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August 13, 1999

Mr. Dale Hardy Roberts  
Executive Secretary  
Public Service Commission  
P. O. Box 360  
Jefferson City, MO 65102

**FILED**

AUG 13 1999

*EM-2000-145*

**RE:** The Empire District Electric Company  
State Line Combined Cycle

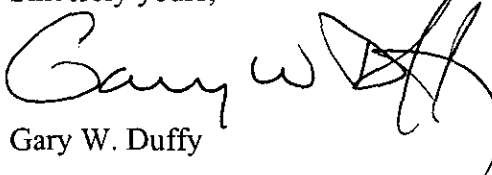
Missouri Public  
Service Commission

Dear Mr. Roberts:

Enclosed for filing in the above-referenced proceeding please find an original and fourteen copies of an Application of The Empire District Electric Company to transfer a partial undivided interest in certain facilities to Westar Generating, Inc.

If you have any questions about this, please give me a call.

Sincerely yours,

  
Gary W. Duffy

Enclosures  
cc w/encl:

Office of Public Counsel

**BEFORE THE PUBLIC SERVICE COMMISSION  
OF THE STATE OF MISSOURI**

In the matter of the application of The Empire )  
District Electric Company for permission and )  
authority to transfer a partial, undivided )  
interest in certain generation facilities, land and )  
related property owned by it to Westar )  
Generating, Inc. in accordance with a contract )  
dated July 26, 1999. )

EM -  
Case No. ~~ES~~-2000- 145

**FILED**  
AUG 13 1999  
Missouri Public  
Service Commission

**FILED**

AUG 13 1999

**APPLICATION**

Comes now The Empire District Electric Company ("Empire" or "Applicant"), by and through its counsel, and for its application pursuant to Section 393.190 RSMo 1994 and 4 CSR 240-2.060(5) for an order of the Public Service Commission ("Commission") allowing the sale and transfer of certain interests in assets necessary or useful in the performance of its duties to the public, respectfully states as follows:

1. Applicant is The Empire District Electric Company. Its principal office is located at 602 Joplin Street, Joplin, Missouri 64802.

2. Empire is a corporation duly incorporated under the laws of the state of Kansas and is qualified to do business as a foreign corporation in Missouri. It also conducts business in the states of Kansas, Arkansas and Oklahoma and is engaged, generally, in the business of generating, purchasing, transmitting, distributing and selling electric power and energy in portions of said states. Empire also provides retail water service in a portion of Missouri. Empire's Missouri operations related to the provision of retail electric and water service are subject to the jurisdiction of the Commission as provided by law.

3. All correspondence, communications, notices, order and decisions of the Commission with respect to this matter should be sent to:

Virgil Brill, Vice President of Energy Supply  
The Empire District Electric Company  
602 Joplin Street  
P.O. Box 127  
Joplin, MO 64802  
Tel: 417 625-5100  
Fax: 417 625-5153

Gary W. Duffy, Attorney at Law  
Brydon, Swearengen & England P.C.  
312 East Capitol Avenue  
P.O. Box 456  
Jefferson City, Missouri 65102-0456  
Tel: 573 635-7166  
Fax: 573 635-3847

4. A certified copy of Empire's Restated Articles of Incorporation, as amended, was filed in Case No. EF-94-39 and is incorporated herein by reference and made a part hereof. A certificate from the Missouri Secretary of State that Empire is authorized to do business in Missouri was provided in Empire's application filed in Case No. EA-99-172 and is incorporated herein by reference and made a part hereof.

5. Empire currently owns and operates an electric generating facility located in the southwest corner of Jasper County, Missouri, called "State Line" at which is presently located two combustion turbine units (State Line Units 1 and 2). Empire, in conjunction with Westar Generating, Inc. ("WGI"), plans to construct a 500 megawatt combined cycle generating station utilizing portions of the existing site and State Line Unit 2. Empire and WGI will have a joint ownership in certain common facilities, the land, and in the existing and new facilities pursuant to a Construction, Ownership and Operation Agreement ("the Agreement") dated July 26, 1999, a copy of which is attached hereto and marked as Appendix A. One new combustion turbine (State Line Unit 3), two new boilers, a new steam turbine (Unit 4), and a new cooling tower are expected to be constructed at the site. The new boilers and steam turbine will use heat from the

exhaust from two of the combustion turbines (existing Unit 2 and new Unit 3) to generate electric power and energy ("State Line Combined Cycle").

6. By this application, and pursuant to the requirements of section 393.190 RSMo 1994, Empire seeks the Commission's permission to transfer certain property interests which are currently used by Empire in the provision of service to the public to WGI, as set out in more detail in the Agreement, to facilitate the construction of State Line Combined Cycle such that Empire and WGI will jointly own undivided interests in the new generation facility to be constructed at the site.

7. The sale of the property and interests by Empire represented by the Agreement is not detrimental to the public interest in that service to Empire's customers will not be diminished as a result of these transactions. Indeed, service to Empire's customers is expected to be enhanced with the addition of more generating capacity at the site to meet the growing needs of Empire's customers.

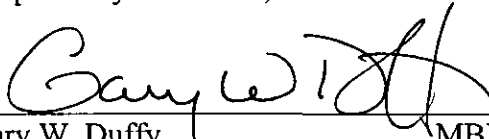
8. With respect to 4 CSR 240-2.060(G), Empire states that it anticipates there will not be a negative impact on the tax revenues of the political subdivisions (e.g., Jasper County) in which the facilities are now located and in which the new facilities will be located. The reason is there will be a significant increase in the taxable property at the site from the new construction, and therefore an anticipated increase in tax revenues for the affected political subdivisions, although the ownership of the property will be divided between two corporate entities instead of one.

9. With reference to 4 CSR 240-2.060(5)(E) and (F), Empire states it understands that WGI will soon be making a separate application for a certificate of public convenience and necessity related to the purchase described herein.

WHEREFORE, Applicant requests an order from the Commission granting it permission

to transfer interests as specified in the Agreement.

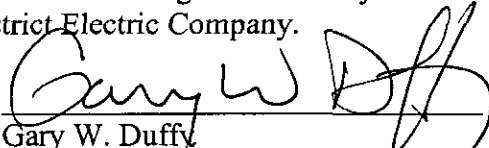
Respectfully submitted,

  
\_\_\_\_\_  
Gary W. Duffy MBE #24905  
BRYDON, SWEARENGEN & ENGLAND P.C.  
312 East Capitol Avenue  
P.O. Box 456  
Jefferson City, Missouri 65102-0456  
(573) 635-7166  
(573) 635-3847 (facsimile)  
Attorneys for  
The Empire District Electric Company

VERIFICATION

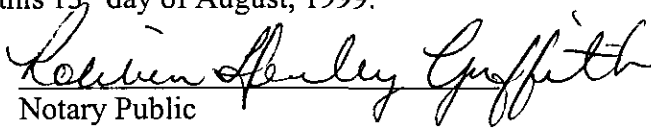
STATE OF MISSOURI     )  
                                  ) ss  
COUNTY OF COLE     )

On the 13<sup>th</sup> day of August, 1999, before me appeared Gary W. Duffy, to me personally known, who, being by me first duly sworn, acknowledged that he had read the above and foregoing document and believes that the allegations therein are true and correct to the best of his information, knowledge and belief, and that the above designated attorneys are authorized to file said application on behalf of The Empire District Electric Company.

  
\_\_\_\_\_  
Gary W. Duffy

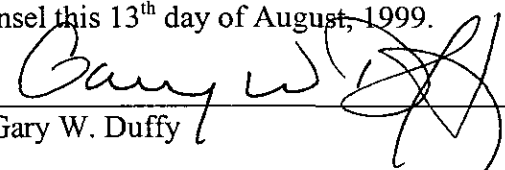
Subscribed and sworn to before me this 13<sup>th</sup> day of August, 1999.

 **ROBBIN HENLEY GRIFFITH**  
A Notary Public of  
Miller County, Missouri  
My Commission Expires 12/28/2001  
My Commission expires: \_\_\_\_\_

  
\_\_\_\_\_  
Notary Public

Certificate of Service

The undersigned certifies that a true and correct copy of the foregoing was served by hand delivery on the Office of the Public Counsel this 13<sup>th</sup> day of August, 1999.

  
\_\_\_\_\_  
Gary W. Duffy

**AGREEMENT FOR THE**  
**CONSTRUCTION, OWNERSHIP AND OPERATION**  
**OF**  
**STATE LINE COMBINED CYCLE GENERATING FACILITY**

BY AND AMONG

THE EMPIRE DISTRICT ELECTRIC COMPANY,  
as an Owner,

WESTAR GENERATING, INC.,  
as an Owner

and

THE EMPIRE DISTRICT ELECTRIC COMPANY,  
as Agent

**Dated: July 26, 1999**

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## STATE LINE COMBINED CYCLE GENERATING FACILITY

### CONSTRUCTION, OWNERSHIP AND OPERATION AGREEMENT

This AGREEMENT is dated as of July 26, 1999, by and among THE EMPIRE DISTRICT ELECTRIC COMPANY ("EDE"), a Kansas corporation having its principal office in Joplin, Missouri, as an Owner; WESTAR GENERATING, INC. ("WGI"), a Kansas corporation having its principal office in Topeka, Kansas, as an Owner; and THE EMPIRE DISTRICT ELECTRIC COMPANY, as Agent.

#### RECITALS

0.1 EDE and WGI intend to construct, own and operate an electric combined cycle generating station located in the southwest corner of Jasper County, Missouri ("State Line Combined Cycle" or "SLCC", as more fully defined in Section 2.1), consisting, in part, of (i) one Westinghouse W501F combustion turbine (the "Existing CT") which is currently owned by EDE and which shall be modified and integrated into SLCC as part of the plant expansion contemplated by this Agreement, (ii) one new W501F combustion turbine, (iii) two new heat recovery steam generators, (iv) one new steam turbine, (v) one new cooling tower and (vi) other associated equipment. Upon substantial completion of construction and the receipt of all requisite permits and authorizations, SLCC will be a 2x1 "F" class combined cycle plant with ownership interests therein as provided in Article II hereof.

SLCC will be constructed and located on the Existing Land (as defined in Section 2.1(a)), the SL2CT Land (as defined in Section 0.4(iv)) and other property as it is acquired. The Existing Land and the SL2CT Land are located adjacent to EDE's State Line 1 facility (including all associated equipment and land, "SL1CT"), shown on Exhibit A hereto under the caption "Legal Description of SL1CT". SLCC and SL1CT will both utilize certain facilities and property which will be identified as State Line common facilities ("SL Common", as more fully defined in Section 2.2). EDE and WGI will share the costs of SL Common and SLCC based on the ownership arrangements described in Section 2.5 hereof. References to "construction, ownership and operation" in this Agreement shall be deemed to include the planning, licensing, design, construction, acquisition, completion, management, control, operation, maintenance, renewal, addition, replacement, modification and disposal of SLCC or SL Common, as applicable, but shall be deemed to exclude marketing and power sales.

0.2 On October 15, 1998, EDE filed an application with the Kansas Corporation Commission ("KCC") for a waiver of the siting permit requirements necessary to construct SLCC and on December 16, 1998, EDE filed an application with the KCC for authority

to construct SLCC. In addition, EDE has filed an application for an air permit for SLCC as described in Section 2.1(c)(ii).

0.3 In furtherance thereof, EDE has, with WGI's knowledge and consent and in contemplation of its entering into this Agreement with WGI, entered into

(i) a contract dated January 15, 1999, with Black & Veatch Corporation, under which said engineering firm will provide engineering and construction management, develop construction specifications, and provide procurement assistance with the balance of plant items, all in connection with the development of SLCC. A copy of such contract was delivered to WGI prior to the date hereof;

(ii) a contract dated April 6, 1999, with Siemens-Westinghouse Power Corporation providing for, in part, the purchase of one W501F combustion turbine and one steam turbine. A copy of such contract was delivered to WGI prior to the date hereof; and

(iii) a Letter Agreement (the "1999 Letter Agreement"), a Precedent Agreement and a Discount Agreement, each dated February 27, 1999, a Parking and Loan Service Agreement dated February 26, 1999, and a Facility Construction, Ownership and Operating Agreement CO-646 dated April 19, 1999, as amended June 15, 1999 (collectively, the "New Gas Transportation Agreements"), each with Williams Gas Pipelines Central ("Williams") providing for the transport of natural gas to SLCC. In addition, pursuant to the 1999 Letter Agreement, certain of EDE's existing agreements with Williams will be amended for the purpose of providing firm transportation capacity for SLCC. Those agreements to be amended are EDE's existing (A) Transportation Service Agreement Under Rate Schedule FTS, (B) Facility Construction, Ownership and Operating Agreement CO-420 and (C) Letter Agreement, each with Williams and each dated April 28, 1994 (collectively, as shall be amended pursuant to the 1999 Letter Agreement, the "Amended Gas Transportation Agreements"). A copy of each such agreement was delivered to WGI prior to the date hereof. The New Gas Transportation Agreements together with the Amended Gas Transportation Agreements and a new firm transportation service agreement to be entered into by EDE with Williams in accordance with the New Gas Transportation Agreements are herein referred to collectively as the "Gas Transportation Agreements."

0.4 Pursuant to Section 2.3 hereof, EDE shall

(i) on the date hereof transfer and/or assign, as applicable, to the Agent (as defined in Section 4.9 hereof), as agent on behalf of each of the Owners (as defined in Section 2.5 hereof), all permits (to the extent required by law), contracts (including those listed in Section 0.3, but excluding those listed in Section 0.3(iii)) and other

rights related to SLCC or SL Common received or entered into by EDE prior to the date hereof;

(ii) upon EDE commencing delivery of gas under the New Gas Transportation Agreements, EDE shall assign a portion of the Gas Transportation Agreements to WGI equal to WGI's then existing Ownership Share (as defined in Section 2.5) in SLCC;

(iii) after receipt of EDE Regulatory Approvals (as defined in Section 1.1(e)) and the Certificate of Convenience (as defined in Section 1.2(c)), if required, execute and deliver documentation pursuant to which (A) EDE and WGI will, subject to the terms of this Agreement, own undivided interests in the Existing SL Common (as defined in Section 2.2) equal to their respective Ownership Shares in SL Common and (B) EDE and WGI will, subject to the terms of this Agreement, own undivided interests in the Existing Land (as defined in Section 2.1) equal to their respective Ownership Shares in SLCC;

(iv) after receipt of EDE Regulatory Approvals and the Certificate of Convenience, if required, but not before the date that exhaust from the Existing CT is utilized in its associated heat recovery steam generator, execute and deliver documentation pursuant to which EDE and WGI will, subject to the terms of this Agreement, own undivided interests in the Existing CT and the underlying land and land rights as shown on Exhibit A hereto under the caption "Legal description of SL2CT" (the "SL2CT Land" and, together with the Existing CT, "SL2CT") equal to their respective Ownership Shares in SLCC; and

(v) commencing on the date of this Agreement, EDE and WGI and any other Owners will, subject to the terms of this Agreement, acquire undivided ownership interests in all other equipment, facilities, lands, land rights and other property and rights acquired or constructed on or after the date hereof to be utilized in SLCC or SL Common equal to their respective Ownership Shares in SLCC and SL Common, respectively.

0.5 EDE and WGI shall, concurrently with, and as a condition to, the execution of this Agreement, execute and deliver each of the following documents: (i) an Accounting and Cash Flow Memorandum (with an Accounting Manual attached thereto), as contemplated by Section 5.3(c), (ii) an Insurance Memorandum, as contemplated by Section 2.7 and (iii) a Payment Agreement, as contemplated by Section 5.3(b) (collectively, and together with other similar agreements or memoranda, including any operating agreements entered into pursuant to Section 4.10, entered into from time to time by the Owners in connection with the construction, ownership or operation of SLCC or SL Common, the "Transaction Documents"). As used herein, all references to this "Agreement" shall be deemed to include references to the Transaction Documents in effect at such time.

0.6 This Agreement is executed for the purposes of (i) creating and confirming the nature and extent of the respective ownership interests of EDE and WGI in SLCC and SL Common; and (ii) imposing certain covenants and obligations running with the rights, titles and interests of EDE and WGI in and to SLCC and SL Common, which covenants and obligations are intended to inure to the benefit of and be binding upon EDE and WGI and any and all persons whomsoever having or claiming any right, title or interest in or to SLCC and SL Common by, from, through or under EDE or WGI.

NOW, THEREFORE, EDE, WGI and the Agent each for itself, its successors and assigns, and for the benefit of the others, their successors and assigns, hereby covenant and agree as follows:

## ARTICLE I

### REPRESENTATIONS, WARRANTIES AND COVENANTS

1.1. EDE Representations, Warranties and Covenants. EDE hereby represents, warrants and covenants to the other Owners as follows:

(a) EDE is a corporation duly organized, validly existing and in good standing under the laws of the State of Kansas and has corporate power and authority to own the undivided ownership interests in SLCC and SL Common to be owned by it hereunder, to execute and deliver this Agreement and to perform its obligations hereunder and to carry on its business as it is now being conducted and as it is contemplated to be conducted pursuant to this Agreement.

(b) The execution, delivery and performance by EDE of this Agreement have been duly authorized by all necessary corporate action on the part of EDE, do not contravene any law, or any governmental rule, regulation or order, applicable to EDE or its properties, or the Articles of Incorporation or By-Laws of EDE, and do not and will not contravene the provisions of, or constitute a default under, any indenture, mortgage, security agreement, contract or other instrument to which EDE is a party or by which EDE is bound. All requisite governmental, regulatory and vendor approvals and consents for the execution and delivery by EDE of this Agreement have been obtained. This Agreement constitutes a legal, valid and binding obligation of EDE, enforceable in accordance with its terms, except as limited by applicable bankruptcy, insolvency, reorganization or similar laws at the time in effect. Upon execution of this Agreement, EDE shall deliver to WGI certified copies of the resolutions adopted by EDE's board of directors authorizing the execution, delivery and performance of this Agreement.

(c) Except as would not reasonably be expected to have a material adverse effect on EDE's business, operations or properties, or on the construction, ownership and operation of SLCC and SL Common, (i) EDE has not, to its knowledge, spilled, stored, discharged, disposed of or otherwise released any hazardous material or substance, petroleum or petroleum product, toxic substance, hazardous or special waste, contaminant, chemical or pollutant, or any tanks, drums or containers thereof, on or in the Existing Land, the SL2CT Land or the Existing SL Common, in violation of any existing federal, state or local environmental law, rule, regulation, code, ordinance, order, decree, permit, license or judgment in effect as of the date of this Agreement for which remediation or cleanup activities would be required and (ii) except for matters disclosed in the environmental audit reports dated May 14, 1993 produced by McClaren Hart and dated April 9, 1999 produced by Midwest Environmental Consultants, P.C. which have been delivered to WGI, relating to the Existing Land, the SL2CT Land and the Existing SL Common, EDE has no knowledge of the existence of any violation of any federal, state or local laws, regulations and orders pertaining to health, safety, or protection of the environment (which shall include, without limitation, the surface water, ground water, drinking water supply, land, surface and subsurface strata, or the presence on the Existing Land, the SL2CT Land or the Existing SL Common of any hazardous or similar wastes, materials, products or by-products).

(d) To EDE's knowledge, there are no defects in the construction or operation of the Existing CT which, in EDE's judgment, would reasonably be expected to materially delay or otherwise materially affect the construction or placing into commercial operation of SLCC, or any portion thereof, or materially affect the rights or obligations of the other Owners in respect of SLCC.

(e) EDE has filed applications with the KCC for authority to construct SLCC and for a waiver of the siting permit requirements and has filed an application for an air permit as described in Section 2.1(c)(ii). On or after the date hereof, EDE will make application with the Public Service Commission of the State of Missouri ("MPSC") and the Arkansas Public Service Commission ("APSC") and with any other necessary regulatory authorities seeking the authority ("EDE Regulatory Approvals") to convey an ownership interest in SL2CT, the Existing Land and the Existing SL Common to WGI in connection with WGI's participation in the construction, ownership and operation of SLCC and SL Common. EDE shall use its reasonable best efforts to obtain such approvals and permits as soon as practicable. Other than the preceding, there are no actions, suits or proceedings pending or, to EDE's knowledge, threatened against or affecting EDE before any court or administrative body or agency which might materially adversely affect the ability of EDE to perform its obligations under this Agreement nor, to the knowledge of EDE, are any other material governmental, regulatory or vendor approvals, authorizations or consents required for the performance by EDE of this Agreement.

(f) EDE has made available to WGI accurate and complete copies of all material specifications, service and warranty records, and other material documents and files in EDE's possession or control which have been requested by WGI prior to the date hereof and which relate to the condition, construction, title or operation of the Existing Land, the Existing SL Common or SL2CT.

(g) EDE has good and marketable title to all of the Existing Land, SL2CT and the Existing SL Common free and clear of all mortgages, liens, security interests or other encumbrances except for (i) Permitted Encumbrances (as defined in Section 2.3(c)), (ii) contracts contemplated by the terms of this Agreement and (iii) encumbrances of public record that EDE shall cause to be released or pay and discharge in full not later than the respective dates on which WGI will acquire undivided interests in the Existing Land, SL2CT and the Existing SL Common pursuant to Sections 2.3(c) and (d) hereof. EDE has delivered to WGI accurate and complete copies of all title insurance policies, surveys, deeds and other title records in EDE's possession relating to the Existing Land, the SL2CT Land and the Existing SL Common.

(h) There does not exist any claim, suit, action or legal, administrative, arbitration or other proceeding or any governmental investigation affecting the Existing Land, the Existing SL Common or SL2CT, nor does EDE have any knowledge of any event, circumstance or condition pertaining to the Existing Land, the Existing SL Common or SL2CT or the ownership, operation or use thereof, in any case that would reasonably be expected to have a material adverse effect on the ownership, operation or use thereof.

(i) There exists no violation of any federal, state or local law, order or regulation applicable to the ownership, operation or use of the Existing Land, SL2CT or the Existing SL Common which violation would reasonably be expected to have a material adverse effect on the ownership, operation or use thereof. EDE has received no notice of any material violation of any law, order, regulation or requirement issued by any governmental agency or authority against or affecting all or any portion of the Existing Land, SL2CT or the Existing SL Common. The current operation and use of the Existing Land, SL2CT and the Existing SL Common are in compliance with all material regulations, ordinances and other laws, orders, regulations, restrictions or requirements applicable thereto, except where the failure to so comply would not reasonably be expected to have a material adverse effect on the ownership, operation or use thereof.

(j) At all times, until the date when an entity is no longer required to guarantee the obligations of WGI pursuant to Section 1.2(d), EDE shall maintain shareholders' equity in an amount at least equal to the balance from time to time of the remaining budgeted costs for completion of the construction of SLCC and SL Common

(the "Construction Cost Balance") then remaining multiplied by EDE's Ownership Share in SLCC. Wherever the term "shareholders' equity" is used in this Agreement with respect to a corporation, it shall mean the shareholders' equity of such corporation determined in accordance with generally accepted accounting principles applied on a consistent basis by such corporation.

1.2. WGI Representations, Warranties and Covenants. WGI hereby represents, warrants and covenants to the other Owners as follows:

(a) WGI is a corporation duly organized, validly existing and in good standing under the laws of the State of Kansas and has corporate power and authority to own the undivided ownership interests in SLCC and SL Common to be owned by it hereunder, to execute and deliver this Agreement and to perform its obligations hereunder and to carry on its business as it is now being conducted and as it is contemplated to be conducted pursuant to this Agreement.

(b) The execution, delivery and performance by WGI of this Agreement have been duly authorized by all necessary corporate action on the part of WGI, do not contravene any law, or any governmental rule, regulation or order, applicable to WGI or its properties, or the Articles of Incorporation or By-Laws of WGI, and do not and will not contravene the provisions of, or constitute a default under, any indenture, mortgage, security agreement, contract or other instrument to which WGI is a party or by which WGI is bound. All requisite governmental, regulatory and vendor approvals and consents for the execution and delivery by WGI of this Agreement have been obtained. This Agreement constitutes a legal, valid and binding obligation of WGI enforceable in accordance with its terms, except as limited by applicable bankruptcy, insolvency, reorganization or similar laws at the time in effect. Upon execution of this Agreement, WGI shall deliver to EDE certified copies of the resolutions adopted by WGI's board of directors authorizing the execution, delivery and performance of this Agreement.

(c) On or after the date hereof, WGI will make application with the MPSC seeking a Certificate of Convenience and Necessity or similar certificate, if required by law (the "Certificate of Convenience"), with respect to its participation in the construction, ownership and operation of SLCC and SL Common. WGI shall use its reasonable best efforts to obtain the Certificate of Convenience, if required by law, as soon as practicable. Other than the preceding, there are no actions, suits or proceedings pending or, to WGI's knowledge, threatened against or affecting WGI before any court or administrative body or agency which might materially adversely affect the ability of WGI to perform its obligations under this Agreement nor, to the knowledge of WGI, are any other material governmental, regulatory or vendor approvals, authorizations or consents required for the performance by WGI of this Agreement.

