

Form 10-Q  
SECURITIES AND EXCHANGE COMMISSION  
WASHINGTON, D.C. 20549

QUARTERLY REPORT PURSUANT TO SECTION 13 OR 15(d)  
OF THE SECURITIES EXCHANGE ACT OF 1934

For the quarterly period ended September 30, 1998

OR

TRANSITION REPORT PURSUANT TO SECTION 13 or 15(d)  
OF THE SECURITIES EXCHANGE ACT OF 1934

For the transition period from to

Commission file number 1-707

KANSAS CITY POWER & LIGHT COMPANY  
(Exact name of registrant as specified in its charter)

Missouri 44-0308720  
(State or other jurisdiction of (I.R.S. Employer  
incorporation or organization) Identification No.)

1201 Walnut, Kansas City, Missouri 64106-2124  
(Address of principal executive offices) (Zip Code)

Registrant's telephone number, including area code: (816) 556-2200

Indicate by check mark whether the registrant (1) has filed all reports required to be filed by Section 13 or 15(d) of the Securities Exchange Act of 1934 during the preceding 12 months (or for such shorter period that the registrant was required to file such reports), and (2) has been subject to such filing requirements for the past 90 days.

Yes (X) No ( )

The number of shares outstanding of the registrant's Common stock at November 9, 1998, was 61,898,020 shares.

PART I - FINANCIAL INFORMATION  
ITEM 1. CONSOLIDATED FINANCIAL STATEMENTS

KANSAS CITY POWER & LIGHT COMPANY  
CONSOLIDATED BALANCE SHEETS

	September 30 1998	December 31 1997
	(thousands)	
ASSETS		
UTILITY PLANT, at original cost		
Electric	\$3,552,745	\$3,502,796
Less-accumulated depreciation	1,379,035	1,314,154
Net utility plant in service	2,173,710	2,188,642
Construction work in progress	102,814	93,264
Nuclear fuel, net of amortization of \$100,839 and \$86,516	31,881	41,649
Total	2,308,405	2,323,555
REGULATORY ASSET - RECOVERABLE TAXES	123,000	123,000
INVESTMENTS AND NONUTILITY PROPERTY	331,623	345,126
CURRENT ASSETS		
Cash and cash equivalents	82,481	74,098
Electric customer accounts receivable, net of allowance for doubtful accounts of \$1,910 and \$1,941	67,603	28,741
Other receivables	29,622	33,492
Fuel inventories, at average cost	17,333	13,824
Materials and supplies, at average cost	44,662	46,579
Deferred income taxes	3,831	648
Other	2,912	7,155
Total	248,444	204,537

DEFERRED CHARGES		
Regulatory assets	27,416	30,017
Other deferred charges	30,518	31,798
Total	57,934	61,815
 Total	 \$3,069,406	 \$3,058,033
CAPITALIZATION AND LIABILITIES		
CAPITALIZATION (see statements)	\$2,008,787	\$2,051,489
CURRENT LIABILITIES		
Notes payable to banks	6,741	1,243
Current maturities of long-term debt	36,287	74,180
Accounts payable	53,899	57,568
Accrued taxes	63,442	1,672
Accrued interest	18,531	22,360
Accrued payroll and vacations	22,608	23,409
Accrued refueling outage costs	9,832	1,664
Other	32,243	15,068
Total	243,583	197,164
DEFERRED CREDITS AND OTHER LIABILITIES		
Deferred income taxes	642,174	638,679
Deferred investment tax credits	59,824	63,257
Other	115,038	107,444
Total	817,036	809,380
COMMITMENTS AND CONTINGENCIES		
 Total	 \$3,069,406	 \$3,058,033

The accompanying Notes to Consolidated Financial Statements are an integral part of these statements.

KANSAS CITY POWER & LIGHT COMPANY  
CONSOLIDATED STATEMENTS OF CAPITALIZATION

	September 30 1998	December 31 1997
	(thousands)	
<b>COMMON STOCK EQUITY</b>		
Common stock-150,000,000 shares authorized without par value-61,908,726 shares issued, stated value	\$ 449,697	\$ 449,697
Retained earnings (see statements)	461,430	428,452
Unrealized gain on securities available for sale	697	1,935
Capital stock premium and expense	(1,674)	(1,664)
Total	910,150	878,420
<b>CUMULATIVE PREFERRED STOCK</b>		
<b>\$100 Par Value</b>		
3.80% - 100,000 shares issued	10,000	10,000
4.50% - 100,000 shares issued	10,000	10,000
4.20% - 70,000 shares issued	7,000	7,000
4.35% - 120,000 shares issued	12,000	12,000
<b>No Par Value</b>		
4.37%* - 500,000 shares issued	50,000	50,000
<b>\$100 Par Value - Redeemable</b>		
4.00%	62	62
Total	89,062	89,062
<b>COMPANY-OBLIGATED MANDATORILY REDEEMABLE PREFERRED SECURITIES OF SUBSIDIARY TRUST HOLDING SOLELY KCPL SUBORDINATED DEBENTURES</b>	150,000	150,000
<b>LONG-TERM DEBT (excluding current maturities)</b>		
<b>General Mortgage Bonds</b>		
Medium-Term Notes due 1998-2008, 6.90% and 6.92% weighted-average rate	386,000	407,500
4.07%* Environmental Improvement Revenue Refunding Bonds due 2012-23	158,768	158,768
<b>Guaranty of Pollution Control Bonds</b>		
4.31% as of December 31, 1997, due 2015-17	0	196,500
<b>Environmental Improvement Revenue Refunding Bonds</b>		
4.28%* Series A & B due 2015	106,500	0
4.50% Series C due 2017	50,000	0
4.35% Series D due 2017	40,000	0
<b>Subsidiary Obligations</b>		
Affordable Housing Notes due 2000-06, 8.34% and 8.48% weighted-average rate	54,775	61,207
Bank Credit Agreement due October 31, 1999, 6.87% and 6.67% weighted-average rate	61,000	107,500
Other Long-Term Notes	2,532	2,532
Total	859,575	934,007
Total	\$2,008,787	\$2,051,489

\* Variable rate securities, weighted-average rate as of September 30, 1998

The accompanying Notes to Consolidated Financial Statements are an integral part of these statements.

KANSAS CITY POWER & LIGHT COMPANY  
CONSOLIDATED STATEMENTS OF INCOME

Three Months Ended September 30	1998	1997
	(thousands)	
ELECTRIC OPERATING REVENUES	\$313,462	\$290,218
OPERATING EXPENSES		
Operation		
Fuel	41,039	39,832
Purchased power	31,273	17,219
Other	49,631	49,897
Maintenance	18,597	15,973
Depreciation	28,857	27,464
Income taxes	39,058	38,762
General taxes	27,934	27,648
Total	236,389	216,795
OPERATING INCOME	77,073	73,423
OTHER INCOME AND (DEDUCTIONS)		
Allowance for equity funds used during construction	912	779
Miscellaneous income	10,471	11,263
Miscellaneous deductions	(22,633)	(16,896)
Income taxes	10,804	8,596
Total	(446)	3,742
INCOME BEFORE INTEREST CHARGES	76,627	77,165
INTEREST CHARGES		
Long-term debt	14,056	15,261
Short-term debt	72	103
Miscellaneous	4,189	4,172
Allowance for borrowed funds used during construction	(575)	(518)
Total	17,742	19,018
Net Income	58,885	58,147
Preferred Stock		
Dividend Requirements	973	952
Earnings Available for Common Stock	\$57,912	\$57,195
Average Number of Common Shares Outstanding	61,888	61,896
Basic and Diluted earnings per Common Share	\$0.94	\$0.92
Cash Dividends per Common Share	\$0.415	\$0.405

The accompanying Notes to Consolidated Financial Statements are an integral part of these statements.

KANSAS CITY POWER & LIGHT COMPANY  
CONSOLIDATED STATEMENTS OF INCOME

Year to Date September 30	1998	1997
	(thousands)	
ELECTRIC OPERATING REVENUES	\$ 748,599	\$ 700,382
OPERATING EXPENSES		
Operation		
Fuel	112,624	104,045
Purchased power	54,317	46,141
Other	143,320	141,358
Maintenance	50,842	52,553
Depreciation	86,238	83,037
Income taxes	70,854	61,128
General taxes	72,135	72,366
Deferred Wolf Creek costs amortization	0	1,368
Total	590,330	561,996
OPERATING INCOME	158,269	138,386
OTHER INCOME AND (DEDUCTIONS)		
Allowance for equity funds used during construction	2,735	1,772
Miscellaneous income	34,390	23,724
Miscellaneous deductions	(60,385)	(92,560)
Income taxes	31,168	48,691
Total	7,908	(18,373)
INCOME BEFORE INTEREST CHARGES	166,177	120,013
INTEREST CHARGES		
Long-term debt	43,426	44,777
Short-term debt	239	1,273
Miscellaneous	12,521	8,710
Allowance for borrowed funds used during construction	(1,816)	(1,891)
Total	54,370	52,869
Net Income	111,807	67,144
Preferred Stock		
Dividend Requirements	2,930	2,866
Earnings Available for Common Stock	\$108,877	\$64,278
Average Number of Common Shares Outstanding	61,878	61,896
Basic and Diluted earnings per Common Share	\$1.76	\$1.04
Cash Dividends per Common Share	\$1.225	\$1.215

The accompanying Notes to Consolidated Financial Statements are an integral part of these statements.

KANSAS CITY POWER & LIGHT COMPANY  
CONSOLIDATED STATEMENTS OF INCOME

Twelve Months Ended September 30	1998	1997
	(thousands)	
ELECTRIC OPERATING REVENUES	\$944,160	\$901,270
OPERATING EXPENSES		
Operation		
Fuel	143,088	140,415
Purchased power	67,423	57,810
Other	193,859	188,843
Maintenance	69,181	70,009
Depreciation	114,099	110,380
Income taxes	80,839	63,514
General taxes	93,066	94,345
Deferred Wolf Creek costs amortization	0	4,273
Total	761,555	729,589
OPERATING INCOME	182,605	171,681
OTHER INCOME AND (DEDUCTIONS)		
Allowance for equity funds used during construction	3,370	2,605
Miscellaneous income	48,178	23,724
Miscellaneous deductions	(84,758)	(99,154)
Income taxes	45,511	55,949
Total	12,301	(16,876)
INCOME BEFORE INTEREST CHARGES	194,906	154,805
INTEREST CHARGES		
Long-term debt	58,947	58,990
Short-term debt	348	1,383
Miscellaneous	16,654	9,930
Allowance for borrowed funds used during construction	(2,266)	(2,407)
Total	73,683	67,896
Net Income	121,223	86,909
Preferred Stock		
Dividend Requirements	3,853	3,816
Earnings Available for Common Stock	\$117,370	\$83,093
Average Number of Common Shares Outstanding	61,893	61,897
Basic and Diluted earnings per Common Share	\$1.90	\$1.34
Cash Dividends per Common Share	\$1.63	\$1.62

The accompanying Notes to Consolidated Financial Statements are an integral part of these statements.

KANSAS CITY POWER & LIGHT COMPANY  
CONSOLIDATED STATEMENTS OF CASH FLOWS

Year to Date September 30	1998	1997
	(thousands)	
<b>CASH FLOWS FROM OPERATING ACTIVITIES</b>		
Net income	\$ 111,807	\$ 67,144
Adjustments to reconcile net income to net cash from operating activities:		
Depreciation	86,238	83,037
Amortization of:		
Nuclear fuel	14,323	15,211
Deferred Wolf Creek costs	0	1,368
Other	6,802	6,049
Deferred income taxes (net)	896	(10,168)
Investment tax credit amortization	(3,433)	(3,170)
Deferred merger costs	0	(5,712)
Kansas rate refund accrual	11,174	0
Allowance for equity funds used during construction	(2,735)	(1,772)
Other operating activities (Note 2)	36,375	25,881
Net cash from operating activities	261,447	177,868
<b>CASH FLOWS FROM INVESTING ACTIVITIES</b>		
Utility capital expenditures	(71,941)	(92,782)
Allowance for borrowed funds used during construction	(1,816)	(1,891)
Purchases of investments	(22,338)	(98,500)
Purchases of nonutility property	(13,686)	(12,271)
Sale of KLT Power	53,033	0
Sale of streetlights	0	21,500
Other investing activities	(7,924)	(8,390)
Net cash from investing activities	(64,672)	(192,334)
<b>CASH FLOWS FROM FINANCING ACTIVITIES</b>		
Issuance of mandatorily redeemable Preferred Securities	0	150,000
Issuance of long-term debt	10,405	66,292
Repayment of long-term debt	(122,730)	(26,787)
Net change in short-term borrowings	5,498	935
Dividends paid	(78,829)	(78,094)
Other financing activities	(2,736)	(9,413)
Net cash from financing activities	(188,392)	102,933
<b>NET CHANGE IN CASH AND CASH EQUIVALENTS</b>	<b>8,383</b>	<b>88,467</b>
<b>CASH AND CASH EQUIVALENTS AT BEGINNING OF YEAR</b>	<b>74,098</b>	<b>23,571</b>
<b>CASH AND CASH EQUIVALENTS AT END OF PERIOD</b>	<b>\$82,481</b>	<b>\$112,038</b>
<b>CASH PAID DURING THE PERIOD FOR:</b>		
Interest (net of amount capitalized)	\$58,915	\$56,562
Income taxes	\$468	\$0

The accompanying Notes to Consolidated Financial Statements are an integral part of these statements.

KANSAS CITY POWER & LIGHT COMPANY  
CONSOLIDATED STATEMENTS OF CASH FLOWS

Twelve Months Ended September 30	1998	1997
	(thousands)	
<b>CASH FLOWS FROM OPERATING ACTIVITIES</b>		
Net income	\$ 121,223	\$ 86,909
Adjustments to reconcile net income to net cash from operating activities:		
Depreciation	114,099	110,380
Amortization of:		
Nuclear fuel	15,948	20,421
Deferred Wolf Creek costs	0	4,273
Other	8,976	7,452
Deferred income taxes (net)	15,844	(19,438)
Investment tax credit amortization	(4,113)	(4,227)
Deferred storm costs	0	(8,885)
Deferred merger costs	5,712	(5,712)
Kansas rate refund accrual	11,174	0
Allowance for equity funds used during construction	(3,370)	(2,605)
Other operating activities (Note 2)	6,570	8,580
Net cash from operating activities	292,063	197,148
<b>CASH FLOWS FROM INVESTING ACTIVITIES</b>		
Utility capital expenditures	(103,893)	(117,105)
Allowance for borrowed funds used during construction	(2,266)	(2,407)
Purchases of investments	(31,441)	(118,305)
Purchases of nonutility property	(17,148)	(17,286)
Sale of KLT Power	53,033	0
Sale of streetlights	0	21,500
Other investing activities	(8,436)	(4,876)
Net cash from investing activities	(110,151)	(238,479)
<b>CASH FLOWS FROM FINANCING ACTIVITIES</b>		
Issuance of mandatorily redeemable Preferred Securities	0	150,000
Issuance of long-term debt	10,405	176,292
Repayment of long-term debt	(124,775)	(46,787)
Net change in short-term borrowings	5,806	(34,065)
Dividends paid	(104,777)	(104,096)
Other financing activities	1,872	(11,204)
Net cash from financing activities	(211,469)	130,140
<b>NET CHANGE IN CASH AND CASH EQUIVALENTS</b>		
	(29,557)	88,809
<b>CASH AND CASH EQUIVALENTS AT BEGINNING OF PERIOD</b>		
	112,038	23,229
<b>CASH AND CASH EQUIVALENTS AT END OF PERIOD</b>		
	\$82,481	\$112,038
<b>CASH PAID DURING THE PERIOD FOR:</b>		
Interest (net of amount capitalized)	\$73,625	\$63,459
Income taxes	\$22,853	\$17,605

The accompanying Notes to Consolidated Financial Statements are an integral part of these statements.



KANSAS CITY POWER & LIGHT COMPANY  
CONSOLIDATED STATEMENTS OF COMPREHENSIVE INCOME

	Three Months Ended September 30		Year to Date September 30		Twelve Months Ended September 30	
	1998	1997	1998	1997	1998	1997
	(thousands)					
Net income	\$ 58,885	\$ 58,147	\$ 111,807	\$ 67,144	\$ 121,223	\$ 86,909
Other comprehensive income (loss), net of tax:						
Net unrealized gain (loss) on securities available for sale	(2,293)	84	(1,238)	(1,315)	(4,472)	(1,769)
Comprehensive Income	\$ 56,592	\$ 58,231	\$ 110,569	\$ 65,829	\$ 116,751	\$ 85,140

The accompanying Notes to Consolidated Financial Statements are an integral part of these statements.

CONSOLIDATED STATEMENTS OF RETAINED EARNINGS

	Three Months Ended September 30		Year to Date September 30		Twelve Months Ended September 30	
	1998	1997	1998	1997	1998	1997
	(thousands)					
Beginning Balance	\$ 429,216	\$ 412,890	\$ 428,452	\$ 455,934	\$ 444,984	\$ 462,171
Net Income	58,885	58,147	111,807	67,144	121,223	86,909
	488,101	471,037	540,259	523,078	566,207	549,080
Dividends Declared						
Preferred stock - at required rates	981	986	3,022	2,892	3,903	3,827
Common stock	25,690	25,067	75,807	75,202	100,874	100,269
Ending Balance	\$ 461,430	\$ 444,984	\$ 461,430	\$ 444,984	\$ 461,430	\$ 444,984

The accompanying Notes to Consolidated Financial Statements are an integral part of these statements.

Certain Forward-looking Information

Statements made in this report which are not based on historical facts are forward-looking and, accordingly, involve risks and uncertainties that could cause actual results to differ materially from those discussed. Any forward-looking statements are intended to be as of the date on which such a statement is made. In connection with the safe harbor provisions of the Private Securities Litigation Reform Act of 1995, we are providing the following important factors that could cause actual results to differ materially from provided forward-looking information. These important factors include: (a) the proposed Western Resources Inc. (Western Resources) merger (see Note 1 to the Consolidated Financial Statements); (b) future economic conditions in the regional, national and international markets; (c) state, federal and foreign regulation and possible additional reductions in regulated electric rates; (d) weather conditions; (e) financial market conditions, including, but not limited to changes in interest rates; (f) inflation rates; (g) increased competition, including, but not limited to, the deregulation of the United States electric utility industry, and the entry of new competitors; (h) ability to carry out marketing and sales plans; (i) ability to achieve generation planning goals and the occurrence of unplanned generation outages; (j) nuclear operations; (k) ability to enter new markets successfully and capitalize on growth opportunities in nonregulated businesses; (l) unforeseen events that would prevent correction of internal or external information systems for Year 2000 problems, and (m) adverse changes in applicable laws, regulations or rules governing environmental (including air quality regulations), tax or accounting matters. This list of factors may not be all inclusive since it is not possible for us to predict all possible factors.

Notes to Consolidated Financial Statements

In management's opinion, the consolidated interim financial statements reflect all adjustments (which include only normal recurring adjustments) necessary to present fairly the results of operations for the interim periods presented. These statements and notes should be read in connection with the financial statements and related notes included in our 1997 annual report on Form 10-K.

1. AMENDED AND RESTATED PLAN OF MERGER WITH WESTERN RESOURCES

Western Resources, Inc. (Western Resources) delivered an unsolicited exchange offer and an amended offer to KCPL's Board of Directors during the second quarter of 1996. After careful consideration, KCPL's Board of Directors rejected both offers. In July 1996 Western Resources commenced an exchange offer for KCPL Common Stock. In late 1996 KCPL began discussing a possible merger with Western Resources leading to a February 7, 1997 agreement.

In December 1997 KCPL canceled its previously scheduled special meeting of shareholders to vote on the transaction because Western Resources advised KCPL that its investment bankers, Salomon Smith Barney, had indicated that it was unlikely that Salomon would be in a position to issue a fairness opinion for the merger transaction on the basis of the February 7, 1997 agreement. During 1997 KCPL incurred and deferred \$7 million of merger-related costs that were expensed in December 1997.

On March 18, 1998, KCPL and Western Resources entered into an Amended and Restated Agreement and Plan of Merger (Amended Agreement). This Amended Agreement provides for the combination of the regulated electric utilities of KCPL and Western Resources into Westar Energy, a new company, using purchase accounting. Westar Energy would be owned approximately 80.1% by Western Resources and approximately 19.9% by KCPL shareholders. At closing, KCPL shareholders would receive for every share of KCPL Common Stock one share of Westar Energy

Common Stock and a fraction of a share of Western Resources Common Stock worth not less than \$21.50 and not more than \$26.50 pursuant to a collar adjustment mechanism. The estimated trading value per share of Westar Energy Common Stock to be issued to KCPL shareholders in connection with the Amended Agreement was estimated to be in the range of \$10 to \$11 per share (as stated in the Joint Proxy Statement dated June 9, 1998). Since Westar Energy would be a newly formed entity with no trading history, there can be no assurance that Westar Energy would trade within the initial estimated range.

On July 30, 1998, KCPL's and Western Resources' shareholders approved the Amended Agreement at special meetings of shareholders. The transaction is subject to several closing conditions, including approval by a number of regulatory and governmental agencies and verification that no sales or use tax is payable in connection with the proposed transactions. If the merger has not been closed by December 31, 1999, either party may terminate the Amended Agreement as long as they did not contribute to the delay. If Western Resources Index Price is less than or equal to \$29.78 five trading days prior to closing, either party can terminate this Amended Agreement.

Applications for regulatory approvals of the Amended Agreement have been filed with the Kansas Corporation Commission (KCC), the Missouri Public Service Commission (MPSC) and the Federal Energy Regulatory Commission (FERC). In the Kansas proceeding, the KCC set a procedural schedule that requires the KCC Staff and intervenors to file their testimony in the case by December 11, 1998. In the Missouri proceeding, a number of parties to the case filed a joint pleading on October 7, 1998, recommending a procedural schedule for the case. In that pleading, the MPSC Staff indicated that, in conjunction with the merger case, the MPSC Staff would review KCPL's earnings. In the FERC proceeding, the FERC Staff, on August 24, 1998, requested that the Companies amend their filing by providing additional analyses using updated information. Such revised information is in the process of being prepared. We cannot predict the timing or outcome of the proceedings.

As part of the foregoing conditions, the obligation of Western Resources to effect the merger is subject to the following:

(A) That the final orders are obtained from the various federal and state regulators on terms and conditions which would not have a material adverse effect on the benefits anticipated by Western Resources in the merger. In many utility mergers state regulators require a portion of savings from merger synergies to be allocated to customers as a condition for their approval of a transaction. Western Resources believes, and has discussed its position with KCPL, that in light of the rate reductions associated with the merger and already allocated to customers, any efforts by the relevant state regulators to seek further rate reductions would give Western Resources the right to trigger such condition. Western Resources and KCPL have each already implemented rate reductions in Kansas and Missouri. KCPL has (i) already implemented rate reductions to share anticipated merger synergies with customers in Missouri from its previously planned merger with UtiliCorp and (ii) entered into a stipulation in Kansas which states that the Kansas Commission staff and the Citizen's Utility Ratepayers Board will not request rate reductions or rate refunds from Western Resources, KCPL or their affiliates sooner than one year after consummation of the merger. Moreover, Western Resources believes that the rate reductions it has begun to implement in Kansas take into account synergies that are related to the merger. However, there is no assurance that the state regulators will not require Westar Energy to share additional merger-related synergies with customers or require rate reductions for other reasons in Missouri or Kansas as a condition to their approval of the merger or that Western Resources will waive this condition and consummate the merger if state regulators require additional rate reductions.

(B) That Western Resources will be reasonably satisfied that it will be exempt from all of the provisions of the Public Utility Holding Company Act of 1935 (1935 Act) other than Section 9(a)(2) thereof. Western Resources seeks an exemption under section 3(a)(1) of the 1935 Act pursuant to

Rule 2. To qualify for an exemption under Section 3(a)(1) of the 1935 Act, Westar Energy must be predominantly intrastate in character and carry on its utility business substantially in the state in which both Westar Energy and Western Resources are incorporated, Kansas. As a result of the merger, Westar Energy will derive utility revenues from outside of the state of Kansas in an amount at the high-end of the range of out-of-state utility revenues of utility subsidiaries of holding companies that currently are exempt from the 1935 Act pursuant to Section 3(a)(1) and Rule 2. In the event that Western Resources determines prior to the consummation of the merger that an exemption under Section 3(a)(1) of the 1935 Act is not available, Western Resources must either (i) waive this condition and become a registered holding company under the 1935 Act or (ii) determine to assert that this condition has not been satisfied and choose not to consummate the merger. Although Western Resources anticipates that after the merger it will qualify for an exemption under Section 3(a)(1) of the 1935 Act pursuant to Rule 2, there is no assurance that the SEC will not challenge Western Resources' stated intention to file for an exemption pursuant to Rule 2 or that this condition will be satisfied.

The Amended Agreement allows the KCPL Board discretion to make changes (including increases) in the KCPL Common Stock dividend consistent with past practice exercising good business judgment. On August 4, 1998, KCPL's Board approved an increase to the common stock dividend raising it to an annualized dividend of \$1.66 per share from \$1.62 per share. The Amended Agreement also requires KCPL to redeem all outstanding shares of cumulative preferred stock prior to consummation of the proposed transactions. If the Amended Agreement is terminated under certain other circumstances and KCPL, within two and one-half years following termination, agrees to consummate a business combination with a third party that made a proposal to combine prior to termination, a payment of \$50 million will be due Western Resources. Under certain circumstances, if KCPL determines not to consummate its merger into Westar Energy due to its inability to receive a favorable tax opinion from its legal counsel, it must pay Western Resources \$5 million. Western Resources will pay KCPL \$5 million to \$35 million if the Amended Agreement is terminated and all closing conditions are satisfied other than conditions relating to Western Resources receiving a favorable tax opinion from its legal counsel, favorable statutory approvals or an exemption from the Public Utility Holding Company Act of 1935.

## 2. CONSOLIDATED STATEMENTS OF CASH FLOWS - OTHER OPERATING ACTIVITIES

	Year to Date		Twelve Months Ended	
	1998	1997	1998	1997
Cash flows affected by changes in:	(thousands)			
Receivables	\$(34,992)	\$(16,478)	\$(17,541)	\$(9,528)
Fuel inventories	(3,509)	3,121	(1,377)	3,584
Materials and supplies	1,917	340	2,332	(505)
Accounts payable	(3,669)	(9,811)	8,092	(175)
Accrued taxes	61,770	44,369	630	(4,250)
Accrued interest	(3,829)	(3,192)	669	4,579
Wolf Creek refueling outage accrual	8,168	5,097	(2,446)	7,731
Pension and postretirement benefit obligations	(1,478)	(4,335)	612	(2,020)
Other	11,997	6,770	15,599	9,164
<b>Total</b>	<b>\$ 36,375</b>	<b>\$ 25,881</b>	<b>\$ 6,570</b>	<b>\$ 8,580</b>

## 3. ACCOUNTING CHANGES

### Change in Accounting Estimate

In 1998 KCPL adopted the American Institute of Certified Public Accountants Statement of Position (SOP) 98-1 -- Accounting for the Costs of Computer Software Developed or Obtained For

Internal Use. KCPL was generally in conformance with this SOP prior to adoption in regards to external direct costs and interest costs incurred in the development of computer software for internal use. This SOP also provides that once the capitalization criteria of the SOP have been met, payroll and payroll-related costs for employees who are directly associated with and who devote time to the internal-use computer software project should be capitalized.

Costs capitalized in accordance with SOP 98-1 will be amortized on a straight-line basis over estimated service lives of 5 to 10 years. The effect of adopting SOP 98-1 for the nine-months ended September 30, 1998, is an increase of net income of approximately \$2,200,000 (\$0.04 per share).

#### Comprehensive Income

In 1998 KCPL adopted Financial Accounting Standards Board Statement No. 130 -- Reporting Comprehensive Income which establishes standards for reporting of comprehensive income and its components.

#### 4. SECURITIES AVAILABLE FOR SALE

Certain investments in equity securities are accounted for as securities available for sale and adjusted to market value with unrealized gains (or losses), net of deferred income taxes, reported as a separate component of comprehensive income and common stock equity.

The cost of securities available for sale held by KLT Inc. (KLT), a wholly-owned subsidiary of KCPL, was \$4.8 million as of September 30, 1998, and \$5.1 million as of December 31, 1997. Unrealized gains were \$0.7 million net of \$0.4 million deferred income taxes, at September 30, 1998, decreasing from \$1.9 million, net of \$1.1 million deferred income taxes, at December 31, 1997.

#### 5. CAPITALIZATION

KCPL Financing I (Trust), a wholly-owned subsidiary of Kansas City Power & Light Company, has previously issued \$150,000,000 of 8.3% preferred securities. The sole asset of the Trust is the \$154,640,000 principal amount of 8.3% Junior Subordinated Deferrable Interest Debentures, due 2037, issued by KCPL.

In August 1998 KCPL refinanced the full amount of its Guaranty of Pollution Control Bonds with unsecured Environmental Improvement Revenue Refunding Bonds. The maturity dates of the Bonds were not extended.

From October 1 through November 9, 1998, KLT's borrowings under its bank credit agreement increased \$18 million.

#### 6. INTANGIBLE ASSETS

The application of purchase accounting for certain investments has resulted in about \$19 million in goodwill recognition. These amounts are included in Other deferred charges and Investments and Nonutility Property on the consolidated balance sheets and are being amortized over 10 to 40 years.

ITEM 2. MANAGEMENT'S DISCUSSION AND ANALYSIS OF FINANCIAL CONDITION AND RESULTS OF OPERATIONS

STATUS OF MERGER

See Note 1 to the Consolidated Financial Statements as to the current status of the merger agreement with Western Resources Inc. (Western Resources) including the Amended and Restated Agreement and Plan of Merger (Amended Merger Agreement) dated March 18, 1998. In December 1996 the Federal Energy Regulatory Commission (FERC) issued a statement concerning electric utility mergers. Under the statement, companies must demonstrate that their merger does not adversely affect competition or wholesale rates. As remedies, FERC may consider a range of conditions including transmission upgrades, divestitures of generating assets or formation of independent system operators.

REGULATION AND COMPETITION

As competition develops throughout the electric utility industry, we are positioning Kansas City Power & Light Company (KCPL) to excel in an open market. We are improving the efficiency of KCPL's core utility operations, lowering prices and offering new services. In particular, value-added services for large energy users can include contracts for natural gas commodities.

Competition in the electric utility industry was accelerated with the National Energy Policy Act of 1992. This Act gives FERC the authority to require electric utilities to provide transmission line access to independent power producers (IPPs) and other utilities (wholesale wheeling). KCPL, already active in the wholesale wheeling market, was one of the first utilities to receive FERC's approval of an open-access tariff for wholesale wheeling transactions. In April 1996 FERC issued an order requiring all owners of transmission facilities to adopt open-access tariffs and participate in wholesale wheeling. We have made the necessary filings to comply with that order.

FERC's April 1996 order has encouraged more movement toward retail competition at the state level. An increasing number of states have already adopted open access requirements for utilities' retail electric service, allowing competing suppliers access to their retail customers (retail wheeling). Many other states are actively considering retail wheeling. In Kansas, the retail wheeling task force proposed a restructuring bill that would implement retail competition on July 1, 2001. Some of the key points included in the proposed bill are: 1) the Kansas Corporation Commission (KCC) will determine the amount of under-utilized assets (stranded costs) each utility is allowed to recover and 2) a unit charge per kwh will be assessed to all customers for recovery of competitive transition costs (these costs include stranded costs, other regulatory assets, nuclear decommissioning, etc.). In Missouri, a legislative committee has been formed to study the issue. The retail wheeling task force formed by the Missouri Public Service Commission (MPSC) issued its report in May 1998. The report identifies issues and various options for the legislature to address. No retail wheeling bill was passed in either the Kansas or Missouri legislatures in 1998.

Competition through retail wheeling could result in market-based rates below current cost-based rates. This would provide growth opportunities for low-cost producers and risks for higher-cost producers, especially those with large industrial customers. Lower rates and the loss of major customers could result in stranded costs and place an unfair burden on the remaining customer base or shareholders. Testimony filed in the merger case in Kansas for KCPL indicated that stranded costs are approximately \$1 billion. An independent study prepared at the request of the KCC concluded that there are no stranded costs. We cannot predict the extent that stranded costs

will be recoverable in future rates. If an adequate and fair provision for recovery of these lost revenues is not provided, certain generating assets may have to be evaluated for impairment and appropriate charges recorded against earnings. In addition to lower profit margins, market-based rates could also require generating assets to be depreciated over shorter useful lives, increasing operating expenses.

Although Missouri and Kansas have not yet authorized retail wheeling, we believe KCPL is positioned well to compete in an open market with its diverse customer mix and pricing strategies. About 20% of KCPL's retail mwh sales are to industrial customers which is below the utility industry average. KCPL has a flexible rate structure with industrial rates that are competitively priced with other companies in the region. In addition, long-term contracts are in place or under negotiation for a large portion of KCPL's industrial sales. Although there currently is no direct competition for retail electric service within KCPL's service territory, it does exist within the bulk power market, between alternative fuel suppliers and among third-party energy management companies. Third-party energy management companies are seeking to initiate relationships with large users in an attempt to enhance their chances to directly supply electricity if retail wheeling is authorized.

Increased competition could also force utilities to change accounting methods. Financial Accounting Standards Board (FASB) Statement No. 71 - Accounting for Certain Types of Regulation, applies to regulated entities whose rates are designed to recover the costs of providing service. An entity's operations could stop meeting the requirements of FASB 71 for various reasons, including a change in regulation or a change in the competitive environment for a company's regulated services. For those operations no longer meeting the requirements of regulatory accounting, regulatory assets would be written off. KCPL's regulatory assets, totaling \$150 million at September 30, 1998, will be maintained as long as FASB 71 requirements are met.

It is possible that competition could eventually have a materially adverse affect on KCPL's results of operations and financial position. Should competition eventually result in a significant charge to equity, capital costs and requirements could increase significantly.

#### NONREGULATED OPPORTUNITIES

KLT Inc. (KLT) is a wholly-owned subsidiary pursuing nonregulated business ventures. On July 31, 1998, KLT sold 100% of the common stock of KLT Power Inc., a wholly-owned subsidiary of KLT, resulting in an after-tax gain of approximately \$2.4 million. Remaining ventures include investments in domestic and China power production, energy services, oil and gas development and production, telecommunications, telemetry technology and affordable housing limited partnerships.

KCPL had a total equity investment in KLT of \$119 million as of September 30, 1998. KLT's net income for the nine-months ended September 30, 1998, totaled \$9.0 million compared to \$2.7 million for the nine-months ended September 30, 1997. KLT's consolidated assets at September 30, 1998, totaled \$302 million.

On May 29, 1998, Home Service Solutions Inc. (HSS), a wholly-owned subsidiary of KCPL, entered into a stock purchase agreement to obtain a 50% interest in R.S. Andrews Enterprises, Inc. (RSAE), a consumer services company in Atlanta, Georgia. RSAE expects to make future acquisitions in other key U.S. markets. On August 28, 1998, HSS formed Worry Free, Inc. to acquire the Worry Free non-regulated business from KCPL. As a residential service provider, Worry Free, Inc. bundles financing, preventative maintenance and warranty services for heating and

air conditioning equipment. KCPL had a total equity investment in Home Service Solutions Inc. of \$21 million as of September 30, 1998.

