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Atomic Safety and Licensing Board Panel

SUBJECT: Response to FLI Cities' answer to 800912 joint motion to make effective license conditions proposed by applicant,NRC & DOJ.Requests ASLB attach proposed license conditions effective immediately.Certificate of Svc encl.

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Dec 3, 1980

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

BEFORE THE ATOMIC SAFETY AND LICENSING BOARD

In the Matter of	)	
	)	
FLORIDA POWER & LIGHT COMPANY (St. Lucie Plant, Unit No. 2)	)	NRC Docket No. 50-389A

STAFF'S RESPONSE TO FLORIDA CITIES' ANSWER TO JOINT MOTION TO MAKE EFFECTIVE LICENSE CONDITIONS PROPOSED BY THE APPLICANT, THE STAFF AND THE DEPARTMENT OF JUSTICE

Pursuant to leave granted by the Atomic Safety and Licensing Board on October 24, 1980, Staff files its response to Florida Cities' (Cities) October 9, 1980 answer. Cities' answer was filed in response to a joint motion filed on September 12, 1980 by the Florida Power & Light Co. (FP&L), the Department of Justice, and Staff which requested that a set of proposed license conditions arrived at through the settlement process be attached to the construction permit for St. Lucie Plant, Unit 2. The joint motion further requested that the license conditions be made effective immediately, without prejudice for a non-settling party to be given an opportunity to persuade the Board to impose different or additional conditions after an evidentiary hearing.

In its answer to the joint motion Cities states that although the proposed license conditions will not cure the alleged situation inconsistent with the antitrust laws, it does not object to the immediate effectiveness of these conditions provided their implementation does not cause it significant injury and it is free to seek more favorable conditions. In making this

determination concerning immediate implementation, Cities separates the license conditions to which it objects into three categories. The first category deals with conditions which do not cause the Cities immediate harm by their implementation but, in the opinion of Cities, do not cure the situation believed to exist. The second category deals with conditions which Cities believes will cause it immediate harm, but which it will nevertheless agree to be implemented immediately if failure to do so would mean withdrawal of the settlement.[1/] The third category includes license conditions that Cities contends would have an immediate, severe and irrevocable adverse impact if they were to be immediately implemented.

Because the joint motion requested immediate implementation of the settlement license conditions subject to the authority of the Board to impose different or additional conditions after a hearing, the Staff addresses only those arguments dealing with proposed license conditions that Cities believes will cause immediate, severe and an irrevocably adverse impact to it. The conditions which Cities lists in this third category exclusively pertain to ownership participation in St. Lucie Unit 2 and deal specifically with:

1/ Section VII(c) of the proposed conditions requires that participating utilities pay a ten percent deposit within a certain time frame to secure their participation in St. Lucie Unit 2. At pages 18 and 19 of its answer Cities contends that certain aspects regarding this deposit requirement are unfair, but concedes that:

> "....while they object greatly to such burdens, if FP&L refused to grant participation and sought to withdraw from settlement, should be (sic) Board agree that the provision is unreasonable, Florida Cities would prefer immediate implementation of the settlement to a withdrawal of their rights to nuclear participation."

(1) the timetable for payment and decisions regarding participation in the unit, (2) FP&L's operational control over the unit, and (3) the sharing of liability with respect to operation of the unit.

I. DISCUSSION

Before addressing Cities' specific assertions with respect to those license conditions that it believes should not be implemented at this time, we would reiterate that Cities are not being precluded from convincing the Board at a hearing that such conditions should be modified. If the Board does modify any of these conditions to reflect Cities' concern, Cities at that time could elect to participate in St. Lucie Unit 2 under such modifications. However, if the license conditions in question are not amended by the Board and if the time limit and other provisions for participation in St. Lucie Unit 2 set forth in Section VII of the proposed conditions have not been met, then Cities would lose its opportunity to participate under the license conditions.

It is the Staff's view that Cities has failed to set forth any convincing reasons why immediate attachment of the license conditons would be inappropriate. Although it has listed reasons why it believes that some of the conditions are unfair, the only reasons stated for opposing immediate implementation is that those provisions would "inhibit participation" and "may preclude acceptable financing."[2/] It does not explain, however, how financing would be adversely affected or how participation would be any more inhibited

2/ Cities' answer at pages 13, 15, 18.

than if the license conditions were vested immediately subject to later modification. The following is Staff's response to Cities specific arguments with respect to immediate implementation of the "third category" of license conditions.