(d) WGI shall concurrently with, and as a condition to, the execution of this Agreement, cause Westar Capital, Inc. ("WCI") to issue an unconditional guarantee (substantially in the form of Exhibit C) to each Owner (other than WGI) and to the Agent as to the due and punctual payment of all obligations of WGI hereunder and under each Transaction Document in accordance with the terms of this Agreement and each such Transaction Document; provided, however that such guarantee shall terminate on the earlier of either of the following: (i) the date on which SLCC is first placed in commercial operation or (ii) the date on which WGI assigns its Ownership Shares in accordance with the terms of this Agreement to an entity which has shareholders' equity in an amount at least equal to the then remaining Construction Cost Balance multiplied by WGI's Ownership Share in SLCC and which is any of Western Resources, Inc. ("WRI"), Kansas Gas and Electric Company ("KGE") or any corporation that is the surviving or resulting entity of the combination of the electric utility businesses of WRI and KGE and that, in any such case, assumes the obligations of WGI under this Agreement (any such entity, a "WGI Preferred Transferee"). At all times, until the occurrence of the earlier of (i) or (ii) above, WGI shall maintain in effect a guarantee of its obligations under this Agreement as described in this Section 1.2(d) from an entity (which entity may be WCI or another entity, the majority of the common stock of which is owned directly or indirectly by Western Resources, Inc., and which is not reasonably objected to by EDE) having shareholders' equity in an amount at least equal to the then remaining Construction Cost Balance multiplied by WGI's Ownership Share in SLCC.

## ARTICLE II

### CREATION AND ADJUSTMENT OF OWNERSHIP INTERESTS

2.1. Definition of State Line Combined Cycle. As used herein the term "SLCC" means and consists of:

(a) the lands and land rights described in Exhibit A hereto under the caption "Legal Description of the Existing Land" (the "Existing Land") and the SL2CT Land, together with all additional lands, land rights, water rights, air rights, additions, betterments, improvements, facilities, fixtures and other tangible property as may be acquired, constructed, installed or contributed by any Owner or their collective or respective agents (including the Agent), for exclusive use in connection with SLCC, and which are owned or are to be owned by the Owners as tenants in common under the provisions of this Agreement (collectively, the "Site");

(b) the equipment and facilities referred to in parts (i) through (v) of the first paragraph of Section 0.1 hereof and all other facilities and property to be con-

structed and installed for use in connection with SLCC as contemplated by the contracts referred to in Section 0.3 hereof or by any other contracts entered into by the Agent pursuant to Section 4.9(c) hereof (collectively, the "Facilities");

(c) any and all permits (i) issued by the Missouri Department of Natural Resources relating to approvals and authorizations received for the construction of SLCC and relating to the discharge of water from SLCC, (ii) issued by the Missouri Department of Natural Resources relating to the air quality at SLCC and (iii) received by the Agent on behalf of the Owners or by any Owner and subsequently assigned to the Agent, in each case, exclusively relating to the construction, ownership or operation of SLCC (collectively, the "Permits");

(d) all contracts assigned by EDE pursuant to Sections 2.3(a) and 2.3(b) hereof and all contracts entered into pursuant to Section 4.9(c) hereof (collectively, the "Contracts"); and

(e) inventories of materials and supplies for use solely in connection with SLCC.

2.2. Definition of State Line Common. As used herein, the term "SL Common" means and consists of the lands and land rights described in Exhibit A hereto under the caption "Legal Description of Existing Land at SL Common" and the existing equipment, inventories and facilities listed on Schedule A hereto (collectively, the "Existing SL Common"), together with all additional equipment, facilities, inventories, lands, land rights, water rights, air rights, additions, betterments, improvements, fixtures and other tangible property as may be acquired, constructed, installed or contributed by any Owner or their collective or respective agents (including the Agent), for use in connection with both SLCC and SL1CT, and which are owned or are to be owned by the Owners as tenants in common under the provisions of this Agreement.

2.3. Assignments; Transfers; Conveyances.

(a) On the date hereof, EDE shall transfer and/or assign, as applicable, to the Agent, as agent on behalf of each of the Owners, each of the contracts listed in Section 0.3 (except for those listed in Section 0.3(iii)) hereof and each other contract, permit (to the extent required by law) and other rights, in each case relating to the construction, ownership or operation of SLCC or SL Common and entered into or received by EDE prior to the date hereof. With respect to each contract so assigned to the Agent on behalf of the Owners, each Owner shall be severally and not jointly responsible (and shall indemnify the other Owners) for a proportionate share equal to its Ownership Share in SLCC or SL Common, as applicable, of all amounts which are payable thereunder and all performance with respect thereto.

(b) Upon EDE commencing delivery of gas under the New Gas Transportation Agreements, EDE shall assign a portion of the Gas Transportation Agreements to WGI equal to WGI's then existing Ownership Share in SLCC. WGI may assign its rights under this Section 2.3(b) subject to any restrictions applicable under the Gas Transportation Agreements.

(c) Promptly after receipt of EDE Regulatory Approvals and the Certificate of Convenience, if required, EDE shall execute and deliver documentation pursuant to which EDE and WGI will, subject to the terms of this Agreement, own undivided interests in the Existing Land and the Existing SL Common equal to their respective Ownership Shares in SLCC and SL Common, respectively. Consideration for such resulting conveyances to WGI shall have consisted of prepayments by WGI pursuant to Section 5.3(b) hereof. Such resulting conveyances to WGI shall be (i) free and clear of all mortgages, liens, security interests or other encumbrances other than as set forth on Exhibit B hereto (collectively, "Permitted Encumbrances") or as otherwise created or agreed to by EDE and WGI and (ii) subject in all respects to the terms and conditions of this Agreement, including, without limitation, the waiver of the right of partition set forth in Section 6.1 hereof. At the time EDE executes and delivers the documentation required pursuant to this Section 2.3(c), EDE shall also provide to WGI documentation establishing (i) the release of WGI's undivided interest in the Existing Land and the Existing SL Common from the lien and security interest of all deeds of trust, mortgage indentures and other security agreements securing any bonds or other obligations or securities of EDE other than Permitted Encumbrances or encumbrances otherwise created or agreed to by EDE and WGI and (ii) that any such lien or security interest affecting EDE's Ownership Shares in the Existing Land and the Existing SL Common is subject and subordinate to the terms and conditions of this Agreement. At the same time, WGI shall provide to EDE documentation establishing that any such lien or security interest affecting WGI's Ownership Shares in the Existing Land and the Existing SL Common is subject and subordinate to the terms and conditions of this Agreement.

(d) After receipt of EDE Regulatory Approvals and the Certificate of Convenience, if required, but not before the date that exhaust from the Existing CT is utilized in its associated heat recovery steam generator, EDE shall execute and deliver documentation pursuant to which EDE and WGI will, subject to the terms of this Agreement, own undivided interests in SL2CT equal to their respective Ownership Shares in SLCC. Consideration for such resulting conveyance to WGI shall have consisted of prepayments by WGI pursuant to Section 5.3(b) hereof. Such resulting conveyance to WGI shall be (i) free and clear of all mortgages, liens, security interests or other encumbrances other than Permitted Encumbrances or as otherwise created or agreed to by EDE and WGI and (ii) subject in all respects to the terms and conditions of this Agreement, including, without limitation, the waiver of the right of partition set forth in Section 6.1 hereof. At the time EDE executes and delivers the documentation required pursuant to this Section 2.3(d), EDE shall also provide to WGI documentation establishing (i) the release of WGI's undivided interest in SL2CT from the lien and security interest of all deeds of trust, mortgage indentures and other security agreements secur-

ing any bonds or other obligations or securities of EDE other than Permitted Encumbrances or encumbrances otherwise created or agreed to by EDE and WGI and (ii) that any such lien or security interest affecting EDE's Ownership Share in SL2CT is subject and subordinate to the terms and conditions of this Agreement. At the same time, WGI shall provide to EDE documentation establishing that any such lien or security interest affecting WGI's Ownership Share in SL2CT is subject and subordinate to the terms and conditions of this Agreement.

(e) Commencing on the date of this Agreement, EDE and WGI and any other Owners will, subject to the terms of this Agreement, acquire undivided ownership interests (with the right of partition waived pursuant to Section 6.1) in all other equipment, facilities, lands, land rights and other property, contracts and rights acquired or constructed on or after the date hereof to be utilized in SLCC or SL Common equal to their respective Ownership Shares in SLCC and SL Common, respectively. The Agent shall provide or secure all documentation appropriate to evidence or create such ownership interests and to subject such property to the terms of this Agreement prior to the time that the lien of any Owner's mortgage or security agreement attaches to such additional property. The Agent shall provide copies of such documentation to each Owner as soon as practicable following execution and delivery thereof. Each Owner, at the direction of the Agent, shall take all actions reasonably necessary to accomplish the foregoing, including, without limitation, the timely execution and delivery of such documentation.

(f) Each such assignment, transfer or conveyance required under this Section shall be effected through execution and delivery of all appropriate documentation under the applicable governing laws and in proper form for recording, where required or appropriate. All such documentation, including deeds, assignments and bills of sale, shall be in the customary form for the transfer and conveyance of similar property and interests in Missouri and shall include warranties of title consistent with the provisions of this Agreement. The Agent shall provide copies of such documentation related to the transfers and assignments in Sections 2.3(a) and 2.3(b) to each Owner as soon as practicable following execution and delivery thereof.

2.4. Recordations. Executed counterparts of this Agreement and any documents or instruments evidencing the conveyances referred to in Section 2.3 shall be recorded in the offices of the Recorder of Deeds for Jasper County, Missouri as soon as practicable following execution and delivery thereof to the extent such recordation is appropriate under applicable law.

2.5. Ownership Shares. EDE and WGI shall take and receive title to and thereafter own SLCC and SL Common as tenants in common, each with undivided ownership interests therein (with the right of partition waived pursuant to Section 6.1) as follows:

Class of Property

Ownership Interest

EDE

WGI

SLCC

60%

40%

SL Common

66 2/3%

33 1/3%

Each of such undivided ownership interests shall be subject to adjustment from time to time as provided for in Sections 2.6, 5.4 and 9.1. Such undivided percentage interests in SLCC and SL Common are herein called "Ownership Shares". The rights, titles and interests of EDE and WGI in and to SLCC and SL Common, as the same may exist from time to time, shall be as provided for under this Agreement, and the covenants and obligations herein shall inure to the benefit of, and shall be binding upon, their successors and assigns. Any party owning an Ownership Share in SLCC and SL Common is herein called an "Owner" thereof, and all such parties are herein called the "Owners". Any reference to "Owner" herein shall not be deemed to include any reference to Agent.

2.6. Owners. Each Owner shall have the right to and may cause an adjustment of its respective Ownership Shares in SLCC and SL Common by transfer of portions of such Ownership Shares pursuant to Section 6.3 or 6.4 hereof, subject, however, to (i) the receipt and filing of a supplement to this Agreement (a "Supplemental Agreement"), which shall be executed by the Agent and each Owner party to the Agreement at such time and in proper form for recording, reflecting such adjustment and containing an assumption by the transferee of such Owner's obligations hereunder, (ii) an assignment to and an assumption by the transferee of such Owner's rights and obligations under the Contracts (either directly or through the Agent) and (iii) appropriate satisfaction and release of any encumbrances other than (x) Permitted Encumbrances, (y) encumbrances otherwise granted or approved in writing by all Owners as encumbrances on all or a portion of SLCC or SL Common and (z) encumbrances as to which the satisfaction and release thereof have been waived by the transferee, in the case of this clause (iii), in proper form for recording or filing, as applicable, and in compliance with the provisions of any mortgage, security agreement or other applicable instrument relating thereto.

2.7. Insurance.

(a) The Agent shall procure title insurance insuring that marketable fee simple title to all real property subject to the terms of this Ownership Agreement is vested in each Owner to the extent of their respective Ownership Shares hereunder, subject only to Permitted Encumbrances and encumbrances otherwise granted or approved in writing by all Owners as encumbrances on all or a portion of SLCC or SL Common. Each Owner shall receive a separate title insurance policy insuring its respective interest in such real property at its sole cost and expense with coverage amounts determined by each individual Owner. Each such policy shall name the respective Owner thereunder, together with any affiliate of such Owner that may succeed to the interest of such Owner by operation of law or otherwise, as the

insured. Each policy shall (i) be in the form of 1970 or 1992 ALTA owner's policy, with extended coverage against mechanic's liens, rights of parties in possession not of public record and other survey matters, (ii) not include any "creditors' rights" exception, (iii) affirmatively insure that the insured Owner is vested with the rights and benefits of an Owner under this Agreement, (iv) affirmatively insure that the lien of any existing mortgage of any Owner is subject to the terms and conditions of this Agreement and (v) contain, at the sole cost and expense of the requesting Owner, any other endorsement requested by such Owner if obtainable. Additionally, the policy issued to WGI shall include, at WGI's sole cost and expense, a "non-imputation" endorsement against imputing to the insured any knowledge of EDE with respect to any matters affecting title prior to the date of issuance of such policy. Each policy shall be issued on the date that the Owners acquire their respective Ownership Shares in each piece of real property in accordance with the terms of this Agreement. The policies may initially be issued with exceptions for matters that a current survey would show and for rights of parties in possession not of record. However, prior to commercial operation of SLCC, the Agent shall secure an ALTA land title survey showing the location of all improvements and easements and otherwise sufficient for purposes of deleting such exceptions. Promptly following completion of such survey, the Agent shall obtain endorsements to both policies deleting such exceptions and insuring that the land covered by such policies and the improvements thereon are as shown on such survey. In the event that the as-built survey shows any encroachments, boundary line conflicts or other discrepancies, the Agent and the Owners shall take such curative action as may be required.

(b) EDE, WGI and the Agent shall enter into an "Insurance Memorandum" on the date hereof for the governance of additional insurance matters with respect to the construction, ownership and operation of SLCC and SL Common.

2.8. Option. EDE hereby grants to WGI (and its successors and permitted assigns) an option (the "Option") to purchase an undivided interest in its substation as described in Exhibit A hereto under the caption "Legal Description of EDE Substation" (the "EDE Substation") equal to WGI's Ownership Share in SL Common at the time WGI delivers notice to EDE of its intention to exercise the Option (the "Exercise Notice") at a price equal to the then Book Value (as defined below) of such undivided interest in the EDE Substation. Upon receipt of the Exercise Notice, EDE shall use its reasonable best efforts to obtain all required regulatory approvals necessary to sell to WGI such undivided interest in the EDE Substation. Any such sale shall be subject to receipt of all required regulatory approvals. The Option shall vest and become exercisable on or after the date of this Agreement and shall expire ten years from the date of this Agreement. Any transfer of an interest in the EDE Substation pursuant to this Section 2.8 shall be (i) free and clear of all mortgages, liens, security interests or other encumbrances other than Permitted Encumbrances or as otherwise created or agreed to by EDE and WGI and (ii) subject in all respects to the terms and conditions of this Agreement, including, without limitation, the waiver of partition set forth in Section 6.1 hereof. Upon any such transfer, the provisions of this Agreement relating to SL Common shall apply to the EDE Substation as if the term "EDE Substation" had been substituted for

that of "SL Common" except that such provisions shall only apply to the Owners owing an interest in the EDE Substation. Whenever the term "Book Value" is used in this Agreement with reference to an asset of an Owner, it shall mean the depreciated book value of such asset determined in accordance with generally accepted accounting principles applied on a consistent basis by such Owner.

### ARTICLE III

#### EASEMENTS FOR FACILITIES AND OPERATION OF SLCC AND SL COMMON

3.1. Interconnection Facilities. Each Owner shall have the right to install, own, operate, maintain and remove, at its own cost and expense, at, on, along, over, under and across the Site or SL Common such facilities as are reasonably required (i) to enable it to deliver to its own system the electric power and energy which it is entitled to receive from SLCC, (ii) to establish interconnections between its system and the systems of others, and (iii) to connect separated portions of its own system facilities; provided that such solely owned facilities shall be so installed, operated, maintained and removed, if applicable, in a manner which shall not unreasonably interfere with or materially impair the use of any then existing facilities located on the Site, SL Common, the EDE Substation or SLICT or the ultimate full utilization of any thereof.

3.2. Relocations and Modifications. In the event an Owner proposes to install, operate or remove any such solely owned facilities hereunder which would require the relocation or modification of any then existing facilities located on the Site or SL Common but would otherwise meet the requirements of this Article, such Owner shall have the right to cause such relocation or modification, provided it bears the cost thereof; provided further that such relocation or modification shall be performed in a manner which shall not unreasonably interfere with or materially impair the use of any then existing facilities located on the Site, SL Common, the EDE Substation or SLICT or the ultimate full utilization of any thereof. In the event the Management Committee, by Supermajority Vote (as defined in Section 4.5), decides it is in the best interest of SLCC or SL Common that any such solely owned facilities hereunder, which were installed in accordance with this Article, be removed, the Agent shall have the right to cause such removal and the cost thereof shall be borne by each of the Owners in proportion to their respective Ownership Shares in SLCC or SL Common, as applicable.

3.3. Personal Property. All solely owned facilities installed pursuant to the provisions of this Article shall (i) be and remain the sole property of the Owner installing them, (ii) not be a portion of SLCC under Section 2.1 hereof or a portion of SL Common under Section 2.2 hereof, (iii) where practicable, be identified by distinctive marking as the property of such Owner, and (iv) be deemed and considered to be personal property which such Owner has reserved the right, subject to Section 3.1, to remove at any time.

3.4. Exclusive Right, Title and Interest. No provision hereof shall give to any other Owner or anyone claiming by, from, through or under such other Owner any right, title or interest in any such solely owned facilities permitted by Section 3.1 hereof.

3.5. Easements.

(a) Subject to the terms of this Agreement, (i) EDE grants a non-exclusive easement to each of the Owners and the Agent over, on, across and through SL1CT and the EDE Substation for the purposes of ingress and egress to and from SLCC and SL Common; provided, however, that such easement shall be utilized by the Agent and such Owners at all times in a manner which shall not unreasonably interfere with or materially impair the use of any then existing facilities located on SL1CT or the EDE Substation or the ultimate full utilization thereof and (ii) each Owner and the Agent grants a non-exclusive easement to EDE over, on, across and through the Site and SL Common for the purposes of ingress and egress to and from the SL1CT and the EDE Substation; provided, however, that such easement shall be utilized by EDE at all times in a manner which shall not unreasonably interfere with or materially impair the use of any then existing facilities located on the Site or SL Common or the ultimate full utilization thereof. The easements granted under this Section 3.5(a) shall be perpetual and shall survive any termination of this Agreement unless such easements are expressly terminated in writing by the affected parties, their successors or assigns.

(b) Subject to the terms of this Agreement (including, without limitation, Section 3.5(c) below), to the extent reasonably necessary after the date hereof (i) EDE shall from time to time authorize, grant, execute and deliver one or more non-exclusive easements to the Owners and the Agent over, under, across and on SL1CT and the EDE Substation for the installation, maintenance, operation, repair, replacement, modification and removal of such utilities, conduit and other similar facilities as may from time to time be useful in connection with the use and operation of SLCC and SL Common; provided, however, that EDE shall not be required to authorize, grant, execute or deliver any such easement to the extent the same could reasonably be expected to unreasonably interfere with or materially impair the use of any then existing or currently planned facilities located on SL1CT or the EDE Substation or the ultimate full utilization thereof and (ii) each Owner and the Agent shall from time to time authorize, grant, execute and deliver one or more non-exclusive easements to EDE over, under, across and on the Site and SL Common for the installation, maintenance, operation, repair, replacement, modification and removal of such utilities, conduit and other similar facilities as may from time to time be useful in connection with the use and operation of SL1CT and the EDE Substation; provided, however, that neither the Agent nor the Owners shall be required to authorize, grant, execute or deliver any such easement to the extent the same could reasonably be expected to unreasonably interfere with or materially impair the use of any then existing or currently planned facilities located on the Site or SL Common or the ultimate full utilization thereof.

(c) In the event the Agent or the Owners or EDE, as the case may be (the "Requesting Party"), desires to obtain a non-exclusive easement pursuant to Section 3.5(b) above, the Requesting Party shall provide a written request therefore which shall include a detailed description of the proposed easement, including the location of and purposes for such easement. To the extent the proposed easement does not satisfy the requirements set forth in Section 3.5(b) above, the Requesting Party and the applicable grantor or grantors of the proposed easement shall negotiate in good faith to establish an arrangement which satisfies the requirements of such section. Any such easement may, at the option of the grantor or grantors of such easement, provide that in the event the easement so granted unreasonably interferes with or materially impairs the use of any facilities located on the land subject to such easement after the date of such easement (other than facilities which existed or were planned as of the date of such easement), or the ultimate full utilization thereof, then the grantor or grantors of such easement shall have the right, after giving at least 60 days' written notice to the Requesting Party (or its successors or assigns), to modify, relocate or remove any installation relating to such easement and the cost thereof shall be borne solely by the Requesting Party (or its successors or assigns); provided however, that, if requested to do so, such grantor or grantors shall negotiate in good faith during such 60-day period with the Requesting Party (or its successors or assigns) to reach a mutually acceptable alternative resolution with respect to such interference or impairment.

(d) Any use of SL1CT or the EDE Substation by the Agent or the Owners and any use of the Site or SL Common by EDE for any of the purposes contemplated under Section 3.5(b) that occurs prior to or in the absence of the execution of a written easement granted pursuant to Sections 3.5(b) and 3.5(c), no matter how long such usage continues, shall conclusively be presumed to be a permissive use pursuant to a revocable license for such use.

#### ARTICLE IV

#### CONSTRUCTION, MANAGEMENT AND OPERATION OF SLCC

4.1. Management Committee. As a means of securing effective cooperation, interchange of information and consultation on a prompt and orderly basis among the Owners in connection with the determination of all policies relating to the construction, management and operation of SLCC and SL Common and for deciding certain matters of significance to all of the Owners as required hereby, the Owners hereby establish a Management Committee. Such construction, management and operation of SLCC and SL Common shall be consistent with the provisions of this Agreement. The Management Committee shall consist of two representatives of each Owner. A proper officer of each Owner shall designate, from time to time, its two representative members to serve on the Management Committee, at least one of whom shall be vested with decision making authority. Such designation shall be by written notice to the other Owners.

4.2. Operating Committee. In order to administer the policies established by the Management Committee relating to the construction, management and operation of SLCC and SL Common and as a means of securing effective cooperation, interchange of information and consultation on a prompt and orderly basis among the Owners in connection with the various administrative and technical problems which may arise from time to time in connection with this Agreement, the Owners hereby establish an Operating Committee, which shall consist of two representatives of each Owner. A proper officer of each Owner shall designate, from time to time, its two representative members to serve on the Operating Committee. Such designation shall be by written notice to the other Owners. Without attempting to limit the powers or scope of the Operating Committee, the Operating Committee shall have the responsibility and power to determine operating parameters for SLCC including minimum load requirements, ramp rates, start-up times for hot and cold starts, and other dispatching criteria that need to be observed to provide for the efficient and economic dispatch of SLCC.

4.3. Accounting Committee. In order to administer the policies established by the Management Committee relating to accounting matters for SLCC and SL Common and as a means of securing effective cooperation, interchange of information and consultation on a prompt and orderly basis among the Owners in connection with the various accounting issues which may arise from time to time in connection with this Agreement, the Owners hereby establish an Accounting Committee, which shall consist of two representatives of each Owner. A proper officer of each Owner shall designate, from time to time, its two representative members to serve on the Accounting Committee. Such designation shall be by written notice to the other Owners.

4.4. Fuel Committee. In order to administer the policies established by the Management Committee relating to fuel matters for SLCC and as a means of securing effective cooperation, interchange of information and consultation on a prompt and orderly basis among the Owners in connection with the various fuel issues which may arise from time to time in connection with this Agreement, the Owners hereby establish a Fuel Committee, which shall consist of two representatives of each Owner. A proper officer of each Owner shall designate, from time to time, its two representative members to serve on the Fuel Committee. Such designation shall be by written notice to the other Owners. Without attempting to limit the powers or scope of the Fuel Committee, the Fuel Committee shall have the responsibility to coordinate fuel purchasing and fuel transportation for SLCC.

4.5. Committee Action. Each Owner shall have a vote on each such Committee equal to its undivided Ownership Share in SLCC. A simple majority of Committee votes shall rule except as otherwise expressly provided in this Agreement or as expressly provided for in any Transaction Document. Whenever it is provided in this Agreement or in any Transaction Document that a decision or action shall be made by a "Supermajority Vote," such decision or action shall be effective only if approved by a vote of such Owner or Owners whose collective Ownership Shares in SLCC are at least 75%. No such Committee shall have

authority to modify or take any action inconsistent with any provision of this Agreement. Any cost or expense incurred by any Committee member in connection with duties as such member shall be borne and paid by the Owner the member represents. The existence of the Committees shall not limit or diminish in any manner the authority or the responsibility of the Agent pursuant to this Agreement, except to the extent as may be herein specifically provided. In case of any disagreement between the Management Committee and any of the Operating Committee, Accounting Committee or Fuel Committee, decisions of the Management Committee shall govern. Each Owner shall act toward each other Owner on the basis of good faith and fair dealing, with due regard for the rights of all Owners in SLCC.

#### 4.6. Property Additions and Retirements.

(a) The Management Committee shall cause to be made such property additions to and retirements from the facilities and property constituting SLCC or SL Common as may, from time to time, be deemed by the Management Committee to be necessary or desirable. In cases where any property addition or retirement would result in the amount to be expended during any year for property additions or retirements to SLCC and SL Common to exceed the amount provided for additions or retirements, respectively, in the budget provided by the Agent for such year by an amount greater than \$5,000,000.00, the Management Committee may cause such property addition or retirement to be made only if approved by a Supermajority Vote.

