O&M Costs, if the E&O Committee unanimously approves such assessments or studies, or as other support costs directly allocable to the requesting Parties if E&O Committee does not unanimously approve such assessments or studies;

4.1.3 to review and make recommendations regarding Operator's schedule for planned outages and maintenance, in accordance with Section 4.3;

4.1.4 to review and make recommendations regarding policies for appropriate levels of the inventory for spare parts and other materials and supplies;

4.1.5 to review and provide input regarding the form and content of the statistical and administrative reports, budgets, and information and other similar records regarding the operation of the Facility and the Common Facilities, including fuel, power and energy compliance and environmental compliance, to be kept by and furnished by Operator to the Owners in accordance with Section 10.1 (excluding accounting records used internally for the purpose of accumulating financial and statistical data, such as books of original entry, ledgers, work papers, and source documents);

4.1.6 to review and consult with Operator regarding the methodology and calculation of the Minimum Net Generation and the Net Generating Capability of the Facility;

4.1.7 to review and consult concerning procedures for performance and efficiency testing;

4.1.8 to review and consult regarding written operating practices and procedures, and to establish the procedures called for in Section 4.2;

4.1.9 to consider and, if appropriate, recommend amendments to this Agreement; *provided, however*, the E&O Committee shall not have authority to approve and adopt any such amendments;

4.1.10 to review and consult regarding any proposal by Operator to implement a physical change to, or material change in the method of operation of, the Facility and the Common Facilities;

4.1.11 to consider and attempt to resolve, avoid and mitigate potential disputes or, if avoidance or resolution is not possible, to provide such support to the Coordinating Committee in connection with its dispute resolution activities as the Coordinating Committee may request; and

4.1.12 to perform such other functions and duties as may be assigned to it by agreement of all of the Parties and to make any recommendations to Operator deemed appropriate or desirable by all of the Parties.

4.2 Development of Procedures. Not later than ninety (90) days prior to the Scheduled Commercial Operation Date, the E&O Committee shall establish mutually acceptable practices and procedures, in the form of a manual, for keeping each Party advised of the operating status of Facility and the Common Facilities and key operating parameters, including Net Generating Capability, Available Net Generating Capability, O&M Costs, Capital Costs, Facility Fuel Costs and the availability of ancillary services. The E&O Committee shall deliver the written procedures to each of the Parties, who shall be responsible for updating each of their copies of the procedures manuals. The E&O Committee shall be responsible for the distribution of any revised or additional procedures developed by the E&O Committee pursuant to this Agreement. Operator will assist the E&O Committee with the development of the procedures and the procedures manual, and will maintain the official version of such procedures manual, which shall be available at the Facility Site for review by the Parties during regular business hours. Copies of the official procedures so designated shall be provided by Operator to the Parties within seven (7) days of any request therefor.

4.3 Coordination of Maintenance.

4.3.1 By no later than one hundred twenty (120) days prior to the Scheduled Commercial Operation Date and by July 1 of each full year of commercial operations thereafter, Operator shall submit to the E&O Committee for its review a plan for Scheduled Maintenance during the following calendar year. The plan shall describe in reasonable detail the contemplated time and duration of each outage and shall cross-reference the related budget. The E&O Committee shall make recommendations concerning the maintenance plans within thirty (30) days of receipt of such plans. In establishing the maintenance schedule for the Facility, Operator shall use commercially reasonable efforts to accommodate the preferences of the Owners, taking into account the schedules already established for maintenance of their other resources. However, Operator shall retain the final responsibility for determining the maintenance schedule for the Facility and the Common Facilities. Operator shall deliver a final annual maintenance schedule to the Owners by no later than September 30 of the calendar year preceding the year to which the maintenance schedule relates. Consistent with Prudent Utility Practice and after duly considering the interests of all of the Owners, Operator

may from time to time make such changes to the scheduled maintenance plans as Operator deems appropriate, subject to Section 4.3.3. Operator shall inform the Owners of such changes on a timely basis, with as much advance notice as is practicable of any anticipated changes to the maintenance schedule. The Owners shall have a reasonable opportunity, not to exceed seven (7) days from receipt of Operator's notice of revisions, to comment on such revisions, which Operator shall reasonably consider in good faith. Operator makes no representation, warranty or promise of any kind as to the accuracy of any estimates or other information contained in any scheduled maintenance plans, other than that they will be prepared in accordance with Prudent Utility Practice and the other requirements of this Agreement.

4.3.2 Scheduled outages for major maintenance shall take into consideration manufacturers' or Construction Contractors' applicable conditions of sale and delivery of the affected facilities and equipment (including operating parameters and warranty requirements) and shall be conducted at intervals consistent with Prudent Utility Practice. Operator may shut down the Facility or the Common Facilities, reduce power or take other appropriate action necessary to ensure operation of the Facility and the Common Facilities in a manner consistent with Prudent Utility Practice. Operator shall provide notice to the Owners of any unscheduled outage as soon as is reasonably practicable.

4.3.3 For maintenance not included in the annual maintenance plan, where Operator has discretion as to the timing of such maintenance, Operator shall provide the Owners as much advance notice as is reasonably practicable of the need for any such maintenance, and provide a reasonable opportunity to comment on the timing of such maintenance, not to exceed seven (7) days from receipt of Operator's notice, which Operator shall reasonably consider in good faith.

4.3.4 If outages of the Facility are required because of maintenance associated with transmission facilities subject to the control of the operator of the transmission system to which the Facility is interconnected, Operator shall provide the Owners as much advance notice as is reasonably practicable of the need for such outage. In the case of outages of the Facility required for scheduled transmission maintenance, Operator shall provide a reasonable opportunity, not to exceed seven (7) days from receipt of Operator's notice, for the Owners to comment to Operator on the timing of such outage. Operator shall reasonably consider such comments in scheduling such outages and communicating with the transmission system operator regarding the timing of such maintenance.

ARTICLE 5 OPERATING BUDGETS

5.1 Budgets. Operator shall prepare all operating and capital budgets for the Facility and the Common Facilities. Operator shall prepare and present to the E&O Committee proposed operating and capital budgets, as described below, for review by, and consultation with, the E&O Committee. If, after a budget has been finalized,

Operator discovers or anticipates any significant variances from any such budget, Operator shall prepare an updated budget and submit it to the E&O Committee for review and consultation in accordance with the provisions below. Operator makes no representation, warranty or promise of any kind as to the accuracy of any estimate contained in any initial or revised budget.

5.1.1 Budgets detailing the monthly projected O&M Costs, Facility Fuel Costs and Capital Costs to be incurred in the Year in which the Commercial Operation Date occurs, showing expected costs by categories consistent with Accounting Practices, shall be submitted by Operator at least one hundred eighty (180) days prior to the Scheduled Commercial Operation Date. The E&O Committee shall review and, if appropriate, suggest modifications to the proposed first Year budgets within thirty (30) days of receipt of the proposed budgets. Operator will use commercially reasonable efforts to accommodate any suggested modifications. However, Operator shall retain the final responsibility for determining such operating budgets, consistent with Prudent Utility Practice and the other requirements of this Agreement. Operator shall deliver to each Owner a final operating budget for the first Year of commercial operation no later than ninety (90) days prior to the Scheduled Commercial Operation Date.

5.1.2 For each full calendar Year of commercial operation during the Term, Operator shall submit proposed budgets detailing the projected O&M Costs, Facility Fuel Costs and Capital Costs to be incurred in each month of the succeeding Year, and annual forecast amounts for the year thereafter, showing expected costs by categories consistent with Accounting Practices. Such budgets shall be prepared and proposed to the E&O Committee by July 1 of the Year prior to the Year to which such budgets will apply and shall include a forecast of amounts for the Year thereafter. The E&O Committee will review and, if appropriate, suggest modifications within thirty (30) days of receipt of the proposed budgets, consistent with Prudent Utility Practice. Operator will use commercially reasonable efforts to accommodate any suggested modifications. However, Operator shall retain the final responsibility for determining such operating budgets, consistent with Prudent Utility Practice and the other requirements of this Agreement. Operator shall deliver final operating budgets to the Owners no later than September 30 of such preceding year.

5.2 Cost Overruns. Operator shall inform the E&O Committee as soon as practicable of the need to expend amounts that exceed a final budget for O&M Costs, Facility Fuel Costs or Capital Costs by more than five percent (5%) and shall provide the Owners a reasonable opportunity, not to exceed seven (7) days from submittal to the E&O Committee, to comment on such cost overruns. Operator shall use commercially reasonable efforts to accommodate any suggestions of the Owners.

5.3 Revisions to Operating and Capital Budgets. To the extent that Operator determines it necessary or appropriate, Operator shall update or revise the applicable annual operating or capital budgets at such times as may be appropriate to reflect changes in assumptions made in their preparation or in actual O&M Costs, Facility Fuel Costs or Capital Costs. Operator shall submit these updates or revisions to the E&O

Committee for review and consultation as soon as is reasonably practicable. Operator shall provide the Owners a reasonable opportunity, not to exceed seven (7) days from submittal to the E&O Committee, to comment on such updates or revisions, and shall use commercially reasonable efforts to take such comments into account. Unless otherwise specified by Operator, such updates or revisions shall become effective for purposes of this Agreement from the date of submission to the E&O Committee and shall be applied to the first calendar month to which such update or revision relates.