The growth of KLT and the investment in RSAE by HSS account for most of the increase in KCPL's consolidated investments and nonutility property.

#### RESULTS OF OPERATIONS

Three-month period: Three months ended September 30, 1998, compared with three months ended September 30, 1997

Nine-month period: Nine months ended September 30, 1998, compared with nine months ended September 30, 1997

Twelve-month period: Twelve months ended September 30, 1998, compared with twelve months ended September 30, 1997

#### EARNINGS OVERVIEW

##### Earnings Per Share (EPS) For the Periods Ended September 30

	1998	1997	Increase	Merger Expenses	Increase excluding Merger Expenses
Three months ended	\$0.94	\$0.92	\$0.02	\$(0.09)	\$0.11
Nine months ended	\$1.76	\$1.04	\$0.72	\$ 0.33	\$0.39
Twelve months ended	\$1.90	\$1.34	\$0.56	\$ 0.26	\$0.30

EPS for all periods excluding merger expenses increased primarily due to increases in retail sales because of warmer than normal weather and continued load growth. Additionally, EPS for all periods increased due to increased bulk power revenues. Partially offsetting these increases to EPS are the effects of increased fuel production costs and purchased power expenses as a result of outages at the Hawthorn 5 and LaCygne 1 generating units (see the Fuel and Purchased Power section).

Growth in subsidiary income increased EPS for the three-month period by \$0.07, the nine-month period by \$0.10 and the twelve-month period by \$0.18. EPS for the three-month period was reduced by \$0.04 because of the implementation of rate reductions approved by the KCC effective January 1, 1998. EPS for the nine- and twelve-month periods was reduced by \$0.11 because of the KCC rate reductions. EPS for the nine- and twelve-month periods was also reduced by increased interest expense related to the mandatorily redeemable preferred securities and increased depreciation expense.

Merger expenses for the three-months ended September 30, 1998, were \$5.8 million (\$0.09 per share). Merger expenses for the nine-months ended September 30, 1998, were \$12.0 million (\$0.19 per share). During the nine-months ended September 30, 1997, KCPL paid \$53 million (\$0.52 per share) to UtiliCorp United Inc. (UtiliCorp) for terminating the merger agreement with UtiliCorp and announcing an agreement to combine with Western Resources. Merger expenses for the twelve-months ended September 30, 1998, reduced EPS by \$0.26. For the twelve-months ended September 30, 1997, EPS was reduced by \$0.52 for the payment to UtiliCorp. Costs to



implement the new merger structure with Western Resources announced March 18, 1998, are being expensed as incurred.

#### MEGAWATT-HOUR (MWH) SALES AND OPERATING REVENUES

Sales and revenue data:

(revenue change in millions)

	Periods ended September 30, 1998 versus September 30, 1997					
	Three Months		Nine Months		Twelve Months	
	Mwh	Revenues	Mwh	Revenues	Mwh	Revenues
	Increase (decrease)					
<b>Retail Sales:</b>						
Residential	13 %	\$ 14	11 %	\$ 27	11 %	\$ 31
Commercial	7 %	8	7 %	18	6 %	21
Industrial	2 %	2	5 %	4	3 %	4
Other	10 %	-	10 %	(4)	6 %	(6)
KS rate refund accrual		(4)		(11)		(11)
Total Retail	8 %	20	8 %	34	7 %	39
<b>Sales for Resale:</b>						
Bulk Power Sales	(13)%	3	13 %	13	(11)%	2
Other	12 %	-	13 %	-	16 %	-
Total		23		47		41
Other revenues		-		1		2
Total Operating Revenues		\$ 23		\$ 48		\$ 43

The KCC approved a settlement agreement, effective January 1, 1998, authorizing a \$14.2 million revenue reduction and an increase in depreciation expense of \$2.8 million. When the KCC approves a new rate design, which is expected to be implemented February 1, 1999, KCPL will refund the amount that has accrued between January 1, 1998, and the implementation date. Recorded revenues for the three-month period are reduced by about \$4 million and the nine- and twelve-month periods are reduced by about \$11 million as a result of an accrual (recorded in Other in Current Liabilities on the Consolidated Balance Sheet) for this rate refund.

Higher summer rates, which are in effect from June through September, and seasonally higher mwh sales in September 1998 versus December 1997 resulted in a higher customer accounts receivable balance at September 30, 1998, compared with December 31, 1997.

Warmer than normal weather and continued load growth resulted in an increase in retail mwh sales for all periods. Load growth consists of higher usage-per-customer as well as the addition of new customers. In addition, retail mwh sales during the nine- and twelve-months ended September 30, 1997, reflected reduced sales to a major industrial customer because of a strike by its employees.

For the three-month period, Other retail revenues remained approximately the same and for the nine- and twelve-month periods Other retail revenues decreased while Other retail mwh sales increased for all periods. These differences are due to the sale of the public streetlight system to the City of Kansas City, Missouri in August 1997. The rate per mwh paid by the city was reduced as a result of the sale agreement, as the new rate is for electricity only. The city has entered into a separate maintenance agreement with KCPL.

On August 19, 1998, KCPL set a record peak demand for the consumption of energy of 3,175 megawatts. This reflects the higher than normal megawatt demand on the system during the summer of 1998.

KCPL has long-term sales contracts with certain major industrial customers. These contracts are tailored to meet customers' needs in exchange for their long-term commitment to purchase energy.

Bulk power sales vary with system requirements, generating unit and purchased power availability, fuel costs and the requirements of other electric systems. For all periods, the price per mwh of bulk power sales increased and even resulted in increased revenues for the three- and twelve-month periods even though mwh sales decreased. Outages at the LaCygne 1 and 2 generating units in the second quarter of 1997 contributed to lower bulk power sales in the nine- and twelve-months ended September 30, 1997.

Total revenue per mwh sold varies with changes in rate tariffs, the mix of mwh sales among customer classifications and the effect of declining price per mwh as usage increases. An automatic fuel adjustment provision is included only in sales that apply to less than 1% of revenues.

Future mwh sales and revenues per mwh will also be affected by national and local economies, weather and customer conservation efforts. Competition, including alternative sources of energy such as natural gas, co-generation, IPPs and other electric utilities, may also affect future sales and revenue.

#### FUEL AND PURCHASED POWER

Combined fuel and purchased power expenses for the three-month period increased 27% while total mwh sales (total of retail and sales for resale) increased 5%. Combined fuel and purchased power expenses for the nine-month period increased 11% while total mwh sales increased 9%. Combined fuel and purchased power expenses for the twelve-month period increased 6% while total mwh sales increased 3%. The differences are due mainly to additional replacement power expenses incurred during the three-, nine- and twelve-months ended September 30, 1998, due to outages at the Hawthorn 5 and LaCygne 1 generating units. Additionally, the per unit cost of generation increased during all periods as a result of more generation from oil and gas which are substantially higher in cost per MMBTU than coal or nuclear. The price per unit of purchased power also increased during all periods due to less purchased power availability and the widespread use of market-based rates in the competitive wholesale market. Partially offsetting these factors, the nine- and twelve-months ended September 30, 1997, included additional replacement power costs incurred during outages at the LaCygne generating units.

Nuclear fuel costs per MMBTU decreased 6% for the twelve-month period. Nuclear fuel costs per MMBTU remain substantially less than the MMBTU price of coal averaging 60% of the MMBTU price of coal for the twelve-months ended September 30, 1998 and 1997. We expect this relationship and the price of nuclear fuel to remain fairly constant through the year 2001. For the twelve-months ended September 30, 1998, fossil plants represented about 76% of generation and the nuclear plant about 24%. For the twelve-months ended September 30, 1997, fossil plants represented about 70% of generation and the nuclear plant about 30%. The twelve-months ended September 30, 1998, reflected a higher percentage of total generation by the fossil plants due mainly to the fall 1997 refueling and maintenance outage at Wolf Creek that lasted for 58 days in the fourth quarter of 1997. Additionally, the outages at the LaCygne coal-fired generating units in 1997

reduced the percentage of total generation by the fossil plants for the twelve-months ended September 30, 1997.

The MMBTU price of coal decreased 6% for the twelve-month period. Our coal procurement strategies continue to provide coal costs well below the regional average. We expect coal costs to remain fairly consistent with current levels through 2001.

#### OTHER OPERATION AND MAINTENANCE EXPENSES

Combined other operation and maintenance expenses for all periods increased. The three-month period increased due to increased maintenance expenses resulting from outages at LaCygne 1 and Hawthorn 5 during the three-months ended September 30, 1998. Repairs to Hawthorn 5 to fix the damage from a steam line rupture will be reimbursed by insurance except for the deductible. Certain maintenance projects originally scheduled for the 1999 spring outage were rescheduled to be completed during this outage resulting in higher maintenance expenses in 1998. Other operation expenses increased for the nine-month period but were partially offset by decreased maintenance expenses as outages at the LaCygne 1 and 2 generating units resulted in additional maintenance expenses in the nine-months ended September 30, 1997. Combined other operation and maintenance expenses for the twelve-month period increased due largely to increases in other power supply expenses, Wolf Creek non-fuel operations, customer service expenses and sales expenses.

We continue to emphasize new technologies, improved work methodologies and cost control. We are continuously improving our work processes to provide increased efficiencies and improved operations. Through the use of cellular technology, a majority of customer meters are read automatically.

#### DEPRECIATION

The increase in depreciation expense for all periods reflects the implementation of the KCC settlement agreement and normal increases in depreciation from capital additions.

#### TAXES

The increase in operating income taxes for all periods reflects higher taxable operating income. Additionally, for the twelve-months ended September 30, 1997, income taxes had been reduced to reflect adjustments for the filing of the 1995 tax returns and the settlement with the Internal Revenue Service regarding tax issues included in the 1985 through 1990 tax returns.

##### Components of general taxes:

	Three Months		Nine Months		Twelve Months	
	Ended		Ended		Ended	
	September 30		September 30		September 30	
	1998	1997	1998	1997	1998	1997
	(thousands)					
Property	\$10,508	\$11,235	\$31,525	\$33,704	\$41,350	\$44,125
Gross receipts	14,472	13,824	32,922	31,764	42,006	41,227
Other	2,954	2,589	7,688	6,898	9,710	8,993
Total	\$27,934	\$27,648	\$72,135	\$72,366	\$93,066	\$94,345

Property taxes decreased for all periods reflecting changes in Kansas tax law which reduced the mill levy rates and because of reductions in Missouri and Kansas property tax assessed valuations. Gross receipts taxes increased for all periods reflecting higher billed Missouri revenues.

#### OTHER INCOME AND (DEDUCTIONS)

Miscellaneous income for the nine- and twelve-month periods increased because of increased revenues from non-utility and subsidiary operations. The gain on the sale of 100% of the common stock of KLT Power Inc., dividends on the investment in a fossil-fuel generator in Argentina (prior to the sale of the investment), revenues from an energy services subsidiary in which KLT obtained a controlling interest during 1997 and increased oil and gas production contributed to the increase in miscellaneous income from subsidiary operations for the nine- and twelve-month periods.

Miscellaneous deductions for all periods included increased non-utility expenses. Additionally, the nine- and twelve-month periods increased because of increased subsidiary operating costs. Increased gas operations and the inclusion of three small companies in which KLT obtained controlling interests during 1997 are the primary activities that contributed to the increase in subsidiary operating costs.

Miscellaneous deductions for the nine- and twelve-month periods decreased primarily due to the \$53 million payment to UtiliCorp in the prior periods. During the nine-months ended September 30, 1998, \$12 million of merger expenses were incurred related to the Amended Merger Agreement with Western Resources. The twelve-months ended September 30, 1998, includes an additional \$7 million of merger expenses related to the original merger agreement with Western Resources.

Income taxes for all periods reflect the tax impact of the excess of miscellaneous deductions over miscellaneous income. Additionally, during the first nine months of 1998 and 1997 we accrued tax credits of \$19 million and \$16 million, respectively, or three-fourths of the total expected annual credits, related to affordable housing partnership investments and oil and gas investments. Non-taxable increases in the cash surrender value of corporate-owned life insurance contracts and certain non-deductible expenses also affected the relationship between net miscellaneous income and deductions and income taxes.

#### INTEREST CHARGES

The increase in miscellaneous interest charges for the nine- and twelve-month periods is primarily due to interest costs incurred on the \$150 million of 8.3% preferred securities issued in April 1997.

We use interest rate swap and cap agreements to limit the volatility in interest expense on a portion of KLT's variable-rate, bank credit agreement and KCPL's variable-rate, long-term debt. Although these agreements are an integral part of our interest rate management, their incremental effect on interest expense and cash flows is not significant. We do not use derivative financial instruments for speculative purposes.

#### WOLF CREEK

Wolf Creek is one of KCPL's principal generating units representing about 16% of its accredited generating capacity. The plant's operating performance has remained strong, contributing about 26% of the annual mwh generation while operating at an average capacity of

88% over the last three years. It has the lowest fuel cost per MMBTU of any of KCPL's generating units.

The incremental operating, maintenance and replacement power costs for planned outages are accrued evenly over the unit's operating cycle, normally 18 months. As actual outage expenses are incurred, the refueling liability and related deferred tax asset are reduced.

Wolf Creek's ninth refueling and maintenance outage, budgeted for 35 days, began in early October 1997 and was completed in December 1997 (58 days). The extended length of the ninth outage was caused by several equipment problems. The extended length of the outage was the primary reason for a \$7 million increase in Wolf Creek related replacement power and operating and maintenance expenses for the twelve-month period. Wolf Creek's tenth refueling and maintenance outage is scheduled for the spring of 1999 and is estimated to be a 40-day outage.

Currently, no major equipment replacements are expected. An extended shut-down of Wolf Creek could have a substantial adverse effect on KCPL's business, financial condition and results of operations. Higher replacement power and other costs would be incurred as a result. Although not expected, an unscheduled plant shut-down could be caused by actions of the Nuclear Regulatory Commission reacting to safety concerns at the plant or other similar nuclear units. If a long-term shut-down occurred, the state regulatory commissions could consider reducing rates by excluding the Wolf Creek investment from rate base.

Ownership and operation of a nuclear generating unit exposes KCPL to risks regarding the cost of decommissioning the unit at the end of its life and to potential retrospective assessments and property losses in excess of insurance coverage.

#### ENVIRONMENTAL MATTERS

KCPL's policy is to act in an environmentally responsible manner and use the latest technology available to avoid and treat contamination. We continually conduct environmental audits designed to ensure compliance with governmental regulations and detect contamination. However, these regulations are constantly evolving; governmental bodies may impose additional or more rigid environmental regulations that could require substantial changes to operations or facilities.

The Clean Air Act Amendments of 1990 contain two programs significantly affecting the utility industry. KCPL has spent about \$5 million for the installation of continuous emission monitoring equipment to satisfy the requirements under the acid rain provision. The other utility-related program calls for a study of certain air toxic substances which has now been completed. Based on the interpretation of this study, regulation of these substances, including mercury, could be required. We cannot predict the likelihood of any such regulations or compliance costs.

In July 1997 the United States Environmental Protection Agency (EPA) published new air quality standards for particulate matter. Additional regulations implementing these new particulate standards have not been finalized. Without the implementation regulations, the real impact of the standards on KCPL cannot be determined. However, the impact on KCPL and other utilities that use fossil fuels could be substantial. Under the new fine particulate regulations the EPA is in the process of implementing a three-year study of fine particulate emissions. Until this testing and review period has been completed, KCPL cannot determine additional compliance costs, if any, associated with the new particulate regulations.

In 1997 the EPA also issued new proposed regulations on reducing nitrogen oxide (NOx) emissions. Final regulations implementing reductions in NOx emissions were announced by the EPA on September 24, 1998. These regulations require 22 states, including Missouri, to submit plans for controlling NOx emissions by September 1999. The regulations will require a significant reduction in NOx emissions from 1990 levels from KCPL's Missouri coal-fired plants by the year 2003. In order to achieve these reductions, KCPL will incur significantly higher capital costs or will purchase power or NOx emissions allowances. It is possible that purchased power or emissions allowances may be too costly or unavailable. Preliminary analysis of the regulations indicate that selective catalytic reduction technology will be required for some of the KCPL units, as well as other changes. Currently, KCPL estimates that additional capital expenditures to comply with these regulations could range from \$90 to \$150 million over the period from 1999 to 2002. Operations and maintenance expenses could also increase by more than \$10 million per year, beginning in 2003. We will continue to refine these preliminary estimates and explore alternatives to comply with these new regulations in order to minimize, to the extent possible, KCPL's capital costs and operating expenses. The ultimate cost of these regulations could be significantly different than the amounts estimated above. KCPL will continue to question whether such significant reductions in NOx emissions are economically justified. The final resolution of this matter may require federal legislative action or litigation.

At a December 1997 meeting in Kyoto, Japan, the Clinton Administration supported changes to the International Global Climate Change treaty which would require a seven percent reduction in United States carbon dioxide (CO2) emissions below 1990 levels. President Clinton has stated that this change in the treaty will not be submitted to the U.S. Senate at this time where ratification is uncertain. If future national restrictions on electric utility CO2 emissions are eventually required, the financial impact upon KCPL could be substantial.

#### IMPACT OF THE YEAR 2000 ISSUE

The Year 2000 Issue is the result of computer programs using two digits instead of four digits to define the applicable year. Computer programs with date-sensitive software may recognize a date using "00" as the year 1900 rather than the year 2000. This could result in a system failure or miscalculations causing disruptions of operations.

In our ongoing assessment of the Year 2000 Issue, we have been examining KCPL's systems, processes and operations to ensure readiness for the year 2000 and plan for the protection of the KCPL electric system. We have determined that it is necessary to modify or replace some of KCPL's hardware and internal software so that its systems will properly utilize dates beyond December 31, 1999. We believe that with the planned modifications and conversions of KCPL's hardware and software, Year 2000 problems will be minimized. We are utilizing both internal and external resources, as necessary, to address the Year 2000 Issue. We have substantially completed the inventory and assessment phases of our Year 2000 project. The remediation and testing phases of the project are in process and we expect to be substantially complete with the remediation phase by July 1999 and with the testing phase prior to the end of 1999. The monitoring phase of our Year 2000 project will continue through at least the first quarter of 2000.

For the past several years, KCPL has made approximately \$39 million in capital investments for new and innovative technologies that place it in a stronger competitive position for the future. We believe all replacement systems will be Year 2000 ready. As a result, the cost of the Year 2000 project has been lessened and is estimated to be under \$7 million of additional costs. These additional costs are being expensed as incurred. However, there is no guarantee that current cost

estimates of the Year 2000 project will not be exceeded. Specific factors that might cause costs to exceed estimates include, but are not limited to, the availability and cost of appropriately trained personnel, the ability to locate and correct all relevant computer codes, the ability to locate and replace non-Year 2000 ready embedded microprocessors and similar uncertainties.

A Nuclear Regulatory Commission (NRC) audit of the Wolf Creek nuclear generating unit's Year 2000 program is scheduled for the week beginning November 19, 1998. To date, we believe we are in compliance with the NRC's Year 2000 regulations including being on schedule to meet the July 1, 1999, deadline for a written response confirming Year 2000 state of readiness.

We have initiated formal communications with all of KCPL's large suppliers and customers to evaluate KCPL's vulnerability to those third parties' failure to remediate their own Year 2000 Issue. However, there is no guarantee that third party systems on which KCPL's systems rely will be timely converted, or that a failure to convert, or a conversion that is incompatible with KCPL's systems, would not have a material adverse effect on KCPL. Contingency plans are being developed for critical suppliers to minimize the affect of third party failures.

KCPL's electrical system is included in the Eastern Interconnection that connects utilities throughout the United States and Canada, east of the Rocky Mountains. The interconnection is essential to the reliability, stability and operational integrity of each connected electric utility. Failure of electric facilities due to the millennium change could affect the interconnection and, if severe, could result in electric service disruptions. KCPL could encounter difficulties supplying electric service if other utilities in the interconnected grid fail to achieve Year 2000 compliance. Recognizing this risk, we are preparing operating contingency plans to protect KCPL's customers and equipment. KCPL's existing emergency procedures for start up after system blackout and its load reduction and restoration procedures will be reviewed and updated. We are evaluating the possibility of forming one or more "islands" to protect a portion of KCPL's system from disruptions and if needed, to provide electricity to assist in the restoration of its system. Alternatives developed during contingency planning will be tested, where feasible, prior to their use. Additionally, we are working with other electric industry organizations, such as the Electric Power Research Institute, to share Year 2000 information. KCPL will also be participating in the operating contingency plans and drills developed by the Southwest Power Pool and the North American Electric Reliability Council.

#### PROJECTED CONSTRUCTION EXPENDITURES

On November 3, 1998, KCPL's Board of Directors approved a plan to increase generation capacity to help ensure that KCPL will be able to meet future load demands of its customers. This plan could result in approximately \$58 million of additional capital expenditures in 1999 with additional costs in later years, unless we enter into operating leases to obtain the capacity.

#### CAPITAL REQUIREMENTS AND LIQUIDITY

As of November 9, 1998, the liquid resources of KCPL included cash flows from operations; \$300 million of registered but unissued, unsecured medium-term notes; \$150 million of registered but unissued, preferred securities and \$281 million of unused bank lines of credit. The unused lines consisted of KCPL's short-term bank lines of credit of \$210 million and KLT's bank credit agreement of \$71 million.

KCPL continues to generate positive cash flows from operating activities although individual components of working capital items will vary with normal business cycles and operations including the timing of receipts and payments. Cash from operating activities increased for the nine- and

twelve-month periods primarily due to increased net income during the current periods, additional income taxes deferred and Kansas rate refund accrued but not refundable until 1999. Additionally, the timing of the Wolf Creek outage affects the refueling outage accrual, deferred income taxes and amortization of nuclear fuel.

The increase in accrued taxes from December 31, 1997, to September 30, 1998, mainly reflects the increase in taxable income during the first nine months of 1998, refunds of federal and state income taxes after the 1997 tax returns were filed and the timing of income tax and property tax payments.

Coal inventory levels at the end of September 1998 are at approximately 100% of targeted levels compared to 75% of targeted levels at December 31, 1997.

Cash used for investing activities varies with the timing of utility capital expenditures and purchases of investments and nonutility properties. Cash used for investing activities decreased for the nine- and twelve-month periods, partially due to \$53 million of proceeds from the July 31, 1998, sale of 100% of the common stock of KLT Power Inc. Additionally, KLT made several large investments during the first three months of 1997. Partially offsetting these activities, the nine- and twelve-months ended September 30, 1997, reflect \$21.5 million of proceeds from the sale of streetlights to the City of Kansas City, Missouri at a minimal gain.

Cash used for financing activities for the nine- and twelve-months ended September 30, 1998, was primarily for repayment of long-term debt by KCPL and KLT and for dividend payments by KCPL. The proceeds from the sale of 100% of the common stock of KLT Power Inc. were primarily used by KLT for repayment of borrowings under its bank credit agreement. The majority of cash from financing activities for the nine- and twelve-months ended September 30, 1997, was used to repay short-term debt, pay merger expenses and finance additional purchases of investments and nonutility properties by KLT. Financings consisted of KCPL Financing 1, a wholly-owned subsidiary of KCPL, issuance of \$150 million of preferred securities and borrowings by KLT on its bank credit agreement.

KCPL's common dividend payout ratio was 86% for the twelve-months ended September 30, 1998, and 121% for the twelve-months ended September 30, 1997. The ratio for the twelve-months ended September 30, 1997, is higher due mainly to the reduction in earnings because of significant merger-related expenses.

We expect to meet day-to-day operations, utility construction requirements and dividends with internally-generated funds. Uncertainties affecting KCPL's ability to meet these requirements with internally-generated funds include the effect of inflation on operating expenses, the level of mwh sales, regulatory actions, compliance with future environmental regulations and the availability of generating units. The funds needed for the retirement of \$346 million of maturing debt through the year 2002 will be provided from operations, refinancings or short-term debt. KCPL might issue additional debt and/or additional equity to finance growth or take advantage of new opportunities.



PART II - OTHER INFORMATION

Item 3. Legal Proceedings

In *Kansas City Power & Light Co. v. Western Resources, Inc., et al.* (previously discussed in the Company's Form 10-K for the year ended December 31, 1997), the United States Court of Appeals for the Eighth Circuit, on July 6, 1998, awarded approximately \$500,000 in attorneys' fees and related expenses to Manson, an intervenor. The Company and Manson have both appealed the award. Manson has withdrawn his original appeal filed on September 23, 1997. The appeals regarding attorneys' fees are all that remain of this litigation.

*State of Missouri ex rel. Inter-City Beverage Co., Inc., et al. vs. The Public Service Commission of the State of Missouri, et al.*; and *Jewish Community Campus of Greater Kansas City, Inc. vs. Kansas State Corporation Commission et al.* (previously discussed in the Company's Form 10-Q for the quarter ended March 31, 1998) were dismissed by the Missouri Court of Appeals, Western District (transfer to the Missouri Supreme Court was denied) and the Kansas Court of Appeals respectively. Complainants in these two cases have exhausted all judicial remedies.

Item 4. Submission of Matters to A Vote of Security Holders.

The Company held a Special Meeting of Shareholders on July 30, 1998, to vote on matters relating to the proposed merger of the Company, Western Resources, Inc., Kansas Gas and Electric Company, NKC, Inc. (to be renamed Westar Energy), and the merger of KCPL with and into Westar Energy. At that meeting, votes cast with respect to the approval and adoption of the Amended and Restated Agreement and Plan of Merger dated as of March 18, 1998, were as follows:

FOR	AGAINST	ABSTAIN
46,005,335	2,444,476	531,913

With respect to the approval of granting discretionary power to adjourn or postpone the Special Meeting to solicit additional votes for Item 1, the votes cast were as follows:

FOR	AGAINST	ABSTAIN
38,087,360	9,948,578	945,786

Item 5. Other Information

**Shareholder Proposals.** Shareholder proposals intended to be presented at the KCPL 1999 Annual Meeting of Shareholders must be received at the Corporate Secretary's Office at the Company's principal office, 1201 Walnut, Kansas City, Missouri 64106-2124, on or before December 11, 1998, for consideration for inclusion in the proxy statement and form of proxy relating to that meeting.

If a shareholder intends to bring a matter before the 1999 Annual Meeting, other than by submitting a proposal for inclusion in the Company's proxy statement for that meeting, the

shareholder must give timely notice according to the Company's By-laws. To be timely, a shareholder's notice must be received by the Corporate Secretary's Office at the Company's principal office, 1201 Walnut, Kansas City, Missouri 64106, not less than sixty (60) days nor more than ninety (90) days prior to the date of the Annual Meeting; provided, however, that in the event that less than seventy (70) days' notice or prior public disclosure of the date of the meeting is given to shareholders, notice by the shareholder to be timely must be so received not later than the close of business on the tenth (10th) day following the day on which such notice of the date of the annual meeting was mailed or such public disclosure of the date of the annual meeting was made, whichever first occurs.

To be in proper written form, a shareholder's notice must set forth as to each matter the shareholder proposes to bring before the annual meeting (i) a brief description of the business desired to be brought before the annual meeting and the reasons for conducting such business at the annual meeting, (ii) the shareholder's name and record address, (iii) the class and number of shares of Company stock the shareholder owns beneficially or of record, (iv) a description of all arrangements or understandings between the shareholder and any other person or persons (including their names) in connection with the proposal of such business by the shareholder, and any material interest of the shareholder in such business, and (v) the shareholder's representation that they intend to appear in person or by proxy at the annual meeting to bring such business before the meeting.

New President. The Board of Directors of the Company on November 3, 1998, elected Bernard J. Beaudoin as President and member of the Board effective January 1, 1999. Mr. Beaudoin, who joined the Company in 1980, is currently Executive Vice President and Chief Financial Officer.

Item 6. Exhibits and Reports on Form 8-K.

Exhibits

- Exhibit 10(a) Credit Agreement dated as of August 11, 1998, among Kansas City Power & Light Company, Certain Lenders, The First National Bank of Chicago and NationsBank, N.A.
- Exhibit 10(b) Railcar Lease dated as of September 8, 1998, with CCG Trust Corporation.
- Exhibit 27 Financial Data Schedule (for the nine months ended September 30, 1998).

Reports on Form 8-K

No reports on Form 8-K were filed with the Securities and Exchange Commission for the quarter ended September 30, 1998.



CREDIT AGREEMENT

Arranged by

FIRST CHICAGO CAPITAL MARKETS, INC.

Dated as of August 11, 1998

among

KANSAS CITY POWER & LIGHT COMPANY,

CERTAIN LENDERS,

THE FIRST NATIONAL BANK OF CHICAGO,

as Administrative Agent

and

NATIONSBANK, N.A.,

as Documentation Agent

TABLE OF CONTENTS

	Page
ARTICLE I	
DEFINITIONS	1
ARTICLE II	
THE CREDITS	10
2.1. Commitment	10
2.2. Required Payments; Termination	10
2.3. Ratable Loans	10
2.4. Types of Advances	10
2.5. Commitment Fee; Reductions in Aggregate Commitment	10
2.6. Minimum Amount of Each Advance	11
2.7. Optional Principal Payments	11
2.8. Method of Selecting Types and Interest Periods for New Advances	11
2.9. Conversion and Continuation of Outstanding Advances	11
2.10. Changes in Interest Rate, etc.	12
2.11. Rates Applicable After Default	12
2.12. Method of Payment	13
2.13. Noteless Agreement; Evidence of Indebtedness	13
2.14. Telephonic Notices	14
2.15. Interest Payment Dates; Interest and Fee Basis	14
2.16. Notification of Advances, Interest Rates, Prepayments and Commitment Reductions	14
2.17. Lending Installations	15
2.18. Non-Receipt of Funds by the Administrative Agent	15
2.19. Extension of Facility Termination Date	15
ARTICLE III	
YIELD PROTECTION; TAXES	16
3.1. Yield Protection	16
3.2. Changes in Capital Adequacy Regulations	16
3.3. Availability of Types of Advances	17
3.4. Funding Indemnification	17
3.5. Taxes	17
3.6. Lender Statements; Survival of Indemnity	19
ARTICLE IV	
CONDITIONS PRECEDENT	19
4.1. Initial Advance	19
4.2. Each Advance	20

ARTICLE V	
REPRESENTATIONS AND WARRANTIES	21
5.1. Existence and Standing	21
5.2. Authorization and Validity	21
5.3. No Conflict; Government Consent	22
5.4. Financial Statements	22
5.5. Material Adverse Change	22
5.6. Taxes	22
5.7. Litigation and Contingent Obligations	22
5.8. ERISA	23
5.9. Accuracy of Information	23
5.10. Regulation U	23
5.11. Material Agreements	23
5.12. Compliance With Laws	23
5.13. Ownership of Properties	23
5.14. Plan Assets; Prohibited Transactions	24
5.15. Environmental Matters	24
5.16. Investment Company Act	24
5.17. Public Utility Holding Company Act	24
5.18. Pari Passu Indebtedness	24
5.19. Year 2000 Problem	24
ARTICLE VI	
COVENANTS	24
6.1. Financial Reporting	25
6.2. Use of Proceeds	26
6.3. Notice of Default	26
6.4. Conduct of Business	26
6.5. Taxes	26
6.6. Insurance	26
6.7. Compliance with Laws	27
6.8. Maintenance of Properties	27
6.9. Inspection	27
6.10. Consolidations, Mergers and Sale of Assets	27
6.11. Liens	28
6.12. Affiliates	29
ARTICLE VII	
DEFAULTS	30
ARTICLE VIII	
ACCELERATION, WAIVERS, AMENDMENTS AND REMEDIES	31
8.1. Acceleration	31
8.2. Amendments	32

8.3.	Preservation of Rights	32
ARTICLE IX		
GENERAL PROVISIONS		33
9.1.	Survival of Representations	33
9.2.	Governmental Regulation	33
9.3.	Headings	33
9.4.	Entire Agreement	33
9.5.	Several Obligations; Benefits of this Agreement	33
9.6.	Expenses; Indemnification	33
9.7.	Numbers of Documents	34
9.8.	Accounting	34
9.9.	Severability of Provisions	34
9.10.	Nonliability of Lenders	34
9.11.	Confidentiality	35
9.12.	Nonreliance	35
ARTICLE X		
THE AGENTS		35
10.1.	Appointment; Nature of Relationship	35
10.2.	Powers	36
10.3.	General Immunity	36
10.4.	No Responsibility for Loans, Recitals, etc.	36
10.5.	Action on Instructions of Lenders	37
10.6.	Employment of Administrative Agents and Counsel	37
10.7.	Reliance on Documents; Counsel	37
10.8.	Administrative Agent's Reimbursement and Indemnification	37
10.9.	Notice of Default	38
10.10.	Rights as a Lender	38
10.11.	Lender Credit Decision	38
10.12.	Successor Administrative Agent	38
10.13.	Administrative Agent's Fee.	39
10.14.	Delegation to Affiliates.	39
ARTICLE XI		
SETOFF; RATABLE PAYMENTS		40
11.1.	Setoff	40
11.2.	Ratable Payments	40
ARTICLE XII		
BENEFIT OF AGREEMENT; ASSIGNMENTS; PARTICIPATIONS		40
12.1.	Successors and Assigns	40
12.2.	Participations	41

12.2.1. Permitted Participants; Effect	41
12.2.2. Voting Rights	41
12.2.3. Benefit of Setoff	41
12.3. Assignments	42
12.3.1. Permitted Assignments	42
12.3.2. Effect; Effective Date	42
12.3.3. Substitution of Lenders	42
12.4. Dissemination of Information	43
12.5. Tax Treatment	43
ARTICLE XIII	
NOTICES	43
13.1. Notices	43
13.2. Change of Address	44
ARTICLE XIV	
COUNTERPARTS	44
ARTICLE XV	
CHOICE OF LAW; CONSENT TO JURISDICTION; WAIVER OF JURY TRIAL	44
15.1. CHOICE OF LAW	44
15.2. CONSENT TO JURISDICTION	44
15.3. WAIVER OF JURY TRIAL	45
EXHIBIT A	FORM OF OPINION
EXHIBIT B	COMPLIANCE CERTIFICATE
EXHIBIT C	ASSIGNMENT AGREEMENT
EXHIBIT D	LOAN/CREDIT RELATED MONEY TRANSFER INSTRUCTION
EXHIBIT E	NOTE
SCHEDULE 1	LIENS



## CREDIT AGREEMENT

This Agreement, dated as of August 11, 1998, is among Kansas City Power & Light Company, the Lenders, The First National Bank of Chicago, as Administrative Agent and NationsBank, N.A., as Documentation Agent. The parties hereto agree as follows:

### ARTICLE I

#### DEFINITIONS

As used in this Agreement:

"Administrative Agent" means The First National Bank of Chicago in its capacity as contractual representative of the Lenders pursuant to Article X, and not in its individual capacity as a Lender, and any successor Administrative Agent appointed pursuant to Article X.

"Advance" means a borrowing hereunder (or conversion or continuation thereof) consisting of the aggregate amount of the several Loans made on the same Borrowing Date (or date of conversion or continuation) by the Lenders to the Borrower of the same Type and, in the case of Eurodollar Advances, for the same Interest Period.

