FORM 8-K

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DQE INC

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SECURITIES AND EXCHANGE COMMISSION
WASHINGTON, D.C. 20549

FORM 8-K
CURRENT REPORT

Pursuant to Section 13 or 15(d) of the
Securities Exchange Act of 1934

March 25, 1999
(Date of earliest event reported)

DQE, Inc.
(Exact name of Registrant as specified in its charter)

Pennsylvania	1-10290	25-1598483
(State of Incorporation)	(Commission File No.)	(IRS Employer Identification No.)

Cherrington Corporate Center, Suite 100
500 Cherrington Parkway, Coraopolis, Pennsylvania 15108-3184

(Address of principal executive offices, including zip code)

Registrant's telephone number, including area code: (412)262-4700

N/A

(Former name or former address, if changed since last report)

Items 1-4. Not Applicable.

Item 5. Other Events.

Incorporated herein by reference as Exhibit 99.1 is a press release, dated March 26, 1999 issued by DQE, Inc.'s wholly owned subsidiary, Duquesne Light Company. Incorporated herein by reference as Exhibits 2.1 and 2.2, respectively, are the Generation Exchange Agreement and the Nuclear Generation Conveyance Agreement, discussed in the press release.

Item 6. Not Applicable.

Item 7. Exhibits.

2.1 Generation Exchange Agreement, dated as of March 25, 1999, by and between Duquesne Light Company, on the one hand, and The Cleveland Electric Illuminating Company, Ohio Edison and Pennsylvania Power Company on the other. The schedules and exhibits to this document are not filed herewith, but will be furnished supplementally to the SEC upon request.

2.2 Nuclear Generation Conveyance Agreement, dated as of March 25, 1999 by and between Duquesne Light Company, on the one hand, and Pennsylvania Power Company and The Cleveland Electric Illuminating Company, on the other. The schedules and exhibits to this document are not filed herewith, but will be furnished supplementally to the SEC upon request.

99.1 Press Release, dated March 26, 1999, issued by DQE, Inc.'s wholly owned subsidiary, Duquesne Light Company.

Items 8-9. Not Applicable.

SIGNATURE

Pursuant to the requirements of the Securities Exchange Act of 1934, the registrant has duly caused this report to be signed on its behalf by the undersigned thereunto duly authorized.

DQE, Inc.

(Registrant)

March 26, 1999

(Date)

/s/ Morgan K. O'Brien

(Signature)
Morgan K. O'Brien
Vice President, Treasurer
and Controller

EXHIBIT INDEX

EXHIBIT	DESCRIPTION
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EXHIBIT 2.1

GENERATION EXCHANGE AGREEMENT

by and between

DUQUESNE LIGHT COMPANY, on the one hand, and

THE CLEVELAND ELECTRIC ILLUMINATING COMPANY

OHIO EDISON COMPANY
and

PENNSYLVANIA POWER COMPANY
on the other

Dated as of March 25, 1999

GENERATION EXCHANGE AGREEMENT

GENERATION EXCHANGE AGREEMENT, dated as of March 25, 1999 (this "Agreement"), by and between Duquesne Light Company, a Pennsylvania corporation ("DLC"), on the one hand, and Ohio Edison Company, an Ohio corporation ("OEC"), Pennsylvania Power Company, a Pennsylvania corporation ("PPC"), and The Cleveland Electric Illuminating Company, an Ohio corporation ("CEIC"), on the other. Each of CEIC, OEC and PPC is a subsidiary (direct or indirect) of FirstEnergy Corp., an Ohio corporation ("FE"), (each such subsidiary, an "FE Subsidiary" and collectively, the "FE Subsidiaries"). DLC, on the one hand, and the FE Subsidiaries, on the other, are referred to individually as a "Party," and collectively, as the "Parties."

W I T N E S S E T H

WHEREAS, DLC and FE, acting on behalf of the FE Subsidiaries and TEC (as defined herein), have entered into an agreement in principle dated October 14, 1998 (the "Agreement in Principle"), regarding the exchange of interests in certain electric generation facilities; and

WHEREAS, in order to implement the Agreement in Principle with respect to certain fossil fuel power plants the Parties desire to set forth in this Agreement the definitive terms and conditions pursuant to which DLC will convey to the FE Subsidiaries its undivided interests in certain electric generation plants operated by the FE Subsidiaries (Sammis, Mansfield and Eastlake, each as defined herein), and the FE Subsidiaries will convey to DLC their interests in certain electric generation plants (Avon Lake, New Castle and Niles, each as defined herein); and

WHEREAS, in order to implement the Agreement in Principle with respect to DLC's nuclear generating assets, which are subject to the jurisdiction of the Nuclear Regulatory Commission, simultaneously with the execution of this Agreement, DLC and certain of the other Parties will enter into the Nuclear Generation Conveyance Agreement (the "Nuclear Conveyance Agreement") dated as of the date hereof, substantially in the form of Exhibit A attached hereto, pursuant to which, subject to the terms and conditions thereof, DLC will agree to convey to certain of the FE Subsidiaries all of its rights, title and undivided interest in, and such FE Subsidiaries will agree to assume those obligations of DLC relating to, the assets specified therein (collectively, "DLC Nuclear Assets").

NOW, THEREFORE, in consideration of the mutual covenants, representations, warranties and agreements hereinafter set forth, and intending to be legally bound hereby, the Parties agree as follows:

ARTICLE I

DEFINITIONS

1.1 Definitions. As used in this Agreement, the following terms have the meanings specified in this Section 1.1.

(1) "Accrued FE Liabilities" has the meaning set forth in Section 4.3

(2) "Accrued Liabilities" means, with respect to a Party, the aggregate amount of the liabilities of such Party that are fixed or determinable as of the Exchange Closing Date and that arise out of any of the following obligations incurred by such Party prior to the Exchange Closing Date, except to the extent that any such obligation is allocable to the right of such Party to receive property, services or other benefit after the Exchange Closing Date: (1) any obligation to repay money advanced to or for the benefit of such Party; (2) any obligation to make an expenditure that is includible in the basis of any asset of such Party for income tax purposes as of the Exchange Closing Date; (3) any obligation to make an expenditure that is deductible by such Party and is not includible in such basis; and (4) any obligation to make any expenditure that is not described in clauses (2) or (3).

(3) "Acquiring Party" means, with respect to the DLC Assets and Assumed DLC Liabilities, the applicable FE Subsidiaries, and with respect to the FE Assets and Assumed FE Liabilities, DLC as to the Accrued FE Liabilities and otherwise as to the ownership of the FE Assets, DLC and the applicable Winning Bidder.

(4) "Affiliate" has the meaning set forth in Rule 12b-2 of the General Rules and Regulations under the Securities Exchange Act of 1934, as amended.

(5) "Agreement" means this Generation Exchange Agreement, together with the Exhibits and Schedules attached hereto, as the same may be from time to time amended.

(6) "Agreement in Principle" has the meaning set forth in the Recitals.

(7) "Ancillary Agreements" means the Auction Agreements, the CAPCO Settlement Agreement, the FE Assignment and Assumption Agreements, the FE (Accrued Liability) Assignment and Assumption Agreements, the DLC Assignment and Assumption Agreements, the Electrical Facilities Agreement, the FE Easement and Attachment Agreements, the FE Connection Agreements, the FE Must-Run Agreements, the Warranty Deeds, the Bill of Sale, the FIRPTA Affidavits, and the Settlement Agreement, in each case as the same may be from time to time amended.

(8) "Assigned Agreements" means, with respect to DLC, the DLC Agreements, and with respect to the applicable FE Subsidiary, the FE Agreements.

(9) "Assumed DLC Liabilities" has the meaning set forth in Section 3.3.

(10) "Assumed FE Liabilities" has the meaning set forth in Section 4.3.

(11) "Assumed Liabilities" means the Assumed FE Liabilities (including the Accrued FE Liabilities) or the Assumed DLC Liabilities, as applicable.

(12) "Auction" means the transfer and sale by auction to be undertaken by DLC of the its generating plants (other than the DLC Assets and the DLC Nuclear Assets) and the FE Assets conveyed to DLC under this Agreement.

(13) "Auction Agreements" means one or more Asset Purchase Agreements, substantially in the form of Exhibit B attached hereto, to be entered into between DLC, the applicable FE Subsidiaries (for the purpose of each such FE Subsidiary making certain representations, warranties, covenants, indemnifications, assignments and deliveries under such Asset Purchase Agreement) and the corresponding Winning Bidders in the Auction, and the ancillary agreements related thereto.

(14) "Auction Closings" means the closings of the transactions contemplated by the Auction Agreements.

(15) "Auction Closing Date" means the date on which the Auction

Closings occur.

(16) "Auction Participants" means the Persons qualified by DLC to submit binding bids in the Auction.

(17) "Auction Plan" means the Generation Auction Plan of DLC filed August 27, 1998, before the PaPUC and approved by the Opinion and Order of the PaPUC No. R-00974104, dated December 18, 1998, as amended from time to time.

(18) "Avon Lake" means all generating units and related assets located at the generating station known as Avon Lake, as more fully identified on Schedule 4.1(Avon Lake), attached hereto.

(19) "Benefit Plans" means with respect to each Party, each deferred compensation and each bonus or other incentive compensation, stock purchase, stock option and other equity compensation plan, program, agreement or arrangement; each severance or termination pay, medical, surgical, hospitalization, life insurance and other "welfare" plan, fund or program (within the meaning of Section 3(1) of ERISA) each profit-sharing, stock bonus or other "pension" plan, fund or program (within the meaning of Section 3(2) of ERISA); each employment, termination or severance agreement; and each other employee benefit plan, fund, program, agreement or arrangement, in

each case, that is sponsored, maintained or contributed to or required to be contributed to by such Party or by any ERISA Affiliate.

(20) "Bills of Sale" means the Bills of Sale, each substantially in the form of Exhibit C attached hereto, to be delivered by each Conveying Party at the respective Exchange Closing with respect to DLC Tangible Personal Property or FE Tangible Personal Property, as the case may be, included in the Exchange Assets transferred to the respective Acquiring Party.

(21) "Bond Counsel" has the meaning set forth in Section 8.16(b).

(22) "Business Day" means any day other than Saturday, Sunday and any day which is a day on which banking institutions in the Commonwealth of Pennsylvania or the State of Ohio are authorized by law or other governmental action to close.

(23) "CAPCO" means the Central Area Power Coordination Group.

(24) "CAPCO Agreements" means all contractual arrangements associated with CAPCO related to the Exchange Assets, including those listed on Schedule 1.1(24).

(25) "CAPCO Settlement Agreement" means that certain CAPCO

Settlement Agreement executed by DLC and each applicable Subsidiary of FE, substantially in the form of Exhibit O attached hereto.

(26) "CEIC" means The Cleveland Electric Illuminating Company, a subsidiary of FE and an Ohio corporation.

(27) "Capital Spare Parts " means any major equipment items of significant cost that are essential to the operation of an Exchange Asset of a Conveying Party. Such equipment is generally a long lead-time item and, consistent with past practice, has been assigned to the capital base of the Exchange Asset upon delivery and prior to its placement in service. In the case of DLC, its Capital Spare Parts are set forth in Schedule 1.1 (27-DLC) and in the case of the FE Subsidiary's, each FE Subsidiary's Capital Spare Parts are set forth in Schedule 1.1 (27-FE).

(28) "CERCLA" means the Comprehensive Environmental Response, Compensation, and Liability Act, 42 U.S.C. Section 9601 et seq., as amended.

(29) "Closing Payment" means the DLC Closing Payments or the FE Closing Payments, as appropriate.

(30) "Closing Payment Balance" means the remaining amount payable after the aggregation or offset of Closing Payments, as provided in Section 5.3.

(31) "COBRA" means the Consolidated Omnibus Budget Reconciliation Act of 1984.

(32) "COBRA Continuation Coverage" means the requirements of Section 4980B(f) of the Code.

(33) "Code" means the Internal Revenue Code of 1986, as amended.

(34) "Commercially Reasonable Efforts" means efforts by a Party which are reasonably within the contemplation of the Parties at the time of executing this Agreement and which do not require the performing Party to expend any funds other than expenditures which are customary and reasonable in transactions of the kind and nature contemplated by this Agreement in order for the performing Party to satisfy its obligations hereunder.

(35) "Computer Systems" means hardware, software, and firmware product (including embedded microcontrollers in non-computer equipment).

(36) "Continuation Period" has the meaning set forth in Section 8.11(e)(ii).

(37) "Conveying Party" means, with respect to the DLC Assets, DLC, and with respect to the FE Assets, the applicable FE Subsidiaries.

(38) "Direct Claim" means any claim by an Indemnitee on account of an Indemnifiable Loss that does not result from a Third Party Claim.

(39) "DLC" means Duquesne Light Company, a Pennsylvania corporation.

(40) "DLC Agreements" means the CAPCO Agreements and any contracts, agreements, licenses and personal property leases entered into by DLC or one of its Affiliates with respect to the ownership, operation or maintenance of the DLC Assets, whether or not disclosed on Schedule 6.9(a), but excluding the DLC Real Property Leases.

(41) "DLC Assets" has the meaning set forth in Section 3.1.

(42) "DLC Assignment and Assumption Agreements" means the Assignment and Assumption Agreements between DLC and each applicable FE Subsidiary, substantially in the form of Exhibit D attached hereto.

(43) "DLC Capital Expenditures" means capital additions to or replacements of property, plants and equipment included in the DLC Assets and other expenditures or repairs on property, plants and equipment included in the DLC Assets that would be capitalized by DLC in accordance with its normal accounting policies.

(44) "DLC Closing Payments" has the meaning set forth in Section 5.2(b).

(45) "DLC Emission Reduction Credits" means the Emission Reduction Credits related to DLC's ownership share of the DLC Plants.

(46) "DLC Environmental Permits" means the permits, registrations, certificates, certifications, licenses and authorizations, consents and approvals of Governmental Authorities required under Environmental Laws and held by DLC with respect to the DLC Assets.

(47) "DLC Estimated Closing Payment" has the meaning set forth in Section 5.2(d).

(48) "DLC Estimated Closing Statement" has the meaning set forth in Section 5.2(d).

(49) "DLC Indemnifiable Loss" has the meaning set forth in

Section 10.1(a).

(50) "DLC Indemnitee" has the meaning set forth in Section 10.1(a).

(51) "DLC Inventories" means materials, spare parts, consumable supplies and chemical inventories relating to the operation of any DLC Plant, provided that "DLC Inventories" shall not include Capital Spare Parts, Fuel Supplies, DLC SO2 Emission Allowances or DLC NOx Emission Allowances, and provided further that reference to "DLC Inventories" shall be limited to the extent of DLC's proportionate ownership interest therein.

(52) "DLC Intellectual Property" has the meaning set forth in Section 3.1(l).

(53) "DLC Material Adverse Effect" means any change in, or effect on, any DLC Plant, from or after the date hereof that is materially adverse to the operations or condition (financial or otherwise) of such DLC Plant, other than: (a) any change affecting the international, national, regional or local electric industry as a whole and not specific and exclusive to such DLC Plant; (b) any change or effect resulting from changes in the international, national, regional or local wholesale or retail markets for electric power; (c) any change or effect resulting from changes in the international, national, regional or local markets for any fuel used in connection with such DLC Plant; (d) any change or effect resulting from changes in the North American, national, regional or local electric transmission systems or operations thereof; (e) any materially adverse change in or effect on such DLC Plant which is cured (including by the payment of money) by DLC before the Termination Date; and (f) any order of any court or Governmental Authority applicable to the providers of generation, transmission or distribution of electricity generally that imposes restrictions, regulations or other requirements

thereon, including any order with respect to an independent system operator or retail access in Pennsylvania or Ohio.

(54) "DLC Nuclear Assets" has the meaning set forth in the Recitals.

(55) "DLC NOx Emission Allowances" means NOx Emission Allowances related to DLC's ownership share of any of the DLC Plants.

(56) "DLC Permits" means any permits, licenses, registrations, franchises and other authorizations, consents and approvals of Governmental Authorities (but in each case excluding DLC Environmental Permits) held by DLC with respect to the DLC Assets.

(57) "DLC Plants" means Sammis, Mansfield, and Eastlake.

(58) "DLC Real Property" has the meaning set forth in Section 3.1(a). Any reference to the DLC Real Property includes, by definition, DLC's right, title and interest in and to the surface and subsurface elements, including the soils and groundwater present at the DLC Real Property, and any reference to items "at the DLC Real Property" includes all items "at, on, in, upon, over, across, under and within" the DLC Real Property.

(59) "DLC Real Property Leases" has the meaning set forth in Section 6.5.

(60) "DLC Required Regulatory Approvals" means the Required Regulatory Approvals listed in Schedule 6.3(b).

(61) "DLC Representatives" means DLC's authorized representatives, including without limitation, its professional and financial advisors and, to the extent expressly designated by DLC, any Auction Participant and/or the Winning Bidder and their respective professional and financial advisors.

(62) "DLC SO2 Emission Allowances" means SO2 Emission Allowances related to DLC's ownership share of any of the DLC Plants.

(63) "DLC Tangible Personal Property" has the meaning set forth in Section 3.1(c).

(64) "DLC Transferable Permits" means those DLC Permits and DLC Environmental Permits with respect to the DLC Assets which may be transferred to an FE Subsidiary without a filing with, notice to, consent of or approval of any Governmental Authority, as set forth in Schedule 1.1(64).

(65) "DLC Transmission Assets" means all Transmission Assets of DLC or any of its Affiliates located on or forming a part of DLC Real

Property, but excluding any transmission assets that are to be transferred pursuant to the Electrical Facilities Agreement.

(66) "DQE" means DQE, Inc., a Pennsylvania corporation and the parent company of DLC.

(67) "Easements" means the easements and access rights to be granted by an applicable Winning Bidder to the corresponding FE Subsidiary pursuant to an FE Easement and Attachment Agreement, including, without limitation, easements authorizing access, use, maintenance, construction, repair, replacement and other activities with respect to the applicable FE Assets, as further described in such

FE Easement and Attachment Agreement.

(68) "Eastlake" means the electrical generation plant known as Eastlake Unit No. 5.

(69) "Eastlake Litigation" has the meaning set forth in Section 5.9.

(70) "Electrical Facilities Agreement" means that certain Electrical Facilities Agreement executed by DLC and the applicable FE Subsidiaries, substantially in the form of Exhibit J attached hereto.

(71) "Emission Reduction Credits" means credits, in units that are established by the Governmental Authority with jurisdiction over the relevant Plant that has obtained the credits, resulting from reductions in the emissions of air pollutants from an emitting source or facility (including, without limitation, and to the extent allowable under applicable law, reductions resulting from shutdowns or control of emissions beyond that required by applicable law) that: (a) have been identified by the PaDEP as complying with applicable Pennsylvania law governing the establishment of such credits (including, without limitation, that such emissions reductions are enforceable, permanent, quantifiable and surplus) and listed in the Emissions Reduction Credit Registry maintained by the PaDEP or with respect to which such identification and listing are pending; or (b) have been certified by any other applicable Governmental Authority as complying with the law and regulations governing the establishment of such credits (including, without limitation, certification that such emissions reductions are enforceable, permanent, quantifiable and surplus). The term includes Emission Reduction Credits that have been approved by the PaDEP and are awaiting USEPA approval. The term also includes certified air emissions reductions, as described above, regardless as to whether the Governmental Authority certifying such reductions designates such certified air emissions reductions by a name other than "emission reduction credits."

(72) "Encumbrances" means any mortgages, pledges, liens, security interests, conditional and installment sale agreements, activity and use limitations, conservation easements, deed restrictions, encumbrances and charges of any kind.

(73) "Environmental Claim" means any and all pending and/or threatened administrative or judicial actions, suits, orders, claims, liens, notices, notices of violations, investigations, complaints, requests for information, proceedings, or other written communication, whether criminal or civil, pursuant to or relating to any applicable Environmental Law or pursuant to a common law theory, by any Person (including, but not limited to, any Governmental Authority, private person and citizens' group) based upon, alleging, asserting or

claiming any actual or potential (a) violation of, or liability under, any Environmental Law, (b) violation of any Environmental Permit, or (c) liability for investigatory costs, cleanup costs, removal costs, remedial costs, response costs, natural resource damages, property damage, personal injury, fines, or penalties arising out of, based on, resulting from, or related to any Environmental Condition or any Release or threatened Release into the environment of any Regulated Substances at any location related to the Exchange Assets, including, but not limited to, any Off-Site Location to which Regulated Substances, or materials containing Regulated Substances, were sent for handling, storage, treatment, or disposal.

(74) "Environmental Condition" means the presence or Release of a Regulated Substance (other than a naturally-occurring substance) on or in environmental media, or structures on Real Property, at an Off-Site Location or other property (including the presence in surface water, groundwater, soils or subsurface strata, or air), including the subsequent migration of any such Regulated Substance, regardless of when such presence or Release occurred or is discovered.

(75) "Environmental Laws" means all federal, state, local, provincial, foreign and international civil and criminal laws, regulations, rules, ordinances, codes, decrees, judgments, directives, or judicial or administrative orders relating to pollution or protection of the environment, natural resources or human health and safety, including, without limitation, laws relating to Releases or threatened Releases of Regulated Substances (including, without limitation, Releases to ambient air, surface water, groundwater, land, surface and subsurface strata) or otherwise relating to the manufacture, processing, distribution, use, treatment, storage, Release, transport, disposal or handling of Regulated Substances. "Environmental Laws" include: (a) with respect to federal law, CERCLA, the Hazardous Materials Transportation Act (49 U.S.C. sections 1801 et seq.), the Resource Conservation and Recovery Act (42 U.S.C. sections 6901 et seq.), the Federal Water Pollution Control Act (33 U.S.C. sections 1251 et seq.), the Clean Air Act (42 U.S.C. sections 7401 et seq.), the Toxic Substances Control Act (15 U.S.C. sections 2601 et seq.), the Oil Pollution Act (33 U.S.C. sections 2701 et seq.), the Emergency Planning and Community Right-to-Know Act (42 U.S.C. sections 11001 et seq.), the Occupational Safety and Health Act (29 U.S.C. sections 651 et seq.), the Safe Drinking Water Act (42 U.S.C. section 300f et seq.), the Surface Mine Conservation and Reclamation Act (30 U.S.C. sections 1251-1279), and regulations adopted pursuant thereto,

and counterpart state and local laws, and regulations adopted pursuant thereto; (b) with respect to Pennsylvania law, the Pennsylvania Clean Streams Law (35 P.S. section 691.1 et seq.), the Pennsylvania Air Pollution Control Act (35 P.S. section 4001 et seq.), the Pennsylvania Solid Waste Management Act (35 P.S. section 6018.101 et seq.), the

Pennsylvania Storage Tank and Spill Prevention Act (35 P.S. section 6021.101 et seq.), the Pennsylvania Safe Drinking Water Act (35 P.S. section 721.1 et seq.), the Pennsylvania Sewage Facilities Act (35 P.S. section 750.1 et seq.), the Pennsylvania Hazardous Sites Cleanup Act (35 P.S. section 6020.101 et seq.), the Pennsylvania Land Recycling and Environmental Remediation Standards Act (35 P.S. section 6026.101 et seq.), the Pennsylvania Surface Mining Conservation and Reclamation Act (52 P.S. section 1396.1 et seq.), the Coal Refuse Disposal Control Act (52 P.S. section 30.51 et seq.), the Non-Coal Surface Mining and Reclamation Act, (52 P.S. section3301 et seq.), the Pennsylvania Worker and Community Right-to-Know Act, 35 P.S. section 7301 et seq.), the Pennsylvania Hazardous Material Emergency Planning and Response Act, 35 P.S. section 6022.101 et seq.), and regulations adopted pursuant thereto; and (c) with respect to Ohio law, the Ohio Rev. Code Ann. section 1501.30 et seq. (Diversion of Waters), Ohio Rev. Code Ann.section 1506.01 et seq. (Coastal Management); Ohio Rev. Code Ann. section 1509.01 et seq. (Oil and Gas), Ohio Rev. Code Ann. section 1513.01 et seq. (Coal Surface Mining), Ohio Rev. Code Ann. section 1520.01 et seq. (Canal Lands); Ohio Rev. Code Ann. section 3704.01 et seq. (Air Pollution Control), Ohio Rev. Code Ann. section 3710.01 et seq. (Asbestos Abatement), Ohio Rev. Code Ann. section 3714.01 et seq. (Construction and Demolition Debris), Ohio Rev. Code Ann. section 3734.01 et seq. (Solid and Hazardous Wastes), Ohio Rev. Code Ann. section 3737.87 et seq. (Petroleum Underground Storage Tanks), Ohio Rev. Code Ann. section 3742.01 et seq. (Lead Abatement and Testing), Ohio Rev. Code Ann. section 3746.01 et seq. (Voluntary Cleanup of Contamination Property), Ohio Rev. Code Ann. section 3747.01 et seq. (Low-Level Radioactive Waste), Ohio Rev. Code Ann. section 3748.01 et seq. (Radiation Control), Ohio Rev. Code Ann. section 3750.01 et seq. (Emergency Planning), Ohio Rev. Code Ann. section 3751.01 et seq. (Hazardous Substances), Ohio Rev. Code Ann. section 3752.01 et seq. (Cessation of Chemical Handling Operations), Ohio Rev. Code Ann. section 3767.01 et seq. (Nuisances), Ohio Rev. Code Ann. section 4913.01 et seq. (Public Utilities Commission-Acid Rain Control), Ohio Rev. Code Ann. section 6109.01 et seq. (Safe Drinking Water), Ohio Rev. Code Ann. section 6111.01 et seq. (Water Pollution Control), and regulations adopted pursuant thereto.

(76) "Environmental Permits" means the DLC Environmental Permits and the FE Environmental Permits.

(77) "ERISA" means the Employee Retirement Income Security Act of 1974, as amended.

(78) "ERISA Affiliate" means a trade or business, whether or not incorporated, that together with a Party would be deemed a "single employer" within the meaning of Section 4001(b) of ERISA.

(79) "Estimated Closing Payment" means the DLC Estimated Closing Payment or the FE Estimated Closing Payment, as appropriate.

(80) "Estimated Closing Statement" means the DLC Estimated Closing Statement or the FE Estimated Closing Statement, as appropriate.

(81) "Exchange Agreements" means this Agreement and the Nuclear Conveyance Agreement.

(82) "Exchange Assets" means the DLC Assets and the FE Assets.

(83) "Exchange Closing" has the meaning set forth in Section 5.1.

(84) "Exchange Closing Date" means the date on which the Exchange Closing occurs.

(85) "Excluded DLC Assets" has the meaning set forth in Section 3.2.

(86) "Excluded DLC Liabilities" has the meaning set forth in Section 3.4.

(87) "Excluded FE Assets" has the meaning set forth in Section 4.2.

(88) "Excluded FE Liabilities" has the meaning set forth in Section 4.4.

(89) "Excluded Liabilities" means the Excluded DLC Liabilities and the Excluded FE Liabilities.

(90) "Exempt Facilities" means those DLC facilities listed in Schedule 1.1 (90) and those FE Subsidiaries facilities listed in Schedule 1.1 (90), as the case may be.

(91) "Facilities Act" has the meaning set forth in Section 12.13.

(92) "FE" means FirstEnergy Corp., an Ohio corporation and the parent company of the FE Subsidiaries.

(93) "FE (Accrued Liability) Assignment and Assumption Agreements" means the FE (Accrued Liability) Assignment and Assumption Agreements between DLC and the applicable FE Subsidiary, substantially in the form of Exhibit F attached hereto.

(94) "FE Agreements" means any contracts, agreements, licenses and personal property leases entered into by an FE Subsidiary or an Affiliate thereof with respect to the ownership, operation or maintenance of the FE Assets, whether or not disclosed on Schedule 7.11(a), including, without limitation, the Local 140 CBA (to the

extent applicable to FE Transferred Union Employees as provided in Section 8.11 hereof) and the Local 270 CBA (to the extent applicable

to Local 270 Employees as provided in Section 8.11 hereof), but excluding the FE Real Property Leases and FE Intellectual Property.

(95) "FE Assets" has the meaning set forth in Section 4.1.

(96) "FE Assignment and Assumption Agreements" means the Assignment and Assumption Agreements between the applicable FE Subsidiary and DLC or, if DLC so directs, the corresponding Winning Bidder, substantially in the form of Exhibit G attached hereto.

(97) "FE Capital Expenditures" means capital additions to or replacements of property, plants and equipment included in the FE Assets and other expenditures or repairs on property, plants and equipment included in the FE Assets that would be capitalized by the FE Subsidiary making such expenditure in accordance with its normal accounting policies.

(98) "FE Closing Payments" has the meaning set forth in Section 5.2(c).

(99) "FE Connection Agreements" means the FE Connection Agreements to be entered into by each FE Subsidiary and DLC or, if DLC so directs, the corresponding Winning Bidder, with respect to Avon Lake, Niles or New Castle, as the case may be, substantially in the form of Exhibit E attached hereto.