ARTICLE 6

FUEL PROCUREMENT AND DELIVERY

6.1 Coal Supplies.

6.1.1 Operator's Fuel Procurement Obligations. In accordance with Prudent Utility Practice and this Agreement, Operator shall be responsible for the purchase and delivery of all the coal necessary for the operation of the Facility at all times during the Term of this Agreement. Accordingly, Operator shall select, enter into and administer any and all contracts for the supply and transportation of coal for the Facility ("Coal Supply Agreements"), and may do so as part of the coal supply and transportation arrangements for PSCo's other coal-fired facilities, including the Existing Facility without adverse distinction between or among the Parties. All such coal shall meet the operating and permit requirements for the Facility. Operator shall procure coal for the Facility based on the Owners' forecasted scheduling of capacity and Energy as provided in the Scheduling Protocol and on the assumption that the Facility will operate at all times at or near its maximum available capacity, other than during Scheduled Outages in accordance with the most recent plan for Scheduled Maintenance pursuant to Section 4.3.

(a) Operator shall consult with the Owners through the E&O Committee from time to time concerning Operator's strategy related to the length, pricing and other material terms of the Coal Supply Agreements, the net benefits that may be realized by incurring any contract minimum penalties or charges in connection with substitute spot-market purchases, and other opportunities for cost savings that may arise. Operator shall keep the Owners informed regularly and in reasonable detail concerning all significant issues that arise in connection with the fuel procurement process and strategy for the Facility or any of the Coal Supply Agreements relevant to the Facility and will reasonably consider input from the Owners with respect to such issues.

(b) Operator's responsibility to administer all Coal Supply Agreements in accordance with its obligations under Section 6.1.1(a) includes enforcement of any rights Operator may have under the Coal Supply Agreements and settlements of any disputes thereunder or amendments thereto, consistent with the requirements of Section 2.2.17.

(c) Operator shall be responsible for all activities related to the delivery and handling of coal at the Facility at all times during the Term of this Agreement. Operator shall determine the appropriate method for delivery, and may from

time to time use railcars and trucks to deliver the coal. The railcars used to deliver coal to the Facility may consist of a combination of leased or purchased railcars, and shall be operated as a fleet in combination with other railcars already owned or leased by PSCo. The O&M Costs and Capital Costs relating to railcars, including any lease costs, and the costs of purchasing additional railcars, in each case that are part of a fleet of railcars owned or leased by PSCo, shall be allocated to the Owners in the manner provided in Section 6.1.4. The E&O Committee may modify the allocation methodology upon review of a study examining the reasonableness of such methodology. The Non-PSCo Parties may, once in any three (3) year period, collectively cause the E&O Committee to commission a proposal for an alternate methodology to allocate rail-car costs and the costs incurred to prepare such study shall be shared by the Owners in accordance with their respective Facility Percentage Shares. Each member of the E&O Committee shall receive a copy of any such reports. Should the members of the E&O Committee fail to adopt unanimously the recommended allocation methodology contained in such study, any Party desiring to adopt the methodology recommended in such report may initiate dispute resolution in accordance with Article 20. Operator shall oversee all maintenance work for the railcars, consistent with its obligations under this Agreement. This work may be performed at a combination of railroad and private railcar repair facilities. Costs under this Section 6.1.1(c) shall be allocated in accordance with this Section and Article 8.

6.1.2 Coal Inventory Management. Operator shall manage all coal inventories for the Facility. The Owners acknowledge that Operator shall manage coal inventories for both the Facility and the Existing Facility and that coal inventories and management activities at any time may relate to the Facility and Existing Facility individually or collectively. Separate physical stockpiles for individual parties will not be maintained at the facility site. As part of the annual budgeting process, Operator shall establish a coal inventory target. Operator shall maintain coal inventories in a manner consistent with Prudent Utility Practice. If the coal inventory accumulates to the point that it exceeds the inventory target established by Operator and is greater than the excess inventory that can be accommodated at the Coal Pile, Operator may reduce the inventory to the highest level that can be accommodated at the Coal Pile.

6.1.3 Coal Inventory Carrying Costs. If, and for such time as, PSCo maintains the coal pile at a level that is greater than sixty (60) days' inventory, each Non-PSCo Party shall be obligated to pay carrying costs on the incremental amount of coal above such sixty (60) day inventory. Each Non-PSCo Party shall pay Operator for each month an amount equal to the product of (a) the average Default Interest Rate for the month divided by twelve (12) and (b) the dollar value of such Non-PSCo Party's portion of the coal inventory that exceeds the sixty (60) day inventory amount.

6.1.4 Cost and Contractual Responsibilities. Subject to this Section 6.1.4, the price for coal and coal transportation services allocated to the Owners under this Agreement shall be based on Operator's actual Facility Fuel Costs. For any billing period, the Owners shall pay for (i) the "Inventory Costs" (as described below) of coal burned at the Facility during such billing period on the basis of Energy delivered to such Owner and (ii) coal handling costs on a Facility Percentage Share basis. "Inventory

Costs" shall consist of (i) the commodity cost of coal, including any minimum-purchase requirements, take-or-pay penalties, or similar provisions under Coal Supply Agreements incurred on or after the Commercial Operation Date and (ii) coal transportation services costs actually paid, including any costs for the use of railcars provided by the railroad. In the event that any Coal Supply Agreements provide for credits, discounts, rebates, BTU adjustments or similar provisions, each Owner shall receive its share of the benefit of any such credits, discounts, rebates, BTU adjustments or similar provisions, in each case based on the Energy delivered to such Owner over the applicable time period. Each Owner shall also receive or bear, as the case may be, its share of any benefits received or penalties or other payments imposed in any litigation or dispute settlement under the Coal Supply Agreements arising after the Commercial Operation Date, in each case based on Energy delivered to such Owner over the applicable time period. In the event that railcars are leased or purchased and those leases or purchases are paid for by the Owners, the amounts paid by the Owners for coal transportation services shall be adjusted to fairly and equitably take into account those lease or purchase payments that were made.

6.1.5 Recordkeeping. Operator shall adopt practices and procedures for accurately keeping track of coal procurement decisions, as well as coal received, coal consumed and the respective inventories of the Parties, including records of coal sampling, analysis and weights and methods used to determine MBTUs delivered, and weighing, sampling and analysis of coal consumed. The E&O Committee may review and make recommendations regarding such procedures. A monthly coal accounting report will be provided to the Owners, including each Owner's beginning inventory, additions, transfers and sales, consumption and ending inventory. The monthly report also will provide the heat rate information necessary to determine each Owner's coal consumption. Operator shall inform each Owner of any accruals for coal supply and transportation costs that it should record at month-end. Physical inventories of the Coal Pile shall be made annually in accordance with Prudent Utility Practice. Reasonable and appropriate adjustments shall be made to the Owners' book inventories based upon the results of the annual physical inventory. Operator shall maintain, and make available to any Owner on request, records from which the calculations described in Section 6.1.1(c) (regarding railcar fleet costs) can be made.

6.2 Coal Handling Services. Operator shall perform or contract for coal handling services, the costs of which shall be accounted for as O&M Costs shared in accordance with Article 8.

6.3 Start Up Fuel Supplies. Operator shall be responsible for the purchase and delivery of natural gas, fuel oil, and any other fuel, as necessary for the reliable operation of the Facility, in accordance with Prudent Utility Practice and the provisions of this Agreement. Each Owner shall reimburse Operator for its Facility Percentage Share of the actual amount of such other fuel consumed by the Facility, based upon readings of appropriate meters installed and maintained at the Facility.

6.4 Audit Rights Regarding Fuel-Related Contracts. Each Owner, at its expense and no more frequently than once in any calendar year, shall have the right to

review Coal Supply Agreements to the extent the counterparty to such Coal Supply Agreements has consented to such review. With respect to any Coal Supply Agreements entered into after the Closing Date that have a term that extends beyond the Scheduled Commercial Operation Date, Operator shall use commercially reasonable best efforts to require provisions that would permit each Non-PSCo Party the right to review such Coal Supply Agreement without the prior consent of the counterparty to such Coal Supply Agreement but subject to any confidentiality requirements contained in such Coal Supply Agreements. Each Owner shall have the right to audit, not more often than once in any calendar year, fuel supply and transportation costs and inventory for all coal delivered to the Coal Pile, subject to the confidentiality provisions in Section 6.6.

6.5 Ash Storage and Management. Operator shall be responsible for the handling, storage and management of all ash and other byproducts produced from the operation of the Facility. The Parties understand that Operator plans to store all ash produced by the Facility at ash storage piles on the Site. Notwithstanding the previous sentence, if Operator sells any ash or other byproducts, each Owner shall be entitled to receive a portion of the net revenues from such sales in accordance with its respective Total Facility Percentage Share. Operator shall notify the Owners of any such sales and shall distribute the net proceeds of such sales to the Owners according to each Owner's Facility Ownership Interest and in accordance with the billing and payment procedures set forth in Article 9.