"Affiliate" of any Person means any other Person directly or indirectly controlling, controlled by or under common control with such Person. For purposes of this definition, "control" (including, with correlative meanings, the terms "controlled by" and "under common control with") shall mean the possession, directly or indirectly, of the power to direct or cause the direction of the management or policies of a Person, whether through the ownership of voting securities or by contract or otherwise.

"Aggregate Commitment" means the aggregate of the Commitments of all the Lenders, as reduced from time to time pursuant to the terms hereof.

"Agreement" means this credit agreement, as it may be amended or modified and in effect from time to time.

"Alternate Base Rate" means, for any day, a rate of interest per annum equal to the higher of (i) the Corporate Base Rate for such day and (ii) the sum of the Federal Funds Effective Rate for such day plus 1/2% per annum.

"Applicable Fee Rate" means, at any time, the percentage rate per annum at which commitment fees are accruing on the unused portion of the Aggregate Commitment at such time as set forth in the Pricing Schedule.

"Applicable Margin" means, with respect to Advances of any Type at any time, the percentage rate per annum which is applicable at such time with respect to Advances of such Type as set forth in the Pricing Schedule.

"Arranger" means First Chicago Capital Markets, Inc., a Delaware corporation, and its successors.

"Article" means an article of this Agreement unless another document is specifically referenced.

"Authorized Officer" means any of the Treasurer or the Chief Financial Officer of the Borrower, acting singly.

"Bonds" is defined in Section 6.2.

"Bond Documents" means the Bonds, any related offering circular and all documents, instruments and certificates delivered in connection therewith.

"Borrower" means Kansas City Power & Light Company, a Missouri corporation, and its successors and assigns.

"Borrowing Date" means a date on which an Advance is made hereunder.

"Borrowing Notice" is defined in Section 2.8.

"Business Day" means (i) with respect to any borrowing, payment or rate selection of Eurodollar Advances, a day (other than a Saturday or Sunday) on which banks generally are open in Chicago and New York for the conduct of substantially all of their commercial lending activities and on which dealings in United States dollars are carried on in the London interbank market and (ii) for all other purposes, a day (other than a Saturday or Sunday) on which banks generally are open in Chicago for the conduct of substantially all of their commercial lending activities.

"Capitalized Lease" of a Person means any lease of Property by such Person as lessee which would be capitalized on a balance sheet of such Person prepared in accordance with GAAP.

"Capitalized Lease Obligations" of a Person means the amount of the obligations of such Person under Capitalized Leases which would be shown as a liability on a balance sheet of such Person prepared in accordance with GAAP.

"Code" means the Internal Revenue Code of 1986, as amended, reformed or otherwise modified from time to time.

"Commitment" means, for each Lender, the obligation of such Lender to make Loans not exceeding the amount set forth opposite its signature below or as set forth in any Notice of Assignment relating to any assignment that has become effective pursuant to Section 12.3.2, as such amount may be modified from time to time pursuant to the terms hereof.

"Contingent Obligation" of a Person means any agreement, undertaking or arrangement by which such Person assumes, guarantees, endorses, contingently agrees to purchase or provide funds for the payment of, or otherwise becomes or is contingently liable upon, the obligation or liability of any other Person, or agrees to maintain the net worth or working capital or other financial condition of any other Person, or otherwise assures any creditor of such other Person against loss.

"Conversion/Continuation Notice" is defined in Section 2.9.

"Controlled Group" means all members of a controlled group of corporations or other business entities and all trades or businesses (whether or not incorporated) under common control which, together with the Borrower or any of its Subsidiaries, are treated as a single employer under Section 414 of the Code.

"Corporate Base Rate" means a rate per annum equal to the corporate base rate of interest announced by First Chicago from time to time, changing when and as said corporate base rate changes.

"Default" means an event described in Article VII.

"Documentation Agent" means NationsBank, N.A., in its capacity as documentation agent for the Lenders.

"Environmental Laws" means any and all federal, state, local and foreign statutes, laws, judicial decisions, regulations, ordinances, rules, judgments, orders, decrees, plans, injunctions, permits, concessions, grants, franchises, licenses, agreements and other governmental restrictions relating to (i) the protection of the environment, (ii) the effect of the environment on human health, (iii) emissions, discharges or releases of pollutants, contaminants, hazardous substances or wastes into surface water, ground water or land, or (iv) the manufacture, processing, distribution, use, treatment, storage, disposal, transport or handling of pollutants, contaminants, hazardous substances or wastes or the clean-up or other remediation thereof.

"ERISA" means the Employee Retirement Income Security Act of 1974, as amended from time to time, and any rule or regulation issued thereunder.

"Eurodollar Advance" means an Advance which bears interest at the applicable Eurodollar Rate.

"Eurodollar Base Rate" means, with respect to a Eurodollar Advance for the relevant Interest Period, the rate determined by the Administrative Agent to be the rate at which First Chicago offers to place deposits in U.S. dollars with first-class banks in the London interbank market at approximately 11:00 a.m. (London time) two Business Days prior to the first day of such Interest Period, in the approximate amount of First Chicago's relevant Eurodollar Loan and having a maturity approximately equal to such Interest Period.

"Eurodollar Loan" means a Loan which bears interest at the applicable Eurodollar Rate.

"Eurodollar Rate" means, with respect to a Eurodollar Advance for the relevant Interest Period, the sum of (i) the quotient of (a) the Eurodollar Base Rate applicable to such Interest Period, divided by (b) one minus the Reserve Requirement (expressed as a decimal) applicable to such Interest Period, plus the Applicable Margin. The Eurodollar Rate shall be rounded to the next higher multiple of 1/16 of 1% if the rate is not such a multiple.

"Excluded Taxes" means, in the case of each Lender or applicable Lending Installation and the Administrative Agent, taxes imposed on its overall net income, and franchise taxes imposed on it, by (i) the jurisdiction under the laws of which such Lender or the Administrative Agent is incorporated or organized or (ii) the jurisdiction in which the Administrative Agent's or such Lender's principal executive office or such Lender's applicable Lending Installation is located.

"Exhibit" refers to an exhibit to this Agreement, unless another document is specifically referenced.

"Extension Date" is defined in Section 2.19.

"Extension Request" is defined in Section 2.19.

"Facility Termination Date" means August 10, 1999 or any later date as may be specified as the Facility Termination Date in accordance with Section 2.19 or any earlier date on which the Aggregate Commitment is reduced to zero or otherwise terminated pursuant to the terms hereof.

"Federal Funds Effective Rate" means, for any day, an interest rate per annum equal to the weighted average of the rates on overnight Federal funds transactions with members of the Federal Reserve System arranged by Federal funds brokers on such day, as published for such day (or, if such day is not a Business Day, for the immediately preceding Business Day) by the Federal Reserve Bank of New York, or, if such rate is not so published for any day which is a Business Day, the average of the quotations at approximately 10:00 a.m. (Chicago time) on such day on such transactions received by the Administrative Agent from three Federal funds brokers of recognized standing selected by the Administrative Agent in its sole discretion.

"FERC" means the Federal Energy Regulatory Commission and any successor agency thereto.

"FERC Order" means the order issued by the FERC to Borrower dated June 4, 1998, Docket No. ES98-26-000, or an extension, renewal or replacement of such order in form and substance satisfactory to the Lenders.

"First Chicago" means The First National Bank of Chicago in its individual capacity, and its successors.

"Floating Rate" means, for any day, a rate per annum equal to the Alternate Base Rate for such day, in each case changing when and as the Alternate Base Rate changes.

"Floating Rate Advance" means an Advance which bears interest at the Floating Rate.

"Floating Rate Loan" means a Loan which bears interest at the Floating Rate.

"FPA" means the Federal Power Act, as amended, and all rules and regulations promulgated thereunder.

"GAAP" means generally accepted accounting principles set forth from time to time in the opinions and pronouncements of the Accounting Principles Board and the American Institute of Certified Public Accountants and statements of the Financial Accounting Standards Board.

"Indebtedness" of a Person means such Person's (i) obligations for borrowed money, (ii) obligations representing the deferred purchase price of Property or services (other than accounts payable arising in the ordinary course of such Person's business payable on terms customary in the trade), (iii) obligations, whether or not assumed, secured by Liens or payable out of the proceeds or production from property now or hereafter owned or acquired by such Person, (iv) obligations which are evidenced by notes, acceptances, or other instruments, (v) obligations of such Person to purchase securities or other property arising out of or in connection with the sale of the same or substantially similar securities or property, (vi) Capitalized Lease Obligations, (vii) Contingent Obligations, (ix) all obligations, contingent or otherwise, with respect to the face amount of letters of credit (whether or not drawn) and bankers' acceptances issued for the account of such Person and (x) any other obligation for borrowed money or other financial accommodation which in accordance with GAAP would be shown as a liability on the consolidated balance sheet of such Person.

"Interest Period" means, with respect to a Eurodollar Advance, a period of one, two, three or six months commencing on a Business Day selected by the Borrower pursuant to this Agreement. Such Interest Period shall end on the day which corresponds numerically to such date one, two, three or six months thereafter, provided, however, that if there is no

such numerically corresponding day in such next, second, third or sixth succeeding month, such Interest Period shall end on the last Business Day of such next, second, third or sixth succeeding month. If an Interest Period would otherwise end on a day which is not a Business Day, such Interest Period shall end on the next succeeding Business Day, provided, however, that if said next succeeding Business Day falls in a new calendar month, such Interest Period shall end on the immediately preceding Business Day.

"Lenders" means the lending institutions listed on the signature pages of this Agreement and their respective successors and assigns.

"Lending Installation" means, with respect to a Lender or the Administrative Agent, the office, branch, subsidiary or affiliate of such Lender or the Administrative Agent listed on the signature pages hereof or on a Schedule or otherwise selected by such Lender or the Administrative Agent pursuant to Section 2.17.

"Lien" means any lien (statutory or other), mortgage, pledge, hypothecation, assignment, deposit arrangement, encumbrance or preference, priority or other security agreement or preferential arrangement of any kind or nature whatsoever (including, without limitation, the interest of a vendor or lessor under any conditional sale, Capitalized Lease or other title retention agreement).

"Loan" means, with respect to a Lender, such Lender's loan made pursuant to Article II (or any conversion or continuation thereof).

"Loan Documents" means this Agreement and any Notes issued pursuant to Section 2.13.

"Material Adverse Effect" means a material adverse effect on (i) the business, Property, condition (financial or otherwise), results of operations, or prospects of the Borrower and its Subsidiaries taken as a whole, (ii) the ability of the Borrower to perform its obligations under the Loan Documents or (iii) the validity or enforceability of any of the Loan Documents or the rights or remedies of the Administrative Agent or the Lenders thereunder.

"Material Indebtedness" is defined in Section 7.5.

"Moody's" means Moody's Investors Service, Inc.

"Multiemployer Plan" means a Plan maintained pursuant to a collective bargaining agreement or any other arrangement to which the Borrower or any member of the Controlled Group is a party to which more than one employer is obligated to make contributions.

"Non-U.S. Lender" is defined in Section 3.5(iv).

"Note" means any promissory note issued at the request of a Lender pursuant to Section 2.13 in the form of Exhibit E.

"Notice of Assignment" is defined in Section 12.3.2.

"Obligations" means all unpaid principal of and accrued and unpaid interest on the Loans, all accrued and unpaid fees and all expenses, reimbursements, indemnities and other obligations of the Borrower to the Lenders or to any Lender, the Administrative Agent or any indemnified party arising under the Loan Documents.

"Other Taxes" is defined in Section 3.5(ii).

"Participants" is defined in Section 12.2.1.

"Payment Date" means the last Business Day of each March, June, September and December.

"PBGC" means the Pension Benefit Guaranty Corporation, or any successor thereto.

"Person" means any natural person, corporation, firm, joint venture, partnership, limited liability company, association, enterprise, trust or other entity or organization, or any government or political subdivision or any agency, department or instrumentality thereof.

"Plan" means an employee pension benefit plan which is covered by Title IV of ERISA or subject to the minimum funding standards under Section 412 of the Code as to which the Borrower or any member of the Controlled Group may have any liability.

"Pricing Schedule" means the Schedule attached hereto identified as such.

"Property" of a Person means any and all property, whether real, personal, tangible, intangible, or mixed, of such Person, or other assets owned, leased or operated by such Person.

"PUHCA" means the Public Utility Holding Company Act of 1935, as amended.

"Purchasers" is defined in Section 12.3.1.

"Regulation D" means Regulation D of the Board of Governors of the Federal Reserve System as from time to time in effect and any successor thereto or other regulation or official interpretation of said Board of Governors relating to reserve requirements applicable to member banks of the Federal Reserve System.

"Regulation U" means Regulation U of the Board of Governors of the Federal Reserve System as from time to time in effect and any successor or other regulation or

official interpretation of said Board of Governors relating to the extension of credit by banks for the purpose of purchasing or carrying margin stocks applicable to member banks of the Federal Reserve System.

"Reportable Event" means a reportable event as defined in Section 4043 of ERISA and the regulations issued under such section, with respect to a Plan, excluding, however, such events as to which the PBGC has by regulation waived the requirement of Section 4043(a) of ERISA that it be notified within 30 days of the occurrence of such event, provided, however, that a failure to meet the minimum funding standard of Section 412 of the Code and of Section 302 of ERISA shall be a Reportable Event regardless of the issuance of any such waiver of the notice requirement in accordance with either Section 4043(a) of ERISA or Section 412(d) of the Code.

"Required Lenders" means Lenders in the aggregate having at least 66- % of the Aggregate Commitment or, if the Aggregate Commitment has been terminated, Lenders in the aggregate holding at least 66- % of the aggregate unpaid principal amount of the outstanding Advances.

"Reserve Requirement" means, with respect to an Interest Period, the maximum aggregate reserve requirement (including all basic, supplemental, marginal and other reserves) which is imposed under Regulation D on Eurocurrency liabilities.

"S&P" means Standard and Poor's Ratings Services, a division of The McGraw Hill Companies, Inc.

"Schedule" refers to a specific schedule to this Agreement, unless another document is specifically referenced.

"Section" means a numbered section of this Agreement, unless another document is specifically referenced.

"Significant Subsidiary" means, at any time, each Subsidiary of the Borrower in which the Borrower has, at such time, an investment, either directly or indirectly, of \$100,000,000 or more, whether through loans or advances, equity investments, capital contributions, Contingent Obligations or otherwise, with all such investments determined at the original amount thereof, without giving effect to any writedowns or writeoffs of any such investment.

"Single Employer Plan" means a Plan maintained by the Borrower or any member of the Controlled Group for employees of the Borrower or any member of the Controlled Group.

"Subsidiary" of a Person means (i) any corporation more than 50% of the outstanding securities having ordinary voting power of which shall at the time be owned or controlled,



directly or indirectly, by such Person or by one or more of its Subsidiaries or by such Person and one or more of its Subsidiaries, or (ii) any partnership, limited liability company, association, joint venture or similar business organization more than 50% of the ownership interests having ordinary voting power of which shall at the time be so owned or controlled. Unless otherwise expressly provided, all references herein to a "Subsidiary" shall mean a Subsidiary of the Borrower.

"Substantial Portion" means, with respect to the Property of the Borrower and its Subsidiaries, Property which (i) represents more than 10% of the consolidated assets of the Borrower and its Subsidiaries as would be shown in the consolidated financial statements of the Borrower and its Subsidiaries as at the beginning of the twelve-month period ending with the month in which such determination is made, or (ii) is responsible for more than 10% of the consolidated net sales or of the consolidated net income of the Borrower and its Subsidiaries as reflected in the financial statements referred to in clause (i) above.

"Taxes" means any and all present or future taxes, duties, levies, imposts, deductions, charges or withholdings, and any and all liabilities with respect to the foregoing, but excluding Excluded Taxes.

"`34 Act Reports" means the periodic reports of the Borrower filed with the Securities and Exchange Commission on Forms 10K, 10Q and 8K (or any successor forms thereto).

"Transferee" is defined in Section 12.4.

"Type" means, with respect to any Advance, its nature as a Floating Rate Advance or a Eurodollar Advance.

"Unmatured Default" means an event which but for the lapse of time or the giving of notice, or both, would constitute a Default.

"Western Merger Transactions" means, collectively, the mergers and related transactions contemplated by the Amended and Restated Plan of Merger, dated as of March 18, 1998, by and among Western Resources, Inc., Kansas Gas & Electric Company, NKC, Inc. and the Borrower.

"Wholly-Owned Subsidiary" of a Person means (i) any Subsidiary all of the outstanding voting securities of which shall at the time be owned or controlled, directly or indirectly, by such Person or one or more Wholly-Owned Subsidiaries of such Person, or by such Person and one or more Wholly-Owned Subsidiaries of such Person, or (ii) any partnership, limited liability company, association, joint venture or similar business organization 100% of the ownership interests having ordinary voting power of which shall at the time be so owned or controlled.

"Year 2000 Problem" means the risk that computer applications and embedded microchips in non-computing devices may be unable to recognize and perform properly date-sensitive functions involving certain dates prior to and any date after December 31, 1999.

The foregoing definitions shall be equally applicable to both the singular and plural forms of the defined terms.

## ARTICLE II

### THE CREDITS

2.1. Commitment. From and including the date of this Agreement and prior to the Facility Termination Date, each Lender severally agrees, on the terms and conditions set forth in this Agreement, to make Loans to the Borrower from time to time in amounts not to exceed in the aggregate at any one time outstanding the amount of its Commitment. Subject to the terms of this Agreement, the Borrower may borrow, repay and reborrow at any time prior to the Facility Termination Date. The Commitments to lend hereunder shall expire on the Facility Termination Date.

2.2. Required Payments; Termination. Any outstanding Advances and all other unpaid Obligations shall be paid in full by the Borrower on the Facility Termination Date.

2.3. Ratable Loans. Each Advance hereunder shall consist of Loans made from the several Lenders ratably in proportion to the ratio that their respective Commitments bear to the Aggregate Commitment.

2.4. Types of Advances. The Advances may be Floating Rate Advances or Eurodollar Advances, or a combination thereof, selected by the Borrower in accordance with Sections 2.8 and 2.9.

2.5. Commitment Fee; Reductions in Aggregate Commitment. The Borrower agrees to pay to the Administrative Agent for the account of each Lender a commitment fee at a per annum rate equal to the Applicable Fee Rate on the daily unused portion of such Lender's Commitment from the date hereof to and including the Facility Termination Date, payable on each Payment Date hereafter and on the Facility Termination Date. The Borrower may permanently reduce the Aggregate Commitment in whole, or in part ratably among the Lenders in integral multiples of \$10,000,000, upon at least three Business Days' prior written notice to the Administrative Agent, which notice shall specify the amount of any such reduction, provided, however, that the amount of the Aggregate Commitment may not be reduced below the aggregate principal amount of the outstanding Advances. All accrued commitment fees shall be payable on the effective date of any termination of the obligations of the Lenders to make Loans hereunder.

2.6. Minimum Amount of Each Advance. Each Eurodollar Advance shall be in the minimum amount of \$5,000,000 (and in multiples of \$1,000,000 if in excess thereof), and each Floating Rate Advance shall be in the minimum amount of \$5,000,000 (and in multiples of \$1,000,000 if in excess thereof), provided, however, that any Floating Rate Advance may be in the amount of the unused Aggregate Commitment.

2.7. Optional Principal Payments. The Borrower may from time to time pay, without penalty or premium, all outstanding Floating Rate Advances, or, in a minimum aggregate amount of \$5,000,000 or any integral multiple of \$100,000 in excess thereof, any portion of the outstanding Floating Rate Advances upon two Business Days' prior notice to the Administrative Agent. The Borrower may from time to time pay, subject to the payment of any funding indemnification amounts required by Section 3.4 but without penalty or premium, all outstanding Eurodollar Advances, or, in a minimum aggregate amount of \$5,000,000 or any integral multiple of \$100,000 in excess thereof, any portion of the outstanding Eurodollar Advances upon three Business Days' prior notice to the Administrative Agent.

2.8. Method of Selecting Types and Interest Periods for New Advances. The Borrower shall select the Type of Advance and, in the case of each Eurodollar Advance, the Interest Period applicable thereto from time to time. The Borrower shall give the Administrative Agent irrevocable notice (a "Borrowing Notice") not later than 11:00 a.m. (Chicago time) on the Borrowing Date of each Floating Rate Advance and not later than 11:00 a.m. (Chicago time) three Business Days before the Borrowing Date for each Eurodollar Advance, specifying:

- (i) the Borrowing Date, which shall be a Business Day, of such Advance,
- (ii) the aggregate amount of such Advance,
- (iii) the Type of Advance selected, and
- (iv) in the case of each Eurodollar Advance, the Interest Period applicable thereto.

Not later than noon (Chicago time) on each Borrowing Date, each Lender shall make available its Loan or Loans in funds immediately available in Chicago to the Administrative Agent at its address specified pursuant to Article XIII. The Administrative Agent will make the funds so received from the Lenders available to the Borrower at the Administrative Agent's aforesaid address.

2.9. Conversion and Continuation of Outstanding Advances. Floating Rate Advances shall continue as Floating Rate Advances unless and until such Floating Rate Advances are converted into Eurodollar Advances pursuant to this Section 2.9 or are repaid in accordance with Section 2.7. Each Eurodollar Advance shall continue as a Eurodollar Advance until the end of the then applicable Interest Period therefor, at which time such

Eurodollar Advance shall be automatically converted into a Floating Rate Advance unless (x) such Eurodollar Advance is or was repaid in accordance with Section 2.7 or (y) the Borrower shall have given the Administrative Agent a Conversion/Continuation Notice (as defined below) requesting that, at the end of such Interest Period, such Eurodollar Advance continue as a Eurodollar Advance for the same or another Interest Period. Subject to the terms of Section 2.6, the Borrower may elect from time to time to convert all or any part of a Floating Rate Advance into a Eurodollar Advance. The Borrower shall give the Administrative Agent irrevocable notice (a "Conversion/Continuation Notice") of each conversion of a Floating Rate Advance into a Eurodollar Advance or continuation of a Eurodollar Advance not later than 10:00 a.m. (Chicago time) at least three Business Days prior to the date of the requested conversion or continuation, specifying:

- (i) the requested date, which shall be a Business Day, of such conversion or continuation,
- (ii) the aggregate amount and Type of the Advance which is to be converted or continued, and
- (iii) the amount of such Advance which is to be converted into or continued as a Eurodollar Advance and the duration of the Interest Period applicable thereto.

2.10. Changes in Interest Rate, etc. Each Floating Rate Advance shall bear interest on the outstanding principal amount thereof, for each day from and including the date such Advance is made or is automatically converted from a Eurodollar Advance into a Floating Rate Advance pursuant to Section 2.9, to but excluding the date it is paid or is converted into a Eurodollar Advance pursuant to Section 2.9 hereof, at a rate per annum equal to the Floating Rate for such day. Changes in the rate of interest on that portion of any Advance maintained as a Floating Rate Advance will take effect simultaneously with each change in the Alternate Base Rate. Each Eurodollar Advance shall bear interest on the outstanding principal amount thereof from and including the first day of the Interest Period applicable thereto to (but not including) the last day of such Interest Period at the interest rate determined by the Administrative Agent as applicable to such Eurodollar Advance based upon the Borrower's selections under Section 2.8 and 2.9 and otherwise in accordance with the terms hereof. No Interest Period may end after the Facility Termination Date.

2.11. Rates Applicable After Default. Notwithstanding anything to the contrary contained in Section 2.8 or 2.9, during the continuance of a Default or Unmatured Default the Required Lenders may, at their option, by notice to the Borrower (which notice may be revoked at the option of the Required Lenders notwithstanding any provision of Section 8.2 requiring unanimous consent of the Lenders to changes in interest rates), declare that no Advance may be made as, converted into or continued as a Eurodollar Advance. During the continuance of a Default the Required Lenders may, at their option, by notice to the Borrower (which notice may be revoked at the option of the Required Lenders notwithstanding any provision of Section 8.2 requiring unanimous consent of the Lenders to

changes in interest rates), declare that (i) each Eurodollar Advance shall bear interest for the remainder of the applicable Interest Period at the rate otherwise applicable to such Interest Period plus 2% per annum and (ii) each Floating Rate Advance shall bear interest at a rate per annum equal to the Floating Rate in effect from time to time plus 2% per annum, provided that, during the continuance of a Default under Section 7.6 or 7.7, the interest rates set forth in clauses (i) and (ii) above shall be applicable to all Advances without any election or action on the part of the Administrative Agent or any Lender.

2.12. Method of Payment. All payments of the Obligations hereunder shall be made, without setoff, deduction, or counterclaim, in immediately available funds to the Administrative Agent at the Administrative Agent's address specified pursuant to Article XIII, or at any other Lending Installation of the Administrative Agent specified in writing by the Administrative Agent to the Borrower, by noon (local time) on the date when due and shall be applied ratably by the Administrative Agent among the Lenders. Each payment delivered to the Administrative Agent for the account of any Lender shall be delivered promptly by the Administrative Agent to such Lender in the same type of funds that the Administrative Agent received at its address specified pursuant to Article XIII or at any Lending Installation specified in a notice received by the Administrative Agent from such Lender.

2.13. Noteless Agreement; Evidence of Indebtedness. (i) Each Lender shall maintain in accordance with its usual practice an account or accounts evidencing the indebtedness of the Borrower to such Lender resulting from each Loan made by such Lender from time to time, including the amounts of principal and interest payable and paid to such Lender from time to time hereunder.

(ii) The Administrative Agent shall also maintain accounts in which it will record (a) the amount of each Loan made hereunder, the Type thereof and the Interest Period with respect thereto, (b) the amount of any principal or interest due and payable or to become due and payable from the Borrower to each Lender hereunder and (c) the amount of any sum received by the Administrative Agent hereunder from the Borrower and each Lender's share thereof.

(iii) The entries maintained in the accounts maintained pursuant to paragraphs (i) and (ii) above shall be prima facie evidence of the existence and amounts of the Obligations therein recorded; provided, however, that the failure of the Administrative Agent or any Lender to maintain such accounts or any error therein shall not in any manner affect the obligation of the Borrower to repay the Obligations in accordance with their terms.

(iv) Any Lender may request that its Loans be evidenced by a promissory note (a "Note"). In such event, the Borrower shall prepare, execute and deliver to such Lender a Note payable to the order of such Lender in substantially the form of Exhibit E hereto. Thereafter, the Loans evidenced by such Note and interest thereon shall at all times (including after any assignment pursuant to Section 12.3) be represented by one or more

Notes payable to the order of the payee named therein or any assignee pursuant to Section 12.3, except to the extent that any such Lender or assignee subsequently returns any such Note for cancellation and requests that such Loans once again be evidenced as described in paragraphs (i) and (ii) above.

2.14. Telephonic Notices. The Borrower hereby authorizes the Lenders and the Administrative Agent to extend, convert or continue Advances, effect selections of Types of Advances and to transfer funds based on telephonic notices made by any person or persons the Administrative Agent or any Lender in good faith believes to be acting on behalf of the Borrower. The Borrower agrees to deliver promptly to the Administrative Agent a written confirmation, if such confirmation is requested by the Administrative Agent or any Lender, of each telephonic notice signed by an Authorized Officer. If the written confirmation differs in any material respect from the action taken by the Administrative Agent and the Lenders, the records of the Administrative Agent and the Lenders shall govern absent manifest error.

2.15. Interest Payment Dates; Interest and Fee Basis. Interest accrued on each Floating Rate Advance shall be payable on each Payment Date, commencing with the first such date to occur after the date hereof and at maturity. Interest accrued on each Eurodollar Advance shall be payable on the last day of its applicable Interest Period, on any date on which the Eurodollar Advance is prepaid, whether by acceleration or otherwise, and at maturity. Interest accrued on each Eurodollar Advance having an Interest Period longer than three months shall also be payable on the last day of each three-month interval during such Interest Period. Interest and commitment fees shall be calculated for actual days elapsed on the basis of a 360-day year. Interest shall be payable for the day an Advance is made but not for the day of any payment on the amount paid if payment is received prior to noon (local time) at the place of payment (it being understood that the Administrative Agent shall be deemed to have received a payment prior to noon (local time) if (x) the Borrower has provided the Administrative Agent with evidence satisfactory to the Administrative Agent that the Borrower has initiated a wire transfer of such payment prior to such time and (y) the Administrative Agent actually receives such payment on the same Business Day on which such wire transfer was initiated). If any payment of principal or interest on an Advance shall become due on a day which is not a Business Day, such payment shall be made on the next succeeding Business Day and, in the case of a principal payment, such extension of time shall be included in computing interest in connection with such payment.

2.16. Notification of Advances, Interest Rates, Prepayments and Commitment Reductions. Promptly after receipt thereof, the Administrative Agent will notify each Lender of the contents of each Aggregate Commitment reduction notice, Borrowing Notice, Conversion/Continuation Notice, and repayment notice received by it hereunder. The Administrative Agent will notify each Lender of the interest rate applicable to each Eurodollar Advance promptly upon determination of such interest rate and will give each Lender prompt notice of each change in the Alternate Base Rate.

2.17. Lending Installations. Each Lender may book its Loans at any Lending Installation selected by such Lender and may change its Lending Installation from time to time. All terms of this Agreement shall apply to any such Lending Installation and the Loans and any Notes issued hereunder shall be deemed held by each Lender for the benefit of such Lending Installation. Each Lender may, by written notice to the Administrative Agent and the Borrower in accordance with Article XIII, designate replacement or additional Lending Installations through which Loans will be made by it and for whose account Loan payments are to be made.

2.18. Non-Receipt of Funds by the Administrative Agent. Unless the Borrower or a Lender, as the case may be, notifies the Administrative Agent prior to the date on which it is scheduled to make payment to the Administrative Agent of (i) in the case of a Lender, the proceeds of a Loan or (ii) in the case of the Borrower, a payment of principal, interest or fees to the Administrative Agent for the account of the Lenders, that it does not intend to make such payment, the Administrative Agent may assume that such payment has been made. The Administrative Agent may, but shall not be obligated to, make the amount of such payment available to the intended recipient in reliance upon such assumption. If such Lender or the Borrower, as the case may be, has not in fact made such payment to the Administrative Agent, the recipient of such payment shall, on demand by the Administrative Agent, repay to the Administrative Agent the amount so made available together with interest thereon in respect of each day during the period commencing on the date such amount was so made available by the Administrative Agent until the date the Administrative Agent recovers such amount at a rate per annum equal to (x) in the case of payment by a Lender, the Federal Funds Effective Rate for such day or (y) in the case of payment by the Borrower, the interest rate applicable to the relevant Loan.

2.19. Extension of Facility Termination Date. The Borrower may request an extension of the Facility Termination Date by submitting a request for an extension to the Administrative Agent (an "Extension Request") no more than 60 days prior to the Facility Termination Date. The Extension Request must specify the new Facility Termination Date requested by the Borrower and the date (which must be at least 30 days after the Extension Request is delivered to the Administrative Agent) as of which the Lenders must respond to the Extension Request (the "Response Date"). The new Facility Termination Date shall be no more than 364 days after the Facility Termination Date in effect at the time the Extension Request is received, including the Facility Termination Date as one of the days in the calculation of the days elapsed. Promptly upon receipt of an Extension Request, the Administrative Agent shall notify each Lender of the contents thereof and shall request each Lender to approve the Extension Request. Each Lender approving the Extension Request shall deliver its written consent no later than the Response Date. If the consent of each of the Lenders is received by the Administrative Agent, the Facility Termination Date specified in the Extension Request shall become effective on the existing Facility Termination Date and the Administrative Agent shall promptly notify the Borrower and each Lender of the new Facility Termination Date.

ARTICLE III

YIELD PROTECTION; TAXES

3.1. Yield Protection. If, on or after the date of this Agreement, the adoption of any law or any governmental or quasi-governmental rule, regulation, policy, guideline or directive (whether or not having the force of law), or any change in the interpretation or administration thereof by any governmental or quasi-governmental authority, central bank or comparable agency charged with the interpretation or administration thereof, or compliance by any Lender or applicable Lending Installation with any request or directive (whether or not having the force of law) of any such authority, central bank or comparable agency:

(i) subjects any Lender or any applicable Lending Installation to any Taxes, or changes the basis of taxation of payments (other than with respect to Excluded Taxes) to any Lender in respect of its Eurodollar Loans, or

(ii) imposes or increases or deems applicable any reserve, assessment, insurance charge, special deposit or similar requirement against assets of, deposits with or for the account of, or credit extended by, any Lender or any applicable Lending Installation (other than reserves and assessments taken into account in determining the interest rate applicable to Eurodollar Advances), or

(iii) imposes any other condition the result of which is to increase the cost to any Lender or any applicable Lending Installation of making, funding or maintaining its Eurodollar Loans or reduces any amount receivable by any Lender or any applicable Lending Installation in connection with its Eurodollar Loans, or requires any Lender or any applicable Lending Installation to make any payment calculated by reference to the amount of Eurodollar Loans held or interest received by it, by an amount deemed material by such Lender,

and the result of any of the foregoing is to increase the cost to such Lender or applicable Lending Installation of making or maintaining its Eurodollar Loans or Commitment or to reduce the return received by such Lender or applicable Lending Installation in connection with such Eurodollar Loans or Commitment, then, within 15 days of demand by such Lender, the Borrower shall pay such Lender such additional amount or amounts as will compensate such Lender for such increased cost or reduction in amount received.

3.2. Changes in Capital Adequacy Regulations. If a Lender determines the amount of capital required or expected to be maintained by such Lender, any Lending Installation of such Lender or any corporation controlling such Lender is increased as a result of a Change, then, within 15 days of demand by such Lender, the Borrower shall pay such Lender the amount necessary to compensate for any shortfall in the rate of return on the portion of such increased capital which such Lender determines is attributable to this Agreement, its Loans



or its Commitment to make Loans hereunder (after taking into account such Lender's policies as to capital adequacy). "Change" means (i) any change after the date of this Agreement in the Risk-Based Capital Guidelines or (ii) any adoption of or change in any other law, governmental or quasi-governmental rule, regulation, policy, guideline, interpretation, or directive (whether or not having the force of law) after the date of this Agreement which affects the amount of capital required or expected to be maintained by any Lender or any Lending Installation or any corporation controlling any Lender. "Risk-Based Capital Guidelines" means (i) the risk-based capital guidelines in effect in the United States on the date of this Agreement, including transition rules, and (ii) the corresponding capital regulations promulgated by regulatory authorities outside the United States implementing the July 1988 report of the Basle Committee on Banking Regulation and Supervisory Practices Entitled "International Convergence of Capital Measurements and Capital Standards," including transition rules, and any amendments to such regulations adopted prior to the date of this Agreement.

3.3. Availability of Types of Advances. If (i) any Lender determines that maintenance of its Eurodollar Loans at a suitable Lending Installation would violate any applicable law, rule, regulation, or directive, whether or not having the force of law, or (ii) the Required Lenders determine that (a) deposits of a type and maturity appropriate to match fund Eurodollar Advances are not available or (b) the interest rate applicable to a Type of Advance does not accurately reflect the cost of making or maintaining such Advance, then the Administrative Agent shall suspend the availability of the affected Type of Advance and, in the case of clause (i), require any affected Eurodollar Advances to be repaid or converted to Floating Rate Advances, subject to the payment of any funding indemnification amounts required by Section 3.4.