(100) "FE Easement and Attachment Agreements" means the Easement, License and Attachment Agreements to be entered into by the applicable FE Subsidiary and DLC or, if DLC so directs, the corresponding Winning Bidder, with respect to the FE Assets to be acquired by DLC or such Winning Bidder, as the case may be, substantially in the form of Exhibit H attached hereto.

(101) "FE Emission Reduction Credits" means the Emission Reduction Credits relating to any of the FE Plants.

(102) "FE Environmental Permits" means the permits, registrations, certificates, certifications, licenses and authorizations, consents and approvals of Governmental Authorities required under Environmental Laws held by each FE Subsidiary with respect to its FE Assets.

(103) "FE Environmental Reports" has the meaning set forth in Section 7.6.

(104) "FE Estimated Closing Payment" has the meaning set forth in

Section 5.2(d).

(105) "FE Estimated Closing Statement" has the meaning set forth in Section 5.2(d).

(106) "FE Indemnifiable Losses" has the meaning set forth in Section 10.2.

(107) "FE Indemnitee" means FE Subsidiaries, their officers, directors, employees, shareholders, Affiliates and agents.

(108) "FE Intellectual Property" has the meaning set forth in Section 4.1(k).

(109) "FE Inventories" means materials, spare parts, consumable supplies and chemical inventories relating to the operation of any FE Plant, provided that "FE Inventories" shall not include Capital Spare Parts, Fuel Supplies, FE SO2 Emission Allowances or FE NOx Emission Allowances.

(110) "FE Material Adverse Effect" means any change in, or effect on any FE Plant, from or after the date hereof, that is materially adverse to the operations or condition (financial or otherwise) of such FE Plant, taken as a whole, other than: (a) any change affecting the international, national, regional or local electric industry as a whole and not specific and exclusive to such FE Plant; (b) any change or effect resulting from changes in the international, national, regional or local wholesale or retail markets for electric power; (c) any change or effect resulting from changes in the international, national, regional or local markets for any fuel used in connection with such FE Plant; (d) any change or effect resulting from changes in the North American, national, regional or local electric transmission systems or operations thereof; (e) any materially adverse change in or effect on such FE Plant which is cured (including by the payment of money) by the FE Subsidiaries before the Termination Date; and (f) any order of any court or Governmental Authority applicable to providers of generation, transmission or distribution of electricity generally that imposes restrictions, regulations or other requirements thereon, including any order with respect to an independent system operator or retail access in Pennsylvania or Ohio.

(111) "FE Must-Run Agreements" means the FE Must-Run Agreements to be entered into by each FE Subsidiary and DLC or, if DLC so directs, the corresponding Winning Bidder, with respect to Avon Lake, Niles or New Castle, as the case may be, substantially in the form of Exhibit R attached hereto.

(112) "FE NOx Emission Allowances" means NOx Emission Allowances related to any of the FE Plants.

(113) "FE Permits" means any permits, licenses, registrations, franchises and other authorizations, consents and approvals of Governmental Authorities (but in each case excluding FE Environmental Permits) held by the FE Subsidiaries with respect to the FE Assets.

(114) "FE Plans" means any Benefit Plan of any FE Subsidiary or any ERISA Affiliate thereof or to which any FE Subsidiary or any ERISA Affiliate thereof contributed thereunder, including any multi-employer plan.

(115) "FE Plants" means Avon Lake, New Castle and Niles.

(116) "FERC" means the Federal Energy Regulatory Commission or any successor agency thereto.

(117) "FE Real Property" has the meaning set forth in Section 4.1(a). Any reference to the FE Real Property includes, by definition, the right, title and interest of the applicable FE Subsidiary in and to the surface and subsurface elements, including the soils and groundwater present at the FE Real Property, and any reference to items "at the FE Real Property" includes all items "at, on, in, upon, over, across, under and within" the FE Real Property.

(118) "FE Real Property Leases" has the meaning set forth in Section 7.5.

(119) "FE Required Regulatory Approvals" means the Required Regulatory Approvals listed in Schedule 7.3(b).

(120) "FE Representatives" means an FE Subsidiary's authorized representatives, including without limitation, their professional and financial advisors.

(121) "FE Savings Plans" means any defined contribution pension plan maintained by an FE Subsidiary or any ERISA Affiliate thereof for the benefit of the FE Transferred Employees.

(122) "FE SO2 Emission Allowances" means SO2 Emission Allowances related to any of the FE Plants.

(123) "FE Subsidiaries" has the meaning set forth in the Recitals.

(124) "FE Subsidiaries SEC Reports" has the meaning set forth in Section 7.20.

(125) "FE Tangible Personal Property" has the meaning set forth in Section 4.1(c).

(126) "FE Transferable Permits" means those FE Permits and FE Environmental Permits with respect to the FE Assets which may be transferred to DLC or a Winning Bidder without a filing with, notice to, consent of or approval of any Governmental Authority, as set forth in Schedule 1.1(126).

(127) "FE Transferred Employee Records" means records related to an FE Subsidiary's employees who become employees of the applicable Winning Bidder but only to the extent such records pertain to (a) skill and development training and biographies, (b) seniority histories, (c) salary and benefit information, (d) Occupational, Safety and Health Administration reports, or (e) active medical restriction forms.

(128) "FE Transferred Employees" means FE Transferred Non-Union Employees and FE Transferred Union Employees.

(129) "FE Transferred Non-Union Employees" has the meaning set forth in Section 8.11(c).

(130) "FE Transferred Union Employees" has the meaning set forth in Section 8.11(b).

(131) "FE Transmission Assets" means the Transmission Assets of each FE Subsidiary or any of their Affiliates located on or forming a part of the FE Real Property.

(132) "Final Adjustment" has the meaning set forth in Section 5.2(f).

(133) "Final Order" means an action by the relevant Governmental Authority that has not been reversed, stayed, enjoined, set aside, annulled or suspended and/or with respect to which any waiting period prescribed by law before the transactions contemplated hereby may be consummated has expired.

(134) "FIRPTA Affidavit" means the Foreign Investment in Real Property Tax Act Certification and Affidavit to be executed by the applicable FE Subsidiary and DLC, substantially in the form of Exhibit I hereto.

(135) "Fuel Supplies" means the supplies of coal, fuel oil, natural gas or alternative fuels related to the operation of any Plant and located at or in transit to such Plant.

(136) "GAAP" means U.S. generally accepted accounting principles.

(137) "Generation Exchange" has the meaning set forth in Section

2.1.

(138) "Good Utility Practices" mean any practices, methods, standards, guides or acts, as applicable, that are:

(a) required by any Governmental Authority, regional or national reliability council, or national trade organization, including NERC, ECAR, Edison Electric Institute, or American Society of Mechanical Engineers, or the successor of any of them, whether or not the Party whose conduct is at issue is a member thereof;

(b) otherwise engaged in or approved by a significant portion of the electric utility industry during the relevant time period which in the exercise of reasonable judgment in light of the facts known or that should have been known at the time a decision was made, could have been expected to accomplish the desired result in a manner consistent with law, regulation, good business practices, generation, transmission, and distribution reliability, safety, environmental protection, economy, and expediency. Good Utility

Practice is intended to be acceptable practices, methods, or acts generally accepted in the region, and is not intended to be limited to the optimum practices, methods, or acts to the exclusion of all others; and

(c) reasonably necessary to maintain the reliability of the Plants.

(139) "Governmental Authority" means any foreign, federal, state, local or other governmental, regulatory or administrative agency, court, commission, department, board, or other governmental subdivision, legislature, rulemaking board, court, tribunal, arbitrating body or other governmental authority.

(140) "HSR Act" means the Hart-Scott-Rodino Antitrust Improvements Act of 1976, as amended.

(141) "Income Tax" means any federal, state, local or foreign Tax (a) based upon, measured by or calculated with respect to gross or net income, profits or receipts (including, without limitation, capital gains Taxes and minimum Taxes) or (b) based upon, measured by or calculated with respect to multiple bases (including, without limitation, corporate franchise taxes) if one or more of the bases on which such Tax may be based, measured by or calculated with respect to, is described in clause (a), in each case together with any interest, penalties, or additions to such Tax.

(142) "Indemnifiable Loss" means any claim, demand, suit, loss, liability, damage, obligation, payment, cost or expense (including,

without limitation, the cost and expense of any action, suit, proceeding, assessment, judgment, settlement or compromise relating thereto and reasonable attorneys' fees and reasonable disbursements in connection therewith).

(143) "Indemnifying Party" means a Party obligated to provide indemnification under this Agreement.

(144) "Indemnitee" means a Person entitled to receive indemnification under this Agreement.

(145) "Independent Accounting Firm" means such independent accounting firm of national reputation as is mutually appointed by the applicable FE Subsidiaries and DLC.

(146) "Information Memorandum" means the memorandum prepared by DLC and its advisors to be distributed to potential Auction Participants.

(147) "Inspection" means all tests, reviews, examinations, inspections, investigations, verifications, samplings and similar activities conducted by an Acquiring Party or its authorized representatives, including without limitation, its professional and

financial advisors, with respect to the Exchange Assets prior to the Exchange Closing.

(148) "Intellectual Property" means all patents and patent rights, trademarks and trademark rights, inventions, copyrights and copyright rights, and all pending applications for registrations of patents, trademarks, and copyrights, necessary for the operation and maintenance of the applicable Exchange Assets, as set forth as part of Schedule 3.1(1) or 4.1(k), as the case may be.

(149) "Inventories" means the DLC Inventories and the FE Inventories.

(150) "Knowledge" means the actual knowledge of the corporate officers or Plant managers of the specified Person charged with responsibility for the particular function as of the date of this Agreement, or, with respect to any certificate delivered pursuant to this Agreement, the date of delivery of the certificate.

(151) "Local 140 CBA" has the meaning set forth in Section 8.11(b).

(152) "Local 270 CBA" has the meaning set forth in Section 8.11(m).

(153) "Local 270 Employees" has the meaning set forth in Section 8.11(m).

(154) "Mansfield" means the electrical generation plants known as Bruce Mansfield Units Nos. 1, 2 & 3.

(155) "Material Adverse Effect" means an FE Material Adverse Effect or a DLC Material Adverse Effect, as applicable.

(156) "New Castle" means all generating units and related assets located at the generating station known as New Castle as more fully identified on Schedule 4.1(New Castle), attached hereto.

(157) "Niles" means all generating units and related assets located at the generating station known as Niles as more fully identified on Schedule 4.1(Niles), attached hereto.

(158) "Non-Qualifying Offer" means an offer to FE Transferred Non-Union Employees that is either less than 100% of such employee's current total annual cash compensation at the time the offer was made (consisting of base salary and target incentive bonus) or requires, as a condition of acceptance, a relocation of residence as described in Section 8.11(f)(iii).

(159) "Non-Union Employees" has the meaning set forth in Section 8.11(c).

(160) "NOx Budget Program" means Nitrous Oxides Budget Program, which is a statutory or regulatory program promulgated by the United

States or a state pursuant to which the United States or state provides for a limit on the nitrous oxides that can be emitted by all sources covered by the program and establishes allowances or authorizations, which in total are equal to the amount of nitrous oxides allowed by the limit, where each allowance or authorization represents a "right" to emit a unit of nitrous oxides, as the means for ensuring compliance with the limit.

(161) "NOx Emission Allowance" means (a) an authorization by the PaDEP under its NOx Budget Program authorizing the emission of one ton of nitrous oxides during the ozone season, as such season is defined by the PaDEP; (b) an authorization by the OEPA under any future NOx Budget Program authorizing the emission of one ton of nitrous oxides during the ozone season, as such season is defined by the OEPA; or (c) an authorization by USEPA under any future NOx Budget program promulgated by the USEPA, including, but not limited to, any future program implemented in lieu of a state NOx Budget Program, authorizing the emission of one ton of nitrous oxides during the ozone season, as such season is defined by the USEPA.

(162) "Nuclear Conveyance Agreement" has the meaning set forth in the Recitals.

(163) "OEPA" means the Ohio Environmental Protection Agency and any successor agency thereto.

(164) "OEC" means Ohio Edison Company, a subsidiary of FE and an Ohio corporation.

(165) "Off-Site Location" means any real property other than the Real Property.

(166) "PaDEP" means the Pennsylvania Department of Environmental Protection and any successor agency thereto.

(167) "PaPUC" means the Pennsylvania Public Utility Commission and any successor agency thereto.

(168) "Party" has the meaning set forth in the Recitals.

(169) "Permits" means with respect to the Exchange Assets, any permits, licenses, registrations, franchises and other authorizations, consents and approvals of Governmental Authorities (but in each case excluding Environmental Permits) held by DLC or any FE Subsidiary, as applicable.

(170) "Permitted Encumbrances (DLC Assets)" means the permitted liens and encumbrances as set forth in Schedule 1.1(170).

(171) "Permitted Encumbrances (FE Assets)" means with respect to the FE Assets: (a) the Easements; (b) those exceptions to title listed

in Schedule 7.9; (c) statutory liens for Taxes or other governmental charges or assessments not yet due or delinquent or the validity of which is being contested in good faith by appropriate proceedings provided that the aggregate amount being so contested does not exceed $100,000; (d) mechanics', carriers', workers', repairers' and other similar liens arising or incurred in the ordinary course of business relating to obligations as to which there is no default on the part of the applicable FE Subsidiary or the validity of which are being contested in good faith, and which do not, individually or in the aggregate, exceed $100,000; (e) zoning, entitlement, conservation restriction and other land use and environmental regulations by Governmental Authorities; and (f) other liens, imperfections in or failure of title, charges, easements, restrictions and Encumbrances which do not materially, individually or in the aggregate, detract from the value of the FE Assets as currently used or materially interfere with the present use of the FE Assets and neither secure

indebtedness, nor individually or in the aggregate create an FE Material Adverse Effect.

(172) "Person" means any individual, partnership, limited liability company, joint venture, corporation, trust, unincorporated organization or governmental entity or any department or agency thereof.

(173) "Plant" means, with respect to the DLC Assets, any of the DLC Plants, and with respect to the FE Assets, any of the FE Plants.

(174) "PPC" means Pennsylvania Power Company, a subsidiary of OEC and a Pennsylvania corporation.

(175) "Proposed DLC Final Adjustment" has the meaning set forth in Section 5.2(e).

(176) "Proposed FE Final Adjustment" has the meaning set forth in Section 5.2(e).

(177) "Proposed Final Adjustment" means the Proposed DLC Final Adjustment or the Proposed FE Final Adjustment, as appropriate.

(178) "Proprietary Information" of a Party means all information about the Party or its Affiliates, including their respective properties or operations, furnished to the other Party or its Representatives by the Party or its Representatives, after the date hereof, regardless of the manner or medium in which it is furnished and all analyses, reports, tests or other information created or prepared by, or on behalf of, a Party during the performance of "Phase I" or "Phase II" environmental site assessments. Proprietary Information does not include information that: (a) is or becomes generally available to the public, other than as a result of a disclosure by the other Party or its Representatives; (b) was available to the other Party on a nonconfidential basis prior to its disclosure by the Party or its Representatives; (c) becomes available to the other Party on a nonconfidential basis from a person, other than the Party or its Representatives, who is not otherwise bound by a confidentiality agreement with the Party or its Representatives, or is not otherwise under any obligation to the Party or any of its

Representatives not to transmit the information to the other Party or its Representatives; or (d) is independently developed by the other Party.

(179) "PUCO" means the Public Utilities Commission of the State of Ohio and any successor agency thereto.

(180) "Qualifying Offer" means an offer to an FE Transferred

Non-Union Employee of the same or similar job that is at least 100% of such employee's current total annual cash compensation at the time the offer was made (consisting of base salary and target incentive bonus) and does not require, as a condition of acceptance, a relocation of residence as described in Section 8.11(f)(iii).

(181) "Real Property" means the DLC Real Property or the FE Real Property, as applicable.

(182) "Real Property Leases" means DLC Real Property Leases and FE Real Property Leases, as applicable.

(183) "Regulated Substances" means (a) any petrochemical or petroleum products, oil or coal ash, radioactive materials, radon gas, asbestos in any form that is or could become friable, urea formaldehyde foam insulation and dielectric fluid containing polychlorinated biphenyls; (b) any chemicals, materials or substances defined as or included in the definition of "hazardous substances," "hazardous wastes," "hazardous materials," "hazardous constituents," "restricted hazardous materials," "extremely hazardous substances," "toxic substances," "contaminants," "pollutants," "toxic pollutants" or words of similar meaning and regulatory effect under any applicable Environmental Law; and (c) any other chemical, material or substance, exposure to which or whose discharge, emission, disposal or Release is prohibited, limited or regulated by any applicable Environmental Law.

(184) "Regulatory Material Adverse Effect" shall occur where a Final Order with respect to Required Regulatory Approvals contains terms and conditions that are materially adverse to the financial condition, prospects, properties, operations or results of operations of the affected Party, taken as a whole including all Subsidiaries and Affiliates, to which the terms and conditions of such Final Order apply; provided that, in addition to the foregoing, any such Final Order shall be deemed to constitute a Regulatory Material Adverse Effect (a) as to FE Subsidiaries or their Affiliates, if it prohibits such FE Subsidiaries or Affiliates from transferring their transmission assets to American Transmission Systems, Inc. (or its successor and assigns), is inconsistent with the FERC's determination in Ohio Edison Co. et al., 81 FERC P. 61,110 (1997) that "we expect FirstEnergy to participate in the Midwest ISO or another appropriate ISO," or requires the FE Subsidiaries or their Affiliates to divest generating plants other than Avon Lake, Newcastle or Niles, and (b) as to DLC, if it disallows from recovery in rates a material portion of the expenses related to the Generation Exchange.

(185) "Release" means release, spill, leak, discharge, dispose of, pump, pour, emit, empty, inject, leach, dump or allow to escape into or through the environment.

(186) "Remediation" means any action taken in the investigation, removal, confinement, cleanup, treatment, or monitoring of an Environmental Condition on Real Property or Off-Site Location, including, without limitation, (a) obtaining any Permits or Environmental Permits required for such remedial activities, and (b) implementation of any engineering controls and institutional controls. The term "Remediation" includes, without limitation, any action which constitutes "removal action" or "remedial action" as defined by Section 101 of CERCLA, 42 U.S.C. section 6901(23) and (24); any action which constitutes a "response" as defined by Section 102 of the Pennsylvania Hazardous Sites Cleanup Act, 35 P.S. section 6020.103; or any action which constitutes a "remedy" or "remedial activities" as defined by Ohio Rev. Code Ann. section 3746.01(N).

(187) "Representatives" means the DLC Representatives and the FE Representatives, as applicable.

(188) "Required Regulatory Approvals" means with respect to a Party, any consent or approval of, filing with, or notice to, any Governmental Authority that is necessary for the execution and delivery of this Agreement by such Party or the consummation of the transactions contemplated hereby, other than such consents, approvals, filings or notices which are not required in the ordinary course to be obtained prior to the Exchange Closing and the transfer of the Exchange Assets or which, if not obtained or made, will not prevent such Party from performing its material obligations hereunder.

(189) "Revenue Bonds" has the meaning set forth in Section 8.16(a).

(190) "Sammis" means the electrical generation plant known as W.H. Sammis Unit No. 7.

(191) "SEC" means the Securities and Exchange Commission and any successor agency thereto.

(192) "Settlement Agreement" means the settlement agreement pertaining to the East Lake Litigation substantially in the form of Exhibit K attached hereto.

(193) "SO2 Emission Allowance" means an authorization by the Administrator of the USEPA under the Clean Air Act, 42 U.S.C. section 7401, et seq., to emit one ton of sulfur dioxide during or after a specified calendar year.

(194) "Subsidiary" when used in reference to any Person means any entity of which outstanding securities, having ordinary voting power

to elect a majority of the Board of Directors or other Persons performing similar functions of such entity are owned directly or indirectly by such Person.

(195) "Support Agreement" means that certain Support Agreement to be executed by FE and DLC providing, among other things, that FE will provide a financial commitment to ensure that the net proceeds of the Auction will be sufficient, at a minimum, to maintain or reduce the level of stranded cost recovery approved by the PaPUC in its May 29, 1998 restructuring order.

(196) "Taxes" means all taxes, charges, fees, levies, penalties or other assessments imposed by any federal, state, local or foreign taxing authority, including, but not limited to, income, excise, property, sales, transfer, franchise, payroll, withholding, social security, gross receipts, license, stamp, occupation, employment or other taxes, including any interest, penalties or additions attributable thereto.

(197) "Tax Return" means any return, report, information return, declaration, claim for refund or other document (including any schedule or related or supporting information) required to be supplied to any taxing authority with respect to Taxes including amendments thereto.

(198) "TEC" means The Toledo Edison Company, a subsidiary of FE and an Ohio corporation.

(199) "Termination Benefits" has the meaning set forth in Section 8.11(g).

(200) "Termination Date" has the meaning set forth in Section 11.1(b).

(201) "Third Party Claim" means any claim, action, or proceeding made or brought by any Person who is not (a) a Party to this Agreement, (b) an Affiliate of a Party to this Agreement, or (c) a Winning Bidder or one of its Affiliates.

(202) "Transfer Taxes" means any real property transfer or gains tax, sales tax, conveyance fee, use tax, stamp tax, stock transfer tax or other similar tax, including any related penalties, interest and additions to tax.

(203) "Transferable Permit" means a DLC Transferable Permit or an FE Transferable Permit, as the case may be.

(204) "Transmission Assets" means with respect to a Plant, the electrical transmission and distribution facilities (as opposed to generation facilities) located on Real Property or forming part of such Plant (whether or not regarded as a "transmission" or

"generation" asset for regulatory or accounting purposes), including all switchyard facilities, step-up transformers, substation facilities and support equipment, as well as all permits, contracts and warranties, to the extent they relate to such transmission and distribution assets.

(205) "Union Employees" has the meaning set forth in Section 8.11(b).

(206) "USEPA" means the United States Environmental Protection Agency and any successor agency thereto.

(207) "UWUA" means Utility Workers Union of America.

(208) "WARN Act" means the Federal Worker Adjustment Retraining and Notification Act of 1988, as amended.

(209) "Warranty Deed" means a special warranty deed or limited warranty deed, as applicable, substantially in the form of Exhibit L attached hereto (with respect to FE Real Property) or Exhibit M attached hereto (with respect to DLC Real Property).

(210) "Winning Bidder" means the party or parties that enter into an Auction Agreement. If there is more than one Winning Bidder, the rights and obligations of each Winning Bidder described herein shall relate to the FE Plant(s) to be acquired by that Winning Bidder and each such Winning Bidder shall enter into an Auction Agreement with the corresponding FE Subsidiary (for the purpose of such FE Subsidiary making certain representations, warranties, covenants, indemnifications, assignments and deliveries under such Auction Agreement). For any provision which refers to or requires action by the Winning Bidder, DLC may elect to perform as if it were the Winning Bidder. If there shall be no Winning Bidder for any portion of the FE Assets then, for the purposes of this Agreement, DLC shall be the Winning Bidder with respect to such portion of the FE Assets.

(211) "Winning Bidder Indemnitee" has the meaning set forth in Section 10.1(f).

(212) "Year 2000 Compliant" means with respect to any Party, that the Computer Systems of such Party will correctly differentiate between years, in different centuries, that end in the same two (2) digits, and will accurately process date/time data (including, but not limited to, calculating, comparing and sequencing) from, into, and between the twentieth and twenty-first centuries, including leap year calculations. "Year 2000 Compliance" has a meaning correlative to the foregoing.

1.2 Certain Interpretive Matters. In this Agreement, unless the

context otherwise requires, the singular shall include the plural, the masculine shall include the feminine and neuter, and vice versa. The term "includes" or "including" shall mean "including without limitation." In addition, (i) references to a Section, Article, Exhibit or Schedule shall mean a Section, Article, Exhibit or Schedule of this Agreement; (ii) reference to a given agreement or instrument shall be a reference to that agreement or instrument as modified, amended, supplemented or restated through the date as of which such reference is made; (iii) references to any Person shall include its permitted successors and assigns and, in the case of any Governmental Authority, any Person succeeding to its functions and capacities; and (iv) references to laws,

rules and regulations shall include such laws, rules and regulations as they may from time to time be amended, modified or supplemented.

1.3 CAPCO Agreements to Govern. The Parties agree that, unless this Agreement expressly provides otherwise, the Parties' ownership, operation and maintenance of each Plant shall be governed by the CAPCO Agreements up to the Exchange Closing Date in respect of such Plant. Unless otherwise restricted under this Agreement, the CAPCO Agreements will govern and control the Parties' ownership, operation and maintenance of each Plant prior to the Exchange Closing Date in respect of such Plant.

1.4 DLC's Interest in Assets. The Parties acknowledge that DLC has a thirty-one and two-tenths percent (31.2%) undivided interest in Sammis and the DLC Assets related thereto, a thirty-one and two tenths percent (31.2%) undivided interest in Eastlake and the DLC Assets related thereto, a twenty-nine and three-tenths percent (29.3%) undivided interest in Mansfield Unit No. 1 and the DLC Assets related thereto, a twenty-eight and sixth-tenths percent (28.6%) undivided interest in Mansfield Unit No. 2 and the DLC Assets related thereto, and a thirteen and seventy-four hundredths percent (13.74%) undivided interest in Mansfield Unit No. 3 and the DLC Assets related thereto. All references in this Agreement to DLC's right, title and interest in such Plants and assets, and rights, liabilities and obligations in connection therewith, shall be construed in this context.

ARTICLE II

EXCHANGE OF ASSETS

2.1 Transfer of FE Assets and Assumed FE Liabilities.

(a) The Parties agree that DLC is to acquire beneficial ownership of the FE Assets from the FE Subsidiaries as provided in Section 3.1 at the Exchange Closing, and that DLC will include the FE Assets in the Auction and intends to convey such beneficial ownership to the Winning Bidders in the Auction pursuant to the Auction Agreements. The FE Subsidiaries agree to cooperate with DLC with respect to the disposition by DLC of its beneficial ownership of the FE Assets in the Auction on the terms and conditions contained

in this Agreement, and to transfer title in and to deliver the FE Assets directly to the Winning Bidders and to assign to the Winning Bidders the FE Assumed Liabilities associated with the FE Assets (other than Accrued Liabilities), each at the direction of DLC as provided in clause (b) of this Section 2.1.

(b) In the event that the Exchange Closing and the Auction Closing are scheduled to occur on the same day, DLC may, at its option, by notice in writing to the applicable FE Subsidiaries, as designated in Schedule 3.1, not less than fifteen (15) days before the Exchange Closing, direct each applicable FE Subsidiary, at the Auction Closing, acting on DLC's behalf (as the new owner of the FE Assets pursuant to this Agreement):

(i) to execute and deliver Bill(s) of Sale with respect to the transfer of the FE Tangible Personal Property with respect

to the FE Assets of such FE Subsidiary and the Warranty Deed(s) with respect to the FE Real Property relating to the FE Assets of such FE Subsidiary and, to the extent applicable, to record title to such FE Real Property in the name of the applicable Winning Bidder,

(ii) to execute and deliver the FE Assignment and Assumption Agreement pursuant to which the applicable Winning Bidder, shall assume the Assumed FE Liabilities directly from such FE Subsidiary, provided that any Assumed FE Liabilities that are Accrued FE Liabilities (as defined below) shall not be assigned to the applicable Winning Bidder, but shall instead be assigned to DLC pursuant to an FE (Accrued Liability) Assignment and Assumption Agreement, as specified by Section 4.3, and

(iii) to provide directly to the applicable Winning Bidder, all other affidavits, instruments, documents, certificates, consents and agreements, as specified by Section 5.6(a);

provided, however, that in the event that the Exchange Closing and the Auction Closing do not occur on the same day, notwithstanding any direction by DLC to the contrary pursuant to this Section 2.1(b) or otherwise, the applicable FE Subsidiaries shall make the foregoing deliveries directly to DLC rather than to the applicable Winning Bidder as may otherwise be contemplated herein.

2.2 Auction Agreement.

(a) Each of the FE Subsidiaries agrees that certain representations, warranties, covenants, indemnifications, assignments and deliveries they are making to DLC in this Agreement in respect of its FE Assets shall run to the benefit of the Winning Bidders that will acquire such FE Assets from DLC in the Auction, but only to the extent such representations, warranties, covenants, indemnifications, assignments and deliveries relate to such FE Assets, and each of the FE Subsidiaries agrees to be a party to the Auction Agreement with each Winning Bidder that is acquiring FE Assets of such

FE Subsidiary solely for the purpose of making such representations, warranties, covenants, indemnifications, assignments and deliveries to such Winning Bidder insofar as they relate to the FE Assets being acquired by such Winning Bidder.

(b) No FE Subsidiary shall have any rights with respect to any consideration paid to DLC by the Winning Bidder for the FE Assets under any Auction Agreement, and in particular shall not have any right to receive, pledge, borrow, or otherwise obtain the benefit of any money or other property received by DLC from any Winning Bidder.

(c) DLC shall be liable to an FE Subsidiary for the obligations of the Winning Bidder that acquires its FE Assets if such Winning Bidder does not have either (i) a credit rating for its senior secured debt as assigned by Moody's Investors Service that is equal to or greater than that of the other parties that acquire the DLC Plants offered for sale in the Auction, but in no case less than that of the party that acquires the DLC Plant known as the Elrama Station, or (ii) a credit rating for its senior secured debt as assigned by Moody's Investors Service of at least Baa3.