6.6 Confidentiality. All information provided to the Parties pursuant to this Article 6 shall be considered confidential information, except to the extent publicly available. No employee of any Party that has daily direct involvement in generation-marketing activities may be provided access to fuel-related contracts and/or data provided pursuant to this Article 6, except to the extent that such contracts and/or data are publicly available and/or relate solely to coal supplies for the Facility (and, if applicable, other units of which the receiving Party is a lessee or an owner). Additionally, the Parties agree that upon delivery of such information, they shall agree to be subject to any reasonable additional confidentiality provisions set forth in the information and contracts being reviewed.

ARTICLE 7 EMISSION ALLOWANCES

7.1 Management of Emission Allowances. Operator shall take all reasonable actions that in Operator's discretion and judgment are necessary to ensure compliance with all legal and regulatory requirements, including the Clean Air Act Amendments ("CAAA"), 42 U.S.C. §7651 *et seq.*, relating to the maintenance of emission allowances for sulfur dioxide (SO₂) for the Facility. Operator shall determine the necessary inventory of emission allowances relating to the Facility to be held for compliance with the CAAA.

7.2 Determination of Required Emission Allowances. Operator will calculate forecast sulfur dioxide emissions and emission allowance requirements for the

Facility for the following Year based on each Owner's annual estimate of its expected Energy usage for the following Year provided pursuant to Section 3.2(a) of the Scheduling Protocol. Operator shall provide the Owners a forecast of sulfur dioxide emissions and required emission allowances by November 1 of the Year preceding the Year to which the forecasts relate. Operator shall provide monthly updates showing year-to-date sulfur dioxide emissions and forecast sulfur dioxide emissions through the end of the applicable Year. Operator shall determine the emission allowance requirements, if any, for each Owner based on Operator's forecasts of emissions and emission allowances. However, Operator shall not be liable to the Owners for any discrepancy between forecasted and actual emissions or required emission allowances.

7.3 Allocation of Emission Allowances. Each Owner shall be entitled to and shall be allocated its share of any emissions allowances allocated to the Facility, as reasonably determined by Operator, in accordance with such Owner's Facility Ownership Interest.

7.4 Emission Allowance Obligation. Each Owner shall be obligated to acquire, in accordance with its respective Facility Percentage Share, any emissions allowances that Operator reasonably determines are required in connection with operating the Facility and that exceed the emissions allowances allocated to the Facility, as provided in Section 7.3 above.

7.5 Acquisition of Emission Allowances.

7.5.1 Each Owner shall transfer to the account established by Operator for tracking emission allowances such Owner's share of the emission allowance requirement for the following Year by no later than December 15 of the Year prior to the next compliance Year.

7.5.2 Operator shall notify the Owners of any emission allowances not required for CAAA compliance following completion of the United States Environmental Protection Agency annual compliance determination.

7.5.3 If Operator determines at any time during a Year that the emission allowances required for CAAA compliance exceed the emission allowances recorded on the account established by Operator for tracking emission allowances, Operator shall notify each Owner of its Facility Percentage Share of such emissions allowance shortfall. Each Owner shall promptly, and in any event not later than ten (10) Business Days after receipt of such notice from Operator, acquire the emissions allowances identified in such notice and transfer them to Operator's tracking account.

ARTICLE 8 ALLOCATION OF COSTS

8.1 General Principles.

8.1.1 Accounting Practices. Operator's accounting activities under this Agreement will be in conformance with Accounting Practices and the provisions of this Article 8.

8.1.2 Establishment of Accounts. Operator shall establish and maintain separate accounts for the Facility. Within such accounts, Operator shall maintain separate accounts for all O&M Costs, Facility Fuel Costs and Capital Costs.

8.1.3 Allocation of Costs. Operator shall use cost allocation methods to fully distribute all O&M Costs, Facility Fuel Costs and Capital Costs. Where applicable, cost allocation methods shall be consistent with such methods as have been approved by the appropriate regulatory agency and with Prudent Utility Practice.

8.1.4 Cost Optimization. The Owners acknowledge that Operator, either due to regulation by Governmental Authority or due to the Owners' mutual best interest, shall optimize certain costs, including administrative and general costs and supervisory costs, by sharing them between the operation of the Facility and the Common Facilities and PSCo's or Xcel Energy's other operations. Where appropriate, such cost optimization shall provide for direct billing to the Project by personnel of Operator's Affiliates. Operator shall inform the E&O Committee with respect to any change in the methodology Operator uses to optimize such costs.

8.1.5 Administrative and General Expenses. The allocation of O&M Costs, Facility Fuel Costs and Capital Costs to the Owners shall not include any operating fee or premium to be paid to Operator for its services, but shall include an allocation of Operator's administrative and general expenses, as described in greater detail in Schedule 2. Operator shall notify each Owner of the applicable administrative and general overhead rate prior to the Commercial Operation Date and, thereafter, shall promptly notify each Owner of any change to such overhead rate.

8.1.6 Labor Overhead Expenses. To the extent not included in the allocation of Operator's administrative and general expenses, O&M Costs and Capital Costs shall include labor overheads, including, but not be limited to, time off allowance, employee payroll taxes, pensions and benefits, incentives and worker's compensation. Labor overheads shall be based on prevailing policies of Operator or, as applicable, the Affiliate of PSCo for which the relevant employee works.

8.2 O&M Costs. All O&M Costs that can be directly assigned to the Facility will be charged to the accounts established for the Facility pursuant to Section 8.1.2 and allocated to each Owner based on its Facility Percentage Share. O&M Costs that cannot be directly assigned to this Facility and that relate to activities applicable to the Facility, the Existing Facility and the Common Facilities ("Shared O&M Costs") are described in Schedule 3 and will be charged to separate accounts designated as shared or common. Shared O&M Costs will be allocated to each Owner based on its Total Facility Percentage Share. Schedule 3 lists the FERC accounts applicable to Steam Power Operations and identifies the allocation method for Shared O&M Costs in each FERC

account, or where appropriate, lower levels of activities for the shared costs within a FERC account.

8.3 Facility Fuel Costs. Facility Fuel Costs shall be allocated to the Owners in the manner provided in Section 6.1.4.

8.4 Capital Costs. Any accounting for retirements, replacements, additions or improvements shall follow prescribed Accounting Practices, including Operator's consistently applied policies for determining capital versus expense and any applicable allocation methodologies approved by the CPUC. Each Owner shall pay for its Facility Percentage Share of all Capital Costs directly related to the Facility. Each Owner shall pay for its Total Facility Percentage Share of all Capital Costs directly related to Common Facilities.

8.5 Miscellaneous.

8.5.1 Change of Accounting Rules. If Accounting Practices change during the Term of this Agreement such that Operator is required to make any form of catch-up cost accrual or payments associated with labor or other costs arising out of past periods, Operator shall be permitted to take account of such rule changes and each Owner shall be responsible for any catch-up accruals or payments associated with such labor or other costs relating to prior periods through the monthly billing process as timely as is possible. If any such change results in a catch-up credit or refund, Operator shall process credit or refund through the monthly billing process as timely as is possible.

8.5.2 Non-Recurring Costs. The Owners' obligations to reimburse Operator for payments made pursuant to any settlements, to satisfy any judgments, and/or as a penalty for violation of any Law or Government Approval shall be governed by Article 14. Unless otherwise determined by the E&O Committee or the Audit Committee, each Owner's responsibility for any other special and/or non-recurring costs Operator may incur consistent with this Agreement and with Accounting Practices and not otherwise included in O&M Costs shall be allocated in accordance with (i) each Owner's Facility Percentage Share, if directly relating to the Facility and (ii) each Owner's Total Facility Percentage Share, if directly relating to the Common Facilities.

ARTICLE 9

OPERATING ACCOUNT; PAYMENTS AND BILLINGS

9.1 Operating Account. Prior to the Commercial Operation Date, Operator shall establish a separate account or accounts (the "Operating Account") with a financial institution. The Operating Account shall be in Operator's name, as operator, and Operator shall be solely entitled to withdraw amounts from the Operating Account. Each Owner shall deposit all payments it makes pursuant to this Agreement into the Operating Account. Operator shall withdraw and apply funds from the Operating Account to pay O&M Costs, Facility Fuel Costs, Capital Costs or any non-recurring costs, other support costs or extraordinary costs, as applicable. Any fees payable to open and maintain the Operating Account, and accrued interest on amounts deposited in the

Operating Account, if any, shall be allocated to each Owner in accordance with its respective Facility Ownership Interest.

9.2 Operating Deposit. The Parties recognize that Operator may be obligated to make payments of O&M Costs and Facility Fuel Costs before it receives the monthly payments from the Owners. To provide cash flow to enable Operator to pay such costs, each Owner shall, no later than sixty (60) days prior to the Scheduled Commercial Operation Date, deposit in the Operating Account an amount equal to the sum of (i) its Facility Percentage Share of the estimated O&M Costs for the first two months of commercial operations, as set forth in Operator's final operating budget for the first Year of commercial operations and (ii) the estimated Facility Fuel Costs for the first two months of commercial operations, which Operator shall provide to each Owner not later than ninety (90) days prior to the Scheduled Commercial Operation Date.