A. The Timetable

A timetable is included in Section VII of the proposed license conditions that sets forth the specific time frames by which payments and other decisions are due for participation in St. Lucie Unit 2. This timetable is intended to avoid questions of timeliness and to require an indication of willingness to participate in the unit as soon as possible. Cities contends that it cannot obtain financing for participation in St. Lucie Unit 2 under the schedules set forth in this timetable and states that it is working on its own timetable which it will provide the Board.

The time frames set forth in Section VII are based upon information obtained during the negotiations from many sources and are believed by Staff to be reasonable. In order to succeed in blocking the immediate implementation of the conditions, Cities has the burden of showing why the proposed timetable is inadequate, is not in the public interest, and will create prejudice. Thus far it has not satisfied this burden. However, the issue of the timetable hopefully will not be difficult to resolve since FP&L has indicated to Staff and the Department of Justice that it will discuss with FMPA any specific problems FMPA has in meeting these deadlines and will attempt to resolve any legitimate differences. It is our understanding that in its

answer which is due today FP&L will advise the Board whether these discussions will result in any agreement.

B. Operational Control

Section VII(i) of the proposed license conditions provides that FP&L may retain complete control over the design, engineering, construction, operation and maintenance of St. Lucie Unit 2.[3/] Although Cities concedes that it may

3/ In the event that the Board accepts Cities arguments that this provision is unreasonable and modifies this section of the license conditions accordingly, FP&L has agreed to make the following commitment:

> "If in the future Company enters into a new participation agreement or an amendment to a participation agreement previously entered into pursuant to Section VII of the proposed license conditions ("new participation agreement") which contains contractual provisions which conflict with the principles of Section VII, paragraph (i) of the proposed conditions submitted to the Licensing Board on September 12, 1980, and such provisions are included in such new participation agreement as a result of a final order of the NRC which is no longer subject to appeal and which (a) modifies or deletes paragraph (i) and (b) requires that such contractual provisions be included in such new agreement, Company, upon request of the other party to a participation agreement previously entered into pursuant to Section VII ("prior participation agreement"), will consent to amend such prior participation agreement to substitute such provisions of such new agreement for the conflicting provisions in such prior participation agreement; provided that Company may, at its option, incorporate in such amendment all other substantive terms of such new agreement which differ from the terms of the prior Participation Agreement, including but not limited to provisions for conveyance of an ownership interest which is less as a percentage of such party's 1977 peak electric load than was originally conveyed in such prior Participation Agreement (in which event Company may include provisions for reconveyance of the excess to Company). This provision is not intended to affect any authority which the NRC may possess independent of this paragraph or to limit the right of any party to take any legal position on the extent of such authority."

be reasonable for FP&L to have operational control over these functions, it contends that provisions must be made to reimburse Cities in the event that FP&L acts to serve its own economic, financial or operating interests and such actions have adverse effects upon the Cities. Absent such modification, Cities contends that it may be unable to arrange financing.

Staff believes that Cities has presented no support for its contention that financing would be inhibited by granting FP&L complete control over the management of the unit. Likewise, Cities has not shown that in order to obtain financing there must be offsetting provisions in the license conditions which would allow Cities reimbursement. It is Staff's understanding that it is not unusual for participation agreements for ownership in nuclear units in the electric utility industry to vest one utility with complete authority over the design, construction, operation, maintenance and disposal of the unit.4/ Furthermore, we are only aware of a few agreements that include provisions reimbursing a participant for decisions by the operating utility that may favor its own financial interests to the detriment of other participants.5/ In addition, Staff is not aware that any utility has ever been denied financing on the basis that a participation agreement grants a sponsoring utility this management control or by the absence of any offsetting reimbursement provisions of the nature requested by Cities. Cities has

4/ See attachments A and B which are examples of provisions regarding operational control found in other participation agreements.

5/ The only reimbursement provisions of this nature which Staff is presently aware are provisions in the FP&L-Orlando participation agreement for St. Lucie 2 discussed, infra (See footnote 8) and similar provisions in a January 6, 1975 agreement for Georgia Power Company's Hatch Unit and a February 1977 agreement for Detroit Edison's Enrico Fermi Unit.

failed to come forward with any information to the contrary, nor has it advanced any reasons why financing would be impeded in this instance.