ARTICLE III

TRANSFER OF DLC ASSETS

3.1 Transfer of DLC Assets. Upon the terms and subject to the satisfaction of the conditions contained in this Agreement, at the Exchange Closing, DLC will assign, convey, transfer and deliver to the FE Subsidiaries, as designated in Schedule 3.1, and each such FE Subsidiary will assume and acquire from DLC, free and clear of all Encumbrances (except for Permitted Encumbrances (DLC Assets)), as applicable in the case of each such FE Subsidiary, all of DLC's right, title and interest in and to all of the assets (except for Excluded DLC Assets) constituting, or used in and necessary to generate electricity from, the DLC Plants and DLC's undivided percentage ownership interest in those assets described below, each as in existence on the Exchange Closing Date (collectively, "DLC Assets"):

(a) Those certain parcels of real property owned by DLC relating to the DLC Plants together with all buildings, facilities and other improvements thereon and all appurtenances thereto, as described in Schedule 6.7 (the "DLC Real Property");

(b) All DLC Inventories, all Capital Spare Parts of DLC and, subject to Section 3.2(h), DLC SO2 Emission Allowances and DLC NOx Emission Allowances with a vintage year occurring during or after the year during which the Exchange Closing occurs;

(c) All machinery (mobile or otherwise), equipment (including communications equipment), vehicles, tools, furniture and furnishings and other personal property related to the DLC Assets, owned by DLC and located on the DLC Real Property on the Exchange Closing Date, including, without limitation, items

of personal property jointly owned by DLC and an FE Subsidiary included in Schedule 3.1(c) together with all the personal property of DLC used principally in the operation of the DLC Plants that are in the possession of DLC and whether or not located on the DLC Real Property, as listed in such Schedule 3.1(c), (other than property used or primarily usable as part of the DLC Transmission Assets) (collectively, "DLC Tangible Personal Property");

(d) Subject to the provisions of Section 8.6(c), all DLC Agreements;

(e) Subject to the provisions of Section 8.6(c), all DLC Real Property Leases;

(f) All DLC Transferable Permits;

(g) All books, operating records, operating, safety and maintenance manuals, engineering design plans, documents, blueprints and as-built plans, specifications, procedures and similar items of DLC relating specifically to the DLC Assets and necessary for the operation of the DLC Plants, in the possession of DLC (subject to the right of DLC to retain copies of the same for its use), other than such items which are proprietary to third parties and accounting records;

(h) All DLC Emission Reduction Credits that accrue on or after, the date of this Agreement but prior to the Exchange Closing Date;

(i) All unexpired, transferable warranties and guarantees from third parties with respect to the DLC Assets and listed in Schedule 3.1(i):

(j) The names of the DLC Plants. It is expressly understood that DLC is not assigning or transferring to any FE Subsidiary any right to use the name "Duquesne," "Duquesne Light Company," "DQE," "DQE, Inc.," or other trade names, trademarks, service marks, corporate names and logos or any part, derivative or combination thereof;

(k) All drafts, memoranda, reports, information, technology, and specifications relating to DLC's plans for Year 2000 Compliance with respect to the DLC Plants; and

(l) The Intellectual Property as described on Schedule 3.1(l) (the "DLC Intellectual Property").

3.2 Excluded DLC Assets. Notwithstanding anything to the contrary in this Agreement, nothing in this Agreement will constitute a transfer to any FE Subsidiary of, or be construed as conferring on any FE Subsidiary, and no FE Subsidiary is acquiring, any right, title or interest in or to the following specific assets which are associated with the DLC Assets, but which are hereby specifically excluded from the transfer to any FE Subsidiary and the definition of DLC Assets herein (collectively, the "Excluded DLC Assets"):

(a) The DLC Transmission Assets, including those certain assets, facilities, agreements and other property used or primarily usable as part of the DLC Transmission Assets;

(b) Certificates of deposit, shares of stock, securities, bonds, debentures, evidences of indebtedness, and interests in joint ventures, partnerships, limited liability companies and other entities;

(c) All cash, cash equivalents, bank deposits, accounts and notes receivable (trade or otherwise), and any income, sales, payroll or other tax receivables;

(d) The rights of DLC and its Affiliates to the names "Duquesne," "Duquesne Light Company," "DQE," "DQE, Inc.," or other trade names, trademarks, service marks, corporate names or logos or any part, derivative or combination thereof;

(e) All tariffs, agreements and arrangements to which DLC is a party for the purchase or sale of electric capacity and/or energy or for the purchase of transmission or ancillary services;

(f) Except as provided in Section 3.7, or in the case of causes of action against third parties (including indemnification and contribution) relating to an Environmental Condition or Regulated Substance or arising under Environmental Laws, the rights of DLC in and to any causes of action against third parties (including indemnification and contribution) relating to any DLC Real Property or DLC Tangible Personal Property, DLC Permits, DLC Environmental Permits, Taxes, DLC Real Property Leases or DLC Agreements, if any, and not relating to the Assumed DLC Liabilities, including any claims for refunds, prepayments, offsets, recoupment, insurance proceeds, condemnation awards,

judgments and the like, whether received as payment or credit against future liabilities, relating specifically to the DLC Plants or the DLC Real Property and relating to any period prior to the Exchange Closing Date;

(g) Any and all of DLC's rights and interests in any contract that is not a DLC Agreement or that is an intercompany transaction between DLC and an Affiliate of DLC, whether or not such intercompany transaction relates to the provision of goods and services, payment arrangements, intercompany charges or balances, or the like;

(h)

(i) (A) All DLC SO2 Emission Allowances with a vintage year occurring prior to the year of the Exchange Closing and (B) any excess DLC SO2 Emission Allowances resulting from DLC's ownership of the DLC Plants during the year of the Exchange Closing, which shall be calculated by summing the SO2 Emission Allowances allocated to the DLC

Plants by the USEPA for such year, multiplied by the quotient of the number of days of DLC ownership of the DLC Plants divided by 365, subtracting the actual tons of sulfur dioxide emitted by the DLC Plants during such portion of such year, and multiplying the result by DLC's ownership share in such DLC Plants. If the results of such calculation is zero or less than zero the amount of the excess DLC SO2 Emission Allowances shall equal zero.

(ii) Any excess DLC NOx Emission Allowances resulting from DLC's ownership of the DLC Plants located in Pennsylvania during the year of the Exchange Closing, which shall be calculated by summing the NOx Emission Allowances allocated to such DLC Plants by the PaDEP for such year, multiplied by the quotient of the number of days of DLC ownership of such DLC Plants during the ozone season (as defined by PaDEP in its NOx Budget Program), divided by the number of days in said ozone season, subtracting the actual tons of nitrous oxides emitted by such DLC Plants during such portion of such ozone season and multiplying the result by DLC's ownership share in such DLC Plants. If the result of such calculation is zero or less then zero, the amount of the excess DLC NOx Emission Allowances shall equal zero; and

(i) Any DLC Nuclear Assets.

3.3 Assumed DLC Liabilities. On the Exchange Closing Date, each FE Subsidiary, as designated by FE in Schedule 3.1, shall deliver to DLC a DLC Assignment and Assumption Agreement pursuant to which such FE Subsidiary shall assume and agree to discharge when due, without recourse to DLC, all of the following liabilities and obligations of DLC, direct or indirect, known or unknown, absolute or contingent, which relate to, or arise by virtue of DLC's ownership of, the applicable DLC Assets (other than Excluded DLC Liabilities), in accordance with the respective terms and subject to the respective conditions thereof (collectively, "Assumed DLC Liabilities"):

(a) All liabilities and obligations of DLC arising on or after the Exchange Closing Date under the DLC Agreements, the DLC Real Property Leases and the DLC Transferable Permits in accordance with the terms thereof,

including, without limitation, the DLC Agreements entered into by DLC (i) prior to the date hereof and (ii) after the date hereof consistent with the terms of this Agreement, except in each case to the extent such liabilities and obligations, but for a breach or default by DLC, would have been paid, performed or otherwise discharged on or prior to the Exchange Closing Date or to the extent the same arise out of any such breach or default or out of any event which after the giving of notice or passage of time or both would constitute a default by DLC;

(b) All liabilities and obligations associated with the DLC Assets in respect of Taxes for which such FE Subsidiary is liable pursuant to

Sections 5.4 and 8.9(b) hereof;

(c) All liabilities, responsibilities and obligations arising under Environmental Laws or relating to Environmental Conditions or Regulated Substances (including common law liabilities relating to Environmental Conditions and Regulated Substances), whether such liability, responsibility or obligation is known or unknown, contingent or accrued, as of the Exchange Closing Date, including, but not limited to: (i) costs of compliance (including capital, operating and other costs) relating to any violation or alleged violation of Environmental Laws occurring prior to, on or after the Exchange Closing Date, with respect to the ownership or operation of the DLC Assets; (ii) property damage or natural resource damage (whether such damages were manifested before or after the Exchange Closing Date) arising from Environmental Conditions or Releases of Regulated Substances at, on, in, under, adjacent to, or migrating from any DLC Assets prior to, on, or after the Exchange Closing Date; (iii) any Remediation (whether or not such Remediation commenced before the Exchange Closing Date or commences after the Exchange Closing Date) of Environmental Conditions or Regulated Substances that are present or have been Released prior to, on or after the Exchange Closing Date, at, on, in, adjacent to or migrating from the DLC Assets; (iv) any violations or alleged violations of Environmental Laws occurring on or after the Exchange Closing Date with respect to the ownership or operation of any DLC Assets; (v) any bodily injury or loss of life arising from Environmental Conditions or Releases of Regulated Substances at, on, in, under, adjacent to or migrating from any DLC Assets on or after the Exchange Closing Date; (vi) any bodily injury, loss of life, property damage, or natural resource damage arising from the storage, transportation, treatment, disposal, discharge, recycling or Release, at any Off-Site Location, or arising from the arrangement for such activities, on or after the Exchange Closing Date, of Regulated Substances generated in connection with the ownership or operation of the DLC Assets; and (vii) any Remediation of any Environmental Condition or Release of Regulated Substances arising from the storage, transportation, treatment, disposal, discharge, recycling or Release, at any Off-Site Location, or arising from the arrangement for such activities, on or after the Exchange Closing Date, of Regulated Substances generated in connection with the ownership or operation of the DLC Assets; provided, that nothing set forth in this Section 3.3(c) shall require any FE Subsidiary to assume any liabilities, responsibilities or obligations that are expressly excluded in Section 3.4;

(d) All liabilities and obligations of DLC with respect to the DLC Assets under the agreements or consent orders set forth on Schedule 3.3(d) arising on or after the Exchange Closing;

(e) Any Tax that may be imposed by any federal, state or local government on the ownership, sale (except as otherwise provided in Section 8.9(a)), operation or use of the DLC Assets on or after the Exchange Closing Date, except for any Income Taxes attributable to income received by DLC; and

(f) All of DLC's rights (except as provided under the CAPCO Settlement Agreement) and obligations under all CAPCO Agreements, except to the

extent otherwise specifically provided in the applicable DLC Assignment and Assumption Agreement.

3.4 Excluded DLC Liabilities. Notwithstanding anything to the contrary in this Agreement, no FE Subsidiary shall assume or be obligated to pay, perform or otherwise discharge the following liabilities or obligations of DLC, provided that, with respect to liabilities and obligations under one or more of the CAPCO Agreements, DLC retains such liabilities and obligations only to the extent such liabilities and obligations are imposed currently on DLC under such CAPCO Agreements, (collectively, the "Excluded DLC Liabilities"):

(a) Any liabilities or obligations of DLC in respect of any Excluded DLC Assets or other assets of DLC that are not DLC Assets;

(b) Any liabilities or obligations with respect to Taxes attributable to DLC's ownership, operation or use of DLC Assets for taxable periods, or portions thereof, ending before the Exchange Closing Date, except for Taxes for which any FE Subsidiary is liable pursuant to Section 5.4 hereof;

(c) Any liabilities or obligations of DLC accruing under DLC Agreements prior to the Exchange Closing Date;

(d) Any and all asserted or unasserted liabilities or obligations to third parties (including employees) for personal injury or tort, or similar causes of action arising during or attributable to the period prior to the Exchange Closing Date, other than liabilities or obligations assumed by such FE Subsidiary under Section 3.3(c);

(e) Any fines, penalties and associated costs for defending related enforcement actions resulting from any violation or alleged violation of Environmental Laws with respect to the ownership or operation of the DLC Assets occurring prior to the Exchange Closing Date;

(f) Any payment obligations of DLC pursuant to the DLC Agreements for goods delivered or services rendered prior to the Exchange Closing Date, including, but not limited to, rental payments pursuant to the DLC Real Property Leases;

(g) Any liabilities, responsibilities and obligations of DLC arising under Environmental Laws or relating to Environmental Conditions or Regulated Substances (including common law liabilities relating to Environmental Conditions and Regulated Substances), whether such liability, responsibility or obligation was known or unknown, contingent or accrued, which relates to (i) any bodily injury, loss of life, property damage or natural resource damage arising from the storage, transportation, treatment, disposal, discharge, recycling or Release of Regulated Substances generated in connection with the ownership or operation of the DLC Assets at any Off-Site Location, or arising from the arrangement for such activities, prior to the Exchange Closing Date; or (ii) any Remediation of any Environmental Condition or Regulated Substance at any Off-Site Location, arising from the storage, transportation, treatment, disposal, discharge, recycling or Release of Regulated Substances generated in

connection with the ownership or operation of the DLC Assets at such Off-Site

Location, or arising from the arrangement for such activities, prior to the Exchange Closing Date; provided, that for purposes of this paragraph, "Off-Site Location" does not include any location to which Regulated Substances disposed of or Released at the DLC Assets have migrated;

(h) Any liability to third parties (including employees) for bodily injury or loss of life, to the extent caused (or allegedly caused) by Environmental Conditions or the Release of Regulated Substances at, on, in, under, or adjacent to, or migrating from, the DLC Assets prior to the Exchange Closing Date; and

(i) Any liability of DLC arising out of a breach by DLC or any of its Affiliates of any of their respective obligations under this Agreement or the Ancillary Agreements.

3.5 Control of Litigation. The Parties agree and acknowledge that DLC shall be entitled exclusively to control, defend and settle any litigation, administrative or regulatory proceeding, and any investigation or Remediation activity (including without limitation any environmental mitigation or Remediation activities), arising out of or related to any Excluded DLC Liabilities, and the FE Subsidiaries agree to cooperate fully in connection therewith.

3.6 Fuel Supplies. At the Exchange Closing, DLC will sell, assign, convey and transfer to each applicable FE Subsidiary its right, title and interest in and to the Fuel Supplies related to the operation of the corresponding DLC Plants, and such FE Subsidiary shall pay to DLC an amount equal to the actual cost of such Fuel Supplies on DLC's books and records, as established by invoices (and reasonable supporting materials demonstrating the actual cost of such Fuel Supplies) with such invoices and supporting materials to be delivered to the applicable FE Subsidiary by DLC not later than three (3) Business Days prior to the Exchange Closing; except that the cost (which the applicable FE subsidiary shall pay to DLC) of coal inventories at Mansfield, shall be the actual cost for such Fuel Supplies reflected on DLC's books and records at the Exchange Closing Date reduced by an amount equal to the product of the number of tons of coal that are in inventory at Mansfield on the Exchange Closing Date multiplied by $9.50 to provide an adjustment to compensate for an existing contract obligation; provided, however, that in the event the Exchange Closing occurs after December 31, 1999 but before March 1, 2000, such cost shall be the actual cost for such Fuel Supplies reflected on DLC's books and records reduced by an amount equal to the product of (x) the number of tons of coal that are in inventory at Mansfield on the Exchange Closing Date multiplied by (y) the product of $.15835 multiplied by the number of calendar days between the Exchange Closing Date and March 1, 2000; and, provided further that in the event the Exchange Closing occurs on or after March 1, 2000, such cost shall be the actual cost for such Fuel Supplies reflected on DLC's books and records without any reduction.

3.7 Property Tax Litigation. The applicable FE Subsidiary will receive the full benefits, including any refunds, and shall bear the full costs incurred after October 14, 1998, related to pending litigation and appeals regarding the property taxes for Eastlake and Sammis as identified on Schedule 3.7. DLC will promptly pay to such FE Subsidiary all amounts received by DLC as a result of such pending litigation and appeals. If the Generation Exchange as to Eastlake or Sammis is not consummated for any reason, the Parties shall negotiate arrangements that place them in the same position as to such Plant, with respect to any such costs or benefits, as if neither the Agreement in Principle nor any of the Exchange Agreements had been executed. DLC will continue to take all

actions necessary in such proceedings, in cooperation with the applicable FE Subsidiary, until the Exchange Closing, subject to reimbursement at the Exchange Closing by such FE Subsidiary of all expenses incurred by DLC for such proceedings after October 14, 1998.

ARTICLE IV

TRANSFER OF FE ASSETS

4.1 Transfer of FE Assets. Upon the terms and subject to the satisfaction of the conditions contained in this Agreement, each applicable FE Subsidiary, as designated in Schedules 4.1 (Avon Lake), 4.1 (New Castle) and 4.1 (Niles), agrees that all of its ownership rights and interests in and to all of the assets (except for Excluded FE Assets) constituting, or used in, and necessary to generate electricity from, its FE Plant, including, without limitation, those assets identified in Schedule 4.1 and those assets described below, each as in existence on the Exchange Closing Date (collectively, "FE Assets"), will be assigned and conveyed to DLC, free and clear of all Encumbrances (except for Permitted Encumbrances (FE Assets)), and DLC agrees that it will have assumed and acquired such beneficial ownership rights and interests in the FE Assets from the FE Subsidiaries, such assignment, conveyance, assumption and acquisition to be effective as of the satisfaction or waiver of the last of the conditions to the Exchange Closing set forth in Article IX by the Party entitled to the benefit of such condition.

(a) Those certain parcels of real property owned by such FE Subsidiary relating to its FE Plants together with all buildings, facilities and other improvements thereon and all appurtenances thereto, as described in Schedule 7.9 (Avon Lake), 7.9 (New Castle) and 7.9 (Niles), respectively (the "FE Real Property");

(b) All FE Inventories of such FE Subsidiary, all Capital Spare Parts of such FE Subsidiary and, subject to Section 4.2(j), FE SO2 Emission Allowances and FE NOx Emission Allowances of such FE Subsidiary with a vintage year occurring during or after the year during which the Exchange Closing

occurs;

(c) All machinery (mobile or otherwise), equipment (including communications equipment), vehicles, tools, furniture and furnishings and other personal property related to the FE Assets, owned by such FE Subsidiary and located on the FE Real Property on the Exchange Closing Date, including, without limitation, the items of personal property included in Schedules 4.1(c)(Avon Lake), 4.1(c)(New Castle) and 4.1(c)(Niles), respectively, as the case may be, together with all the personal property of such FE Subsidiaries used principally in the operation of its FE Plant that are in the possession of such FE Subsidiary whether or not located on the FE Real Property, as listed in such Schedules 4.1(c), (other than property used or primarily usable as part of the FE Transmission Assets) (collectively, "FE Tangible Personal Property");

(d) Subject to the provisions of Section 8.6(c), all FE Agreements of such FE Subsidiary;

(e) Subject to the provisions of Section 8.6(c), all FE Real Property Leases of such FE Subsidiary;

(f) All FE Transferable Permits of such FE Subsidiary;

(g) All books, operating records, operating, safety and maintenance manuals, engineering design plans, documents, blueprints and as-built plans, specifications, procedures and similar items of such FE Subsidiary relating specifically to its FE Assets and necessary for the operation of its FE Plant (subject to the right of such FE Subsidiary to retain copies of the same for its use) other than such items which are proprietary to third parties and accounting records;

(h) All unexpired, transferable warranties and guarantees from third parties with respect to any FE Asset of such FE Subsidiary, as of the Exchange Closing Date;

(i) The names of the FE Plants. It is expressly understood that no FE Subsidiary is assigning or transferring to DLC or any Winning Bidder any right to use the name "FirstEnergy," "FE," "Ohio Edison," "Pennsylvania Power," "Cleveland Electric Illuminating," "Toledo Edison," "The Illuminating Company" or other trade names, trademarks, service marks, corporate names and logos or any part, derivative or combination thereof;

(j) All drafts, memoranda, reports, information, technology, and specifications relating to such FE Subsidiary's plans for Year 2000 Compliance with respect to its FE Plant;

(k) The Intellectual Property of each such FE Subsidiary, as described on Schedule 4.1(k) (the "FE Intellectual Property"); and

(l) All FE Emission Reduction Credits of such FE Subsidiary with

respect to its FE Plant that accrue on or after the date of this Agreement but prior to the Exchange Closing Date.

4.2 Excluded FE Assets. Notwithstanding anything to the contrary in this Agreement, nothing in this Agreement will constitute a transfer to DLC or a Winning Bidder of, or be construed as conferring on DLC or a Winning Bidder, and neither DLC nor a Winning Bidder is acquiring, any right, title or interest in or to the following specific assets of the FE Subsidiaries that are associated with their FE Assets, but which are hereby specifically excluded from the sale and the definition of FE Assets herein (collectively, the "Excluded FE Assets"):

(a) The FE Transmission Assets of each FE Subsidiary, including those certain assets, facilities and agreements identified on Schedule 4.2(a) hereto;

(b) Certain switches and meters in the FE Plants, gas facilities, revenue meters and remote testing units, drainage pipes and systems, as identified in the FE Easement and Attachment Agreement, and certain equipment and systems described on Schedule 4.2(b);

(c) Certificates of deposit, shares of stock, securities, bonds, debentures, evidences of indebtedness, and interests in joint ventures, partnerships, limited liability companies and other entities of such FE Subsidiaries;

(d) All cash, cash equivalents, bank deposits, accounts and notes receivable (trade or otherwise), and any income, sales, payroll or other tax receivables of such FE Subsidiaries;

(e) The rights of each FE Subsidiary and its Affiliates to the names "FirstEnergy," "FE," "Ohio Edison," "Pennsylvania Power," "Cleveland Electric Illuminating," "Toledo Edison," "The Illuminating Company" or any other trade names, trademarks, service marks, corporate names or logos, or any part, derivative or combination thereof;

(f) All tariffs, agreements and arrangements to which an FE Subsidiary is a party for the purchase or sale of electric capacity and/or energy or for the purchase of transmission or ancillary services;

(g) Except in the case of causes of action against third parties (including indemnification and contribution) relating to an Environmental Condition or Regulated Substances or arising under Environmental Laws, the rights of any FE Subsidiary in and to any causes of action against third parties (including indemnification and contribution) relating to any FE Real Property or FE Tangible Personal Property, FE Permits, FE Environmental Permits, Taxes, FE Real Property Leases or FE Agreements, if any, and not relating to the Assumed FE Liabilities, including any claims for refunds, prepayments, offsets, recoupment, insurance proceeds, condemnation awards, judgments and the like, whether received as payment or credit against future liabilities, relating

specifically to the FE Plants or the FE Real Property and relating to any period prior to the Exchange Closing Date;

(h) All personnel records of each FE Subsidiary and its Affiliates relating to the FE Transferred Employees, other than FE Transferred Employee Records or other records the disclosure of which is required by law, or legal or regulatory process or subpoena;

(i) Any and all of each FE Subsidiary's rights and interests in any contract that is not an FE Agreement or that is an intercompany transaction between an FE Subsidiary and its Affiliate, whether or not such intercompany transaction relates to the provision of goods and services, payment arrangements, intercompany charges or balances, or the like;

(j)

(i) (A) All FE SO2 Emission Allowances with a vintage year occurring prior to the year of the Exchange Closing and (B) any excess FE SO2 Emission Allowances resulting from the FE Subsidiaries' ownership of the FE Plants during the year of the Exchange Closing, which shall be calculated by summing the SO2 Emission Allowances allocated to the FE Plants by the USEPA for such year, multiplied by the quotient of the number of days of ownership of the FE Plants by the FE Subsidiaries divided by 365, and subtracting the actual tons of sulfur dioxide emitted by the FE Plants during such portion of such year. If the results of such calculation is zero or less than zero, the amount of the excess FE SO2 Emission Allowances shall equal zero;

(ii) Any excess FE NOx Emission Allowances resulting from the FE Subsidiaries' ownership of the FE Plants located in

Pennsylvania during the year of the Exchange Closing, which shall be calculated by summing the NOx Emission Allowances allocated to such FE Plants by the PaDEP for such year, multiplied by the quotient of the number of days of the FE Subsidiaries' ownership of such FE Plants during the ozone season (as defined by PaDEP in its NOx Budget Program), divided by the number of days in said ozone season, and subtracting the actual tons of nitrous oxides emitted by such FE Plants during such portion of such ozone season. If the result of such calculation is zero or less then zero, the amount of the excess FE NOx Emission Allowances shall equal zero; and

(k) Any and all rights and obligations of the FE Subsidiaries under the CAPCO Agreements.

4.3 Assumed FE Liabilities. At the Exchange Closing, DLC and each FE Subsidiary shall execute and deliver to each other an FE Assignment and Assumption Agreement with respect to all of the Assumed FE Liabilities applicable to the FE Assets being transferred by such FE Subsidiary (including

any Accrued Liabilities of the applicable FE Subsidiary), provided, however, that if DLC has exercised its option pursuant to Section 2.1 to direct each applicable FE Subsidiary to execute and deliver the respective FE Assignment and Assumption Agreement to the applicable Winning Bidder, then each such FE Subsidiary shall execute and deliver to such Winning Bidder, subject to such Winning Bidder executing and delivering, an FE Assignment and Assumption Agreement with respect to all of the Assumed FE Liabilities applicable to the FE Assets being transferred by such FE Subsidiary to such Winning Bidder, except as otherwise provided below with respect to Accrued FE Liabilities, and provided further, that the FE Subsidiaries agree that the obligation of DLC to execute an FE Assignment and Assumption Agreement with respect to any of the Assumed FE Liabilities (other than Accrued FE Liabilities) shall be discharged by the execution of an FE Assignment and Assumption Agreement by the applicable Winning Bidder with respect to such FE Assumed Liabilities. All of the following liabilities and obligations of each FE Subsidiary, direct or indirect, known or unknown, absolute or contingent, which relate to, or arise by virtue of such FE Subsidiary's ownership of the FE Assets (other than Excluded FE Liabilities) are referred to collectively as "Assumed FE Liabilities":

(a) All liabilities and obligations of such FE Subsidiary associated with its FE Assets arising on or after the Exchange Closing Date under its FE Agreements, FE Real Property Leases and FE Transferable Permits, each in accordance with the terms thereof, including, without limitation, the FE Agreements entered into by such FE Subsidiary (i) prior to the date hereof and (ii) after the date hereof consistent with the terms of this Agreement, except in each case to the extent such liabilities and obligations, but for a breach or default of such FE Subsidiary, would have been paid, performed or otherwise discharged on or prior to the Exchange Closing Date or to the extent the same arise out of any such breach or default or out of any event which after the giving of notice or passage of time or both would constitute a default by such FE Subsidiary;

(b) All liabilities and obligations of such FE Subsidiary associated with its FE Assets in respect of Taxes for which DLC or the corresponding Winning Bidder is liable pursuant to Sections 5.4 or 8.9(a) hereof;

(c) All liabilities and obligations of the such FE Subsidiary associated with its FE Assets with respect to the FE Transferred Employees incurred after the Exchange Closing Date for which the corresponding Winning Bidder is responsible pursuant to Section 8.11;

(d) All liabilities, responsibilities and obligations of such FE Subsidiary associated with its FE Assets arising under Environmental Laws or relating to Environmental Conditions or Regulated Substances (including common law liabilities relating to Environmental Conditions and Regulated Substances), whether such liability, responsibility or obligation is known or unknown, contingent or accrued, as of the Exchange Closing Date, including, but not limited to: (i) costs of compliance (including capital, operating and other

costs) relating to any violation or alleged violation of Environmental Laws occurring prior to, on or after the Exchange Closing Date, with respect to the ownership or operation of the FE Assets; (ii) property damage or natural resource damage (whether such damages were manifested before or after the Exchange Closing Date) arising from Environmental Conditions or Releases of Regulated Substances at, on, in, under, adjacent to, or migrating from any FE Assets prior to, on, or after the Exchange Closing Date; (iii) any Remediation (whether or not such Remediation commenced before the Exchange Closing Date or commences after the Exchange Closing Date) of Environmental Conditions or Regulated Substances that are present or have been Released prior to, on or after the Exchange Closing Date, at, on, in, adjacent to or migrating from the FE Assets; (iv) any violations or alleged violations of Environmental Laws occurring on or after the Exchange Closing Date with respect to the ownership or operation of any FE Assets; (v) any bodily injury or loss of life arising from Environmental Conditions or Releases of Regulated Substances at, on, in, under, adjacent to or migrating from any FE Assets on or after the Exchange Closing Date; (vi) any bodily injury, loss of life, property damage, or natural resource damage arising from the storage, transportation, treatment, disposal, discharge, recycling or Release, at any Off-Site Location, or arising from the arrangement for such activities, on or after the Exchange Closing Date, of Regulated Substances generated in connection with the ownership or operation of the FE Assets; and (vii) any Remediation of any Environmental Condition or Release of Regulated Substances arising from the storage, transportation, treatment, disposal, discharge, recycling or Release, at any Off-Site Location, or arising from the arrangement for such activities, on or after the Exchange Closing Date, of Regulated Substances generated in connection with the ownership or operation of the FE Assets; provided, that nothing set forth in this Section 4.3(d) shall require the applicable Winning Bidder or DLC to assume any liabilities, responsibilities or obligations that are expressly excluded in Section 4.4;

(e) All liabilities and obligations of such FE Subsidiary associated with its FE Assets under the agreements or consent orders set forth on Schedule 4.3(e) arising on or after the Exchange Closing Date; and

(f) With respect to the FE Assets of such FE Subsidiary, any Tax that may be imposed by any federal, state or local government on the ownership, sale (except as otherwise provided in Section 8.9(a)), operation or use of the FE Assets on or after the Exchange Closing Date, except for any Income Taxes attributable to income received by such FE Subsidiary.