9.3 Billing Procedures. Commencing with the first full month after the month during which the Commercial Operation Date occurs, Operator shall prepare and deliver to each Owner monthly invoices setting forth the amount due from each Owner on account of Capital Costs, O&M Costs and Facility Fuel Costs incurred during the preceding month. All invoices shall be itemized by FERC account, shall provide reasonable detail (together with reasonable supporting information) and shall otherwise conform to the requirements of Article 8. Operator shall provide each monthly invoice by e-mail and fax to the Owners on or before the 20th day of the month. PSCo shall certify in each invoice that (i) the amounts set forth in the attached invoice relate to actual O&M Costs, (ii) PSCo has paid or will pay its share of such O&M Costs, (iii) PSCo has no reason to believe that the attached invoice contains any errors or inaccuracies and (iv) PSCo has investigated the progress of the work and, to PSCo's best knowledge, the amounts set forth in the attached invoice are commensurate with the progress of the work during the billing period set forth in the attached invoice. Each Owner shall pay the invoiced amount on or before the first Business Day of the following month (the "Payment Date") via a bank wire transfer or ACH debit to the Operating Account in accordance with the instructions provided in writing by Operator. Interest shall be payable on all amounts not paid on or before the Payment Date, over the actual number of days elapsed from the Payment Date to the date such amounts are paid, at the Default Interest Rate.

9.4 Non-Payment.

9.4.1 Notice of Late Costs and Expenses. If any Non-PSCo Party fails to pay any amounts when due and payable under this Agreement ("Late Payments"), then PSCo shall notify each other Party of such Late Payments. Such notice shall set forth in reasonable detail the name of the non-paying Party, the amount of the Late Payments and the date on which such Late Payments were due and payable.

9.4.2 PSCo Loans. PSCo may, but shall not be obligated to, advance to the non-paying Party all or a portion of such Late Payments by paying such Late Payments directly to the account or accounts specified in the applicable invoice.

PSCo shall provide written notice of any such advances to the non-paying Party. All such advances shall constitute loans from PSCo to the non-paying Party (a “PSCo Loan”) and shall bear interest at the Default Interest Rate, starting from the date the PSCo Loan is made through and including the date on which the PSCo Loan and all accrued interest is repaid in full to PSCo. All PSCo Loans shall be immediately due and payable. PSCo shall have the right, in addition to the other rights and remedies granted under this Agreement or available to it at law or in equity, to take any action that PSCo may deem appropriate to obtain payment of any PSCo Loan and interest thereon and any costs and expenses incurred by or on behalf of PSCo to collect same, including reasonable attorneys fees.

9.4.3 If PSCo, in its sole discretion, elects not to advance a PSCo Loan pursuant to Section 9.4.2, then PSCo shall be entitled, in addition to any other rights and remedies granted under this Agreement or available to it at law or in equity, to take any action that PSCo may deem appropriate to obtain payment from such non-paying Party of such Late Payments and any costs and expenses incurred by or on behalf of PSCo to collect same, including reasonable attorneys fees.

9.5 Extraordinary Costs. If Operator incurs extraordinary costs related to Facility or the Common Facilities in accordance with Accounting Practices, it may request accelerated payment from the Parties. In no event will payment be due earlier than three (3) days after the date the invoice was transmitted.

9.6 Payment in Event of Dispute. If upon receipt of an invoice hereunder, a Party disputes the existence or extent of any obligation to make any payment hereunder, it shall nevertheless make payment in full of all invoices when due, with a written protest, submitted at the time of or subsequent to such payment, directed to Operator, with copies to the other Parties. When any Dispute regarding payment is resolved and any amount is to be refunded, payment of amounts due shall be refunded within ten (10) days thereafter, together with interest at the Prime Rate, based upon the actual number of days elapsed from the date of the payment to which the correction relates to the date of the refund.

9.7 Annual Accounting. Within one hundred twenty (120) days following the end of each calendar year from and after the Commercial Operation Date, Operator shall submit to the Owners a final accounting for the previous calendar year showing all amounts expended and billed hereunder and the apportionment of such expenditures among the Owners. Adjustments (including interest at the Prime Rate, if applicable) shall be made among the Owners, if required, so that all costs properly incurred in the performance of O&M Services shall have been shared by the Parties in accordance with this Agreement). Within one hundred-eighty (180) days of receiving the final accounting, each Owner shall raise all billing issues that it can reasonably identify on the basis of the information provided in the final accounting. However, this time limit shall not bar any Owner from subsequently raising any billing dispute the basis for which was not reasonably discernable based on the information provided in the final accounting, and which became known to the Owner through later-acquired information that such

Owner could not reasonably have been expected to acquire prior to the expiration of such one hundred-eighty (180) day period (including without limitation the results of any audit or other review covering the period of the disputed invoice).

9.8 Audit Adjustments. Where an audit pursuant to Section 11.2 or other review of Operator's activities identifies a cost for which Operator invoiced to any Owner an amount either higher or lower than the costs for which such Owner is properly chargeable under this Agreement, then Operator shall, as appropriate, refund or invoice each affected Owner an amount equal to (a) the difference between the amount invoiced and the amount properly charged plus (b) interest on such difference at the Prime Rate, over the actual number of days elapsed from the date of payment of the original invoice to the date of refund or payment of shortfall.

ARTICLE 10

INFORMATION; RECORDKEEPING AND REPORTING REQUIREMENTS

10.1 Operator to Provide Relevant Information. Operator shall keep the E&O Committee members promptly advised of all significant matters with respect to the operation and maintenance of the Facility and the Common Facilities. Operator shall provide to the E&O Committee members statistical and administrative reports, budgets, accounting records and information, and other records pertaining to O&M Services as may be necessary or appropriate for each of the Parties to protect and make full use of its interests in the Facility and the Common Facilities.

10.2 Recordkeeping. Operator shall separately maintain, or cause to be separately maintained, appropriate documentation and records of operating and performance information and expenditures made and costs incurred by Operator together with all other charges, payments and any expenses or revenues relating to the Facility and the Common Facilities. Such records of Operator shall be readily identifiable and, upon request, be made available for inspection at a reasonable time at Operator's offices by any Owner. Operator shall also make available for inspection and copying at Operator's offices within a reasonable time by any Owner upon reasonable request any bids, contracts, purchase orders and related documents respecting the operation or maintenance of Facility or the Common Facilities. The E&O Committee shall develop reasonable policies and procedures for Operator's retention of documents relating to the Facility and the Common Facilities, consistent with applicable requirements of Law. Incremental costs associated with record keeping requirements, if any, that (i) arise solely from the request of a Party to keep records in a manner that does not result from such Party's obligations under the Project Agreements or from legal, regulatory or accounting requirements applicable to such Party and (ii) would impose a significant administrative burden, the costs of which it would be inequitable to allocate to the Parties based on their respective Facility Percentage Shares, shall be a reimbursable expense to be borne in full by the requesting Party.

10.3 Facility Availability. From and after the Commercial Operation Date, Operator shall keep each Party informed of the projected availability of the Facility

and of any required or projected limitations on dispatch in accordance with the Scheduling Protocol.

10.4 Notices. Operator shall promptly furnish the Parties with copies of material notices related to the Facility or the Common Facilities delivered by Operator to any third party or received by Operator from any third party.

10.5 Reports.

10.5.1 Monthly Reports. As soon as reasonably practicable but in no event later than the twentieth (20th) day of the first month following the Commercial Operation Date and each month thereafter during the Term, Operator shall prepare and provide to each E&O Committee member by e-mail a report comparing budget-to-actual expenditures for the preceding month and year-to-date, with explanations for material variance. In addition, the report shall include year-end forecasts of O&M Costs, Facility Fuel Costs and Capital Costs, monthly and cumulative operating statistics, and other information reasonably available to Operator.

10.5.2 Quarterly Reports. No later than thirty (30) days after each calendar quarter following the Commercial Operation Date, Operator shall prepare and submit to each E&O Committee member a written report documenting heat rate, capability, availability, scheduled outages, full and partial forced outages, fuel cost, environmental, and financial performance measures in respect of the Facility during the previous quarter. This report shall also include the most recent electronic version of generator availability data system ("GADS") data. In addition, unusual operating events, accidents, damage to the Facility or the Common Facilities, environmental incidents and injuries (including OSHA recordable and lost-time accidents) shall be documented in reasonable detail in this report.

10.5.3 Annual Reports. No later than ninety (90) days after each calendar year following the Commercial Operation Date, Operator shall prepare and submit to each E&O Committee member unaudited statements for the preceding fiscal year for all costs that have been incurred pursuant to this Agreement.