Notwithstanding Cities failure to demonstrate why this proposed condition should not be attached immediately to the St. Lucie Unit 2 license, this issue may be mooted by a provision that FP&L included in a participation agreement negotiated with the City of Orlando and is now willing to include in all other participation agreements for the unit.[6/] The provision in question in the Orlando-FP&L agreement provides Orlando replacement power if FP&L voluntarily ceases to operate St. Lucie Unit 2 because of the availability of less expensive power from other sources.[7/] Cities fears now seem to be allayed since in its answer[8/] it has stated that to some extent the

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6/ Representatives of FP&L have informed Staff and the Department of Justice that FP&L will now offer to utilities listed in Section VII of the license conditions substantially identical participation agreements to the participation agreement it has entered into with the Orlando Public Utilities Commission.

7/ The FP&L-Orlando participation agreement for St. Lucie Unit 2 at page 79 specifically provides:

> In the event, and only in the event, that after Firm Operation, the Company voluntarily ceases to operate or reduces output from St. Lucie Unit No. 2 for the reason that the cost of energy that could have been generated by St. Lucie Unit No. 2 would have been more expensive to the Company than the cost of energy available to the Company from sources other than St. Lucie Unit No. 2, the Company will make available to the Participant replacement power and energy in each hour equal to the amount thereof reasonably anticipated to have been available to the Participants from St. Lucie Unit No. 2 at a cost equal to the estimated variable cost of producing such power and energy from St. Lucie Unit No. 2 that would have been incurred in St. Lucie Unit No. 2 were continued in operation without such cessation or reduction of output, with appropriate adjustments being made for reasonably determinable changes in operating conditions.

8/ Cities' answer at page 15.

potential for abuse regarding FP&L's operational control over St. Lucie Unit 2 would be mitigated by including the type of provision that appears in the Orlando-FP&L participation agreement.

C. The Liability Provision

Section VII(e)(1) of the proposed license conditions provides, in part, that in the event parties are unable to agree on the terms of a participation agreement, then such disputes may be submitted to binding arbitration. There is a standard set forth in this proposed condition for the arbitrator when considering liability provisions in participation agreements. The standard included in this condition provides that the arbitrator shall approve liability provisions proposed by FP&L unless he determines that such provisions constitute "an unreasonable proposal which renders meaningless the Company's offer of participation in St. Lucie Unit No. 2."

Cities contends that this liability provision in Section VII(e)(1) of the proposed license conditions allows FP&L to impose onerous liability obligations on participating utilities. To demonstrate that its fears are not groundless, it cites the recently agreed to participation agreement for St. Lucie Unit 2 between Orlando and FP&L as an example of the unfavorable liability provisions that FP&L will impose. Other than by generally alleging that financing may be hindered, however, it does not explain why this proposed license condition cannot be implemented now subject to having the opportunity to dispute its reasonableness at a hearing. Contrary to Cities assertions regarding the liability provisions, Staff is not aware

that a utility has ever had difficulty in obtaining financing because of such provisions.[9/] In this regard, it is our understanding that the Orlando Utilities Commission is not presently being hindered in its attempts to obtain financing for its participation in St. Lucie Unit 2.

II. OTHER MATTERS RAISED BY CITIES

A. Clarification With Respect To The Scope Of The License Conditions

In its answer Cities seeks verification of the fact that subsequent Board orders may broaden or enhance the scope of relief as set out in the proposed license conditions, but such orders would not narrow or restrict that relief.[10/] Staff believes this assessment is correct. When Staff agreed to a settlement with FP&L it did so with the belief that the entire set of license conditions were necessary to be included in the St. Lucie Unit 2 license. The parties to the stipulation have agreed not to request the Board to modify any of the conditions and we do not anticipate that Cities will ask the Licensing Board to narrow relief. Staff believes the Atomic Safety and Licensing Board in the Catawba proceeding was correct when it decided to accept in their entirety and not diminish a set of license conditions agreed to in a settlement between the Department of Justice, the NRC Staff and the Applicant. In that proceeding the Chairman of the Licensing Board stated:

9/ Attachments A and B are examples of participation agreements that have liability provisions similar to the FP&L-Orlando agreement. Financing was obtained for the ownership shares bestowed in each of these agreements.

10/ Cities' answer at page 1.

> Now, the reason we're exploring this, Mr. Avery, if your commitments have been made, and I assume that the Department of Justice and the AEC Staff will also abide by their commitments, it is a fate accompli. The commitments are open to the world, and they are your responsibility, once the license is issued, assuming that the license contains at least those conditions; it may well contain more, but it will contain at least those conditions.
>
> When I say it may contain more conditions, this Board is not bound by whatever settlement agreement you all agree among yourselves until we approve it. And in the course of approving it, I can't quite foresee that we would condition the plant less than that, but we might put in more conditions; I don't know. It depends on what the Intervenors can show us.11/ (Emphasis added).