Notwithstanding any other provision of this Section 4.3, to the extent that any of the Assumed FE Liabilities that would be assigned and assumed by a Winning Bidder pursuant to this Section 4.3 are Accrued Liabilities as of the Exchange

Closing Date of an FE Subsidiary ("Accrued FE Liabilities"), then such Accrued FE Liabilities shall not be assigned to and assumed by such Winning Bidder as otherwise provided herein, but shall instead be assigned to and assumed by DLC at the Exchange Closing pursuant to FE (Accrued Liability) Assignment and Assumption Agreements to be entered into between DLC and such FE Subsidiaries,

and each FE Subsidiary and DLC agree to execute and deliver to each other an FE (Accrued Liability) Assignment and Assumption Agreement with respect to the Accrued Liabilities of such FE Subsidiary.

4.4 Excluded FE Liabilities. Notwithstanding anything to the contrary in this Agreement, neither DLC nor the applicable Winning Bidder shall assume or be obligated to pay, perform or otherwise discharge the following liabilities or obligations of each of the FE Subsidiaries (collectively, the "Excluded FE Liabilities"):

(a) Any liabilities or obligations of the applicable FE Subsidiary in respect of any Excluded FE Assets or other assets of such FE Subsidiary that are not its FE Assets;

(b) Any liabilities or obligations of such FE Subsidiary with respect to Taxes attributable to such FE Subsidiary's ownership, operation or use of its FE Assets for taxable periods, or portions thereof, ending before the Exchange Closing Date, except for Taxes for which the applicable Winning Bidder or DLC is liable pursuant to Sections 5.4 hereof;

(c) Any liabilities or obligations of such FE Subsidiary accruing under any of its FE Agreements prior to the Exchange Closing Date;

(d) Any and all asserted or unasserted liabilities or obligations to third parties (including employees) for personal injury or tort, or similar causes of action arising during or attributable to the period prior to the Exchange Closing Date, other than liabilities or obligations assumed under Section 4.3(d);

(e) Any fines, penalties and associated costs for defending related enforcement actions, resulting from any violation or alleged violation of Environmental Laws with respect to such FE Subsidiary's ownership or operation of its FE Assets occurring prior to the Exchange Closing Date;

(f) Any payment obligations of such FE Subsidiary pursuant to its FE Agreements for goods delivered or services rendered prior to the Exchange Closing Date, including, but not limited to, rental payments pursuant to its FE Real Property Leases;

(g) Any liabilities, responsibilities and obligations of such FE Subsidiary arising under Environmental Laws or relating to Environmental Conditions or Regulated Substances (including common law liabilities relating to Environmental Conditions and Regulated Substances), whether such liability, responsibility or obligation was known or unknown, contingent or accrued, which relates to (i) any bodily injury, loss of life, property damage or natural resource damage arising from the storage, transportation, treatment, disposal, discharge, recycling or Release of Regulated Substances generated in connection with such FE Subsidiary's ownership or operation of its FE Assets at any Off-Site Location, or arising from the arrangement for such activities, prior to the Exchange Closing Date; or (ii) any Remediation of any Environmental

Condition or Regulated Substance at any Off-Site Location, arising from the storage, transportation, treatment, disposal, discharge, recycling or Release of Regulated Substances generated in connection with such FE Subsidiary's ownership or operation of its FE Assets at such Off-Site Location, or arising from the arrangement for such activities, prior to the Exchange Closing Date; provided, that for purposes of this paragraph, "Off-Site Location" does not include any location to which Regulated Substances disposed of or Released at such FE Assets have migrated;

(h) Any liability to third parties (including employees) for bodily injury or loss of life, to the extent caused (or allegedly caused) by Environmental Conditions or the Release of Regulated Substances at, on, in, under, or adjacent to, or migrating from, the FE Assets of such FE Subsidiary prior to the Exchange Closing Date;

(i) Any liabilities or obligations of such FE Subsidiary or any ERISA Affiliate of such FE Subsidiary relating to any FE Plan including but not limited to any liability (i) relating to benefits payable under any FE Plan; (ii) relating to the Pension Benefit Guaranty Corporation under Title IV of ERISA; (iii) relating to a multi-employer plan; (iv) with respect to non-compliance with the notice and benefit continuation requirements of COBRA; (v) with respect to any noncompliance with ERISA or any other applicable laws; or (vi) with respect to any suit, proceeding or claim which is brought against DLC or the applicable Winning Bidder, any FE Plan, or any fiduciary or former fiduciary of any such FE Plan, in each case other than liabilities or obligations assumed under Section 8.11;

(j) Any liabilities or obligations arising from facts or circumstances prior to the Exchange Closing Date relating to the employment or termination of employment, including discrimination, wrongful discharge, unfair labor practices, or constructive termination by such FE Subsidiary of any individual, attributable to any actions or inactions by such FE Subsidiary prior to the Exchange Closing Date, including without limitation unfair labor practice charges relating to Avon Lake, other than those actions or inactions taken at the written direction of DLC, other than liabilities or obligations assumed under Section 8.11;

(k) Any obligations of such FE Subsidiary for wages, overtime, employment taxes, severance pay, transition payments in respect of compensation or similar benefits accruing or arising prior to the Exchange Closing Date under any term or provision of any contract, plan, instrument or agreement relating to any of its FE Assets, other than liabilities or obligations assumed under Section 8.11; and

(l) Any liability of the applicable FE Subsidiary arising out of a breach by such FE Subsidiary, or any of its Affiliates, of any of their respective obligations under this Agreement or the Ancillary Agreements.

4.5 Control of Litigation. The Parties agree and acknowledge that the FE Subsidiaries shall be entitled exclusively to control, defend and settle any litigation, administrative or regulatory proceeding, and any investigation or Remediation activity (including without limitation any environmental mitigation or Remediation activities), arising out of or related to any Excluded FE Liabilities and DLC shall cooperate fully in connection therewith, and the Auction Agreements shall provide that the applicable Winning Bidder shall agree to cooperate fully in connection therewith.

4.6 Fuel Supplies. At the Exchange Closing, each FE Subsidiary will sell, assign, convey, transfer and deliver to DLC its right, title and interest in and to the Fuel Supplies related to the operation of its FE Plants, and DLC shall pay the applicable FE Subsidiary an amount equal to the actual cost of such Fuel Supplies on such FE Subsidiary's books and records, as established by invoices (and reasonable supporting materials demonstrating the actual cost of such Fuel Supplies) with such invoices and supporting materials to be delivered to DLC by such FE Subsidiary not later than three (3) Business Days prior to the scheduled date of the Exchange Closing.

4.7 Inventories. Schedule 4.7 lists the quantities of FE Inventories for the Avon Lake, New Castle and Niles FE Plants that will be transferred to DLC together with the net book values of such FE Inventories. At the Exchange Closing, as part of the FE Assets, each FE Subsidiary will transfer to DLC the FE Inventories relating to its FE Plants. Because each FE Subsidiary has operated its FE Plant as part of a larger, integrated utility system, not all of such FE Inventories have actually been maintained in stock at each such FE Plant, but are identified and dedicated as FE Assets on Schedules 4.7 (Avon Lake), 4.7 (New Castle) and 4.7 (Niles), respectively, as the case may be. Each FE Subsidiary shall transport and deliver all such FE Inventories to the applicable FE Plant prior to the Exchange Closing.

ARTICLE V

THE EXCHANGE CLOSING

5.1 Exchange Closing. Upon the terms and subject to the satisfaction of the conditions in Article IX of this Agreement, the exchange between the Parties hereto, as contemplated by this Agreement, shall take place at a closing (the "Exchange Closing"), to be held at the offices of Skadden, Arps, Slate, Meagher & Flom LLP, 1440 New York Avenue, N.W., Washington, D.C. at 10:00 a.m. local time on the day following the date that all of the conditions precedent to the Exchange Closing set forth in Article IX of this Agreement have been either satisfied or waived by the Party for whose benefit such conditions precedent exist, or at such other time and date as the Parties may mutually agree.

5.2 Calculation of Closing Payments.

(a) No payment of any purchase price will be made by either

Party to the other for the transfer of the DLC Assets and the FE Assets. The Parties have agreed that certain payments will be made for other specified purposes (hereinafter, the "Closing Payments") and such Closing Payments shall be calculated in accordance with this Section 5.2.

(b) The "DLC Closing Payments" means the sums of the following amounts calculated for and to be paid to DLC by the applicable FE Subsidiary:

(i) the amounts expended by DLC between the date hereof and the Exchange Closing Date for DLC Capital Expenditures relating to the DLC Assets transferred to such FE Subsidiary that (A) are not described in Schedule 8.1(d) and (B) satisfy one or more of

the tests for permitted DLC Capital Expenditures set forth in Section 8.1(d); plus or minus

(ii) the amounts by which DLC's share of the book value of all DLC Inventories relating to the DLC Assets transferred to such FE Subsidiary, as of the Exchange Closing Date, exceeds or falls short of that value set forth in Schedule 5.2(b)(ii); plus or minus

(iii) the net balance payable to or by DLC, if any, of items relating to the DLC Assets transferred to such FE Subsidiary prorated as of the Exchange Closing Date pursuant to Section 5.4; plus

(iv) the amounts payable to DLC pursuant to Section 3.6 by such FE Subsidiary for DLC's ownership interest in the Fuel Supplies at the DLC Plants transferred to such FE Subsidiary; plus

(v) in the case of PPC, the amount payable to DLC by PPC pursuant to the Electrical Facilities Agreement; plus

(vi) in the case of CEIC, the amount payable to DLC by CEIC for costs incurred in the property tax litigation pursuant to Section 3.7.

(c) The "FE Closing Payments" means the sums of the following amounts calculated for and to be paid to the applicable FE Subsidiary by DLC:

(i) the amount expended by such FE Subsidiary between the date hereof and the Exchange Closing Date for FE Capital Expenditures, with respect to its FE Assets that (A) are not described in Schedule 8.1(c) and (B) satisfy one or more of the tests for permitted FE Capital Expenditures set forth in Section 8.1(c); plus or minus

(ii) the amount by which the book value of FE Inventories for such FE Subsidiary's FE Plant, as of the Exchange Closing Date, exceeds or falls short of that set forth in Schedule 4.7

with respect to such FE Plant; plus or minus

(iii) the net balance payable to or by such FE Subsidiary, if any, of items relating to its FE Assets prorated pursuant to Section 5.4.

(d) At least ten (10) Business Days prior to the Exchange Closing Date, DLC shall prepare and deliver to each FE Subsidiary an estimated closing statement (collectively, the "DLC Estimated Closing Statements") that shall set forth DLC's best estimate of the estimated DLC Closing Payments relating to such FE Subsidiary (collectively, the "DLC Estimated Closing Payments"). At least ten (10) Business Days prior to the Exchange Closing Date, each FE Subsidiary shall prepare and deliver to DLC an estimated closing statement (collectively, the "FE Estimated Closing Statements") that shall set forth such FE Subsidiary's best estimate of the estimated FE Closing Payments relating to DLC (collectively, the "FE Estimated Closing Payments"). Within five (5) Business Days following the delivery of an Estimated Closing Statement, the Party receiving such Estimated Closing Statement may object in good faith to such Estimated Closing Payment in writing. In the event of any such objection,

the applicable Parties shall attempt to resolve their differences by negotiation. If such Parties are unable to do so before three (3) Business Days prior to the Exchange Closing Date, the amounts of the Estimated Closing Payments not in dispute shall be paid at the Exchange Closing and the disputed portions shall be paid as a Final Adjustment to the extent required by Section 5.2(f).

(e) Within sixty (60) days following the Exchange Closing Date, (i) DLC shall prepare and deliver to each FE Subsidiary a final closing statement setting forth the final DLC Closing Payment relating to such FE Subsidiary including adjustments to the proration amounts specified by Section 5.4 (collectively, the "Proposed DLC Final Adjustments"), and (ii) each applicable FE Subsidiary shall prepare and deliver to DLC a final closing statement setting forth the final FE Closing Payment relating to DLC including adjustments to the proration amounts specified by Section 5.4 (collectively, the "Proposed FE Final Adjustments"). All calculations of the Closing Payments shall be prepared using the same accounting principles, policies and methods as the Conveying Party has historically used in connection with the calculation of the items reflected on such Proposed Final Adjustment.

(f) Within thirty (30) days following the delivery of the Proposed Final Adjustment, the Party receiving such Proposed Final Adjustment may object to such Proposed Final Adjustment in writing. Each Party agrees to cooperate with the other Party to provide such Party and its Representatives information used to prepare such Proposed Final Adjustment and information relating thereto. If the Party receiving a Proposed Final Adjustment objects to such Proposed Final Adjustment, the applicable Parties shall attempt to resolve their differences by negotiation. If such Parties are unable to do so within thirty (30) days of any such objection, the applicable FE Subsidiary and DLC

shall appoint an Independent Accounting Firm, which shall, at their joint expense, review the Proposed Final Adjustment and determine the appropriate adjustment to the Closing Payment, if any, within thirty (30) days of such appointment. The Parties agree to cooperate with the Independent Accounting Firm and provide it with such information as it reasonably requests to enable it to make such determination. The finding of such Independent Accounting Firm shall be binding on the Parties. Upon determination by agreement of the Parties or by binding determination of the Independent Accounting Firm of the appropriate adjustment (in either case, the "Final Adjustment"), if the Final Adjustment results in a change to the Closing Payment made by either DLC or the applicable FE Subsidiary, the Party owing the difference shall deliver such difference to the Party owed such amount no later than two (2) Business Days after the determination of such Final Adjustment, in immediately available funds or in any other manner as reasonably requested by the Party owed such amount.

5.3 Payment of Closing Payments. (a) If the DLC Closing Payment calculated for any of the FE Subsidiaries is a positive amount, such amount shall be payable by the applicable FE Subsidiary to DLC. If the DLC Closing Payment calculated for any of the FE Subsidiaries is a negative amount, such amount shall be payable by DLC to the applicable FE Subsidiary.

(b) If the FE Closing Payment calculated for DLC is a positive amount, such amount shall be payable by DLC to the applicable FE Subsidiary. If the FE Closing Payment calculated for DLC is a negative amount, such amount shall be payable by the applicable FE Subsidiary to DLC.

(c) Amounts payable with respect to each Closing Payment shall be aggregated or offset, as appropriate (the remaining amount payable after such aggregation or offset is referred to herein as a "Closing Payment Balance"). In connection with the Exchange Closing, subject to Section 5.2(d), each Party owing a Closing Payment Balance shall pay such amount to the Party to whom such Closing Payment Balance is owed at the Exchange Closing by wire transfer of immediately available funds denominated in U.S. dollars or by such other means as are agreed upon by such Parties.

5.4 Prorations. Notwithstanding anything to the contrary in any of the CAPCO Agreements:

(a) The Parties agree that all of the items normally prorated, including those listed below (but not including Income Taxes), relating to the business and operation of the Exchange Assets shall be prorated as of the Exchange Closing Date, with each Conveying Party remaining liable for such items to the extent such items relate to any time period prior to the Exchange Closing Date, and the Party that is acquiring such Conveying Party's Exchange Assets under this Agreement to be liable for such items to the extent such items relate to periods commencing with the Exchange Closing Date (measured in the same units used to compute the item in question, otherwise measured by calendar days):

(i) personal property, real estate and occupancy

Taxes, assessments and other charges, if any, on or with respect to the business and operation of the Exchange Assets;

(ii) rent, Taxes and all other items (including prepaid services or goods not included in Inventories) payable by or to a Conveying Party under any of the Assigned Agreements conveyed by that Party;

(iii) any permit, license, registration, compliance assurance fees or other fees with respect to any Transferable Permit;

(iv) sewer rents and charges for water, telephone, electricity and other utilities with respect to the Exchange Assets;

(v) rent and Taxes payable by a Conveying Party under the Real Property Leases assigned to the Party that is acquiring such Real Property Leases under this Agreement; and

(vi) insurance premiums paid on or with respect to the business and operation of the Exchange Assets.

(b) In connection with the prorations referred to in Section 5.4 (a) above, in the event that actual figures are not available at the Exchange Closing Date, the proration shall be based upon the actual Taxes or other amounts accrued through the Exchange Closing Date or paid for the most recent year (or other appropriate period) for which actual Taxes or other amounts paid are available. Such prorated Taxes or other amounts shall be re-prorated and paid to the appropriate Party within sixty (60) days of the date that the previously unavailable actual figures become available. The prorations shall be based on the number of days in a year or other appropriate period (i) before the Exchange Closing Date and (ii) including and after the Exchange Closing Date.

The Parties agree to furnish each other with such documents and other records as may be reasonably requested in order to confirm all adjustment and proration calculations made pursuant to this Section 5.4.

5.5 Audit Cooperation. Each Party shall notify and provide the other Party with reasonable assistance in the event of an examination, audit or other proceeding regarding any fair market value of the Exchanged Assets and Assumed Liabilities.

5.6 Deliveries by FE Subsidiaries. At the Exchange Closing, each FE Subsidiary with respect to its FE Assets will deliver, or cause to be delivered, the following to DLC (or, if DLC so directs, the applicable Winning Bidder):

(a) With respect to the transfer of the FE Assets (except for the Excluded FE Assets) and Assumed FE Liabilities (except for the Excluded FE Liabilities):

(i) Duly executed Bills of Sale with respect to the FE Assets of such FE Subsidiary;

(ii) Certified copies of any and all governmental and other third party consents, waivers or approvals obtained or required to be obtained by the applicable FE Subsidiary with respect to the transfer of its FE Assets or the consummation of the transactions contemplated by this Agreement;

(iii) One or more Warranty Deeds conveying title to the FE Real Property by such FE Subsidiary to DLC or, if DLC so directs, the corresponding Winning Bidder, duly executed and acknowledged by such FE Subsidiaries and in recordable form;

(iv) FIRPTA Affidavits, duly executed by such FE Subsidiary;

(v) To the extent available, originals of all of its FE Agreements, FE Real Property Leases and FE Transferable Permits and, if such originals are not available, true and correct copies thereof;

(vi) All such other instruments of assignment, transfer or conveyance as shall, in the reasonable opinion of DLC and its counsel, be necessary or desirable to transfer the FE Assets to DLC or, if DLC so directs, the applicable Winning Bidder, in accordance with this Agreement and where necessary or desirable in recordable form; and

(vii) The applicable FE Assignment and Assumption Agreement, the FE (Accrued Liability) Assignment and Assumption Agreement, the FE Easement and Attachment Agreement, the FE Connection Agreement and the FE Must-Run Agreement, duly executed by the such FE Subsidiary.

(b) With respect to the transfer of DLC Assets (except for the Excluded DLC Assets) and the assumption of Assumed DLC Liabilities (except for Excluded DLC Liabilities):

(i) The DLC Assignment and Assumption Agreements, the CAPCO Settlement Agreement, the Electrical Facilities Agreement and the Settlement Agreement duly executed by the applicable FE Subsidiaries; and

(ii) All such other instruments of assignment or assumption as shall, in the reasonable opinion of DLC and its counsel, be necessary for the assignment of the DLC Assets to or the assumption of the Assumed DLC Liabilities by the FE Subsidiaries, in accordance with this Agreement.

(c) With respect to this Agreement:

(i) The documents to be delivered by such FE Subsidiary under Section 9.2;

(ii) Copies, certified by the Secretary or Assistant Secretary of such FE Subsidiary, of corporate resolutions authorizing the execution and delivery of this Agreement and all of the agreements and instruments to be executed and delivered by each of the FE Subsidiaries in connection herewith and with the consummation of the transactions contemplated hereby;

(iii) Certificates of the Secretary or Assistant Secretary of such FE Subsidiary identifying the name and title and bearing the signatures of the officers of such FE Subsidiary authorized to execute and deliver this Agreement and the other agreements and instruments contemplated hereby;

(iv) Certificates of Good Standing with respect to such FE Subsidiary, issued by the Secretary of State of Ohio or the Secretary of State of the Commonwealth of Pennsylvania, as appropriate;

(v) Such other agreements, documents, instruments and writings as are reasonably required to be delivered by such FE Subsidiary at or prior to the Exchange Closing Date pursuant to this Agreement or the Auction Agreement or otherwise reasonably required by DLC or the applicable Winning Bidder, as the case may be, in connection herewith; and

(vi) Certificates dated the Exchange Closing Date executed by the duly authorized officers of such FE Subsidiary to the effect that, to such officers' Knowledge, the conditions set forth in Sections 9.2(b), (c) and (d) have been satisfied by such FE Subsidiary and that each of the representations and warranties of such FE Subsidiary made in this Agreement are true and correct in all material respects as though made at and as of the Exchange Closing Date.

5.7 Deliveries by DLC. At the Exchange Closing, DLC will deliver, or cause to be delivered, the following to the applicable FE Subsidiary:

(a) With respect to the transfer of the DLC Assets (except for the Excluded DLC Assets):

(i) The DLC Assignment and Assumption Agreements, the CAPCO Settlement Agreement, the Electrical Facilities Agreement and the Settlement Agreement, duly executed by DLC;

(ii) Duly executed Bills of Sale with respect to the DLC Assets;

(iii) Certified copies of any and all governmental and other third party consents, waivers or approvals obtained or required to be obtained by DLC with respect to the transfer of the DLC Assets or the consummation of the transactions contemplated by this Agreement;

(iv) One or more Warranty Deeds conveying title to the DLC Real Property to the applicable FE Subsidiaries, duly executed and acknowledged by DLC and in recordable form;

(v) FIRPTA Affidavits, duly executed by DLC;

(vi) To the extent available, originals of all DLC Agreements, DLC Real Property Leases and DLC Transferable Permits and, if such originals are not available, true and correct copies thereof; and

(vii) All such other instruments of assignment, transfer or conveyance as shall, in the reasonable opinion of the applicable FE Subsidiaries and their counsel, be necessary or desirable to transfer the DLC Assets to such FE Subsidiaries, in accordance with this Agreement and where necessary or desirable in recordable form.

(b) With respect to the transfer of the FE Assets (except for the Excluded FE Assets):

(i) The FE Assignment and Assumption Agreements, the FE (Accrued Liability) Assignment and Assumption Agreements, the FE Easement and Attachment Agreements, the FE Connection Agreements and the FE Must-Run Agreements, duly executed by the corresponding Winning Bidder or DLC, as applicable; and

(ii) All such other instruments of assignment or assumption as shall, in the reasonable opinion of the applicable FE Subsidiaries and their counsel, be necessary for assignment of the FE Assets to or the assumption of the Assumed FE Liabilities by DLC or the corresponding Winning Bidder, respectively, in accordance with this Agreement.

(c) With respect to this Agreement:

(i) The documents to be delivered by DLC under Section 9.3;

(ii) Copies, certified by the Secretary or Assistant Secretary of DLC, of corporate resolutions authorizing the execution and delivery of this Agreement and all of the agreements and

instruments to be executed and delivered by DLC in connection herewith and with the consummation of the transactions contemplated hereby;

(iii) A certificate of the Secretary or Assistant Secretary of DLC identifying the name and title and bearing the signatures of the officers of DLC authorized to execute and deliver this Agreement and the other agreements and instruments contemplated hereby;

(iv) A certificate of Good Standing with respect to DLC, issued by the Secretary of State of the Commonwealth of Pennsylvania and by the Secretary of State of such other states where DLC conducts business;

(v) Such other agreements, documents, instruments and writings as are required to be delivered by DLC at or prior to the Exchange Closing Date pursuant to this Agreement or otherwise reasonably required by the FE Subsidiaries in connection herewith; and

(vi) Certificate dated the Exchange Closing Date executed by the duly authorized officers of DLC to the effect that, to such officers' Knowledge, the conditions set forth in Sections 9.3(b), (c) and (d) have been satisfied by DLC and that each of the representations and warranties of DLC made in this Agreement are true and correct in all material respects as though made at and as of the Exchange Closing Date.

5.8 Ancillary Agreements. The Parties acknowledge that the Ancillary Agreements (except for the Auction Agreements, the Support Agreement, the CAPCO Settlement Agreement and the Electrical Facilities Agreement) shall be executed on the Exchange Closing Date or the Auction Closing Date, as applicable, and each Party agrees to execute, in connection with the Exchange Closing or the Auction Closing, as applicable, each such Ancillary Agreement to which it is to be a party, substantially in the form of such Ancillary Agreements attached hereto. Each Party further (i) acknowledges that it has executed the CAPCO Settlement Agreement and the Electrical Facilities Agreement on the date hereof and (ii) agrees that the Parties hereto shall make, pursuant to Section 8.7 hereof, all filings necessary or advisable to obtain any Required Regulatory Approvals in respect of such CAPCO Settlement Agreement and such Electrical Facilities Agreement and the transactions contemplated in each of them.

5.9 Pending Litigation. The Settlement Agreement will take effect as of the Exchange Closing and when effective shall constitute full settlement of the claims asserted or which could have been asserted in the Eastlake Litigation (as defined below). Upon the execution of the Exchange Agreements, the Parties will jointly present to the Federal District Court, Northern District of Ohio an order in the form of Exhibit N attached hereto, to suspend the litigation captioned The Cleveland Electric Illuminating Company v. Duquesne Light Company

under docket number 1:95 CV 2307 (the "Eastlake Litigation") while preserving the Parties' rights to continue the Eastlake Litigation in the event that the Exchange Closing does not occur. If the Exchange Closing does not occur, DLC shall retain all rights with respect to such litigation, provided that execution of the Exchange Agreements shall constitute an irrevocable waiver by DLC of claims for money damages in the Eastlake Litigation but not for any other remedy, including the partition or sale of the unit.

5.10 Work in Progress. The Parties agree to work together before and after the Exchange Closing to effect an orderly transition with respect to work in progress.

ARTICLE VI

REPRESENTATIONS, WARRANTIES AND DISCLAIMERS OF DLC

DLC represents and warrants to the FE Subsidiaries as follows:

6.1 Incorporation; Qualification. DLC is a corporation duly incorporated, validly existing and in good standing under the laws of the Commonwealth of Pennsylvania and has all requisite corporate power and authority to own, lease and operate its material assets and properties and to carry on its business as is now being conducted. DLC is duly qualified to do business as a foreign corporation and is in good standing under the laws of each jurisdiction in which its business, as now being conducted, shall require it to be so qualified, except where the failure to be so qualified would not have a DLC Material Adverse Effect. DLC has heretofore delivered to the FE Subsidiaries true, complete and correct copies of its Articles of Incorporation and Bylaws as currently in effect.

6.2 Authority. DLC has full corporate power and authority to execute and deliver this Agreement and each of the Ancillary Agreements to which DLC is a signatory and to consummate the transactions contemplated hereby or thereby. The execution and delivery of this Agreement and each of the Ancillary Agreements to which DLC is a signatory by DLC and the consummation of the transactions contemplated hereby and thereby by DLC have been duly and validly authorized by all necessary corporate action required on the part of DLC and this Agreement has been duly and validly executed and delivered by DLC. Subject to the receipt of the DLC Required Regulatory Approvals, each of this Agreement and the Ancillary Agreements to which DLC is a signatory constitutes the legal, valid and binding agreement of DLC, enforceable against DLC in accordance with its terms, except as may be limited by applicable bankruptcy, insolvency, fraudulent conveyance, reorganization, moratorium or other similar laws affecting or relating to enforcement of creditors' rights generally and general principles of equity (regardless of whether enforcement is considered in a proceeding at law or in equity).

6.3 Consents and Approvals; No Violation. (a) Except as set forth in

Schedule 6.3(a), and subject to obtaining any DLC Required Regulatory Approvals, neither the execution, delivery and performance of this Agreement by DLC nor the execution, delivery and performance by DLC of the Ancillary Agreements to which it is a party will (i) conflict with or result in any breach of any provision of the Articles of Incorporation or Bylaws of DLC, (ii) result in a default (or give rise to any right of termination, cancellation or acceleration) under any of the terms, conditions or provisions of any note, bond, mortgage, indenture, material agreement or other instrument or obligation to which DLC is a party or by which it, or any of the DLC Assets may be bound, except for such defaults (or rights of termination, cancellation or acceleration) as to which requisite waivers or consents have been obtained or that would not, individually or in the aggregate, create a DLC Material Adverse Effect; or (iii) constitute violations of any law, regulation, order, judgment or decree applicable to DLC, which violations, individually or in the aggregate, would create a DLC Material Adverse Effect.