3.4. Funding Indemnification. If any payment of a Eurodollar Advance occurs on a date which is not the last day of the applicable Interest Period, whether because of acceleration, prepayment or otherwise, or a Eurodollar Advance is not made on the date specified by the Borrower for any reason other than default by the Lenders, the Borrower will indemnify each Lender for any loss or cost incurred by it resulting therefrom, including, without limitation, any loss or cost in liquidating or employing deposits acquired to fund or maintain such Eurodollar Advance.

3.5. Taxes. (i) All payments by the Borrower to or for the account of any Lender or the Administrative Agent hereunder or under any Note shall be made free and clear of and without deduction for any and all Taxes. If the Borrower shall be required by law to deduct any Taxes from or in respect of any sum payable hereunder to any Lender or the Administrative Agent, (a) the sum payable shall be increased as necessary so that after making all required deductions (including deductions applicable to additional sums payable under this Section 3.5) such Lender or the Administrative Agent (as the case may be) receives an amount equal to the sum it would have received had no such deductions been made, (b) the Borrower shall make such deductions, (c) the Borrower shall pay the full amount deducted to the relevant authority in accordance with applicable law and (d) the

Borrower shall furnish to the Administrative Agent the original copy of a receipt evidencing payment thereof within 30 days after such payment is made.

(ii) In addition, the Borrower hereby agrees to pay any present or future stamp or documentary taxes and any other excise or property taxes, charges or similar levies which arise from any payment made hereunder or under any Note or from the execution or delivery of, or otherwise with respect to, this Agreement or any Note ("Other Taxes").

(iii) The Borrower hereby agrees to indemnify the Administrative Agent and each Lender for the full amount of Taxes or Other Taxes (including, without limitation, any Taxes or Other Taxes imposed on amounts payable under this Section 3.5) paid by the Administrative Agent or such Lender and any liability (including penalties, interest and expenses) arising therefrom or with respect thereto. Payments due under this indemnification shall be made within 30 days of the date the Administrative Agent or such Lender makes demand therefor pursuant to Section 3.6.

(iv) Each Lender that is not incorporated under the laws of the United States of America or a state thereof (each a "Non-U.S. Lender") agrees that it will, not less than ten Business Days after the date of this Agreement, (i) deliver to each of the Borrower and the Administrative Agent two duly completed copies of United States Internal Revenue Service Form 1001 or 4224, certifying in either case that such Lender is entitled to receive payments under this Agreement without deduction or withholding of any United States federal income taxes, and (ii) deliver to each of the Borrower and the Administrative Agent a United States Internal Revenue Form W-8 or W-9, as the case may be, and certify that it is entitled to an exemption from United States backup withholding tax. Each Non-U.S. Lender further undertakes to deliver to each of the Borrower and the Administrative Agent (x) renewals or additional copies of such form (or any successor form) on or before the date that such form expires or becomes obsolete, and (y) after the occurrence of any event requiring a change in the most recent forms so delivered by it, such additional forms or amendments thereto as may be reasonably requested by the Borrower or the Administrative Agent. All forms or amendments described in the preceding sentence shall certify that such Lender is entitled to receive payments under this Agreement without deduction or withholding of any United States federal income taxes, unless an event (including without limitation any change in treaty, law or regulation) has occurred prior to the date on which any such delivery would otherwise be required which renders all such forms inapplicable or which would prevent such Lender from duly completing and delivering any such form or amendment with respect to it and such Lender advises the Borrower and the Administrative Agent that it is not capable of receiving payments without any deduction or withholding of United States federal income tax.

(v) For any period during which a Non-U.S. Lender has failed to provide the Borrower with an appropriate form pursuant to clause (iv), above (unless such failure is due to a change in treaty, law or regulation, or any change in the interpretation or administration thereof by any governmental authority, occurring subsequent to the date on which a form

originally was required to be provided), such Non-U.S. Lender shall not be entitled to indemnification under this Section 3.5 with respect to Taxes imposed by the United States; provided that, should a Non-U.S. Lender which is otherwise exempt from or subject to a reduced rate of withholding tax become subject to Taxes because of its failure to deliver a form required under clause (iv), above, the Borrower shall take such steps as such Non-U.S. Lender shall reasonably request to assist such Non-U.S. Lender to recover such Taxes.

(vi) Any Lender that is entitled to an exemption from or reduction of withholding tax with respect to payments under this Agreement or any Note pursuant to the law of any relevant jurisdiction or any treaty shall deliver to the Borrower (with a copy to the Administrative Agent), at the time or times prescribed by applicable law, such properly completed and executed documentation prescribed by applicable law as will permit such payments to be made without withholding or at a reduced rate.

3.6. Lender Statements; Survival of Indemnity. To the extent reasonably possible and upon the request of the Borrower, each Lender shall designate an alternate Lending Installation with respect to its Eurodollar Loans to reduce any liability of the Borrower to such Lender under Sections 3.1, 3.2 and 3.5 or to avoid the unavailability of Eurodollar Advances under Section 3.3, so long as such designation is not, in the judgment of such Lender, disadvantageous to such Lender. Each Lender shall deliver a written statement of such Lender to the Borrower (with a copy to the Administrative Agent) as to the amount due, if any, under Section 3.1, 3.2, 3.4 or 3.5. Such written statement shall set forth in reasonable detail the calculations upon which such Lender determined such amount and shall be final, conclusive and binding on the Borrower in the absence of manifest error. Determination of amounts payable under such Sections in connection with a Eurodollar Loan shall be calculated as though each Lender funded its Eurodollar Loan through the purchase of a deposit of the type and maturity corresponding to the deposit used as a reference in determining the Eurodollar Rate applicable to such Loan, whether in fact that is the case or not. Unless otherwise provided herein, the amount specified in the written statement of any Lender shall be payable on demand after receipt by the Borrower of such written statement. The obligations of the Borrower under Sections 3.1, 3.2, 3.4 and 3.5 shall survive payment of the Obligations and termination of this Agreement.

#### ARTICLE IV

##### CONDITIONS PRECEDENT

4.1. Initial Advance. The Lenders shall not be required to make the initial Advance hereunder unless the Borrower has furnished to the Administrative Agent with sufficient copies for the Lenders:

- (i) Copies of the articles or certificate of incorporation of the Borrower, together with all amendments, and a certificate of good standing, each certified by the appropriate governmental officer in its jurisdiction of incorporation.
- (ii) Copies, certified by the Secretary or Assistant Secretary of the Borrower, of its by-laws and of its Board of Directors' resolutions and of resolutions or actions of any other body authorizing the execution of the Loan Documents to which the Borrower is a party.
- (iii) An incumbency certificate, executed by the Secretary or Assistant Secretary of the Borrower, which shall identify by name and title and bear the signatures of the Authorized Officers and any other officers of the Borrower authorized to sign the Loan Documents to which the Borrower is a party, upon which certificate the Administrative Agent and the Lenders shall be entitled to rely until informed of any change in writing by the Borrower.
- (iv) A certificate, signed by the chief financial officer of the Borrower, stating that on the initial Borrowing Date no Default or Unmatured Default has occurred and is continuing.
- (v) A written opinion of the Borrower's counsel, addressed to the Lenders in substantially the form of Exhibit A.
- (vi) Any Notes requested by a Lender pursuant to Section 2.13 payable to the order of each such requesting Lender.
- (vii) A certified copy of the FERC Order authorizing the Borrower to incur the Indebtedness contemplated by the Loan Documents.
- (viii) Written money transfer instructions, in substantially the form of Exhibit D, addressed to the Administrative Agent and signed by an Authorized Officer, together with such other related money transfer authorizations as the Administrative Agent may have reasonably requested.
- (ix) Copies of the Bond Documents, certified by the Secretary or an Assistant Secretary of the Borrower.
- (x) Such other documents as any Lender or its counsel may have reasonably requested.

4.2. Each Advance. The Lenders shall not be required to make any Advance (other than an Advance that, after giving effect thereto and to the application of the proceeds thereof, does not increase the aggregate amount of outstanding Advances), unless on the applicable Borrowing Date:

- (i) There exists no Default or Unmatured Default.
- (ii) The representations and warranties contained in Article V are true and correct as of such Borrowing Date except to the extent any such representation or warranty is stated to relate solely to an earlier date, in which case such representation or warranty shall have been true and correct on and as of such earlier date.
- (iii) The FERC Order shall not have expired or been revoked and shall permit the Borrower to incur the Indebtedness evidenced by such Advance. The Borrower shall, upon request, provide the Administrative Agent with evidence satisfactory to the Administrative Agent that, after giving effect to such Advance, the aggregate amount of short-term debt instruments issued by the Borrower in reliance upon the FERC Order shall not exceed the maximum amount of Indebtedness authorized by the FERC Order.

Each Borrowing Notice with respect to each such Advance shall constitute a representation and warranty by the Borrower that the conditions contained in Sections 4.2(i) and (ii) have been satisfied. Any Lender may require a duly completed compliance certificate in substantially the form of Exhibit B as a condition to making an Advance.

## ARTICLE V

### REPRESENTATIONS AND WARRANTIES

The Borrower represents and warrants to the Lenders that:

5.1. Existence and Standing. Each of the Borrower and its Subsidiaries is a corporation, partnership (in the case of Subsidiaries only) or limited liability company duly and properly incorporated or organized, as the case may be, validly existing and (to the extent such concept applies to such entity) in good standing under the laws of its jurisdiction of incorporation or organization and has all requisite authority to conduct its business in each jurisdiction in which its business is conducted.

5.2. Authorization and Validity. The Borrower has the power and authority and legal right to execute and deliver the Loan Documents and to perform its obligations thereunder. The execution and delivery by the Borrower of the Loan Documents and the performance of its obligations thereunder have been duly authorized by proper corporate proceedings, and the Loan Documents constitute legal, valid and binding obligations of the Borrower enforceable against the Borrower in accordance with their terms, except as enforceability may be limited by bankruptcy, insolvency or similar laws affecting the enforcement of creditors' rights generally.

5.3. No Conflict; Government Consent. Neither the execution and delivery by the Borrower of the Loan Documents, nor the consummation of the transactions therein contemplated, nor compliance with the provisions thereof will violate (i) any law, rule, regulation, order, writ, judgment, injunction, decree or award binding on the Borrower or (ii) the Borrower's articles or certificate of incorporation or by-laws or (iii) the provisions of any indenture, instrument or agreement to which the Borrower is a party or is subject, or by which it, or its Property, is bound, or conflict with or constitute a default thereunder, or result in, or require, the creation or imposition of any Lien in, of or on the Property of the Borrower pursuant to the terms of any such indenture, instrument or agreement. No order, consent, adjudication, approval, license, authorization, or validation of, or filing, recording or registration with, or exemption by, or other action in respect of any governmental or public body or authority (including without limitation the FERC), or any subdivision thereof, which has not been obtained by the Borrower, is required to be obtained by the Borrower in connection with the execution and delivery of the Loan Documents, the borrowings under this Agreement, the payment and performance by the Borrower of the Obligations or the legality, validity, binding effect or enforceability of any of the Loan Documents.

5.4. Financial Statements. The December 31, 1997 consolidated financial statements of the Borrower and its Subsidiaries heretofore delivered to the Lenders were prepared in accordance with GAAP and fairly present the consolidated financial condition and operations of the Borrower and its Subsidiaries at such date and the consolidated results of their operations for the period then ended.

5.5. Material Adverse Change. Since March 31, 1998 there has been no change in the business, Property, prospects, condition (financial or otherwise) or results of operations of the Borrower and its Subsidiaries which could reasonably be expected to have a Material Adverse Effect.

5.6. Taxes. The Borrower and its Subsidiaries have filed all United States federal tax returns and all other tax returns which are required to be filed and have paid all taxes due pursuant to said returns or pursuant to any assessment received by the Borrower or any of its Subsidiaries, except such taxes, if any, as are being contested in good faith and as to which adequate reserves have been provided in accordance with GAAP and as to which no Lien exists. The United States income tax returns of the Borrower and its Subsidiaries have been audited by the Internal Revenue Service through the fiscal year ended December 31, 1990. No tax liens have been filed and no material claims are being asserted with respect to any such taxes. The charges, accruals and reserves on the books of the Borrower and its Subsidiaries in respect of any taxes or other governmental charges are adequate.

5.7. Litigation and Contingent Obligations. Except as set forth in the Borrower's '34 Act Reports, there is no litigation, arbitration, governmental investigation, proceeding or inquiry pending or, to the knowledge of any of their officers, threatened against or affecting the Borrower or any of its Subsidiaries which could reasonably be expected to have a Material Adverse Effect or which seeks to prevent, enjoin or delay the making of any Loans.

Other than any liability incident to any litigation, arbitration or proceeding which could not reasonably be expected to have a Material Adverse Effect, the Borrower has no material contingent obligations not provided for or disclosed in the financial statements referred to in Section 5.4.

5.8. ERISA. The Borrower and each other member of the Controlled Group has fulfilled its obligations under the minimum funding standards of ERISA and the Code with respect to each Plan and is in compliance in all material respects with the presently applicable provisions of ERISA and the Code with respect to each Plan. Neither the Borrower nor any other member of the Controlled Group has (i) sought a waiver of the minimum funding standard under Section 412 of the Code in respect of any Plan, (ii) failed to make any contribution or payment to any Plan or Multiemployer Plan, or made any amendment to any Plan which has resulted or could result in the imposition of a Lien or the posting of a bond or other security under ERISA or the Code or (iii) incurred any liability under Title IV of ERISA other than a liability to the PBGC for premiums under Section 4007 of ERISA.

5.9. Accuracy of Information. No information, exhibit or report furnished by the Borrower or any of its Subsidiaries to the Administrative Agent or to any Lender in connection with the negotiation of, or compliance with, the Loan Documents contained any material misstatement of fact or omitted to state a material fact or any fact necessary to make the statements contained therein not misleading.

5.10. Regulation U. Margin stock (as defined in Regulation U) constitutes less than 25% of the value of those assets of the Borrower and its Subsidiaries which are subject to any limitation on sale, pledge or other restriction hereunder.

5.11. Material Agreements. Neither the Borrower nor any Subsidiary is a party to any agreement or instrument or subject to any charter or other corporate restriction which is reasonably likely to have a Material Adverse Effect. Neither the Borrower nor any Subsidiary is in default in the performance, observance or fulfillment of any of the obligations, covenants or conditions contained in any agreement to which it is a party, which default could reasonably be expected to have a Material Adverse Effect.

5.12. Compliance With Laws. The Borrower and its Subsidiaries have complied with all applicable statutes, rules, regulations, orders and restrictions of any domestic or foreign government or any instrumentality or agency thereof having jurisdiction over the conduct of their respective businesses or the ownership of their respective Property except for any failure to comply with any of the foregoing which could not reasonably be expected to have a Material Adverse Effect.

5.13. Ownership of Properties. Except as set forth on Schedule 1, on the date of this Agreement, the Borrower and its Significant Subsidiaries will have good title, free of all Liens other than those permitted by Section 6.11, to all of the Property and assets reflected

in the Borrower's most recent consolidated financial statements provided to the Administrative Agent as owned by the Borrower and its Subsidiaries.

5.14. Plan Assets; Prohibited Transactions. The Borrower is not an entity deemed to hold "plan assets" within the meaning of 29 C.F.R. 2510.3-101 of an employee benefit plan (as defined in Section 3(3) of ERISA) which is subject to Title I of ERISA or any plan (within the meaning of Section 4975 of the Code), and neither the execution of this Agreement nor the making of Loans hereunder gives rise to a prohibited transaction within the meaning of Section 406 of ERISA or Section 4975 of the Code.

5.15. Environmental Matters. Except as set forth in the Borrower's '34 Act Reports, there are no risks and liabilities accruing to the Borrower due to Environmental Laws that could reasonably be expected to have a Material Adverse Effect.

5.16. Investment Company Act. Neither the Borrower nor any Subsidiary is an "investment company" or a company "controlled" by an "investment company", within the meaning of the Investment Company Act of 1940, as amended.

5.17. Public Utility Holding Company Act. The Borrower is a public utility. Neither Borrower or any Subsidiary is a "holding company," a "subsidiary company" of a "holding company" or an "affiliate" of a "holding company" or of a "subsidiary company" of a "holding company", within the meaning of PUHCA.

5.18. Pari Passu Indebtedness. The Indebtedness under the Loan Documents ranks at least pari passu with all other unsecured Indebtedness of the Borrower.

5.19 Year 2000 Problem. The Borrower and its Subsidiaries (a) have reviewed the areas within their business and operations which could be adversely affected by, and have developed or are developing a program to address on a timely basis, the Year 2000 Problem and (b) have made appropriate inquiries as to the effect the Year 2000 Problem will have on their material suppliers and customers. Based on such review, program and inquiries, the Borrower reasonably believes that the "Year 2000 Problem" will not have a Material Adverse Effect.

## ARTICLE VI

### COVENANTS

During the term of this Agreement, unless the Required Lenders shall otherwise consent in writing:



6.1. Financial Reporting. The Borrower will maintain, for itself and each Subsidiary, a system of accounting established and administered in accordance with generally accepted accounting principles, and furnish to the Lenders:

- (i) Within 90 days after the close of each of its fiscal years, an unqualified audit report certified by Coopers & Lybrand or other firm of independent certified public accountants which is a member of the "Big Four," prepared in accordance with GAAP on a consolidated basis for itself and its Subsidiaries, including balance sheets as of the end of such period and related statements of income, retained earnings and cash flows, accompanied by (a) any management letter prepared by said accountants, and (b) a certificate of said accountants that, in the course of their examination necessary for their audit report, they have obtained no knowledge of any Default or Unmatured Default, or if, in the opinion of such accountants, any Default or Unmatured Default shall exist, stating the nature and status thereof.
- (ii) Within 45 days after the close of the first three quarterly periods of each of its fiscal years, for itself and its Subsidiaries, either (i) consolidated and consolidating unaudited balance sheets as at the close of each such period and consolidated and consolidating profit and loss and reconciliation of surplus statements and a statement of cash flows for the period from the beginning of such fiscal year to the end of such quarter, all certified by its chief financial officer or (ii) if the Borrower is then a "registrant" within the meaning of Rule 1-01 of Regulation S-X of the Securities and Exchange Commission and required to file a report on Form 10-Q with the Securities and Exchange Commission, a copy of the Borrower's report on Form 10-Q for such quarterly period.
- (iii) Together with the financial statements required under Sections 6.1(i) and (ii), a compliance certificate in substantially the form of Exhibit B signed by its chief accounting officer stating that no Default or Unmatured Default exists, or if any Default or Unmatured Default exists, stating the nature and status thereof.
- (iv) As soon as possible and in any event within 10 days after the Borrower knows that any Reportable Event has occurred with respect to any Plan, a statement, signed by the chief financial officer of the Borrower, describing said Reportable Event and the action which the Borrower proposes to take with respect thereto.
- (v) Promptly upon the furnishing thereof to the shareholders of the Borrower, copies of all financial statements, reports and proxy statements so furnished.

- (vi) Promptly upon the filing thereof, copies of all registration statements and annual, quarterly, monthly or other regular reports which the Borrower files with the Securities and Exchange Commission.
- (vii) Promptly upon the request of the Administrative Agent or any Lender, such updated information or documentation as may be requested from time to time regarding the efforts of the Borrower and its Significant Subsidiaries to address the Year 2000 Problem.
- (ix) Such other information (including non-financial information) as the Administrative Agent or any Lender may from time to time reasonably request.

6.2. Use of Proceeds. The Borrower will use the proceeds of the Advances to provide liquidity support for the remarketing of the Borrower's \$106,500,000 Environmental Improvement Revenue Refunding Bonds (Kansas City Power & Light Company Project) Series 1998-A and Series 1998-B (collectively, the "Bonds"), and to repay outstanding Advances. The Borrower will not use any of the proceeds of the Advances to purchase or carry any "margin stock" (as defined in Regulation U).

6.3. Notice of Default. The Borrower will, and will cause each Subsidiary to, give prompt notice in writing to the Lenders of the occurrence of any Default or Unmatured Default and of any other development, financial or otherwise, which could reasonably be expected to have a Material Adverse Effect.

6.4. Conduct of Business. The Borrower will, and will cause each Significant Subsidiary to, carry on and conduct its business in substantially the same manner and in substantially the same fields of enterprise as it is presently conducted and do all things necessary to remain duly incorporated or organized, validly existing and (to the extent such concept applies to such entity) in good standing as a domestic corporation, partnership or limited liability company in its jurisdiction of incorporation or organization, as the case may be, and maintain all requisite authority to conduct its business in each jurisdiction in which its business is conducted.

6.5. Taxes. The Borrower will, and will cause each Significant Subsidiary to, timely file United States federal and applicable foreign, state and local tax returns required by law and pay when due all taxes, assessments and governmental charges and levies upon it or its income, profits or Property, except those which are being contested in good faith by appropriate proceedings and with respect to which adequate reserves have been set aside in accordance with GAAP.

6.6. Insurance. The Borrower will, and will cause each Significant Subsidiary to, maintain with financially sound and reputable insurance companies insurance on all their Property in such amounts and covering such risks as is consistent with sound business

practice, and the Borrower will furnish to any Lender upon request full information as to the insurance carried.

6.7. Compliance with Laws. The Borrower will, and will cause each Significant Subsidiary to, comply with all laws, rules, regulations, orders, writs, judgments, injunctions, decrees or awards to which it may be subject including, without limitation, all Environmental Laws.

6.8. Maintenance of Properties. The Borrower will, and will cause each Significant Subsidiary to, do all things necessary to maintain, preserve, protect and keep its Property in good repair, working order and condition, and make all necessary and proper repairs, renewals and replacements so that its business carried on in connection therewith may be properly conducted at all times.

6.9. Inspection. The Borrower will, and will cause each Subsidiary to, permit the Administrative Agent and the Lenders, by their respective representatives and agents, to inspect any of the Property, books and financial records of the Borrower and each Subsidiary, to examine and make copies of the books of accounts and other financial records of the Borrower and each Subsidiary, and to discuss the affairs, finances and accounts of the Borrower and each Subsidiary with, and to be advised as to the same by, their respective officers at such reasonable times and intervals as the Administrative Agent or any Lender may designate. After the occurrence and during the continuance of a Default, any such inspection shall be at the Borrower's expense; at all other times, the Borrower shall not be liable to pay the expenses of the Administrative Agent or any Lender in connection with such inspections.

6.10. Consolidations, Mergers and Sale of Assets. The Borrower will not, nor will it permit any Significant Subsidiary to, sell, lease, transfer, or otherwise dispose of all or substantially all of its assets (whether by a single transaction or a number of related transactions and whether at one time or over a period of time) or consolidate with or merge into any Person or permit any Person to merge into it, except

- (i) A Wholly-Owned Subsidiary may be merged into the Borrower.
- (ii) The Borrower may sell all or substantially all of its assets to, or consolidate with or merge into, any other corporation, or permit another corporation to merge into it; provided, however, that (a) the surviving corporation, if such surviving corporation is not the Borrower, or the transferee corporation in the case of a sale of all or substantially all of the Borrower's assets (1) shall be a corporation organized and existing under the laws of the United States of America or a state thereof or the District of Columbia, and (2) shall expressly assume in writing the due and punctual payment of the Obligations and the due and punctual performance of and compliance with all of the terms of this Credit Agreement and the other Loan Documents to be performed or complied

with by the Borrower, (b) immediately before and after such merger, consolidation or sale, there shall not exist any Default or Unmatured Default and (c) the surviving corporation of such merger or consolidation, or the transferee corporation of the assets of the Borrower, as applicable, has, both immediately before and after such merger, consolidation or sale, a Moody's Rating of Baa3 or better or an S&P Rating of BBB - or better.

- (iii) The Western Merger Transactions; provided, however, that (a) the surviving corporation of any merger or consolidation involving the Borrower that is contemplated by the Western Merger Transactions, if such surviving corporation is not the Borrower, or the transferee corporation in the case of a sale of all or substantially all of the Borrower's assets (1) shall be a corporation organized and existing under the laws of the United States of America or a state thereof or the District of Columbia, and (2) shall expressly assume in writing the due and punctual payment of the Obligations and the due and punctual performance of and compliance with all of the terms of this Credit Agreement and the other Loan Documents to be performed or complied with by the Borrower, (b) immediately before and after such merger, consolidation or sale, there shall not exist any Default or Unmatured Default and (c) the surviving corporation of such merger or consolidation, or the transferee corporation of such assets of the Borrower, as applicable, has, both immediately before and after giving effect to such merger, consolidation or sale, a Moody's Rating of Baa3 or better or an S&P Rating of BBB - or better.

6.11. Liens. The Borrower will not, nor will it permit any Significant Subsidiary to, create, incur, or suffer to exist any Lien in, of or on the Property of the Borrower or any of its Significant Subsidiaries, except:

- (i) Liens for taxes, assessments or governmental charges or levies on its Property if the same shall not at the time be delinquent or thereafter can be paid without penalty, or are being contested in good faith and by appropriate proceedings and for which adequate reserves in accordance with GAAP shall have been set aside on its books.
- (ii) Liens imposed by law, such as carriers', warehousemen's and mechanics' liens and other similar liens arising in the ordinary course of business which secure payment of obligations not more than 60 days past due or which are being contested in good faith by appropriate proceedings and for which adequate reserves shall have been set aside on its books.
- (iii) Liens arising out of pledges or deposits under worker's compensation laws, unemployment insurance, old age pensions, or other social security or retirement benefits, or similar legislation.

- (iv) Utility easements, building restrictions and such other encumbrances or charges against real property as are of a nature generally existing with respect to properties of a similar character and which do not in any material way affect the marketability of the same or interfere with the use thereof in the business of the Borrower or its Subsidiaries.
- (v) The Lien of the General Mortgage Indenture and Deed of Trust dated December 1, 1986, from the Borrower to UMB, N.A.
- (vi) Liens existing on the date hereof and described in Schedule 1.
- (vii) Judgment Liens which secure payment of legal obligations that would not constitute a Default under Section 7.9.
- (viii) Liens on Property acquired by the Borrower or a Significant Subsidiary after the date hereof, existing on such Property at the time of acquisition thereof (and not created in anticipation thereof), provided that in any such case no such Lien shall extend to or cover any other Property of the Borrower or such Significant Subsidiary, as the case may be.
- (ix) Deposits to secure the performance of bids, trade contracts (other than for borrowed money), leases, statutory obligations, surety and appeal bonds, performance bonds and other obligations of a like nature incurred in the ordinary course of business by the Borrower or any Significant Subsidiary.
- (x) Liens which would otherwise not be permitted by clauses (i) through (ix) securing additional Indebtedness of the Borrower or a Significant Subsidiary, provided that after giving effect thereto the aggregate unpaid principal amount of Indebtedness (including, without limitation, Capitalized Lease Obligations) of the Borrower and its Significant Subsidiaries (including prepayment premiums and penalties) secured by such Liens permitted by this clause (x) shall not exceed \$50,000,000.

6.12. Affiliates. The Borrower will not, and will not permit any Subsidiary to, enter into any transaction (including, without limitation, the purchase or sale of any Property or service) with, or make any payment or transfer to, any Affiliate except in the ordinary course of business and pursuant to the reasonable requirements of the Borrower's or such Subsidiary's business and upon fair and reasonable terms no less favorable to the Borrower or such Subsidiary than the Borrower or such Subsidiary would obtain in a comparable arms-length transaction.

ARTICLE VII

DEFAULTS

The occurrence of any one or more of the following events shall constitute a Default:

7.1. Any representation or warranty made or deemed made by or on behalf of the Borrower to the Lenders or the Administrative Agent under or in connection with this Agreement, any Loan, or any certificate or information delivered in connection with this Agreement or any other Loan Document shall be materially false on the date as of which made.

7.2. Nonpayment of principal of any Loan when due, or nonpayment of interest upon any Loan or of any commitment fee or other obligations under any of the Loan Documents within five days after the same becomes due.

7.3. The breach by the Borrower of any of the terms or provisions of Section 6.2, 6.10, 6.11 or 6.12.

7.4. The breach by the Borrower (other than a breach which constitutes a Default under another Section of this Article VII) of any of the terms or provisions of this Agreement which is not remedied within five days after written notice from the Administrative Agent or any Lender.

7.5. Failure of the Borrower or any of its Significant Subsidiaries to pay when due any Indebtedness aggregating in excess of \$15,000,000 ("Material Indebtedness"); or the default by the Borrower or any of its Significant Subsidiaries in the performance of any term, provision or condition contained in any agreement under which any such Material Indebtedness was created or is governed, or any other event shall occur or condition exist, the effect of which default or event is to cause, or to permit the holder or holders of such Material Indebtedness to cause, such Material Indebtedness to become due prior to its stated maturity; or any Material Indebtedness of the Borrower or any of its Significant Subsidiaries shall be declared to be due and payable or required to be prepaid or repurchased (other than by a regularly scheduled payment) prior to the stated maturity thereof; or the Borrower or any of its Subsidiaries shall not pay, or admit in writing its inability to pay, its debts generally as they become due.

7.6. The Borrower or any of its Significant Subsidiaries shall (i) have an order for relief entered with respect to it under the Federal bankruptcy laws as now or hereafter in effect, (ii) make an assignment for the benefit of creditors, (iii) apply for, seek, consent to, or acquiesce in, the appointment of a receiver, custodian, trustee, examiner, liquidator or similar official for it or any Substantial Portion of its Property, (iv) institute any proceeding seeking an order for relief under the Federal bankruptcy laws as now or hereafter in effect or

seeking to adjudicate it a bankrupt or insolvent, or seeking dissolution, winding up, liquidation, reorganization, arrangement, adjustment or composition of it or its debts under any law relating to bankruptcy, insolvency or reorganization or relief of debtors or fail to file an answer or other pleading denying the material allegations of any such proceeding filed against it, (v) take any corporate or partnership action to authorize or effect any of the foregoing actions set forth in this Section 7.6 or (vi) fail to contest in good faith any appointment or proceeding described in Section 7.7.

7.7. Without the application, approval or consent of the Borrower or any of its Subsidiaries, a receiver, trustee, examiner, liquidator or similar official shall be appointed for the Borrower or any of its Subsidiaries or any Substantial Portion of its Property, or a proceeding described in Section 7.6(iv) shall be instituted against the Borrower or any of its Subsidiaries and such appointment continues undischarged or such proceeding continues undismissed or unstayed for a period of 30 consecutive days.

7.8. Any court, government or governmental agency shall condemn, seize or otherwise appropriate, or take custody or control of, all or any portion of the Property of the Borrower and its Subsidiaries which, when taken together with all other Property of the Borrower and its Subsidiaries so condemned, seized, appropriated, or taken custody or control of, during the twelve-month period ending with the month in which any such action occurs, constitutes a Substantial Portion.

7.9. The Borrower or any of its Significant Subsidiaries shall fail within 30 days to pay, bond or otherwise discharge any judgment or order for the payment of money in excess of \$15,000,000 (either singly or in the aggregate with other such judgments), which is not stayed on appeal or otherwise being appropriately contested in good faith.

## ARTICLE VIII

### ACCELERATION, WAIVERS, AMENDMENTS AND REMEDIES

8.1. Acceleration. If any Default described in Section 7.6 or 7.7 occurs with respect to the Borrower, the obligations of the Lenders to make Loans hereunder shall automatically terminate and the Obligations shall immediately become due and payable without any election or action on the part of the Administrative Agent or any Lender. If any other Default occurs, the Required Lenders (or the Administrative Agent with the consent of the Required Lenders) may terminate or suspend the obligations of the Lenders to make Loans hereunder, or declare the Obligations to be due and payable, or both, whereupon the Obligations shall become immediately due and payable, without presentment, demand, protest or notice of any kind, all of which the Borrower hereby expressly waives.

If, within 30 days after acceleration of the maturity of the Obligations or termination of the obligations of the Lenders to make Loans hereunder as a result of any Default (other than any Default as described in Section 7.6 or 7.7 with respect to the Borrower) and before any judgment or decree for the payment of the Obligations due shall have been obtained or entered, the Required Lenders (in their sole discretion) shall so direct, the Administrative Agent shall, by notice to the Borrower, rescind and annul such acceleration and/or termination.

8.2. Amendments. Subject to the provisions of this Article VIII, the Required Lenders (or the Administrative Agent with the consent in writing of the Required Lenders) and the Borrower may enter into agreements supplemental hereto for the purpose of adding or modifying any provisions to the Loan Documents or changing in any manner the rights of the Lenders or the Borrower hereunder or waiving any Default hereunder; provided, however, that no such supplemental agreement shall, without the consent of all of the Lenders:

- (i) Extend the final maturity of any Loan or forgive all or any portion of the principal amount thereof, or reduce the rate or extend the time of payment of interest or fees thereon.
- (ii) Reduce the percentage specified in the definition of Required Lenders.
- (iii) Extend the Facility Termination Date, or reduce the amount or extend the payment date for, the mandatory payments required under Section 2.2, or increase the amount of the Commitment of any Lender hereunder, or permit the Borrower to assign its rights under this Agreement.
- (iv) Amend this Section 8.2.

No amendment of any provision of this Agreement relating to the Administrative Agent shall be effective without the written consent of the Administrative Agent. The Administrative Agent may waive payment of the fee required under Section 12.3.2 without obtaining the consent of any other party to this Agreement.

8.3. Preservation of Rights. No delay or omission of the Lenders or the Administrative Agent to exercise any right under the Loan Documents shall impair such right or be construed to be a waiver of any Default or an acquiescence therein, and the making of a Loan notwithstanding the existence of a Default or the inability of the Borrower to satisfy the conditions precedent to such Loan shall not constitute any waiver or acquiescence. Any single or partial exercise of any such right shall not preclude other or further exercise thereof or the exercise of any other right, and no waiver, amendment or other variation of the terms, conditions or provisions of the Loan Documents whatsoever shall be valid unless in writing signed by the Lenders required pursuant to Section 8.2, and then only to the extent in such writing specifically set forth. All remedies contained in the Loan Documents or by law



afforded shall be cumulative and all shall be available to the Administrative Agent and the Lenders until the Obligations have been paid in full.

## ARTICLE IX

### GENERAL PROVISIONS

9.1. Survival of Representations. All representations and warranties of the Borrower contained in this Agreement shall survive the making of the Loans herein contemplated.

9.2. Governmental Regulation. Anything contained in this Agreement to the contrary notwithstanding, no Lender shall be obligated to extend credit to the Borrower in violation of any limitation or prohibition provided by any applicable statute or regulation.

9.3. Headings. Section headings in the Loan Documents are for convenience of reference only, and shall not govern the interpretation of any of the provisions of the Loan Documents.

9.4. Entire Agreement. The Loan Documents embody the entire agreement and understanding among the Borrower, the Administrative Agent and the Lenders and supersede all prior agreements and understandings among the Borrower, the Administrative Agent and the Lenders relating to the subject matter thereof other than the fee letter described in Section 10.13.

9.5. Several Obligations; Benefits of this Agreement. The respective obligations of the Lenders hereunder are several and not joint and no Lender shall be the partner or agent of any other (except to the extent to which the Administrative Agent is authorized to act as such). The failure of any Lender to perform any of its obligations hereunder shall not relieve any other Lender from any of its obligations hereunder. This Agreement shall not be construed so as to confer any right or benefit upon any Person other than the parties to this Agreement and their respective successors and assigns, provided, however, that the parties hereto expressly agree that the Arranger shall enjoy the benefits of the provisions of Sections 9.6, 9.10 and 10.11 to the extent specifically set forth therein and shall have the right to enforce such provisions on its own behalf and in its own name to the same extent as if it were a party to this Agreement.