ARTICLE 11

ACCESS AND AUDIT RIGHTS

11.1 Non-PSCo Parties' Rights of Access. Each Non-PSCo Party shall have reasonable rights of access to (i) go upon and into the Facility Site and to inspect and observe operation of the Facility and, pursuant to the Property Rights Agreement, go upon and into the Existing Facility Site to inspect and observe operation of the Common Facilities, subject in each case to such reasonable conditions as Operator may impose for safety, security and operating reasons, and (ii) during normal business hours, review documents and records relating to the Facilities and the Common Facilities, at its own expense. The Non-PSCo Parties' rights of access to the Facility Site and documents are not intended to substitute for or diminish in any way Operator's affirmative duty to provide information as provided for herein. Each Non-PSCo Party may, by prior written

notice, request PSCo to permit such Non-PSCo Party's agents, consultants or Lenders (and such Lenders' consultants) to accompany such Non-PSCo Party during any visits to the Facility Site and PSCo shall not unreasonably withhold any such request.

11.2 Audits.

11.2.1 Each Non-PSCo Party shall have the right from time to time (but not more frequently than once each Year) to conduct audits of the books, records and other documents maintained by Operator with respect to the Facility, the Facility Site and the Common Facilities, and such other documents as may be necessary to ensure compliance with this Agreement, including ascertaining the correctness of all charges to, and payments made by, such Non-PSCo Party under this Agreement; provided, that the retroactive period for which any adjustments may be made as a result of such audit shall not exceed two (2) years from the date such audit is requested. However, audits of fuel supply and transportation contracts shall be governed by Section 6.4. Such audits may be made either by the Non-PSCo Party's own officers or employees, or through its duly authorized agents or representatives, subject to Article 19. No payment under this Agreement shall constitute a waiver of the right of the Non-PSCo Party to conduct an audit, or to question or contest the correctness of any charge, credit, allocation, or other accounting matter hereunder. Operator shall cooperate with any Non-PSCo Party in the conduct of any such audit, which shall include (i) furnishing records directly related to the Facility, the Facility Site, the Common Facilities or this Agreement and making reasonably requested copies of the same, in each case in a timely manner and (ii) retaining custody and care of records directly related to the Facility, the Facility Site, the Common Facilities and this Agreement in an orderly and accessible fashion. During normal business hours Operator shall provide each Party, through its duly authorized agents or representatives (including but not limited to any auditor utilized by a Party, or any nationally recognized accounting firm retained by such Party), access to, and upon request, copies of Operator's books, records and other documents directly related to the Facility, the Facility Site and the Common Facilities, and such other third-party documents (subject to Section 11.2.2) as may be necessary to ascertain the correctness of all charges to, and payments made by, such Party under this Agreement, which books, records and other documents shall be in a form sufficient to enable each Party to verify the costs that have been allocated and billed to each Party pursuant to this Agreement. In addition, if an auditing Party is not reasonably capable of completing its audit solely on the basis of documentary information and consultations through the E&O Committee or the Audit Committee, the auditing Party may present such issues to Operator and request Operator to make Operator's plant manager for the Facility or the manager of operations and maintenance at the Facility available for an interview with the auditing Party and its duly authorized agents or representatives; provided, that the scope of any such interview shall be limited to those matters directly related to the Facility, the Facility Site, the Common Facilities or this Agreement that have been previously presented in writing to Operator by the requesting Owner. Operator shall make commercially reasonable efforts to comply with such requests. All such audits shall be conducted at the Non-PSCo Party's sole cost and expense and subject to its compliance with Operator's reasonable

policies and procedures, including to security and safety requirements, and the confidentiality provisions of Article 19.

11.2.2 To the extent that third-party documents requested by a Party under Section 11.2.1 cannot be made available to a requesting Party consistent with the confidentiality requirements imposed by such third party, notwithstanding Operator's commercially reasonable efforts to obtain such documents for the Parties and the requesting Party's willingness to execute such non-disclosure agreements as the third party and/or Operator may reasonably require, Operator shall, on the request and at the expense of the requesting Party, cause Operator's independent auditor to prepare an audit report responding to such questions as the requesting Party identifies.

ARTICLE 12 TAXES

To the extent possible, each Party shall separately report, file returns with respect to, be responsible for and pay all applicable taxes arising out of or relating to its respective rights, benefits, advantages, titles and interests under this Agreement. Except as otherwise expressly provided in any Project Agreement, to the extent that the Parties do not pay directly for taxes relating to the Facility and/or the Common Facilities, such taxes shall be included as O&M Costs and paid by the Parties pursuant to Article 9. For the avoidance of doubt, no local, state or federal income taxes shall be included in O&M Costs.

ARTICLE 13 INSURANCE

Operator shall procure insurance coverage for the Facility and for the Common Facilities as provided in Section 10.1.2 of the Joint Ownership Agreement. Subject to Article 10 of the Joint Ownership Agreement, each Party shall be responsible for its Total Facility Percentage Share of such insurance costs and any deductibles for the Facility and the New Common Facilities. Operator shall be solely responsible for insurance premiums and deductibles for the Existing Common Facilities.

ARTICLE 14 INDEMNIFICATION AND LIABILITY

14.1 General Indemnity.

14.1.1 Subject to Article 16 of the Joint Ownership Agreement, each Owner shall, severally and not jointly (in accordance with the allocation methodology set forth in the following sentence), indemnify, defend and hold harmless Operator and its agents, employees, officers, directors and Affiliates (collectively, the "Operator Indemnified Parties") from and against any and all Claims arising under or relating to this Agreement asserted against, imposed upon or incurred by Operator, in its capacity as Operator, or any Operator Indemnified Party, except to the extent those Claims arise directly from the gross negligence or willful misconduct of an Operator

Indemnified Party. Each Party shall be responsible for its Facility Percentage Share of Claims to the extent related to the Facility and, until the fifteenth (15th) anniversary of the Commercial Operation Date, the New Common Facilities. Each Party shall be responsible for its Total Facility Percentage Share of such Claims to the extent related to the Existing Common Facilities and, from and after the fifteenth (15th) anniversary of the Commercial Operation Date, the New Common Facilities.

14.1.2 Subject to Article 16 of the Joint Ownership Agreement, Operator shall indemnify, defend and hold harmless each Owner and its respective agents, employees, officers, directors and Affiliates (collectively, the "Owner Indemnified Parties") from and against any and all Claims arising under or relating to this Agreement and any and all regulatory penalties and fines and reasonable expenses (including reasonable attorneys' fees and expenses) asserted against, imposed upon or incurred by any such Owner Indemnified Party to the extent arising directly from Operator's gross negligence or willful misconduct.

14.2 Liability Among the Parties.

14.2.1 As among the Parties, each Owner shall bear its respective responsibility and liability for the receipt, transmission and distribution of its Energy from the Delivery Point and Operator shall have no responsibility or liability beyond the Delivery Point.

14.2.2 All issues of liability as between and among the Parties arising under this Agreement shall constitute Disputes to be resolved pursuant to the provisions of Article 20.

14.2.3 Any indemnification obligation of Operator shall not constitute O&M Costs or other costs hereunder for which Operator is entitled to be reimbursed.

14.3 Cooperation Regarding Claims. Except with respect to Claims against the Owners with respect to agreements entered into by Operator pursuant to Article 2, which Claims shall be governed by Sections 2.2.17 and 2.2.18, if any Party (in such capacity, an "Indemnified Party") receives notice or has knowledge of any Claim that may result in a claim for indemnification by such Indemnified Party against any other Party (in such capacity, an "Indemnifying Party") pursuant to this Article 14, such Indemnified Party shall as promptly as practicable give the Indemnifying Party notice of such Claim; provided, that failure promptly to give such notice or to provide such information and documents shall not relieve the Indemnifying Party from the obligation hereunder to respond to or to defend the Indemnified Party against such Claim unless such failure shall materially diminish the ability of the Indemnifying Party to respond to such claim or to defend the Indemnified Party. Such notice shall include a reasonably detailed description of the facts and circumstances relating to such Claim, and a complete copy of all notices, pleadings and other papers related thereto, and in reasonable detail the basis for its potential claim for indemnification with respect thereto. The Indemnifying Party, upon its acknowledgment in writing of its obligation to indemnify the Indemnified

Party, shall be entitled to assume the defense or to represent the interests of the Indemnified Party in respect of such Claim, which shall include the right to select and direct legal counsel and other consultants, appear in proceedings on behalf of such Indemnified Party and to propose, accept or reject offers of settlement, all at its sole cost; provided, that if and to the extent that any such settlement is reasonably likely to involve injunctive, equitable or prospective relief or materially and adversely affect the Indemnified Party's business or operations other than as a result of money damages or other money payments, then such settlement will be subject to the reasonable approval of the Indemnified Party. Nothing herein shall prevent an Indemnified Party from retaining its own legal counsel and other consultants and participating in its own defense at its own cost and expense. The Parties shall cooperate with each other in any notification to insurers.

ARTICLE 15

ASSIGNMENTS AND DELEGATIONS

15.1 Successors and Assigns. This Agreement shall be binding on each Party's successors and permitted assigns.

15.2 Assignment by Operator.

15.2.1 Operator shall not assign this Agreement in whole without the prior written consent of each Owner, which consent shall not be unreasonably withheld, delayed or conditioned; provided, that Operator may, without the consent of the Owners, (i) assign this Agreement to an Affiliate if (A) such Affiliate transferee or assignee assumes all of Operator's obligations under this Agreement, (B) such Affiliate has the financial and operational capacity, including creditworthiness, to perform its obligations under this Agreement and (C) following such assignment, the Owners will continue to enjoy economic benefits substantially similar to those that PSCo, acting in its reasonable discretion, would have provided in similar circumstances, including market conditions, had there been no such assignment, or (ii) transfer or assign this Agreement to any person or entity succeeding to all or substantially all of the assets of Operator so long as, in each such case, the assignee shall agree in writing to be bound by the terms and conditions hereof prior to such assignment.