(b) Except as set forth in Schedule 6.3(b) (the filings and approvals referred to in Schedule 6.3(b) are collectively referred to as the "DLC Required Regulatory Approvals"), no consent or approval of, filing with, or notice to, any Governmental Authority is necessary for the execution and delivery of this Agreement by DLC, or the consummation by DLC of the transactions contemplated hereby, other than (i) such consents, approvals, filings or notices which, if not obtained or made, will not prevent DLC from performing its material obligations hereunder and (ii) such consents, approvals, filings or notices which become applicable to DLC or the DLC Assets as a result of the specific regulatory status of the FE Subsidiaries (or any of their Affiliates) or as a result of any other facts that specifically relate to the business or activities in which the FE Subsidiaries (or any of their Affiliates) is or proposes to be engaged.

6.4 Insurance. Except as set forth in Schedule 6.4, all material policies of fire, liability, workers' compensation and other forms of insurance (if any) owned or held by, or on behalf of, DLC with respect to the business, operations or employees at the DLC Plants or the DLC Assets are in full force and effect, all premiums with respect thereto covering all periods up to and including the date hereof have been paid (other than retroactive premiums which may be payable with respect to comprehensive general liability and workers' compensation insurance policies), and no notice of cancellation or termination has been received with respect to any such policy which was not replaced on substantially similar terms prior to the date of such cancellation. Except as described in Schedule 6.4, within the thirty-six (36) months preceding the date of this Agreement, DLC has not been refused any insurance with respect to the DLC Assets nor has its coverage been limited by any insurance carrier to which it has applied for any such insurance or with which it has carried insurance during the last twelve (12) months.

6.5 DLC Real Property Leases. Schedule 6.5 lists, as of the date of this Agreement, all real property leases under which DLC is a lessee or lessor and which relate to the DLC Assets ("DLC Real Property Leases"). Except as set

forth in Schedule 6.5, all such DLC Real Property Leases are valid, binding and enforceable against DLC in accordance with their terms; there are no existing defaults by DLC or, to DLC's Knowledge, any other party thereunder that could reasonably be expected to result in a DLC Material Adverse Effect; and no event has occurred which (whether with or without notice, lapse of time or both) would constitute a default by DLC or, to DLC's Knowledge, any other party thereunder that could reasonably be expected to result in a DLC Material Adverse Effect. DLC has delivered to the FE Subsidiaries true, correct and complete copies of each of the DLC Real Property Leases.

6.6 Environmental Matters. DLC is an owner but not an operator of each of the DLC Plants, each of which is operated by an FE Subsidiary. For this reason, both DLC's environmental responsibilities and its Knowledge of environmental issues and concerns at the DLC Plants and the DLC Assets are limited. Subject to this fact, and except as disclosed in Schedule 6.6:

(a) DLC holds, and is in substantial compliance with, all DLC Environmental Permits that are required for DLC to own the DLC Assets, and DLC is otherwise in compliance with applicable Environmental Laws with respect to its ownership of the DLC Assets, except for such failures to hold or comply with required DLC Environmental Permits, or such failures to be in compliance with applicable Environmental Laws, as would not, individually or in the aggregate, create a DLC Material Adverse Effect;

(b) DLC has not received any written request for information, or been notified that it is a potentially responsible party, under CERCLA or any similar state law, with respect to the DLC Real Property; and

(c) DLC has not entered into or agreed to any consent decree or order relating to the DLC Assets, and is not subject to any outstanding judgment, decree, or judicial order relating to compliance with any Environmental Law or to Remediation of Regulated Substances under any Environmental Law relating to the DLC Assets.

The representations and warranties made in this Section 6.6 are DLC's exclusive representations and warranties relating to environmental matters.

6.7 Real Property. Schedule 6.7 contains a description of the DLC Real Property included in the DLC Assets. True and correct copies of all current surveys, abstracts, title commitments and title opinions in DLC's possession and all policies of title insurance currently in force and in the possession of DLC with respect to the DLC Real Property have heretofore been made available to the FE Subsidiaries.

6.8 Condemnation. Except as set forth in Schedule 6.8, DLC has not received any written notices of and otherwise has no Knowledge of any pending or threatened proceedings or actions by any Governmental Authority to condemn or take by power of eminent domain all or any part of the DLC Assets.

6.9 Contracts and Leases. (a) Schedule 6.9(a) lists each DLC Agreement which is material to DLC for the business or operations of the DLC Assets, other than those (i) that are expected to expire or terminate prior to the Exchange Closing Date, (ii) that provide for annual payments by DLC after the date hereof of less than $100,000 or payments by DLC after the date hereof of less than $500,000 in the aggregate, or (iii) to which an FE Subsidiary is a signatory.

(b) Except as disclosed in Schedule 6.9(b), each DLC Agreement listed in Schedule 6.9(a), constitutes a legal, valid and binding obligation of DLC and, to DLC's Knowledge, constitutes a valid and binding obligation of the other parties thereto, and may be transferred to the applicable FE Subsidiary as contemplated by this Agreement without the consent of the other parties thereto and will continue in full force and effect thereafter, unless in any such case the impact of such lack of legality, validity or binding nature, or inability to transfer, would not, individually or in the aggregate, create a DLC Material Adverse Effect.

(c) Except as set forth in Schedule 6.9(c), there is not, under any of the DLC Agreements listed in Schedule 6.9(a), any default or event which, with notice or lapse of time or both, would constitute a default on the part of DLC or, to DLC's Knowledge, any of the other parties thereto, except such events of default and other events which would not, individually or in the aggregate, create a DLC Material Adverse Effect.

6.10 Legal Proceedings. Except as set forth in Schedule 6.10, there is no action or proceeding pending, or, to DLC's Knowledge, threatened against DLC before any court, arbitrator or Governmental Authority, which could,

individually or in the aggregate, reasonably be expected to create a DLC Material Adverse Effect. Except as set forth in Schedule 6.10, DLC is not subject to any outstanding judgments, rules, orders, writs, injunctions or decrees of any court, arbitrator or Governmental Authority that would, individually or in the aggregate, create a DLC Material Adverse Effect.

6.11 Permits. (a) DLC has all DLC Permits (other than DLC Environmental Permits, which are addressed in Section 6.6 hereof) necessary to own the DLC Assets except where the failure to have such DLC Permits would not, individually or in the aggregate, create a DLC Material Adverse Effect. Except as disclosed on Schedule 6.11(a), DLC has not received any written notification that DLC is in violation of any such DLC Permits, except notifications of violations which would not, individually or in the aggregate, create a DLC Material Adverse Effect. DLC is in compliance with all such DLC Permits except where non-compliance would not, individually or in the aggregate, create a DLC Material Adverse Effect.

(b) Schedule 6.11(b) sets forth all material DLC Permits (other than DLC Transferable Permits, which are set forth on Schedule 1.1(64)) related to the DLC Assets.

6.12 Taxes. (a) DLC has filed or caused to be filed all Tax Returns that are required to be filed by it with respect to any Tax relating to the DLC Assets, and paid or caused to be paid all Taxes that have become due as indicated thereon, except where such Tax is being contested in good faith by appropriate proceedings, or where the failure to so file or pay would not create a DLC Material Adverse Effect. All Tax Returns relating to the DLC Assets are true, correct and complete in all material respects. There are no liens for Taxes upon the DLC Assets except for liens for Taxes not yet due and Permitted Encumbrances (DLC Assets).

(b) Except as set forth in Schedule 6.12(b), no notice of deficiency or assessment has been received from any taxing authority with respect to liabilities for Taxes of DLC in respect of the DLC Assets, which have not been fully paid or finally settled, and any such deficiency shown in Schedule 6.12(b) is being contested in good faith through appropriate proceedings.

(c) Except as set forth in Schedule 6.12(c), there are no outstanding agreements or waivers extending the applicable statutory periods of limitation for Taxes associated with the DLC Assets that will be binding upon any FE Subsidiary after the Exchange Closing.

(d) Except as set forth in Schedule 6.12(d), none of the DLC Assets is property that is required to be treated as being owned by any other person pursuant to the so-called safe harbor lease provisions of former Section 168(f) of the Code, and none of the DLC Assets is "tax-exempt use" property within the meaning of Section 168(h) of the Code.

(e) Schedule 6.12(e) sets forth the taxing jurisdictions in which DLC owns DLC Assets or conducts business that require a notification to a taxing authority of the transactions contemplated by this Agreement, if the failure to make such notification, or obtain Tax clearance certificates in connection therewith, would either require any FE Subsidiary to withhold any portion of the consideration or subject any FE Subsidiary to any liability for any Taxes of DLC.

6.13 Intellectual Property. Schedule 3.1(l) sets forth all Intellectual Property used in and, individually or in the aggregate with other Intellectual Property, material to the operation of the DLC Assets, each of which DLC either has all right, title and interest in, or valid and binding rights under contract to use in connection with its operation of the DLC Assets. Except as disclosed in Schedule 6.13, (i) DLC is not, nor has it received any notice that it is, in default (or with the giving of notice or lapse of time or both, would be in default), under any contract to use such Intellectual Property, and (ii) to DLC's Knowledge, such Intellectual Property is not being infringed by any other Person. DLC has not received notice that it is infringing any Intellectual Property of any other Person in connection with the operation or business of the DLC Assets, and DLC, to its Knowledge, is not infringing any Intellectual Property of any other Person which, individually or in the

aggregate, would have a DLC Material Adverse Effect.

6.14 Compliance With Laws. DLC is in compliance with all applicable laws, rules and regulations with respect to its ownership of the DLC Assets except where the failure to be in compliance would not, individually or in the aggregate, create a DLC Material Adverse Effect.

6.15 DISCLAIMERS REGARDING DLC ASSETS. EXCEPT FOR THE REPRESENTATIONS AND WARRANTIES SET FORTH IN THIS ARTICLE VI, THE DLC ASSETS ARE TRANSFERRED "AS IS, WHERE IS", AND DLC EXPRESSLY DISCLAIMS ANY REPRESENTATIONS OR WARRANTIES OF ANY KIND OR NATURE, EXPRESS OR IMPLIED, AS TO LIABILITIES, OPERATIONS OF THE DLC PLANTS, THE TITLE, CONDITION, VALUE OR QUALITY OF THE DLC ASSETS OR THE PROSPECTS (FINANCIAL AND OTHERWISE), RISKS AND OTHER INCIDENTS OF THE DLC ASSETS, AND DLC SPECIFICALLY DISCLAIMS ANY REPRESENTATION OR WARRANTY OF MERCHANTABILITY, USAGE, SUITABILITY OR FITNESS FOR ANY PARTICULAR PURPOSE WITH RESPECT TO THE DLC ASSETS, OR ANY PART THEREOF, OR AS TO THE WORKMANSHIP THEREOF, OR THE ABSENCE OF ANY DEFECTS THEREIN, WHETHER LATENT OR PATENT, OR COMPLIANCE WITH ENVIRONMENTAL REQUIREMENTS, OR THE APPLICABILITY OF ANY GOVERNMENTAL REQUIREMENTS, INCLUDING BUT NOT LIMITED TO ANY ENVIRONMENTAL LAWS, OR WHETHER DLC POSSESSES SUFFICIENT REAL PROPERTY OR PERSONAL PROPERTY TO OPERATE THE DLC ASSETS. EXCEPT AS OTHERWISE EXPRESSLY PROVIDED HEREIN, DLC FURTHER SPECIFICALLY DISCLAIMS ANY REPRESENTATION OR WARRANTY REGARDING THE ABSENCE OF REGULATED SUBSTANCES OR LIABILITY OR POTENTIAL LIABILITY ARISING UNDER ENVIRONMENTAL LAWS WITH RESPECT TO THE DLC ASSETS. WITHOUT LIMITING THE GENERALITY OF THE FOREGOING, EXCEPT AS OTHERWISE EXPRESSLY PROVIDED HEREIN, DLC EXPRESSLY DISCLAIMS ANY REPRESENTATION OR WARRANTY OF ANY KIND REGARDING THE CONDITION OF THE DLC ASSETS OR THE SUITABILITY OF THE DLC ASSETS FOR OPERATION AS A POWER PLANT AND NO SCHEDULE OR EXHIBIT TO THIS AGREEMENT, NOR ANY OTHER MATERIAL OR INFORMATION PROVIDED BY OR COMMUNICATIONS MADE BY DLC OR DLC REPRESENTATIVES, OR BY ANY BROKER OR INVESTMENT BANKER, WILL CAUSE OR CREATE ANY WARRANTY, EXPRESS OR IMPLIED, AS TO THE TITLE, CONDITION, VALUE OR QUALITY OF THE DLC ASSETS.

6.16 Year 2000 Compliance. DLC makes no warranties or representations of any kind, whether direct or implied, that any of the Computer Systems included in the DLC Assets to be transferred under this Agreement is Year 2000 Compliant.

6.17 SEC Filings; Financial Statements. (a) DLC has filed all forms, reports and documents required to be filed with the SEC since January 1, 1998, and has heretofore delivered or made available to the FE Subsidiaries in the form filed with the SEC, together with any amendments thereto, its (i) Annual Reports on Form 10-K for the fiscal year ended December 31, 1997, (ii) Quarterly Reports on Form 10-Q for the fiscal quarter ended March 31, 1998, June 30, 1998 and September 30, 1998, and (iii) all other reports or registration statements filed by DLC with the SEC since January 1, 1998 (collectively, the "DLC SEC Reports"). The DLC SEC Reports (i) were prepared substantially in accordance with the requirements of the Securities Act of 1933, as amended or the Securities Exchange Act of 1934, as amended, as the case may be, and the rules

and regulations promulgated under each of such respective acts, and the DLC SEC Reports did not at the time they were filed contain any untrue statement of a material fact or omit to state a material fact required to be stated therein or necessary in order to make the statements therein, in the light of the circumstances under which they were made, not misleading.

(b) The financial statements, including all related notes and schedules, contained in the DLC SEC Reports (or incorporated by reference therein) fairly present the consolidated financial position of DLC as at the respective dates thereof and the consolidated results of operations and cash flows of DLC for the periods indicated in accordance with GAAP applied on a consistent basis throughout the periods involved (except for changes in accounting principles disclosed in the notes thereto) and subject in the case of interim financial statements to normal year-end adjustments.

ARTICLE VII

REPRESENTATIONS, WARRANTIES AND DISCLAIMERS OF THE FE SUBSIDIARIES

Each FE Subsidiary severally with respect to itself and all matters related to such FE Subsidiary obligations hereunder and as to the FE Assets to be exchanged by such FE Subsidiary, hereby represents and warrants to DLC:

7.1 Incorporation; Qualification. Such FE Subsidiary is a corporation duly incorporated, validly existing and in good standing under the laws of its respective state of incorporation and has all requisite corporate power and authority to own, lease and operate its material assets and properties and to carry on its business as is now being conducted. Such FE Subsidiary is duly qualified to do business as a foreign corporation and is in good standing under the laws of each jurisdiction in which its business as now being conducted shall require it to be so qualified, except where the failure to be so qualified would not have an FE Material Adverse Effect. Such FE Subsidiary has heretofore delivered to DLC true, complete and correct copies of its respective Articles of Incorporation, Code of Regulations or Bylaws, as currently in effect.

7.2 Authority. Such FE Subsidiary has full corporate power and authority to execute and deliver this Agreement and each of the Ancillary Agreements to which it is a signatory and to consummate the transactions contemplated hereby or thereby. The execution and delivery of this Agreement and each of the Ancillary Agreements to which it is a signatory by such FE Subsidiary and the consummation of the transactions contemplated hereby and thereby by such FE Subsidiary have been duly and validly authorized by all necessary corporate action required on the part of such FE Subsidiary and this Agreement and each Ancillary Agreement to which it is a signatory has been duly and validly executed and delivered by such FE Subsidiary. Subject to the receipt of the FE Required Regulatory Approvals, each of this Agreement and each of the Ancillary Agreements to which it is a signatory constitutes the legal, valid and

binding agreement of such FE Subsidiary, enforceable against such FE Subsidiary in accordance with its terms, except as may be limited by applicable bankruptcy, insolvency, fraudulent conveyance, reorganization, moratorium or other similar laws affecting or relating to enforcement of creditors' rights generally and general principles of equity (regardless of whether enforcement is considered in a proceeding at law or in equity).

7.3 Consents and Approvals; No Violation.

(a) Except as set forth in Schedule 7.3(a), and subject to obtaining any FE Required Regulatory Approvals, neither the execution, delivery and performance by such FE Subsidiary of this Agreement nor the execution, delivery and performance by such FE Subsidiary of the Ancillary Agreements to which such FE Subsidiary is a signatory will (i) conflict with or result in any breach of any provision of the Articles of Incorporation, Code of Regulations or Bylaws of such FE Subsidiary, (ii) result in a default (or give rise to any right of termination, cancellation or acceleration) under any of the terms, conditions or provisions of any note, bond, mortgage, indenture, material agreement or other instrument or obligation to which such FE Subsidiary is a party or by which such FE Subsidiary, or any of its FE Assets may be bound, except for such defaults (or rights of termination, cancellation or acceleration) as to which requisite waivers or consents have been obtained or that would not, individually or in the aggregate, create an FE Material Adverse Effect; or (iii) constitute violations of any law, regulation, order, judgment or decree applicable to such FE Subsidiary, which violations, individually or in the aggregate, would create an FE Material Adverse Effect.

(b) Except as set forth in Schedule 7.3(b) (the filings and approvals referred to in Schedule 7.3(b) are collectively referred to as "FE Required Regulatory Approvals"), no consent or approval of, filing with, or notice to, any Governmental Authority is necessary for the execution and delivery of this Agreement, or the consummation by such FE Subsidiary of the transactions contemplated hereby, other than (i) such consents, approvals, filings or notices which, if not obtained or made, will not prevent such FE Subsidiary from performing its material obligations hereunder and (ii) such consents, approvals, filings or notices which become applicable to such FE Subsidiary or its FE Assets as a result of the specific regulatory status of DLC (or any of its Affiliates) or any Winning Bidder to which such FE Subsidiary is directed to make any delivery hereunder or as a result of any other facts that specifically relate to the business or activities in which DLC (or any of its Affiliates) or any Winning Bidder to which such FE Subsidiary is directed to make any delivery hereunder is or proposes to be engaged.

7.4 Insurance. Except as set forth in Schedule 7.4, all material policies of fire, liability, workers' compensation and other forms of insurance (if any) owned or held by, or on behalf of, such FE Subsidiary with respect to the business, operations or employees at its FE Plants or its FE Assets are in full force and effect, all premiums with respect thereto covering all periods up to and including the date hereof have been paid (other than retroactive premiums

which may be payable with respect to comprehensive general liability and workers' compensation insurance policies), and no notice of cancellation or termination has been received with respect to any such policy which was not replaced on substantially similar terms prior to the date of such cancellation. Except as described in Schedule 7.4, within the thirty-six (36) months preceding the date of this Agreement, such FE Subsidiary has not been refused any insurance with respect to its FE Assets nor has its coverage been limited by any insurance carrier to which it has applied for any such insurance or with which it has carried insurance during the last twelve (12) months.

7.5 FE Real Property Leases. Schedule 7.5 lists, as of the date of this Agreement, all real property leases under which such FE Subsidiary is a lessee or lessor and which relate to its FE Assets ("FE Real Property Leases"). Except as set forth in Schedule 7.5, all such Real Property Leases are valid, binding and enforceable against such FE Subsidiary in accordance with their terms; there are no existing defaults by such FE Subsidiary or, to such FE Subsidiary's Knowledge, any other party thereunder that could reasonably be expected to result in an FE Material Adverse Effect; and no event has occurred which (whether with or without notice, lapse of time or both) would constitute a default by such FE Subsidiary or, to such FE Subsidiary's Knowledge, any other party thereunder that could reasonably be expected to result in an FE Material Adverse Effect. Such FE Subsidiary has delivered to DLC, and DLC shall deliver to the applicable Winning Bidder, true, correct and complete copies of each of its FE Real Property Leases.

7.6 Environmental Matters. Except as disclosed in Schedule 7.6 or 4.3(e) or in the "Phase I" and "Phase II" environmental site assessments prepared by the independent environmental consultants and made available for inspection by DLC ("FE Environmental Reports"):

(a) Such FE Subsidiary holds, and is in substantial compliance with, all FE Environmental Permits that are required for such FE Subsidiary to conduct the business and operations of its FE Assets, and such FE Subsidiary is otherwise in compliance with applicable Environmental Laws with respect to the business and operations of its FE Assets, except for such failures to hold or comply with required FE Environmental Permits, or such failures to be in compliance with applicable Environmental Laws, as would not, individually or in the aggregate, create an FE Material Adverse Effect;

(b) Such FE Subsidiary has not received any written request for information, or been notified that it is a potentially responsible party, under CERCLA or any similar state law with respect to its FE Real Property;

(c) Such FE Subsidiary has not entered into or agreed to any consent decree or order relating to its FE Assets, or is subject to any outstanding judgment, decree, or judicial order relating to compliance with any Environmental Law or to Remediation of Regulated Substances under any Environmental Law relating to its FE Assets; and

(d) To the Knowledge of such FE Subsidiary, no Release of Regulated Substances has occurred at, from, in, on, or under its FE Real Property and no Regulated Substances are present in, on, about or migrating from its FE Real Property that could give rise to an Environmental Claim related to its FE Assets for which Remediation reasonably could be required, except in any such case to the extent that any such Release or Environmental Claim would not, individually or in aggregate, create an FE Material Adverse Effect.

The representations and warranties made in this Section 7.6 are the exclusive representations and warranties of such FE Subsidiary relating to environmental matters as of the date hereof.

7.7 Labor Matters. Such FE Subsidiary previously delivered to DLC true and correct copies of all collective bargaining agreements to which such FE Subsidiary is a party or is subject to and which relate to the business and operations of its FE Assets. With respect to the business or operations of its FE Assets, except to the extent set forth in Schedule 7.7 and except for such matters as will not, individually or in aggregate, create an FE Material Adverse Effect, (a) such FE Subsidiary is in compliance with all applicable laws respecting employment and employment practices, occupational safety and health, plant closing, mass layoffs, terms and conditions of employment and wages and hours; (b) such FE Subsidiary has not received any written notice of any unfair labor practice complaint against any FE Subsidiary pending before the National Labor Relations Board; (c) no arbitration proceeding arising out of or under any collective bargaining agreement is pending against such FE Subsidiary; and (d) such FE Subsidiary has not experienced any work stoppage within the three-year period prior to the date hereof and to the Knowledge of such FE Subsidiary none is currently threatened.

7.8 Benefit Plans: ERISA. (a) Schedule 7.8(a) lists all FE Plans maintained for, or in which the employees of such FE Subsidiary connected with its FE Assets participate. True and complete copies of all such FE Plans have been made available to DLC.

(b) No liability under Title IV or Section 302 of ERISA has been incurred by any FE Subsidiary or any ERISA Affiliate of such FE Subsidiary that has not been satisfied in full, and no condition exists that presents a material risk to such FE Subsidiary or any ERISA Affiliate thereof incurring any such liability, other than liability for premiums due the Pension Benefit Guaranty Corporation (which premiums have been paid when due). Insofar as the representation made in this Section 7.8(b) applies to Sections 4064, 4069 or 4204 of Title IV of ERISA, it is made with respect to any employee benefit plan, program, agreement or arrangement subject to Title IV of ERISA to which such FE Subsidiary or any ERISA Affiliate of such FE Subsidiary made, or was required to make, contributions during the five (5)-year period ending on the last day of the most recent plan year ended prior to the Exchange Closing Date.

(c) The consummation of the transactions contemplated by this Agreement will not, either alone or in combination with another event, (i) entitle any current or former employee or officer of such FE Subsidiary or any ERISA Affiliate of such FE Subsidiary to severance pay, unemployment

compensation or any other payment, except as expressly provided in this Agreement, or (ii) accelerate the time of payment or vesting, or increase the amount of compensation due any such employee or officer.

(d) There has been no material failure of any of the FE Plans that is a group health plan (as defined in Section 5000(b)(1) of the Code) to meet the requirements of Section 4980B(f) of the Code with respect to a qualified beneficiary (as defined in Section 4980B(g) of the Code). Neither such FE Subsidiary nor any ERISA Affiliate of such FE Subsidiary has contributed to a nonconforming group health plan (as defined in Section 5000(c) of the Code) and no ERISA Affiliate of such FE Subsidiary has incurred a Tax under Section 5000(e) of the Code that is or could become a liability of the Acquiring Party.

(e) There are no pending, threatened or anticipated claims by or on behalf of any FE Plans, by any employee or beneficiary covered under any such FE Plans, or otherwise involving any such FE Plans (other than routine claims for benefits).

7.9 Real Property. Schedule 7.9 contains a description of the FE Real Property of such FE Subsidiary included in the FE Assets. True and correct copies of all current surveys, abstracts, title commitments and title opinions in such FE Subsidiary's possession and all policies of title insurance currently in force and in the possession of such FE Subsidiary with respect to its FE Real Property have heretofore been made available to DLC.

7.10 Condemnation. Except as set forth in Schedule 7.10, such FE Subsidiary has not received any written notices of and otherwise has no Knowledge of any pending or threatened proceedings or actions by any Governmental Authority to condemn or take by power of eminent domain all or any part of its FE Assets.

7.11 Contracts and Leases. (a) Schedule 7.11(a) lists each FE Agreement which is material to such FE Subsidiary for the business or operations of its FE Assets, other than those (i) that are expected to expire or terminate prior to the Exchange Closing Date, or (ii) that provide for annual payments by any FE Subsidiary after the date hereof of less than $100,000 or payments by such FE Subsidiary after the date hereof of less than $500,000 in the aggregate.

(b) Except as disclosed in Schedule 7.11(b), each FE Agreement listed in Schedule 7.11(a) constitutes a legal, valid and binding obligation of such FE Subsidiary and, to the Knowledge of such FE Subsidiary, constitutes a valid and binding obligation of the other parties thereto, and may be transferred to the Acquiring Party as contemplated by this Agreement without the consent of the other parties thereto and will continue in full force and effect thereafter, unless in any such case the impact of such lack of legality, validity or binding nature, or inability to transfer, would not, individually or in the aggregate, create an FE Material Adverse Effect.

(c) Except as set forth in Schedule 7.11(c), there is not, under

any of its FE Agreements listed on Schedule 7.11(a), any default or event which, with notice or lapse of time or both, would constitute a default on the part of such FE Subsidiary or to its Knowledge, any of the other parties thereto, except such events of default and other events which would not, individually or in the aggregate, create an FE Material Adverse Effect.

7.12 Legal Proceedings. Except as set forth in Schedule 7.12, there is no action or proceeding pending, or, to the Knowledge of such FE Subsidiary, threatened against such FE Subsidiary before any court, arbitrator or Governmental Authority, which could, individually or in the aggregate,

reasonably be expected to create an FE Material Adverse Effect. Except as set forth in Schedule 7.12, such FE Subsidiary is not subject to any outstanding judgments, rules, orders, writs, injunctions or decrees of any court, arbitrator or Governmental Authority that would, individually or in the aggregate, create an FE Material Adverse Effect.

7.13 Permits. (a) Such FE Subsidiary has all FE Permits (other than FE Environmental Permits, which are addressed in Section 7.6 hereof) necessary to own and operate its FE Assets except where the failure to have such FE Permits would not, individually or in the aggregate, create an FE Material Adverse Effect. Except as disclosed on Schedule 7.13(a), such FE Subsidiary has not received any notification that such FE Subsidiary is in violation of any such FE Permits, except notifications of violations which would not, individually or in the aggregate, create an FE Material Adverse Effect. Such FE Subsidiary is in compliance with all its FE Permits except where non-compliance would not, individually or in the aggregate, create an FE Material Adverse Effect.

(b) Schedule 7.13(b) sets forth all material FE Permits (other than FE Transferable Permits, which are set forth on Schedule 1.1(126)), related to the FE Assets of such FE Subsidiary.

7.14 Taxes. (a) Such FE Subsidiary has filed or caused to be filed all Tax Returns that are required to be filed by it with respect to any Tax relating to the FE Assets or to such FE Subsidiary's operation of the FE Assets, and paid or caused to be paid all Taxes that have become due as indicated thereon, except where such Tax is being contested in good faith by appropriate proceedings, or where the failure to so file or pay would not create an FE Material Adverse Effect. Such FE Subsidiary has complied in all material respects with all applicable laws, rules and regulations relating to withholding Taxes relating to its FE Transferred Employees. All Tax Returns relating to its FE Assets are true, correct and complete in all material respects. There are no liens for Taxes upon its FE Assets except for liens for Taxes not yet due and Permitted Encumbrances (FE Assets).