(b) Each Owner shall pay for the cost of any such property addition thereto or the expenses relating to the retirement therefrom in the same percentage as its Ownership Share in SLCC or SL Common, as applicable, and the rights, titles and interests of any Owner in and to any such property addition shall be proportionate to its Ownership Share in SLCC or SL Common, as applicable.

(c) Upon removal or retirement of any facilities or property included in any portion of SLCC or SL Common and subject to compliance with and only to the extent permitted by the applicable provisions of any related security agreement contemplated in Section 4.8 or 6.2 hereof, the Agent may, notwithstanding the provisions of Section 6.1 hereof, either (i) divide or partition such removed or retired facilities or property, or (ii) sell or otherwise dispose of such removed or retired facilities or property and distribute the proceeds thereof to or for the account of each Owner in accordance with its Ownership Share in SLCC or SL Common, as applicable. Unless approved by all Owners, the Agent shall not sell or otherwise dispose of any such removed or retired facilities or property to any Owner or any affiliate of any Owner except for a cash price equal to the fair market value of such facilities or property as determined by the written report of a qualified, independent appraiser selected by a Supermajority Vote of the Management Committee (an "Independent Appraisal"). For purposes of this Agreement, the term "affiliate" of an Owner shall mean any individual, group of individuals, corporation or other entity controlling, controlled by or under common control with

such Owner, and "control" for these purposes shall mean ownership of 50% or more of all financial interests or 50% or more of the voting interests.

4.7. Destruction, Damage or Condemnation.

(a) Subject to the receipt of all requisite approvals of any governmental agency having jurisdiction, in the event SLCC or any portion thereof should be damaged or destroyed, then, if (i) the cost of repairs or reconstruction is estimated to be more than \$15 million and the Management Committee determines by a Supermajority Vote to repair or reconstruct SLCC or (ii) the cost of repairs or reconstruction is estimated to be less than or equal to \$15 million and the Management Committee determines by a simple majority vote to repair or reconstruct SLCC, the Agent shall cause such repairs or reconstruction to be made so that SLCC and SL Common (to the extent of any damage or destruction to SL Common arising out of the same occurrence) shall be restored to substantially the same general condition, character and use as existed prior to such damage or destruction, and the Owners shall share the cost of such repairs or reconstruction in excess of available insurance proceeds in proportion to their respective Ownership Shares in SLCC and SL Common. All insurance proceeds in excess of the cost of such repairs or reconstruction shall be distributed to or for the account of the Owners in accordance with their respective Ownership Shares in SLCC and SL Common.

(b) If such damage or destruction occurs and the Management Committee, in accordance with Section 4.7(a) above, does not determine to repair or reconstruct SLCC, the Agent shall not cause such repairs or reconstruction to be made and the insurance proceeds received as a result of such damage or destruction (net of all expenses and liabilities) shall be distributed to or for the account of the Owners in accordance with their respective Ownership Shares in SLCC and SL Common, and, unless one or more Owners desire to repair or reconstruct SLCC in accordance with Section 4.7(d), the remaining facilities shall be disposed of by the Agent in a manner as decided by the Management Committee and the proceeds therefrom shall be distributed to or for the account of the Owners in accordance with their respective Ownership Shares in SLCC and SL Common, all subject to the liens of any encumbrance and the provisions of any related security instrument contemplated in Section 4.8 or 6.2 hereof.

(c) Subject to the receipt of all requisite approvals of any governmental agency having jurisdiction, in the event SLCC or any portion thereof shall be subject to a taking or a voluntary conveyance of all or any portion of SLCC in lieu thereof, if the Management Committee determines by Supermajority Vote to replace, repair or reconstruct such portion of SLCC, the Agent shall apply the proceeds of any award received in connection with such taking to the replacement, repairs or reconstruction of SLCC and SL Common (if SL Common is affected by the same taking or voluntary conveyance in lieu thereof) and, to the extent the proceeds of such award are insufficient to cover the cost of such replacement, repair or reconstruction, the Owners shall share the costs of such replacement, repairs or reconstruction in excess of such award in proportion to their respective Ownership Shares in SLCC and

SL Common. If the Management Committee does not determine by Supermajority Vote to replace, repair or reconstruct such portion of SLCC, the Agent shall not cause such replacement, repairs or reconstruction to be made and the proceeds of any award relating to such taking shall be distributed to or for the account of the Owners in accordance with their respective Ownership Shares in SLCC and SL Common, and, unless one or more Owners desire to repair, reconstruct or replace SLCC in accordance with Section 4.7(d), the remaining facilities shall be disposed of by the Agent in a manner as decided by the Management Committee and the proceeds therefrom shall be distributed to or for the account of the Owners in accordance with their Ownership Shares in SLCC and SL Common, all subject to the liens of any encumbrance and the provisions of any related security instrument contemplated in Section 4.8 or 6.2 hereof.

(d) Subject to the receipt of all requisite approvals of any governmental agency having jurisdiction, if repairs, reconstruction or replacement are not made in accordance with the foregoing provisions of this Section 4.7 but one or more Owners desire to repair, reconstruct or replace SLCC, then each other Owner shall sell its Ownership Shares in SLCC and SL Common (except in the case of EDE, which shall retain an Ownership Share in SL Common equal to the then existing EDE Common Percentage (as defined in Section 5.4(b)(iii))) to the Owner or Owners which desire to repair, reconstruct or replace SLCC for a purchase price equal to the fair market value as determined by an Independent Appraisal (after giving effect to such damage, destruction, taking or voluntary conveyance in lieu thereof but prior to repair, reconstruction or replacement). Any such sale shall be free and clear of all mortgages, liens, security interests or other encumbrances other than (i) Permitted Encumbrances, (ii) encumbrances otherwise granted or approved in writing by all Owners as encumbrances on all or a portion of SLCC or SL Common and (iii) encumbrances as to which the satisfaction and release thereof have been waived by the Owners agreeing to repair, reconstruct or replace SLCC. The Owners agreeing to repair, reconstruct or replace SLCC and SL Common shall share the cost of such purchase in the ratio of their respective Ownership Shares in SLCC and SL Common. In the event of any sale under this Section 4.7(d), any insurance proceeds or the proceeds of any award received as the result of such damage, destruction, taking or voluntary conveyance in lieu thereof shall be distributed to and retained by all the Owners (including the selling Owner(s)) in accordance with their respective Ownership Shares in SLCC and SL Common (without giving effect to such sale).

(e) Subject to the receipt of all requisite approvals of any governmental agency having jurisdiction, (i) in the event SL Common or any portion thereof shall be damaged or destroyed, the Agent shall repair or reconstruct the damaged portion of SL Common to the extent required and in the manner contemplated by Section 4.7(a), and (ii) in the event SL Common or any portion thereof shall be subject to a taking or a voluntary conveyance of all or any portion of SL Common in lieu thereof, the Management Committee shall replace, repair or reconstruct the portion of SL Common not so taken to the extent required and in the manner contemplated by Section 4.7(c); provided, however, that in no event shall the pur-

chase option set forth in Section 4.7(d) apply to a damage, destruction, taking or conveyance in lieu of a taking of property consisting solely of SL Common; and provided, further, that in the event of a damage, destruction, taking or conveyance in lieu of a taking of property consisting solely of SL Common, the Management Committee shall direct the Agent to repair, reconstruct or replace SL Common to the full extent required for the proper and efficient operation of SLCC, and any decision to repair, reconstruct or replace SL Common or any portion thereof not so required for the proper and efficient operation of SLCC shall require a Supermajority Vote. The cost for any such replacement, repair or reconstruction shall be borne by the Owners in proportion to their respective Ownership Shares in SL Common.

(f) Unless approved by all Owners, the Agent shall not sell or otherwise dispose of any facilities pursuant to this Section 4.7 to any Owner or any affiliate of any Owner except for a cash price equal to the fair market value of such facilities or property as determined by an Independent Appraisal.

4.8. Requirements of Mortgage Indentures. Each Owner may take such action in regard to its Ownership Share in SLCC and SL Common as may be necessary to comply with provisions of any existing or future sale-leaseback transactions, deeds of trust, mortgage indentures or other security agreements of such Owner, including, without limitation, any provision relating to standards of maintenance, absence of liens, payment of taxes and governmental charges, compliance with governmental regulations, insurance coverage, and the like; provided, however, that any such action by one Owner shall not effect a default by another Owner under the provisions of any then existing security instrument of such other Owner. The Management Committee or the Operating Committee shall take such action relating to the maintenance of SLCC and SL Common as any Owner shall advise, in writing, when it is necessary for such Owner to comply with the provisions of any such existing or future sale-leaseback transactions, deed of trust, mortgage indenture or security agreement to which it is a party and the incremental costs therefor shall, unless otherwise provided in the applicable Transaction Document or approved by a Supermajority Vote of the Management Committee, be borne entirely by the Owner obligated to comply with such provision; provided, however, that in no event shall either such Committee be required to take any such action which could reasonably be expected to unreasonably interfere with or materially impair the use of any then existing facilities located on the Site, SL Common, the EDE Substation or SL1CT or the ultimate full utilization of any thereof.

4.9. Agent.

(a) Each Owner hereby appoints and authorizes EDE to act as its agent (the "Agent"), and EDE accepts such appointment, to perform, as a construction and operating agent, through EDE's own employees, agents, servants and contractors, all functions as may be required for the construction, ownership and operation of SLCC and SL Common, and each Owner other than EDE hereby ratifies and confirms all such action taken by EDE and, in

the case of any material action, disclosed to such Owner, with respect to SLCC and SL Common to date; provided, however, that the Agent shall not be liable to any Owner for any loss, cost, damage or expense incurred by such Owner as a result of any action or failure to act, whether heretofore taken or hereafter taken, in its capacity as Agent, by the Agent with respect to its construction, ownership and operation of SLCC or SL Common, unless the Agent's action or failure to act was not a prudent utility practice and was materially prejudicial to such Owner for the benefit of the Owner that is acting as Agent. For the purposes of this Agreement, the term "prudent utility practice" means, at a particular time, any of the practices, methods and acts engaged in or approved by a significant portion of the electric utility industry prior to such time, or any of the practices, methods and acts which, in the exercise of reasonable judgment in light of the facts known at the time the decision was made, could have been expected to accomplish the desired result when viewed in the context of the overall objectives sought to be obtained with respect to the transactions contemplated by this Agreement consistent with good business practices, reliability, safety 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 to a spectrum of practices, methods or acts having due regard for, among other things, manufacturers' warranties and the requirements of governmental agencies of competent jurisdiction and the requirements of this Agreement.

(b) Upon written notice to the Agent, the Owner with the largest Ownership Share in SLCC (other than the Owner then acting as the Agent) may, at its option, forthwith become, and assume the duties of, the Agent hereunder instead of the then current Agent if at such time (i) the Owner then acting as the Agent shall file a petition in voluntary bankruptcy or reorganization or shall make a general assignment for the benefit of its creditors, or shall consent to the appointment of a receiver for the whole or any material part of its utility assets; or shall be adjudicated as bankrupt or insolvent; or an order, judgment or decree shall be entered by any court of competent jurisdiction appointing, without such Owner's consent, a receiver for the whole or any material part of its assets and such adjudication order, judgment or decree shall not be vacated or set aside or stayed within 90 days after the entry thereof (in each case, a "Bankruptcy Event") or (ii) the Owner then acting as Agent shall be in default of any material obligation hereunder for a period of 90 days or more after written notice thereof by any other Owner; provided, however, in either case (i) or (ii), that such Owner attempting to assume the role of Agent shall not be in default of any material obligation hereunder, and a Bankruptcy Event shall not have occurred with respect to such Owner. In addition, the Management Committee shall have the authority to appoint a new Agent at any time that the then serving Agent is not an Owner holding an Ownership Share in SLCC of at least 25%. The Management Committee shall also have the authority to appoint a new Agent at any other time, but only if such appointment is made by a Supermajority Vote. Upon removal or replacement, the Agent shall promptly transfer and assign to its successor all the Agent's right, title and interest in and to all contracts, rights and property then held by the Agent in connection with the construction, ownership and operation of SLCC and SL Common and shall deliver to such successor all documents and materials in its possession that are relevant to the

construction, ownership and operation of SLCC and SL Common; provided, that the Agent's right to indemnification and limitations on liability hereunder shall continue after such transfer and assignment.

(c) All contracts relating to the construction, ownership and operation of SLCC or SL Common may be executed solely by the Agent or, at its request, by each Owner. Whether or not a contract is entered into in the name of all Owners, each Owner shall be severally and not jointly responsible for a proportionate share equal to its Ownership Share in SLCC or SL Common, as applicable, of all amounts which are payable thereunder and all performance with respect to such contracts. The Agent is expressly authorized to execute all contracts as agent on behalf of each of the Owners and subject to the terms of this Agreement. Each contract entered into in the name of all Owners shall provide for several, but not joint, liability in proportion to each Owner's respective Ownership Share in SLCC or SL Common, as applicable. The Agent will be responsible for the administration and enforcement of all contracts relating to the construction, ownership and operation of SLCC or SL Common, whether executed solely by the Agent or by each Owner or executed by EDE and assigned to the Agent pursuant to Section 2.3(a) or (b).

(d) The Agent shall have the authority to settle any claims by or against the Owners involving third parties relating exclusively to the construction, ownership or operation of SLCC or SL Common; provided, however, that a Supermajority Vote of the Management Committee shall be required for settlement of any such claim by the Owners unless the amount originally claimed is less than \$250,000 and for settlement of any such claim against the Owners unless it would subject the Owners to a total liability of less than \$250,000 and not obligate any Owner to perform or comply with non-monetary obligations, agreements or restrictions.

(e) The Agent shall have the authority and responsibility to execute and file, with all regulatory agencies having jurisdiction, such applications, amendments, reports and other documents and filings as shall be required in or in connection with the licensing and other regulatory matters with respect to SLCC or SL Common; provided, however, that each Owner shall be responsible for obtaining all required approvals and authorizations, including those listed in Sections 1.1(e) and 1.2(c), relating to its participation in SLCC and SL Common and to its performance of this Agreement.

(f) The Agent agrees to give prompt notice to each of the Owners of all claims instituted against the Agent or any Owner relating to the construction, ownership or operation of SLCC or SL Common and of all claims settled by the Agent pursuant to Section 4.9(d). In addition, upon request of any Owner, the Agent agrees to make available, or provide copies of, all information and documentation entered into, received or filed by the Agent on behalf of the Owners pursuant to this Section 4.9.

(g) In accepting responsibilities, as set forth herein, subject to Section 7.4(b) and Section 7.6, the Agent (i) agrees it will carry out the provisions of this Agreement with the same prudence and care that it would exercise if it were constructing and operating SLCC and SL Common solely for its own benefit; (ii) agrees that it will proceed with construction and operation in accordance with prudent utility practice and other provisions of this Agreement; and (iii) agrees to use its reasonable best efforts to secure, administer and enforce contracts for the construction of SLCC in a manner to achieve commercial operation in accordance with a completion schedule and budget approved by the Management Committee, and consult with the Owners with respect to any anticipated material delays in the completion schedule or increases in the budget.

(h) For the purposes of this Agreement, all individuals employed by the Owner that is acting as Agent which are used by the Agent for purposes of the construction, ownership or operation of SLCC or SL Common shall be considered employees of the Owner that is acting as Agent and no other Owner.

(i) The Agent shall not enter into any contract with any Owner or any affiliate of an Owner in connection with the construction, ownership and operation of SLCC or SL Common except as contemplated herein or approved by the Supermajority Vote of the Management Committee.

(j) The Agent shall furnish to any Owner such information and copies of such documents and records as such Owner may reasonably request from time to time concerning any aspect of the construction, ownership and operation of SLCC and SL Common.

4.10. Transaction Documents. In addition to the Transaction Documents referred to in Sections 2.7(b), 5.3(b) and 5.3(c), the Owners shall enter into operating agreements (each a Transaction Document) for the purpose of establishing more detailed provisions and procedures to implement the provisions of this Agreement as well as for defining the operating parameters for SLCC, including those Transaction Documents contemplated by Sections 5.2, 5.3(a) and 5.6. If an Owner shall transfer, under the provisions of this Agreement (other than pursuant to Section 6.2), all or any portion of its Ownership Shares to a transferee which is not an Owner at the time, such Owner shall assign, and shall cause such transferee to assume, the related portion of its rights and obligations under any Transaction Document applicable thereto. No assignment of any rights or obligations under any Transaction Document shall be made except in connection with a transfer of Ownership Shares hereunder.

## ARTICLE V

### CAPACITY AND ENERGY ENTITLEMENT AND FINANCIAL OBLIGATIONS

5.1. Capacity Entitlement. Subject to the provisions of Sections 5.4 and 5.6, each Owner shall be entitled at all times to the then effective maximum operable capacity of SLCC (as determined by the Agent, but not in excess of that then permitted by law) in proportion to its Ownership Share in SLCC at such time, and it hereby waives any and all right to any capacity in excess of such pro rata amount. An Owner shall be entitled to greater capacity to the extent any other Owner agrees to provide such Owner any or all of its capacity entitlement, such terms of interchange to be governed by Section 5.5 hereof.

5.2. Energy Entitlement. Subject to the provisions of Section 5.4, each Owner, at all times, (a) shall be entitled to schedule and have the right to receive energy from SLCC at a rate not in excess of that portion of the then maximum operable capacity of SLCC to which such Owner is entitled pursuant to Section 5.1; provided, however, that each Owner shall only be so entitled if, at such time, the total energy scheduled from SLCC is at a rate not less than the minimum operable capability of SLCC (as determined by the Agent, but not less than that then required by law), and (b) if requested by the Agent, shall schedule energy from SLCC at a rate not less than that portion of the minimum operable capability of SLCC (as determined by the Agent, but not less than that then required by law), which is proportional to its Ownership Share in SLCC at such time, each such maximum operable capacity and minimum operable capability as measured on the basis of net output of SLCC. All such scheduling of energy by an Owner shall be conducted pursuant to and in the manner provided by the applicable Transaction Documents. EDE, WGI and the Agent acknowledge and agree that, for the purposes of this Section 5.2, the normal, minimum operable capability of SLCC shall be established at approximately 60% of the maximum operable capacity of one of the two combustion turbines utilized in SLCC, plus 100% of the associated output of the steam turbine, which is currently estimated to aggregate 160 megawatts.

5.3. Financial Obligations.

(a) Each Owner shall at all times pay

(i) a share corresponding to its then Ownership Share in SLCC of all expenditures for construction, operation and maintenance (excluding fuel and other variable generating costs as provided in the applicable Transaction Documents) of SLCC and for renewals, replacements, additions and retirements in respect thereof;

(ii) a share corresponding to its then Ownership Share in SL Common of all expenditures for construction, operation and maintenance of SL Common and for renewals, replacements, additions and retirements in respect thereof; and

(iii) subject to Section 5.6 hereof, a share of all expenditures in respect to fuel burned at SLCC (and other variable generating costs as provided in the applicable Transaction Documents).

(b) Because EDE, as of the date of this Agreement, owns 100% of SL2CT, the Existing Land and the Existing SL Common, WGI agrees to make monthly cash payments to EDE on the first business day of each month beginning as of May 3, 1999 and extending through and including October 2, 2000 of such amounts and on such terms as are more fully described in a "Payment Agreement" between EDE and WGI entered into on the date hereof.

(c) All of the mechanics for the billing of and payment for the expenditures outlined in Subsections (a) and (b) above shall be governed by an "Accounting and Cash Flow Memorandum," (with an "Accounting Manual" attached thereto) which shall be entered into by EDE, WGI and the Agent on the date hereof.

(d) For the purposes of this Section, expenditures shall not be deemed to include (i) interest charges on borrowed funds, income taxes, and property, business and occupation taxes of each Owner, which shall be borne entirely by such Owner, and (ii) depreciation, amortization and allowances for funds used during construction. Property taxes attributable to SLCC or SL Common shall be shared by the Owners in accordance with the Accounting Manual.

(e) EDE shall remain responsible for and shall pay and perform all liabilities, obligations, costs and expenses to the extent that such liabilities, obligations, costs and expenses are incurred for the account of EDE and not for the account of all of the Owners hereunder as may be appropriate to effect the provisions of this Agreement with respect to or in any way relating to the ownership, operation or use of the Existing Land, SL2CT or the Existing SL Common prior to the respective dates of transfer of such property pursuant to Section 2.3.

(f) Notwithstanding anything to the contrary herein, WGI shall not be obligated to make any payment hereunder to the extent it has made such payment pursuant to the interim agreement dated as of April 30, 1999 among EDE, WGI and Western Resources, Inc.

#### 5.4. Default.

(a) If prior to the date of commercial operation of SLCC an Owner shall (i) be in default of any non-payment obligation hereunder for a period of 30 days or more after written notice thereof by any other Owner or by Agent, (ii) fail or be unable, for any reason

whatsoever, to make any payment within 10 days after receipt of written notice that such payment was due and not paid (A) for or on account of the construction of SLCC or (B) for payments required by Section 5.3(a)(ii) or 5.3(b), (iii) be subject to a Bankruptcy Event, or (iv) be in default beyond any applicable cure period under any mortgage, deed of trust, security agreement or other instrument under which a lien or other security interest has been granted or will be acquired in such Owner's ownership interests in SLCC or SL Common and shall have received an indication from a trustee or similar entity that such entity is considering exercising its right of foreclosure with respect to such Owner's ownership interests in SLCC or SL Common, then such Owner shall be deemed to be in default hereunder and the non-defaulting Owner or Owners may, by written notice to the defaulting Owner, but without relieving the defaulting Owner of its liability for the default, agree to complete or cause the completion of construction of SLCC without additional payments by the defaulting Owner and either (x) limit the defaulting Owner's Ownership Shares to the percentages equal to the product of the Ownership Shares of the defaulting Owner as stated in Section 2.5 multiplied by the ratio of the payments theretofore made by the defaulting Owner to the payments that should have been made by the Defaulting Owners at such date, in each case with respect to all payments required pursuant to this Agreement for the construction, ownership and operation of SLCC and SL Common, exclusive of any allowance for funds used during construction, in which event the defaulting Owner's Ownership Shares shall reduce automatically and concurrently as and to the extent that additional construction expenditures (exclusive of any allowance for funds used during construction) are paid by or for the account of the non-defaulting Owner or Owners for completion thereof or as and to the extent any Owner fails to make payments pursuant to Section 5.3(a)(ii) or 5.3(b); or (y) purchase the entire Ownership Shares of the defaulting Owner for an amount equal to the amount of payments theretofore made by such defaulting Owner to the date of such purchase multiplied by 95% (or 100% if the defaulting Owner is only in default under cause (iv) above), such purchase cost to be shared, and such Ownership Shares of the defaulting Owner to be acquired, by the non-defaulting owners in proportion to their Ownership Shares in SLCC and SL Common, as applicable; provided, however, that, with respect to clause (x) above, upon completion of SLCC, the defaulting Owner shall remain subject to all provisions of this Agreement with respect to any reduced Ownership Shares; provided further, however, that with respect to clauses (x) and (y) above, to the extent EDE is the defaulting Owner, EDE shall retain an Ownership Share in SL Common at least equal to the then existing EDE Common Percentage. In any such event, the respective Ownership Shares of the Owners shall adjust automatically and proportionately to reflect the defaulting Owner's decreasing Ownership Shares and the non-defaulting Owners' increasing Ownership Shares as and to the extent that additional construction expenditures are made or caused to be made by each non-defaulting Owner for completion thereof or as and to the extent any Owner fails to make payments pursuant to Section 5.3(b). Correspondingly, if, subsequent to the date of commercial operation of SLCC, any Owner defaults in its obligation to pay its proportionate share of property additions, betterments or improvements, then the Ownership Shares of such defaulting Owner shall be subject to the same reduction or purchase as specified above in this Section 5.4(a).