9.6. Expenses; Indemnification. (i) The Borrower shall reimburse the Administrative Agent and the Arranger for any reasonable costs, internal charges and out-of-pocket expenses (including attorneys' fees and time charges of attorneys for the Administrative Agent, which attorneys may be employees of the Administrative Agent) paid or incurred by the Administrative Agent or the Arranger in connection with the preparation,

negotiation, execution, delivery, syndication, review, amendment, modification, and administration of the Loan Documents. The Borrower also agrees to reimburse the Administrative Agent, the Arranger and the Lenders for any costs, internal charges and out-of-pocket expenses (including attorneys' fees and time charges of attorneys for the Administrative Agent, the Arranger and the Lenders, which attorneys may be employees of the Administrative Agent, the Arranger or the Lenders) paid or incurred by the Administrative Agent, the Arranger or any Lender in connection with the collection and enforcement of the Loan Documents.

(ii) The Borrower hereby further agrees to indemnify the Administrative Agent, the Arranger and each Lender, its directors, officers and employees against all losses, claims, damages, penalties, judgments, liabilities and expenses (including, without limitation, all expenses of litigation or preparation therefor whether or not the Administrative Agent, the Arranger or any Lender is a party thereto) which any of them may pay or incur arising out of or relating to this Agreement, the other Loan Documents, the transactions contemplated hereby or the direct or indirect application or proposed application of the proceeds of any Loan hereunder except to the extent that they are determined in a final non-appealable judgment by a court of competent jurisdiction to have resulted from the gross negligence or willful misconduct of the party seeking indemnification. The obligations of the Borrower under this Section 9.6 shall survive the payment of the Obligations and termination of this Agreement.

9.7. Numbers of Documents. All statements, notices, closing documents, and requests hereunder shall be furnished to the Administrative Agent with sufficient counterparts so that the Administrative Agent may furnish one to each of the Lenders.

9.8. Accounting. Except as provided to the contrary herein, all accounting terms used herein shall be interpreted and all accounting determinations hereunder shall be made in accordance with GAAP.

9.9. Severability of Provisions. Any provision in any Loan Document that is held to be inoperative, unenforceable, or invalid in any jurisdiction shall, as to that jurisdiction, be inoperative, unenforceable, or invalid without affecting the remaining provisions in that jurisdiction or the operation, enforceability, or validity of that provision in any other jurisdiction, and to this end the provisions of all Loan Documents are declared to be severable.

9.10. Nonliability of Lenders. The relationship between the Borrower on the one hand and the Lenders and the Administrative Agent on the other hand shall be solely that of borrower and lender. Neither the Administrative Agent, the Arranger nor any Lender shall have any fiduciary responsibilities to the Borrower. Neither the Administrative Agent, the Arranger nor any Lender undertakes any responsibility to the Borrower to review or inform the Borrower of any matter in connection with any phase of the Borrower's business or operations. The Borrower agrees that neither the Administrative Agent, the Arranger nor

any Lender shall have liability to the Borrower (whether sounding in tort, contract or otherwise) for losses suffered by the Borrower in connection with, arising out of, or in any way related to, the transactions contemplated and the relationship established by the Loan Documents, or any act, omission or event occurring in connection therewith, unless it is determined in a final non-appealable judgment by a court of competent jurisdiction that such losses resulted from the gross negligence or willful misconduct of the party from which recovery is sought. Neither the Administrative Agent, the Arranger nor any Lender shall have any liability with respect to, and the Borrower hereby waives, releases and agrees not to sue for, any special, indirect or consequential damages suffered by the Borrower in connection with, arising out of, or in any way related to the Loan Documents or the transactions contemplated thereby.

9.11. Confidentiality. Each Lender agrees to hold any confidential information which it may receive from the Borrower pursuant to this Agreement in confidence, except for disclosure (i) to its Affiliates and to other Lenders and their respective Affiliates, (ii) to legal counsel, accountants, and other professional advisors to that Lender or to a Transferee, (iii) to regulatory officials, (iv) to any Person as requested pursuant to or as required by law, regulation, or legal process, (v) to any Person in connection with any legal proceeding to which that Lender is a party and (vi) permitted by Section 12.4.

9.12. Nonreliance. Each Lender hereby represents that it is not relying on or looking to any margin stock (as defined in Regulation U of the Board of Governors of the Federal Reserve System) for the repayment of the Loans provided for herein.

## ARTICLE X

### THE AGENTS

10.1. Appointment; Nature of Relationship. The First National Bank of Chicago is hereby appointed by each of the Lenders as its contractual representative (herein referred to as the "Administrative Agent") hereunder and under each other Loan Document, and each of the Lenders irrevocably authorizes the Administrative Agent to act as the contractual representative of such Lender with the rights and duties expressly set forth herein and in the other Loan Documents. The Administrative Agent agrees to act as such contractual representative upon the express conditions contained in this Article X. Notwithstanding the use of the defined term "Administrative Agent," it is expressly understood and agreed that the Administrative Agent shall not have any fiduciary responsibilities to any Lender by reason of this Agreement or any other Loan Document and that the Administrative Agent is merely acting as the contractual representative of the Lenders with only those duties as are expressly set forth in this Agreement and the other Loan Documents. In its capacity as the Lenders' contractual representative, the Administrative Agent (i) does not hereby assume any

fiduciary duties to any of the Lenders, (ii) is a "representative" of the Lenders within the meaning of Section 9-105 of the Uniform Commercial Code and (iii) is acting as an independent contractor, the rights and duties of which are limited to those expressly set forth in this Agreement and the other Loan Documents. Each of the Lenders hereby agrees to assert no claim against the Administrative Agent on any agency theory or any other theory of liability for breach of fiduciary duty, all of which claims each Lender hereby waives. Each Lender hereby appoints NationsBank, N.A. as Documentation Agent for the Lenders. The Documentation Agent, in its capacity as such, shall have no rights, duties or responsibilities hereunder or under any other Loan Document.

10.2. Powers. The Administrative Agent shall have and may exercise such powers under the Loan Documents as are specifically delegated to the Administrative Agent by the terms of each thereof, together with such powers as are reasonably incidental thereto. The Administrative Agent shall have no implied duties to the Lenders, or any obligation to the Lenders to take any action thereunder except any action specifically provided by the Loan Documents to be taken by the Administrative Agent.

10.3. General Immunity. Neither the Administrative Agent nor any of its directors, officers, agents or employees shall be liable to the Borrower, the Lenders or any Lender for any action taken or omitted to be taken by it or them hereunder or under any other Loan Document or in connection herewith or therewith except to the extent such action or inaction is determined in a final non-appealable judgment by a court of competent jurisdiction to have arisen from the gross negligence or willful misconduct of such Person.

10.4. No Responsibility for Loans, Recitals, etc. Neither the Administrative Agent nor any of its directors, officers, agents or employees shall be responsible for or have any duty to ascertain, inquire into, or verify (a) any statement, warranty or representation made in connection with any Loan Document or any borrowing hereunder; (b) the performance or observance of any of the covenants or agreements of any obligor under any Loan Document, including, without limitation, any agreement by an obligor to furnish information directly to each Lender; (c) the satisfaction of any condition specified in Article IV, except receipt of items required to be delivered solely to the Administrative Agent; (d) the existence or possible existence of any Default or Unmatured Default; (e) the validity, enforceability, effectiveness, sufficiency or genuineness of any Loan Document or any other instrument or writing furnished in connection therewith; (f) the value, sufficiency, creation, perfection or priority of any Lien in any collateral security; or (g) the financial condition of the Borrower or any guarantor of any of the Obligations or of any of the Borrower's or any such guarantor's respective Subsidiaries. The Administrative Agent shall have no duty to disclose to the Lenders information that is not required to be furnished by the Borrower to the Administrative Agent at such time, but is voluntarily furnished by the Borrower to the Administrative Agent (either in its capacity as Administrative Agent or in its individual capacity).

10.5. Action on Instructions of Lenders. The Administrative Agent shall in all cases be fully protected in acting, or in refraining from acting, hereunder and under any other Loan Document in accordance with written instructions signed by the Required Lenders, and such instructions and any action taken or failure to act pursuant thereto shall be binding on all of the Lenders. The Lenders hereby acknowledge that the Administrative Agent shall be under no duty to take any discretionary action permitted to be taken by it pursuant to the provisions of this Agreement or any other Loan Document unless it shall be requested in writing to do so by the Required Lenders. The Administrative Agent shall be fully justified in failing or refusing to take any action hereunder and under any other Loan Document unless it shall first be indemnified to its satisfaction by the Lenders pro rata against any and all liability, cost and expense that it may incur by reason of taking or continuing to take any such action.

10.6. Employment of Administrative Agents and Counsel. The Administrative Agent may execute any of its duties as Administrative Agent hereunder and under any other Loan Document by or through employees, agents, and attorneys-in-fact and shall not be answerable to the Lenders, except as to money or securities received by it or its authorized agents, for the default or misconduct of any such agents or attorneys-in-fact selected by it with reasonable care. The Administrative Agent shall be entitled to advice of counsel concerning the contractual arrangement between the Administrative Agent and the Lenders and all matters pertaining to the Administrative Agent's duties hereunder and under any other Loan Document.

10.7. Reliance on Documents; Counsel. The Administrative Agent shall be entitled to rely upon any Note, notice, consent, certificate, affidavit, letter, telegram, statement, paper or document believed by it to be genuine and correct and to have been signed or sent by the proper person or persons, and, in respect to legal matters, upon the opinion of counsel selected by the Administrative Agent, which counsel may be employees of the Administrative Agent.

10.8. Administrative Agent's Reimbursement and Indemnification. The Lenders agree to reimburse and indemnify the Administrative Agent ratably in proportion to their respective Commitments (or, if the Commitments have been terminated, in proportion to their Commitments immediately prior to such termination) (i) for any amounts not reimbursed by the Borrower for which the Administrative Agent is entitled to reimbursement by the Borrower under the Loan Documents, (ii) for any other expenses incurred by the Administrative Agent on behalf of the Lenders, in connection with the preparation, execution, delivery, administration and enforcement of the Loan Documents (including, without limitation, for any expenses incurred by the Administrative Agent in connection with any dispute between the Administrative Agent and any Lender or between two or more of the Lenders) and (iii) for any liabilities, obligations, losses, damages, penalties, actions, judgments, suits, costs, expenses or disbursements of any kind and nature whatsoever which may be imposed on, incurred by or asserted against the Administrative Agent in any way relating to or arising out of the Loan Documents or any other document delivered in

connection therewith or the transactions contemplated thereby (including, without limitation, for any such amounts incurred by or asserted against the Administrative Agent in connection with any dispute between the Administrative Agent and any Lender or between two or more of the Lenders), or the enforcement of any of the terms of the Loan Documents or of any such other documents, provided that no Lender shall be liable for any of the foregoing to the extent any of the foregoing is found in a final non-appealable judgment by a court of competent jurisdiction to have resulted from the gross negligence or willful misconduct of the Administrative Agent. The obligations of the Lenders under this Section 10.8 shall survive payment of the Obligations and termination of this Agreement.

10.9. Notice of Default. The Administrative Agent shall not be deemed to have knowledge or notice of the occurrence of any Default or Unmatured Default hereunder unless the Administrative Agent has received written notice from a Lender or the Borrower referring to this Agreement describing such Default or Unmatured Default and stating that such notice is a "notice of default". In the event that the Administrative Agent receives such a notice, the Administrative Agent shall give prompt notice thereof to the Lenders.

10.10. Rights as a Lender. In the event the Administrative Agent is a Lender, the Administrative Agent shall have the same rights and powers hereunder and under any other Loan Document with respect to its Commitment and its Loans as any Lender and may exercise the same as though it were not the Administrative Agent, and the term "Lender" or "Lenders" shall, at any time when the Administrative Agent is a Lender, unless the context otherwise indicates, include the Administrative Agent in its individual capacity. The Administrative Agent and its Affiliates may accept deposits from, lend money to, and generally engage in any kind of trust, debt, equity or other transaction, in addition to those contemplated by this Agreement or any other Loan Document, with the Borrower or any of its Subsidiaries in which the Borrower or such Subsidiary is not restricted hereby from engaging with any other Person.

10.11. Lender Credit Decision. Each Lender acknowledges that it has, independently and without reliance upon the Administrative Agent, the Arranger or any other Lender and based on the financial statements prepared by the Borrower and such other documents and information as it has deemed appropriate, made its own credit analysis and decision to enter into this Agreement and the other Loan Documents. Each Lender also acknowledges that it will, independently and without reliance upon the Administrative Agent, the Arranger or any other Lender and based on such documents and information as it shall deem appropriate at the time, continue to make its own credit decisions in taking or not taking action under this Agreement and the other Loan Documents.

10.12. Successor Administrative Agent. The Administrative Agent may resign at any time by giving written notice thereof to the Lenders and the Borrower, such resignation to be effective upon the appointment of a successor Administrative Agent or, if no successor Administrative Agent has been appointed, forty-five days after the retiring Administrative Agent gives notice of its intention to resign. The Administrative Agent may be removed at

any time with or without cause by written notice received by the Administrative Agent from the Required Lenders, such removal to be effective on the date specified by the Required Lenders. Upon any such resignation or removal, the Required Lenders shall have the right to appoint, on behalf of the Borrower and the Lenders, a successor Administrative Agent. If no successor Administrative Agent shall have been so appointed by the Required Lenders within thirty days after the resigning Administrative Agent's giving notice of its intention to resign, then the resigning Administrative Agent may appoint, on behalf of the Borrower and the Lenders, a successor Administrative Agent. Notwithstanding the previous sentence, the Administrative Agent may at any time without the consent of the Borrower or any Lender, appoint any of its Affiliates which is a commercial bank as a successor Administrative Agent hereunder. If the Administrative Agent has resigned or been removed and no successor Administrative Agent has been appointed, the Lenders may perform all the duties of the Administrative Agent hereunder and the Borrower shall make all payments in respect of the Obligations to the applicable Lender and for all other purposes shall deal directly with the Lenders. No successor Administrative Agent shall be deemed to be appointed hereunder until such successor Administrative Agent has accepted the appointment. Any such successor Administrative Agent shall be a commercial bank having capital and retained earnings of at least \$100,000,000. Upon the acceptance of any appointment as Administrative Agent hereunder by a successor Administrative Agent, such successor Administrative Agent shall thereupon succeed to and become vested with all the rights, powers, privileges and duties of the resigning or removed Administrative Agent. Upon the effectiveness of the resignation or removal of the Administrative Agent, the resigning or removed Administrative Agent shall be discharged from its duties and obligations hereunder and under the Loan Documents. After the effectiveness of the resignation or removal of an Administrative Agent, the provisions of this Article X shall continue in effect for the benefit of such Administrative Agent in respect of any actions taken or omitted to be taken by it while it was acting as the Administrative Agent hereunder and under the other Loan Documents. In the event that there is a successor to the Administrative Agent by merger, or the Administrative Agent assigns its duties and obligations to an Affiliate pursuant to this Section 10.12, then the term "Corporate Base Rate" as used in this Agreement shall mean the prime rate, base rate or other analogous rate of the new Administrative Agent.

10.13. Administrative Agent's Fee. The Borrower agrees to pay to the Administrative Agent, for its own account, the fees agreed to by the Borrower and the Administrative Agent pursuant to that certain letter agreement dated July 3, 1998, or as otherwise agreed from time to time.

10.14. Delegation to Affiliates. The Borrower and the Lenders agree that the Administrative Agent may delegate any of its duties under this Agreement to any of its Affiliates. Any such Affiliate (and such Affiliate's directors, officers, agents and employees) which performs duties in connection with this Agreement shall be entitled to the same benefits of the indemnification, waiver and other protective provisions to which the Administrative Agent is entitled under Articles IX and X.

ARTICLE XI

SETOFF; RATABLE PAYMENTS

11.1. Setoff. In addition to, and without limitation of, any rights of the Lenders under applicable law, if the Borrower becomes insolvent, however evidenced, or any Default occurs, any and all deposits (including all account balances, whether provisional or final and whether or not collected or available) and any other Indebtedness at any time held or owing by any Lender or any Affiliate of any Lender to or for the credit or account of the Borrower may be offset and applied toward the payment of the Obligations owing to such Lender, whether or not the Obligations, or any part hereof, shall then be due.

11.2. Ratable Payments. If any Lender, whether by setoff or otherwise, has payment made to it upon its Loans (other than payments received pursuant to Section 3.1, 3.2, 3.4 or 3.5) in a greater proportion than that received by any other Lender, such Lender agrees, promptly upon demand, to purchase a portion of the Loans held by the other Lenders so that after such purchase each Lender will hold its ratable proportion of Loans. If any Lender, whether in connection with setoff or amounts which might be subject to setoff or otherwise, receives collateral or other protection for its Obligations or such amounts which may be subject to setoff, such Lender agrees, promptly upon demand, to take such action necessary such that all Lenders share in the benefits of such collateral ratably in proportion to their Loans. In case any such payment is disturbed by legal process, or otherwise, appropriate further adjustments shall be made.

ARTICLE XII

BENEFIT OF AGREEMENT; ASSIGNMENTS; PARTICIPATIONS

12.1. Successors and Assigns. The terms and provisions of the Loan Documents shall be binding upon and inure to the benefit of the Borrower and the Lenders and their respective successors and assigns, except that (i) the Borrower shall not have the right to assign its rights or obligations under the Loan Documents and (ii) any assignment by any Lender must be made in compliance with Section 12.3. Notwithstanding clause (ii) of this Section, any Lender may at any time, without the consent of the Borrower or the Administrative Agent, assign all or any portion of its rights under this Agreement and any Note to a Federal Reserve Bank; provided, however, that no such assignment to a Federal Reserve Bank shall release the transferor Lender from its obligations hereunder. The Administrative Agent may treat the Person which made any Loan or which holds any Note as the owner thereof for all purposes hereof unless and until such Person complies with Section 12.3 in the case of an assignment thereof or, in the case of any other transfer, a written notice of the transfer is filed with the Administrative Agent. Any assignee or transferee of



the rights to any Loan or any Note agrees by acceptance of such transfer or assignment to be bound by all the terms and provisions of the Loan Documents. Any request, authority or consent of any Person, who at the time of making such request or giving such authority or consent is the owner of the rights to any Loan (whether or not a Note has been issued in evidence thereof), shall be conclusive and binding on any subsequent holder, transferee or assignee of the rights to such Loan.

## 12.2. Participations.

12.2.1. Permitted Participants; Effect. Any Lender may, in the ordinary course of its business and in accordance with applicable law, at any time sell to one or more banks or other entities ("Participants") participating interests in any Loan owing to such Lender, any Note held by such Lender, any Commitment of such Lender or any other interest of such Lender under the Loan Documents. In the event of any such sale by a Lender of participating interests to a Participant, such Lender's obligations under the Loan Documents shall remain unchanged, such Lender shall remain solely responsible to the other parties hereto for the performance of such obligations, such Lender shall remain the owner of its Loans and the holder of any Note issued to it in evidence thereof for all purposes under the Loan Documents, all amounts payable by the Borrower under this Agreement shall be determined as if such Lender had not sold such participating interests, and the Borrower and the Administrative Agent shall continue to deal solely and directly with such Lender in connection with such Lender's rights and obligations under the Loan Documents.

12.2.2. Voting Rights. Each Lender shall retain the sole right to approve, without the consent of any Participant, any amendment, modification or waiver of any provision of the Loan Documents other than any amendment, modification or waiver with respect to any Loan or Commitment in which such Participant has an interest which forgives principal, interest or fees or reduces the interest rate or fees payable with respect to any such Loan or Commitment, extends the Facility Termination Date or postpones any date fixed for any regularly-scheduled payment of principal of, or interest or fees on, any such Loan or Commitment.

12.2.3. Benefit of Setoff. The Borrower agrees that each Participant shall be deemed to have the right of setoff provided in Section 11.1 in respect of its participating interest in amounts owing under the Loan Documents to the same extent as if the amount of its participating interest were owing directly to it as a Lender under the Loan Documents, provided that each Lender shall retain the right of setoff provided in Section 11.1 with respect to the amount of participating interests sold to each Participant. The Lenders agree to share with each Participant, and each Participant, by exercising the right of setoff provided in Section 11.1, agrees to share with each Lender, any amount received pursuant to the exercise of its right of setoff, such amounts to be shared in accordance with Section 11.2 as if each Participant were a Lender.

### 12.3. Assignments.

12.3.1. Permitted Assignments. Any Lender may, in the ordinary course of its business and in accordance with applicable law, at any time assign to one or more banks or other entities ("Purchasers") all or any part of its rights and obligations under the Loan Documents. Such assignment shall be substantially in the form of Exhibit C or in such other form as may be agreed to by the parties thereto. The consent of the Borrower and the Administrative Agent shall be required prior to an assignment becoming effective with respect to a Purchaser which is not a Lender or an Affiliate thereof; provided, however, that if a Default has occurred and is continuing, the consent of the Borrower shall not be required. Such consent shall not be unreasonably withheld or delayed. Each such assignment shall (unless each of the Borrower and the Administrative Agent otherwise consents) be in an amount not less than the lesser of (i) \$10,000,000 or (ii) the remaining amount of the assigning Lender's Commitment (calculated as at the date of such assignment).

12.3.2. Effect; Effective Date. Upon (i) delivery to the Administrative Agent of a notice of assignment, substantially in the form attached as Exhibit I to Exhibit C (a "Notice of Assignment"), together with any consents required by Section 12.3.1, and (ii) payment of a \$3,000 fee to the Administrative Agent for processing such assignment, such assignment shall become effective on the effective date specified in such Notice of Assignment. The Notice of Assignment shall contain a representation by the Purchaser to the effect that none of the consideration used to make the purchase of the Commitment and Loans under the applicable assignment agreement are "plan assets" as defined under ERISA and that the rights and interests of the Purchaser in and under the Loan Documents will not be "plan assets" under ERISA. On and after the effective date of such assignment, such Purchaser shall for all purposes be a Lender party to this Agreement and any other Loan Document executed by or on behalf of the Lenders and shall have all the rights and obligations of a Lender under the Loan Documents, to the same extent as if it were an original party hereto, and no further consent or action by the Borrower, the Lenders or the Administrative Agent shall be required to release the transferor Lender with respect to the percentage of the Aggregate Commitment and Loans assigned to such Purchaser. Upon the consummation of any assignment to a Purchaser pursuant to this Section 12.3.2, the transferor Lender, the Administrative Agent and the Borrower shall, if the transferor Lender or the Purchaser desires that its Loans be evidenced by Notes, make appropriate arrangements so that new Notes or, as appropriate, replacement Notes are issued to such transferor Lender and new Notes or, as appropriate, replacement Notes, are issued to such Purchaser, in each case in principal amounts reflecting their respective Commitments, as adjusted pursuant to such assignment.

12.3.3. Substitution of Lenders. In the event any Lender's long term unsecured debt rating falls below Aa3 from Moody's or AA- from S&P, the Borrower may designate another financial institution which is acceptable to the Administrative

Agent in its sole discretion, to purchase, pursuant to this Section 12.3, the Loans and Commitment of such Lender and such Lender's rights hereunder, without recourse to or warranty by, or expense to, such Lender for a purchase price equal to the outstanding principal amount of the Loans payable to such Lender plus any accrued but unpaid interest on such Loans and accrued but unpaid commitment fees and any other amounts payable to such Lender under this Agreement, and to assume all the obligations of such Lender hereunder.

12.4. Dissemination of Information. The Borrower authorizes each Lender to disclose to any Participant or Purchaser or any other Person acquiring an interest in the Loan Documents by operation of law (each a "Transferee") and any prospective Transferee any and all information in such Lender's possession concerning the creditworthiness of the Borrower and its Subsidiaries; provided that each Transferee and prospective Transferee agrees to be bound by Section 9.11 of this Agreement.

12.5. Tax Treatment. If any interest in any Loan Document is transferred to any Transferee which is organized under the laws of any jurisdiction other than the United States or any State thereof, the transferor Lender shall cause such Transferee, concurrently with the effectiveness of such transfer, to comply with the provisions of Section 3.5(iv).

#### ARTICLE XIII

##### NOTICES

13.1. Notices. Except as otherwise permitted by Section 2.13 with respect to borrowing notices, all notices, requests and other communications to any party hereunder shall be in writing (including electronic transmission, facsimile transmission or similar writing) and shall be given to such party: (x) in the case of the Borrower or the Administrative Agent, at its address or facsimile number set forth on the signature pages hereof, (y) in the case of any Lender, at its address or facsimile number set forth below its signature hereto or (z) in the case of any party, at such other address or facsimile number as such party may hereafter specify for the purpose by notice to the Administrative Agent and the Borrower in accordance with the provisions of this Section 13.1. Each such notice, request or other communication shall be effective (i) if given by facsimile transmission, when transmitted to the facsimile number specified in this Section and confirmation of receipt is received, (ii) if given by mail, 72 hours after such communication is deposited in the mails with first class postage prepaid, addressed as aforesaid, or (iii) if given by any other means, when delivered (or, in the case of electronic transmission, received) at the address specified in this Section; provided that notices to the Administrative Agent under Article II shall not be effective until received.

13.2. Change of Address. The Borrower, the Administrative Agent and any Lender may each change the address for service of notice upon it by a notice in writing to the other parties hereto.

ARTICLE XIV  
COUNTERPARTS

This Agreement may be executed in any number of counterparts, all of which taken together shall constitute one agreement, and any of the parties hereto may execute this Agreement by signing any such counterpart. This Agreement shall be effective when it has been executed by the Borrower, the Administrative Agent and the Lenders and each party has notified the Administrative Agent by facsimile transmission or telephone that it has taken such action.

ARTICLE XV

CHOICE OF LAW; CONSENT TO JURISDICTION; WAIVER OF JURY TRIAL

15.1. CHOICE OF LAW. THE LOAN DOCUMENTS (OTHER THAN THOSE CONTAINING A CONTRARY EXPRESS CHOICE OF LAW PROVISION) SHALL BE CONSTRUED IN ACCORDANCE WITH THE INTERNAL LAWS (AND NOT THE LAW OF CONFLICTS) OF THE STATE OF ILLINOIS, BUT GIVING EFFECT TO FEDERAL LAWS APPLICABLE TO NATIONAL BANKS.

15.2. CONSENT TO JURISDICTION. THE BORROWER HEREBY IRREVOCABLY SUBMITS TO THE NON-EXCLUSIVE JURISDICTION OF ANY UNITED STATES FEDERAL OR ILLINOIS STATE COURT SITTING IN CHICAGO, ILLINOIS IN ANY ACTION OR PROCEEDING ARISING OUT OF OR RELATING TO ANY LOAN DOCUMENTS AND THE BORROWER HEREBY IRREVOCABLY AGREES THAT ALL CLAIMS IN RESPECT OF SUCH ACTION OR PROCEEDING MAY BE HEARD AND DETERMINED IN ANY SUCH COURT AND IRREVOCABLY WAIVES ANY OBJECTION IT MAY NOW OR HEREAFTER HAVE AS TO THE VENUE OF ANY SUCH SUIT, ACTION OR PROCEEDING BROUGHT IN SUCH A COURT OR THAT SUCH COURT IS AN INCONVENIENT FORUM. NOTHING HEREIN SHALL LIMIT THE RIGHT OF THE AGENT OR ANY LENDER TO BRING PROCEEDINGS AGAINST THE BORROWER IN THE COURTS OF ANY OTHER JURISDICTION. ANY JUDICIAL PROCEEDING BY THE BORROWER AGAINST THE AGENT OR ANY LENDER OR ANY AFFILIATE OF THE AGENT OR ANY LENDER INVOLVING, DIRECTLY OR INDIRECTLY, ANY MATTER IN

ANY WAY ARISING OUT OF, RELATED TO, OR CONNECTED WITH ANY  
LOAN DOCUMENT SHALL BE BROUGHT ONLY IN A COURT IN CHICAGO,  
ILLINOIS.

15.3. WAIVER OF JURY TRIAL. THE BORROWER, THE AGENT  
AND EACH LENDER HEREBY WAIVE TRIAL BY JURY IN ANY JUDICIAL  
PROCEEDING INVOLVING, DIRECTLY OR INDIRECTLY, ANY MATTER  
(WHETHER SOUNDING IN TORT, CONTRACT OR OTHERWISE) IN ANY WAY  
ARISING OUT OF, RELATED TO, OR CONNECTED WITH ANY LOAN  
DOCUMENT OR THE RELATIONSHIP ESTABLISHED THEREUNDER.

IN WITNESS WHEREOF, the Borrower, the Lenders and the Administrative Agent have executed this Agreement as of the date first above written.

KANSAS CITY POWER & LIGHT COMPANY

By: /s/Andrea F. Bielsker  
Title: Treasurer  
1200 Walnut  
Kansas City, Missouri 64141

Attention: Andrea F. Bielsker,  
Treasurer  
Telephone: (816) 556-2595  
FAX: (816) 556-2992

Commitments

-----

\$22,000,000

THE FIRST NATIONAL BANK OF CHICAGO,  
Individually and as Administrative Agent

By: /s/William N. Banks  
Title: First Vice President  
One First National Plaza  
Chicago, Illinois 60670

Attention: William N. Banks  
Telephone: (312) 732-9781  
FAX: (312) 732-3055

\$22,000,000

NATIONSBANK, N.A.,  
Individually and as Documentation Agent

By: /s/Curtis L. Anderson  
Title: Senior Vice President  
901 Main Street  
Dallas, Texas 75202

Attention: Curtis L. Anderson  
Telephone: (214) 508-1290  
FAX: (214) 508-3943

\$18,000,000

ABN AMRO BANK, N.V.

By: /s/Mark R. Lasek  
Title: Vice President

By: /s/Robert E. Lee IV  
Title: Assistant Vice President  
135 South LaSalle Street  
Chicago, Illinois 60603

Attention: Mark Lasek  
Telephone: (312) 904-2074  
FAX: (312) 904-1466

\$18,000,000

THE BANK OF NOVA SCOTIA, ATLANTA OFFICE

By: /s/F. C. H. Ashby  
Title: Senior Manager Loan Operations  
600 Peachtree Street N.E., Suite 2700  
Atlanta, GA 30308

Attention: Vicki Gibson  
Telephone: (404) 877-1557  
FAX: (404) 888-8998

\$15,000,000

THE BANK OF NEW YORK

By: /s/Ian K. Stewart  
Title: Senior Vice President  
One Wall Street, 19th Floor  
New York, NY 10286

Attention: Nate Howard  
Telephone: (212) 635-7916  
FAX: (212) 635-7923

\$15,000,000

WESTDEUTSCHE LANDESBANK GIROZENTRALE

By: /s/Lisa Walker  
Title: Vice President

By: /s/Elisabeth R. Wilds  
Title: Associate  
1211 Ave of the Americas  
New York, NY 10036

Attention: Cheryl Y. Wilson  
Telephone: (212) 852-6152  
FAX: (212) 302-7946

\$110,000,000  
=====

EQUIPMENT LEASING AGREEMENT

dated as of September 8, 1998

between

CCG TRUST CORPORATION,  
as the Lessor

and

KANSAS CITY POWER & LIGHT COMPANY,  
as the Lessee

THIS IS COUNTERPART NO. 2 OF 5 SERIALY NUMBERED MANUALLY EXECUTED COUNTERPARTS. TO THE EXTENT, IF ANY, THAT THIS DOCUMENT CONSTITUTES CHATTEL PAPER UNDER THE UNIFORM COMMERCIAL CODE, NO SECURITY INTEREST IN THIS DOCUMENT MAY BE PERFECTED THROUGH THE POSSESSION OF ANY COUNTERPART OTHER THAN COUNTERPART NO. 1.



TABLE OF CONTENTS

1. Definitions; Construction. . . . .1

2. Agreement for Purchase and Lease of Equipment. . . . 10  
    (a) Purchase. . . . . 10  
    (b) Lease . . . . . 10

3. Conditions Precedent . . . . . 10

4. Delivery, Acceptance and Leasing of Equipment;  
    Funding . . . . . 11  
    (a) Delivery, Acceptance and Leasing. . . . . 11  
    (b) Funding . . . . . 12  
    (c) Characterization. . . . . 12

5. Term . . . . . 12

6. Return of Equipment. . . . . 12

7. Basic Rent and Other Payments. . . . . 14  
    (a) Basic Rent. . . . . 14  
    (b) Supplemental Payments . . . . . 15  
    (c) Method of Payment . . . . . 15

8. Net Lease. . . . . 15

9. Use of Equipment; Compliance with Laws . . . . . 16

10. Maintenance and Repair of Equipment. . . . . 17

11. Replacements; Alterations: Modifications . . . . . 17

12. Identification Marks; Inspection . . . . . 18

13. Assignment and Subleasing; Quiet Enjoyment . . . . . 19  
    (a) By the Lessee . . . . . 19  
    (b) By the Lessor . . . . . 19  
    (c) Quiet Enjoyment . . . . . 20

14. Liens. . . . . 21

15. Loss, Damage or Destruction. . . . . 21

(a)	Risk of Loss, Damage or Destruction . . . . .	21
(b)	Payment of Casualty Loss Value Upon an Event of Loss . . . . .	21
(c)	Substitution. . . . .	22
(d)	Application of Payments Not Relating to an Event of Loss . . . . .	23
16.	Insurance. . . . .	23
17.	General Tax Indemnity. . . . .	23
18.	Indemnification. . . . .	27
19.	No Warranties. . . . .	29
20.	Lessee's Representations and Warranties. . . . .	29
21.	Events of Default. . . . .	31
22.	Remedies Upon Default. . . . .	32
23.	Lessor's Right to Perform for the Lessee . . . . .	34
24.	Late Charges . . . . .	35
25.	Further Assurances . . . . .	35
26.	Notices. . . . .	35
27.	Lessee's Renewal, Purchase and Sale Options. . . . .	35
(a)	Lessee's Renewal Option . . . . .	35
(b)	Lessee's Purchase Option. . . . .	36
(c)	Third Party Sale of Equipment . . . . .	37
(i)	Remarketing Obligations . . . . .	37
(ii)	Sale of Equipment . . . . .	37
28.	End-of-Term Rental Adjustment - Third Party Sale of Equipment . . . . .	38
29.	Covenants of the Lessee. . . . .	38
(a)	Financial Information . . . . .	38
(b)	Mergers, etc. . . . .	39
(c)	ERISA . . . . .	39
(d)	ERISA Information . . . . .	39
(e)	ERISA Notice. . . . .	40
(f)	Litigation. . . . .	40

30. Payment of Transaction Expenses. . . . . 40  
31. Owner for Income Tax Purposes. . . . . 40  
32. Governing Law; Waiver of Jury Trial; Submission  
to Jurisdiction . . . . . 40  
33. Miscellaneous. . . . . 41  
34. Registered Instrument. . . . . 41

SCHEDULE I - NOTICE OF INFORMATION

SCHEDULE II - PRINCIPAL COMPONENT, UNAMORTIZED LEASE  
BALANCE AND BASIC RENT PAYMENT

SCHEDULE III - FORM OF PURCHASE AGREEMENT ASSIGNMENT

EXHIBIT A - FORM OF LEASE SUPPLEMENT

EXHIBIT B - FORM OF FUNDING NOTICE

## EQUIPMENT LEASING AGREEMENT

EQUIPMENT LEASING AGREEMENT dated as of September 8, 1998 (herein, as amended and supplemented from time to time, called "this Lease"), between CCG Trust Corporation, a Barbados corporation (together with its successors and permitted assigns herein called the "Lessor"), having its principal place of business at #1 Chelston Park, Collymore Rock, St. Michael, Barbados, West Indies, and KANSAS CITY POWER & LIGHT COMPANY, a Missouri corporation (together with its successors and permitted assigns herein called the "Lessee"), having its principal place of business at 1201 Walnut Street, Kansas City, Missouri 64106.