Another question Cities poses regarding the scope of the license conditions is whether "...FMPA qualifies for all rights contained in the license conditions" and whether qualifying utilities can participate in St. Lucie 2 through FMPA and in so doing also receive adequate backup and transmission services through FMPA.12/ Staff believes that the license conditions must be referred to in each instance when determining which entities will receive entitlements. However, Section VII(f) specifically concerns participation in St. Lucie through FMPA. This section provides that in the event that an entity does not itself participate in St. Lucie Unit 2 by ownership, it has the right to transfer its participation rights to FMPA. Other services can be made available to FMPA by Section I of the license conditions which includes "lawful associations" under the definition of a "neighboring entity"

11/ Duke Power Company (Catawba Nuclear Station, Units 1 and 2) Dkt. Nos. 50-413A and 50-414A. Hearing conference transcript of May 13, 1974 at page 136.

12/ Cities' answer at page 12.

and "neighboring distribution system." Staff believes that FMPA would qualify as a "lawful association" and that its members which qualify as neighboring entities and neighboring distribution systems could transfer their entitlements for coordination and transmission services to FMPA through this section of the proposed conditions.

B. CITIES REQUEST FOR AN IMMEDIATE PREHEARING CONFERENCE

The joint motion of September 12, 1980 requests that the Licensing Board order Cities to set forth in writing any objection they may have to the proposed license conditions. Cities suggests that this procedure be bypassed and that a prehearing conference be called before drafting this pleading "to discuss the objections so that the Board and the parties may be informed and, possibly, to negotiate various differences among the parties."[13/] Staff does not believe that holding a prehearing conference for this purpose would be meaningful until Cities first specifies in writing its objections to the conditions and the legal and factual basis for such objections. Without first receiving this information, the parties will not have an opportunity to study Cities objections and to prepare for specific discussions of the issues. Although such a prehearing conference would not appear practical before Cities first specify their objections, Staff would not oppose a prehearing conference at this time to discuss the question of whether the license conditions should be immediately attached to the St. Lucie license.

13/ Cities' answer at page 4. The topics Cities wishes to discuss at this prehearing conference include its objections to all of the license conditions and are not limited to objections to the "third category" license conditions involved with the issue of immediate implementation of the license conditions.

CONCLUSION

For the above stated reasons, Staff does not believe that Cities would be prejudiced if the proposed license conditions are attached at this time to the construction permit for St. Lucie Unit 2. Furthermore, it is in the public interest that these conditions now become effective so that their benefits can be made available as soon as possible. Staff accordingly requests that the Licensing Board attach the conditions effective immediately.

Staff further recommends that before holding a prehearing conference regarding Cities objections to the total license conditions that Cities first specifies these objections in writing. However, we do not object to holding a prehearing conference at this time to discuss the immediate implementation of the proposed license conditions.

Respectfully submitted,

Lee Scott Dewey

Lee Scott Dewey
Counsel for NRC Staff

Dated at Bethesda, Maryland
this 3rd day of December, 1980.

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

BEFORE THE ATOMIC SAFETY AND LICENSING BOARD

In the Matter of	)	
	)	
FLORIDA POWER & LIGHT COMPANY	)	NRC Docket Nos. 50-389A
(St. Lucie Plant, Unit No. 2)	)	

CERTIFICATE OF SERVICE

I hereby certify that copies of STAFF'S RESPONSE TO FLORIDA CITIES' ANSWER TO JOINT MOTION TO MAKE EFFECTIVE LICENSE CONDITIONS PROPOSED BY THE APPLICANT, THE STAFF AND THE DEPARTMENT OF JUSTICE in the above-captioned proceeding have been served on the following by deposit in the United States mail, first class, or, as indicated by an asterisk, through deposit in the Nuclear Regulatory Commission's internal mail system, this 3rd day of December, 1980.

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ATTACHMENT A

DUANE ARNOLD ENERGY CENTER

OWNERSHIP PARTICIPATION AGREEMENT

THIS AGREEMENT entered into this 1st day of June, 1970, between IOWA ELECTRIC LIGHT AND POWER COMPANY, an Iowa corporation, hereinafter called "Company", CENTRAL IOWA POWER COOPERATIVE, an Iowa cooperative corporation, hereinafter called "Cipco", and CORN BELT POWER COOPERATIVE, an Iowa cooperative corporation, hereinafter called "Corn Belt", (each of which is sometimes herein referred to as "Party" and collectively as "Parties"), WITNESSETH:

ARTICLE I

Recitals

Section 1.1 Each of the Parties is a public utility engaged in the generation, transmission and distribution of electric power and energy in the State of Iowa.