(b) Except as set forth in Schedule 7.14(b), no notice of deficiency or assessment has been received from any taxing authority with respect to liabilities for Taxes of such FE Subsidiary in respect of its FE Assets, which have not been fully paid or finally settled, and any such deficiency shown in

Schedule 7.14(b) is being contested in good faith through appropriate proceedings.

(c) Except as set forth in Schedule 7.14(c), there are no outstanding agreements or waivers extending the applicable statutory periods of limitation for Taxes associated with is FE Assets that will be binding upon the Acquiring Party after the Exchange Closing.

(d) Except as set forth in Schedule 7.14(d), none of its FE Assets is property that is required to be treated as being owned by any other person pursuant to the so-called safe harbor lease provisions of former Section 168(f) of the Code, and none of its FE Assets is "tax-exempt use" property within the meaning of Section 168(h) of the Code.

(e) Schedule 7.14(e) sets forth the taxing jurisdictions in which such FE Subsidiary owns assets or conducts business that require a notification to a taxing authority of the transactions contemplated by this Agreement, if the failure to make such notification, or obtain Tax clearance certificates in connection therewith, would either require the Acquiring Party to withhold any

portion of the consideration or subject the Acquiring Party to any liability for any Taxes of such FE Subsidiary.

7.15 Intellectual Property. Schedule 4.1(k) sets forth all Intellectual Property used in and, individually or in the aggregate with other Intellectual Property, material to the operation or business by such FE Subsidiary of its FE Assets, each of which such FE Subsidiary or its Affiliates either has all right, title and interest in or valid and binding rights under contract to use in connection with its operation of its FE Assets. Except as disclosed in Schedule 7.15, (i) such FE Subsidiary is not, nor has received any notice that it is in default (or with the giving of notice or lapse of time or both, would be in default), under any contract to use such Intellectual Property, and (ii) to the Knowledge of such FE Subsidiary, such Intellectual Property is not being infringed by any other Person. Such FE Subsidiary has not received notice that it is infringing any Intellectual Property of any other Person in connection with the operation or business of its FE Assets, and such FE Subsidiary to its Knowledge, is not infringing any Intellectual Property of any other Person which, individually or in the aggregate, would have an FE Material Adverse Effect.

7.16 FE Capital Expenditures. Except as set forth in Schedule 8.1(a), there are no FE Capital Expenditures that are planned by such FE Subsidiary with respect to its FE Assets through December 31, 1999.

7.17 Compliance With Laws. Such FE Subsidiary is in compliance with all applicable laws, rules and regulations with respect to the ownership or operation of its FE Assets, except where the failure to be in compliance would not, individually or in the aggregate, create an FE Material Adverse Effect.

7.18 DISCLAIMERS REGARDING FE ASSETS. EXCEPT FOR THE REPRESENTATIONS AND WARRANTIES SET FORTH IN THIS ARTICLE VII, THE FE ASSETS ARE TRANSFERRED "AS IS, WHERE IS", AND SUCH FE SUBSIDIARY EXPRESSLY DISCLAIMS ANY REPRESENTATIONS OR WARRANTIES OF ANY KIND OR NATURE, EXPRESS OR IMPLIED, AS TO LIABILITIES, OPERATIONS OF ITS FE PLANTS, THE TITLE, CONDITION, VALUE OR QUALITY OF ITS FE ASSETS OR THE PROSPECTS (FINANCIAL AND OTHERWISE), RISKS AND OTHER INCIDENTS OF ITS FE ASSETS, AND SUCH FE SUBSIDIARY SPECIFICALLY DISCLAIMS ANY REPRESENTATION OR WARRANTY OF MERCHANTABILITY, USAGE, SUITABILITY OR FITNESS FOR ANY PARTICULAR PURPOSE WITH RESPECT TO ITS FE ASSETS, OR ANY PART THEREOF, OR AS TO THE WORKMANSHIP THEREOF, OR THE ABSENCE OF ANY DEFECTS THEREIN, WHETHER LATENT OR PATENT, OR COMPLIANCE WITH ENVIRONMENTAL REQUIREMENTS, OR THE APPLICABILITY OF ANY GOVERNMENTAL REQUIREMENTS, INCLUDING BUT NOT LIMITED TO ANY ENVIRONMENTAL LAWS, OR WHETHER SUCH FE SUBSIDIARY POSSESSES SUFFICIENT REAL PROPERTY OR PERSONAL PROPERTY TO OPERATE ITS FE ASSETS. EXCEPT AS OTHERWISE EXPRESSLY PROVIDED HEREIN, SUCH FE SUBSIDIARY FURTHER SPECIFICALLY DISCLAIMS ANY REPRESENTATION OR WARRANTY REGARDING THE ABSENCE OF REGULATED SUBSTANCES OR LIABILITY OR POTENTIAL LIABILITY ARISING UNDER ENVIRONMENTAL LAWS WITH RESPECT TO ITS FE ASSETS. WITHOUT LIMITING THE GENERALITY OF THE FOREGOING, EXCEPT AS

OTHERWISE EXPRESSLY PROVIDED HEREIN, SUCH FE SUBSIDIARY EXPRESSLY DISCLAIMS ANY REPRESENTATION OR WARRANTY OF ANY KIND REGARDING THE CONDITION OF ITS FE ASSETS OR THE SUITABILITY OF ITS FE ASSETS FOR OPERATION AS A POWER PLANT AND NO SCHEDULE OR EXHIBIT TO THIS AGREEMENT, NOR ANY OTHER MATERIAL OR INFORMATION PROVIDED BY OR COMMUNICATIONS MADE BY SUCH FE SUBSIDIARY OR ITS REPRESENTATIVES, OR BY ANY BROKER OR INVESTMENT BANKER, WILL CAUSE OR CREATE ANY WARRANTY, EXPRESS OR IMPLIED, AS TO THE TITLE, CONDITION, VALUE OR QUALITY OF ITS FE ASSETS.

7.19 Year 2000 Compliance. Such FE Subsidiary, with respect to all Computer Systems included in its FE Assets to be transferred under this Agreement, has plans to achieve Year 2000 Compliance with respect to such Computer Systems, and is using its Commercially Reasonable Efforts to execute and carry out such plans.

7.20 SEC Filings; Financial Statements. (a) Such FE Subsidiary has filed all forms, reports and documents required to be filed by such FE Subsidiary with the SEC since January 1, 1998, and has heretofore delivered or made available to DLC in the form filed with the SEC, together with any amendments thereto, its (i) Annual Reports on Form 10-K for the fiscal year ended December 31, 1997, (ii) all proxy statements relating to its meetings of stockholders (whether annual or special) held since January 1, 1997, (iii) Quarterly Reports on Form 10-Q for the fiscal quarter ended March 31, 1998, June 30, 1998 and September 30, 1998, and (iv) all other reports or registration statements filed by such FE Subsidiary with the SEC since January 1, 1998 (collectively, "FE Subsidiaries SEC Reports"). The FE Subsidiaries SEC Reports were prepared substantially in accordance with the requirements of the Securities Act of 1933, as amended or the Securities Exchange Act of 1934, as amended, as the case may be, and the rules and regulations promulgated under

each of such respective acts, and did not at the time they were filed contain any untrue statement of a material fact or omit to state a material fact required to be stated therein or necessary in order to make the statements therein, in the light of the circumstances under which they were made, not misleading.

(b) The financial statements, including all related notes and schedules, contained in the FE Subsidiaries SEC Reports (or incorporated by reference therein) fairly present the consolidated financial position of the FE Subsidiaries as at the respective dates thereof and the consolidated results of operations and cash flows of the FE Subsidiaries for the periods indicated in accordance with GAAP applied on a consistent basis throughout the periods involved (except for changes in accounting principles disclosed in the notes thereto) and subject in the case of interim financial statements to normal year-end adjustments.

ARTICLE VIII

COVENANTS OF THE PARTIES

8.1 Conduct of Business Relating to the Exchange Assets. The Parties understand and agree that the existing CAPCO Agreements regarding the Plants remain in full force and effect during the period from the date of this Agreement through the Exchange Closing Date, and that during such period,

except as modified by this Agreement, the ownership, operation and maintenance of the Plants shall be as provided in the existing CAPCO Agreements.

(a) Except as described in Schedule 8.1(a) or as expressly contemplated by this Agreement or to the extent DLC otherwise consents in writing, during the period from the date of this Agreement to the Exchange Closing Date, each FE Subsidiary that is operating one or more of the FE Assets, (i) will operate such FE Assets in the ordinary course of business consistent with its past practices and Good Utility Practices, (ii) shall use all Commercially Reasonable Efforts to preserve intact such FE Assets, and endeavor to preserve the goodwill and relationships with customers, suppliers and others having business dealings with it, (iii) shall maintain adequate insurance coverage relating to such FE Assets, including insurance described in Section 7.4, and (iv) shall comply with all applicable laws relating to such FE Assets, including without limitation, all Environmental Laws, except, with respect to such FE Assets, where the failure to so comply would not result in an FE Material Adverse Effect.

(b) Each Party that is operating one or more of the Exchange Assets, shall continue its program to install such equipment or Computer Systems relating to its Exchange Assets (except for such equipment and systems described on Schedule 4.2(b)) with respect to Year 2000 Compliance in accordance with the plans referred to in Sections 3.1(k) or 4.1(j), as the case may be; provided

that if the Acquiring Party requests reasonable changes in such plans the Conveying Party will alter its plans provided that (i) all incremental costs of the Conveying Party shall be promptly reimbursed by the Acquiring Party and (ii) the Acquiring Party shall, to the Conveying Party's reasonable satisfaction, indemnify, defend and hold harmless the Conveying Party from and against any and all Indemnifiable Losses in any way relating to, resulting from or arising out of such requested changes to such plans.

(c) Without limiting the generality of Section 8.1(a) and, except as contemplated in this Agreement or as described in Schedule 8.1(c), or as required under applicable law or by any Governmental Authority, prior to the Exchange Closing Date, without the prior written consent of DLC, no FE Subsidiary shall as to its FE Assets:

(i) Make any material change in the levels of the FE Inventories customarily maintained by such FE Subsidiary with respect to its FE Asset, other than changes which are consistent with Good Utility Practices;

(ii) Sell, lease (as lessor), encumber, pledge, transfer or otherwise dispose of, any FE Asset (except for FE Inventories or Fuel Supplies used, consumed or replaced in the ordinary course of business consistent with past practices of such FE Subsidiary or Good Utility Practices) other than to encumber any such FE Asset with Permitted Encumbrances (FE Assets);

(iii) Modify, amend or voluntarily terminate, prior to the respective expiration date of any of the Assigned Agreements or Real Property Leases or any of its FE Permits or FE Environmental Permits with respect to any of its FE Assets in any material respect, other than (A) in the ordinary course of business, to the extent consistent with the past practices of such FE Subsidiary and with Good Utility Practices, (B) with cause, to the extent consistent with past practices of such FE Subsidiary and with Good Utility Practices, or (C) as may be required in connection with transferring of any such FE

Subsidiary's rights or obligations thereunder to the Acquiring Party pursuant to this Agreement;

(iv) Except as otherwise provided herein, enter into any commitment for the purchase, sale, or transportation of fuel for any FE Asset having a term greater than six months and not terminable on or before the Exchange Closing Date either (A) automatically, or (B) by option of such FE Subsidiary (or, after the Exchange Closing, by the Acquiring Party) in its sole discretion, if the aggregate payment under such commitment for fuel and all other outstanding commitments for fuel for that FE Asset not previously approved by DLC would exceed $1,000,000;

(v) Sell, lease or otherwise dispose of FE SO2 Emission Allowances or FE NOx Emission Allowances or FE Emission Reduction Credits, except to the extent necessary to operate such FE Assets in accordance with this Section 8.1;

(vi) Except as otherwise provided herein, enter into any contract, agreement, commitment or arrangement relating to any FE Asset that individually exceeds $250,000 or in the aggregate exceeds $1,000,000 unless it is terminable by such FE Subsidiary (or, after the Exchange Closing, by the Acquiring Party) without penalty or premium upon no more than sixty (60) days notice;

(vii) Except as otherwise required by the terms of any collective bargaining agreement or as otherwise provided under Section 8.11 hereof, (A) hire at, or transfer to such FE Asset, any new employees prior to the Exchange Closing, other than to fill vacancies in existing positions in the reasonable discretion of such FE Subsidiary, (B) materially increase salaries or wages of employees employed in connection with such FE Assets prior to the Exchange Closing, (C) take any action prior to the Exchange Closing to affect a material change in any collective bargaining agreement, or (D) take any action prior to the Exchange Closing to materially increase the aggregate benefits payable to the employees employed in connection with such FE Assets;

(viii) Make any FE Capital Expenditures except (A) as described on Schedule 8.1(c)(viii); (B) as mandated after the date of this Agreement by any Governmental Authority (provided that DLC may direct such FE Subsidiary to delay making such FE Capital Expenditures and contest such mandates by appropriate proceedings at DLC's expense, unless such delay would have an adverse impact on the FE Assets); or (C) those which are prudent in amount but do not exceed in the aggregate $500,000 for any Exchange Asset, in addition to those identified in (A) or (B) above; or

(ix) Except as otherwise provided herein, enter into any written or oral contract, agreement, commitment or arrangement with respect to any of the proscribed transactions set forth in the foregoing paragraphs (i) through (viii).

(d) Prior to the Exchange Closing Date, without the prior written consent of DLC, no FE Subsidiary shall as to the DLC Assets make any DLC Capital Expenditure except (A) as described on Schedule 8.1(d); (B) as mandated after the date of this Agreement by any Governmental Authority (provided that the DLC may direct any FE Subsidiary to delay making such DLC Capital Expenditures and contests such mandate by appropriate proceedings at DLC's

expense, unless such delay would have an adverse impact on the DLC Assets); (C) as necessary to restore the DLC Asset to service or to avoid serious damage; or

(D) those which are prudent in amount but do not exceed in the aggregate $500,000 for any DLC Asset, in addition to those identified in (A) or (B) above.

(e) Except as contemplated in this Agreement, as described in Schedule 8.1(e), or as required under applicable law or by any Governmental Authority, prior to the Exchange Closing Date, without the prior written consent of the applicable FE Subsidiaries, DLC shall not:

(i) Sell, lease (as lessor), encumber, pledge, transfer or otherwise dispose of, any DLC Asset (except for DLC Inventories or Fuel Supplies used, consumed or replaced in the ordinary course of business consistent with past practices of DLC or Good Utility Practices) other than to encumber any such DLC Asset with Permitted Encumbrances (DLC Assets);

(ii) Enter into any contract, agreement, commitment or arrangement relating to any DLC Asset that individually exceeds $250,000 or in the aggregate exceeds $1,000,000 unless it is terminable by DLC (or, after the Exchange Closing, by an FE Subsidiary) without penalty or premium upon no more than sixty (60) days notice; or

(iii) Enter into any written or oral contract, agreement, commitment or arrangement with respect to any of the proscribed transactions set forth in the foregoing paragraphs (i) and (ii).

8.2 Access to Information.

(a) Between the date of this Agreement and the Exchange Closing Date, the FE Subsidiaries will, at reasonable times and upon reasonable notice, provide DLC, the DLC Representatives, the Auction Participants and the Winning Bidders:

(i) reasonable access to their managerial personnel and to all books, records, plans, equipment, offices and other facilities and properties constituting the FE Assets;

(ii) such historical financial and operating data and other information with respect to the FE Assets as they may from time to time reasonably request;

(iii) upon request, a copy of each material report, schedule or other document filed by FE or any FE Subsidiary with respect to the FE Assets with the SEC, FERC, PUCO, PaPUC, PaDEP or any other Governmental Authority;

(iv) access to each FE Asset for Inspection by DLC, DLC Representatives, Auction Participants and Winning Bidders at reasonable times during regular business hours scheduled for such Inspections, and shall provide qualified management, engineering,

operations and maintenance and other personnel to make presentations as required, to escort such Persons and to assist in all aspects of conducting the Inspections, provided that each of DLC, the Auction

Participants, the Winning Bidders and the FE Subsidiaries shall bear their own costs of participating in the Inspections; and

(v) with all such other information in the possession or control of an FE Subsidiary as shall be reasonably necessary to enable DLC, the DLC Representatives and the Auction Participants to assemble the information reasonably necessary or appropriate for the Auction or to verify the accuracy of the representations and warranties of the FE Subsidiaries contained in this Agreement; provided, however, that (A) any such Inspections shall be conducted in such a manner as not to interfere unreasonably with the operation of the FE Assets, (B) the applicable FE Subsidiary shall not be required to take any action which would constitute a waiver of any legal privilege, including, but not limited to, the attorney-client privilege, the work product privilege, and the self critical investigation privilege, and (C) the applicable FE Subsidiary need not supply DLC, any Auction Participant or any Winning Bidder with any information which such FE Subsidiary are under a legal or contractual obligation to withhold from disclosure.

Notwithstanding anything in this Section 8.2(a) to the contrary, with respect to employee records the FE Subsidiaries will only furnish or provide such access to FE Transferred Employee Records and will not furnish or provide access to other employee personnel records or medical information unless required by law or specifically authorized by the affected employee.

(b)

(i) DLC, the DLC Representatives, the Auction Participants and the Winning Bidders shall be entitled to conduct Inspections, in accordance with this Section 8.2(b), of all of the FE Assets located adjacent to any Connection Point (as defined in the FE Connection Agreements) to verify and/or determine the accuracy of the data, drawings, and records described in the FE Connection Agreements. The Parties shall cooperate to schedule DLC's, the Auction Participants' and the applicable Winning Bidder's Inspections of the FE Assets so that any interference with the operation of each FE Plant is minimized, to the extent reasonably feasible, and so that DLC, the Auction Participants and such Winning Bidder may complete their Inspections of the FE Assets within thirty (30) working days of commencement of Inspections and within two (2) months after the execution of the Auction Agreements.

(ii) At a mutually convenient time not more than one (1) month after DLC, the Auction Participants and the Winning Bidders

have completed their Inspections, the Parties shall meet to discuss whether, as a result of the Inspections, it is appropriate to modify the exhibits to the FE Connection Agreements to portray more accurately the Connection Points. Any modification to any portion of the exhibits to any FE Connection Agreement to which the respective Parties agree shall thereafter be deemed part of such exhibit for all purposes under such FE Connection Agreement.

(c) The FE Subsidiaries agree that in order to satisfy the requirements of the Auction, it is necessary and hereby agree (i) to complete surveys and title reports for the FE Real Property, (ii) to subdivide the FE Real Property appropriately to prepare it for sale, in each case as soon as practicable following the execution of this Agreement, and (iii) to provide DLC with a copy of preliminary title reports and surveys for the FE Real Property as

soon as such preliminary title reports and surveys are available. DLC agrees to provide the applicable FE Subsidiaries with a copy of preliminary title reports and surveys for the DLC Real Property as soon as such preliminary title reports and surveys are available.

(d) For seven (7) years after the Exchange Closing Date (or such longer period as may be required by applicable law), each Party and its Representatives (and under the terms of the respective Auction Agreement, the applicable Winning Bidder and its Representatives) shall have reasonable access to all of the books and records of the Exchange Assets, including all FE Transferred Employee Records in the possession of any Party to the extent that such access may reasonably be required in connection with the Assumed Liabilities or the Excluded Liabilities, or regarding other matters relating to or affected by the operation of the Exchange Assets. Such access shall be afforded by the applicable Winning Bidder or the Party in possession of any such books and records upon receipt of reasonable advance notice and during normal business hours. The Person exercising this right of access shall be solely responsible for any costs or expenses incurred by it or the holder of the information with respect to such access pursuant to this Section 8.2(d). If the Person in possession of such books and records shall desire to dispose of any books and records upon or prior to the expiration of such seven-year period (or any such longer period), such Person shall, prior to such disposition, give the other Person a reasonable opportunity, at the latter's expense, to segregate and remove such books and records as it may select.

(e) Each Party agrees that, prior to the Exchange Closing Date, neither it nor its Representatives will contact any vendors, suppliers, employees, or other contracting parties of a Conveying Party or its Affiliates with respect to any aspect of the Conveying Party's Exchange Assets or the transactions contemplated hereby, without the prior written consent of the applicable Conveying Party, which consent shall not be unreasonably withheld. For avoidance of doubt, if the Conveying Party is an FE Subsidiary, consent will only be needed from such FE Subsidiary.

(f) Each Party shall provide the other with (i) copies of its Annual Report on Form 10-K filed with the SEC for the fiscal year ended December 31, 1998, as soon as practicable but in no event later than March 31, 1999, and (ii) copies of its Quarterly Reports on Form 10-Q filed with the SEC for those quarters ended March 31, 1999, June 30, 1999 and September 30, 1999, as soon as practicable after each such report is filed with the SEC.

8.3 Confidentiality. (a) Each Party shall, and shall use its best efforts to cause its Representatives to, (i) keep all Proprietary Information of the other Party confidential and not to disclose or reveal any such Proprietary Information to any person other than such Party's Representatives and (ii) not use such Proprietary Information other than in connection with the consummation of the transactions contemplated hereby. After the Exchange Closing Date, any Proprietary Information, to the extent related to the Exchange Assets acquired by an Acquiring Party, shall no longer be subject to the restrictions set forth herein. The obligations of the Parties under this Section 8.3(a) shall be in full force and effect for three (3) years from the date hereof and will survive the termination of this Agreement, the discharge of all other obligations owed by the Parties to each other and the Exchange Closing Date.

(b) Notwithstanding the terms of Section 8.3(a) above, the FE Subsidiaries agree that prior to the Exchange Closing, DLC may reveal or disclose Proprietary Information to any other Persons in connection with the Auction; provided that such Persons agree in writing to maintain the confidentiality of the Proprietary Information in accordance with this Agreement.

(c) Upon the other Party's prior written approval (which shall not be unreasonably withheld), either Party or the applicable Winning Bidder may provide Proprietary Information of the other Party to the PUCO, PaPUC, SEC, FERC or any other Governmental Authority with jurisdiction or any stock exchange, as may be necessary to obtain Required Regulatory Approvals, or to comply generally with any relevant law or regulation. The disclosing Party, or the applicable Winning Bidder (as required by the respective Auction Agreement), will seek confidential treatment for the Proprietary Information provided to any Governmental Authority and the disclosing Party, or the Winning Bidder (as required by the respective Auction Agreement), will notify the other Party as far in advance as is practicable of its intention to release to any Governmental Authority any Proprietary Information.

8.4 Public Statements. Subject to the requirements imposed by law, any Governmental Authority or stock exchange, prior to the Exchange Closing Date, no press release or other public announcement or public statement or comment in response to any inquiry relating to the transactions contemplated by this Agreement shall be issued or made by any Party without the prior approval of the other Party (which approval shall not be unreasonably withheld). The Parties agree to cooperate in preparing any such announcements.

8.5 Expenses. Except to the extent specifically provided herein,

whether or not the transactions contemplated hereby are consummated, all costs and expenses incurred in connection with this Agreement and the transactions contemplated hereby shall be borne by the Party incurring such costs and expenses. Notwithstanding anything to the contrary herein, each Acquiring Party will be responsible for (a) all costs and expenses associated with obtaining any title insurance policy and all endorsements thereto that such Acquiring Party elects to obtain and (b) all filing fees under the HSR Act relating to the Exchange Assets that such Acquiring Party would acquire hereunder.

8.6 Further Assurances.

(a) Subject to the terms and conditions of this Agreement, each Party shall use its best efforts to take, or cause to be taken, all actions, and to do, or cause to be done, all things necessary, proper or advisable under applicable laws and regulations to consummate and make effective the Generation Exchange and the assumption of the Assumed Liabilities pursuant to this Agreement and the Auction Agreements. Such actions shall include, without limitation, each Party using its best efforts to ensure satisfaction of the conditions precedent to its obligations hereunder, including obtaining all necessary consents, approvals, and authorizations of third parties and Governmental Authorities required to be obtained in order to consummate the transactions hereunder, and as a Conveying Party to effectuate a transfer of the Transferable Permits to any Acquiring Party. The Conveying Party shall cooperate with the Acquiring Party in its efforts to obtain all other Permits and Environmental Permits necessary for the Acquiring Party to operate the Exchanged Assets. As an Acquiring Party, each Party agrees to perform promptly all conditions required of such Acquiring Party in connection with the Conveying Party's Required Regulatory Approvals, other than those conditions which would create for it a Material Adverse Effect. Neither of the Parties hereto shall,

without prior written consent of the other Party, take or fail to take any action which might reasonably be expected to prevent or materially impede, interfere with or delay the transactions contemplated by this Agreement or the Auction Agreements.

(b)

(i) In the event that any Exchange Asset to be assigned, conveyed, transferred and delivered hereunder to any Acquiring Party shall not have been so assigned, conveyed, transferred and delivered to such Acquiring Party at the Exchange Closing, the Conveying Party shall, subject to Section 8.6(c), use Commercially Reasonable Efforts to so assign, convey, transfer and deliver such asset to such Acquiring Party as promptly as is practicable after the Exchange Closing.

(ii) In the event that any Easement shall not have been granted by an Acquiring Party to the applicable Conveying Party at the Exchange Closing, such Acquiring Party shall use Commercially

Reasonable Efforts to grant such Easement to the applicable Conveying Party as promptly as is practicable after the Exchange Closing.

(c)

(i) To the extent that a Conveying Party's rights under any material (as such term is defined in Section 8.6(c)(iii) below) Assigned Agreement or Real Property Lease may not be assigned without the consent of another Person which consent has not been obtained by the Exchange Closing Date, this Agreement shall not constitute an agreement to assign the same, if an attempted assignment would constitute a breach thereof or be unlawful.

(ii) The Parties agree that if any consent to an assignment of any material Assigned Agreement or Real Property Lease shall not be obtained or if any attempted assignment would be ineffective or would impair the Acquiring Party's rights and obligations under the material Assigned Agreement or Real Property Lease in question, so that the Acquiring Party would not in effect acquire the benefit of all such rights and obligations, the Conveying Party, at the Acquiring Party's option and to the maximum extent permitted by law and by such material Assigned Agreement or Real Property Lease shall, after the Exchange Closing Date, appoint the Acquiring Party to be the Conveying Party's agent with respect to such material Assigned Agreement or Real Property Lease, or, to the maximum extent permitted by law and by such material Assigned Agreement or Real Property Lease, enter into such reasonable arrangements with the Acquiring Party or take such other actions as are necessary to provide the Acquiring Party with the same or substantially similar rights and obligations of such material Assigned Agreement or Real Property Lease as the Acquiring Party may reasonably request. The Parties shall cooperate and shall each use Commercially Reasonable Efforts prior to and after the Exchange Closing Date to obtain an assignment of such material Assigned Agreement or Real Property Lease to the Acquiring Party.

(iii) For purposes of this Section 8.6(c), all Real Property Leases and Assigned Agreements listed on Schedules 7.5 and 7.11(a) are deemed to be "material." Without limitation of the foregoing, to the extent that any fuel supply contract relating to an FE Plant is not assignable, then the applicable FE Subsidiary will agree to continue to purchase fuel pursuant to such contract and to resell it to the applicable Acquiring Party at the FE Subsidiary's purchase price for the remainder of the term of that contract; provided that, the term of such fuel supply contract shall not be extended and the respective Auction Agreement shall require such Winning Bidder to make payment to the FE Subsidiary in this circumstance on an as-incurred basis.

(d) To the extent that a Conveying Party's rights under any warranty or guaranty described in Section 3.1(i) or 4.1(i) may not be assigned without the consent of another Person, which consent has not been obtained by the Exchange Closing Date, this Agreement shall not constitute an agreement to assign the same, if an attempted assignment would constitute a breach thereof, or be unlawful. DLC and each FE Subsidiary agree that if any consent to an assignment of any such warranty or guaranty shall not be obtained, or if any attempted assignment would be ineffective or would impair the Acquiring Party's rights and obligations under the warranty or guaranty in question, so that the Acquiring Party would not in effect acquire the benefit of all such rights and obligations, the Conveying Party, at the Acquiring Party's option and expense, shall use Commercially Reasonable Efforts, to the maximum extent permitted by law and by such warranty or guaranty, to enforce such warranty or guaranty for the benefit of the Acquiring Party so as to provide Acquiring Party to the maximum extent possible with the benefits and obligations of such warranty or guaranty.

8.7 Consents and Approvals.

(a) As promptly as advisable after the date of execution of this Agreement, DLC and each of the FE Subsidiaries shall file or cause to be filed with the Federal Trade Commission and the United States Department of Justice any notifications required to be filed under the HSR Act and the rules and regulations promulgated thereunder with respect to the transactions contemplated hereby. The Parties shall use their respective best efforts to respond promptly to any requests for additional information made by either of such agencies, and to cause the waiting periods under the HSR Act to terminate or expire at the earliest possible date after the date of filing of such notification. Each Acquiring Party will pay all filing fees under the HSR Act relating to the Exchange Assets to be acquired thereby, but each Party will bear its own costs of the preparation of any such filing.