In consideration of the mutual covenants and agreements hereinafter set forth, the parties hereto agree as follows:

### 1. Definitions; Construction.

(a) Definitions. Unless the context otherwise requires, the following terms shall have the following meanings for all purposes of this Lease and shall be equally applicable to both the singular and the plural forms of the terms herein defined:

"AAR" means the Association of American Railroads or any successor thereto.

"Acceptance Date" for any Item of Equipment means the date on which the Lessee has unconditionally accepted such Item for lease hereunder, as evidenced by the Lessee's execution and delivery of a Lease Supplement for such Item dated such date.

"Acquisition Cost" of each Item of Equipment means an amount as reflected on Schedule II to the Lease Supplement equal to one-hundred one percent (101%) of the total cost paid by the Lessor to the Manufacturer for such Item.

"Affected Party" means the Lessor or any of its successors and permitted assigns.

"Affiliate" of any Person means any other Person directly or indirectly controlling, controlled by or under common control with such Person. For purposes of this definition, "control" (including, with correlative meanings, the terms "controlled by" and "under common control with") shall mean the possession, directly or indirectly, of the power to direct or cause the direction of the management or policies of a Person, whether through the ownership of voting securities or by contract or otherwise.

"After Tax Basis" means, with respect to any payment to be received, the amount of such payment increased so that, after deduction of the amount of all taxes required to be paid by the recipient (less any tax savings actually realized and the present value (discounted at the then-prevailing Applicable Rate) of any tax savings projected to be actually realized by the recipient as

a result of, in the case of a cash basis taxpayer, the payment, or, in the case of an accrual taxpayer, the accrual of the amount in respect of which the indemnity payment is being made and in respect of the indemnity amount) with respect to the receipt or accrual by the recipient of such amounts, such increased payment (as so reduced) is equal to the payment otherwise required to be made.

"Applicable Law" shall mean all applicable laws, statutes, treaties, rules, codes, ordinances, regulations, certificates, orders, interpretations, licenses and permits of any Governmental Authority (including the DOT, the FRA and the AAR Interchange Rules) and judgments, decrees, injunctions, writs, orders or like action of any court, arbitrator or other administrative, judicial or quasi-judicial tribunal or agency of competent jurisdiction.

"Applicable Rate" means a per annum rate equal to 6.09% per annum (calculated on the basis of a 30-day month and a 360-day year).

"Appraisal" means, with respect to any Item, an appraisal of the Fair Market Sales Value of such Item.

"Assignee" shall have the meaning given to such term in Section 13(b) hereof.

"Basic Rent" means the rent payable for each Item of Equipment during (i) the Basic Term thereof pursuant to Section 7(a) hereof and (ii) each Renewal Term thereof (if this Lease is renewed) pursuant to Section 27(a) hereof.

"Basic Term" for each Item of Equipment means the period commencing on the Basic Term Commencement Date and ending on the first anniversary of such date unless extended by a Renewal Term or earlier terminated in accordance with the provisions hereof.

"Basic Term Commencement Date" for each Item of Equipment means the Acceptance Date.

"Business Day" means any day other than a day on which banking institutions in the State of New York, Barbados, West Indies, or the State of Missouri are authorized or required by law to close.

"Casualty Loss Value" with respect to any Item of Equipment as of the Casualty Loss Value Payment Date with respect to such Item means an amount determined by multiplying the Acquisition Cost of such Item of Equipment by the percentage set forth opposite such Casualty Loss Value Payment Date on Schedule I attached to the Lease Supplement for such Item.

"Casualty Loss Value Payment Date" with respect to any Item of Equipment shall mean the earlier of (i) the day that is 90 days after the date of the Event of Loss applicable to such Item or (ii) the Rent Payment Date next following the date of the Event of Loss applicable to such Item (or the last day of the Term, if sooner) and shall be as set forth in the Schedule of Casualty Loss

Values attached to the Lease Supplement for such Item but in no event shall the Casualty Loss Value Payment date be sooner than the first to occur of (a) receipt of the insurance proceeds or (b) 45 days after the date of the Event of Loss.

"Change in Withholding Tax Law" means (A) the enactment of any amendment to the Code or the enactment of any other United States Federal statute relating to Federal income tax regarding withholding requirements for interest paid to non-United States entities, (B) the adoption of any regulation to the Code, or any amendment of any regulation to the Code, in temporary or final form (that is, in a form that is effective) regarding withholding requirements for interest paid to non-United States entities, (C) the entry into force of any new income tax convention to which the United States is a party or any amendment or supplement to, or revocation of, any income tax convention to which the United States is a party regarding withholding requirements for interest paid to non-United States entities.

"Closing Date" means the date of the execution and delivery of this Lease by the parties hereto.

"Code" means the Internal Revenue Code of 1986, as the same may be amended from time to time, or any comparable successor law.

"Commitment Amount" means \$12,710,071.20 plus the amounts described in the definition of Transaction Expenses in an aggregate maximum amount not to exceed that Maximum Acquisition Cost.

"Default" means any condition or event that after notice or lapse of time or both would constitute an Event of Default.

"Disclosure Documents" means the Lessee's (i) Annual Report on Form 10-K for the year ended December 31, 1997, and (ii) Quarterly Report on Form 10-Q for the quarter ended June 30, 1998.

"DOT" means the U.S. Department of Transportation or any successor thereto.

"Equipment" means the Freight Car Services, Inc. aluminum gondola railcars of the type(s) described on each consecutively numbered Lease Supplement and leased or to be leased by the Lessor to the Lessee hereunder, together with any and all accessions, additions, improvements, appliances, parts, instruments, appurtenances, accessories, furnishings, replacements and other equipment of whatever nature from time to time incorporated or installed therein which are or become the property of the Lessor pursuant to the terms of this Lease.

"Equipment Documents" means the disclosure materials related to the description and specifications of the Equipment, as such documents may be amended or supplemented from time

to time provided to the Lessor by the Lessee, and identified as such by the parties hereto on the Closing Date.

"Estimated Residual Value" for any Item of Equipment means the amount obtained by multiplying (a) the percentage set forth in the Lease Supplement for such Item under the caption "Estimated Residual Value Percentage" applicable to the Basic Term or Renewal Term then ending, by (b) the Acquisition Cost for such Item.

"Event of Default" means any of the events referred to in Section 21 hereof.

"Event of Loss" with respect to any Item of Equipment means (except as caused by the Lessor's gross negligence or willful misconduct, other than any such negligence or misconduct as may be imputed to Lessor solely by reason of its interest in the Equipment) (i) the permanent loss of such Item of Equipment, (ii) unless the Lessee has irrevocably exercised its purchase option as to that Item under Section 27(b) hereof or the Lessee has irrevocably exercised its sale option as to that Item under Section 27(c) hereof, the loss of the use of such Item of Equipment due to theft or disappearance for a period in excess of 90 days or the remainder of the then applicable Term, whichever is less, (iii) the destruction, the determination that such Item of Equipment is damaged beyond repair, or rendition of such Item of Equipment permanently unfit for normal use for any reason whatsoever, (iv) the condemnation, confiscation, seizure, or requisition of title to such Item of Equipment by any Governmental Authority under the power of eminent domain or otherwise, (v) the confiscation, condemnation, seizure of or requisition of use of such Item of Equipment by any Governmental Authority other than the United States (which shall only be an Event of Loss if continuing at the end of the then-applicable Term) for a period in excess of 360 days (or the remainder of the then-applicable Term, whichever is less), (vi) the use of such Item of Equipment shall have been prohibited in interstate commerce for a continuous period in excess of the lesser of 360 days or the balance of the then-applicable Term as a result of any rule, regulation or order of, or other action by, the U.S. government or any agency or instrumentality thereof or (vii) damage to such Item or any part thereof or any other event that results in an insurance settlement on the basis of a total loss or constructive or compromised total loss.

"Expenses" shall mean liabilities, obligations, losses (excluding loss of anticipated profits, provided that such exclusion shall not affect Lessor's right to any Make Whole Amount required to be paid under this Lease), damages, claims, actions, suits, judgments, fees, charges (including demurrage charges), penalties and costs, expenses and disbursements (including reasonable out-of-pocket legal fees and expenses) of any kind and nature whatsoever.

"Fair Market Sales Value" means, with respect to any Item, the amount that would be paid in cash in an arm's-length transaction between an informed and willing purchaser and an informed and willing seller, neither of whom is under any compulsion to purchase or sell, respectively, for the ownership of such Item based on the actual condition of such Item.

"FRA" means the Federal Railroad Administration or any successor thereto.

"Funding" means the payment of the aggregate Acquisition Cost for all Items of Equipment covered by the initial Lease Supplement.

"Funding Date" means the date on which the Funding occurs.

"Funding Notice" is defined in Section 4(b) hereof.

"Governmental Authority" shall mean any Federal, state, county, municipal or regional governmental authority, agency, board, body, instrumentality or court (including the DOT and AAR).

"[I]ncluding" means including, without limitation.

"Indemnified Party" is defined in Section 18 hereof.

"Internal Revenue Service" means the United States Internal Revenue Service or any Successor agency or regulatory authority.

"Item of Equipment or "Item" means one of the units of Equipment more specifically described in a Lease Supplement and leased to the Lessee hereunder, together with the related appurtenances, additions, improvements, equipment and replacements thereto.

"Lease Supplement" means a Lease Supplement substantially in the form attached hereto as Exhibit A, to be executed by the Lessor and the Lessee with respect to the Items of Equipment covered thereby as provided in Section 4 hereof, evidencing that each such Item is leased hereunder.

"Lessee" is defined in the preamble of this Lease.

"Lessor" is defined in the preamble of this Lease.

"Lien" means liens, mortgages, encumbrances, pledges, claims, leases, charges and security interests of any kind.

"Make Whole Amount" means, as of the date of any purchase option pursuant to Section 27(b) hereof, the excess, if any, of (i) the present value, as of such date of purchase, of the remaining Principal Components and Interest Components with respect to such Item that, but for such purchase, would have been payable under this Lease on the Rent Payment Dates after such purchase over (ii) the purchase aggregate Unamortized Lease Balance remaining to be paid under this Lease with respect to such item. Such present value shall be determined by discounting the amounts of such installments semi-annually from their respective payment dates to the date of purchase at a rate equal to the Treasury Rate (as defined below) plus 0.50% per annum. "Treasury Rate" with respect to the Make Whole Amount means the weekly average of the yield



on a hypothetical United States Treasury security with a constant maturity matching the remaining average life to maturity of such Principal Component. The hypothetical Treasury security is to be derived by referring to the most recently available information (by not more than ten (10) nor less than five (5) Business Days preceding the date of the purchase) contained in the Federal Reserve Board's Statistical Release H.15 (519) (or its successor publication). If there is a Treasury constant maturity listed in said Federal Reserve Release H. 15 (519) with a maturity equal to the then-remaining average life to maturity of such Principal Component then the yield on such Treasury security shall be the Treasury Rate. If no such Treasury constant maturity exists, then the weekly average yield on such Treasury security shall be linearly interpolated from the weekly average yields on (a) the Treasury security with constant maturity closest to and greater than the then-remaining average life to maturity of such Principal Component and (b) the Treasury security with a constant maturity closest to and less than the then-remaining average life to maturity of such Principal Component. If there shall be no Treasury security with a constant maturity less than the then-remaining average life to maturity on such Principal Component, then the Treasury Rate shall mean the weekly average yield on the Treasury security with the shortest Treasury constant maturity. If said Federal Reserve Release H.15 (519) or a successor publication refers to no applicable yield on Treasury securities, then the Treasury Rate shall be determined in any manner mutually acceptable to the Lessor and the Lessee.

"Manufacturer" means, with respect to each Item of Equipment, the manufacturer or supplier thereof specified in the Lease Supplement with respect to such Item.

"Maximum Acquisition Cost" means \$12,837,171.91.

"Maximum Lessee Risk Amount" for any Item of Equipment shall mean the percentage set forth in the Lease Supplement for such Item under the caption "Maximum Lessee Risk Percentage" applicable to the Basic Term or any Renewal Term then ending, multiplied by the Acquisition Cost for such Item.

"Maximum Lessor Risk Amount" for any Item of Equipment shall mean the percentage set forth in the Lease Supplement for such Item under the caption "Maximum Lessor Risk Percentage" applicable to the Basic Term or any Renewal Term then ending, multiplied by the Acquisition Cost for such Item.

"Maximum Term" for each Item of Equipment shall mean the twentieth anniversary of the Closing Date.

"Multiemployer Plan" shall have the meaning assigned to the term "multiemployer plan" in Section 3(37) of ERISA.

"Net Proceeds of Sale" is defined in Section 28.

"1935 Act" means the Public Utility Holding Company Act of 1935, as amended.

"Permitted Liens" shall mean:

(a)(i) any rights in favor of the Lessor or any Assignee under the Lease and the related documents and (ii) any rights of any Persons entitled to use of the Equipment in accordance with this Lease;

(b) any Lien on the Lessee's rights in this Lease and Lessee's interest in the Equipment contained in mortgages granted by the Lessee which cover after acquired property of the Lessee and which otherwise subject all or substantially all of the Lessee's assets to such mortgage, provided that any such Lien on the Equipment is subordinate to and does not adversely affect Lessor's interest in the Equipment under this Lease, and in connection therewith Lessee warrants that no one other than Lessor has made any filing with the Surface Transportation Board or the Interstate Commerce Commission covering any of the Equipment subject to this Lease (except for Freight Car Services, Inc. whose filing is being terminated contemporaneously herewith), and in the event that the mortgagee under any of Lessee's mortgages claims that it has an interest in such Equipment which is superior to Lessor's interest therein, such claim shall constitute an Event of Default under Section 21(c) of this Lease;

(c) any Lien (including Liens of landlords, carriers, warehousemen, mechanics or materialmen) in favor of any Person securing payment of the price of goods or services provided in the ordinary course of business for amounts the payment of which is not overdue or is being contested in good faith by appropriate proceedings diligently prosecuted so long as such proceedings do not involve any material risk of the sale, forfeiture or loss of one or more Items of Equipment or any part thereof and such proceedings do not involve any material risk of civil liability to Lessor or any risk of criminal liability to Lessor (other than minor fines which do not adversely affect Lessor);

(d) any Lien arising out of any act of, or any failure to act by, or any claim (including any claim for taxes) against, the Lessor, any Assignee or any of their Affiliates which is either not required to be indemnified by Lessee under this Lease or unrelated to the transactions contemplated by this Lease or any Lien arising out of any breach by the Lessor, any Assignee or any of their Affiliates of their obligations under this Lease or any related documents;

(e) any Lien for taxes, assessments or other governmental charges which are not delinquent or the validity of which is being contested in good faith by appropriate proceedings diligently prosecuted so long as such proceedings do not involve any material risk of the sale, forfeiture or loss of one or more Items of Equipment or any part thereof and such proceedings do not involve any material risk of civil liability to Lessor or any risk of criminal liability to Lessor (other than minor fines which do not adversely affect Lessor); and

(f) attachments, judgments and other similar Liens arising in connection with court proceedings, provided that within ninety (90) days of the attachment thereof (or fifteen (15) days prior to any execution or sale pursuant thereto), the execution or other enforcement of such Liens is effectively stayed and the claims secured thereby are being contested in good faith and by appropriate proceedings so long as such proceedings do not involve any material risk of the sale, forfeiture or loss of one or more Items of Equipment or any part thereof and such proceedings do not involve any material risk of civil liability to Lessor or any risk of criminal liability to Lessor (other than minor fines which do not adversely affect Lessor).

"Person" means any individual, corporation, limited liability company, partnership, joint venture, association, joint stock company, trust, trustee(s) of a trust, unincorporated organization, or Governmental Authority.

"Plan" shall mean (a) with respect to the Lessee, any plan described in Section 3(3) of ERISA under which the Lessee or any ERISA Affiliate of the Lessee has any liability, and (b) with respect to any other person, any employee benefit plan or other plan established or maintained by such person for the benefit of such person's employees and to which Title IV of ERISA applies.

"Remarketing Period" shall have the meaning given to such term in Section 27(c) hereof.

"Renewal Term" for any Item of Equipment, means each one year period (not to exceed nineteen consecutive one year periods) following the end of the Basic Term for such Item with respect to which the Lessee has the option to renew this Lease pursuant to Section 27(a) hereof. Notwithstanding anything to the contrary which may be contained in this Lease, the Basic Term of this Lease with respect to any Item of Equipment shall in no event exceed the Maximum Term.

"Rent Payment Date" shall mean March 8, 1999, and each six-month anniversary of such date through the Term of the Lease.

"Rental Period" for each Item of Equipment means (i) initially, the period commencing on the Funding Date for the applicable Lease Supplement and ending on the immediately succeeding Rent Payment Date and (ii) thereafter, each period beginning on the first day after the last day of the preceding Rental Period and ending on the next succeeding Rent Payment Date.

"Responsible Officer" means, with respect to the subject matter of any covenant, agreement or obligation of any Person contained herein in the related transaction documents, the President, any Vice President, the Chief Financial Officer or the Treasurer who, in the normal performance of such person's operational responsibility, would have knowledge of such matter and the requirements with respect thereto.

"SEC" means the United States Securities and Exchange Commission or any successor agency or regulatory authority.

"Supplemental Payments" means without duplication all amounts, liabilities and obligations which the Lessee assumes or agrees to pay hereunder to the Lessor or others, including payments of Casualty Loss Value and any indemnities that may become payable by the Lessee hereunder, but excluding Basic Rent.

"Tax Indemnitee" is defined in Section 17 hereof.

"Term" means the full term of this Lease with respect to any Item of Equipment, including the Basic Term and each Renewal Term (if any).

"Termination Date" for any Item of Equipment, means the last day of the Basic Term of such Item, or if the Term of such Item has been renewed pursuant to Section 27(a) or 27(d), the last day of the Renewal Term of such Item.

"Transaction Expenses" means all costs and expenses incurred in connection with the preparation, execution and delivery of this Lease and the transaction documents and the transactions contemplated thereby including:

(a) the reasonable fees, out-of-pocket expenses and disbursements of any law firm or other external counsel of the Lessor in connection with the negotiation and documentation of this Lease and the transactions contemplated hereby; and

(b) any and all taxes and fees incurred in recording, registering or filing this Lease, any Lease Supplement or any other transaction document, any deed, declaration, mortgage, security agreement, notice or financing statement with any public office, registry or governmental agency in connection with the transactions contemplated by the transaction documents.

"Unamortized Lease Balance" means the sum reflected on Schedule II to this Lease for the relevant date of determination.

"Western Resources Merger Transaction" means, collectively, the mergers and related transactions contemplated by the Amended and Restated Plan of Merger, dated as of March 18, 1998, by and among Western Resources, Inc., Kansas Gas & Electric Company, NKC, Inc. and the Borrower.

(b) Construction. The words "this Lease", "herein", "hereunder", "hereof" or other like words mean this Equipment Leasing Agreement (including each schedule, exhibit, and other attachment), as from time to time supplemented and amended.

2. Agreement for Purchase and Lease of Equipment.

(a) Purchase. Subject to the terms and conditions of this Lease, on the Funding Date the Lessor shall purchase the Items of Equipment listed on the initial Lease Supplement for the aggregate Acquisition Cost specified in such Lease Supplement. The Lessor will pay the invoiced cost of the Equipment to the Manufacturer and the remainder of the Acquisition Cost to the Persons entitled to such payments as part of Transaction Expenses by wire transfer of immediately available funds to such account in the United States as designated in writing to the Lessor at least two Business Days prior to the Funding Date.

(b) Lease. Subject to, and upon all of the terms and conditions of this Lease, the Lessor hereby agrees to lease to the Lessee and the Lessee hereby agrees to lease from the Lessor each Item of Equipment listed on a Lease Supplement for the Term with respect to such Item. Provided that no Event of Default has occurred and is continuing hereunder, neither the Lessor or any Assignee, nor anyone claiming through or under the Lessor or any Assignee, shall cause or allow any Lien attributable to it to exist or arise against any of the Equipment (except for Permitted Liens (other than those described in (d) of the definition of Permitted Liens) and Liens which are required to be removed by Lessee under the terms of this Lease) or interfere with the Lessee's quiet enjoyment and use of any Item of Equipment by the Lessee (or any permitted transferee from the Lessee) during the Term therefor, except as otherwise expressly permitted hereunder.

3. Conditions Precedent. The Lessor shall have no obligation to purchase any Item of Equipment nor to lease the same to the Lessee unless each of the following conditions are fulfilled to the satisfaction of the Lessor on or prior to the Funding Date:

(a) this Lease shall have been executed and delivered by the parties hereto, and no Default or Event of Default shall have occurred and be continuing;

(b) no material adverse change in the financial condition of the Lessee which, in the Lessor's reasonable opinion, would impair the ability of the Lessee to pay and perform its obligations under this Lease has occurred, except as expressly contemplated and disclosed under the Disclosure Documents, since the date of the Disclosure Documents;

(c) such Item of Equipment shall be free from all damage and be acceptable to the Lessor, and free and clear of all Liens, other than any Permitted Lien;

(d) [Intentionally Omitted];

(e) after giving effect to such purchase, the aggregate Acquisition Cost of all Equipment subject to this Lease shall not exceed the Maximum Acquisition Cost;

(f) the Lessor shall have received an invoice or a bill of sale for such Item of Equipment from the Manufacturer thereof, approved for payment by the Lessee, showing the Lessor as the purchaser of such Item;

(g) the Lessor shall have received a Lease Supplement for such Item, duly executed by the Lessee, and dated the Acceptance Date for such Item;

(h) a memorandum of this Lease and the Lease Supplement covering such Item, shall have been duly filed with the Surface Transportation Board of the DOT and Uniform Commercial Code financing statements covering such Item in form and substance satisfactory to Lessor shall have been filed in such jurisdictions as may be necessary or appropriate;

(i) the Lessor shall have received a copy of resolutions of the Lessee's board of directors authorizing the execution, delivery and performance by the Lessee of this Lease;

(j) the Lessor shall have received a fully executed Funding Notice with respect to the initial Lease Supplement;

(k) if the Funding Date does not occur on the date hereof, the Lessor shall have received a certificate from the Lessee (executed on its behalf by a Responsible Officer of the Lessee) to the effect that the representations and warranties of the Lessee contained herein shall be true and correct on and as of the Funding Date with the same effect as though made on and as of the Funding Date;

(l) the Lessor shall have received certificates of insurance, loss payable endorsements and other evidence that the Lessee has complied with the provisions of Section 16; and

(m) the Lessee and the Lessor shall have executed and delivered the Purchase Agreement Assignment in substantially the form of Schedule III hereto.

4. Delivery, Acceptance and Leasing of Equipment;  
Funding.

(a) Delivery, Acceptance and Leasing. The Lessor shall not be liable to the Lessee for any failure or delay in obtaining any Item of Equipment or making delivery thereof. Forthwith upon delivery of each Item of Equipment to the Lessee, the Lessee or its agents will promptly inspect such Item, and unless the Lessee gives the Lessor prompt written notice of any defect in or other proper objection to such Item, the Lessee shall promptly upon completion of such inspection execute and deliver to the Lessor a Lease Supplement for such Item, dated the Acceptance Date of such Item. The execution by the

Lessor and the Lessee of a Lease Supplement for an Item of Equipment shall (a) evidence that such Item is leased under, and is subject to all of the terms, provisions and conditions of, this Lease, and (b) constitute the Lessee's unconditional acceptance of such Item for all purposes of this Lease.

(b) Funding. The Funding shall be made on notice from the Lessee to the Lessor received by the Lessor not later than two Business Days prior to the proposed Funding Date; provided, however, that (i) the Funding shall be for an aggregate Acquisition Cost equal to the Commitment Amount with respect to the initial Lease Supplement or such lesser amount which shall be acceptable to the Lessee and the Lessor, and (ii) the aggregate of all Acquisition Costs paid for by the Lessor, after giving effect to the Funding, shall not exceed the Maximum Acquisition Cost. The notice of Funding shall be in the form of Exhibit B (each a "Funding Notice"), and shall specify the date of the proposed Funding, the aggregate Acquisition Cost for the Items covered by the initial Lease Supplement (including Transaction Expenses) to be funded on such date and the list of Equipment to be funded by the Lessor on such date, and shall be accompanied by the Manufacturer's invoices and/or bills of sale for the Equipment to be funded.

(c) Characterization. As further described herein, the Lessee and the Lessor hereby agree to treat the arrangement created pursuant to this Lease as a financing or conditional sale for Federal income tax purposes.

5. Term. The Basic Term for each Item of Equipment shall commence on the Basic Term Commencement Date thereof and, unless this Lease is sooner terminated with respect to such Item (or all Equipment) pursuant to the provisions hereof, shall end on the last day of the Basic Term thereof, as specified in the applicable Lease Supplement, or if this Lease is renewed with respect to such Item pursuant to Section 27(a) hereof, on the last day of the last Renewal Term thereof or if this Lease is extended with respect to such Item pursuant to Section 27(d) hereof, for one or more Additional Terms as specified therein.

6. Return of Equipment. Upon the expiration or earlier termination of the Term with respect to each Item of Equipment (unless the Lessee has exercised its purchase option with respect thereto pursuant to Section 27(b) hereof or a third party sale thereof has been consummated on the Termination Date with respect thereto pursuant to Section 27(c) hereof), the Lessee will, at its expense, surrender and deliver possession of each Item of Equipment to the Lessor or the Lessor's agent on the Termination Date at such location(s) in the continental United States, no greater than fifty (50) miles from Kansas City, Missouri or in route between Lessee's facilities and the Powder River Basin in Wyoming as shall be designated by the Lessor (not to exceed two (2) locations) in writing at least sixty (60) days prior to the termination or expiration of the applicable Term or in the absence of such designation, at the then location of each such Item. At the time of such return to the Lessor, each Item of Equipment (and each part or component thereof) shall:

(a) be in as good condition, state of repair, and appearance as when delivered to the Lessee hereunder, ordinary wear and tear excepted, and not in immediate need of any further repair or reconditioning,

(b) comply with all laws and rules referred to in Sections 9 and 10 hereof, shall have been maintained in accordance with the terms of this Lease (and all modifications or alterations of such Equipment that were undertaken prior to the Termination Date shall have been fully accomplished and completed), and no Default or Event of Default shall have occurred and be continuing hereunder,

(c) conform to and comply with all applicable Governmental Authority (including DOT and FRA) safety rules and regulations (without exemption, waiver or deferment),

(d) be suitable for interchange under the rules and regulations of the AAR and FRA, to the extent the Equipment was originally designed and approved, provided that the Lessee shall not be required to make any modifications which would not be required of the Lessee if the Lessee were to continue to operate the Equipment,

(e)(i) have attached or affixed thereto any addition, modification or improvement considered an accession thereto as provided in Section 11 hereof, (ii) have removed therefrom in a workmanlike manner if so requested by the Lessor or any Assignee at the Lessee's expense any addition, modification or improvement which, as provided in Section 11 hereof, is owned by the Lessee, and (iii) have removed therefrom, or painted over, in either case in a workmanlike manner, any insignia or marking permitted pursuant to Section 12 hereof,

(f) be suitable for hauling coal,

(g) be free from all material accumulations or deposits from commodities transported in or on it while in the service of the Lessee and be free of corrosion, ordinary wear and tear excepted,

(h) shall not have any missing or damaged parts or any structural or mechanical damage on any surface or device, ordinary wear and tear excepted, and

(i) be free and clear of all Liens, other than the Permitted Liens specified in clause (a)(i) or clause (d) of the definition thereof.

The Lessee shall pay for any repairs necessary to restore any Item of Equipment to the condition required by this Lease.



For the purpose of delivering possession of any Items of Equipment as above required, the Lessee shall at its own cost, expense and risk:

- (i) forthwith and in the usual manner (including, to the extent legally required by Applicable Law, to protect the Lessor's or any Assignee's interest in the Items of Equipment) give prompt electronic and written notice to all railroads to which any Items of Equipment have been interchanged or which may have possession thereof to return the Items of Equipment and place such Items of Equipment upon such storage tracks along the rail routes then used by the Lessee in the ordinary usage of the Equipment as the Lessor reasonably may designate;
- (ii) if requested by Lessor, cause such Items of Equipment to be stored on such tracks at the risk of the Lessee without charge to the Lessor or any Assignee for insurance, rent or storage until all such Items of Equipment have been sold, leased or otherwise disposed of by the Lessor for a period not to exceed thirty (30) days after the Termination Date; and
- (iii) deliver to the Lessor, if requested, all manuals and inspection, modification, overhaul and maintenance records applicable to such Items of Equipment (which records may exclude the cost of repairs, maintenance, modifications and overhauls).

During any storage period, the Lessee will maintain and keep the Items of Equipment in the manner set forth in Section 10 hereof and permit the Lessor or any Person designated by it, including the authorized representative or representatives of any prospective purchaser, lessee or other user of any Items of Equipment, to inspect the same during normal business hours at such inspector's own risk, cost and expense.

Until the Equipment has been returned to the Lessor in the condition and as otherwise provided in this Section 6 hereof, purchased under Section 27(b) hereof or sold under Section 27(c) hereof, the Lessee shall continue to pay the Lessor rent at a per diem rate equal to the daily equivalent of the Basic Rent that was payable on the last Rent Payment Date until such Items of Equipment are returned to the Lessor; provided that during such holdover period, the Lessee shall use its best efforts to secure the return of the Equipment as required under this Section 6. Lessee shall pay all rent payable pursuant to this Section 6 on a monthly basis, with all amounts being paid within thirty (30) days after all Items of Equipment have been returned to Lessor in accordance with this Section 6, in each case after Lessee has received from Lessor an invoice for such amount. The provision for payment pursuant to this Section 6 shall not be in abrogation of the Lessor's right under this Section 6 to have such Equipment returned to it hereunder.

7. Basic Rent and Other Payments.

(a) Basic Rent. The Lessee hereby agrees to pay to the Lessor Basic Rent semi-annually, in arrears, for each Item of Equipment during the Basic Term thereof on each Rent Payment Date during the Basic Term in the respective amounts set forth opposite such Rent Payment Date on Schedule II hereto.

(b) Supplemental Payments. The Lessee also agrees to pay to the Lessor, or to whomsoever shall be entitled thereto as expressly provided herein, all Supplemental Payments, promptly as the same shall become due and owing, and in the event of any failure on the part of the Lessee so to pay any such Supplemental Payment hereunder, the Lessor shall (except as otherwise specified herein) have all rights, powers and remedies provided for herein or by law or equity or otherwise in the case of nonpayment of Basic Rent.

(c) Method of Payment. All payments of Basic Rent and Supplemental Payments required to be made by the Lessee to the Lessor shall be made by wire transfer of immediately available funds no later than 12:00 noon, New York time, to such account of the Lessor as specified on Schedule I hereto (or such other account as Lessor may hereafter designate in writing to Lessee). If the date that any payment of Basic Rent is due is other than a Business Day, the payment of Basic Rent otherwise payable on such date shall be payable on the next succeeding Business Day with no adjustment to the payment amount. In the event of any assignment to an Assignee pursuant to Section 13(b) hereof in accordance with Section 34, all payments which are assigned to such Assignee, whether Basic Rent, Supplemental Payments or otherwise, shall be paid by wire transfer of immediately available funds to an account designated by the Person entitled to receipt thereof.

8. Net Lease. This Lease is a net lease. Except as may otherwise be provided for in this Lease, the Lessee acknowledges and agrees that the Lessee's obligations to pay Basic Rent for all Equipment leased hereunder, and to pay all Supplemental Payments payable hereunder shall be unconditional and irrevocable under any and all circumstances, shall not be subject to cancellation, termination, modification or repudiation by the Lessee, and shall be paid and performed by the Lessee without notice or demand and without any abatement, reduction, diminution, setoff, or recoupment whatsoever, including any abatement, reduction, diminution, setoff, or recoupment due or alleged to be due to, or by reason of, any past, present or future claims which the Lessee may have against the Lessor, any Assignee, any Manufacturer of the Equipment or any Item thereof, or any other Person for any reason whatsoever, or any defect in the Equipment or any Item thereof, or the condition, design, operation or fitness for use thereof, any damage to, or any loss or destruction of, the Equipment or any Item thereof, or any Liens or rights of others with respect to the Equipment or any Item thereof, or any prohibition or interruption of or other restriction against the Lessee's use, operation or possession of the Equipment or any Item thereof, for any reason whatsoever, or any interference with such use,

operation or possession by any Person or entity, or any default by the Lessor in the performance of any of its obligations herein contained, or any other indebtedness or liability, howsoever and whenever arising, of the Lessor, or of any Assignee, or of the Lessee to any other Person, or by reason of insolvency, bankruptcy or similar proceedings by or against the Lessor, any Assignee or the Lessee, or for any other reason whatsoever, whether similar or dissimilar to any of the foregoing, any present or future law to the contrary notwithstanding; it being the intention of the parties hereto that all Basic Rent and Supplemental Payments payable by the Lessee hereunder shall continue to be payable in all events and in the manner and at the times herein provided, without notice or demand, unless the obligation to pay the same shall be terminated pursuant to the express provisions of this Lease. However, nothing in this Section 8 shall prevent the Lessee from separately pursuing any rights it might have against the Lessor or any other Person. Notwithstanding the foregoing, this Lease is intended to and shall be construed as an operating lease for financial accounting purposes. If this Lease is determined not to be a true lease for purposes of the Uniform Commercial Code, Lessee's interest in the Equipment shall serve as security for the obligations of the Lessee hereunder.