(b) If subsequent to the date of commercial operation of SLCC any Owner becomes subject to a Bankruptcy Event or a default by any Owner occurs in the payment of all or any part of its share of any expenditures as required by Section 5.3 (other than as specified in the last sentence of Section 5.4(a)), such Owner shall not be entitled to any capacity entitlement or to schedule or receive any energy from SLCC during the continuance of such Bankruptcy Event or such default if such Bankruptcy Event or default is not cured within five (5) days after receipt of written notice by any other Owner or the Agent of such Bankruptcy Event or default. During the remaining period of any such Bankruptcy Event or such default, the non-defaulting Owners shall be entitled (without relieving the defaulting Owner of its liability for the default) to schedule and receive all the energy capable of being produced by SLCC (including the capacity entitlement of the defaulting Owner) in proportion to their respective Ownership Shares in SLCC; provided, however, that if and when the defaulting Owner cures such default (which shall include payment of interest on all amounts past due at a rate equal to the LIBOR Rate (as defined in the Accounting and Cash Flow Memorandum)) prior to the effective date of a termination of the rights of such defaulting Owner in accordance with the terms of this Section 5.4(b), the defaulting Owner's rights to capacity entitlement and energy entitlement in accordance with Sections 5.1 and 5.2 of this Agreement shall be restored within seven days of the date that such default is cured. If such Bankruptcy Event or such payment default shall continue for more than 30 days, Owners of a majority of the Ownership Shares in SLCC (excluding the Ownership Shares of the defaulting Owner) may give written notice (a "Termination Notice") to the defaulting Owner, with copies to all Owners, to terminate all rights of the defaulting Owner under this Agreement on the date specified in such notice, which date shall be not less than 150 days after the giving of such notice, unless such Bankruptcy Event or default shall be remedied prior to the date of termination. If, after receipt of a Termination Notice, the Bankruptcy Event or default is not so remedied, upon the effective date of such termination,

(i) the defaulting Owner shall cease to have any rights under this Agreement except for its right to receive payment for its Ownership Shares pursuant to clause (iii) below;

(ii) the defaulting Owner shall pay to the Agent all amounts then owed by the defaulting Owner under the terms of this Agreement with interest thereon at the then interest rate at which Missouri statutes then prescribe interest on judgments, together with the amount of any damages incurred by the non-defaulting Owners in connection with such default or the termination of the defaulting Owner's rights under this Agreement (including but not limited to legal and other expenses);

(iii) subject to all required governmental regulatory approvals, the non-defaulting Owners shall purchase the defaulting Owners' Ownership Shares at a purchase price equal to (x) 95% of the lower of the fair market value (as determined by an Independent Appraisal) or the Book Value of the defaulting Owner's Ownership Shares less (y) all amounts owed by the defaulting Owner pursuant to the terms of

clause (ii) above (and for this purpose, the non-defaulting Owners may withhold from such payment a reasonable estimate of the damages to which such non-defaulting Owners may be entitled under clause (ii) above until final resolution of any dispute relating to such damages pursuant to Section 8.1 of this Agreement). If the amount required to be deducted under clause (y) of the preceding sentence is greater than the amount described in clause (x), the defaulting Owner shall remain liable for the deficiency. Such payment, if any, by the non-defaulting Owners shall be in the proportion of their respective Ownership Shares in SLCC and SL Common; provided, however, that if EDE is the defaulting Owner, the non-defaulting Owners shall purchase 100% of EDE's Ownership Share in SLCC and that portion of EDE's Ownership Share in SL Common which would result in EDE retaining an Ownership Share in SL Common equal to the product of (A) 100% and (B) a fraction, the numerator of which is the maximum operable capacity of SL1CT to which EDE is entitled and the denominator of which is the sum of (1) the maximum operable capacity of SL1CT to which EDE is entitled and (2) the maximum operable capacity of SLCC (the "EDE Common Percentage"); and

(iv) the non-defaulting Owners shall succeed to all of the defaulting Owner's rights and obligations under this Agreement, the Transaction Documents and the Contracts, in accordance with their respective Ownership Shares.

(c) To the extent a defaulting Owner's Ownership Shares are decreased or purchased pursuant to this Section, the defaulting Owner shall take all actions legally required under applicable law to assign that portion of its rights and obligations in the Contracts, equal to the decrease in its Ownership Shares, to the other Owners. To the extent the defaulting Owner shall fail to execute any required documentation, it hereby grants to the Agent a power of attorney to so execute such documentation. The defaulting Owner shall cause any transfer of its Ownership Shares under this Section 5.4 to be free and clear of all mortgages, liens, security interests or other encumbrances other than (i) Permitted Encumbrances, (ii) encumbrances otherwise granted or approved in writing by all Owners as encumbrances on all or a portion of SLCC or SL Common and (iii) encumbrances as to which the satisfaction and release thereof have been waived by the non-defaulting Owners.

(d) Nothing in Section 5.4(a) or 5.4(b) is intended to relieve, or shall relieve, a defaulting Owner of its liability for any default, except to the extent such defaulting Owner's Ownership Shares are purchased pursuant to Section 5.4(b)(iii). The exercise by the non-defaulting Owner or Owners of any rights provided for in this Section 5.4 (including rights which reduce the Ownership Shares of the defaulting Owner or permit the non-defaulting Owner or Owners to use the capacity entitlement of the defaulting Owner) shall be considered only in mitigation of the damages due the non-defaulting Owner or Owners for which the defaulting Owner shall be and remain liable until paid, together with interest thereon at a rate equal to 125% of each non-defaulting Owner's authorized rate of accrual of

(i) an allowance for funds used during construction (AFUDC), (ii) interest during construction (IDC), or (iii) other similar cost component regularly used by such non-defaulting Owner, each as applicable during such period.

(e) In the event that any dispute exists between or among the Owners with respect to the payment or performance of any obligation of an Owner under this Agreement or any of the Transaction Documents, such Owner may tender payment or performance as demanded by any other Owner or the Agent under protest and reservation of rights (as more fully described in the Accounting and Cash Flow Memorandum) without waiving such Owner's rights thereafter to bring an action or proceeding under applicable law (after complying with the provisions of Section 8.1) to resolve such dispute and to secure such judgment or other relief as may be appropriate under the circumstances.

5.5. Interchange. Except as otherwise provided in Section 5.4 or in any Transaction Document, the use by an Owner of the capacity entitlement of another Owner shall be settled on the basis of applicable rate schedules for such interchange transactions between such Owners as the same then may be in effect.

5.6. Fuel. A procurement strategy for fuel will be agreed to by the Fuel Committee which strategy may be changed at any time. The Transaction Documents referred to in Section 4.10 shall cover the procurement of fuel. However, nothing in this Agreement or the Transaction Documents shall prohibit each Owner from the procurement of and payment for the fuel to be used for such Owner's scheduled energy entitlement pursuant to Section 5.2 hereof. If, upon request by the Agent made to any Owner, pursuant to Section 5.2(b) hereof, to schedule energy from SLCC at such Owner's share of the minimal operable capacity of SLCC, such Owner is unable or unwilling to procure the required fuel for such energy, then the Agent may procure enough fuel on behalf of the other Owners to cover such Owner's shortfall; provided, however, that notwithstanding Section 5.3(a)(iii) hereof, if the Agent procures such fuel, such non-procuring Owner shall pay a share of all expenditures in respect to fuel burned at SLCC and other variable generating costs as set forth in the applicable Transaction Documents.

## ARTICLE VI

### PARTITION - ENCUMBRANCE - TRANSFER

6.1. Partition. The Owners and their successors and assigns hereby waive their respective rights with respect to the partition of SLCC and SL Common for a period of time ending with the abandonment of the use thereof for the generation, transmission or distribution of electricity. No Owner nor their respective successors or assigns shall take or resort to any action (including, without limitation, any court proceeding at law or in equity) or

enter into any agreement (including, without limitation, any security agreement or mortgage) for the purpose of or which might result in a partition of SLCC or SL Common (including, without limitation, the Site, the Facilities, and all additions and improvements thereto and replacements thereof). Each Owner, for itself and its successors and assigns, hereby releases all partition rights in respect thereof, whether now existing or hereafter accruing, whether under common law or statute, and whether in kind or otherwise, and each Owner shall from time to time, upon written request by any other Owner, execute and deliver such further instruments as may be necessary or appropriate to confirm the foregoing waiver and release of partition rights. The provisions of this Section 6.1 shall continue in effect for the period of time specified above, and each Owner acknowledges and agrees that, in light of the significant economic investment jointly made by the Owners in SLCC and SL Common, such period of time is a reasonable period to establish for the waiver of partition rights and for the other agreements of the Owners set forth in this Section 6.1. Consequently, the parties hereto expressly agree that the provisions of this Section 6.1 shall never be deemed to create or impose an unreasonable restraint on alienation.

6.2. Encumbrance. Each Owner and its successors and assigns shall have the right to and may collaterally assign, pledge, grant a security interest in or otherwise encumber its Ownership Shares in SLCC and SL Common (subject in all respects to the provisions of this Agreement, including, without limitation, Sections 4.8 and 6.1 hereof and subject to receipt of all required regulatory approvals) by any sale-leaseback transaction, deed of trust, mortgage indenture or other security agreement, whether now existing or hereafter created as security for its present or future bonds or other obligations or securities, without the prior consent of any other Owner; provided, however, that in the case of a sale-leaseback transaction (unless otherwise consented to by the Owners holding a majority of the Ownership Shares in SLCC not owned by the transferring Owner, which consent shall not be unreasonably withheld), upon the expiration of such lease, and absent any default thereunder, title to such Ownership Shares shall revert back to the original Owner participating in such transaction. Any trustee, lessor or secured party thereunder, when acting pursuant to the provisions thereof, shall have the benefit of, and may require and enforce performance of, the covenants and obligations herein and may exercise all rights and powers of such Owner under this Agreement and the applicable Transaction Documents as the same may then be in effect.

6.3. Transfer.

(a) Any Owner (the "Transferring Owner") may sell, transfer, assign, convey or otherwise dispose of all of its Ownership Shares, without the consent of any other Owner, (i)(x) in the case of WGI, to a WGI Preferred Transferee and (y) in the case of any other Owner (including any Owner to whom WGI transfers all or any portion of its Ownership Shares in accordance with the terms of this Agreement), to another corporation (whether or not affiliated with such Owner) together with all or substantially all of its other electric generating property, pursuant to or as a result of a merger, consolidation, liquidation or corporate reorganization or, in the case of a Transferring Owner that is in the business of selling electric

power, by sale of substantially all such Transferring Owner's electric generating assets, or (ii) to any corporation that is an affiliate of such Transferring Owner, provided that with respect to any such transaction described in clause (i) or (ii) all regulatory approvals for such transfer shall have been obtained and such corporation by written agreement or by operation of law assumes the obligations hereunder of the Transferring Owner. Upon assumption by such transferee corporation of the Transferring Owner's obligations hereunder and payment of all amounts then due by the Transferring Owner under this Agreement, the Transferring Owner shall be released from all liabilities and obligations under this Agreement accruing subsequent to the transfer; provided, however, that in the case of a transfer pursuant to clause (ii) of this Section 6.3(a) to an affiliate of the Transferring Owner, the Transferring Owner shall not be so released from its obligations and liabilities under this Agreement without the consent of the non-transferring Owners holding a majority of the Ownership Shares in SLCC not owned by the Transferring Owner (which consent shall not be unreasonably withheld).

(b) Other than as provided in Section 6.2 or 6.3(a), a Transferring Owner may not sell, transfer, assign, convey or otherwise dispose of its Ownership Shares or any portion thereof unless (i) such Ownership Shares or any portion thereof are transferred pursuant to the provisions of Section 6.4 hereof to another entity or agency including any other Owner (the "Approved Transferee"), (ii) all regulatory approvals for such transfer shall have been obtained and (iii) such Approved Transferee is a corporation incorporated in the United States. Upon assumption by such Approved Transferee of the Transferring Owner's obligations hereunder and payment of all amounts then due by the Transferring Owner under this Agreement relating to the portion of the Ownership Shares so transferred, the Transferring Owner shall be released from the corresponding liabilities under this Agreement accruing subsequent to the transfer.

(c) Any transfer by an Owner other than EDE of its Ownership Shares or any portion thereof must consist of a transfer of all of its Ownership Shares in SLCC and SL Common or equal percentages thereof. Any transfer by EDE of its Ownership Share in SLCC or any portion thereof must consist of a transfer of a portion of its Ownership Share in SL Common equal to the portion of its Ownership Share in SLCC so transferred less the EDE Common Percentage at such time. Notwithstanding any provision in this Agreement to the contrary, EDE may, at any time and from time to time, sell or otherwise transfer a portion of its Ownership Share in SL Common up to the then existing EDE Common Percentage in connection with a corresponding sale of a portion of SL1CT.

#### 6.4. Right of First Refusal.

(a) Except with respect to transfers permitted under Section 6.2 or 6.3(a), should the Transferring Owner desire to sell, transfer, assign, convey or otherwise dispose of its Ownership Shares or any portion thereof (the "Transfer Shares"), the other Owners (which shall include the Approved Transferee if an Owner at such time) of Ownership Shares (the

"Remaining Owners") shall have rights of first refusal, as provided in this Section, to purchase such Transfer Shares, and such Transferring Owner shall not dispose of such Transfer Shares except as provided in this Section.

(b) At least 120 days prior to its intended date to so dispose of its Transfer Shares, and after receipt by it of a bona fide written offer, which it desires to accept, from the Approved Transferee (who shall be a buyer ready, willing and able to purchase the Transfer Shares upon expiration of the notice periods specified in this Section), the Transferring Owner shall serve a written Notice of Intent to Transfer upon the Remaining Owners. Such Notice shall contain the name of the Approved Transferee, the approximate proposed date of disposition of such Transfer Shares, the terms and conditions of said bona fide written offer received by the Transferring Owner from the Approved Transferee, and the terms and conditions under which the Transferring Owner would sell such Transfer Shares to the Remaining Owners (which shall include, without limitation, the right to purchase for cash), which shall be at least as favorable to the Remaining Owners as the terms and conditions offered by the Approved Transferee. In the event that the offer from the Approved Transferee is not an all cash offer, any dispute over whether the terms and conditions offered by the Transferring Owner to sell to the Remaining Owners for cash are at least as favorable to the Remaining Owners as the terms offered by the Approved Transferee shall be resolved by an Independent Appraisal.

(c) Each Remaining Owner desiring to purchase all or any portion of such Transfer Shares shall signify such desire by serving written Notice of Intent to Purchase upon the Transferring Owner and the other Remaining Owners within 90 days after receipt of a Notice of Intent to Transfer under Subsection (b).

(d) If the Remaining Owners signify their intention under Subsection (c) to purchase in the aggregate more than the entire Transfer Shares, then each such Remaining Owner shall have the right to purchase (i) a portion of the Transfer Shares not in excess of the ratio of its Ownership Shares to the aggregate Ownership Shares of the Remaining Owners who have served a Notice of Intent to Purchase under Subsection (c), plus (ii) a similar proportionate share of the Transfer Shares which other Remaining Owners elect not to purchase.

(e) If in their Notices of Intent to Purchase served under Subsection (c) the Remaining Owners should signify an intention to purchase less than the entire Transfer Shares, the Remaining Owners shall have an additional 30 days after receipt of the last Notice of Intent to Purchase under Subsection (c) to resignify their intention to purchase the entire Transfer Shares. If, upon resignification, the Remaining Owners signify their intention to purchase in the aggregate more than the entire Transfer Shares, then such Owners shall have the right to purchase the Transfer Shares in accordance with Subsection (d).

(f) If and when intention to purchase the entire Transfer Shares has been signified by written Notices of Intent to Purchase from the Remaining Owners, disposal of such Transfer Shares shall be effected by the Transferring Owner to the Remaining Owners as

soon as practicable after the signifying of the intention to purchase the entire Transfer Shares in accordance with their respective Notices of Intent to Purchase, subject to all required governmental regulatory approvals thereof, and release of all mortgages, liens, security interests or other encumbrances other than (i) Permitted Encumbrances, (ii) encumbrances otherwise granted or approved in writing by all Owners as encumbrances on all or a portion of SLCC or SL Common and (iii) encumbrances as to which the satisfaction and release thereof have been waived by the Remaining Owners. The Transferring Owner shall take all action legally required and use its reasonable best efforts to obtain such approvals and effect such releases.

(g) If the Remaining Owners have failed to signify (by proper Notices of Intent to Purchase as provided hereunder) their intention to purchase the entire Transfer Shares, the Transferring Owner shall be entitled to dispose of the entire Transfer Shares to the Approved Transferee upon the terms and conditions stated in its bona fide written offer, including obtaining all required governmental regulatory approvals, which the Remaining Owners agree not to directly or indirectly oppose.

(h) Any disposition of Transfer Shares hereunder, whether to any Remaining Owner or Owners or to any Approved Transferee, shall be made subject to all of the benefits and burdens of the covenants and obligations applicable thereto as provided in this Agreement. Any such Approved Transferee shall, in a written notice to the other Owners, upon receipt of Transfer Shares, agree to be bound by the terms of this Agreement and the applicable Transaction Documents. In addition, the Transferring Owner shall execute all documentation required under applicable law to assign that portion of its rights and obligations in the Contracts equal to the Transfer Shares to the Remaining Owner or Owners or to the Approved Transferee, as applicable. Unless otherwise provided in the Notice of Intent to Transfer, if the Transfer Shares constitute all of the Ownership Shares then owned by the Transferring Owner (or, in the case of EDE, if the Transfer Shares constitute all of EDE's Ownership Share in SLCC and a portion of EDE's Ownership Share in SL Common at least equal to that which would leave EDE with an Ownership Share in SL Common no greater than the EDE Common Percentage after such transfer), then upon transfer of the Transfer Shares hereunder and payment of all amounts then due by the Transferring Owner under this Agreement, the Transferring Owner shall be released from all liabilities and obligations under this Agreement accruing subsequent to the transfer.

## ARTICLE VII

### COVENANTS AND OBLIGATIONS

7.1. Equitable Servitude. The respective covenants and obligations of the Owners under this Agreement are intended to be in the nature of covenants and equitable servitudes (not liens) which shall run with the respective rights, titles and interests of their Own-

ership Shares, and be for the benefit of and be binding upon any and all persons whomsoever having or claiming any right, title or interest in or to SLCC or SL Common by, from, through or under the Owners, or their successors or assigns.

7.2. Independent Covenants and Obligations. The covenants and obligations contained in this Agreement are deemed to be independent covenants, not dependent covenants, and the obligation of any Owner to keep and perform all of the covenants and obligations assumed by or imposed upon it hereunder is not conditioned upon the performance by any other Owner of all or any of the covenants and obligations to be kept and performed by it.

7.3. Several Obligations. The obligations and liabilities of the Owners are intended to be several and not joint or collective, and nothing herein contained shall be construed to create an association, joint venture, trust or partnership. Each Owner shall be individually responsible for the performance of its own obligations herein provided. No Owner shall have a right or power to bind any other Owner without its express written consent, except as expressly provided in this Agreement or any of the Transaction Documents.

7.4. Liability.

(a) All risk, loss and damage arising out of the ownership, construction, operation, or maintenance of SLCC and SL Common will be borne by each Owner in proportion to its Ownership Share in SLCC and SL Common, respectively, portions of which may be insured at costs to be shared proportionately by them. If insured, the Owners shall be named insured as their respective interests may appear, with subrogation rights waived, subject to any Insurance Memorandum entered into by the Owners. If any Owner shall be required to make any payment or incur any obligation in excess of its proportionate Ownership Shares, then the other Owners shall indemnify and reimburse such Owner proportionately to the extent of any such excess.

(b) The Agent shall not be liable to any Owner for any loss, cost, damage or expense caused by delays in completion or unavailability of SLCC or SL Common or by plant shutdowns or service interruptions unless any such loss, cost, damage or expense was caused by an action or failure to act by the Agent and such action or failure to act was not a prudent utility practice and was materially prejudicial to such Owner for the benefit of the Owner that is acting as Agent.

(c) The Agent does not provide any assurances as to, or guarantee, the final cost of construction, operation, maintenance or decommission of any part of SLCC or SL Common. All oral and written forecasts of costs, construction, expenditures and operating and maintenance expenses are estimates only, subject to change and final determination at the time the costs are incurred.

7.5. Force Majeure. If, because of a force majeure, the Agent or any Owner is unable to carry out and perform any of its obligations under this Agreement (except the payment of money), and if the Agent or such Owner promptly gives all Owners or the other Owners, as applicable, written notice of such force majeure, then the obligation of the Agent or the Owner giving such notice shall be suspended to the extent made necessary by such force majeure and during its continuance, provided the effect of such force majeure is eliminated insofar as possible with all reasonable dispatch. The term "force majeure" as used herein (i) shall mean causes not within the control of the party directly affected and claiming suspension of its obligations (other than the payment of monetary obligations) and which by the exercise of due diligence and foresight could not reasonably have been avoided, and (ii) shall be deemed to include, but not be limited to, acts of God, acts of civil or military authorities, acts of war or public enemy, acts of any court, regulatory agency or administrative body having jurisdiction, insurrections, riots, strikes or other labor disturbances, breakdown of or accidents to plant, equipment or facilities, fires, explosions, floods, drought or similar acts of nature, interruption of transportation, embargoes or other causes of a similar nature; provided, however, that any strike or other labor disturbance may be settled at the sole discretion of the party directly affected thereby.

7.6. Indemnification of Agent. Each Owner hereby indemnifies and holds the Agent and its affiliates, officers, directors and employees (the Agent and each such other person being an "Agent Indemnified Party") harmless, in proportion to its respective Ownership Share in SLCC, from any and all losses, claims, liabilities and damages arising from or relating to any Agent Indemnified Party's performance as agent under this Agreement or the transactions contemplated hereby, and each Owner shall promptly reimburse (or, upon the request of the Agent, promptly advance), in proportion to its respective Ownership Share in SLCC, such Agent Indemnified Party for all expenses (including counsel fees and expenses) as they are incurred in connection with the investigation of, preparation for or defense of any pending or threatened claim or any action or proceeding arising therefrom, whether or not such Agent Indemnified Party is a party, whether or not such claim, action or proceeding is initiated or brought by or on behalf of such Agent Indemnified Party and whether or not resulting in any liability; provided, however, that no Owner shall be liable for any of the foregoing to the extent such losses, claims, liabilities, damages or expenses are determined by a court of competent jurisdiction in a final and non-appealable judgment to have resulted from a deliberate violation of this Agreement occurring pursuant to duly authorized action by corporate officers of the Agent.

7.7. IRS Election. The Owners will cause the timely filing of an election that the arrangement contemplated by this Agreement be excluded from the application of Subchapter "K" of Chapter 1 of Subtitle "A" of the Internal Revenue Code of 1986, or any successor provision, or such portion or portions thereof as may be permitted or authorized by the Secretary of the Treasury or his delegate, insofar as such subchapter or any portion or portions thereof may be applicable to such arrangement or the Owners under this Agreement.

## ARTICLE VIII

### DISPUTE RESOLUTION

8.1. Disputes. In the event of a dispute among the Owners, the Owners shall attempt, in good faith, to resolve the dispute amicably and promptly. If the Owners are unable to resolve the dispute within 60 days, or such shorter period as the Owners may agree, despite such good faith efforts, the Owners may: (i) by mutual agreement, submit the dispute to binding arbitration under such rules and procedures as they may at the time so agree to; or (ii) pursue any other legal or equitable remedies that may be available.

## ARTICLE IX

### GENERAL PROVISIONS

9.1. Implementing and Confirmatory Instruments. Each Owner shall execute such instruments as may from time to time reasonably be requested by any other Owner or the Agent to implement the provisions of this Agreement, any Transaction Document or any Contract, including instruments of conveyance and transfer, and to confirm the effective Ownership Shares in the facilities and property which then constitute SLCC or SL Common. Each additional Owner (other than EDE or WGI) shall sign and deliver to each other Owner and the Agent a written document assuming its proportional obligations and agreeing to perform the provisions of this Agreement, the Transaction Documents and the Contracts.

9.2. Waivers. No waiver by an Owner of its rights with respect to a default under this Agreement shall be effective unless all non-defaulting Owners waive their respective rights. Any such waiver shall not be deemed to be a waiver with respect to any subsequent default or matter. No delay short of the statutory period of limitations in asserting or imposing any right hereunder shall be deemed a waiver of such right.

9.3. Notices. All communications hereunder shall be in writing and shall be hand delivered, mailed by certified mail, couriered by next-day air courier or telecopied and confirmed in writing. Notices to EDE shall be directed to it at The Empire District Electric Company, 602 Joplin Street, Joplin, Missouri 64802, attention of Vice President of Energy Supply, telecopier number (417) 625-5153. Notices to WGI shall be directed to it at 818 South Kansas Avenue, Topeka, Kansas 66612, attention of President, telecopier number (785) 575-8173, and with a copy to Western Resources, Inc., 818 South Kansas Avenue, Topeka, Kansas 66612, attention of General Counsel, telecopier number (785) 575-1936. All such notices and communications shall be deemed to have been duly given: when delivered by hand, if personally delivered; when receipt is acknowledged by the addressee, if mailed by certified

mail; one business day after being timely delivered to a next-day air courier guaranteeing overnight delivery; and when receipt is acknowledged by the addressee, if telecopied. Any party to this Agreement may change its notice address by giving notice of its new address to the other parties in accordance with the provisions of this Section 9.3.

9.4. Severability. In the event any provision hereof or the application thereof to any person or circumstance shall be held invalid in any final decision by a court having jurisdiction in the premises, the remainder of this Agreement and its application to persons or circumstances other than those as to which it was held invalid shall not be affected thereby.

9.5. Governing Law. The validity, interpretation and performance of this Agreement and each of its provisions shall be governed by the laws of the State of Missouri, without giving effect to any provisions relating to conflict of laws.

9.6. No Third Party Beneficiary. The parties hereto do not intend to create rights in or to grant remedies to any third party as a beneficiary of this Agreement or of any duty, covenant, obligation or undertaking established herein.

9.7. Amendments. An amendment to this Agreement shall be effective upon written approval by such Owner or Owners whose collective Ownership Share in SLCC is at least 75% so long as such amendment does not cause the relative rights and obligations of any Owner to differ in any respect from the rights and obligations of any other Owner. Any other amendment requires the written approval of each Owner.