Section 1.2 Each of the Parties desires and intends to utilize the most modern technology to bring the benefits of efficient and economical electric service to the consumers of Iowa, and to this intent and purpose the Parties herewith establish their joint participation in a 550 MWe nominally rated nuclear generating station to be known as the Duane Arnold Energy Center to be located near Palo in Linn County, Iowa, including, without limitation, a boiling water reactor, turbine generator and associated auxiliaries, equipment and transformation, the complete construction and installation to be hereinafter called the "Project".

Section 1.3 The Project will be owned in undivided

ownership wherein Company will own eighty percent, Cipco will own ten percent and Corn Belt will own ten percent. Each Party will be individually responsible for the financing of its respective proportion of the Project and shall have the right to pledge such respective proportion as security therefor. The participation in the Project by Cipco and Corn Belt each shall be subject to and contingent upon such Party or Parties securing financing for the investment in its respective percentage of ownership and participation from the United States of America acting through the Rural Electrification Administration, or from such other source as for it shall be financially feasible. Company shall have the right to arrange for a minor portion of its eighty percent (80%) undivided ownership to be granted to another electric utility, and thereupon this Agreement shall be amended to include such other ownership as a Party hereunder, with the same general rights, obligations and responsibilities as those of the Parties.

Section 1.4 The Parties hereto agree that the Company, as the predominant owner, shall be solely responsible for the design, construction, operation, maintenance and disposal of the Project so as fully to comply with all requirements of the statutes and the rules and regulations of the Atomic Energy Commission and such other regulatory authority as in the opinion of the Company shall have competent jurisdiction.

OPERATIONAL CONTROL

Section 1.5 Each Party will be entitled to its proportionate share of the power and energy of the Project.

Section 1.6 Each Party shall be entitled to the benefit of the production and capacity of the Project in proportion to its ownership thereof, and each Party individually shall bear

reasonable effort fully to inform Cipco and Corn Belt as to the plans for and progress of Project in accordance with Section 1.6 hereof; but no failure of Company to provide information shall constitute a default, excuse or release for any Party from any obligation hereunder.

Section 2.7 Cooperation. All Parties will cooperate with each other in all activities in connection with the Project, including, without limitation, the filing of applications for authorizations, permits or licenses and the execution of such other documents as may be reasonably necessary to carry out the provisions of this Agreement. Neither Cipco nor Corn Belt, without Company's written consent, shall incur any obligation in connection with the Project which would or might obligate Company to any third party.

Section 2.8 Limitation of Liability. No Party shall be liable to any other Party for any loss, cost, damage or expense incurred by any other Party as a result of any action or failure to act by such Party in connection with this Agreement, expecting only (a) any Party shall be liable t any other Party or Parties injured for any action not taken in good faith or any

tion in breach of this or any other Agreement between the Par-

if, by reason of any joint liability, any Party shall be called upon to make any payment or incur any obligation in excess of the proportionate interest of such Party in the Project, the other Parties shall indemnify and reimburse such Party to the extent of their proportionate interests in such excess; and (c) each Party shall be solely liable for, and shall indemnify each of the other Parties for any claim arising out of the maintenance

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by such indemnifying Party of any facility installed and maintained by such Party pursuant to the second paragraph of Section 2.4.

Section 2.9 Sharing of Costs. Company shall be responsible for 80%, Cipco for 10% and Corn Belt for 10% of all costs, obligations and liabilities incurred in the initial construction of the Project and for all subsequent capital expenditures required and made with respect to the Project during the life thereof, excluding interest, except as otherwise expressly provided herein. This Agreement generally is intended to set forth the responsibility for capital costs and the costs of inventories of materials, supplies, tools and equipment; and it is likewise intended that the responsibility for operating expenses will be set forth in an Operating Agreement between the Parties to be hereafter executed; nevertheless, it is the absolute intent of the Parties to share all costs, obligations and liabilities incurred in connection with the Project, and not otherwise expressly provided for, in the proportions set forth above, and in the event of any doubt whether responsibility for any specific cost, obligation or liability is provided for in this Agreement or in said Operating Agreement, such cost, obligation or liability shall be so shared.