9. Use of Equipment; Compliance with Laws. The Lessee agrees that the Equipment will be used and operated solely in the conduct of its business or as otherwise provided by Section 13(a) hereof and in compliance with any and all applicable insurance policy terms, conditions, and provisions for the insurance required by Section 16 hereof and with all Applicable Laws of any Governmental Authority applicable to the use and operation of the Equipment, including the AAR Interchange Rules, the rules and regulations of the FRA, the DOT and the Surface Transportation Board, and environmental, noise and pollution laws (including notifications and reports); provided, however, that the Lessee shall not be obligated to so comply with laws, rules or regulations (i) whose application or validity is being contested diligently and in good faith by appropriate proceedings, so long as such proceedings do not involve any material risk of the sale, forfeiture or loss of one or more Items of Equipment or any part thereof and such proceedings do not involve any material risk of civil liability to Lessor or any risk of criminal liability to Lessor (other than minor fines which do not adversely affect Lessor and which are indemnified for by Lessee), (ii) compliance with which shall have been excused or exempted (subject to Section 6(c)) by a nonconforming use permit, waiver, extension or forbearance exempting it from such laws, rules or regulations, (iii) if failure to comply shall impose no material risk of civil liability or any risk of criminal liability on the Lessor (other than minor fines which do not adversely affect Lessor and which are indemnified for by Lessee), or (iv) if failure of compliance would impose no additional liability on the Lessor or adverse consequences of the Lessor's rights under this Lease or its interest in the Equipment. The Equipment shall in no event be used or located outside of the continental limits of the United States, Canada, Mexico and Alaska unless at least thirty (30) days' prior written notice of such use or location is provided to Lessor, Lessor shall have consented thereto and all filings, recordings, deposits, or giving of notice necessary to protect the rights of the Lessor in or to the Lease and the Equipment shall have been made, such consent not to be unreasonably withheld; provided, however, Lessee shall give Lessor thirty (30) days' notice prior to first operating the Equipment in Canada and, in connection therewith, Lessee shall execute and deliver to Lessor all documents Lessor may

reasonably request to protect the rights of Lessor in or to this Lease and the Equipment. The Lessee shall not use any Item of Equipment, or permit any Item of Equipment to be used, for the transportation or storage of any substance which is any substance which is specifically listed or designated as "oil" under Section 1001 of the Oil Pollution Act of 1990 and which is subject to the provisions of that Act or which is categorized as, or required to be labeled as, "poison" or "poisonous", "explosive" or "radioactive" (or any categories or labels substituted for such categories or labels as in effect on the day hereof) under 49 CFR 171 or other applicable Federal rules in effect from time to time regulating the transportation of hazardous or toxic materials, including nuclear fuels, radioactive products, asbestos, PCB's or nuclear wastes, nor will the Lessee permit the Equipment to engage in any unlawful trade or violate any law or carry any unlawful cargo that will expose the Equipment to penalty, forfeiture or capture.

10. Maintenance and Repair of Equipment. The Lessee agrees, at its own cost and expense, to keep, repair, maintain and preserve the Equipment in good order and operating condition, and in compliance with such maintenance and repair standards, ordinary wear and tear excepted, as set forth in the applicable AAR and FRA rules and regulations and as otherwise may be required to enforce warranty claims against each Manufacturer of each Item of Equipment, and except as otherwise permitted by Section 9 hereof but subject to Section 6 hereof) in compliance with all Applicable Laws relating to the maintenance and condition of the Equipment, including environmental, noise and pollution laws and regulations (including notifications and reports), and suitable for interchange under the rules of the AAR, to the extent the Equipment was originally designed and approved and with all lawful rules of the DOT, the Surface Transportation Board and any other legislative, executive, administrative or judicial body exercising any power or jurisdiction over the Equipment, to the extent that such laws and rules affect the title, operation, maintenance or use of the Equipment, and in the event that such laws or rules require any alteration, replacement or addition of or to any part on any Equipment the Lessee will conform therewith at its own expense. The Lessee agrees to prepare and deliver to the Lessor and any Assignee within a reasonable time prior to the required date of filing (or, to the extent permissible, file on behalf of the Lessor and any Assignee) any and all reports (other than income and franchise tax returns and those required under banking and similar laws) to be filed by the Lessor or any Assignee with any Federal or state regulatory authority by reason of the ownership by the Lessor or any Assignee of the Items of Equipment or the leasing thereof to the Lessee. The Lessee agrees to maintain all records, logs and other materials required by the AAR or DOT, or any other Governmental Authority having jurisdiction over the Items of Equipment or the Lessee, to be maintained in respect of each Item of Equipment. The Lessee shall, at its own cost and expense, supply the necessary power and other items required in the operation of the Equipment. The Lessee hereby waives any right now or hereafter conferred by law to make repairs on the Equipment at the expense of the Lessor.

11. Replacements; Alterations: Modifications. In case any Item of Equipment (or any equipment, part or appliance therein) is required to be altered, added to, replaced or modified in order to comply with any Applicable Laws or pursuant to Section 9 or 10 hereof (each, a "Required Alteration"), the Lessee agrees to make such Required Alteration at its own expense and the same shall immediately become subject to the terms of this Lease. The Lessee or any permitted sublessee may make any optional alteration to any Item of Equipment (each, an "Optional Alteration") provided such Optional Alteration does not impair the condition, value, use or remaining useful life of such Item of Equipment. In the event such Optional Alteration (i) is readily removable without causing material damage to the Item of Equipment, (ii) is not a part, item of equipment or appliance which replaces any part, item of equipment or appliance originally incorporated or installed in or attached to such Item of Equipment on the Acceptance Date therefor or any part, item of equipment or appliance in replacement of or substitution for any such original part, item of equipment or appliance, and (iii) is not a Required Alteration, so long as no Default or Event of Default shall have occurred and be continuing, the Lessee may, as its sole cost and expense, remove such Optional Alteration. Upon the removal thereof as provided above, such Optional Alteration shall no longer be deemed subject to this Lease or part of the Equipment from which it was removed. Any Optional Alteration not removed as above provided prior to the return of the Equipment to the Lessor hereunder shall remain the property of the Lessor. The Lessee agrees that, within thirty days after the Lessor so requests (but not more frequently than once per year), the Lessee will give written notice to the Lessor describing, in reasonable detail, the Required Alterations and specifying the cost thereof with respect to each Item of Equipment and the date or dates when made. Any parts installed or replacements made by the Lessee upon any Item of Equipment pursuant to its obligation to maintain and keep the Equipment in good order, operating condition and repair under Section 10 hereof shall be considered accessions to such Item of Equipment and a security interest therein shall be immediately vested in the Lessor. Except as required or permitted by the provisions of this Section 11, the Lessee shall not modify an Item of Equipment without the prior written authority and approval of the Lessor.

12. Identification Marks; Inspection. The Lessee will cause each Item to be kept numbered with the identification number as shall be set forth on the Lease Supplement therefor, and the Lessee will keep and maintain, plainly, distinctly, durably, and conspicuously marked on each side of each Item, in letters not less than one inch in height, the words "Subject to Lease or security interest filed with the U.S. Surface Transportation Board", with appropriate changes thereof and additions thereto as from time to time may be required by law in order to protect the Lessor's title to and interests in such Item and the rights of the Lessor and of any Assignee. The Lessee will replace promptly any such words which may be removed, defaced, obliterated or destroyed. The Lessee will not change the identification number of any Item unless and until a statement of new number or numbers to be substituted therefor shall have been deposited by the Lessee in all public offices where this Lease shall have been filed, recorded and deposited. As promptly as practicable after any change in identification number, Lessee shall notify Lessor of such change. The Items of Equipment may be lettered with the names or initials or other insignia customarily used by the Lessee or any permitted sublessee. The Lessee shall not allow the name

of any Person to be placed upon any Item of Equipment as a designation that might reasonably be interpreted as indicating a claim of ownership thereto or a security interest therein by any Person other than the Lessor or any Assignee. The Lessor shall have the right (at its risk and expense, or at the Lessee's expense if a Default or Event of Default exists) to inspect the Equipment and the Lessee's records pertaining to the Equipment no more frequently than once in any twelve consecutive months, so long as no Default or Event of Default shall have occurred and be continuing, at such reasonable times as it shall request during the Term, not to interfere with Lessee's operations.

13. Assignment and Subleasing; Quiet Enjoyment.

(a) By the Lessee. The Lessee may, without any consent of the Lessor, so long as no Default or Event of Default shall have occurred and be continuing, sublease any Item of Equipment to any U.S.-based operator, provided, however, that the following conditions shall apply thereto: (i) any sublease shall be expressly subject to and subordinate to the terms and conditions of this Lease; (ii) THE LESSEE'S OBLIGATIONS (FINANCIAL OR OTHERWISE) UNDER THIS LEASE SHALL CONTINUE IN THEIR ENTIRETY IN FULL FORCE AND EFFECT AS THE OBLIGATIONS OF A PRINCIPAL AND NOT OF A SURETY; (iii) the sublessee shall not engage in activities with the Equipment substantially different from the Lessee's activities without prior consent from the Lessor, which consent shall not be unreasonably withheld; (iv) the sublease does not adversely affect the Lessor's interest and rights in this Lease nor the Lessor's interest and rights in the Equipment; (v) the Lessee shall provide the Lessor prompt written notice, not to exceed ten (10) Business Days after execution of such sublease, of any such sublease of any Item of Equipment, which notice shall describe the parties, term and applicable Items of Equipment subject to any such agreement or arrangement; and (vi) the term of such sublease (including all available renewal terms) shall not extend beyond the termination date of the last Renewal Term for which Lessee has exercised its renewal option. THE LESSEE SHALL NOT, WITHOUT THE PRIOR WRITTEN CONSENT OF THE LESSOR, WHICH CONSENT SHALL NOT BE UNREASONABLY WITHHELD, ASSIGN, TRANSFER OR ENCUMBER (EXCEPT FOR PERMITTED LIENS AND AS MAY OTHERWISE BE PERMITTED HEREBY) ITS RIGHTS, INTERESTS OR OBLIGATIONS UNDER THIS LEASE AND ANY SUCH ASSIGNMENT, TRANSFER OR ENCUMBERING (EXCEPT FOR THE PERMITTED LIENS AND AS MAY OTHERWISE BE PERMITTED HEREBY) BY THE LESSEE SHALL BE NULL AND VOID. Lessee may enter into a joint venture or pooling arrangement or create a special purpose subsidiary to operate such railcars, and, so long as Lessee remains bound to pay and perform all of the obligations of Lessee under this Lease, any such arrangements will not be deemed to have relinquished control or violated this Section 13(a) of the Lease.

(b) By the Lessor. The Lessor may, at any time, without the consent of the Lessee, sell, assign or transfer to any Person all or any part of the Lessor's rights,

obligations, or interest in, to and under the Equipment or any Item(s) thereof, this Lease, any Lease Supplement and/or any Basic Rent and Supplemental Payments payable under this Lease or any Lease Supplement so long as (a) such Person is an institutional investor (organized under the laws of the United States or any state thereof) and, at the time of transfer, shall not be the subject of any bankruptcy, insolvency or other similar proceedings; (b) such Person (or a guarantor acceptable to Lessee) shall have a tangible net worth in excess of \$50 million; (c) the transfer shall not result in a violation of any Applicable Law; (d) 30 days prior written notice shall be given to Lessee by Lessor of any proposed transfer; (e) Lessor (or such Person) shall pay all expenses of Lessee; and (f) Lessor must transfer not less than all of the Equipment then remaining under the Lease. The Lessor shall obtain the approval of the Lessee, which such approval shall not be unreasonably withheld or delayed, prior to the time the Lessor sells, assigns or transfers all or any part of the Lessor's rights, obligations, title or interest in, to and under the Equipment or any Item(s) thereof, this Lease, any Lease Supplement and/or any Basic Rent and Supplemental Payments payable under this Lease or any Lease Supplement to any Person other than as provided in the immediately preceding sentence. Any Person to whom any such sale, assignment or transfer is made in accordance with the terms of this Lease is herein called an "Assignee" and any such sale, assignment or transfer is herein called an "assignment". The Lessee agrees to execute any and all related acknowledgments, consents, amendments (necessary or appropriate to reflect such assignment) and other documents, and to make any and all registrations and filings (including filings under the Uniform Commercial Code) that may be reasonably requested by the Lessor or an Assignee, all at the Lessor's expense, in connection with any such assignment. Each Assignee shall have and may enforce all of the rights and benefits of the Lessor hereunder with respect to the Item(s) of Equipment and related Lease Supplement(s) covered by the assignment. Each such assignment shall be subject to the Lessee's rights hereunder. Notwithstanding anything to the contrary in this Lease, the Lessee shall be under no obligation to any Assignee except upon written notice of such assignment from the Lessor and compliance with the terms of Section 34 below; provided, however, that until such notice and compliance with Section 34, Lessee shall deem and treat Lessor as the Party entitled to the rights and benefits of "Lessor" hereunder. Upon written notice to the Lessee of an assignment and compliance with the terms of Section 34 below, the Lessee agrees to pay the Basic Rent and Supplemental Payments with respect to the Item(s) of Equipment covered by such assignment to such Assignee to a United States bank account in accordance with the instructions specified in such notice without any abatement, setoff, or recoupment whatsoever, and to otherwise comply with all notices, directions and demands which shall be properly given by the Lessor or such Assignee with respect to such Item(s), in accordance with the provisions of this Lease. Notwithstanding any such assignment, all obligations of the Lessor to the Lessee under this Lease shall be and remain enforceable by the Lessee against the Lessor (unless and until Lessee has notice of such assignment and such assignment has been made in accordance with the terms of this Section 13 and Section 34 below and thereafter against any Assignee to whom an assignment has been made).

(c) Quiet Enjoyment. So long as no Default or Event of Default shall have occurred and be continuing hereunder, the Lessee and its Affiliates (to the extent permitted by the terms hereof) shall be entitled to the possession and use of the Items of Equipment upon lines of railroad over which the Lessee or its Affiliates has or have trackage or other operating rights or over which railroad equipment of the Lessee or its Affiliates is operated pursuant to contract and shall be entitled to permit the use of the Items of Equipment by connecting and other carriers in the usual interchange of traffic or pursuant to run-through or trip-lease agreements, provided, however, that the LESSEE'S OBLIGATIONS (FINANCIAL OR OTHERWISE) UNDER THIS LEASE SHALL CONTINUE IN THEIR ENTIRETY IN FULL FORCE AND EFFECT AS THE OBLIGATIONS OF A PRINCIPAL AND NOT OF A SURETY. The Lessee may receive and retain compensation for the use of any of the Items of Equipment from railroads or other entities so using such Items of Equipment.

14. Liens. The Lessee will not directly or indirectly create, incur, assume or suffer to exist any Lien on or with respect to (i) the Equipment or any Item thereof, or the Lessor's interest therein, or (ii) this Lease or any of the Lessor's interests hereunder, except in the case of either clause (i) or (ii), Permitted Liens. The Lessee, at its own expense, will promptly pay, satisfy and otherwise take such actions as may be necessary to keep this Lease and the Equipment free and clear of, and to duly discharge or eliminate or bond in a manner satisfactory to the Lessor and each Assignee, if any, any such Lien not excepted above if the same shall arise at any time. The Lessee will notify the Lessor and each Assignee, if any, in writing promptly upon becoming aware of any tax or other Lien (other than any Permitted Lien excepted above) that shall attach to the Equipment or any Item of Equipment, in reasonable detail.

15. Loss, Damage or Destruction.

(a) Risk of Loss, Damage or Destruction. The Lessee hereby assumes all risk of loss, damage, theft, taking, destruction, confiscation, requisition or commandeering, partial or complete, of or to each Item of Equipment, however caused or occasioned (except as caused or occasioned by the Lessor's or any Assignee's gross negligence or willful misconduct), such risk to be borne by the Lessee with respect to each Item of Equipment from the date of this Lease, and continuing until such Item of Equipment has been returned to the Lessor in accordance with the provisions of Section 6 hereof or has been purchased by the Lessee or sold in accordance with the provisions of Section 27 hereof. The Lessee agrees that no occurrence specified in the preceding sentence shall impair, in whole or in part, any obligation of the Lessee under this Lease, including the obligation to pay Basic Rent, until such obligation is terminated in accordance with the terms of this Lease.

(b) Payment of Casualty Loss Value Upon an Event of Loss. Subject to Section 15(c), if an Event of Loss occurs with respect to an Item of Equipment during the



Term, the Lessee shall, within thirty (30) days after such Event of Loss, give the Lessor written notice thereof and shall pay to the Lessor on the applicable Casualty Loss Value Payment Date the sum of (i) all unpaid Basic Rent payable for such Item of Equipment for any Rental Period in which the Event of Loss has occurred, plus (ii) the Casualty Loss Value of such Item of Equipment determined as of the immediately preceding Rent Payment Date plus interest thereon at the Applicable Rate from such preceding Rent Payment Date through the Applicable Casualty Loss Value Payment Date, plus (iii) all other Supplemental Payments due for such Item of Equipment as of the date of payment of the amounts specified in the foregoing clauses (i) and (ii). Any payments received at any time by the Lessor or by the Lessee from any insurer or other party as a result of the occurrence of such Event of Loss will be applied in reduction of the Lessee's obligation to pay the foregoing amounts, if not already paid by the Lessee, or, if already paid by the Lessee, will be applied to reimburse the Lessee for its payment of such amount (unless a Default or Event of Default exists, in which case the Lessor may first apply any such payments in reduction of the Lessee's obligation to pay any other amounts due from the Lessee). Upon payment in full of such Casualty Loss Value and Basic Rent, (A) the obligation of the Lessee to pay Basic Rent hereunder with respect to such Item of Equipment shall terminate and the Term of this Lease with respect to such Item shall terminate, and (B) the Lessor shall transfer to the Lessee, "as is, where is" without recourse or warranty except as to the absence of Liens described in clause (d) of the definition of Permitted Liens, all right, title and interest conveyed to the Lessor in and to such Item of Equipment.

(c) Substitution. Provided no Default or Event of Default shall have occurred and be continuing, Lessee may, in lieu of payment of the Casualty Loss Value for any Item of Equipment due and owing as provided in Section 15(b), convey or cause to be conveyed to Lessor within 180 days of the occurrence of the applicable Event of Loss (or such longer period as Lessor may reasonably agree), as replacement for any lost or destroyed Item of Equipment, title to a replacement Item of Equipment of the same or similar type, free and clear of all liens and having a value, utility, remaining useful life and estimated residual value at least equal to, and being in good operating condition as, such Item of Equipment, assuming such Item of Equipment was in the condition and repair required by the terms hereof immediately prior to the loss or destruction (such replacement car being hereinafter referred to as a "Replacement Car"). Prior to or at the time of any such conveyance, the Lessee, at its own expense, will furnish Lessor with (i) a warranty bill of sale in form and substance satisfactory to Lessor, with respect to such Replacement Car, (ii) a Lease Supplement and an Acceptance Certificate, subjecting such Replacement Car to this Lease, duly executed by Lessee, suitable for execution by Lessor and, upon such execution, for filing for recordation in the same manner as provided for herein (and Lessee shall promptly file the same for recordation and furnish to Lessor satisfactory evidence thereof), (iii) an opinion of counsel to the effect that (x) the bill of sale referred to in clause (i) above constitutes a legal, valid, binding and enforceable obligation of the seller, (y) such Replacement Car has been subjected to this Lease free

and clear of all liens, and (z) all filings, recordings and other action necessary or appropriate to perfect and protect the Lessor's interests in the Replacement Car have been accomplished, (iv) an acknowledgment by Lessee to Lessor, in form and substance reasonably satisfactory to Lessor, that Lessee will indemnify Lessor for any loss or deferral of depreciation or other adverse tax consequences resulting from such replacement, (v) an officer's certificate addressed to Lessor certifying that as of said date, and upon consummation of the replacement, no Default exists, and (vi) such other documents and evidence as Lessor may reasonably request in order to establish the consummation of the transactions contemplated by this Section 15(c). For all purposes hereof, upon passage of title thereto to Lessor, the Replacement Car shall be deemed part of the property leased hereunder and the Replacement Car shall be deemed an "Item of Equipment" as defined herein. Upon full compliance by Lessee with the terms of this Section 15(c) as determined by Lessor in good faith, Lessor will transfer to Lessee or its designee, without recourse or warranty (except as to the absence of Lessor's Liens) all of Lessor's right, title and interest in and to such destroyed Item of Equipment.

(d) Application of Payments Not Relating to an Event of Loss. Any payments (including insurance proceeds) received at any time by the Lessor or the Lessee from any party with respect to any loss or damage to any Item or Items of Equipment not constituting an Event of Loss will be paid to or retained by the Lessee (unless an Event of Default exists, in which case the Lessor may first apply any such payments in reduction of the Lessee's obligation to pay any other amounts due from the Lessee).

16. Insurance. The Lessee will at its sole expense and at all times during the Term or, if applicable, until the pertinent Items of Equipment are returned to the Lessor or the Lessor's agent pursuant to Section 6 hereof, whichever is longer, cause to be carried and maintained (i) public liability insurance with respect to third party personal injury and property damage in an amount per occurrence of not less than \$10,000,000 and (ii) property insurance in respect of all Items of Equipment in an amount not less than the Casualty Loss Value for such Item of Equipment (subject, in the case of clause (ii), to such per occurrence limits as may be specified in the applicable policies of insurance). The Lessee will carry such insurance as is required hereunder in such amounts and for such risks consistent with prudent industry practice (which industry means major creditworthy U.S. electric utilities and which own or use railcars for the transportation of coal) and at least comparable in amounts and against risks customarily insured against by the Lessee in respect of equipment owned or leased by it similar in nature to the Equipment; provided that the Lessee may in any event self-insure or carry deductibles for up to \$5,000,000 per occurrence for public liability and \$5,000,000 per occurrence for property insurance (or such higher amounts as shall be consistent with prudent industry practice at the time). The proceeds of any such property insurance as is required hereunder shall be payable to the Lessor, each Assignee and the Lessee, as their respective interests may appear. Each policy required hereunder (i) shall provide thirty days' prior notice of cancellation or material change and (ii) shall include the Lessor and each Assignee, if any, as loss payee and/or additional insured as their respective interests may appear, and the Lessee shall endeavor to obtain a waiver by such

insurance company of any right to claim any premiums or commissions against the Lessor and each Assignee. Prior to the Funding Date and thereafter on the expiration dates of the expiring policies theretofore delivered, the Lessee shall deliver to the Lessor and each Assignee, if any, certificates of insurance issued by the insurer(s) for the insurance required to be maintained hereunder. If the Lessee shall fail to cause the insurance required under this Section to be carried and maintained, the Lessor or any Assignee may, after prior written notice to the Lessee, provide such insurance, and the Lessee shall reimburse the Lessor or such Assignee, as the case may be, upon demand for the cost thereof as a Supplemental Payment hereunder.

17. General Tax Indemnity.

(a) The Lessee agrees to pay, defend and indemnify and hold the Lessor and each Assignee and Affected Party (each, a "Tax Indemnitee") harmless on an After-Tax Basis from any and all U.S. Federal, U.S. state and local taxes, including sales, use, ad valorem and property taxes, together with any penalties, fines or interest thereon (herein called "taxes or other impositions") howsoever imposed, whether levied or imposed upon or asserted against the Lessor, Tax Indemnitee, the Lessee, the Equipment, any Item of Equipment, or any part thereof, by any Federal, state or local government or taxing authority in the United States, upon or with respect to (i) the Equipment, or any Item of Equipment or any part thereof, or (ii) the ownership and operation of the Equipment, or any Item of Equipment or any part thereof; provided, however, that the foregoing indemnity shall not apply to

(i) any tax or other imposition based on or measured by net income or in the nature of a net income tax or imposed in lieu of a net income tax, including any franchise tax and any such similar tax based on capital, receipts, net worth or comparable basis of measurement, unless such taxes or other impositions are (i) imposed solely by reason of the use, location, or presence of the Equipment in, or the presence or activities of the Lessee in, or the making of payments by the Lessee from, the jurisdiction imposing such taxes or impositions or (ii) are in the nature of sales, use, property, ad valorem or value added taxes, provided the foregoing indemnity shall not apply if such taxes would not have been required to be paid if Lessor had not assigned any interest under or related to the Lease;

(ii) other than as expressly provided in Section 27(b) hereof, any taxes or other impositions in respect of this Lease of any Item of Equipment that results from any act, event or omission that occurs after the termination of this Lease in respect of such Item of Equipment and the payment in full of all amounts due under this Lease;

(iii) any taxes or other impositions that are imposed on any Tax Indemnatee as a result of the gross negligence or willful misconduct of such Tax Indemnatee or its Affiliate;

(iv) any taxes or other impositions that are imposed on any Tax Indemnatee that are a result of such Tax Indemnatee not being a resident of, or not being organized under the laws of, the United States or any political subdivision thereof; provided, however, that proviso (v) and not this proviso (iv) shall govern U.S. Federal income taxes imposed by withholding;

(v) U.S. Federal income taxes imposed by withholding; provided, however, that this exclusion shall not apply if the tax required to be deducted and withheld would not have been required to be so deducted and withheld but for a Change in Withholding Tax Law that occurs after the date on which the Tax Indemnatee acquires its interest in the Lease;

(vi) any taxes or other impositions that have not been paid and that are being contested in accordance with clause (b) below; provided that this exclusion shall apply only during the conduct of such contest;

(vii) any taxes or other impositions that result from any transfer by any Tax Indemnatee of any interest in an Item of Equipment or any interest arising under this Lease (other than as set forth in Section 11, Section 27(b) and Section 27(c) hereof, or in connection with the occurrence of an Event of Default, or an Event of Loss or as otherwise required by this Lease);

(viii) any tax that is enacted or adopted as a substitute for or in lieu of any tax that would not have been indemnified against pursuant to Section 17(a);

(ix) taxes on any items of tax preference or any minimum tax of such Tax Indemnatee;

(x) taxes which are gross income or gross receipts taxes, unless (i) such taxes are imposed solely by reason of the use, location, or presence of the Equipment in, or the presence or activities of the Lessee in, or the making of payments by the Lessee from, the jurisdiction imposing such taxes or (ii) such taxes are in the nature of sales, use, property, ad valorem or value added taxes; provided, the immediately foregoing indemnity shall not apply if such taxes would not have been required to be paid if Lessor had not assigned any interest under or related to the Lease; and

(xi) taxes or other impositions imposed on any Tax Indemnatee as a result of, or in connection with, any "prohibited transaction" within the meaning or the provisions of the Code or regulations thereunder or as set forth in Section 406 of ERISA or the regulations implementing ERISA, engaged in by any Tax Indemnatee.

Notwithstanding the foregoing provisos (i) through (xi), the Lessee shall indemnify each Tax Indemnatee for any taxes identified in provisos (i), (iv) or (vii) (or any increase in such taxes) imposed on such Tax Indemnatee net of any decrease in such taxes actually realized by such Tax Indemnatee, to the extent that such tax or tax increase would not have occurred if on each Funding Date the Lessor had advanced funds to the Lessee in the form of a loan secured by the Equipment in an amount equal to the amount funded on such Funding Date, with debt service for such loan equal to the Basic Rent payable on each Rent Payment Date and a principal balance at the maturity of such loan in an amount equal to the amount of the Acquisition Cost then outstanding at the end of the term of this Lease.

The Lessee will prepare and file any reports or returns required to be made with respect to any tax or other imposition for which the Lessee is responsible, directly or indirectly, if permitted by applicable law to file the same, and if not so permitted, the Lessee shall, at its sole cost, prepare such reports or returns for signature by the Tax Indemnatee or, upon request of the Tax Indemnatee, will promptly provide the Tax Indemnatee with all information necessary for the making and timely filing of such reports or returns by the Tax Indemnatee, and shall forward the same, together with immediately available funds for payment of any tax or other imposition due, to the Tax Indemnatee, at least ten days in advance of the date such payment is to be made. Upon written request, the Lessee shall furnish the Tax Indemnatee with copies of all paid receipts or other appropriate evidence of payment for all taxes or other impositions paid by the Lessee pursuant to this Section 17. All of the indemnities contained in this Section 17 in respect of (i) any act, event, omission or tax period that occurs on or prior to termination of this Lease and (ii) any sale described in Section 27(b) hereof shall continue in full force and effect notwithstanding the expiration or earlier termination of this Lease in whole or in part, including the expiration or termination of the Term with respect to any Item (or all) of the Equipment, and are expressly made for the benefit of, and shall be enforceable by, the Lessor and each Assignee.

The Lessee shall have no obligation to pay any amount under this Section 17 to any Lessor other than CCG Trust Corporation that is greater than the amount that would have been payable to CCG Trust Corporation if it were the Lessor (the Lessee being obligated only to pay to such Lessor the amount it would have paid to CCG Trust Corporation).

(b) In the event any claim, action, proceeding or suit is brought against any Tax Indemnatee with respect to which the Lessee would be required to indemnify such Tax Indemnatee, such Tax Indemnatee shall promptly give written notice of any such claim, action, proceeding or suit to the Lessee. The Lessee may, and upon the Lessee's request any such Tax Indemnatee will, at the Lessee's expense, resist and defend such action, suit

or proceeding, or cause the same to be resisted or defended by counsel selected by the Lessee and reasonably satisfactory to such Tax Indemnitee, and the Lessee shall pay all costs and expenses (including attorney's fees and expenses) reasonably incurred by such Tax Indemnitee in connection with such action, suit or proceeding; provided that no Tax Indemnitee shall compromise or settle any such actions for which it has assumed the responsibility of defense without consent of the Lessee (not unreasonably to be withheld), and provided further, that the failure of any Tax Indemnitee to give such notice to the Lessee shall not relieve the Lessee from any of its obligations to provide indemnification to any Tax Indemnitee under this Section 17, except to the extent that the Lessee's right to contest or defend is adversely affected by such Tax Indemnitee's failure to give notice; provided further, that the Lessee shall be relieved of its obligations to provide indemnification under this Section 17 with respect to any Tax Indemnitee, to the extent that such Tax Indemnitee shall deliver to the Lessee a written notice waiving the benefits of the indemnification of such Tax Indemnitee provided by this Section 17 in connection with such claim, action, proceeding or suit. In such event the Tax Indemnitee shall reimburse the Lessee for all amounts paid by the Lessee with respect to such non-contested claim, action, proceeding, or suit. If any Tax Indemnitee actually obtains a refund (or would have actually received such a refund but for offset by matters not indemnifiable by the Lessee under Section 17(a)) of all or any part of any tax paid or reimbursed by the Lessee, such Tax Indemnitee shall promptly pay to the Lessee the amount of such refund (or the amount of such offset) plus any interest thereon (less any taxes imposed on such Tax Indemnitee with respect to such interest) received from the relevant taxing authority (or which would have been received with respect to the amount of such an offset) plus the amount of any tax benefits realized by such Tax Indemnitee as a result of such payment (net of any net tax detriment resulting from the receipt of the refund and interest on the refund (after giving effect to such Tax Indemnitee's obligations to make payments to the Lessee under this sentence)).

(c) On the Funding Date but in any event at least five Business Days prior to the first date on which any payment is due hereunder for the account of any Affected Party not incorporated under the laws of the United States or a state thereof, such Affected Party agrees that it will have delivered to each of the Lessee and the Lessor two duly completed copies of United States Internal Revenue Service Form 1001, W-8 or 4224, certifying that such Affected Party is entitled to receive payments of interest and/or yield and a return of the principal amount of the Acquisition Cost under the transaction documents without deduction or withholding of any United States Federal income taxes. Each Affected Party which so delivers a Form 1001, W-8 or 4224 further undertakes to deliver to each of the Lessee and the Lessor two additional copies of such form (or a successor form) on or before the date that such form expires (currently, three successive calendar years for Forms 1001 and W-8 and one calendar year for Form 4224) or becomes obsolete or after the occurrence of any event requiring a change in the most recent forms so delivered by it, and such amendments thereto or extensions or renewals thereof as may be reasonably requested by the Lessee or the Lessor, in each case certifying that such

Affected Party is entitled to receive payments under the transaction documents without deduction or withholding of any United States Federal income taxes, unless any change in treaty, law or regulation has occurred prior to the date on which any delivery of such additional forms would otherwise be required which changes such Affected Party's entitlement to receive any payments without withholding and such Affected Party advises the Lessee that it is no longer entitled to receive payments without any withholding of United States Federal income tax.

18. Indemnification. The Lessee hereby assumes liability for, and does hereby agree to indemnify, protect, save, defend, and hold harmless the Lessor, each Assignee and their respective officers, directors, employees, successors, permitted assigns, and agents (each such party being herein, for purposes of this Section 18, called an "Indemnified Party") on an After-Tax Basis for, from and against any and all Expenses of every kind and nature whatsoever, imposed on, incurred by, or asserted against any Indemnified Party, in any way relating to or arising out of (a) the manufacture, construction, ordering, purchase, acceptance or rejection, ownership, titling or retitling, registration or reregistration, delivery, leasing, subleasing, releasing, possession, use, operation, storage, removal, return, repossession, sale or other disposition of the Equipment or any Item of Equipment, or any part thereof as may arise from (i) the transactions contemplated by this Lease, (ii) the loss or damage to any property or death or injury to any persons, (iii) patent or latent defects in any Item of Equipment (whether or not discoverable by the Lessee or any Indemnified Party), (iv) any claims based on strict liability in tort, (v) any claims based on patent, trademark, tradename or copyright infringement, (vi) any claims based upon any non-compliance with or violation of any environmental control, noise or pollution laws or requirements, including fines and penalties arising from violations of or noncompliance with such requirements or failure to report discharges, and costs of clean-up of any discharge, and (vii) any loss or damage to any commodities loaded or shipped in the Equipment; or (b) any failure on the part of the Lessee to perform or comply with any of the terms of this Lease; or (c) any power of attorney issued to the Lessee in connection with this Lease (all the foregoing being "Liabilities"). The Lessee shall give each Indemnified Party prompt notice of any occurrence, event or condition known to the Lessee as a consequence of which any Indemnified Party may be entitled to indemnification hereunder. The Lessee shall forthwith upon demand of any such Indemnified Party reimburse such Indemnified Party for amounts reasonably expended by it in connection with any of the foregoing or pay such amounts directly; provided, however, that the Lessee's Liability for taxes, imposts and similar matters (other than taxes arising against the Lessee under Section 4975 of the Code) are expressly limited to the terms of Section 17 hereof and Lessee shall not be liable to such Indemnified Party under this Section 18 for any of the Liabilities to the extent they arise from the gross negligence, willful misconduct, or breach of such Indemnified Party's obligations under this Lease, or to the extent that they arise from or after any transfer of the Lessor's interest in any Item or this Lease (other than arising directly in connection with a transfer resulting from an Event of Default, an Event of Loss, or a sale made under Section 27 hereof, or any transfer made at the Lessee's request or direction). The Lessee shall be subrogated to an Indemnified Party's rights in any matter with respect to which the Lessee has actually reimbursed such Indemnified Party for amounts expended by it or has actually paid such amounts directly. If any claim for a

Liability is made against the Lessee or any Indemnified Party and such party has received notice thereof, such party receiving notice of such Liability shall promptly notify the Lessee; provided that the failure to provide such notice promptly shall not release the Lessee from any of its obligations to indemnify hereunder, except to the extent that such failure adversely affects any applicable defense or counterclaim, or otherwise increases the amount the Lessee would have been liable for in the absence of such failure. Subject to the rights of any insurer under any policy of insurance maintained pursuant to this Lease, and if no Default or Event of Default shall exist, the Lessee shall have the right to investigate and defend or compromise any Liability for which it may be required to indemnify, and each Indemnified Party agrees to cooperate with all responsible requests of the Lessee in connection therewith. Notwithstanding any of the foregoing to the contrary, the Lessee shall not be entitled to assume responsibility for and control of any such judicial or administrative proceedings if (i) any Event of Default shall exist, (ii) such proceedings will involve a material risk of the sale, forfeiture, or loss of, or the creation of any Lien (other than a Permitted Lien) on, any Item, unless the Lessee posts a bond or other security satisfactory to the relevant Indemnified Party in respect to such risk, or (iii) such proceedings would involve the imposition of criminal liability (other than minor fines which have no adverse effect on any Indemnified Party which are indemnified for by Lessee) on an Indemnified Party or if such contest will, in the reasonable opinion of such Indemnified Party, be inappropriate under applicable standards of professional conduct. An Indemnified Party may participate at its own expense and with its own counsel in any judicial proceeding controlled by the Lessee pursuant to the preceding provisions. In the case of any Liability covered by any policy of insurance maintained pursuant to this Lease, each Indemnified Party shall cooperate with all reasonable requests of the insurers in the exercise of their rights to investigate, defend, or compromise such claim as may be required by such policy to maintain the insurance coverage provided to the parties thereunder. The provisions of this Section 18, and the obligations of the Lessee under this Section 18, shall apply from the date of the execution of this Lease notwithstanding that the Term may not have commenced with respect to any Item of Equipment, and shall survive and continue in full force and effect (as to any event occurring or condition existing during the Term) notwithstanding the expiration or earlier termination of this Lease or the Termination Date.