9.8. Confidentiality. Each party hereto agrees that it will keep in strict confidence, and will instruct, and use its reasonable best efforts to cause, its advisors and representatives to keep in strict confidence, all nonpublic information obtained from any other party hereto, including all documentation and cost studies, unless such information is disclosed with the prior written consent of the party to which it relates; provided, however, that this restriction shall not apply to information which (a) has at the time in question entered the public domain other than by reason of breach of this provision by a party hereto; (b) is required to be disclosed by law or by any order, rule, or regulation (whether valid or invalid) of any court, or governmental agency, or authority, but only to the extent such disclosure is so required; provided that the party disclosing the nonpublic information shall promptly give notice of such disclosure to the party from whom the information was obtained and shall cooperate with the party from whom the information was obtained in an effort to ensure that confidential treatment will be accorded such nonpublic information to the extent feasible; (c) is reasonably required or requested by any utility regulatory agency having jurisdiction over the party so required or requested to furnish the nonpublic information; provided that the party disclosing the nonpublic information shall promptly give notice of such disclosure to the party from whom the information was obtained and shall cooperate with the party from whom the information was obtained in an effort to ensure that confidential treatment will be accorded

such nonpublic information to the extent feasible; or (d) is reasonably required to be provided to any party's accountants, attorneys, mortgagees or financial advisors in connection with this Agreement or the transactions contemplated hereby; provided that the party disclosing the nonpublic information uses its reasonable best efforts to cause such accountants, attorneys, mortgagees or other financial advisors to keep such nonpublic information in strict confidence. Upon termination of this Agreement, each party shall promptly return or destroy all nonpublic information obtained from any other party or any of its affiliates, advisors or representatives and any copies made of such information.

9.9. Survival. The agreements, covenants, representations and warranties contained in this Agreement shall survive vesting of the respective Ownership Shares of the Owners and completion of the construction of SLCC and SL Common and shall continue in full force and effect until termination of this Agreement in accordance with the terms hereof. In addition, the agreements and covenants contained in Sections 3.5(a) (unless expressly terminated in accordance with the terms thereof), 4.9 (with respect to the limitation on liability of the Agent), 7.4, 7.6, 9.8 and 10.3 shall survive termination of this Agreement.

9.10. Entire Agreement. This Agreement, together with the other Transaction Documents executed contemporaneously herewith or referenced herein, embody the entire agreement as of the date hereof between the parties hereto with respect to the transactions contemplated herein, and there have been and are no agreements, representations or warranties between the parties other than those set forth or provided for herein.

9.11. Counterparts. This Agreement may be executed in any number of counterparts, and all such counterparts taken together shall constitute one and the same instrument.

## ARTICLE X

### TERM - TERMINATION

10.1. Effective Date and Term. This Agreement shall become effective upon execution hereof by each of the parties hereto and shall continue in full force and effect thereafter until terminated as provided in Section 10.2 or 10.3.

10.2. Termination. Except as provided in Section 10.3, this Agreement shall terminate and be of no further force and effect from and after the earliest to occur of:

- (i) the Owners filing of record in the office of the Recorder of Deeds for Jasper County, Missouri (or such other office as may then serve such function) a duly executed Termination Agreement terminating this Agreement and discharging the

rights, titles and interests of all Owners from the benefits and burdens of the covenants and obligations herein; provided that undivided interests in SLCC and SL Common shall have been released from the liens of all encumbrances contemplated by Section 4.8 or 6.2 hereof and such releases shall have been duly filed of record prior to recording of such Termination Agreement;

(ii) an Owner acquiring by transfer hereunder or by operation of law all Ownership Shares in SLCC and, as a result of the merger of such undivided percentage interests therein becomes the sole beneficial Owner of all rights, titles and interests therein; or

(iii) an abandonment of the use of SLCC for the generation and transmission of electricity as evidenced by an Affidavit of Abandonment duly executed by an Owner, filed of record as provided in Part (i) above, and thereafter published in a newspaper of general circulation in Jasper County, Missouri, with written notice thereof delivered to the other Owners within ten (10) days after the recording of such Affidavit, unless another Owner denies such abandonment by an Affidavit of Non-abandonment similarly filed of record within sixty (60) days after publication of such Affidavit of Abandonment.

10.3. Disposition Upon Abandonment. Notwithstanding Sections 6.3 and 6.4 hereof, in the event this Agreement is terminated by Affidavit of Abandonment as provided in Section 10.2(iii), the Owner executing the Affidavit of Abandonment (i) shall have the right to dispose of all the facilities and property then included in SLCC (provided such facilities and property to be disposed of are not then subject to the lien of any encumbrance, unless such disposition is otherwise made in accordance with the terms of any related security agreement, contemplated in Section 4.8 or 6.2 hereof), (ii) shall dispose thereof as promptly as practicable and (iii) shall distribute the proceeds thereof to the Owners, or to lienholders for the account of the Owners, in accordance with their respective Ownership Shares in SLCC; provided, however, that if any determinable portion of such proceeds is received from facilities or property the cost of which was borne by the Owners disproportionately to their Ownership Shares in SLCC, the distribution of such proceeds shall be adjusted accordingly; provided further, however, that termination of this Agreement pursuant to Section 10.2(iii) shall not discharge any Owner of any obligation it then owes hereunder as a result of any transaction occurring prior to such termination. Termination of this Agreement by Affidavit of Abandonment as provided in Section 10.2(iii) shall not relieve any Owner from its proportionate responsibility for the costs and expenses of the decommissioning of SLCC, which proportionate responsibility shall be in accordance with such Owner's Ownership Shares in SLCC at the time the Affidavit of Abandonment is filed of record in accordance with Section 10.2(iii).

[Signature page to follow]

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed by their duly authorized officers the day and year first above written.

ATTEST:

THE EMPIRE DISTRICT ELECTRIC  
COMPANY,  
as an Owner

Janet S. Watson  
Name: Janet S. Watson  
Title: Secretary-Treasurer

By: Virgil E. Brill  
Name: Virgil E. Brill  
Title: Vice President - Energy Supply

(SEAL)

ATTEST:

WESTAR GENERATING, INC.,  
as an Owner

Leslie D. Morgan  
Name: Leslie D. Morgan  
Title: Vice President, Secretary  
and Treasurer

By: Thomas L. Grennan  
Name: Thomas L. Grennan  
Title: President

(NO SEAL)

ATTEST:

THE EMPIRE DISTRICT ELECTRIC  
COMPANY,  
as Agent

Janet S. Watson  
Name: Janet S. Watson  
Title: Secretary-Treasurer

By: Virgil E. Brill  
Name: Virgil E. Brill  
Title: Vice President - Energy Supply

(SEAL)

STATE OF Missouri )  
COUNTY OF Newton ) ss.:

On this 23<sup>RD</sup> day of July, 1999, before me personally appeared Virgil E. Brill, to me personally known, who, being by me duly sworn did say that he is the Vice President - Energy Supply of The Empire District Electric Company, a Kansas corporation, and that the seal affixed to the foregoing instrument is the corporate seal of said corporation and that said instrument was signed and sealed on behalf of said corporation by authority of its Board of Directors, and said Virgil E. Brill acknowledged said instrument to be the free act and deed of said corporation.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal at my office in JOPLIN the day and year last above written.

(SEAL)

Julie A Maus  
Printed Name: JULIE A MAUS  
Notary Public in and for said State  
Commissioned in Newton County

My Commission Expires:

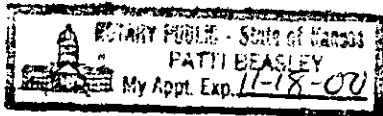
MARCH 26, 2002

STATE OF Kansas )  
COUNTY OF Shawnee ) ss.:

On this 26<sup>th</sup> day of July, 1999, before me personally appeared Thomas L. Grennan, to me personally known, who, being by me duly sworn did say that he is the President of Westar Generating, Inc., a Kansas corporation, and that said instrument was signed and sealed on behalf of said corporation by authority of its Board of Directors, and said Thomas L. Grennan acknowledged said instrument to be the free act and deed of said corporation and that said corporation has no corporate seal.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal at my office in Topeka, KS the day and year last above written.

(SEAL)



Patti Beasley  
Printed Name: PATTI BEASLEY  
Notary Public in and for said State  
Commissioned in Shawnee County

My Commission Expires:

November 18, 2000

STATE OF Missouri )  
 ) SS.:  
COUNTY OF Newton )

On this 23<sup>rd</sup> day of July, 1999, before me personally appeared Virgil E. Brill, to me personally known, who, being by me duly sworn did say that he is the Vice President - Energy Supply of The Empire District Electric Company, as Agent, a Kansas corporation, and that the seal affixed to the foregoing instrument is the corporate seal of said corporation and that said instrument was signed and sealed on behalf of said corporation by authority of its Board of Directors, and said Virgil E. Brill acknowledged said instrument to be the free act and deed of said corporation.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal at my office in JOPLIN the day and year last above written.

(SEAL)

Julie A. Maus  
Printed Name: JULIE A. MAUS  
Notary Public in and for said State  
Commissioned in Newton County

My Commission Expires:

MARCH 26, 2002

## EXHIBIT A

### Property Descriptions

#### TRACT A

#### Legal Description of SL1CT

A TRACT OF LAND LOCATED IN THE WEST HALF OF SECTION 14, TOWNSHIP 27 NORTH, RANGE 34 WEST, MORE PARTICULARLY DESCRIBED AS FOLLOWS:

COMMENCING AT AN EXISTING IRON PIN AT THE NORTH QUARTER CORNER OF SAID SECTION 14;

THENCE, S89°53'06"W, ALONG THE NORTH LINE OF SAID SECTION 14, A DISTANCE OF 344.34 FEET;

THENCE, S00°06'54"E, 2027.25 FEET, TO THE POINT OF BEGINNING;

THENCE, S00°01'16"E, 109.18 FEET;

THENCE, S89°58'44"W, 155.66 FEET;

THENCE, S76°25'43"W, 39.83 FEET;

THENCE, N88°35'56"W, 107.74 FEET;

THENCE, S01°24'04"W, 129.58 FEET;

THENCE, N89°59'21"W, 163.23 FEET;

THENCE, N00°06'18"W, 107.35 FEET;

THENCE, N89°58'32"E, 96.08 FEET;

THENCE, N00°12'30"E, 64.96 FEET;

THENCE, S89°53'20"W, 96.43 FEET;

THENCE, N00°06'18"W, 73.13 FEET;

THENCE, N89°58'44"E, 468.90 FEET, TO THE POINT OF BEGINNING.

ALSO:

A TRACT OF LAND LOCATED IN THE WEST HALF OF SECTION 14, TOWNSHIP 27 NORTH, RANGE 34 WEST, MORE PARTICULARLY DESCRIBED AS FOLLOWS:

COMMENCING AT AN EXISTING IRON PIN AT THE NORTH QUARTER CORNER OF SAID SECTION 14;

THENCE, S89°53'06"W, ALONG THE NORTH LINE OF SAID SECTION 14, A DISTANCE OF 66.89 FEET;

THENCE, S00°06'54"E, 2022.25 FEET, TO THE POINT OF BEGINNING;

THENCE, S00°11'42"E, 307.40 FEET;

THENCE, S89°48'18"W, 228.08 FEET;

THENCE, N00°11'42"W, 105.03 FEET;

THENCE, S89°48'18"W, 31.51 FEET;

THENCE, N00°11'42"W, 129.20 FEET;

THENCE, N89°48'18"E, 84.63 FEET;

THENCE, N00°11'42"W, 73.17 FEET;

THENCE, N89°48'18"E, 174.97 FEET, TO THE POINT OF BEGINNING.

CONTAINING 3.18 ACRES, MORE OR LESS.

TRACT B

Legal Description of SL2CT

A TRACT OF LAND LOCATED IN THE WEST HALF OF SECTION 14, TOWNSHIP 27 NORTH, RANGE 34 WEST, MORE PARTICULARLY DESCRIBED AS FOLLOWS:

COMMENCING AT A ALUMINUM MONUMENT AT THE NORTHWEST CORNER OF SAID SECTION 14;

THENCE, S01°56'10"E, ALONG THE WEST LINE OF SAID SECTION 14, A DISTANCE OF 1804.75 FEET;

THENCE, N88°03'50"E, 653.50 FEET;

THENCE, N89°58'44"E, 485.62 FEET,

THENCE, N00°06'18"W, 38.89 FEET, TO THE POINT OF BEGINNING;

THENCE, N00°06'18"W, 18.51 FEET;

THENCE, N89°53'42"E, 317.22 FEET;

THENCE, S00°06'18"E, 140.36 FEET;

THENCE, S89°53'42"W, 247.17 FEET;

THENCE, N00°11'14"W, 21.78 FEET;

THENCE, N89°31'16"E, 25.27 FEET;

THENCE, N01°50'39"W, 100.33 FEET;

THENCE, S89°39'57"W, 92.25 FEET, TO THE POINT OF BEGINNING.

CONTAINING 0.77 ACRES, MORE OR LESS.

## TRACT C

### Legal Description of Existing Land

A TRACT OF LAND LOCATED IN THE WEST HALF OF SECTION 14, TOWNSHIP 27 NORTH, RANGE 34 WEST, MORE PARTICULARLY DESCRIBED AS FOLLOWS:

COMMENCING AT A ALUMINUM MONUMENT AT THE NORTHWEST CORNER OF SAID SECTION 14;

THENCE, N89°53'06"E, ALONG THE NORTH LINE OF SAID SECTION 14, A DISTANCE OF 283.04 FEET, TO A POINT ON THE WEST RIGHT-OF-WAY LINE OF THE BURLINGTON NORTHERN RAILROAD;

THENCE, S52°55'08"E, ALONG SAID RIGHT-OF-WAY LINE, 80.51 FEET TO THE POINT OF BEGINNING;

THENCE, S52°55'08"E, CONTINUING ALONG SAID RIGHT-OF-WAY LINE, 1839.16 FEET, TO A POINT OF CURVATURE TO THE LEFT;

THENCE, ALONG SAID CURVE TO THE LEFT, SAID CURVE HAVING A CENTRAL ANGLE OF 04°36'39", RADIUS OF 2914.79 FEET, ARC LENGTH OF 234.56 FEET, AND A CHORD BEARING OF S56°13'27"E, TO A POINT ON THE NORTH-SOUTH HALF SECTION LINE;

THENCE, S00°00'19"E, ALONG SAID HALF SECTION LINE, 712.83 FEET;

THENCE, S89°58'44"W, 317.21 FEET;

THENCE, S00°01'16"E, 23.69 FEET;

THENCE, S89°58'44"W, 492.14 FEET;

THENCE, N00°06'18"W, 71.57 FEET;

THENCE, N89°26'59"E, 70.18 FEET;

THENCE, N00°11'14"W, 87.53 FEET;

THENCE, N89°53'42"E, 247.17 FEET;

THENCE, N00°06'18"W, 140.36 FEET;

THENCE, S89°53'42"W, 317.22 FEET;

THENCE, S00°06'18"E, 57.40 FEET;

THENCE, S89°58'44"W, 485.62 FEET;

THENCE, S00°00'45"W, 61.44 FEET;

THENCE, N89°59'15"W, 651.78 FEET, TO A POINT ON THE WEST LINE OF SAID SECTION 14;

THENCE, N01°56'10"W, ALONG THE WEST LINE OF SAID SECTION 14, A DISTANCE OF 1719.99 FEET;

THENCE, N52°33'26"E, 106.00 FEET;

THENCE, N87°27'15"E, 259.17 FEET, TO THE POINT OF BEGINNING. EXCEPT THAT PORTION USED OR TAKEN FOR ROAD PURPOSES.

ALSO:

A TRACT OF LAND LOCATED IN THE WEST HALF OF SECTION 14, TOWNSHIP 27 NORTH, RANGE 34 WEST, MORE PARTICULARLY DESCRIBED AS FOLLOWS:

COMMENCING AT AN EXISTING IRON PIN LOCATED AT THE NORTH QUARTER CORNER OF SAID SECTION 14;

THENCE, S89°53'06"W, ALONG THE NORTH LINE OF SAID SECTION 14, 325.00 FEET, TO THE POINT OF BEGINNING;

THENCE, S00°00'19"E, 600.00 FEET;

THENCE, N89°53'06"E, 325.00 FEET, TO A POINT ON THE NORTH-SOUTH HALF SECTION LINE;

THENCE, S00°00'19"E, ALONG SAID HALF SECTION LINE, 572.03 FEET, TO A POINT ON THE NORTH RIGHT-OF-WAY LINE OF THE BURLINGTON NORTHERN RAILROAD AND A POINT OF CURVATURE TO THE RIGHT;

THENCE, ALONG SAID CURVE TO THE RIGHT, SAID CURVE HAVING CENTRAL ANGLE OF 03°15'59", RADIUS OF 2864.79 FEET, ARC LENGTH OF 163.32 FEET AND A CHORD BEARING OF N55°57'25"W;

THENCE, N52°58'40"W, ALONG SAID RIGHT-OF-WAY LINE, 629.53 FEET;

THENCE, N00°38'24"E, 465.34 FEET;

THENCE, S89°17'17"E, 172.54 FEET;

THENCE, N00°01'25"E, 237.47 FEET, TO A POINT ON THE NORTH LINE OF SAID SECTION 14;

THENCE, N89°53'06"E, ALONG SAID NORTH LINE, 135.00 FEET, TO THE POINT OF BEGINNING.  
EXCEPT THAT PORTION USED OR TAKEN FOR ROAD PURPOSES.

CONTAINING 67.07 ACRES, MORE OR LESS.

TRACT D

Legal Description of Existing Land at SL Common

A TRACT OF LAND LOCATED IN THE WEST HALF OF SECTION 14, TOWNSHIP 27 NORTH, RANGE 34 WEST, MORE PARTICULARLY DESCRIBED AS FOLLOWS:

COMMENCING AT A ALUMINUM MONUMENT AT THE NORTHWEST CORNER OF SAID SECTION 14;

THENCE, S01°56'10"E, ALONG THE WEST LINE OF SAID SECTION 14, A DISTANCE OF 1843.99 FEET, TO THE POINT OF BEGINNING;

THENCE, S89°59'15"E, 651.78 FEET;

THENCE, N00°00'45"E, 61.44 FEET;

THENCE, N89°58'44"E, 485.62 FEET;

THENCE, S00°06'18"E, 487.90 FEET;

THENCE, S89°59'21"E, 163.23 FEET;

THENCE, N01°24'04"E, 129.58 FEET;

THENCE, S88°35'56"E, 107.74 FEET;

THENCE, N76°25'43"E, 39.83 FEET;

THENCE, N89°58'44"E, 155.66 FEET;

THENCE, N00°01'16"W, 109.18 FEET;

THENCE, N89°58'44"E, 23.24 FEET;

THENCE, N00°01'16"W, 23.69 FEET;

THENCE, N89°58'44"E, 317.21 FEET, TO A POINT ON THE NORTH-SOUTH HALF SECTION LINE;

THENCE, S00°00'19"E, ALONG SAID HALF SECTION LINE, 946.14 FEET;

THENCE, S89°13'22"W, 1909.30 FEET, TO A POINT ON THE WEST LINE OF SAID SECTION 14;

THENCE, N01°56'10"W, ALONG SAID WEST LINE, 1129.83 FEET, TO THE POINT OF BEGINNING.

EXCEPT FOR THE FOLLOWING DESCRIBED PARCELS:

A TRACT OF LAND LOCATED IN THE WEST HALF OF SECTION 14, TOWNSHIP 27 NORTH, RANGE 34 WEST, MORE PARTICULARLY DESCRIBED AS FOLLOWS:

COMMENCING AT A ALUMINUM MONUMENT AT THE NORTHWEST CORNER OF SAID SECTION 14;

THENCE, S01°56'10"E, ALONG THE WEST LINE OF SAID SECTION 14, A DISTANCE OF 1804.75 FEET;

THENCE, N88°03'50"E, 653.50 FEET, TO THE POINT OF BEGINNING;

THENCE, N89°58'44"E, 403.35 FEET;

THENCE, S00°00'12"E, 425.07 FEET;

THENCE, S89°40'11"W, 370.84 FEET;

THENCE, N55°31'22"W, 39.57 FEET;

THENCE, N00°00'45"E, 404.66 FEET, TO THE POINT OF BEGINNING.

ALSO:

A TRACT OF LAND LOCATED IN THE WEST HALF OF SECTION 14, TOWNSHIP 27 NORTH, RANGE 34 WEST, MORE PARTICULARLY DESCRIBED AS FOLLOWS:

COMMENCING AT AN EXISTING IRON PIN AT THE NORTH QUARTER CORNER OF SAID SECTION 14;

THENCE, S89°53'06"W, ALONG THE NORTH LINE OF SAID SECTION 14, A DISTANCE OF 66.89 FEET;

THENCE, S00°06'54"E, 2022.25 FEET, TO THE POINT OF BEGINNING;

THENCE, S00°11'42"E, 307.40 FEET;

THENCE, S89°48'18"W, 228.08 FEET;

THENCE, N00°11'42"W, 105.03 FEET;

THENCE, S89°48'18"W, 31.51 FEET;

THENCE, N00°11'42"W, 129.20 FEET;

THENCE, N89°48'18"E, 84.63 FEET;

THENCE, N00°11'42"W, 73.17 FEET;

THENCE, N89°48'18"E, 174.97 FEET, TO THE POINT OF BEGINNING.

CONTAINING 39.64 ACRES, MORE OR LESS.

TRACT E

Legal Description of EDE Substation

A TRACT OF LAND LOCATED IN THE WEST HALF OF SECTION 14, TOWNSHIP 27 NORTH, RANGE 34 WEST, MORE PARTICULARLY DESCRIBED AS FOLLOWS:

COMMENCING AT A ALUMINUM MONUMENT AT THE NORTHWEST CORNER OF SAID SECTION 14;

THENCE, S01°56'10"E, ALONG THE WEST LINE OF SAID SECTION 14, A DISTANCE OF 1804.75 FEET;

THENCE, N88°03'50"E, 653.50 FEET, TO THE POINT OF BEGINNING;

THENCE, N89°58'44"E, 403.35 FEET;

THENCE, S00°00'12"E, 425.07 FEET;

THENCE, S89°40'11"W, 370.84 FEET;

THENCE, N55°31'22"W, 39.57 FEET;

THENCE, N00°00'45"E, 404.66 FEET, TO THE POINT OF BEGINNING.

ALSO;

A TRACT OF LAND LOCATED IN THE WEST HALF OF SECTION 14, TOWNSHIP 27 NORTH, RANGE 34 WEST, MORE PARTICULARLY DESCRIBED AS FOLLOWS:

COMMENCING AT AN EXISTING IRON PIN AT THE NORTH QUARTER CORNER OF SAID SECTION 14;

THENCE, S89°53'06"W, ALONG THE NORTH LINE OF SAID SECTION 14, A DISTANCE OF 344.34 FEET;

THENCE, S00°06'54"E, 2027.25 FEET;

THENCE, S89°58'44"W, 468.90 FEET;

THENCE, N00°06'18"W, 71.57 FEET, TO THE POINT OF BEGINNING;

THENCE, N89°26'59"E, 70.18 FEET;

THENCE, N00°11'14"W, 109.31 FEET;

THENCE, N89°31'16"E, 25.27 FEET;

THENCE, N01°50'39"W, 100.33 FEET;

THENCE, S89°39'57"W, 92.25 FEET;

THENCE, S00°06'18"E, 209.93 FEET, TO THE POINT OF BEGINNING.

ALSO;

A TRACT OF LAND LOCATED IN THE WEST HALF OF SECTION 14, TOWNSHIP 27 NORTH, RANGE 34 WEST, MORE PARTICULARLY DESCRIBED AS FOLLOWS:

COMMENCING AT AN EXISTING IRON PIN AT THE NORTH QUARTER CORNER OF SAID SECTION 14;

THENCE, S89°53'06"W, ALONG THE NORTH LINE OF SAID SECTION 14, A DISTANCE OF 344.34 FEET;

THENCE, S00°06'54"E, 2027.25 FEET;

THENCE, S89°58'44"W, 468.90 FEET;

THENCE, S00°06'18"E, 73.13 FEET, TO THE POINT OF BEGINNING;

THENCE, N89°53'20"E, 96.43 FEET;  
THENCE, S00°12'30"W, 64.96 FEET;  
THENCE, S89°58'32"W, 96.08 FEET;  
THENCE, N00°06'18"W, 64.81 FEET, TO THE POINT OF BEGINNING.

CONTAINING 4.47 ACRES, MORE OR LESS.

## EXHIBIT B

### Permitted Encumbrances

#### SL2CT Land

The lien of General State and County Taxes for the year 1999, due November 1, 1999.

Easement to Southwestern Bell Telephone Company filed February 5, 1964 at 7:59 a.m. in Book 1014 at Page 624.

Easement to The Empire District Electric Company filed May 5, 1983 at 8:19 a.m. in Book 1264 at Page 14.

#### Existing Land

The lien of General State and County Taxes for the year 1999, due November 1, 1999.

Right-of-way to Baltic Operating Company filed September 24, 1956 at 3:37 p.m. in Book 828 at Page 583, as assigned to the Gas Service Company by instrument filed November 13, 1964 at 10:01 a.m. in Book 55 at Page 23 and November 20, 1964 at 11:27 a.m. in Book 1039 at Page 214.

Easement to The Empire District Electric Company filed November 14, 1946 at 9:41 a.m. in Book 526 at Page 574, and Book 526 at page 572.

Right-of-way easement to Jasper County Public Water Supply District No. 1 filed January 16, 1992 at 8:21 a.m. in Book 1402 at Page 1710.

Easement and right-of-way Agreement between Empire District Electric Company and Williams Natural Gas Company filed June 26, 1995 at 8:29 a.m. in Book 1480 at Page 0572.

Easement to The Empire District Electric Company filed April 4, 1996 at 8:33 a.m. in Book 1499 at Page 1235.