15.2.2 Subject to Section 15.2.1, Operator shall not delegate all of its obligations hereunder without the prior written consent of each Owner; provided, that each Owner acknowledges and agrees that Operator may delegate performance of a substantial portion of the O&M Services to a service company Affiliate that provides services to Operator in the ordinary course of Operator's business. In addition, Operator may partially delegate its obligations by subcontracting with non-affiliated third parties for the performance of certain O&M Services. In the event of any partial delegation of responsibilities under this Section 15.2.2, Operator shall remain liable to the Owners for the performance of all of the O&M Services hereunder.

15.3 Assignment by Owners.

15.3.1 Except for (i) transfers or assignments by PSCo pursuant to Sections 12.2 and 12.4 of the Joint Ownership Agreement, (ii) transfers or assignments by a Non-PSCo Party pursuant to Section 12.3 of the Joint Ownership Agreement and (iii) collateral assignments to Lenders in accordance with Article 13 of the Joint Ownership Agreement, no Owner may assign this Agreement or assign its rights or delegate its duties hereunder without the prior written consent of each other Owner.

15.3.2 Any such transferee shall execute a counterpart of this Agreement to evidence its assent hereto.

ARTICLE 16 EVENTS OF DEFAULT; REMEDIES

16.1 Events of Default. The following shall be Events of Default under this Agreement:

16.1.1 failure by any Party to pay in full any amount due hereunder, where such failure is not cured within fifteen (15) days after notice from Operator of such failure;

16.1.2 as to any Party, a Bankruptcy Event affecting such Party;

16.1.3 as to any Party, a material breach of a representation or warranty provided by such Party under this Agreement;

16.1.4 failure by a Party to observe or perform any of the material terms or conditions set forth in this Agreement, other than those described in Sections 16.1.1, 16.1.2 and 16.1.3 above, and such failure is not cured within thirty (30) days after notice thereof from one or more non-defaulting Parties; provided, that if such failure is capable of being cured but cannot reasonably be cured within the thirty (30) day period, and if the defaulting Party has commenced and is diligently pursuing such cure and provides the other Parties with adequate assurance of due performance to protect such Parties against loss arising from any failure to perform, the cure period shall be extended to not more than one hundred and twenty (120) days after the written notice of default, as shall be necessary for such Party to cure the failure with all due diligence and dispatch; and

16.1.5 as to any Owner, an Event of Default attributable to such Owner under any other Project Agreement.

16.2 Remedies.

16.2.1 Upon the occurrence of an Event of Default by a Non-PSCo Party other than the failure to make a payment required hereunder, PSCo shall have the right to exercise the remedies set forth in Section 14.2.2(c)(2) of the Joint Ownership Agreement. The defaulting Non-PSCo Party shall continue to be responsible for its

allocated share of O&M Costs, Facility Fuel Costs, non-recurring costs and extraordinary costs in accordance with Articles 8 and 9 during such Event of Default.

16.2.2 Upon the occurrence of an Event of Default by a Non-PSCo Party for failure to make a payment required hereunder, PSCo shall be have the right to exercise the remedies set forth in Section 14.2.2(c)(1) of the Joint Ownership Agreement. The defaulting Non-PSCo Party shall continue to be responsible for its allocated share of O&M Costs, Facility Fuel Costs, non-recurring costs and extraordinary costs in accordance with Articles 8 and 9 during such Event of Default.

16.2.3 Upon the occurrence of an Event of Default by Operator, any Non-PSCo Party shall have the right to exercise the remedies set forth in Section 14.1.2 of the Joint Ownership Agreement.

16.3 Remedies Not Exclusive. Subject to the following sentence, upon the occurrence of any Event of Default, the non-defaulting Parties shall be entitled to exercise all remedies available to them at law or in equity, including specific performance, it being agreed that monetary damages may not be an adequate remedy for the breach of the Parties' obligations hereunder. Notwithstanding any remedies otherwise available to the non-defaulting Parties at law or in equity that may be pursued in accordance with Article 20, in the event of a breach or default by any Party, it is the Parties' intention that (i) this Agreement may be terminated only pursuant to its express terms and (ii) so long as PSCo is an Owner and is the Operator, the Owners shall have no right to replace Operator or reduce the scope of its duties.

ARTICLE 17 FORCE MAJEURE

17.1 Force Majeure Excuse. No Party to this Agreement shall be responsible or liable for, or deemed in breach of this Agreement for, any delay or failure in the performance of its respective obligations under this Agreement (except for obligations to pay money) to the extent such delay or failure is due solely to circumstances beyond the reasonable control of the Party experiencing such delay or failure (such Party being referred to as the "Non-Performing Party"), including, but not limited to, (a) acts of God, unusually severe weather conditions (including, but not limited to, floods, freezes, blizzards, hurricanes, tornadoes, earthquakes, mud slides, lightening and the like), war or riot or insurrection, requirements or actions or failures to act by governmental authorities preventing or delaying performance, fire, acts of terrorism or of the public enemy, sabotage, civil disturbance or unrest, strikes and labor disputes, and (b) damage or breakdown of necessary facilities or equipment (such causes being referred to as "Force Majeure"), provided that:

(a) The Non-Performing Party gives the other Party written notice within forty eight (48) hours after learning of the Force Majeure condition, with details further describing the particulars of the occurrence to be supplied not later than ten (10) days after the occurrence of such condition;

(b) The suspension of performance is of no greater scope and of no longer duration than is necessitated by the Force Majeure condition;

(c) The Non-Performing Party uses its commercially reasonable efforts to remedy the condition of Force Majeure or the effects thereof;

(d) The Non-Performing Party uses its commercially reasonable efforts to remedy its inability to perform; and

(e) When the Non-Performing Party is able to resume performance of its obligations under this Agreement, that Party shall give the other Party written notice to that effect.

17.2 Force Majeure Exclusions. The term Force Majeure shall not include (i) any negligent or intentional act, error or omission, or failure to comply with any applicable Law or any breach of or default under this Agreement, in any such instance by the Non-Performing Party or its contractors, (ii) the unavailability of equipment which reasonably could have been avoided by operating or maintenance practices in accordance with Prudent Utility Practice, (iii) labor strikes or slowdowns of the Non-Performing Party's employees, and (iv) changes in market conditions that affect the cost of energy or capacity or any necessary wheeling or transmission arrangements.

17.3 Records. Each Party shall retain records of events it claims as Force Majeure and of its efforts to remedy the effects of such events and, upon request, shall make those records available to the other Party.

ARTICLE 18

TERM AND EFFECTIVENESS

This Agreement shall be binding on the Parties upon execution of this Agreement by all the Parties. The term ("Term") of this Agreement shall commence, for each Non-PSCo Party, upon its purchase of ownership interests in the Facility and New Common Facilities (the "Closing Date"), pursuant to and in accordance with the Joint Ownership Agreement. The Term of the Agreement shall commence, for PSCo as both Party and Operator, upon the first of such closings. This Agreement shall remain in full force and effect so long as the Joint Ownership Agreement remains in full force and effect unless terminated by the mutual agreement of the Parties prior to such date. In addition, upon the withdrawal of any Party from the Joint Ownership Agreement, such Party shall automatically be deemed to have withdrawn from this Agreement. This Agreement shall terminate following an Event of Total Loss or Event of Loss to the extent provided in Section 10.3 of the Joint Ownership Agreement. For the avoidance of doubt, the termination of this Agreement shall not relieve any Party of any liabilities accrued up to the date of termination.

ARTICLE 19

CONFIDENTIALITY

19.1 Confidentiality.

19.1.1 No Party nor any of its Affiliates, agents or advisors shall (a) reveal to any third party any non-public information, including any of the Project Agreements, concerning the Project, the other Parties, the other Parties' Affiliates or this Agreement ("Confidential Information"); or (b) use any Confidential Information in any manner which may directly or indirectly injure the Project, the other Parties, or the other Parties' Affiliates. Notwithstanding the foregoing, and subject to Sections 19.1.2 and 19.1.3 below, a Party may disclose Confidential Information (i) if required by applicable Law, (ii) to any Lender or prospective Lender or other entities, including but not limited to consultants, attorneys and third-parties, necessary to develop, finance or refinance the Facility Assets or (iii) to any entity with which such Party has entered into formal discussions concerning the purchase of such Party's ownership interests in the Facility Assets. Any Party may disclose to any and all Persons, without limitation of any kind, the tax treatment and tax structure of the transactions contemplated by this Agreement and all materials of any kind (including opinions or other tax analyses) that are provided to it relating to such tax treatment and tax structure. In addition, each Party acknowledges that it has no proprietary or exclusive rights to the tax treatment or tax structure of the transactions contemplated by this Agreement or any tax matter or tax idea related to such transactions. However, each Party shall keep confidential any such information relating to the tax treatment or tax structure of the transactions contemplated by this Agreement that is required to be kept confidential to the extent necessary to comply with any applicable federal or state securities laws.