(b) As promptly as advisable after the date of this Agreement, DLC and the FE Subsidiaries, as applicable, shall make any filings required by the Federal Power Act. Prior to filings with the FERC, the filing Party shall submit such filings to the other Party for review and comment and shall incorporate into the application any revisions reasonably requested. The Party making the filing shall be solely responsible for the cost of preparing and filing the application, any petition(s) for rehearing, or any reapplication. If the initial filing is rejected by the FERC, the Party that made the filing agrees to petition the FERC for rehearing and/or to re-submit an application with the FERC, provided that in either case this action does not create a Material Adverse Effect with respect to the Party that made the filing and has been approved by the other Party.

(c) As promptly as advisable, and in any case within sixty (60) days after the date of this Agreement, the Parties, as applicable, shall make or cause to be made any filings required by law with the PUCO, PaPUC and any other Governmental Authority, and make or cause to be made any other filings required

to be made with respect to the transactions contemplated hereby. The Parties shall respond promptly to any requests for additional information made by such agencies, and use their respective commercially reasonable efforts to cause regulatory approval to be obtained at the earliest possible date after the date of any such filing. Each Party will bear its own costs of the preparation of any such filing.

(d) The Parties shall cooperate with each other and promptly prepare and file notifications with, and request Tax clearances from, state and local taxing authorities in jurisdictions in which a portion of the Closing Payment may be required to be withheld or in which the Acquiring Party would otherwise be liable for any Tax liabilities of the Conveying Party pursuant to such state and local Tax law.

(e) Each Acquiring Party shall have the primary responsibility for securing the transfer, reissuance or procurement of the Permits and Environmental Permits (other than Transferable Permits) effective as of the Exchange Closing Date. Each Conveying Party shall cooperate with the Acquiring Party's efforts in this regard and assist in any transfer or reissuance of a Permit or Environmental Permit held by such Conveying Party or the procurement of any other Permit or Environmental Permit when so requested by the Acquiring Party.

8.8 Fees and Commissions. Each Party represents and warrants to the other Party that, except for Lehman Brothers Inc., which is acting for and at the expense of DLC, no broker, finder or other Person is entitled to any brokerage fees, commissions or finder's fees in connection with the transactions contemplated hereby by reason of any action taken by the Party making such representation. Each Party will pay to the other Party or otherwise discharge, and will indemnify and hold the other harmless from and against, any and all claims or liabilities for all brokerage fees, commissions and finder's fees (other than the fees, commissions and finder's fees payable to the parties listed above) incurred by reason of any action taken by the indemnifying party.

8.9 Tax Matters.

(a) All Transfer Taxes incurred in connection with this Agreement and the transactions contemplated hereby, including, without limitation, (i) Pennsylvania or Ohio sales tax; (ii) the Pennsylvania or Ohio transfer tax, conveyance fees or conveyances of interests in real and/or personal property; and (iii) Pennsylvania or Ohio sales tax and transfer tax on deeds shall be borne by the applicable Conveying Party. Each Conveying Party shall file, to the extent required by, or permissible under, applicable law, all necessary Tax Returns and other documentation with respect to all such Transfer Taxes, and, if required by applicable law, the Acquiring Party shall join in the execution of any such Tax Returns and other documentation, except to the extent that such execution is inconsistent with the Party's commitments in the Auction Agreements. Prior to the Exchange Closing Date, to the extent applicable, each Acquiring Party shall provide to the applicable Conveying Party appropriate certificates of Tax exemption from each applicable taxing authority.

(b) With respect to Taxes to be prorated in accordance with Section 5.4 of this Agreement, each Party shall prepare and timely file and the Auction Agreement shall require the Winning Bidders to prepare and timely file all Tax Returns required to be filed after the Exchange Closing Date with respect to the Exchange Assets, if any, and shall duly and timely pay all such

Taxes shown to be due on such Tax Returns. Each Party's preparation of any such Tax Returns shall be subject to the other Party's approval, which approval shall not be unreasonably withheld, except if such approval is inconsistent with such Party's obligations under the applicable Auction Agreements. Each Party shall make such Tax Returns available for the other Party's review and approval no later than fifteen (15) Business Days prior to the due date for filing each such Tax Return.

(c) Each Party shall provide the other Party with such assistance as may reasonably be requested by such other Party in connection with the preparation of any Tax Return, any audit or other examination by any taxing authority, or any judicial or administrative proceedings relating to liability for Taxes, and each shall retain and provide the requesting Party with any records or information which may be relevant to such return, audit, examination or proceedings. Any information obtained pursuant to this Section 8.9(c) or pursuant to any other Section hereof providing for the sharing of information or review of any Tax Return or other instrument relating to Taxes shall be kept confidential by the Parties hereto.

8.10 Advice of Changes. Prior to the Exchange Closing, each Party will advise the other in writing with respect to any matter arising after execution of this Agreement of which that Party obtains Knowledge and which, if existing or occurring at the date of this Agreement, would have been required to be set forth in this Agreement, including any of the Schedules or Exhibits hereto. Each Party may at any time notify the other Party, in writing, of any development causing a breach of any of its representations and warranties in Article VI, in the case of DLC, or Article VII, in the case of the FE Subsidiaries. Unless a Party has the right to terminate this Agreement pursuant to Section 11.1(e) or (f) below by reason of such developments and exercises that right within the period of fifteen (15) days after receipt of such written notice, said written notice will be deemed to have amended this Agreement, including the appropriate Schedule or Exhibit, to have qualified the representations and warranties contained in Articles VI and VII above, as applicable, and to have cured any misrepresentation or breach of warranty that otherwise might have existed hereunder by reason of the development.

8.11 FE Subsidiaries' Employees.

(a) Each FE Subsidiary shall identify the employees at its FE Plant on Schedule 8.11(a), which schedule shall also set forth such employees' level of seniority, classification and Plant location. The FE Subsidiaries may submit an offer of continuing employment with an FE Subsidiary to those employees identified on Schedule 8.11(a), provided that such offer shall not be

contingent on any such employee waiving his or her rights to consider a competing offer of employment from the Winning Bidder. Upon the acceptance by any such employee of an FE Subsidiary's offer of continuing employment, the applicable FE Subsidiary shall provide written notice thereof to DLC and shall modify Schedule 8.11(a) to reflect the same. The Parties agree that the Auction Agreement shall include provisions containing the terms set forth in paragraphs (b) through (p) of this Section 8.11.

(b) At least 90 days prior to the Auction Closing Date, Winning Bidder shall provide the applicable FE Subsidiary with notice of its staffing level requirements, listed by classification and operation, and shall be required to offer employment only to that number of employees of the applicable FE Subsidiary who are covered by the UWUA, Local 140 collective bargaining

agreement with FE ("Local 140 CBA") and who are either (i) employed in positions relating to the FE Plant, New Castle (collectively, "Union Employees") or (ii) if employed at another location, perform substantially all their work in support of the New Castle plant, and in each case, who are necessary to satisfy Winning Bidder's staffing level requirements. In each classification, FE Union Employees shall be so offered employment in order of their seniority as provided for in the Local 140 CBA. Each employee who becomes employed by Winning Bidder pursuant to this section shall be referred herein as a "FE Transferred Union Employee."

(c) At least 90 days prior to the Auction Closing Date, Winning Bidder shall provide the applicable FE Subsidiary with notice of its staffing level requirements, listed by classification and operation, and shall be required to make either a Non-Qualifying or a Qualifying Offer of employment only to that number of salaried employees of the applicable FE Subsidiary who are listed in, or are in a function or whose employment responsibilities are listed in, Schedule 8.11(c) (collectively, "Non-Union Employees"), which Schedule 8.11(c) shall also set forth such employees' salary and responsibilities, and who are necessary to satisfy Winning Bidder's staffing level requirements. Each employee who becomes employed by Winning Bidder pursuant to this section shall be referred herein as a "FE Transferred Non-Union Employee." Winning Bidder shall inform the FE Subsidiaries of those Non-Union Employees to whom Winning Bidder has made offers of employment not later than 90 days prior to the Auction Closing Date.

(d) All offers of employment made by a Winning Bidder pursuant to Sections 8.11 (b) and (c) shall be made in accordance with all applicable laws and regulations and shall remain open for a period of ten (10) working days. Any such offer which is accepted within such ten (10) working day period shall thereafter be irrevocable until the earlier of the Auction Closing Date or the termination of this Agreement pursuant to its terms. Following the acceptance of such offers the Winning Bidder shall provide written notice thereof to the applicable FE Subsidiary and the applicable FE Subsidiary shall provide Winning Bidder with access to the files and records of employees accepting such offers, to the extent permitted by contract, the Local 140 CBA and/or applicable law. Schedule 8.11(d) sets forth the collective bargaining

agreements, and amendments thereto, to which the applicable FE Subsidiary is a party in connection with the Exchange Assets.

(e) With respect to FE Transferred Union Employees and FE Transferred NonUnion Employees, the following shall be applicable:

(i) For such FE Transferred Union Employees, the Winning Bidder shall be required to recognize UWUA, Local 140 as the exclusive collective bargaining representative and shall assume the terms and conditions of the Local 140 CBA to the extent applicable to such FE Transferred Union Employees until the expiration of said agreement and will further comply with all applicable legal obligations with respect to collective bargaining under federal labor law thereafter. Moreover, should the Winning Bidder subsequently sell, convey or otherwise transfer its interest in the New Castle Plant to any other entity prior to the expiration of the Local 140 CBA, the Winning Bidder shall make the foregoing commitments a condition of such sale, conveyance or transfer.

(ii) The Winning Bidder will establish and maintain benefit plans (including a severance plan) for Transferred FE Union Employees and FE

Transferred Non-Union Employees under either the Local 140 CBA or any similar FE document which are comparable to the FE Plans in effect for such employees immediately prior to the Auction Closing Date and provide at least the same level of benefits or coverage as the FE Plans for the duration of the Local 140 CBA, in the case of FE Transferred Union Employees, or December 31, 2001, in the case of FE Transferred Non-Union Employees (such period being hereinafter referred to as the "Continuation Period"). Subject to applicable law and the Local 140 CBA, nothing in the foregoing shall prevent the Winning Bidder from using different benefit providers or from establishing new benefit plans or using its existing benefit plans as the means of meeting its obligation hereunder. The commitments under this paragraph shall, however, require the following during the Continuation Period:

(A) With respect to the applicable FE Subsidiary's health care plans, the Winning Bidder agrees to waive all limitations as to pre-existing conditions and actively-at-work exclusions and waiting periods for such employees, except that the Winning Bidder may require the employee or his/her dependent who, on the Auction Closing Date, is then in the process of satisfying any similar exclusion or waiting period under the FE Subsidiary's health care plans to satisfy fully the balance of the applicable time period for such exclusion or waiting period under the Winning Bidder's plan. With respect to the calendar year in which the Auction Closing Date occurs, all health care expenses incurred by any such employees and/or any eligible dependent thereof in the portion of the calendar year preceding the Auction Closing Date that were qualified to be taken into account for purposes of satisfying any deductible or out-of-pocket limit under the FE Subsidiary's health care plans shall be taken into account for purposes of satisfying any deductible or out-of-pocket limit under the

Winning Bidder's health care plan for such calendar year.

(B) With respect to service and seniority, the Winning Bidder shall recognize each such employee's service and seniority with the FE Subsidiary for all non-pension purposes, including the determination of eligibility and extent of service or seniority-related welfare benefits such as vacation and sick pay benefits and to agree to give each such employee full credit for all vacation benefits banked, accrued, and unused, as of the Auction Closing Date.

(C) With respect to pension benefits, the Winning Bidder shall provide each such employee with a pension benefit that, when combined with the benefit accrued by such employee under the FE Subsidiary's pension plan as it exists on the date hereof, is at least equal in value to the pension benefit such employee would have accrued if such employee had remained employed with the FE Subsidiary and continued to be covered by such FE Subsidiary's pension plan (as it exists on the date hereof) during the Continuation Period. In providing such benefits, the Winning Bidder shall recognize each such employee's combined service and earnings with the applicable FE Subsidiary and the Winning Bidder. Further, the Winning Bidder shall provide to any such employee who is laid off by the Winning Bidder during the Continuation Period and who, at the time of such layoff, is between the ages of 50-54 and has ten or more years of combined service with the applicable FE Subsidiary and the Winning Bidder, a retirement benefit from the Winning Bidder's pension plan, beginning at age 55, that is at least equal to the subsidized early retirement benefit that such employee would have received under the FE Subsidiary's pension plan had such employee continued to be covered by such plan as it exists on the date hereof. The determination of the benefit required by this Section 8.11(e)(ii)(C) shall be made in good faith by the accounting firm then acting as the independent auditor of Winning Bidder, which

determination shall be final and binding on the parties hereto and each affected employee.

(D) With respect to post-retirement medical and life insurance programs, the Winning Bidder shall provide to any such employee who retires from the Winning Bidder's employment prior to the expiration of the Local 140 CBA with respect to FE Transferred Union Employees, and December 31, 2001 with respect to FE Transferred Non-Union Employees, and is at least age 55 and has ten or more years of combined service with the FE Subsidiary and the Winning Bidder, benefits, to the extent possible, that are substantially equivalent to the FE Subsidiary's post-retirement medical and life insurance programs that such employee would have received, if such employee had continued to be covered by the FE Subsidiary's programs as they existed on the date hereof.

(E) With respect to the FE Subsidiary's Savings Plan, the Winning Bidder shall take any and all necessary action to cause the trustee of any defined contribution plan of the Winning Bidder in which any such employee becomes a participant by virtue of this section, to accept a direct "rollover" of all or a portion of said employee's "eligible rollover distribution" within the meaning of Section 402 of the Code from the FE Savings Plan, if requested to do so by such employee, or to accept a direct plan-to-plan transfer from the FE Savings Plan of the account balances of any such employee and the assets of such plans related thereto, if requested to do so by the applicable FE Subsidiary or by such employee. The Winning Bidder agrees that the property so rolled over and the assets so transferred may include (i) promissory notes evidencing loans from the FE Savings Plan to such employees that are outstanding as of the Auction Closing Date, and (ii) shares of FE common stock in which the account balances of such employees are invested as of the Auction Closing Date. However, any defined contribution plan of the Winning Bidder or its Affiliates accepting such a rollover or transfer shall not be required to (i) make any further loans to any such employee after the Auction Closing Date or (ii) permit any additional investment to be made in FE common stock on behalf of any such employee after the Auction Closing Date. The FE Subsidiaries hereby represent to DLC and the Winning Bidder that the FE Savings Plan is intended to be qualified within the meaning of Section 402 of the Code.

(f) The Winning Bidder shall pay or provide to FE Transferred Union Employees and/or FE Transferred Non-Union Employees the benefits more particularly described in paragraphs (i), (ii) and (iii), as applicable:

(i) With respect to severance benefits, the Winning Bidder is required to provide for any such employee who is terminated as a result of an overall reduction in work force due to decreased employment needs of the Winning Bidder prior to the expiration of the Local 140 CBA, with respect to FE Transferred Union Employees, and December 31, 2001, with respect to FE Transferred Non-Union Employees, severance benefits at the level for such employees in effect as of the date hereof. FE Transferred Non-Union Employees shall also be entitled to such severance benefits if, prior to December 31, 2001, the Winning Bidder reduces the pay rate for such employee and such employee within seven (7) days thereafter terminates employment. Any employee provided severance benefits under this section may be required to execute a

release of claims against DLC or the Winning Bidder, in such form as the Winning Bidder shall prescribe, as a condition for the receipt of such benefits.

(ii) Each FE Transferred Union or FE Transferred Non-Union Employee who accepts employment with the Winning Bidder, shall be provided by the Winning Bidder with a transition bonus of $2,500, less applicable taxes, payable as soon as practicable following the Auction Closing Date. In no event shall any such employee receive more than one transition bonus as a result of

the transfer of employment from an FE Subsidiary to the Winning Bidder.

(iii) Each FE Transferred Non-Union Employee who is initially assigned, or assigned within 12 months of the Auction Closing Date, by the Winning Bidder to a principal place of work that requires such employee to relocate his/her residence will be reimbursed for all relocation expenses in accordance with the FE Subsidiary's relocation plans in effect as of the date hereof. For purposes of the foregoing, a required relocation of residence shall include a change in the principal place of work that is more than 30 miles farther from such employee's principal place of work immediately prior to the Auction Closing Date and requires a commute from his/her current residence of at least one hour in each direction.

(g) With respect to any FE Union Employees who do not receive an offer of employment from the Winning Bidder pursuant to subsection (b) hereof and with respect to any Non-Union Employees who decline a Non-Qualifying Offer pursuant to subsection (c) hereof, and are thereafter terminated, the Winning Bidder shall reimburse the applicable FE Subsidiary for the aggregate estimated cost that FE Subsidiary will or may incur in providing the severance, pension, and banked, accrued or unused vacation benefits described in Schedule 7.8(a) to the FE Union Employees and FE Non-Union Employees therein described (collectively the "Termination Benefits"). The estimated cost of such pension benefits shall be calculated by the actuarial firm regularly engaged to provide actuarial services to the applicable FE Subsidiary with respect to its pension plans, and shall be determined using the same assumptions as to mortality, turnover, interest rate and other actuarial assumption as used by such firm in determining the cost of benefits under the FE Subsidiary's pension plans for purposes of their most recently issued financial statements prior to the Auction Closing Date.

(h) The applicable FE Subsidiary shall be responsible, with respect to the Exchange Assets, for performing and discharging all requirements under the WARN Act and under applicable state and local laws and regulations for the notification of its employees of any "employment loss" within the meaning of the WARN Act which occurs prior to the Auction Closing Date.

(i) Winning Bidder shall not be responsible for extending COBRA Continuation Coverage to any employees and former employees of any of the FE Subsidiaries, or to any qualified beneficiaries of such employees and former employees, who become or became entitled to COBRA continuation coverage on or before the Auction Closing Date, including those for whom the Auction Closing Date occurs during their COBRA election period.

(j) Individuals who are otherwise Union Employees, as defined in Section 8.11(b) or NonUnion Employees, as defined in Section 8.11(c) but who on any date are not actively at work due to a leave of absence covered by the Family and Medical Leave Act (FMLA), or due to any other authorized leave of absence, shall nevertheless be treated as "Union Employees" or as "Non-Union

Employees", as the case may be, on such date if they are able (i) to return to work within the protected period under the FMLA or such other leave (which in any event shall not extend more than twelve (12) weeks after the Auction Closing Date), whichever is applicable, and (ii) to perform the essential functions of their job, with or without a reasonable accommodation.

(k) The FE Subsidiaries are responsible for extending and continuing to extend COBRA Continuation Coverage to all employees and former employees, and qualified beneficiaries of such employees and former employees of the FE Subsidiaries, who become or became entitled to such COBRA Continuation Coverage on or before the Auction Closing Date, including those for whom the Auction Closing Date occurs during their COBRA election period.

(l) The FE Subsidiaries shall pay to each employee of such FE Subsidiaries to whom the Winning Bidder offers employment pursuant to this Section 8.11, all unpaid salary, bonus, and holiday compensation, workers' compensation or other compensation or employment benefits that are payable in cash which have accrued to such employees through and including the Auction Closing Date, at such times as provided under the terms of the applicable compensation or benefit programs. With respect to workers compensation claims of such employees that require payments that continue beyond the Auction Closing Date, the Winning Bidder shall be responsible for such payments. The FE Subsidiaries shall be responsible for initiating the transfer of the claims and the associated risk and liability to the Winning Bidder with either the Ohio or the Pennsylvania Bureau of Workers' Compensation, as appropriate.

(m) The following provisions shall apply with respect to employees who are covered by the UWUA Local 270 Collective Bargaining Agreement ("Local 270 CBA") who are employed in positions at the FE Plant of Avon Lake or, if employed at another location, perform substantially all their work in support of the FE Plant of Avon Lake "Local 270 Employees").

(i) Subject to Section (m)(ii) hereof, the Winning Bidder shall not be obligated to assume the Local 270 CBA or to recognize UWUA Local 270 as the exclusive collective bargaining agent for Local 270 Employees unless otherwise required by federal law as a result of the actions of the Winning Bidder. The Winning Bidder further shall not be required to make offers of employment to Local 270 Employees. The Winning Bidder shall inform the FE Subsidiaries of those Local 270 Employees, if any, to whom the Winning Bidder has made offers of employment not later than 90 days prior to the Auction Closing Date.

(ii) In the event that, not less than fifteen (15) days prior to the date for submission of final, binding bids in the Auction, UWUA Local 270 and the applicable FE Subsidiary modify the Local 270 CBA, the Winning Bidder shall be required to assume such Local 270 CBA so modified to the extent applicable to Local 270 Employees, provided that the Local 270 CBA as amended or modified permits the Winning Bidder to determine its staffing level requirements and does not require the Winning Bidder to offer employment to Local 270 Employees in excess of such staffing level requirements; and provided further that the Local 270 CBA as amended or modified does not, taken as a whole,

materially exceed the provisions of the Local 140 CBA, including, without limitation, the provisions of the Local 140 CBA with respect to cash compensation, fringe benefits, health care, and pension benefits, as of the date of this Agreement.

(o) The provisions of this Section 8.11 shall not be construed as being for the benefit for any person other than the Parties hereto, and shall not be enforceable by persons other than such Parties (including, without limitations, the Union Employees and Non-Union Employees).

(p) The applicable FE Subsidiaries agree to indemnify and hold harmless the Winning Bidder and DLC from any and all remedies or damages that may be applied or charged to, or imposed on, the Winning Bidder and/or DLC as the result of any unfair labor practice charges (i) filed by UWUA Local 270 or its members against FE and/or an FE Subsidiary, or to which Winning Bidder and/or DLC is added as a party, or (ii) filed against Winning Bidder and/or DLC arising out of facts and circumstances that gave rise to unfair labor practice charges filed against FE and/or an FE Subsidiary.

8.12 Risk of Loss.

(a) From the date hereof through the Exchange Closing Date, all risk of loss or damage to the assets included in the Exchange Assets shall be borne by the Conveying Party, other than loss or damage caused by the acts or negligence of the Acquiring Party, which loss or damage shall be the responsibility of the Acquiring Party.

(b) If, before the Exchange Closing Date, all or any portion of the Exchange Assets are (i) taken by eminent domain or are the subject of a pending or (to the Knowledge of the Conveying Party with respect such Exchange Assets) contemplated taking which has not been consummated or (ii) damaged or destroyed by fire or other casualty, such Conveying Party shall (x) notify the Acquiring Party (or, if the Acquiring Party is the Winning Bidder, DLC) promptly in writing of such fact, (y) assign or pay, as the case may be, any proceeds thereof to the Acquiring Party (or, if the Acquiring Party is the Winning Bidder, DLC) at the Exchange Closing, and (z) either restore the damage or assign the insurance proceeds therefor (and pay the amount of any deductible and/or self-insured amount in respect of such casualty) to the Acquiring Party (or, if the Acquiring Party is the Winning Bidder, DLC) at the Exchange Closing. Notwithstanding the above, if such taking, casualty or loss results, or would result, in a Material Adverse Effect to the Conveying Party (with respect to the Exchange Assets being conveyed by the Conveying Party), the Parties shall, unless the procedures contained in Section 11.1(h) shall have been elected, negotiate to settle the loss resulting from such taking, casualty or loss (and such negotiation shall include, without limitation, the negotiation of a fair and equitable payment to the Acquiring Party (or, if the Acquiring Party is the Winning Bidder, DLC) to offset such taking, casualty or loss). If no such settlement is reached within sixty (60) days after the Conveying Party has notified the Acquiring Party (or, if the Acquiring Party is the Winning Bidder,

DLC) of such taking, casualty or loss, then the Acquiring Party (or, if the Acquiring Party is the Winning Bidder, DLC) may terminate this Agreement pursuant to Section 11.1(g). In the event of damage or destruction which the Conveying Party elects to restore, the Conveying Party will have the right (with respect to the Exchange Assets being conveyed by the Conveying Party) to postpone the Exchange Closing for up to six (6) months, and the Acquiring Party (or, if the Acquiring Party is the Winning Bidder, DLC) will have the right to inspect and observe, or have its Representatives inspect or observe, all repairs necessitated by any such damage or destruction.

8.13 Cooperation in Auction.

(a) The FE Subsidiaries will cooperate with DLC in a commercially reasonable manner to provide for the timely and successful completion of the Auction, including providing the access to information specified in Section 8.2 and designating a person or persons having engineering and operational familiarity with respect to each of the FE Plants to be the principal contact person(s) for the Auction and causing such person(s) to make sufficient time available for such purpose as reasonably required by DLC or DLC Representatives.

(b) The FE Subsidiaries shall not submit a bid in the Auction.

(c) The FE Subsidiaries shall promptly review information concerning the FE Assets to be included in the Information Memorandum and supporting materials concerning the FE Assets and provide DLC with written confirmation of the accuracy and completeness of such information as provided to the FE Subsidiaries, with the understanding that such information will be used in connection with the delivery of the Information Memorandum to potential Auction Participants, and the FE Subsidiaries shall advise DLC from time to time if any such information as provided to the FE Subsidiaries becomes inaccurate or misleading. The FE Subsidiaries shall respond promptly to requests from DLC or DLC Representatives for additional information concerning the FE Assets.

(d) The FE Subsidiaries shall not participate in the management, planning or implementation of the Auction and shall have no right to do so despite its assistance in providing information.

(e) The FE Subsidiaries acknowledge and agree that Inspections and documentation must be completed with respect to the FE Assets to satisfy conditions to the Exchange Closing and the Auction Closings, including the subdivision of the FE Real Property to prepare it for sale and the preparation of title reports and surveys for the FE Real Property in connection with preparing ALTA title owner's insurance policies. The FE Subsidiaries agree to cooperate and assist in the preparation and completion of the foregoing and to use their reasonable efforts (i) to address any Environmental Conditions and (ii) to eliminate any material exception to title, in each case provided that the failure to do so is reasonably likely to substantially and adversely affect the marketability of the FE Assets.

(f) The Auction Agreements shall include provisions requiring the Winning Bidder to perform all obligations such Winning Bidder would have as an Acquiring Party under this Agreement with respect to the FE Assets to be acquired by such Winning Bidder in the Auction.

8.14 Additional Agreements. In connection with the Auction Agreements and each respective Auction Closing, each applicable FE Subsidiary or DLC, as the case may be, with respect to its FE Assets shall enter into the respective Auction Agreement, the FE Assignment and Assumption Agreement, the Bills of Sale, the FE Easement and Attachment Agreement, the FIRPTA Affidavit, the FE Connection Agreement, the FE Must-Run Agreement and the Warranty Deeds contemplated by this Agreement, all substantially in the form of the respective Exhibits attached hereto, with the applicable Winning Bidder.

8.15 Reserved.

8.16 Tax Exempt Financing.

(a) Each Acquiring Party understands and agrees that:

(i) the Exempt Facilities have been financed, and refinanced, in whole or in part, with the proceeds of the issuance and sale by various governmental agencies or authorities of industrial development revenue bonds or private activity bonds (collectively, the "Revenue Bonds") the interest on which, with certain exceptions, is excluded from gross income for purposes of federal income taxation; and DLC or an FE Subsidiary, as the case may be, is the economic obligor in respect of such bonds;

(ii) the basis for such exclusion is the use of the Exempt Facilities for the purpose of (A) the abatement or control of atmospheric pollution or contamination (B) the abatement or control of water pollution or contamination, (C) sewage disposal and/or (D) the disposal of solid waste, such qualifying purposes being discussed in more detail in (b) below;

(iii) the use of the Exempt Facilities for a purpose other than a qualifying purpose indicated in subsection (ii) above could impair (A) such exclusion from gross income of the interest on such bonds, possibly with retroactive affect, unless appropriate remedial action (which could include prompt redemption or defeasance of such bonds) were taken and/or (B) the deductibility of the Conveying Party's payment of interest based on the restrictions in Section 150(b) of the Code; and

(iv) any breach by the Acquiring Party of its obligations under this Article could result in the incurrence by the Conveying Party of additional costs and expenses, including without

limitation, increased interest costs, loss of the interest deduction for tax purposes and transaction costs relating to any refinancing redemption and/or defeasance of all or part of the Revenue Bonds, and such Acquiring Party will be liable to the Conveying Party for such additional costs and expenses.

(b)

(i) Each Acquiring Party agrees that it shall not use, or permit the use of, the Exempt Facilities for any purpose other than:

(A) abating or controlling atmospheric or water pollution or contamination by removing, altering, disposing of or storing pollutants, contaminants, waste or heat, all as contemplated in U.S. Treasury Regulations Section 1.103-8(g);

(B) the collection, storage, treatment, utilization, processing or final disposal of solid waste, all as contemplated in U.S. Treasury Regulations Section 1.103-8(f); or

(C) the collection, storage, treatment, utilization, processing or final disposal of sewage, all as contemplated in U.S. Treasury

Regulations Section 1.103-8(f) unless such Acquiring Party has obtained at its own expense an opinion addressed to the Conveying Party of nationally recognized bond counsel reasonably acceptable to such Conveying Party ("Bond Counsel") that such use will not impair (x) the exclusion from gross income of the interest on any issue of Revenue Bonds for federal income tax purposes or (y) the deductibility of the Conveying Party's payments of interest based on the restrictions in Section 150(b) of the Code.