Right-of-way to The Empire District Electric Company filed January 24, 1997 at 8:23 a.m. in Book 1521 at Page 2088.

Easement to Southwestern Bell Telephone Company filed February 5, 1964 at 7:59 a.m. in Book 1014 at Page 624.

Easement to Southwestern Bell Telephone Company filed January 11, 1979 at 10:05 a.m. in Book 1220 at Page 49.

Right-of-way for Drainage Ditch is conveyed by instrument filed May 2, 1950 at 8:37 a.m. in Book 643 at Page 515.

Easement to The Empire District Electric Company filed May 5, 1983 at 8:19 a.m. in Book 1264 at Page 14.

Right-of-way for State line road on the West and 20th Street on the North as set forth on Certificate of Survey dated March 30, 1999, signed by Patrick D. Bryant, RLS.

Right-of-way to the County of Jasper filed September 25, 1943 at 10:51 a.m. in Book 468 at Page 350.

#### Existing SL Common

The lien of General State and County Taxes for the year 1999, due November 1, 1999.

Easement and right-of-way Agreement between Empire District Electric Company and Williams Natural Gas Company filed June 26, 1995 at 8:29 a.m. in Book 1480 at Page 0572.

Easement to Southwestern Bell Telephone Company filed February 5, 1964 at 7:59 a.m. in Book 1014 at Page 624.

Easement to Southwestern Bell Telephone Company filed January 11, 1979 at 10:05 a.m. in Book 1220 at Page 49.

Right-of-way for Drainage Ditch is conveyed by instrument filed May 2, 1950 at 8:37 a.m. in Book 643 at Page 515.

Easement to The Empire District Electric Company filed May 5, 1983 at 8:19 a.m. in Book 1264 at Page 14.

Right-of-way for State line road on the West as set forth on Certificate of Survey dated March 30, 1999, signed by Patrick D. Bryant, RLS.

#### EDE Substation

The lien of General State and County Taxes for the year 1999, due November 1, 1999.

Easement to Southwestern Bell Telephone Company filed February 5, 1964 at 7:59 a.m. in Book 1014 at Page 624.

Easement to The Empire District Electric Company filed May 5, 1983 at 8:19 a.m. in Book 1264 at Page 14.

**FORM OF GUARANTEE**

**STATE LINE COMBINED CYCLE GENERATING FACILITY**

This GUARANTEE is dated as of July 26, 1999, by Westar Capital, Inc. (the "Guarantor"), a Kansas corporation, to and in favor of The Empire District Electric Company ("EDE"), a Kansas corporation, as an Owner, The Empire District Electric Company, as Agent, and the other Owners (other than Westar Generating, Inc. ("WGI")) from time to time under the Ownership Agreement (as defined below).

**RECITALS**

WHEREAS EDE, WGI and the Agent executed as of July 26, 1999 a certain Construction, Ownership and Operation Agreement (the "Ownership Agreement") for the purpose of (i) creating and confirming the nature and extent of their respective undivided ownership interests in SLCC and SL Common and (ii) imposing certain covenants and obligations running with their rights, titles and interests in and to SLCC and SL Common. All capitalized terms used herein but not otherwise defined shall have the meanings ascribed to them in the Ownership Agreement; and

WHEREAS Section 1.2(d) of the Ownership Agreement requires, as a condition to the execution of the Ownership Agreement, WGI to cause the Guarantor to issue an unconditional guarantee to each Owner (other than WGI) and to the Agent as to the due and punctual payment of all obligations of WGI under the Ownership Agreement and under each Transaction Document in accordance with the terms of the Ownership Agreement and each such Transaction Document; and

WHEREAS, all of the outstanding capital stock of WGI and the Guarantor is owned by Western Resources, Inc.

NOW, THEREFORE, in consideration of the foregoing and for other good and valuable consideration, the receipt and sufficiency of which are acknowledged, the parties agree as follows:

1. Guarantor Representations, Warranties and Covenants. The Guarantor hereby represents, warrants and covenants to the Owners as follows:

(a) The Guarantor is a corporation duly organized, validly existing and in good standing under the laws of the State of Kansas and has corporate power and authority to execute and deliver this Guarantee, and to perform its obligations hereunder.

(b) The execution, delivery and performance by the Guarantor of this Guarantee have been duly authorized by all necessary corporate action on the part of the Guarantor, do not contravene any law, or any governmental rule, regulation or order, applicable to the Guarantor or its properties, or the Articles of Incorporation or By-Laws of the Guarantor, and do not and will not contravene the provisions of, or constitute a default under, any indenture, mortgage, security agreement, contract or other instrument to which the Guarantor is a party or by which the Guarantor is bound. All requisite governmental, regulatory and vendor approvals and consents for the execution, delivery and performance by the Guarantor of this Guarantee have been obtained. This Guarantee constitutes a legal, valid and binding obligation of the Guarantor enforceable in accordance with its terms, except as limited by applicable bankruptcy, insolvency, reorganization or similar laws at the time in effect.

2. Guarantee.

(a) The Guarantor, by execution of this Guarantee, unconditionally guarantees to each Owner (other than WGI) and to the Agent the due and punctual payment of all obligations of WGI (accruing prior to the termination of this Guarantee) under the Ownership Agreement and under each Transaction Document in accordance with the terms of the Ownership Agreement and each such Transaction Document (the "Guaranteed Obligations"). The Guarantor, by execution of this Guarantee, agrees that its obligations hereunder shall be absolute and unconditional, irrespective of, and shall be unaffected by, any circumstances which may constitute a legal or equitable discharge of a surety.

(b) Notwithstanding anything else to the contrary in this Guarantee, the aggregate liability of the Guarantor under this Guarantee at any particular time shall be limited to an amount equal to the sum of (i) the then remaining Construction Cost Balance multiplied by WGI's Ownership Share in SLCC plus (ii) the then remaining monthly payments required by Section 5.3(b) of the Ownership Agreement; provided, however, that if at any such time the summation of the amounts in (i) and (ii) above is less than \$25 million, then the aggregate liability of the Guarantor at such time shall be limited to \$25 million.

(c) The Guarantor waives diligence, presentment, demand for payment, filing of claims with a court in the event of merger or bankruptcy of WGI, any right to require a proceeding first against WGI, protest or notice with respect to any such obligation evidenced thereby and all demands whatsoever, and covenants that this Guarantee will not be discharged as to any such obligation except by payment in full of such obligation.

(d) Notwithstanding anything else to the contrary in this Guarantee, this Guarantee, and all obligations and liability of the Guarantor hereunder (except for obligations and liabilities which are accrued but unpaid on the date of such termination, which shall remain as obligations and liabilities of the Guarantor until fully satisfied), shall terminate automatically and without need for the execution of any further documentation on the earlier of either of the following: (i) the date on which SLCC is first placed in commercial operation or

(ii) the date on which WGI assigns its Ownership Shares in accordance with the terms of the Ownership Agreement to a WGI Preferred Transferee. The Owners and the Agent shall also execute a termination and release of this Guarantee in the event that another entity meeting the criteria outlined in Section 1.2(d) of the Ownership Agreement executes a guarantee of the obligations of WGI substantially to the extent outlined herein.

(e) The Guarantor shall, to the extent of any payment by it pursuant to this Guarantee, be subrogated to all the rights of the Owners (other than WGI) and the Agent as to all payments and damages payable by WGI with respect to which payments have been made by the Guarantor, but, so long as any Guaranteed Obligations remain outstanding, such right of subrogation on the part of the Guarantor shall in all respects be subordinate and junior in right of payment to the prior indefeasible payment in full of all the Guaranteed Obligations to the Owners (other than WGI) and the Agent.

### 3. Miscellaneous.

(a) Notices. Any notice, demand, request or consent provided for in this Guarantee or made in connection herewith shall be deemed to be properly served if given in accordance with Section 9.3 of the Ownership Agreement. Notices to the Guarantor shall be directed to it at Westar Capital, Inc., 818 South Kansas Avenue, Topeka, Kansas 66612, attention of President, telecopier number (785) 575-1774, and with a copy to WGI and Western Resources, Inc. at the addresses set forth in Section 9.3 of the Ownership Agreement.

(b) Severability. In the event any provision of this Guarantee or the application thereof to any person or circumstance shall be held invalid in any final decision by a court having jurisdiction in the premises, the remainder of this Guarantee and its application to persons or circumstances, other than those as to which it was held invalid, shall not be affected thereby.

(c) Governing Law. The validity, interpretation and performance of this Guarantee and each of its provisions shall be governed by the laws of the State of Missouri, without giving effect to any provisions relating to conflict of laws.

(d) Successors and Assigns. This Guarantee shall inure to the benefit of each Owner (other than WGI), the Agent and their successors and assigns and shall be binding upon the Guarantor and its successors and assigns.

(e) Amendments. An amendment to this Guarantee shall be effective upon written approval by the Guarantor and such Owner or Owners whose collective Ownership Shares in SLCC are at least 75% (excluding WGI for purposes of this calculation) so long as such amendment does not cause the relative rights and obligations of any Owner to differ in any respect from the rights and obligations of any other Owner. Any other amendment requires the written approval of each Owner (other than WGI) and the Guarantor.

(f) Headings. The Section headings herein are for convenience only and shall not affect the construction hereof.

(g) Counterparts. This Guarantee may be executed in any number of counterparts, and all such counterparts taken together shall be deemed to constitute one and the same instrument.

(h) Effective Date and Term. This Guarantee shall continue in full force and effect until terminated in accordance with Section 2(d) hereof or, if still in effect at such time, shall terminate concurrently with the termination of the Ownership Agreement.

[Signature page to follow]

IN WITNESS WHEREOF, the parties hereto have caused this Guarantee to be executed by their duly authorized officers, the day and year first above written.

WESTAR CAPITAL, INC.,  
as Guarantor

By: \_\_\_\_\_  
Name: Lee Wages  
Title: President

THE EMPIRE DISTRICT ELECTRIC  
COMPANY,  
as an Owner

By: \_\_\_\_\_  
Name: Virgil E. Brill  
Title: Vice President - Energy Supply

THE EMPIRE DISTRICT ELECTRIC COM-  
PANY,  
as Agent

By: \_\_\_\_\_  
Name: Virgil E. Brill  
Title: Vice President - Energy Supply

## SCHEDULE A

### List of Existing Equipment, Inventories and Facilities at SL Common

| FERC<br>Account | EDEC<br>UOP No. | UOP Description |
|-----------------|-----------------|-----------------|
|-----------------|-----------------|-----------------|

#### IMPROVEMENTS TO SITE

|     |       |                                                                                                                                                      |
|-----|-------|------------------------------------------------------------------------------------------------------------------------------------------------------|
| 341 | 10502 | <b>Drains - storm</b><br>Culverts, ditches, tiles etc., located through out the site,<br>draining storm runoff into a catch basin south of the site. |
|     | 10503 | <b>Drains - sewage</b><br>Piping, fittings etc. from the plant warehouse and office<br>to the sewer system.                                          |
|     | 11001 | <b>Chainlink security fence</b><br>Fence surrounding the main facilities.                                                                            |
|     | 11002 | <b>Barbwire fence</b><br>Fence surrounding other property at the site.                                                                               |
|     | 14501 | <b>Plant roads</b><br>Asphalt road into the plant site, around and through<br>Unit 1 and 2.                                                          |
|     | 15501 | <b>Deep Well</b><br>Well for general plant use, includes metal building, pump,<br>motor, etc. 1000 ft. deep.                                         |

#### FIRE PROTECTION SYSTEM

|     |       |                                                                                                                                     |
|-----|-------|-------------------------------------------------------------------------------------------------------------------------------------|
| 341 | 11501 | <b>Fire protection system</b><br>System for general plant fire protection, includes pump,<br>motor, controls, piping, and hydrants. |
|     | 11502 | <b>250,000 gallon tank</b>                                                                                                          |

Fire protection system water tank.

## **FOUNDATIONS**

|     |       |                                                                                      |
|-----|-------|--------------------------------------------------------------------------------------|
| 341 | 12001 | Foundation - complete for one structure<br>Concrete foundations - general structures |
|-----|-------|--------------------------------------------------------------------------------------|

## **LIGHT AND POWER SYSTEM**

|     |       |                                                                                             |
|-----|-------|---------------------------------------------------------------------------------------------|
| 341 | 12501 | Light and power system - complete<br>General site lighting and electrical power provisions. |
|-----|-------|---------------------------------------------------------------------------------------------|

## **PLUMBING SYSTEM**

|     |       |                                                                                                                    |
|-----|-------|--------------------------------------------------------------------------------------------------------------------|
| 341 | 13001 | Plumbing system - complete<br>Piping, fittings, fixtures for warehouse and office. Water<br>and in-building sewer. |
|-----|-------|--------------------------------------------------------------------------------------------------------------------|

## **BUILDINGS**

|     |       |                                                                                                           |
|-----|-------|-----------------------------------------------------------------------------------------------------------|
| 341 | 14001 | Maintenance shop<br>Metal warehouse and maintenance building - 3374 sq. ft.                               |
|     | 14002 | Office building<br>Metal office building - 3374 square feet                                               |
|     | 14003 | Oil storage building<br>900 sq. ft. building with overhead door, 2 entrance doors<br>and oil containment. |
|     | 14004 | Permanent guard house<br>Guard house at main gate to site.                                                |
|     | 14005 | Demineralized water building<br>Motors, pumps, valves for demineralized water.                            |

## **SERVICE WATER SYSTEM**

- |     |       |                                                                                                                                        |
|-----|-------|----------------------------------------------------------------------------------------------------------------------------------------|
| 341 | 15502 | <b>Service water pump skid</b><br>Includes motor, pump, piping and valves for service water.                                           |
|     | 15503 | <b>Piping-One continuous run for a single purpose,<br/>any material</b><br>Piping for service water outside of the service water skid. |
|     | 15504 | <b>Valves</b><br>Valves for service water outside of the service water skid.                                                           |

## **WATER INJECTION SYSTEM**

- |     |       |                                                                                 |
|-----|-------|---------------------------------------------------------------------------------|
| 342 | 22502 | <b>Tank - Demineralized water</b><br>735,000 gallon demineralized water storage |
|-----|-------|---------------------------------------------------------------------------------|

## **AIR COMPRESSOR SYSTEM**

- |     |       |                                                                                    |
|-----|-------|------------------------------------------------------------------------------------|
| 345 | 50001 | <b>Air compressor-Ingersoll Rand</b><br>General purpose air source for plant site. |
|-----|-------|------------------------------------------------------------------------------------|

## **GROUNDING SYSTEM**

- |     |       |                                                                                     |
|-----|-------|-------------------------------------------------------------------------------------|
| 345 | 52001 | <b>Grounding system complete for single purpose</b><br>Plant site grounding system. |
|-----|-------|-------------------------------------------------------------------------------------|

## **PANELS**

- |     |       |                                                                                    |
|-----|-------|------------------------------------------------------------------------------------|
| 345 | 56001 | <b>Breaker panel - for medium voltage equip.</b><br>Panel for auxiliary equipment. |
|-----|-------|------------------------------------------------------------------------------------|

## **COMMUNICATIONS SYSTEM**

- |     |       |                                                                             |
|-----|-------|-----------------------------------------------------------------------------|
| 346 | 60001 | <b>Plant communication system</b><br>Gaitronics plant signal paging system. |
|     | 60002 | <b>Telephone system</b><br>Plant site telephone system                      |

60005      Plant sign  
State Line plant sign at entrance site.

### **TOOLS AND EQUIPMENT**

346      60501      Tools  
Various hand tools for plant maintenance.

61003      Mowing equipment  
Tractor and mower for plant site.

### **OFFICE FURNITURE AND EQUIPMENT**

346      61501      Furniture  
Plant office furniture

61503      Office equipment  
Plant calculators etc.

**ACCOUNTING AND CASH FLOW MEMORANDUM**  
**STATE LINE COMBINED CYCLE GENERATING FACILITY**

This MEMORANDUM is dated as of July 26, 1999, by and among The Empire District Electric Company ("EDE"), a Kansas Corporation having its principal office in Joplin, Missouri, as an Owner; Westar Generating, Inc. ("WGI"), a Kansas corporation having its principal office in Topeka, Kansas, as an Owner; and The Empire District Electric Company, as Agent.

**RECITALS**

WHEREAS EDE, WGI and the Agent executed as of July 26, 1999 a certain Construction, Ownership and Operation Agreement (the "Ownership Agreement") for the purpose of (i) creating and confirming the nature and extent of their respective undivided ownership interests in SLCC and SL Common and (ii) imposing certain covenants and obligations running with their rights, titles and interests in and to SLCC and SL Common. All capitalized terms used herein but not otherwise defined shall have the meanings ascribed to them in the Ownership Agreement; and

WHEREAS Section 5.3(c) of the Ownership Agreement requires that the Owners shall, by and through agreement among themselves, enter into an Accounting and Cash Flow Memorandum for the purpose of establishing the mechanics for the billing of and payment for the expenditures outlined in Sections 5.3(a) and 5.3(b) of the Ownership Agreement.

NOW, THEREFORE, EDE, WGI and the Agent, each for itself, its successors and assigns, and for the benefit of the others, their successors and assigns, hereby covenant and agree as follows:

1. Scope. This memorandum covers all matters relating to accounting, billing and payment procedures and record keeping pertaining to the timely provision of funds necessary for site acquisition, construction and commercial operation of SLCC and SL Common.

2. Accounting Manual. The Agent shall develop and keep all records and perform all accounting for SLCC and SL Common required by (i) each Owner to meet its accounting, financial, and statistical requirements, and (ii) all regulatory bodies and taxing authorities having appropriate jurisdiction. Each Owner, however, shall be responsible for preparing and filing its required governmental reports. Such accounting and record keeping shall be performed in accordance with the procedures set forth in the Accounting Manual at-

tached hereto. The Accounting Manual may be amended at any time by the Accounting Committee.

3. Construction Estimates. Based on decisions of the Management Committee covering all construction schedules, the Agent shall undertake to prepare written estimates of the cash requirements for site acquisition and construction of SLCC and SL Common. Such estimates shall be made monthly after the signing of this Memorandum until the date of commercial operation of SLCC. The Agent shall revise such estimates when changes in deliveries, construction schedules or other factors materially affect the cash required during the progress of construction. Copies of all such estimates shall be furnished promptly to each of the Owners.

4. Annual Budgets.

(a) On or about August 1 of 2000, and of each year thereafter, each Owner shall furnish to the Agent its long-term forecasts of (1) its anticipated fuel purchases and (2) statistical information including quantity of gas burned and kwh generation.

(b) On or about September 1 of 2000 and of each year thereafter, the Agent shall prepare and furnish to the Owners a five-year plan for the period commencing with the next succeeding January 1. The five-year plan shall include (1) required or desirable capital expenditures for additions, betterments, removals and retirements, (2) operation and maintenance expenses and (3) planned outage schedules. The Agent shall receive, and upon request, discuss with any Owner the comments of such Owner concerning the five-year plan or any revisions thereof, and the Agent shall incorporate the comments of any such Owner therein to the extent the Agent in its sole discretion deems appropriate. The first year of each five-year plan will be the annual budget for the year commencing with the next succeeding January 1. Any single property addition (not including betterments or improvements to existing equipment) contained in the annual budget which is budgeted to cost more than \$15,000,000 must be approved by a Supermajority Vote of the Management Committee. In addition, any annual actual expenditures greater than 20% over the annual capital or operation and maintenance budget shall be subject to approval by a Supermajority Vote of the Management Committee.

5. Payments, Billings and Settlements - Property Transfers. Section 5.3(b) of the Ownership Agreement and the Payment Agreement between EDE and WGI dated the date hereof provide for monthly payments from WGI to EDE for consideration for its future ownership of undivided interests in SL2CT, the Existing Land, and the Existing SL Common. WGI shall pay to EDE on or before the first business day of each month, starting May 3, 1999 and extending through and including October 2, 2000, the amount specified in the Payment Agreement.

6. Payments, Billings and Settlements - Construction Expenditures.

(a) Substantially all payments to outside vendors related to costs incurred in connection with site development and construction of SLCC and SL Common shall be made from a separate controlled disbursement bank account (the "SLCC Bank Account") managed by the Agent. The funds necessary to satisfy these payments made from the SLCC Bank Account will be drawn on an as-needed basis from an account of the Owner that is acting as Agent (the "Agent-Owner"). In addition, internal charges applicable to such site development and construction, which the Agent-Owner incurs, shall be paid directly from an account of the Agent-Owner. The Agent-Owner shall be reimbursed by the other Owners (the "Non-Agent Owners") in proportion to their respective Ownership Shares in SLCC or SL Common, as applicable, in accordance with the following paragraph.

(b) The Agent-Owner will require periodic funding by the Non-Agent Owners, semi-monthly on approximately the 5th and 15th business day of each month, or when the aggregated total of unfunded construction expenditures reaches \$2.5 million or another threshold as determined by the Accounting Committee. The Agent-Owner shall notify the Non-Agent Owners three days in advance of each such funding requirement. The Non-Agent Owners shall be billed a monthly carrying charge at the end of each month (evidenced by a worksheet showing the daily cash flow activity for such month) on the funds provided by the Agent-Owner on their behalf, which shall be assessed on funds from the time payments are made by the Agent-Owner until the Agent-Owner is reimbursed by the Non-Agent Owners. The carrying charge shall be calculated by multiplying the Agent-Owner's actual weighted average commercial paper rate for the month (or if the Agent-Owner has no commercial paper outstanding for such month, the LIBOR Rate) (the "Interest Rate") by the daily average outstanding balance on a 360 day basis at the end of each calendar month. The Accounting Committee, by a Supermajority Vote, may review and make changes to the funding threshold and interest rate used for the carrying charge whenever it deems appropriate.

"LIBOR Rate" shall mean for each month, 0.25% plus (a) the LIBOR Index Rate for such month, if such rate is available, or (b) if the LIBOR Index Rate cannot be determined, the arithmetic average of the rates of interest per annum (rounded upwards, if necessary, to the nearest 1/100 of 1%) at which deposits in U.S. dollars in immediately available funds are offered to first-class banks at 11:00 a.m. (London, England time) on the last business day, of each month by three or more major banks in the interbank eurodollar market (as selected by the Agent) for a one-month period and in an amount equal or comparable to the outstanding obligations on which interest is to be paid.

"LIBOR Index Rate" shall mean for any month, the rate per annum (rounded upwards, if necessary, to the next higher one hundred-thousandth of a percentage point) for deposits in U.S. dollars for a one-month period, which appears on the Telerate Page 3750 as of 11:00 a.m. (London, England time) on the last business day of such month.

(c) Documentation of all bills paid and fundings made shall be kept in a manner that will allow for an audit of the construction costs as deemed necessary by the Accounting Committee.

(d) Notwithstanding any other provisions of the Memorandum, no Owner shall be called upon to reimburse any other Owner for its Allowance for Funds Used During Construction.

(e) Billing methods and carrying charge calculations may be revised and based on another method determined by the Accounting Committee whenever it deems appropriate.

(f) All changes or revisions to terms or procedures which the Accounting Committee is permitted to make pursuant to this Section 6 shall be binding on the parties hereto.

7. Payments, Billings and Settlements - Operation Expenditures.

(a) Substantially all payments to outside vendors related to costs incurred in connection with the operation and maintenance of SLCC and SL Common shall be made from the SLCC Bank Account. The funds necessary to satisfy these payments made from the SLCC Bank Account will be drawn on an as-needed basis from an account of the Agent-Owner. In addition, internal charges applicable to such operating expenses, which the Agent-Owner incurs, shall be paid directly from an account of the Agent-Owner. The Agent-Owner shall be reimbursed by the Non-Agent Owners in proportion to their respective Ownership Shares (except as provided for in Section V.C of the Accounting Manual) in SLCC or SL Common, as applicable, in accordance with the procedures set forth in the following paragraph.

(b) The Agent-Owner will require periodic funding by the Non-Agent Owners, semi-monthly on approximately the 5th and 15th business day of each month. The Agent-Owner shall notify the Non-Agent Owners three days in advance of each such funding requirement. The Non-Agent Owners shall be billed a monthly carrying charge at the end of each month (evidenced by a worksheet showing the daily cash flow activity for such month) on the funds provided by the Agent-Owner on their behalf, which shall be assessed on funds from the time payments are made by the Agent-Owner until the Agent-Owner is reimbursed by the Non-Agent Owners. The carrying charge shall be calculated by multiplying the Interest Rate by the daily average outstanding balance on a 360 day basis at the end of each calendar month. The Accounting Committee, by Supermajority Vote, may review and make changes to the funding periods and interest rate used for the carrying charge whenever it deems appropriate.

(c) Documentation of all bills paid and fundings made shall be kept in a manner that will allow for an audit of all SLCC and SL Common costs as deemed necessary by the Accounting Committee.

(d) Billing methods and carrying charge calculations may be revised and based on another method determined by the Accounting Committee whenever it deems appropriate.

(e) All changes or revisions to terms or procedures which the Accounting Committee is permitted to make pursuant to this Section 7 shall be binding on the parties hereto.

8. Material and Supply Inventories. Material and supply inventories for SLCC and SL Common will be owned by the Owners in proportion to their respective Ownership Shares unless otherwise determined by the Accounting Committee. All payments, billings and settlements for purchase relating to such material and supply inventories shall be made in accordance with the procedures set forth in Section 6 hereof.