19.1.2 The Parties shall ensure that, prior to any disclosure of Confidential Information to a third party pursuant to Section 19.1.1, all third parties assume the obligations and undertakings of this Article 19. This restriction shall cease to be binding with respect to Confidential Information which has become available as a matter of public record through no act or omission of such Party or its Affiliates, agents or advisors, or to the extent such Confidential Information was in possession of such Party or its Affiliates prior to its earliest receipt from another Party. In the event this Agreement terminates without the Closing Date occurring, then all data, plans, proposals, materials and other Confidential Information furnished hereunder shall be returned to the Party from whom received, with an appropriate assurance that all copies have been destroyed. The obligations established pursuant to this Section 19.1.2 shall survive any termination of this Agreement and the withdrawal of a Party for a period of two (2) years.

19.1.3 Each Party agrees that if it becomes subject to a subpoena or other Law to disclose any Confidential Information of one of the other Parties, it will provide such other Party with prompt notice so that such other Party may seek a protective order or other appropriate remedy. If such protective order or other appropriate remedy is denied or otherwise not obtained, the Party required to furnish the information shall furnish only that portion of the Confidential Information which is, in the opinion of its counsel, legally compelled, and will cooperate with the other Party and its counsel to enable the other Party to attempt to obtain a protective order or other

reliable assurance that confidential treatment will be accorded the Confidential Information to be disclosed.

ARTICLE 20 DISPUTE RESOLUTION

20.1 General. The dispute resolution procedures set forth in this Article 20 shall govern the resolution of any dispute, claim or controversy arising out of, under or relating to this Agreement ("Dispute"), unless otherwise provided in this Agreement or mutually agreed to by the Parties. Resolution of any Dispute hereunder shall be by the Coordinating Committee or, upon failure to timely reach a resolution in such manner, litigation, all as provided in this Article 20.

20.2 Dispute Resolution. Upon a Party's written notification to the other Parties of a Dispute, which notification must include a written explanation of the Dispute and the material particulars of the notifying Party's position as to the Dispute, the Coordinating Committee shall meet not later than seven (7) days thereafter ("First Meeting Deadline") to attempt in good faith to resolve the Dispute and to produce written terms of settlement for the Dispute (a "Settlement Agreement"). A Settlement Agreement executed by each member of the Coordinating Committee shall serve as conclusive evidence of the resolution of such Dispute. If the Coordinating Committee members do not produce and execute the Settlement Agreement within fourteen (14) days after the date of the first meeting or within a longer period agreed to by each Coordinating Committee member, then any Party may, upon written notice to each other Party, pursue all of its rights and remedies provided at law or equity, or otherwise in this Agreement.

20.3 Continued Performance. During the pendency of any Dispute, each Party shall continue to perform all of its respective obligations under this Agreement and all other Project Agreements.

ARTICLE 21 MISCELLANEOUS PROVISIONS

21.1 Representations and Warranties. Each Party represents and warrants that (i) it is an entity duly organized, validly existing and in good standing under the Laws of the jurisdiction in which it is organized and is qualified to do business in all jurisdictions where it is required to be qualified, (ii) it has the necessary power and authority to enter into and perform its obligations under this Agreement, (iii) it has duly authorized the person(s) signing this Agreement to execute this Agreement on its behalf, (iv) upon execution, this Agreement will be a legal, valid and binding obligation of such Party, enforceable against such Party in accordance with its terms; and (v) the execution and delivery of this Agreement and its performance by such Party will not violate, result in a breach of or conflict with any Law applicable to such Party, its organizational documents or the terms of any other agreement binding on such Party.

21.2 Binding Effect and Benefit of This Agreement. This Agreement shall be binding upon, and shall inure to the benefit of, the Parties hereto and their respective heirs, executors, administrators, successors and assigns.

21.3 Further Assurances. In furtherance of the terms and conditions of this Agreement, each of the Parties shall collaborate in good faith with each other in order to achieve the performance of their respective obligations hereunder.

21.4 Severability. If any provision or provisions of this Agreement shall be held to be invalid, illegal or unenforceable, the validity, legality or enforceability of the remaining provisions hereof shall not in any way be affected or impaired thereby.

21.5 Amendments. Except to the extent provided in Section 2.5 of the Joint Ownership Agreement, this Agreement may not be amended, supplemented or otherwise modified unless done so in a writing signed by the Parties, and no provision hereof shall be deemed waived unless such waiver is in writing and signed by the waiving Party.

21.6 Choice of Law; Jurisdiction and Venue. THIS AGREEMENT SHALL BE GOVERNED BY AND CONSTRUED IN ACCORDANCE WITH THE LAWS OF THE STATE OF COLORADO, EXCLUDING ANY CHOICE OF LAW PROVISIONS THAT WOULD RESULT IN THE APPLICATION OF THE LAWS OF ANOTHER STATE. JURISDICTION AND VENUE WITH RESPECT TO ANY ACTION BROUGHT BEFORE A COURT OF LAW IN CONNECTION WITH THIS AGREEMENT SHALL LIE IN ANY APPROPRIATE COURT SITUATED IN THE STATE OF COLORADO.

21.7 Counterparts. This Agreement may be executed in any number of counterparts, and all of which when taken together shall constitute one and the same instrument. The Parties hereto may execute this Agreement by signing any such counterpart.

21.8 Notices. Any and all notices and other communications required or permitted to be given pursuant to this Agreement shall be in writing and shall be deemed given (i) upon personal delivery, or (ii) upon the sender's receipt of electronic confirmation of transmission, if sent by telex or facsimile, or (iii) upon receipt if sent by U.S. mail or courier. The Parties designate the following addresses for purposes of the foregoing (unless a Party elects to amend its address in a signed writing to the other Party setting forth such change):

If to Operator or
PSCo as Owner: Director, Strategic Planning and Resource Acquisition
Public Service Company of Colorado
1099 18th Street, Suite 3000
Denver, CO 80202

If to IREA: General Manager

5496 North U.S. Highway 85
P.O. Drawer A
Sedalia, CO 80135

If to Holy Cross: Chief Executive Officer
Holy Cross Electric Association, Inc.
3799 Highway 82
P.O. Drawer 2150
Glenwood Springs, CO 81602

21.9 Joint Preparation. This Agreement shall be considered for all purposes as having been prepared through the joint efforts of the Parties and shall not be construed against one Party or the other as a result of the preparation, substitution, submission or other event of the negotiation, drafting or execution of this Agreement.

21.10 Liability.

21.10.1 No Consequential Damages. Notwithstanding any other provision of this Agreement, in no event shall the Parties or any of their Affiliates, by reason of any of their respective acts or omissions relating to the operation and maintenance of the Facility or the Common Facilities or relating to any of their obligations under this Agreement, be liable, whether in contract, tort, misrepresentation, warranty, negligence, strict liability or otherwise, for any special, indirect, incidental, consequential or punitive damages arising out of or in connection with this Agreement, or the performance or breach thereof.

21.10.2 Non-Recourse. Each Party acknowledges and agrees that in no event shall any partner, shareholder, owner, officer, director, trustee, agent, or employee of a Party or an affiliate of a Party be personally liable to the other Party or any third party for any payments, obligations or performance due under this Agreement, or any breach or failure of performance of such Party hereunder, and the sole recourse for payment or performance of the obligations under this Agreement shall be only against a Party and its assets.

21.11 Effectiveness; Entire Agreement; Prior Agreements. This Agreement shall be effective as of the date hereof. This Agreement supersedes the Original O&M Agreement and the First Amended and Restated O&M Agreement and, together with the other Project Agreements, constitutes a complete integration of the agreement between the Parties with respect to the subject matter of this Agreement and such other Project Agreements, except and to the extent that the IREA PPA and the Holy Cross PSA contain express provisions relating to the Project Agreements; provided, however, that nothing in this Agreement shall affect the rights or obligations of PSCo and IREA accrued with respect to the period prior to the date hereof under the Original Project Agreements (as defined in the Joint Ownership Agreement) or the First Amended and Restated Project Agreements (as defined in the Joint Ownership Agreement),

irrespective of whether such Original Project Agreements or First Amended and Restated Project Agreements have been amended and restated as of the date hereof. Except with respect to the matters contained in the other Project Agreements, this Agreement contains the entire understanding of the Parties with respect to the subject matter hereof and reflects all prior agreements and commitments with respect to the Parties' respective rights and obligations set forth herein. Except as provided above, there exist no other understandings, terms or conditions, written or oral, related to the rights and obligations established by this Agreement, and no Party has relied on any representation, express or implied, not contained herein.

21.12 Brokers. No Party has employed any financial advisor, broker, or finder or incurred any liability for any financial advisory, brokerage, finder's or similar fee or commission in connection with the Project or the transactions contemplated by this Agreement.