The cost of construction and capital expenditures is defined as all expenditures made by Company for the project described in Section 2.1 for those items recorded in accordance with the Electric Plant Instructions and in appropriate accounts as set forth in the Federal Power Commission Uniform System of

— ATTACHMENT B —

Docket Nos. 50-387 and 50-388

Map to Exhibit A not included in this copy

TENANCY IN COMMON

PARTICIPATION AGREEMENT

FOR

SUSQUEHANNA

BETWEEN

ALLEGHENY ELECTRIC COOPERATIVE, INC.

AND

PENNSYLVANIA POWER & LIGHT COMPANY

MARCH 18, 1977

Article V: Completion of Construction of Susquehanna

A. PL shall place Susquehanna Unit #1 and Susquehanna Unit #2 individually in Contract Operation at the earliest practicable date that it has been determined that such unit is a reliable source of capacity and complies fully with all requirements of all applicable statutes and the rules and regulations of the Nuclear Regulatory Commission and such other regulatory agencies as shall have competent jurisdiction over the planning, design, licensing, construction, operation and maintenance of Susquehanna. Such date with respect to each such unit shall be the date of Contract Operation for such unit.

B. PL shall have the sole and absolute authority and discretion to design, construct, control and manage Susquehanna without challenge to such authority and discretion by AE. Such authority and discretion shall include, but shall not be limited to:

OPERATIONAL CONTROL

1. Staffing of Susquehanna;

2. Making and modifying all contracts with third parties including but not limited to all contracts relating to nuclear fuels, nuclear fuel fabrication and exploration for nuclear fuel for Susquehanna;

3. Procuring and replacing parts, spare parts, materials, supplies and equipment used in the design and construction of Susquehanna;

4. Establishing and revising all construction schedules and dates of Contract Operation of Susquehanna Unit #1 and

Susquehanna Unit #2 including but not limited to the acceleration, deferral and/or cancellation of construction of Susquehanna, subject to Article XXX hereof;

5. Providing for the design and construction of any and all items which may be useful or desirable in respect of Susquehanna;

6. Securing and attempting to keep in effect all licenses, permits, permissions, approvals, and other authorizations of any nature whatsoever required or desired by PL to be obtained from any and all governmental, quasi-governmental, regulatory, supervisory, or other bodies or entities of authority;

7. Maintaining any and all records.

Any other provision, term, condition or Article to the contrary notwithstanding, the rights of PL as set forth in this Article V shall not furnish a basis for the assertion by AE of liability against PL. LIABILITY

C. Subsequent to Second Closing, PL shall own a ninety percent (90%) undivided ownership interest in Susquehanna as tenants in common with AE which shall own a ten percent (10%) undivided ownership interest in Susquehanna as is in existence and as is being constructed, under and subject to the terms and conditions contained in this Agreement. Whenever in the sole judgment of PL, PL deems it desirable, PL and AE shall jointly enter into contracts, leases and agreements in respect of Susquehanna with any third party (and thereby become joint signatories) dated subsequent to Second Closing, with the rights and liabilities of said contracts, leases and agreements thereby vesting in PL and AE in proportion to their respective undivided ownership interests in Susquehanna. It is understood by the Parties hereto that AE may not become a joint signatory of one or more contracts, leases and agreements in

Article XVI: Sharing of Risks

Except as contemplated in Article XXXI of this Agreement, anything contained in this Agreement or the Operating Agreement, or any other written document whether written prior to, during, or subsequent to the execution of this Agreement, and any oral statement whether made prior to, during, or subsequent to the execution of this Agreement, to the contrary notwithstanding, PL and AE shall share in proportion to their respective undivided ownership interests as contemplated in this Agreement, any and all responsibility and any and all risks of any nature whatsoever in respect of Susquehanna (other than responsibilities resulting from the failure of one Party to perform a financial duty to the other Party under this Agreement or the Operating Agreement) which responsibility and risks shall include, but shall not be limited to the following: (a) the financial success or failure of Susquehanna, (b) all liability sounding in tort, strict liability, contract, or otherwise in respect of Susquehanna, (c) any situation arising out of or in any manner whatsoever connected with scientific, engineering or environmental aspects of Susquehanna, (d) any situation arising out of or in any manner connected with the construction, design, operation, management, or maintenance and retirement of Susquehanna, (e) any situation arising out of or in any manner connected with any and all regulations, laws, decisions, rulings, orders, advisements, notices, or other

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communications, of any governmental, quasi-governmental, regulatory, supervisory, or advisory body, of any nature whatsoever, provided however, nothing herein shall limit the benefits or the responsibilities which each Party shall derive as a result of its undivided ownership interests in Susquehanna.

(End of Article XVI)