9. Other Procedures. The Accounting Committee shall develop such other procedures, which shall be binding on the parties hereto, as may be necessary or convenient for equitably sharing the timely provision of cash for this project.

10. Payment Disputes. Each Owner shall pay all invoices, funding requests and all other charges under this Memorandum and the Ownership Agreement when due. Each Owner shall have two years to question or contest the validity, propriety or amount of any such charge after which time the correctness of such charge shall be conclusively presumed. In the event any Owner by timely notice questions or contests the correctness of any such charge, the Owners shall in good faith attempt to resolve such dispute by consultation. Any subsequent adjustment to the invoice, funding request or other charge resulting from consultation shall include interest, calculated from the date of payment of the disputed amount until the date the adjustment is made using the Interest Rate. In the event that the Owners are unable to resolve any dispute in this manner, the dispute may be submitted to resolution pursuant to Section 8.1 of the Ownership Agreement.

11. Ownership Agreement Precedence. Neither this Memorandum nor any amendment, modification or supplement hereto shall constitute an amendment to the Ownership Agreement unless and until the Ownership Agreement is amended in accordance with its terms, including, but not limited to, Section 9.7 thereof. Any inconsistency between any provision of the then-effective Ownership Agreement and any provision herein shall be resolved by application of the provisions of the then-effective Ownership Agreement, which shall take precedence and be controlling, any other understanding, agreement, covenant or provision to the contrary notwithstanding.

12. Interim Agreement. Notwithstanding anything to the contrary herein, WGI shall not be obligated to make any payment hereunder to the extent it has made such payment pursuant to the interim agreement dated as of April 30, 1999 among EDE, WGI and Western Resources, Inc.

13. Notices. Any notice, demand, request or consent provided for in this Memorandum or made in connection herewith shall be deemed to be properly served if given in accordance with Section 9.3 of the Ownership Agreement.

14. Waiver. No waiver by an Owner of its right with respect to default under this Memorandum shall be effective unless all non-defaulting Owners waive their respective rights. Any such waiver shall not be deemed to be a waiver with respect to any subsequent default or matter. No delay short of the applicable statutory period of limitations in asserting or imposing any such right shall be deemed a waiver of such right.

15. Severability. In the event any provision of this Memorandum or the application thereof to any person or circumstance shall be held invalid in any final decision by a court having jurisdiction in the premises, the remainder of this Memorandum and its application to persons or circumstances, other than those as to which it was held invalid, shall not be affected thereby.

16. Governing Law. The validity, interpretation and performance of this Memorandum and each of its provisions shall be governed by the laws of the State of Missouri, without giving effect to any provisions relating to conflict of laws.

17. Successors and Assigns. This Memorandum shall inure to the benefit of and be binding upon the successors and assigns of each Owner; provided, however, that this Memorandum shall not be assigned except in connection with the transfer by an Owner of all or any portion of its Ownership Shares, in which event such Owner shall assign and shall cause such transferee to assume the related portion of its rights and obligations under this Memorandum, all as provided for in Section 2.6 of the Ownership Agreement.

18. No Third-Party Beneficiary. The parties hereto do not intend to create rights in or to grant remedies to any third party as a beneficiary of this Memorandum or of any duty, covenant, obligation or undertaking established herein.

19. Amendments. An amendment to this Memorandum shall be effective upon written approval by such Owner or Owners whose collective Ownership Share in SLCC is at least 75% so long as such amendment does not cause the relative rights and obligations of any Owner to differ in any respect from the rights and obligations of any other Owner. Any other amendment requires the written approval of each Owner.

20. Headings. The Section headings herein are for convenience only and shall not affect the construction hereof.

21. Counterparts. This Memorandum may be executed in any number of counterparts, and all such counterparts taken together shall be deemed to constitute one and the same instrument.

22. Effective Date and Term. This Memorandum shall continue in full force and effect during the term of the Ownership Agreement and shall terminate concurrently with the termination of said Ownership Agreement.

[Signature page to follow]

IN WITNESS WHEREOF, the parties hereto have cause this Memorandum to be executed by their duly authorized officers, the day and year first above written.

THE EMPIRE DISTRICT ELECTRIC  
COMPANY,

as an Owner

By: Virgil E. Brill  
Name: Virgil E. Brill  
Title: Vice President - Energy Supply

WESTAR GENERATING, INC.,  
as an Owner

By: Thomas L. Grennan  
Name: Thomas L. Grennan  
Title: President

THE EMPIRE DISTRICT ELECTRIC  
COMPANY,

as Agent

By: Virgil E. Brill  
Name: Virgil E. Brill  
Title: Vice President - Energy Supply

Addendum to Accounting  
and Cash Flow Memorandum

ACCOUNTING MANUAL

STATE LINE COMBINED CYCLE GENERATING FACILITY

I. Purpose

This Accounting Manual sets forth the agreed record keeping and accounting procedures relating to site acquisition, construction and commercial operation of the State Line Combined Cycle Generating Facility jointly owned by The Empire District Electric Company ("EDE") and Westar Generating Inc. ("WGI") as tenants in common, each with undivided ownership interests therein, as set forth in the Construction, Ownership and Operation Agreement (the "Ownership Agreement") dated as of July 26, 1999 among EDE, WGI and The Empire District Electric Company, as Agent. All capitalized terms used herein but not otherwise defined shall have the meanings ascribed to them in the Ownership Agreement.

II. Ownership Interest

Ownership interest as used herein as a basis of allocation of expenses, unless otherwise specified, shall be the respective Ownership Shares of the Owners in SLCC as determined in accordance with the Ownership Agreement.

III. Maintenance of Records

The Agent shall develop, maintain and keep all necessary original, microform, or electronic copies of accounting records and supporting documents in accordance with the applicable requirements of the Federal Energy Regulatory Commission ("FERC") and all other regulatory bodies and taxing authorities having jurisdiction. The Agent shall keep such records and supporting documents at its principal office wherever the same may be located from time to time. The Agent, during normal working hours, shall make all such original, microform, or electronic copies of records and supporting documents available at its principal office to appropriate personnel of the Owners, and on written request by an Owner, to independent auditors and authorized representatives of any regulatory body or taxing authority having jurisdiction, for inspection, copying, audit and other proper business requirements. All accounts and all original records and supporting documents shall be retained by the Agent at least as long as required by the "Federal Energy Regulatory Commission Regulations to Govern the Preservation of Records of Public Utilities and Licensees". Upon request by an Owner, the Agent shall

furnish copies of any or all such accounts, records or supporting documents to such Owner, and such Owner shall pay for the cost of preparing such copies.

IV. Construction and Removal Costs

Construction, removal and/or net salvage costs incurred by or for the account of each of the Owners shall be accounted for in accordance with the regular accounting procedures followed by them unless otherwise specified in this Section IV. All construction, removal and/or net salvage costs shall be ultimately shared by the Owners in proportion to their Ownership Shares in SLCC or SL Common, as applicable.

The remainder of this Section IV, which will comment on specific construction, removal and net salvage cost elements, is not intended to be all inclusive, but is intended only to set forth those items which appear to require specific agreement among the Owners.

A. Properly Billable Charges

1. Paid Absences – Labor cost of employees of the Owner that is acting as Agent (the "Agent-Owner") shall include all direct costs including expenses for paid absences due to vacation, holidays, sickness or other absences, such as those provided for by contracts with labor unions, in addition to direct payroll cost, in each case, in accordance with the regular procedures of the Agent-Owner. Such costs shall be capitalized and shared by the Owners in accordance with their respective Ownership Shares in SLCC or SL Common, as applicable.

2. Payroll Taxes and Employee Benefits – Specific costs for Federal and state unemployment taxes, FICA tax and employee benefits (other than pensions and healthcare costs set forth below) shall be capitalized and shared by the Owners as actually incurred in proportion to their respective Ownership Shares in SLCC or SL Common, as applicable.

3. Pensions and Healthcare – Pension and healthcare costs shall be charged as a capital item to each Owner as incurred by the Agent-Owner (whether on a cash basis or by accrual) and each of the Owners shall be responsible for expenses actually incurred by the Agent-Owner on a cash basis, in each case, in proportion to their respective Ownership Shares in SLCC or SL Common, as applicable.

4. Injuries and Damages – Costs related to injuries and damages shall be charged as a capital item to each Owner as incurred by the Agent-Owner (whether on a cash basis or by accrual) and each of the Owners shall be responsible for expenses actually incurred by the Agent-Owner on a cash basis, in each case, in proportion to their respective Ownership Shares in SLCC or SL Common, as applicable. These costs may include, but are not limited

to, the cost of workmen's compensation, public liability, and property damage insurance claims less than the insurance deductible.

5. Use of Owner Vehicles – The costs relating to the usage of vehicles owned by the Owners shall be capitalized and shared by the Owners in proportion to their respective Ownership Shares on the basis of reports of actual hours or miles of use, which physical measure shall be priced on the same basis as that used by the Agent-Owner for distribution of the cost of usage of similar vehicles.

6. Coordination and Supervision Costs – The cost of each Owner's or Agent's employees (as determined in accordance with the normal procedures of such Owner or the Agent) which is spent in coordination and supervision of this project and out-of-pocket expenses of corporate officers directly related to this project, shall be capitalized and shared by the Owners in proportion to their respective Ownership Shares in SLCC or SL Common, as applicable. That portion of the salary of EDE's Vice President of Energy Supply and WGI's Vice President of Generation Services directly related to this project (but no portion of the salary of any other corporate officer) shall be capitalized and shared by the Owners in proportion to their respective Ownership Shares in SLCC or SL Common, as applicable.

7. Purchasing Expense – It is contemplated that most of the purchasing will be done by the Agent during the initial construction of SLCC. In the event any purchasing is done (at the direction of the Agent) by any Owner in its individual capacity during construction, or any construction contracts are negotiated related to construction (including any such contracts negotiated or entered into by EDE prior to July 26, 1999), expenses, including contracting expense or direct expenses, shall be capitalized and shared by the Owners in proportion to their respective Ownership Shares in SLCC or SL Common, as applicable.

8. Administrative and General Expenses – Direct charges for administrative and general expenses shall be capitalized and shared by the Owners in proportion to their respective Ownership Shares in SLCC or SL Common, as applicable, except to the extent specifically provided in paragraph 6 above.

B. Property Taxes

1. During the period of construction, each Owner shall report to the appropriate taxing authority its investment in assets relating to SLCC and SL Common subject to real estate and personal property taxes and shall make timely payment of all taxes levied thereon. All such real estate and personal property taxes incurred during this period shall be capitalized.

2. Notwithstanding the foregoing, all real estate and personal property taxes incurred with respect to land and property owned on the date hereof by EDE that shall

become part of SLCC or SL Common (collectively, the "Transferred Property"), shall be shared by the Owners for the year of the transfer, in proportion to their respective Ownership Shares in SLCC or SL Common, as applicable, prorated for that year, based on the date of final transfer of such property.

3. In the event real estate and personal property taxes (other than taxes with respect to the Transferred Property during the applicable year of transfer) are not levied separately upon the individual Owners for their respective Ownership Shares, but instead are levied upon the Agent or the Agent-Owner for all Ownership Shares, the Owners shall be responsible for their respective share of all real estate and personal property taxes relating to SLCC and SL Common in proportion to their respective Ownership Shares in SLCC and SL Common, as applicable.

4. Each Owner shall record its property tax expense directly on its own books.

C. Insurance Program – All insurance costs referred to in the Insurance Memorandum incurred during the period of construction shall be capitalized and shared by the Owners in proportion to their respective Ownership Shares in SLCC or SL Common, as applicable, unless otherwise specified in the Insurance Memorandum.

D. Legal Costs – The following legal costs shall be capitalized and shared by the Owners in proportion to their respective Ownership Shares in SLCC or SL Common, as applicable: (a) any basic legal retainer fee paid to an outside attorney or law firm to the extent the attorney or legal firm has been retained specifically because of the construction of this project, (b) fees in excess of normal retainers which are incurred because of the construction of this project and (c) expenses of attorneys which are related to land acquisition or to the construction of this project.

E. Directly Incurred Expenses – The cost of any directly incurred expense to facilitate the construction of SLCC or SL Common shall be capitalized and shared by the Owners in proportion to their respective Ownership Shares in SLCC or SL Common, as applicable.

F. Allowance for Funds Used During Construction – Each Owner shall calculate the amount of the Allowance for Funds Used During Construction ("AFUDC") applicable to its Ownership Shares each month, using the AFUDC rate established by such Owner.

G. Construction Power – EDE shall provide electric service for construction power at EDE's regular rate for company use facilities. The cost of construction power shall be shared by the Owners according to their respective Ownership Shares in SLCC.

H. Test Runs

1. Actual costs for fuel used during test runs shall be shared by the Owners in proportion to their respective Ownership Shares in SLCC, and such costs net of energy revenue shall be individually capitalized by each Owner on its own books, unless otherwise prescribed by the FERC. All fuel handling costs and testing costs incurred prior to the date of commercial operation shall be capitalized, unless otherwise prescribed by the FERC, and shared by the Owners in proportion to their respective Ownership Shares in SLCC.

2. The energy generated during test runs will be delivered to the SLCC electrical bus. The energy will be owned by the Owners based on their respective Ownership Shares in SLCC. It will be the responsibility of the Owners to make proper transmission arrangements for and utilize the energy.

I. Training of Personnel – At various dates prior to the date of commercial operation it will be necessary for the Agent to assign to SLCC the personnel who will operate and maintain SLCC for the purposes of familiarization with the equipment and for training in its operation and maintenance. All cost of this training shall be capitalized, as required by the FERC in its Uniform System of Accounts, and shall be shared by the Owners in proportion to their respective Ownership Shares in SLCC.

J. Audit of Construction Cost – During the course of the construction of SLCC it is desirable to perform certain internal audit work. The program, timing and scope of the audit work shall be established by the Management Committee. Any or all of the Owners may furnish personnel assigned to this work. All cost of this work, including the time of employees assigned thereto shall be capitalized and shared by the Owners in proportion to their respective Ownership Shares in SLCC.

K. Accounting Costs – The Agent shall provide the resources (including employees and any necessary liaisons with contractors) required to maintain the necessary coordination between the accounting records of the Owners. These employees will also be responsible for keeping any special records required for the proper sharing of construction costs between the Owners. Any time actually spent on these duties by said employees shall be capitalized and shared by the Owners in proportion to their respective Ownership Shares in SLCC.

V. Operating Expenses

Operating expenses incurred by or for the account of each of the Owners shall be accounted for in accordance with the regular accounting procedures followed by them unless otherwise specified in this Section V. All operating expenses shall be ultimately shared by the Owners in proportion to their Ownership Shares in SLCC or SL Common, as applicable.

The remainder of this Section V, which will comment on specific cost elements, is not intended to be all inclusive, but is intended only to set forth those items which appear to require specific agreement among the Owners.

A. Fuel

1. (a) Firm Transportation – Reservation charges associated with the gas transportation agreements referred to in Section 0.3(iii) of the Ownership Agreement shall be shared by each of the Owners in accordance with their respective Ownership Shares in SLCC. All transportation charges for commodity, fuel (shrinkage) and associated balancing shall be charged in the month incurred, and will be shared on the basis of the proportion of total net kilowatt-hours generated for each Owner during the month to the total net kilowatt-hours generated for all Owners during the month, or as amended by the Fuel Committee, except as provided in Section V, paragraph I.

(b) Firm Transportation Capacity Release to EDE's or WGI's Other Facilities – SLCC will be credited monthly for any release or use thereof of SLCC firm transportation capacity at EDE's or WGI's other facilities (or facilities of WGI's affiliates, to the extent permitted by the Gas Transportation Agreements) as a reservation charge credit equal to the weighted average release rate (as set forth in the Gas Transportation Agreements) for the month or at a rate agreed to by the Fuel Committee. Either EDE or WGI (or such affiliates) may utilize any capacity of the other party to the extent and for so long as such other party has decided not to use that capacity. The Agent shall maintain a report of all nominations made on behalf of EDE's or WGI's other facilities (or facilities of WGI's affiliates, to the extent permitted by the Gas Transportation Agreements). With respect to quantities nominated under the gas transportation agreements transported for EDE's and/or WGI's facilities (or facilities of WGI's affiliates, to the extent permitted by the Gas Transportation Agreements), EDE and/or WGI (or such affiliates) shall be billed all transportation charges for commodity, fuel (shrinkage) and associated balancing in the month such charges are incurred.

2. Fuel Handling and Testing - All fuel handling and testing expenses shall be charged in the month incurred, and shall be shared on the basis of the proportion of total net kilowatt-hours generated for each Owner during the month to the total net kilowatt-hours for all Owners during the month, except as provided in Section V, paragraph I.

3. To the extent the Agent purchases all fuel commodity or secures fuel through hedge or derivative transaction on behalf of the Owners, all expenses incurred by the Agent related thereto shall be charged in the month incurred, and shall be shared on the basis of the proportion of total net kilowatt-hours generated for each Owner during the month to the total net kilowatt-hours for all Owners during the month, except as provided in Section V, paragraph I. Fuel secured by the Agent through hedging or derivative transactions on behalf of the Owners must be approved by the Management Committee prior to conducting such trans-

actions. Further, risk management policies and procedures, agreed upon by the Management Committee, must be developed prior to engaging in these types of transactions.

4. To the extent that an Owner, in its individual capacity, purchases some or all of its required monthly fuel commodity or secures fuel through hedge or derivative transaction, then (a) if the Agent has not secured any quantity of fuel for operation in a month, any such Owners procuring fuel in that month will not incur any direct fuel commodity expenses from the Agent, but will be the only parties responsible for any fuel imbalance created in that month or (b) if the Agent has secured a portion of the quantity of fuel for operation in that month, the fuel expenses incurred by the Agent shall be prorated to each Owner based on the proportion of the adjusted energy generated by each Owner to the adjusted energy generated by SLCC for all Owners, or as otherwise determined by the Fuel Committee. The adjusted energy generated by any Owner is that portion of energy generated for a particular Owner using fuel procured by the Agent as calculated in the next two succeeding sentences. For an Owner who does not procure any fuel, the adjusted energy generated for such Owner will equal the actual energy generated by such Owner. For an Owner who does procure fuel, the adjusted energy generated will be calculated by reducing the actual energy generated for such Owner by an amount of energy equal to a fraction, the numerator of which is the amount of fuel procured by such Owner and the denominator of which is the average SLCC unit efficiency for the month.

B. Operation Expenses - Operation expenses shall be charged to appropriate Operation accounts as identified by the FERC. Charges for Operation expenses shall be borne by each Owner in proportion to its Ownership Share in SLCC or SL Common, as applicable.

C. Maintenance Expense - Maintenance expenses shall be charged to appropriate Maintenance accounts as identified by the FERC. During the initial twelve-month period following commercial operation, all Maintenance expenses shall be borne by each Owner in proportion to its Ownership Share in SLCC or SL Common, as applicable. After this initial period, 75% of the charges for Maintenance expenses shall be borne by each Owner in proportion to its applicable Ownership Share and 25% of the charges for Maintenance expenses shall be borne by each Owner in proportion to each Owner's share of net generation to the total generation for all Owners for the twelve-month period ending on the last day of the month immediately preceding the date of such determination. Notwithstanding the foregoing, WGI shall not be required to actually pay any such expenses until the aggregate amount of expenses allocable to WGI exceeds an amount equal to \$7,000 multiplied by the number of starts of the Existing CT occurring after the completion of the scheduled overhaul of the Existing CT in the fall of 1999 and prior to the transfer of an undivided interest in the Existing CT to WGI pursuant to Section 2.3(d) of the Ownership Agreement.

D. Administrative and General Expenses

1. Administrative and General Expenses – Administrative and general expenses include, but are not limited to, expenses directly related to expenses detailed in section V, paragraphs A, B, C and D. The FERC Uniform System of Accounts requires that certain expenses directly related to operation and maintenance of a production plant must be charged to accounts in the administrative and general expense category.

2. Property Insurance – See the "Insurance Memorandum" dated July 26, 1999, entered into among EDE, WGI and the Agent.

3. Injuries and Damages - Costs related to injuries and damages shall be charged to each Owner as incurred by the Agent-Owner (whether on a cash basis or by accrual) and each of the Owners shall be responsible for expenses actually incurred by the Agent-Owner on a cash basis, in each case, in proportion to their respective Ownership Shares in SLCC or SL Common, as applicable. These costs may include, but are not limited to the cost of workmen's compensation, public liability, and property damage insurance claims less than the insurance deductible.

4. Employee Pensions and Benefits - Costs for employee pensions and benefits shall be charged to each Owner as incurred by the Agent-Owner (whether on a cash basis or by accrual) and each of the Owners shall be responsible for expenses actually incurred by the Agent-Owner on a cash basis, in each case, in proportion to their respective Ownership Shares in SLCC or SL Common, as applicable.

5. Other Administrative and General Expenses - It is recognized that the Agent-Owner, as operator of SLCC and SL Common, will incur certain costs associated with the operation of SLCC and SL Common. These costs include but are not restricted to payroll, accounts payable, general accounting, personnel administration, legal expense, internal audit, public relations and communication, purchasing and stores, treasury and the general overhead costs to support these services. These costs incurred by the Agent-Owner in the operation and maintenance of SLCC and SL Common shall be shared by each of the Owners in proportion to their respective Ownership Shares in SLCC or SL Common, as applicable. The items and amount of cost to be so shared shall be identified and determined by the Accounting Committee.

E. Paid Absences – Labor costs of employees of the Agent-Owner shall include all direct costs including expenses for paid absences due to vacation, holidays, sickness or other absences, such as those provided for by contracts with labor unions, in addition to direct payroll cost, in each case, in accordance with the regular procedures of the Agent-Owner. Such costs shall be shared by the Owners in accordance with their respective Ownership Shares in SLCC or SL Common, as applicable.

F. Depreciation - Rates for depreciation of SLCC and SL Common shall meet the requirements of appropriate regulatory bodies. Each Owner shall compute depreciation on its own investment in SLCC and SL Common and shall record depreciation expense directly on its own books.

G. Property Taxes

1. Each Owner shall report to the appropriate taxing authority its investment in assets relating to SLCC and SL Common subject to real estate and personal property taxes and shall make timely payment of all taxes levied thereon.

2. In the event real estate and personal property taxes are not levied separately upon the individual Owners for their respective Ownership Shares, but instead are levied upon the Agent or the Agent-Owner for all Ownership Shares, the Owners shall be responsible for their respective share of all real estate and personal property taxes relating to SLCC and SL Common in proportion to their respective Ownership Shares in SLCC and SL Common, as applicable.

3. Each Owner shall record its property tax expense directly on its own books.

H. Other Taxes

1. Payroll Taxes and Employee Benefits – Specific costs for Federal and state unemployment taxes and FICA tax shall be shared by the Owners as actually incurred in proportion to their respective Ownership Shares in SLCC or SL Common, as applicable.

2. Other Miscellaneous Taxes – The cost of any other taxes charged to this account, which are incurred because of the ownership or operation of SLCC or SL Common, shall be shared on an equitable basis to be determined by the Accounting Committee according to the nature of the tax expense incurred.

I. Station Uses - Electrical - When SLCC is in service, the station uses shall be divided on the basis of net generation for each Owner. When SLCC is out of service, the station uses shall be divided based on each Owner's Ownership Share in SLCC with each Owner either furnishing or arranging for its portion of the uses. Station uses shall be considered to be the station's uses as determined by the Operating Committee and accumulated hour by hour during the month, except they shall be adjusted for inadvertent or incorrect readings.

VI. Other Income and Miscellaneous Income Deductions

The nature of other income and deductions related to SLCC and SL Common cannot be determined in advance. Generally, it is anticipated that such items will be shared in proportion to the Owner's respective Ownership Shares. Other divisions may be used if appropriate to the nature of the item but only with the approval of the Accounting Committee.

VII. Inventories

Materials and Supplies – The Agent will maintain separate inventories for SLCC and SL Common. Each Owner will own an interest in the inventory of materials and supplies in proportion to its Ownership Share in SLCC and SL Common, as applicable. Purchase of materials and supplies required after the in-service date of commercial operation shall be made by the Agent (which may be purchased from EDE) and the cost of materials and supplies inventory shall include all direct costs in accordance with the normal accounting procedures of the Agent-Owner. The inventory and issues therefrom shall be priced on an average price basis and issues shall also include costs for stores expenses in accordance with the normal accounting procedures of the Agent-Owner. A physical inventory of materials and supplies shall be made at least every two years as prescribed by the FERC in its Uniform System of Accounts. Any adjustment between book quantity and physical count shall be made by charging or crediting the appropriate inventory account with the number of units to be adjusted, priced at the average price of the stock item. Any adjustment to inventory shall be shared by the Owners according to their respective Ownership Shares in SLCC or SL Common, as applicable.

VIII. Changes in Accounting Procedures

A. Individual Owners' Company Procedures – In the event any Owner makes any change in its accounting procedures which would change the method of distribution or allocation of costs or expense, that Owner shall notify the other Owners of the nature of the change and its estimated effect on costs or expenses related to this project. A simple change in accounting methods intended to achieve a more accurate allocation of actual costs or expenses will not be considered as a change in accounting procedures for purpose of this Section VIII.

B. Change in Accounting Manual – It is recognized that it is impossible to anticipate all circumstances which may arise and it is not likely that this Accounting Manual will initially cover all points upon which agreement should be reached. Therefore, it is necessary to provide for changes to this Accounting Manual in order to maintain an equitable allocation of costs and expenses among the Owners. A change in this Accounting Manual shall be made only in accordance with Section 2 of the Accounting and Cash Flow Memorandum.