21.13 Survival. The provisions of Articles 14, 16, 19 and 20 and of Sections 9.4, 21.6, 21.13 and 21.14, including the rights and obligations of the Parties therein provided, shall survive the termination or expiration of this Agreement, the withdrawal of a Party from this Agreement, and the performance by the Parties of their obligations hereunder.

21.14 Rules of Construction. The following rules of construction shall be followed when interpreting this Agreement:

21.14.1 titles and headings are inserted for convenience of reference only and shall not be used for the purposes of construing or interpreting this Agreement;

21.14.2 words importing the singular also include the plural and vice versa;

21.14.3 references to natural persons or parties include any Person having legal capacity;

21.14.4 references to a person include such person's successors and assigns; provided, however, that with respect to a Party and its rights and obligations under this Agreement, references to a Party shall only include such Party's successors and assigns if such successors and assigns are permitted by this Agreement;

21.14.5 words importing one gender include the other gender;

21.14.6 the words "include" and "including" mean "including, but not limited to" and corresponding grammatical variants;

21.14.7 except as otherwise expressly stated herein, all references in this Agreement to contracts, agreements, or other documents shall be

deemed to mean such contracts, agreements or other documents, as the same may be modified, supplemented, or amended from time-to-time;

21.14.8 except as otherwise expressly stated herein, all references to Preambles, Recitals, Sections, Articles and Exhibits in this Agreement are references to the Preamble, Recitals, Sections, Articles and Exhibits of this Agreement;

21.14.9 words and abbreviations not defined in this Agreement which have well-known technical or design, engineering, or construction industry meanings are used in this Agreement in accordance with such recognized meanings;

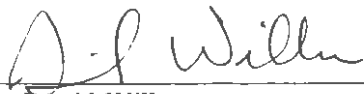
21.14.10 each reference to any applicable Law shall be construed as a reference to such applicable Law as it may have been, or may from time to time be, amended, replaced, extended or re-enacted and shall include any subordinate legislation, rule or regulation promulgated under any such applicable Law and all protocols, codes, proclamations and ordinances issued or otherwise applicable under any such Law;

21.14.11 if any payment or obligation under this Agreement would, by the method for calculating time provided herein, become due on a day other than a Business Day, such payment or obligation will be deemed to be due on the next following Business Day; and


21.14.12 the terms "hereof", "herein", "hereto", "hereunder" and words of similar or like import, refer to this entire Agreement, together with its Exhibits and Schedules, if any, and not any one particular Article, Section, Exhibit, Schedule, or other subdivision of this Agreement.

IN WITNESS WHEREOF, the undersigned have duly executed this Agreement as of the day and year first written above.

PUBLIC SERVICE COMPANY OF
COLORADO, as an Owner

By: 
Name: David Wilks
Title: Vice President

PUBLIC SERVICE COMPANY OF
COLORADO, as Operator

By: 
Name: David Wilks
Title: Vice President

INTERMOUNTAIN RURAL
ELECTRIC ASSOCIATION

By: _____

Name: Timothy L. White

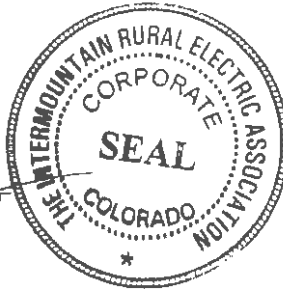
Title: President

ATTEST:


By: _____

Name: Eugene M. Sperry

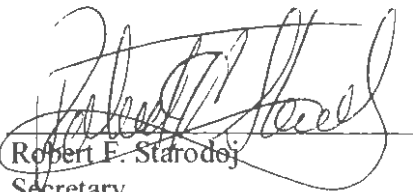
Title: Secretary-Treasurer



HOLY CROSS ELECTRIC
ASSOCIATION, INC.

By: 
Name: Thomas R. Turnbull
Title: President

ATTEST:

By: 
Name: Robert F. Starodaj
Title: Secretary

Schedule 1 to
Operations and Maintenance Agreement

Facility Ownership Interests

<u>Owner</u>	<u>Facility Ownership Interest</u>
PSCo	66 $\frac{2}{3}$ %
IREA	25 $\frac{1}{3}$ %
Holy Cross	8%

Administrative and General Overhead

In addition to Capital Costs, Facility Fuel Costs, O&M Costs, and labor overheads, Operator shall, to the extent not otherwise recovered, allocate a portion of its total administrative and general ("A&G") expenses to the Parties.

An A&G overhead rate will be derived annually using the most current calendar year A&G expenses and total O&M labor costs reported. The A&G overhead rate will be applied to O&M productive labor billed to the Parties.

In any given year, the A&G overhead rate will be calculated using Operator's prior year actual costs in a ratio of actual A&G expenses recorded (listed below) to the actual O&M productive labor recorded. This rate will be used in the current year to calculate and bill the Parties the A&G overhead costs on a monthly basis. The amount of A&G billed to the Parties for the current year will be trued up once the current calendar year A&G expenses and labor costs are reported and a new A&G overhead rate is calculated.

Costs that will be included in the calculation of the A&G overhead rate are as follows:

I. All or a portion of the total calendar year account balances in Operating Agent FERC accounts:

- 920, Administrative and General Salaries,
- 921, Office Supplies & Expenses,
- 922, Administrative Expenses Transferred Credit,
- 923, Outside Services Employed,
- 925, Injuries and Damages (excluding Worker's Compensation which is addressed in note II below)
- 928, Regulatory Commission Expense,
- 929, Duplicate Charges Credit,
- 930.1, General Advertising Expenses,
- 930.2, Miscellaneous General Expenses,
- 931, Rents,
- 932, Maintenance of Structures, and
- 935, Maintenance of General Plant

II Portions of the total calendar year account balances in the Operating Agent FERC accounts listed below:

- 925, Injuries and Damages (Worker's Compensation component)

- 926, Pensions and Benefits
- 408, Payroll Taxes
- 924, Property Insurance

To the extent amounts recorded in these accounts are billed to the Parties through O&M Costs, labor overheads or other methods, only the amounts of such costs associated with labor costs recorded in account 920 (Administrative and General Salaries) will be included in the A&G overhead rate.

Schedule 3 to
Operations and Maintenance Agreement

Shared O&M Costs

<u>FERC Account</u>	<u>Description</u>	<u>Allocation Method</u>	<u>Definition¹</u>
	ELECTRIC – Operations		
500	Operating Supervision and Engineering	Total Facility Percentage Share	This account shall include the cost of labor and expenses incurred in the general supervision and direction of the operation of steam power generating stations. Direct supervision of specific activities, such as fuel handling, boiler room operations, generator operations, etc., shall be charged to the appropriate account.
502	Steam Expenses	Total Facility Percentage Share	This account shall include the cost of labor, materials used and expenses incurred in production of steam for electric generation. This includes all expenses of handling and preparing fuel beginning at the point where the fuel enters the first boiler plant bunker, hopper, tank or holder of the boiler-house structure.
	Ash Handling	Total Facility Percentage Share	Operating Ash-collection and disposal equipment located inside the plant.
	Water	Total Facility Percentage Share	Boiler feed water purchased and pumping supplies.
	Chemicals	Total Facility Percentage Share	Chemicals purchased and used.

¹ See Code of Federal Regulations 18 for the complete definition.

505	Electric Expenses	Total Facility Percentage Share	This account shall include the cost of labor, materials used and expenses incurred in operating prime movers, generators, and their auxiliary apparatus, switch gear and other electric equipment to the points where electricity leaves for conversion for transmission or distribution.
506	Miscellaneous Steam Power Expenses	Total Facility Percentage Share	This account shall include the cost of labor, materials used and expenses incurred which are not specifically provided for or are not readily assignable to other steam generation operation expense accounts.
507	Rents	Total Facility Percentage Share	This account shall include all rents of property of others used, occupied or operated in connection with steam power generation.
509	Allowances	Total Facility Percentage Share	This account shall include the cost of allowances expensed concurrent with the monthly emission of sulfur dioxide.
ELECTRIC – Maintenance			
510	Maintenance Supervision and Engineering	Total Facility Percentage Share	This account shall include the cost of labor and expenses incurred in the general supervision and direction of maintenance of steam generation facilities. Direct field supervision of specific jobs shall be charged to the appropriate maintenance account.
511	Maintenance of Structures	Total Facility Percentage Share	This account shall include the cost of labor, materials used and expenses incurred in the maintenance of steam structures, the book cost of which is includible in account 311, Structures and Improvements.
512	Maintenance of Boiler Plant	Total Facility Percentage Share	This account shall include the cost of labor, materials used and expenses incurred in the maintenance of steam plant, the book cost of which is includible in account 312, Boiler Plant Equipment.
513	Maintenance of Electric Plant	Total Facility Percentage Share	This account shall include the cost of labor, materials used and expenses incurred in the maintenance of electric plant, the book cost of which

			is includible in account 313, Engines and Engine-Driven Generators, account 314, Turbogenerator Units, and account 315, Accessory Electric Equipment.
514	Maintenance of Miscellaneous Steam Plant	Total Facility Percentage Share	This account shall include the cost of labor, materials used and expenses incurred in maintenance of miscellaneous steam generation plant, the book cost of which is includible in account 316, Miscellaneous Power Plant Equipment.