19. No Warranties. THE LESSOR LEASES AND THE LESSEE TAKES THE EQUIPMENT "AS-IS, WHERE-IS." THE LESSEE ACKNOWLEDGES AND AGREES THAT AS BETWEEN THE LESSOR AND THE LESSEE (A) THE EQUIPMENT IS OF DESIGN, CAPACITY AND MANUFACTURE SELECTED BY AND ACCEPTABLE TO THE LESSEE, (B) THE LESSEE IS SATISFIED THAT THE EQUIPMENT IS SUITABLE FOR ITS PURPOSES, (C) THE LESSOR IS NOT A MANUFACTURER OR A DEALER IN PROPERTY OF SUCH KIND, AND (D) THE LESSOR HAS NOT MADE, OR DEEMED TO HAVE MADE, AND THE LESSOR EXPRESSLY DISCLAIMS AND MAKES NO REPRESENTATION OR WARRANTY, EITHER EXPRESSED OR IMPLIED, AS TO THE DESIGN, CONDITION, QUALITY, CAPACITY, MERCHANTABILITY, DURABILITY, SUITABILITY OR FITNESS FOR ANY PARTICULAR PURPOSE OF THE EQUIPMENT, AS TO THE ABSENCE OF LATENT OR OTHER DEFECTS, WHETHER OR NOT DISCOVERABLE, AS TO THE ABSENCE OF ANY INFRINGEMENT OF ANY PATENT,



TRADEMARK OR COPYRIGHT, AS TO THE ABSENCE OF OBLIGATIONS BASED ON STRICT LIABILITY IN TORT, OR ANY OTHER IMPLIED REPRESENTATION OR WARRANTY CONCERNING THE EQUIPMENT.

20. Lessee's Representations and Warranties. The Lessee hereby represents and warrants, as of the date hereof and on the Funding Date, that:

- (a) the Lessee is a corporation duly organized, validly existing and in good standing under the laws of the State of Missouri, and is qualified to do business in, and is in good standing in, each state or other jurisdiction in which the nature of its business makes such qualification necessary;
- (b) the Lessee has the corporate power and authority to execute and perform this Lease and to lease the Equipment hereunder, and has duly authorized the execution, delivery and performance of this Lease;
- (c) the leasing of the Equipment from the Lessor by the Lessee, the Lessee's execution and delivery of this Lease, each Lease Supplement, the Purchase Agreement Assignment and other related instruments, documents and agreements, and the compliance by the Lessee with the terms hereof and thereof, and the payments and performance by the Lessee of all of its obligations hereunder and thereunder (i) have been duly and legally authorized by appropriate corporate action taken by the Lessee, (ii) are not in contravention of, and will not result in a violation or breach of, any of the terms of the Lessee's Articles of Incorporation, its By-Laws, or of any provisions relating to shares of the capital stock of the Lessee, and (iii) will not violate or constitute a breach of any provision of law, any order of any court or other Governmental Authority, or any indenture, agreement or other instrument to which the Lessee is a party, or by or under which the Lessee or any of the Lessee's property is bound, or be in conflict with, result in a breach of, or constitute (with due notice and/or lapse of time) a default under any such indenture, agreement or instrument, or result in the creation or imposition of any Lien upon any of the Lessee's property or assets other than the Liens contemplated hereby and the Permitted Liens;
- (d) this Lease has been executed by the duly authorized officer or officers of the Lessee and delivered to the Lessor and constitutes, when executed by the duly authorized officer or officers of the Lessee and delivered to the Lessor, each Lease Supplement and related instruments, documents and agreements with respect to each Item of Equipment will constitute, the legal, valid and binding obligations of the Lessee, enforceable against the Lessee in accordance with their terms (subject to such bankruptcy and similar laws affecting the rights of creditors generally);

(e) the Lessee holds all material licenses, certificates and permits from Governmental Authorities necessary to use and operate the Equipment in accordance with the provisions of this Lease;

(f) there is no litigation or other proceeding now pending or, to the best of the Lessee's knowledge, threatened against or affecting the Lessee, in any court or before any regulatory commission, board or other administrative Governmental Authority (i) which would directly or indirectly adversely affect or impair the title of the Lessor to the Equipment, or (ii) which, except as may be contemplated and disclosed under the Disclosure Documents, would materially adversely affect the financial condition of the Lessee;

(g) all balance sheets, statements or profit and loss and other financial statements set forth in the Disclosure Documents fairly present the financial condition of the Lessee on the dates for which, and the results of its operations for the periods for which, the same have been furnished, and have been prepared in accordance with generally accepted accounting principles consistently followed throughout the periods covered thereby (except as noted therein); and there has been no material adverse change in the financial condition of the Lessee, since the date of the Disclosure Documents, except as may be disclosed under the Disclosure Documents;

(h) no approval that has not been obtained by the Lessee as of the date of this representation and warranty is required from any regulatory body, board, authority or commission, nor from any other administrative or governmental agency, nor from any other Person, with respect to the Lessee's execution, delivery and performance of this Lease;

(i) the Disclosure Documents and the Equipment Documents are true and correct in all material respects and do not omit any information necessary to make the information provided, in light of the circumstances under which such information was provided, not materially misleading;

(j) the Lessee is not an "investment company" or a company "controlled" by an "investment company", within the meaning of the Investment Company Act of 1940, as amended; and

(k) any Lien on the Lessee's interest in the Equipment contained in mortgages granted by the Lessee which cover after acquired property of the Lessee and which otherwise subject all or substantially all of the Lessee's assets to such mortgage, is subordinate to and does not adversely affect Lessor's interest in the Equipment under this Lease, and no one other than Lessor has made any filing with the Surface Transportation

Board or the Interstate Commerce Commission covering any of the Equipment subject to this Lease.

21. Events of Default. Any of the following events shall constitute an Event of Default

(a) the Lessee shall fail to make any payment of Basic Rent or any Supplemental Payment on the date due, and that failure shall continue for at least ten (10) Business Days after the due date for such payment in the case of Basic Rent or thirty (30) days after receipt of written notice from Lessor, in the case of any other amount, including Supplemental Payments; or

(b) the Lessee shall fail to perform or observe any other covenant, condition, or agreement to be performed or observed by it under this Lease, or in any agreement or certificate furnished to the Lessor or any Assignee in connection herewith, and such failure shall continue unremedied for ten (10) days (if not capable of being cured) or thirty (30) days (if capable of being cured) after the first to occur of (i) an officer of Lessee with express authority to make decisions regarding this Lease has actual specific knowledge thereof or (ii) Lessor provides written notice to the Lessee specifying such failure and demanding the same to be remedied; or

(c) any representation or warranty made by the Lessee under this Lease or in any Lease Supplement or in any document or certificate furnished to the Lessor or any Assignee in connection herewith or pursuant hereto, shall prove to be untrue or incorrect in any material respect when made; provided that if the effect of such misrepresentation or warranty is reasonably curable, the Lessee shall have thirty (30) days after notice from the Lessor to effect a cure; or

(d) the Lessee shall (i) generally fail to pay, or admit in writing its inability to pay, its debts as they become due, or shall voluntarily commence any case or proceeding or file any petition under any bankruptcy, insolvency or similar law or seeking dissolution, liquidation or reorganization or the appointment of a receiver, trustee, custodian or liquidator for itself or a substantial portion of its property, assets or business or to effect a plan or other arrangement with its creditors, or shall file any answer admitting the jurisdiction of the court and the material allegations of any involuntary petition filed against it in any bankruptcy, insolvency or similar case or proceeding, or shall be adjudicated bankrupt, or shall make a general assignment for the benefit of creditors, or shall consent to, or acquiesce in the appointment of, a receiver, trustee, custodian or liquidator for itself or substantially all of its property, assets or business; or

(e) involuntary proceedings or an involuntary petition shall be commenced or filed against the Lessee under any bankruptcy, insolvency or similar law or seeking the dissolution, liquidation or reorganization of the Lessee or the appointment of a receiver,

trustee, custodian or liquidator for the Lessee or of substantially all of the property, assets or business of the Lessee, or any writ, judgment, warrant of attachment, execution or similar process shall be issued or levied against substantially all of the property, assets or business of the Lessee, and such proceedings or petition shall not be dismissed, or such writ, judgment, warrant of attachment, execution or similar process shall not be stayed, released, vacated or fully bonded, within ninety (90) consecutive days after commencement, filing or levy, as the case may be.

22. Remedies Upon Default.

(a) Upon the occurrence of any Event of Default and at any time thereafter so long as the same shall be continuing, the Lessor may exercise one or more of the following remedies as the Lessor in its sole discretion may elect:

(i) the Lessor may terminate or cancel this Lease, without prejudice to any other remedies of the Lessor hereunder, with respect to all or any Item of Equipment, and whether or not this Lease has been so terminated, may enter the premises of the Lessee or any other party to take immediate possession of the Equipment and remove all or any Item of Equipment by summary proceedings or otherwise, or may cause the Lessee, to store, maintain, surrender and deliver possession of the Equipment or such Item in the same manner as provided in Section 6 hereof;

(ii) the Lessor may lease to others the Equipment or any Item of Equipment, as the Lessor in its sole discretion may determine, free and clear of any rights of the Lessee and without any duty to account to the Lessee with respect to such action or inaction or for any proceeds with respect thereto, except as required by this Lease or by law;

(iii) the Lessor may sell the Equipment or any Item of Equipment at public or private sale as the Lessor may determine, free and clear of any rights of the Lessee (except as required by law), and the Lessee shall pay to the Lessor, as liquidated damages for loss of a bargain and not as a penalty (in lieu of the Basic Rent due for the Equipment or Item(s) so sold for any Rental Period commencing after the date on which such sale occurs), the difference, if any of (A) the sum of (x) all unpaid Basic Rent payable for each Item of Equipment for all Rental Periods through the date on which such sale occurs, plus (y) the Casualty Loss Value of the Item(s) of Equipment so sold, computed as of the Rent Payment Date coincident with (or, if the sale is not on a Rent Payment Date, next preceding) the date of such sale, plus (z) all unpaid Supplemental Payments (including Make Whole Amount, if any) due with respect to each Item of Equipment so sold

minus (B) the net proceeds of such sale (exclusive of any costs, fees and expenses incurred in connection with such sale);

(iv) whether or not the Lessor shall have exercised, or shall thereafter at any time exercise, any of its rights under clause (i) or (ii) above with respect to any Item(s) of Equipment, the Lessor, by written notice to the Lessee specifying a payment date, may demand that the Lessee pay to the Lessor, and the Lessee shall pay to the Lessor, on the payment date specified in such notice, as liquidated damages for loss of a bargain and not as a penalty (in lieu of the Basic Rent due for any Item(s) of Equipment for any Rental Period commencing after the payment date specified in such notice and in lieu of the exercise by the Lessor of its remedies under clause (ii) above in the case of a re-lease of such Item(s) or under clause (iii) above with respect to a sale of such Item(s)), the sum of (i) all unpaid Basic Rent payable for such Item(s) for all Rental Periods through the payment date specified in such notice, plus (ii) all unpaid Supplemental Payments (including Make Whole Amount, if any) due with respect to such Item(s) as of the payment date specified in such notice, plus (iii) an amount, with respect to each such Item, equal to the Casualty Loss Value of such Item(s) computed as of the Rent Payment Date coincident with (or, if the payment date specified is not a Rent Payment Date, next preceding) the payment date specified in such notice; provided, however, that with respect to any such Item(s) returned to or repossessed by the Lessor, the amount recoverable by the Lessor pursuant to the foregoing shall be reduced (but not below zero) by an amount equal to the Fair Market Sales Value of such Item(s) as of the date on which the Lessor has obtained possession of such Item(s) and shall not exceed the Maximum Lessee Risk Amount plus the Make Whole Amount due to Lessor, if any, for such date;

(v) unless the Equipment has been sold in its entirety, the Lessor may, whether or not the Lessor shall have exercised or shall thereafter at any time exercise any of its rights under clause (ii), (iii) or (iv) of this Section 22 with respect to the Equipment or portions thereof, demand, by written notice to the Lessee specifying a date not earlier than ten days after the date of such notice, that the Lessee purchase, on such date, the Equipment (or the remaining portion thereof) in accordance with the provisions of Section 27(b)(i); provided, however that no such written notice shall be required upon the occurrence of any Event of Default described in clause (d) or (e) of Section 21; and

(vi) the Lessor may exercise any other right or remedy which may be available to it under Applicable Law or proceed by appropriate court action to

enforce the terms hereof or to recover damages for the breach hereof or to rescind this Lease.

In addition, the Lessee shall be liable for all Expenses, including attorneys' fees and Appraisal costs and expenses, reasonably incurred by the Lessor or any Assignee by reason of the occurrence of any Event of Default or the exercise of the Lessor's remedies with respect thereto, including all Expenses incurred in connection with the return of the Equipment in accordance with Section 6 hereof or in placing the Equipment in the condition required by Section 6. For the purpose of clause (iv) above, the "Fair Market Sales Value" of any Item of Equipment shall mean such value as has been determined by averaging the valuations of an independent qualified appraiser selected by each of the Lessor and the Lessee. The exercise or beginning of exercise by the Lessor of any one or more of its remedies shall not constitute the exclusive election of such remedies. No express or implied waiver by the Lessor of any Event of Default shall in any way be, or be construed to be, a waiver of any future or subsequent Event of Default.

(b) After the sale of all of the Equipment pursuant to the exercise of the Lessor's remedies under this Lease, any amounts collected by the Lessor in such sale or sales which exceed the sum of (i) the applicable Casualty Loss Values for all Items of Equipment subject to this Lease, plus but without duplication (ii) any amounts owed by the Lessee to the Lessor under this Lease, plus but without duplication (iii) the costs incurred by the Lessor in consummating such sale, shall be paid to the Lessee by the Lessor.

23. Lessor's Right to Perform for the Lessee. If the Lessee fails to make any Supplemental Payment required to be made by it hereunder or fails to perform or comply with any of its agreements contained herein, the Lessor may itself, after at least five (5) Business Days' prior written notice to the Lessee, make such payment or perform or comply with such agreement, and the amount of such payment and the amount of the reasonable Expenses of the Lessor incurred in connection with such payment or the performance of or compliance with such agreement, as the case may be, together with interest thereon at the rate specified in Section 24 hereof, shall, if not paid by the Lessee to the Lessor on demand, be deemed a Supplemental Payment hereunder.

24. Late Charges. The Lessee shall pay to the Lessor, upon demand, to the extent permitted by applicable law, interest on any installment of Basic Rent not paid when due, and on any Supplemental Payment or other amount payable under this Lease which is not paid when due, for any period for which any of the same is overdue (without regard to any grace period) at a rate equal to the lesser of (a) the Applicable Rate plus two percent per annum, or (b) the maximum rate of interest permitted by law.

25. Further Assurances. The Lessee will promptly and duly execute and deliver to the Lessor and any Assignee such other documents and assurances and filings (including with the Surface Transportation Board and under the Uniform Commercial Code), and will take such further action as the Lessor or any Assignee may from time to time reasonably request in order to carry out more effectively the intent and purposes of this Lease and to establish and protect the rights and remedies created or intended to be created in favor of the Lessor and of any Assignee and their respective rights, title and interests in and to the Equipment.

26. Notices. All notices provided for or required under the terms and provisions hereof shall be in writing (including facsimile) and addressed, delivered or transmitted to the appropriate party at its address or facsimile number as set forth on Schedule I hereto, or in the case of any Assignee, to the address or facsimile number as such Assignee shall designate in writing to the Lessor and the Lessee, or in each case at such other address or facsimile number as an addressee shall designate in writing to the other parties. Any notice, if mailed or sent by courier service, shall be deemed given when delivered; any notice, if transmitted by facsimile, shall be deemed given when transmitted and electronically confirmed.

27. Lessee's Renewal, Purchase and Sale Options.

(a) Lessee's Renewal Option. With respect to each Lease Supplement, the Lessee shall be entitled, at its option, to renew this Lease for a Renewal Term with respect to all or any portion of the Items of Equipment then subject to such Lease Supplement (provided that the balance of the Equipment not so renewed is purchased), unless (i) an Event of Default exists, or (ii) this Lease shall have been earlier terminated. The first Renewal Term with respect to each such Item of Equipment will commence at the expiration of the Basic Term of such Item, and each succeeding Renewal Term will commence at the expiration of the next preceding Renewal Term. All of the provisions of this Lease, including Basic Rent, Casualty Loss Value and the Applicable Rate, shall be applicable during each Renewal Term for each such Item of Equipment. If the Lessee intends not to exercise said renewal option with respect to all of such Items of Equipment for the next following Renewal Term with respect thereto, the Lessee shall give written notice to the Lessor to such effect at least 180 days prior to the expiration of the Basic Term, in the case of the first Renewal Term, and at least 180 days prior to the expiration of the then current Renewal Term of said Item(s) of Equipment, in the case of the then next succeeding Renewal Term. If the Lessee fails to give such written notice to the Lessor with respect to all of the Items of Equipment covered by any Lease Supplement, it shall be conclusively presumed that the Lessee has elected to exercise said renewal option with respect to all of such Items of Equipment for said Renewal Term. In the event the Lessee elects not to exercise said renewal option, the Lessee shall be deemed to have exercised its purchase option under Section 27(b) hereof (unless Lessee elects to sell such Item to a third party in accordance with Section 27(c) hereof).

(b) Lessee's Purchase Option. (I) With respect to each Lease Supplement, the Lessee shall be entitled, at its option at the end of the Basic Term and any Renewal Term (notwithstanding that Lessee may have previously agreed to renew this Lease for subsequent Renewal Terms), upon written notice to the Lessor as hereinafter provided, to purchase all, but not less than all, Items of Equipment then subject to such Lease Supplement for which Lessee has not opted to renew this Lease, unless (i) a Default or Event of Default exists, or (ii) this Lease shall have been earlier terminated. Such purchase shall be consummated, and the Lessee shall pay the purchase price therefor to the Lessor in immediately available funds, on the Rent Payment Date specified in the Lessee's notice to the Lessor. The date of purchase shall be no earlier than the first anniversary of the Funding Date with respect to such Items of Equipment. The purchase price for each such Item shall be an amount (each, an "EBO Purchase Option Amount") equal to the Unamortized Lease Balance for such Items of Equipment. In addition, the Lessee shall pay to the Lessor on the early buyout date, in immediately available funds, (x) any applicable sales, excise or other taxes imposed as a result of such sale (other than gross or net income or similar taxes attributable to such sale), plus (y) the Make Whole Amount, if any, required to be paid under the terms of this Lease and any other Supplemental Payments then due and owing to the Lessor hereunder. The Lessor's sale of each Item of Equipment shall be on an "as-is, where-is" basis, without any representation or warranty by, or recourse to, the Lessor except that the Lessor shall warrant that each such Item of Equipment shall be returned free and clear of all Liens of the sort described in clause (d) of the definition of Permitted Liens. If the Lessee intends to exercise said early buyout option, the Lessee shall provide the Lessor with 180 days' prior written notice thereof.

(II) In addition to Lessee's purchase option under clause (I) above, if either (x) this Lease is not construed as an operating lease for financial accounting purposes by Lessee's independent accountants or (y) any Required Alteration under Section 11 is reasonably determined by Lessee to be economically impractical, then, with respect to each Lease Supplement, the Lessee shall be entitled, upon not less than ninety (90) days prior written notice to the Lessor as hereinafter provided, to purchase all, but not less than all, Items of Equipment then subject to such Lease Supplement, unless (i) a Default or Event of Default exists, or (ii) this Lease shall have been earlier terminated. Such purchase shall be consummated, and the Lessee shall pay the purchase price therefor to the Lessor in immediately available funds, on the Business Day (the "Payment Date") specified in the Lessee's notice to the Lessor. The purchase price for each such Item shall be an amount (each, an "EBO Purchase Option Amount") equal to the Unamortized Lease Balance for such Items of Equipment as of the immediately preceding Rent Payment Date plus interest accrued thereon at the Applicable Rate from such preceding Rent Payment Date through such Payment Date. In addition, the Lessee shall pay to the Lessor on the Payment Date, in immediately available funds, (x) any applicable sales, excise or other taxes imposed as a result of such sale (other than gross or net income or similar taxes attributable to such sale), plus (y) the Make Whole Amount, if any, required to be paid under the terms of this Lease and any other Supplemental Payments then due and owing to



the Lessor hereunder. The Lessor's sale of each Item of Equipment shall be on an "as-is", "where-is" basis, without any representation or warranty by, or recourse to, the Lessor except that the Lessor shall warrant that each such Item of Equipment shall be returned free and clear of all Liens of the sort described in clause (d) of the definition of Permitted Liens.

(c) Third Party Sale of Equipment.

(i) Remarketing Obligations. In the event the Lessee (x) delivers notice to the Lessor that it has elected not to renew this Lease with respect to all Items of Equipment then subject to this Lease in accordance with Section 27(a) hereof and (y) has not exercised its option to purchase all of the Items of Equipment then subject to this Lease pursuant to Section 27(b), then the Lessee shall have the obligation during the last 180 days of the Basic Term (after exercise of the maximum number of Renewal Terms permitted hereby) (the "Remarketing Period"), to obtain (at the cost of the Lessee) bona fide bids for not less than all Items of Equipment then subject to this Lease from prospective purchasers (who are not, and are not acting on behalf of, Lessee or any Affiliate of Lessee) who are financially capable of purchasing such Items of Equipment for cash. Any such sale shall be on an "as-is, where-is" basis, without recourse or warranty except that the Lessor shall warrant that each such Item of Equipment shall be returned free and clear of all Liens of the sort described in clause (d) of the definition of Permitted Liens. All such bids received by the Lessee during such Remarketing Period of such Items of Equipment shall be immediately certified to the Lessor in writing, setting forth the amount of such bid and the name and address of the person or entity submitting such bid. Notwithstanding the foregoing, the Lessor shall have the right, but not the obligation, to seek bids for the Equipment during the Remarketing Period.

(ii) Sale of Equipment. On the Termination Date, provided that all the conditions hereof have been met, the Lessor shall sell (or cause to be sold) all Items of Equipment then subject to this Lease, for cash to the bidder, if any, selected by the Lessee on an "as-is, where-is" basis and without recourse or warranty except that the Lessor shall warrant that each such Item of Equipment shall be returned free and clear of all Liens of the sort described in clause (d) of the definition of Permitted Liens, and upon receipt by the Lessor of the sales price, the Lessor shall instruct the Lessee to deliver and the Lessee shall deliver such Item(s) of Equipment to such bidder; provided that (x) any such sale shall be consummated, and the sales price for such Item (and any amounts payable by Lessee pursuant to Section 28) shall be paid to the Lessor in immediately available funds, on or before the Termination Date, and (y) the Lessor shall not be obligated

to sell such Equipment if (i) the Net Proceeds of Sale of such Items are less than the aggregate Maximum Lessor Risk Amount applicable to such Items as of the Termination Date, and (ii) the Lessor has not received the amounts, if any, payable by the Lessee pursuant to Section 28; provided further that if such sale shall not be consummated on such date and the Term shall not have been extended or renewed, Lessee shall be deemed to have exercised its purchase option pursuant to Section 27(b)(i) and shall pay Lessor the amounts specified therein on the Termination Date. Except as expressly set forth herein, the Lessee shall have no right, power or authority to bind the Lessor in connection with any proposed sale of the Equipment.

28. End-of-Term Rental Adjustment - Third Party Sale of Equipment. If the aggregate proceeds of sale of the Equipment pursuant to Section 27(c) after deducting therefrom the aggregate amount of all costs (other than sales commissions or similar third-party fees, unless approved in writing by the Lessee) incurred by the Lessor in connection with such sale (such net amount being hereinafter referred to as "Net Proceeds of Sale") are less than the aggregate Estimated Residual Value of the Equipment as of such Termination Date, the Lessee shall, on the Termination Date, pay to the Lessor, in immediately available funds, to the Lessor's account specified pursuant to Section 7(c) hereof, (x) an amount equal to such deficiency (a "Deficiency") plus (y) the Basic Rent due and payable for such Items of Equipment on the Termination Date plus (z) any other Supplemental Payments then due and owing to the Lessor hereunder; provided, however, that if no Default or Event of Default shall exist, the amount of the Deficiency payable by the Lessee with respect to the Items covered by such Lease Supplement shall not exceed the Maximum Lessee Risk Amount as set forth in such Lease Supplement for such Termination Date. If the Net Proceeds of Sale of such Items of Equipment exceed the aggregate Estimated Residual Value of such Items, then the Lessor shall apply that excess to any amounts that the Lessee then owes to the Lessor hereunder with respect to such Items (or, if an Event of Default exists, to any other amount that the Lessee then owes to the Lessor), and shall pay to the Lessee the remainder of such excess as an adjustment to the Basic Rent payable under this Lease for such Items.

29. Covenants of the Lessee. The Lessee agrees, for the benefit of the Lessor and each Assignee, as follows:

(a) Financial Information. During the Term, the Lessee will furnish or cause to be furnished to the Lessor (a) within one hundred twenty (120) days after the end of each of its fiscal years, its consolidated balance sheet and related consolidated statements of income and cash flows, in each case certified by independent certified public accountants of nationally recognized standing, showing its financial position at the close of such year and the results of its operations and cash flows for such year; (b) within sixty (60) days after the end of each of the first three (3) quarters in each of its fiscal years, its unaudited condensed consolidated balance sheet and related condensed consolidated statements of income and cash flows, such balance sheets to be as of the end of such quarter and such

statements of income and cash flows to be for the period from the beginning of the fiscal year to the end of such quarter, in each case in the forms included in its Quarterly Report on Form 10-Q for such quarter filed with the SEC pursuant to the Securities Exchange Act of 1934, as amended, and subject to audit and year-end adjustments; and (c) such other information respecting the Lessee's business, properties or its condition or operations, financial or otherwise, as the Lessor may from time to time reasonably request.

In the event the Lessee is no longer obligated to file Forms 10-K and 10-Q with the SEC, the Lessee shall furnish to the Lessor the financial statements required to be filed under such Forms on or prior to the dates specified in the preceding sentence.

(b) Mergers, etc. The Lessee shall not merge with or into or consolidate with or into any other Person (other than the Western Resources Merger Transaction, which merger Lessor and Lessee agree complies with clauses (1) and (2) below) or sell, transfer, or otherwise dispose of substantially all the Lessee's assets unless, immediately after giving effect thereto, (1) the Lessee is the surviving corporation, or the surviving (if not the Lessee) or resulting corporation shall have assumed, in writing, the obligations of the Lessee under this Lease pursuant to documentation reasonably satisfactory to the Lessor and each Assignee (if any), and (2) the surviving entity or resulting entity or transferee, as applicable, will have a credit rating from Standard & Poor's Rating Group for its senior unsecured debt of BBB or better (or an equivalent rating from Moody's Investors Service).

(c) ERISA. As soon as possible and in any event (A) within the time notice to the PBGC is required as to any ERISA Event described in clause (i) of the definition of ERISA Event with respect to any Plan of the Lessee or any ERISA Affiliate of the Lessee has occurred and (B) within ten days after any other ERISA Event with respect to any Plan of the Lessee or any ERISA Affiliate of the Lessee has occurred, the Lessee shall deliver to the Lessor a statement if the Lessee (signed on its behalf by a Responsible Officer of the Lessee) describing such ERISA Event and the action, if any, which the Lessee or such ERISA Affiliate proposes to take with respect thereto.

(d) ERISA Information. Promptly after receipt thereof' by the Lessee or any of its ERISA Affiliates from the PBGC, the Lessee shall deliver to the Lessor copies of each notice received by the Lessee or such ERISA Affiliate of the PBGC's intention to terminate any Plan if the Lessee or such ERISA Affiliate or to have a trustee appointed to administer any such Plan.

(e) ERISA Notice. Promptly after receipt thereof by the Lessee or any ERISA Affiliate of the Lessee from a Multiemployer Plan sponsor, the Lessee shall deliver to the Lessor copy of each notice received by the Lessee or such ERISA Affiliate concerning the imposition or amount of withdrawal liability in an aggregate principal amount of at least

\$10 million pursuant to Section 4202 of ERISA in respect of which the Lessee or such ERISA Affiliate is reasonably expected to be liable.

(f) Litigation. The Lessee shall deliver to the Lessor, promptly after the Lessee becomes aware of the occurrence thereof, notice of all actions, suits, proceedings or other events for which the Lessor will be entitled to indemnity hereunder.

30. Payment of Transaction Expenses. The Lessor shall be responsible for the reasonable fees and expenses of its counsel and special Surface Transportation Board counsel incurred in connection with the negotiation and initial documentation of this transaction. The Lessee shall be responsible for the reasonable fees and expenses of its counsel.

31. Owner for Income Tax Purposes. The Lessor agrees that the Lessee shall be deemed the owner of the Equipment for Federal, state and local income tax purposes and that, so long as no Event of Default shall have occurred and be continuing, the Lessor shall take no action inconsistent with such ownership for income tax purposes.

32. Governing Law; Waiver of Jury Trial; Submission to Jurisdiction. This Lease shall in all respects be governed by, and construed in accordance with, the laws of the State of Illinois, including all matters of construction, validity and performance. The Lessee and the Lessor hereby waive any right to a trial by jury in any dispute arising under or in any way relating to the transactions contemplated by this Lease. Each of the Lessor and the Lessee (a) irrevocably submits itself to the non-exclusive jurisdiction of the Courts of the State of Illinois, Cook County and the United States District Court for the Northern District of Illinois for the purposes of any suit, action or other proceeding arising out of this Lease, or the subject matter hereof or the transaction contemplated hereby, (b) irrevocably agrees that all claims in respect of such action or proceeding may be heard and determined in such Illinois State or United States Federal court and (c) agrees not to assert, by way of motion, as a defense or otherwise, in any such suit, action or proceeding any claim that is not personally subject to the jurisdiction of the above-named Illinois State or United States Federal courts, that the suit, action or proceeding is brought in an inconvenient forum, that the venue of the suit, action or proceeding is improper, or that this Lease or the subject matter hereof may not be enforced in or by such courts under any applicable law. The Lessee agrees that its submission to jurisdiction is made for the express benefit of the Lessor and its successors and permitted assigns. Lessee hereby agrees that service of process may be made upon Lessee by written notice. Nothing in this Section 32 shall affect the right of the Lessor or its successors or assigns to serve legal process in any other manner permitted by law or affect the right of the Lessor or its successors or permitted assigns to bring any action or proceeding against the Lessee or its property in the courts of other jurisdictions.

33. Miscellaneous. Any provision of this Lease which is prohibited or unenforceable in any jurisdiction shall, as to such jurisdiction, be ineffective to the extent of such prohibition or unenforceability without invalidating or diminishing any party's rights under the remaining provisions hereof, and any such prohibition or unenforceability in any jurisdiction shall not invalidate or render unenforceable such provision in any other jurisdiction. To the extent permitted by applicable law, the Lessee and the Lessor hereby waive any provision of law which renders any provision of this Lease prohibited or unenforceable in any respect. No term or provision of this Lease may be amended, altered, waived, discharged or terminated orally, but may be amended, altered, waived, discharged or terminated only by an instrument in writing signed by a duly authorized officer of the party against which the enforcement of the amendment, alteration, waiver, discharge or termination is sought. A waiver on any one occasion shall not be construed as a waiver on a future occasion. All of the covenants, conditions and obligations contained in this Lease shall be binding upon and shall inure to the benefit of the respective successors and permitted assigns of the Lessor and the Lessee (subject to the restrictions of Section 13 above and Section 34 below). This Lease, each Lease Supplement and each related instrument, document, agreement and certificate, collectively constitute the complete and exclusive statement of the terms of the agreement between the Lessor and the Lessee with respect to the acquisition and leasing of the Equipment, and cancel and supersede any and all prior oral or written understandings with respect thereto. This Lease and each Lease Supplement may be executed in counterparts, each of which shall constitute an original document but all of which together shall constitute a single instrument.

34. Registered Instrument. This Lease is a registered instrument. A manually signed copy of this Lease shall be evidence only of Lessor's and Lessee's rights and is not a bearer instrument. The Lessor agrees with the Lessee that the Lessee shall keep books of registry by which Lessee will register by book entry, and register by book entry any transfer of, Lessor's interest in this Lease and in the right to receive any payments under this Lease. Prior to the due presentment for registration of any transfer of Lessor's interest in this Lease, the Lessee and the Lessor shall deem and treat the Person in whose name this Lease is registered in the books of registry as the absolute owner of this Lease and the holder of this Lease for the purpose of receiving payment of all amounts payable with respect to this Lease. Lessor's interest in this Lease and in the rights to receive any payments under the Lease may be transferred only pursuant to and in compliance with the provisions of this Lease, which transfers shall be registered by book entry made by the Lessee in its books of registry. No transfer by Lessor (whether or not with Lessee's consent) of any interest in this Lease or in the right to receive any payments hereunder shall be permitted unless a book entry of such transfer is made upon such registry and such transfer is otherwise in accordance with the terms of this Lease.

IN WITNESS WHEREOF, the parties hereto have caused this Equipment Leasing Agreement to be duly executed by their duly authorized representatives as of the date first above written.

[SIGNATURES ARE ON ATTACHED PAGES]

[Equipment Leasing Agreement]

Attest:

Lessee:

KANSAS CITY POWER & LIGHT COMPANY

By: /s/Jeanie Sell Latz  
Name: Jeanie Sell Latz  
Title:  
Senior Vice President-  
Corporate Services, Corporate  
Secretary & Chief Legal Officer

By: /s/Andrea F. Bielsker  
Name: Andrea F. Bielsker  
Title:  
Treasurer

(Corporate Seal)

Lessor:

CCG TRUST CORPORATION

Attest:

By: /s/M. Hafiz Khan  
Name: M. Hafiz Khan  
Title:  
Attorney at Law

By: /s/John R. Walker  
Name: John R. Walker  
Title:  
Managing Director

(Corporate Seal)

THIS IS COUNTERPART NO. \_\_\_ OF \_\_\_\_ SERIALY NUMBERED MANUALLY EXECUTED COUNTERPARTS. TO THE EXTENT, IF ANY, THAT THIS DOCUMENT CONSTITUTES CHATTEL PAPER UNDER THE UNIFORM COMMERCIAL CODE, NO SECURITY INTEREST IN THIS DOCUMENT MAY BE PERFECTED THROUGH THE POSSESSION OF ANY COUNTERPART OTHER THAN COUNTERPART NO. 1.

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