IX. Calculation of Percentages

Computation of percentages required for any allocations of cost or expense required in this Accounting Manual shall be made to the nearest one-tenth of one percent, or if there is no nearest one-tenth, then to the nearest even one-tenth of one percent.

X. Reporting

The Accounting Committee shall determine the timing and scope of reports which will be provided by the Agent to each Owner.

## INSURANCE MEMORANDUM

### STATE LINE COMBINED CYCLE GENERATING FACILITY

This MEMORANDUM is dated as of July 26, 1999, by and among The Empire District Electric Company ("EDE"), a Kansas corporation having its principal office in Joplin, Missouri, as an Owner; Westar Generating, Inc. ("WGI"), a Kansas corporation having its principal office in Topeka, Kansas, as an Owner; and The Empire District Electric Company, as Agent.

#### RECITALS

WHEREAS EDE, WGI and the Agent executed as of July 26, 1999 a certain Construction, Ownership and Operation Agreement (the "Ownership Agreement") for the purpose of (i) creating and confirming the nature and extent of their respective undivided ownership interests in SLCC and SL Common and (ii) imposing certain covenants and obligations running with their rights, titles and interests in and to SLCC and SL Common. All capitalized terms used herein but not otherwise defined shall have the meanings ascribed to them in the Ownership Agreement; and

WHEREAS Section 2.7 of the Ownership Agreement requires that the Owners shall, by and through agreement among themselves, enter into an Insurance Memorandum for the purpose of governing the insurance matters with respect to the construction, ownership and operation of SLCC and SL Common.

NOW, THEREFORE, EDE, WGI and the Agent, each for itself, its successors and assigns, and for the benefit of the others, their successors and assigns, hereby covenant and agree as follows:

I.     Responsibilities of the Operating Committee  
       With Respect to the Insurance Program

The Operating Committee shall adopt and manage for the economic benefit of the Owners the Insurance Program described below with respect to the construction, ownership and operation of SLCC and SL Common; provided that such Insurance Program shall comply with the provisions hereof and with the requirements of the Ownership Agreement, including, but not limited to, Section 4.8 thereof.

Prior to October 1, 1999 and on or before April 15 of each year thereafter, the Operating Committee shall review the Insurance Program summary prepared for it by the Agent and shall approve such Insurance Program or request changes thereto.

II. Responsibilities of the Agent With Respect to the Insurance Program

A. Summary. The Agent shall recommend to the Operating Committee the Insurance Program applicable to the construction, ownership and operation of SLCC and SL Common, and shall procure and administer the Insurance Program subject to the approval by the Operating Committee.

B. Procure and Administer the Insurance Program. The Agent shall (i) procure the policies in the Insurance Program; provided that nothing in this Memorandum shall require the Agent to procure separate policies from those of the Owner acting as Agent so long as the Agent adheres to the other provisions of this Memorandum; (ii) retain for the Owners originals of all separate policies and endorsements with respect to SLCC and SL Common; (iii) furnish to each Owner the information described below under Section II.D - "Provide Reports to the Owners"; (iv) give and receive on behalf of the Owners all notices in connection therewith; (v) file all proofs of loss and adjust all claims in connection therewith; provided that for those claims in excess of \$3,000,000, the Operating Committee shall have the right of participation and approval; (vi) effect binders or renewals of such insurance; (vii) procure similar substitute insurance in the event of cancellation; and (viii) otherwise administer the Insurance Program.

The Agent shall permit no substantial or material change or modification in the Insurance Program without the prior approval of the Operating Committee and shall give notice to each Owner of any insubstantial or minor change or modification not previously approved by the Operating Committee.

C. Provide Reports to the Operating Committee. Prior to September 15, 1999 and on or before April 1 of each year thereafter, the Agent shall provide to the Operating Committee a summary of the Insurance Program and any recommendations for changes to the Insurance Program. Such summary shall delineate insurers, costs, coverages, property insurable values, limits, deductibles, retentions and other special terms, covenants and conditions of the insurance with respect to SLCC and SL Common and all parts thereof.

D. Provide Reports to the Owners. The Agent shall furnish to each Owner the following:

1. Documentation of policies in the Insurance Program covering SLCC and SL Common. Such documentation may be in the form of (i) a certificate of insurance for each policy provided within 15 days after the policy is purchased or renewed, reflecting (in addition to the usual certificate information), the policy's deductible or self-insured retention and the presence of each Owner's named insured status, or (ii) a written statement provided by each June 1 that summarizes for each policy the same

information that is shown on a certificate of insurance, plus the additional information listed in (i).

2. A copy of the current Property Insurance policies covering SLCC and SL Common.
3. An annual list of insurable property values for SLCC and SL Common.
4. An annual explanation of the method by which each insurance premium charged to SLCC and SL Common was calculated and allocated.
5. Notice of any losses, claims, known injuries and/or damages which may result in claims arising out of and in the course of the operation of SLCC or SL Common.
6. An explanation of the current status of any property and liability insurance claims filed with respect to SLCC and SL Common and insurance recovery related thereto.
7. Such other information as may be reasonably requested by an Owner.

E. Provide Notifications to Insurers of Claims and Losses. The Agent shall give, on behalf of the Owners, all notices to insurers in accordance with the notice and loss provisions of the policies in the Insurance Program.

### III. Description of the Insurance Program

A. Insurance Types, Policy Limits and Self-Insured Retentions/Deductibles. The Insurance Program covering the construction, ownership and operation of SLCC and SL Common shall include, but not be limited to, the following. The policy limits specified may be provided by a combination of primary and excess/umbrella policies and may be adjusted as appropriate to the extent an Owner purchases a separate insurance policy as described in Section IV:

1. Replacement Cost Property and Boiler & Machinery Insurance ("Property Insurance") covering property of SLCC and SL Common. The minimum policy limit for such coverage per occurrence shall be the replacement cost of such property and the maximum self-insured retention shall be \$2 million per occurrence. The property description of SLCC or SL Common in any such property insurance policy may be written as follows (updated as required by the addition or removal of any Owners):

SLCC [and/or SL Common], owned by The Empire District Electric Company, a Kansas corporation, and Westar Generating, Inc., a Kansas corpo-

ration, as their ownership interests (and the ownership interests of their successors or assigns) may appear pursuant to the State Line Combined Cycle Generating Facility Construction, Ownership and Operation Agreement dated July 26, 1999, recorded in the Register of Deeds for Jasper County, Missouri, subject to any amendment, modification or supplement thereto thereafter duly executed and filed of record in the Office of the Register of Deeds for Jasper County, Missouri.

All policies of Property Insurance with respect to SLCC or SL Common shall provide that any loss thereunder shall be due each Owner covered thereby in proportion to its Ownership Share in SLCC or SL Common, as applicable, as in effect at the date of such loss, and that any and all amounts due each such Owner shall be payable to any holder of the security interest in such Owner's undivided ownership interest therein as and to the extent that the interests of such Owner and such holder may appear. Each Owner shall have the right to name any mortgagee, trustee or secured party on all or any part of the Property Insurance as loss payees or additional insureds as their interests may appear.

2. *Excess Workers' Compensation Insurance* covering employees of the Owner acting as Agent engaged in the performance of their duties relating to the construction, ownership and operation of SLCC and SL Common. The minimum policy limit for such coverage shall be \$25 million per occurrence and the maximum self-insured retention shall be \$2 million per occurrence.

3. *Employer's Liability Insurance* covering employees of the Owner acting as Agent engaged in the performance of their duties relating to the construction, ownership and operation of SLCC and SL Common. The minimum policy limit for such coverage shall be \$25 million per occurrence and the maximum self-insured retention shall be \$2 million per occurrence.

4. *Employment Practices Liability Insurance* covering employees of the Owner acting as Agent engaged in the performance of their duties relating to the construction, ownership and operation of SLCC and SL Common. The minimum policy limit for such coverage shall be \$25 million per occurrence and the maximum self-insured retention shall be \$2 million per occurrence.

5. *Auto Liability Insurance* covering all vehicles assigned to SLCC and SL Common and all vehicles used in connection with the performance by the Agent of its duties related thereto. The minimum policy limit for such coverage shall be \$1 million per occurrence and the maximum self-insured retention shall be \$100,000 per occurrence.

6. *Excess General or Umbrella Liability Insurance* covering SLCC and SL Common and the Agent's activities in connection therewith for third-party bodily injuries and property damages. The minimum policy limit for such coverage shall be \$25 million per occurrence and the maximum self-insured retention shall be \$2 million per occurrence.

7. *Fiduciary Liability Insurance* with respect to employee benefit plans covering employees of the Owner acting as Agent engaged in the performance of their duties relating to the construction, ownership and operation of SLCC and SL Common. The minimum policy limit for such coverage shall be \$20 million per occurrence and the maximum self-insured retention shall be \$2 million per occurrence.

8. *Employee Benefits Liability Insurance* with respect to employee benefit plans covering employees of the Owner acting as Agent engaged in the performance of their duties relating to the construction, ownership and operation of SLCC and SL Common. The minimum policy limit for such coverage shall be \$20 million per occurrence and the maximum self-insured retention shall be \$2 million per occurrence.

9. *Crime Insurance* including employee fidelity coverage for losses incurred by the Agent and by the employee benefit plans for employees of the Owner acting as Agent engaged in the performance of their duties relating to the construction, ownership and operation of SLCC and SL Common. The minimum policy limit for such coverage shall be \$3 million per occurrence and the maximum self-insured retention shall be \$100,000 per occurrence.

B. Cancellation. All insurance policies in the Insurance Program shall be non-cancelable by the insurance carrier for any reason whatsoever without at least thirty (30) days' prior written notice to each Owner, and to any mortgagee, trustee or secured party previously named by any Owner as loss payee or named insured and each such policy and certificate shall be so endorsed.

C. Other Policy Requirements. All policies in the Insurance Program placed by the Agent shall carry endorsements (a) naming all Owners (individually, and as Agent, if applicable) as named insureds thereunder, with cross-liability protection, (b) waiving such insurer's rights of subrogation against each Owner with respect to any matter arising out of or in the course of the construction, ownership or operation of SLCC or SL Common and (c) specifying that the insurance is intended to serve as primary insurance and any "other insurance" clause contained in these policies is not to apply to SLCC or SL Common.

IV. Separate Excess General or Umbrella Liability Insurance Policies by Owners; Separate Property Insurance Policies by Owners

In lieu of participating in the Excess General or Umbrella Liability Insurance and/or the Property Insurance under the Insurance Program, an Owner may, at its sole election and expense, insure separately its undivided ownership interest in any risk or loss exposure relating to SLCC and SL Common under its own individual insurance program accruing to the sole benefit of such Owner. All policies of insurance effected under this Paragraph IV shall (a) comply with the terms outlined in Section III.A, except that the policy limits therein may be reduced, and the maximum self-insured retentions may be reduced, to the portion thereof equal to such Owner's Ownership Share in SLCC or SL Common as applicable, (b) be evidenced by certificates furnished to each Owner, (c) waive such insurer's rights of subrogation against each Owner with respect to any matter arising out of or in the course of the construction, ownership or operation of SLCC or SL Common; and (d) specify that the insurance is intended to serve as primary insurance and any "other insurance" clause contained in these policies is not to apply to SLCC or SL Common. Failure of any Owner to carry Excess General or Umbrella Liability Insurance and/or Property Insurance shall not relieve such Owner of its liability under Section 7.4 of the Ownership Agreement.

V. Self-Insurance

The Agent may be or may become a self-insurer with respect to the risks and exposures relating to SLCC and SL Common as long as such self insurance does not exceed the self-insured retention applicable to the insurance policy in Section III.A that could insure such risk or exposure.

VI. Premiums, Costs, Expenses and Losses

All premium payments for policies in the Insurance Program and all costs, expenses and losses with respect to all SLCC and SL Common risks and loss exposures for which the Agent is acting as a self-insurer shall be treated as operating expenses of SLCC or SL Common and shall be borne and ultimately paid by the Owners (except to the extent any such Owner has purchased a separate insurance policy covering matters for which such premium payments, costs, expenses or losses relate) in proportion to their respective Ownership Shares in SLCC or SL Common, as applicable, unless otherwise provided by the Accounting and Cash Flow Memorandum.

The Agent shall initially pay all costs, expenses and losses with respect to all risks and exposures for SLCC and SL Common to the extent that it is acting as self-insurer therefor. Upon receipt of notice of premium payments due for a policy in the Insurance Pro-

gram, the Agent shall make such payment and bill each Owner participating in such policy in accordance with the Accounting and Cash Flow Memorandum. Each such Owner participating in such policy shall pay its share of all such premium payments in proportion to its Ownership Share in SLCC or SL Common, as applicable.

VII. Insurance Proceeds

A. Property Insurance Proceeds. Any and all proceeds of the Property Insurance policy that are paid directly to an Owner on account of a particular loss shall be applied to the repair or replacement of the property damaged or destroyed, in respect of which the insurance proceeds were paid directly to such Owner, or to the construction or acquisition of permanent improvements, extensions or additions to such property, under the provisions of Section 4.7 of the Ownership Agreement.

B. Other Insurance Proceeds. All other insurance proceeds applicable to SLCC or SL Common from policies in the Insurance Program shall be allocated to the Owners covered by the policy in the Insurance Program providing such proceeds in proportion to their respective Ownership Share in SLCC or SL Common, as applicable, unless otherwise provided by the Ownership Agreement or the Accounting and Cash Flow Memorandum.

VIII. Solely Owned Facilities

Each Owner shall maintain insurance with respect to all of its solely owned facilities installed pursuant to the provisions of Article III of the Ownership Agreement in accordance with prudent utility practice (as defined in Section 4.9(a) of the Ownership Agreement) and shall provide evidence of such insurance, if any, to the Agent and to each other Owner upon request.

IX. Miscellaneous

A. Ownership Agreement Precedence. Neither this Memorandum nor any amendment, modification or supplement hereto shall constitute an amendment to the Ownership Agreement unless and until the Ownership Agreement is amended in accordance with its terms, including, but not limited to, Section 9.7 thereof. Any inconsistency between any provision of the then-effective Ownership Agreement and any provision herein shall be resolved by application of the provisions of the then-effective Ownership Agreement, which shall take precedence and be controlling, any other understanding, agreement, covenant or provision to the contrary notwithstanding.

B. Notices. Any notice, demand, request or consent provided for in this Memorandum or made in connection herewith shall be deemed to be properly served if given in accordance with Section 9.3 of the Ownership Agreement.

C. Waiver. No waiver by an Owner of its right with respect to a default under this Memorandum shall be effective unless all non-defaulting Owners waive their respective rights. Any such waiver shall not be deemed to be a waiver with respect to any subsequent default or matter. No delay short of the applicable statutory period of limitations in asserting or imposing any such right shall be deemed a waiver of such right.

D. Severability. In the event any provision of this Memorandum or the application thereof to any person or circumstance shall be held invalid in any final decision by a court having jurisdiction in the premises, the remainder of this Memorandum and its application to persons or circumstances, other than those as to which it was held invalid, shall not be affected thereby.

E. Governing Law. The validity, interpretation and performance of this Memorandum and each of its provisions shall be governed by the laws of the State of Missouri, without giving effect to any provisions relating to conflict of laws.

F. Dispute Resolution. Any controversy between or among Owners arising out of or relating to this Memorandum, or any breach hereof or default hereunder, shall be treated in the same manner and to the same effect as provided for in Sections 5.4(e) and 8.1 of the Ownership Agreement.

G. Successors and Assigns. This Memorandum shall inure to the benefit of and be binding upon the successors and assigns of each Owner; provided, however, that this Memorandum shall not be assigned except in connection with the transfer by an Owner of all or any portion of its Ownership Shares, in which event such Owner shall assign and shall cause such transferee to assume the related portion of its rights and obligations under this Memorandum, all as provided for in Section 2.6 of the Ownership Agreement.

H. No Third-Party Beneficiary. The parties hereto do not intend to create rights in or to grant remedies to any third party as a beneficiary of this Memorandum or of any duty, covenant, obligation or undertaking established herein.

I. Amendments. An amendment to this Memorandum shall be effective upon written approval by such Owner or Owners whose collective Ownership Share in SLCC is at least 75% so long as such amendment does not cause the relative rights and obligations of any Owner to differ in any respect from the rights and obligations of any other Owner. Any other amendment requires the written approval of each Owner.

J. Headings. The Section headings herein are for convenience only and shall not affect the construction hereof.

K. Counterparts. This Memorandum may be executed in any number of counterparts, and all such counterparts taken together shall be deemed to constitute one and the same instrument.

L. Effective Date and Term. This Memorandum shall continue in full force and effect during the term of the Ownership Agreement and shall terminate concurrently with the termination of said Ownership Agreement.

[Signature page to follow]

IN WITNESS WHEREOF, the parties hereto have caused this Memorandum to be executed by their duly authorized officers, the day and year first above written.

THE EMPIRE DISTRICT ELECTRIC  
COMPANY,  
as an Owner

By: Virgil E. Brill  
Name: Virgil E. Brill  
Title: Vice President - Energy Supply

WESTAR GENERATING, INC.,  
as an Owner

By: Thomas L. Grennan  
Name: Thomas L. Grennan  
Title: President

THE EMPIRE DISTRICT ELECTRIC  
COMPANY,  
as Agent

By: Virgil E. Brill  
Name: Virgil E. Brill  
Title: Vice President - Energy Supply

## **GUARANTEE**

### **STATE LINE COMBINED CYCLE GENERATING FACILITY**

This GUARANTEE is dated as of July 26, 1999, by Westar Capital, Inc. (the "Guarantor"), a Kansas corporation, to and in favor of The Empire District Electric Company ("EDE"), a Kansas corporation, as an Owner, The Empire District Electric Company, as Agent, and the other Owners (other than Westar Generating, Inc. ("WGI")) from time to time under the Ownership Agreement (as defined below).

### **RECITALS**

WHEREAS EDE, WGI and the Agent executed as of July 26, 1999 a certain Construction, Ownership and Operation Agreement (the "Ownership Agreement") for the purpose of (i) creating and confirming the nature and extent of their respective undivided ownership interests in SLCC and SL Common and (ii) imposing certain covenants and obligations running with their rights, titles and interests in and to SLCC and SL Common. All capitalized terms used herein but not otherwise defined shall have the meanings ascribed to them in the Ownership Agreement; and

WHEREAS Section 1.2(d) of the Ownership Agreement requires, as a condition to the execution of the Ownership Agreement, WGI to cause the Guarantor to issue an unconditional guarantee to each Owner (other than WGI) and to the Agent as to the due and punctual payment of all obligations of WGI under the Ownership Agreement and under each Transaction Document in accordance with the terms of the Ownership Agreement and each such Transaction Document; and

WHEREAS, all of the outstanding capital stock of WGI and the Guarantor is owned by Western Resources, Inc.

NOW, THEREFORE, in consideration of the foregoing and for other good and valuable consideration, the receipt and sufficiency of which are acknowledged, the parties agree as follows:

1. Guarantor Representations, Warranties and Covenants. The Guarantor hereby represents, warrants and covenants to the Owners as follows:

(a) The Guarantor is a corporation duly organized, validly existing and in good standing under the laws of the State of Kansas and has corporate power and authority to execute and deliver this Guarantee, and to perform its obligations hereunder.

(b) The execution, delivery and performance by the Guarantor of this Guarantee have been duly authorized by all necessary corporate action on the part of the Guarantor, do not contravene any law, or any governmental rule, regulation or order, applicable to the Guarantor or its properties, or the Articles of Incorporation or By-Laws of the Guarantor, and do not and will not contravene the provisions of, or constitute a default under, any indenture, mortgage, security agreement, contract or other instrument to which the Guarantor is a party or by which the Guarantor is bound. All requisite governmental, regulatory and vendor approvals and consents for the execution, delivery and performance by the Guarantor of this Guarantee have been obtained. This Guarantee constitutes a legal, valid and binding obligation of the Guarantor enforceable in accordance with its terms, except as limited by applicable bankruptcy, insolvency, reorganization or similar laws at the time in effect.

2. Guarantee.

(a) The Guarantor, by execution of this Guarantee, unconditionally guarantees to each Owner (other than WGI) and to the Agent the due and punctual payment of all obligations of WGI (accruing prior to the termination of this Guarantee) under the Ownership Agreement and under each Transaction Document in accordance with the terms of the Ownership Agreement and each such Transaction Document (the "Guaranteed Obligations"). The Guarantor, by execution of this Guarantee, agrees that its obligations hereunder shall be absolute and unconditional, irrespective of, and shall be unaffected by, any circumstances which may constitute a legal or equitable discharge of a surety.

(b) Notwithstanding anything else to the contrary in this Guarantee, the aggregate liability of the Guarantor under this Guarantee at any particular time shall be limited to an amount equal to the sum of (i) the then remaining Construction Cost Balance multiplied by WGI's Ownership Share in SLCC plus (ii) the then remaining monthly payments required by Section 5.3(b) of the Ownership Agreement; provided, however, that if at any such time the summation of the amounts in (i) and (ii) above is less than \$25 million, then the aggregate liability of the Guarantor at such time shall be limited to \$25 million.

(c) The Guarantor waives diligence, presentment, demand for payment, filing of claims with a court in the event of merger or bankruptcy of WGI, any right to require a proceeding first against WGI, protest or notice with respect to any such obligation evidenced thereby and all demands whatsoever, and covenants that this Guarantee will not be discharged as to any such obligation except by payment in full of such obligation.

(d) Notwithstanding anything else to the contrary in this Guarantee, this Guarantee, and all obligations and liability of the Guarantor hereunder (except for obligations and liabilities which are accrued but unpaid on the date of such termination, which shall remain as obligations and liabilities of the Guarantor until fully satisfied), shall terminate automatically and without need for the execution of any further documentation on the earlier of either of the

following: (i) the date on which SLCC is first placed in commercial operation or (ii) the date on which WGI assigns its Ownership Shares in accordance with the terms of the Ownership Agreement to a WGI Preferred Transferee. The Owners and the Agent shall also execute a termination and release of this Guarantee in the event that another entity meeting the criteria outlined in Section 1.2(d) of the Ownership Agreement executes a guarantee of the obligations of WGI substantially to the extent outlined herein.

(e) The Guarantor shall, to the extent of any payment by it pursuant to this Guarantee, be subrogated to all the rights of the Owners (other than WGI) and the Agent as to all payments and damages payable by WGI with respect to which payments have been made by the Guarantor, but, so long as any Guaranteed Obligations remain outstanding, such right of subrogation on the part of the Guarantor shall in all respects be subordinate and junior in right of payment to the prior indefeasible payment in full of all the Guaranteed Obligations to the Owners (other than WGI) and the Agent.

3. Miscellaneous.

(a) Notices. Any notice, demand, request or consent provided for in this Guarantee or made in connection herewith shall be deemed to be properly served if given in accordance with Section 9.3 of the Ownership Agreement. Notices to the Guarantor shall be directed to it at Westar Capital, Inc., 818 South Kansas Avenue, Topeka, Kansas 66612, attention of President, telecopier number (785) 575-1774, and with a copy to WGI and Western Resources, Inc. at the addresses set forth in Section 9.3 of the Ownership Agreement.

(b) Severability. In the event any provision of this Guarantee or the application thereof to any person or circumstance shall be held invalid in any final decision by a court having jurisdiction in the premises, the remainder of this Guarantee and its application to persons or circumstances, other than those as to which it was held invalid, shall not be affected thereby.

(c) Governing Law. The validity, interpretation and performance of this Guarantee and each of its provisions shall be governed by the laws of the State of Missouri, without giving effect to any provisions relating to conflict of laws.

(d) Successors and Assigns. This Guarantee shall inure to the benefit of each Owner (other than WGI), the Agent and their successors and assigns and shall be binding upon the Guarantor and its successors and assigns.

(e) Amendments. An amendment to this Guarantee shall be effective upon written approval by the Guarantor and such Owner or Owners whose collective Ownership Shares in SLCC are at least 75% (excluding WGI for purposes of this calculation) so long as such amendment does not cause the relative rights and obligations of any Owner to differ in

any respect from the rights and obligations of any other Owner. Any other amendment requires the written approval of each Owner (other than WGI) and the Guarantor.

(f) Headings. The Section headings herein are for convenience only and shall not affect the construction hereof.

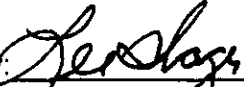
(g) Counterparts. This Guarantee may be executed in any number of counterparts, and all such counterparts taken together shall be deemed to constitute one and the same instrument.

(h) Effective Date and Term. This Guarantee shall continue in full force and effect until terminated in accordance with Section 2(d) hereof or, if still in effect at such time, shall terminate concurrently with the termination of the Ownership Agreement.

[Signature page to follow]

IN WITNESS WHEREOF, the parties hereto have caused this Guarantee to be executed by their duly authorized officers, the day and year first above written.

WESTAR CAPITAL, INC.,  
as Guarantor

By:   
Name: Lee Wages  
Title: President

THE EMPIRE DISTRICT ELECTRIC  
COMPANY,  
as an Owner

By:   
Name: Virgil E. Brill  
Title: Vice President - Energy Supply

THE EMPIRE DISTRICT ELECTRIC  
COMPANY,  
as Agent

By:   
Name: Virgil E. Brill  
Title: Vice President - Energy Supply