(ii) Each Acquiring Party reasonably expects, as of the date of this Agreement, that the Exempt Facilities will continue to be used for the qualifying purposes set forth in subsection (i) above, and for no other purpose, for the remainder of their useful lives.

(c) It is expressly understood and agreed that the provisions of clause (b) above shall not prohibit the Acquiring Party from suspending the operation of the Exempt Facilities on a temporary basis, or from terminating the operation of the Exempt Facilities on a permanent basis and shutting down, retiring, abandoning and/or decommissioning the Exempt Facilities; provided, however, that if the Exempt Facilities, in whole or in part, are dismantled and sold, including any sale for scrap, and if the operation of the Plant served by such Exempt Facilities shall not theretofore have been, and is not then being, terminated on a permanent basis, then the proceeds of such sale of the Exempt Facilities shall, within six months from the date of sale, be expended to acquire replacement property to be used for the same qualifying purpose as the

Exempt Facilities so sold, unless such Acquiring Party has obtained, at its own expense, an opinion addressed to the Conveying Party of Bond Counsel that the failure to take this action will not impair (x) the exclusion from gross income of the interest on any issue of Revenue Bonds for federal income tax purposes or (y) the deductibility of the Conveying Party's payments of interest based on the restrictions in Section 150(b) of the Code.

(d) Each Acquiring Party agrees that it shall not issue, or have issued on its behalf, any tax-exempt bonds to finance or refinance its acquisition of the Exempt Facilities; provided that it is expressly understood and agreed that this clause (d) shall not prohibit the use of tax-exempt bonds to finance or refinance any improvement to the Exempt Facilities made after the date of acquisition or to any assets other than the Exempt Facilities.

(e) Each Acquiring Party agrees that it shall give the Conveying Party at least 180 days' prior written notice of any suspension or termination of the operation of the Exempt Facilities, or any part thereof, and of any sale, exchange, transfer or other disposition of the Exempt Facilities, or any part thereof, including, but not limited to, a sale for scrap.

(f) If the Conveying Party shall desire to refund any Revenue Bonds, the Acquiring Party shall cooperate with the Conveying Party and with Bond Counsel with respect to the refunding bonds and shall provide upon request any representations, agreements or covenants that are reasonably requested concerning its compliance to such date and/or in the future with the representations, agreements and covenants made herein.

(g) If the Acquiring Party shall sell, exchange, transfer or otherwise dispose of the Exempt Facilities to a third party, such Acquiring Party shall cause to be included in the documentation relating to such transaction covenants and agreements on the part of such third party substantially identical to those on the part of such Acquiring Party contained in this Section 8.16.

(h) The covenants and agreements on the part of the Acquiring Party contained in this Section 8.16 shall continue in effect so long as any Revenue Bonds, including any refunding bonds issued hereafter to refund any Revenue Bonds, shall remain outstanding. The Conveying Party shall notify the Acquiring Party promptly when there shall be no Revenue Bonds outstanding.

(i) The Parties hereto agree that the Auction Agreements shall include a provision substantially similar to this Section 8.16 covering "Exempt Facilities" (as defined in the Auction Agreements) relating to the "Purchased Assets" (as defined in the Auction Agreements) for the benefit of DLC or the FE Subsidiaries, as the case may be.

ARTICLE IX

9.1 Conditions to Obligations of the Parties. The obligation of the Parties to effect the Generation Exchange and the other transactions contemplated by this Agreement shall be subject to the fulfillment at or prior to the Exchange Closing Date, of the following conditions:

(a) The waiting period under the HSR Act applicable to the consummation of the exchange of the Exchange Assets contemplated hereby shall have expired or been terminated;

(b) No preliminary or permanent injunction or other order or decree by any Governmental Authority which prevents the consummation of the exchange of the Exchange Assets contemplated herein shall have been issued and remain in effect (each Party agreeing to use its reasonable best efforts to have any such injunction, order or decree lifted) and no statute, rule or regulation shall have been enacted by any state or federal government or Governmental Authority prohibiting the consummation of the exchange of the Exchange Assets;

(c) The DLC Nuclear Closing as defined in the Nuclear Conveyance Agreement shall have occurred;

(d) The CAPCO Settlement Agreement shall have been executed by DLC, the FE Subsidiaries and TEC;

(e) The Support Agreement shall have been executed by FE and DLC;

(f) All consents or approvals, filings with, or notices to any Governmental Authority that are necessary for the consummation of the transactions contemplated by each of the CAPCO Settlement Agreement and the Electrical Facilities Agreement shall have been obtained or made, other than such consents, approvals, filings or notices which are not required in the ordinary course to be obtained or made prior to the consummation of the transactions thereunder or which, if not obtained or made, will not prevent the parties thereto from performing their material obligations thereunder; and

(g) There shall be no court order requiring DQE to consummate the transactions contemplated under the Agreement and Plan of Merger between DQE and Allegheny Energy, Inc.

9.2 Conditions to Obligations of DLC. The obligation of DLC to effect the exchange of the DLC Assets and the other transactions contemplated by this Agreement shall be subject to the fulfillment of the following conditions, or the waiver thereof by the DLC, at or prior to the Exchange Closing Date:

(a) DLC shall have received all DLC Required Regulatory Approvals, in form and substance reasonably satisfactory to it and on terms and conditions that do not create a Regulatory Material Adverse Effect for DLC;

(b) All consents and approvals for the execution, delivery and performance of this Agreement and the Ancillary Agreements, and for the consummation of the transfer of the FE Assets contemplated hereby as required under the terms of any note, bond, mortgage, indenture, material agreement or other instrument or obligation to which an FE Subsidiary is a party or by which any FE Subsidiary, or any of the FE Assets, may be bound, shall have been obtained, other than those which if not obtained, would not, individually or in the aggregate, create an FE Material Adverse Effect;

(c) Each FE Subsidiary shall have in all material respects performed and complied with the covenants and agreements contained in this Agreement which are required to be performed and complied with by each such FE Subsidiary on or prior to the Exchange Closing Date;

(d) The representations and warranties of each FE Subsidiary set forth in this Agreement shall be true and correct in all material respects as of the Exchange Closing Date as though made at and as of the Exchange Closing Date;

(e) DLC shall have received certificates from authorized officers of each FE Subsidiary, dated the Exchange Closing Date, to the effect that, to such officers' Knowledge, the conditions set forth in Sections 9.2(b), (c) and (d) have been satisfied by each such FE Subsidiary;

(f) DLC shall have received an opinion from the FE Subsidiaries' counsel, dated the Exchange Closing Date and reasonably satisfactory in form and substance to DLC and its counsel, substantially to the effect that:

(i) Each FE Subsidiary is a corporation duly organized, validly existing and in good standing under the laws of the state of its organization and is qualified to do business in any other state in which it operates any of the FE Assets or will operate DLC Assets and has the full corporate power and authority to own, lease and operate its material assets and properties and to carry on its business as is now conducted, and to execute and deliver the Agreement and each of the Ancillary Agreements to which it is a party and to consummate the transactions contemplated hereby and thereby; and the execution and delivery of the Agreement and the Ancillary Agreements by such FE Subsidiary, and the consummation of the transactions contemplated hereby and thereby have been duly and validly authorized by all necessary corporate action required on the part of such FE Subsidiary;

(ii) The Agreement and each of the Ancillary Agreements to which it is a party have been duly and validly executed and delivered by each applicable FE Subsidiary and constitute legal, valid and binding agreements of each such FE Subsidiary, enforceable against such FE Subsidiary in accordance with their terms, except as may be

limited by applicable bankruptcy, insolvency, fraudulent conveyance, reorganization, moratorium or other similar laws affecting or relating to enforcement of creditors' rights generally and general principles of equity (regardless of whether enforcement is considered in a proceeding at law or in equity);

(iii) The execution, delivery and performance of the Agreement and each of the Ancillary Agreements to which it is a party by each applicable FE Subsidiary does not (A) conflict with the Articles of Incorporation, Bylaws or Code of Regulations, as currently in effect, of such FE Subsidiary or (B) to the knowledge of such counsel, constitute a violation of or default under those agreements or instruments set forth on a schedule attached to the opinion and which have been identified to such counsel as all the agreements and instruments which are material to the business or financial condition of such FE Subsidiary;

(iv) The Bills of Sale, the FE (Accrued Liability) Assignment and Assumption Agreements and the FE Assignment and Assumption Agreements, the Warranty Deeds and other transfer instruments described in Section 5.6 are in proper form to transfer to DLC, or the applicable Winning Bidder, as appropriate, such title as was held by each applicable FE Subsidiary to its FE Assets;

(v) The DLC Assignment and Assumption Agreements and other transfer documents described in Section 5.6 are in proper form for the FE Subsidiary, as applicable, to assume the Assumed DLC Liabilities; and

(vi) No consent or approval of, filing with, or notice to, any Governmental Authority is necessary for the execution and delivery by each applicable FE Subsidiary of this Agreement, and each of the Ancillary Agreements to which such FE Subsidiary is a party or the consummation by such FE Subsidiary of the transactions contemplated hereby and thereby, other than (A) such consents, approvals, filings or notices set forth in Schedules 7.3(a) or 7.3(b) or which, if not obtained or made, will not prevent each such FE Subsidiary from performing its material obligations under this Agreement and each of the Ancillary Agreements and (B) such consents, approvals, filings or notices which become applicable to such FE Subsidiary or its respective FE Assets as a result of the specific regulatory status of DLC (or any of its Affiliates) or as a result of any other facts that specifically relate to the business or activities in which DLC (or any of its Affiliates) is or proposes to be engaged.

In rendering the foregoing opinion, FE Subsidiaries' counsel may rely on opinions of local law reasonably acceptable to DLC;

(g) Each FE Subsidiary shall have delivered, or caused to be delivered, to DLC at the Exchange Closing, the FE Subsidiary's closing deliveries described in Section 5.6;

(h) The FE Subsidiaries, as applicable, shall have delivered, or caused to be delivered, to each applicable Acquiring Party a title insurance company ALTA title owner's policies on the FE Real Property insuring title, subject only to Permitted Encumbrances (FE Assets), standard printed exceptions and such other Encumbrances as are reasonably acceptable to such Acquiring Party. A Permitted Encumbrance (FE Assets) which is not removed prior to the

Auction Closing shall be deemed reasonably acceptable to DLC as aforesaid unless such Permitted Encumbrance (FE Assets) would have an FE Material Adverse Effect;

(i) All conditions to consummation of the respective Auction Agreement with the applicable Winning Bidder shall have been satisfied or waived by DLC and DLC shall be reasonably satisfied that such Winning Bidder will perform its obligations thereunder; and

(j) FE shall have paid, or caused to be paid, the financial commitment contemplated by, and required to be provided to DLC pursuant to the terms of, the Support Agreement.

9.3 Conditions to Obligations of the FE Subsidiaries. The obligation of the FE Subsidiaries to effect the exchange of the FE Assets and the other transactions contemplated by this Agreement shall be subject to the fulfillment of the following conditions, or the waiver thereof, by the FE Subsidiaries at or prior to the Exchange Closing Date:

(a) Each FE Subsidiary shall have received all applicable FE Required Regulatory Approvals on terms and conditions that do not create a Regulatory Material Adverse Effect for such FE Subsidiary;

(b) All consents and approvals for the execution, delivery and performance of this Agreement and the Ancillary Agreements, and for the consummation of the transfer of the DLC Assets contemplated hereby as required under the terms of any note, bond, mortgage, indenture, material agreement or other instrument or obligation to which DLC is a party or by which DLC, or any of the DLC Assets, may be bound, shall have been obtained, other than those which if not obtained, would not, individually or in the aggregate, create a DLC Material Adverse Effect;

(c) DLC shall have in all material respects performed and complied with the covenants and agreements contained in this Agreement which are required to be performed and complied with by DLC on or prior to the Exchange Closing Date;

(d) The representations and warranties of DLC set forth in this Agreement shall be true and correct in all material respects as of the Exchange Closing Date as though made at and as of the Exchange Closing Date;

(e) The FE Subsidiaries shall have received certificates from

the authorized officers of DLC, dated the Exchange Closing Date, to the effect that, to such officers' Knowledge, the conditions set forth in Sections 9.3(b), (c) and (d) have been satisfied by DLC;

(f) The FE Subsidiaries shall have received an opinion from DLC's counsel, dated the Exchange Closing Date and reasonably satisfactory in form and substance to the FE Subsidiaries and their counsel, substantially to the effect that:

(i) DLC is a corporation duly incorporated, validly existing and in good standing under the laws of the Commonwealth of Pennsylvania and has the full corporate power and authority to own, lease and operate its material assets and properties and to carry on its business as is now conducted, and to execute and deliver the Agreement and each of the Ancillary Agreements to which it is a party

and to consummate the transactions contemplated hereby and thereby; and the execution and delivery of the Agreement and the Ancillary Agreements by DLC, and the consummation of the transactions contemplated hereby and thereby have been duly and validly authorized by all necessary corporate action required on the part of DLC;

(ii) The Agreement and each of the Ancillary Agreements to which DLC is a party have been duly and validly executed and delivered by DLC and constitute legal, valid and binding agreements of DLC, enforceable against DLC in accordance with their terms, except as may be limited by applicable bankruptcy, insolvency, fraudulent conveyance, reorganization, moratorium or other similar laws affecting or relating to enforcement of creditors' rights generally and general principles of equity (regardless of whether enforcement is considered in a proceeding at law or in equity);

(iii) The execution, delivery and performance of the Agreement and each of the Ancillary Agreements to which DLC is a party by DLC does not (A) conflict with the Articles of Incorporation or Bylaws, as currently in effect, of DLC or (B) to the knowledge of such counsel, constitute a violation of or default under those agreements or instruments set forth on a Schedule attached to the opinion and which have been identified to such counsel as all the agreements and instruments which are material to the business or financial condition of DLC;

(iv) The DLC Assignment and Assumption Agreements, the Bills of Sale, the deeds, and other transfer instruments described in Section 5.7 are in proper form to transfer to the FE Subsidiaries such title as was held by DLC to the DLC Assets;

(v) The FE (Accrued Liability) Assignment and Assumption Agreement and other transfer documents described in Section

5.7 are in proper form for DLC to assume the Assumed FE Liabilities; and

(vi) No consent or approval of, filing with, or notice to, any Governmental Authority is necessary for the execution and delivery of this Agreement and each of the Ancillary Agreements to which DLC is a party by DLC, or the consummation by DLC of the transactions contemplated hereby and thereby, other than (A) such consents, approvals, filings or notices set forth in Schedules 6.3(a) or 6.3(b) or which, if not obtained or made, will not prevent DLC from performing its material obligations under this Agreement and each of the Ancillary Agreements to which DLC is a party and (B) such consents, approvals, filings or notices which become applicable to DLC or the DLC Assets as a result of the specific regulatory status of the FE Subsidiaries (or any of their Affiliates) or as a result of any other facts that specifically relate to the business or activities in which the FE Subsidiaries (or any of their Affiliates) is or proposes to be engaged.

In rendering the foregoing opinion, DLC's counsel may rely on opinions of local law reasonably acceptable to the FE Subsidiaries;

(g) DLC shall have delivered, or caused to be delivered, to the FE Subsidiaries at the Exchange Closing, DLC's closing deliveries described in Section 5.7; and

(h) The FE Subsidiaries shall have received from a title insurance company ALTA title owner's policies on the DLC Real Property insuring title, subject only to Permitted Encumbrances (DLC Assets), standard printed exceptions and such other Encumbrances as are reasonably acceptable to the FE Subsidiaries. A Permitted Encumbrance (DLC Assets) that is not removed prior to the Exchange Closing shall be deemed reasonably acceptable to the FE Subsidiaries as aforesaid unless such Permitted Encumbrance (DLC Assets) would have a DLC Material Adverse Effect.

ARTICLE X

INDEMNIFICATION

10.1 Indemnification of DLC by FE Subsidiaries.

(a) Each FE Subsidiary severally with respect to itself under this Agreement and all its obligations related to the Exchange Assets to be exchanged by such FE Subsidiary pursuant to this Agreement, shall indemnify, defend and hold harmless DLC, its officers, directors, employees, shareholders, Affiliates and agents (each, a "DLC Indemnitee") from and against any and all Indemnifiable Losses asserted against or suffered by any DLC Indemnitee (each, a "DLC Indemnifiable Loss") in any way relating to, resulting from or arising out

of (i) any breach by such FE Subsidiary of any covenant or agreement of such FE Subsidiary as an Acquiring Party contained in this Agreement or the representations and warranties contained in Sections 7.1, 7.2 and 7.3, and (ii) the Assumed DLC Liabilities.

(b) Each FE Subsidiary severally with respect to itself under this Agreement and all its obligations related to the Exchange Assets to be exchanged by such FE Subsidiary pursuant to this Agreement, shall indemnify, defend and hold harmless the DLC Indemnitees from and against any and all DLC Indemnifiable Losses in any way relating to, resulting from or arising out of (i) any breach by such FE Subsidiary of any covenant or agreement of such FE Subsidiary contained in this Agreement, except those related solely to its obligations as an Acquiring Party, or the representations and warranties contained in Sections 7.1, 7.2 and 7.3, (ii) the Excluded FE Liabilities, (iii) noncompliance by such FE Subsidiary with any bulk sales or transfer laws as provided in Section 12.14, and (iv) any Third Party Claims against a DLC Indemnitee arising out of or in connection with the FE Subsidiary's ownership or operation of the Excluded FE Assets.

(c) Each FE Subsidiary, severally with respect to itself under this Agreement and all its obligations related to the Exchange Assets to be exchanged by such FE Subsidiary pursuant to this Agreement, shall indemnify, defend and hold harmless each DLC Indemnitee from and against any and all DLC Indemnifiable Losses in any way relating to, resulting from or arising out of any claim by the applicable Winning Bidder or any Third Party against a DLC Indemnitee arising out of or in connection with the FE Assets or the Assumed FE Liabilities; provided, however, that after the Auction Closing has occurred, DLC cannot enforce this indemnity against any of the FE Subsidiaries if such claim is in any way relating to, resulting from or arising out of the liabilities assumed by such Winning Bidder in the respective Auction Agreement.

(d) Each FE Subsidiary, jointly and severally, with respect to itself and all matters related to the Exchange Assets to be exchanged by each FE Subsidiary pursuant to this Agreement, shall indemnify, defend and hold harmless each DLC Indemnitee from and against any and all DLC Indemnifiable Losses in any way relating to, resulting from or arising out of any Third Party Claim against a DLC Indemnitee asserting that DLC's execution of the Agreement in Principle, this Agreement or the Nuclear Conveyance Agreement constitutes an interference with contractual obligation of any FE Subsidiary.

(e) Except as otherwise provided in Section 10.1(c), DLC, for itself and on behalf of DLC Representatives and DLC's Affiliates, does hereby release, hold harmless and forever discharge the FE Subsidiaries, their Representatives and Affiliates, from any and all DLC Indemnifiable Losses resulting from, arising out of or relating to Assumed FE Liabilities. Except as otherwise provided in Section 10.1(c), DLC hereby waives any and all rights and benefits with respect to such DLC Indemnifiable Losses that it now has, or in the future may have conferred upon it by virtue of any statute or common law principle which provides that a general release does not extend to claims which

a party does not know or suspect to exist in its favor at the time of executing the release, if Knowledge of such claims would have materially affected such party's settlement with the obligor. In this connection, DLC hereby acknowledges that it is aware that factual matters now unknown to it may have given or may hereafter give rise to DLC Indemnifiable Losses that are currently unknown, unanticipated and unsuspected, and it further agrees that this release has been negotiated and agreed upon in light of that awareness and nevertheless hereby intends to release the FE Subsidiaries, their Representatives and Affiliates from the DLC Indemnifiable Losses in the manner contemplated by this paragraph.

(f) Each FE Subsidiary with respect to itself and all matters related to such FE Subsidiary and to its FE Assets shall indemnify, defend and hold harmless each Winning Bidder, its officers, directors, employees, shareholders, Affiliates and agents (each, a "Winning Bidder Indemnitee") from and against any and all Indemnifiable Losses asserted against or suffered by any Winning Bidder Indemnitee arising out of or in connection with (i) any breach by such FE Subsidiary of any covenant or agreement of such FE Subsidiary contained in the representations and warranties contained in Article VII hereof, (ii) the Excluded FE Liabilities, (iii) noncompliance by such FE Subsidiary with any bulk sales or transfer laws as provided in Section 12.14, and (iv) any Third Party Claims against a Winning Bidder Indemnitee arising solely out of or in connection with such FE Subsidiary's ownership or operation of the Excluded FE Assets on or after the Auction Closing Date.

10.2 Indemnification of FE Subsidiaries by DLC.

(a) DLC shall indemnify, defend and hold harmless the FE Subsidiaries, their officers, directors, employees, shareholders, Affiliates and agents (each, an "FE Indemnitee") from and against any and all Indemnifiable Losses asserted against or suffered by any FE Indemnitee (each, an "FE Indemnifiable Loss") in any way relating to, resulting from or arising out of (i) any breach by DLC of any covenant or agreement of DLC as an Acquiring Party contained in this Agreement or the representations and warranties contained in Sections 6.1, 6.2 and 6.3, (ii) any loss or damages resulting from or arising out of DLC's Inspection of the FE Assets and (iii) the Accrued FE Liabilities.

(b) DLC shall indemnify, defend and hold harmless the FE Indemnitees from and against any and all FE Indemnifiable Losses in any way relating to, resulting from or arising out of (i) any breach by DLC of any covenant or agreement of DLC contained in this Agreement, except those related solely to its obligations as an Acquiring Party, or the representations and warranties contained in Sections 6.1, 6.2 and 6.3, (ii) the Excluded DLC Liabilities, (iii) noncompliance by DLC with any bulk sales or transfer laws as provided in Section 12.14, and (iv) any Third Party Claims against an FE Indemnitee arising out of or in connection with DLC's ownership or operation of the Excluded DLC Assets.

(c) DLC shall indemnify, defend and hold harmless each FE Indemnitee from and against any and all FE Indemnifiable Losses in any way

relating to, resulting from or arising out of any Third Party Claim against an FE Indemnitee (i) asserting that the transactions contemplated by the Agreement in Principle, this Agreement or the Nuclear Conveyance Agreement contravene any contractual obligations of DLC or (ii) requesting a temporary restraining order or a preliminary or permanent injunction in respect of such transactions.

(d) Each FE Subsidiary, for itself and on behalf of its Representatives and Affiliates, do hereby release, hold harmless and forever discharge DLC, DLC Representatives and DLC's Affiliates, from any and all FE Indemnifiable Losses resulting from, arising out of or relating to (i) Assumed DLC Liabilities, and (ii) from and after the Exchange Closing, Assumed FE Liabilities (other than the Accrued FE Liabilities). Each FE Subsidiary hereby waives any and all rights and benefits with respect to such FE Indemnifiable Losses that it now has, or in the future may have conferred upon it by virtue of any statute or common law principle which provides that a general release does not extend to claims which a party does not know or suspect to exist in its favor at the time of executing the release, if Knowledge of such claims would have materially affected such party's settlement with the obligor. In this connection, each FE Subsidiary hereby acknowledges that it is aware that factual matters now unknown to it may have given or may hereafter give rise to FE Indemnifiable Losses that are currently unknown, unanticipated and unsuspected, and it further agrees that this release has been negotiated and agreed upon in light of that awareness and nevertheless hereby intends to release DLC, DLC Representatives and DLC's Affiliates from the FE Indemnifiable Losses in the manner contemplated by this paragraph.

10.3 Certain Indemnifications to be Required of the Winning Bidder.

DLC shall require that each applicable Winning Bidder provide the following indemnifications:

(a) indemnification of the FE Indemnitees as follows:

(i) Winning Bidder shall indemnify, defend and hold harmless the FE Indemnitee from and against any and all Indemnifiable Losses in any way relating to, resulting from or arising out of (A) any breach by the Winning Bidder of any covenant or agreement of the Winning Bidder contained in the respective Auction Agreement or the representations and warranties contained in Section 6.1, 6.2 and 6.3 of such Auction Agreement, (B) the Assumed FE Liabilities (other than the Accrued FE Liabilities) with respect to the FE Assets acquired by such Winning Bidder, and (C) any loss or damages resulting from or arising solely out of any Inspection of such FE Assets, and (D) any

Third Party Claims against an FE Indemnitee arising solely out of or in connection with Winning Bidder's ownership or operation of the FE Plants and other FE Assets acquired by such Winning Bidder in the Auction, on or after the Auction Closing Date; and

(ii) Winning Bidder, for itself and on behalf of its representatives and Affiliates, shall release, hold harmless and forever discharge the FE Subsidiaries, their Representatives and Affiliates, from any and all Indemnifiable Losses of any kind or character, whether known or unknown, hidden or concealed, resulting from or arising out of any Environmental Condition or violation of Environmental Law relating to its purchased FE Assets, other than any liabilities or obligations described in Sections 2.4A(g)and (h) of the respective Auction Agreement. Winning Bidder hereby waives any and all rights and benefits with respect to such Indemnifiable Losses that it now has, or in the future may have conferred upon it by virtue of any statute or common law principle which provides that a general release does not extend to claims which a party does not know or suspect to exist in its favor at the time of executing the release, if Knowledge of such claims would have materially affected such party's settlement with the obligor. In this connection, Winning Bidder hereby acknowledges that it is aware that factual matters now unknown to it may have given or may hereafter give rise to Indemnifiable Losses that are currently unknown, unanticipated and unsuspected, and it further agrees that this release has been negotiated and agreed upon in light of that awareness and nevertheless hereby intends to release the FE Subsidiaries and their Representatives and Affiliates from the Indemnifiable Losses in the manner contemplated by this paragraph.

(b) indemnification of the DLC Indemnitees as follows:

(i) indemnification of the DLC Indemnitees from and against any DLC Indemnifiable Loss in any way relating to, resulting from or arising out of (A) any breach by the applicable Winning Bidder of any covenant or agreement of such Winning Bidder contained in the respective Auction Agreement or the representations and warranties contained in Section 6.1, 6.2 and 6.3 of such Auction Agreement, (B) the Assumed FE Liabilities, and (C) any loss or damage resulting from or arising out of any Inspection of the DLC Assets; and

(ii) In addition, DLC shall require that the applicable Winning Bidder provide a release of DLC and each applicable FE Subsidiary in substantially the form of Sections 10.1(e) and 10.2(d) hereof.

10.4 Certain Limitations on Indemnification.

(a) Notwithstanding anything to the contrary contained herein:

(i) Any Indemnitee shall use Commercially Reasonable Efforts to mitigate all losses, damages and the like relating to a claim under these indemnification provisions, including availing itself of any defenses, limitations, rights of contribution, claims against third persons and other rights at law or equity. The Indemnitee's Commercially Reasonable Efforts shall include the reasonable expenditure of money to mitigate or otherwise reduce or

eliminate any loss or expenses for which indemnification would otherwise be due, and the Indemnifying Party shall reimburse the Indemnitee for the Indemnitee's reasonable expenditures in undertaking the mitigation; and

(ii) Any Indemnifiable Loss shall be net of (A) the dollar amount of any insurance or other proceeds actually receivable by the Indemnitee or any of its Affiliates with respect to the Indemnifiable Loss, and (B) income tax benefits to the Indemnitee, to the extent realized by the Indemnitee. Any Person seeking indemnity hereunder shall use Commercially Reasonable Efforts to seek coverage (including both costs of defense and indemnity) under applicable insurance policies with respect to any such Indemnifiable Loss.

(b) The expiration, termination or extinguishment of any covenant or agreement shall not affect the Parties' obligations under Sections 10.1, 10.2, and 10.3 hereof if the Indemnitee provided the Indemnifying Party with proper notice of the claim or event for which indemnification is sought prior to such expiration, termination or extinguishment.

(c) Except to the extent otherwise provided in Article XI, the rights and remedies of DLC and the FE Subsidiaries under this Article X are exclusive and in lieu of any and all other rights and remedies which DLC and the FE Subsidiaries may have under this Agreement for monetary relief, with respect to (i) any breach of or failure to perform any covenant, agreement, or representation or warranty set forth in this Agreement, after the occurrence of the Exchange Closing, or (ii) the Assumed Liabilities or the Excluded Liabilities, as the case may be. The indemnification obligations of the Parties set forth in this Article X apply only to matters arising out of this Agreement but do not extend to matters arising out of the other Ancillary Agreements. Any Indemnifiable Loss arising under or pursuant to any other Ancillary Agreement shall be governed by the indemnification obligations, if any, contained in such Ancillary Agreement under which the Indemnifiable Loss arises.

(d) Notwithstanding anything to the contrary contained herein, no Party (including an Indemnitee) shall be entitled to recover from any other Party (including an Indemnifying Party) for any liabilities, damages, obligations, payments, losses, costs, or expenses under this Agreement any amount in excess of the actual compensatory damages, court costs and reasonable attorney's and other advisor fees suffered by such Party. Each Party waives any right to recover punitive, incidental, special, exemplary and consequential damages arising in connection with or with respect to this Agreement. The provisions of this Section 10.4(d) shall not apply to indemnification for a Third Party Claim.

10.5 Defense of Claims.

(a) If any Indemnitee receives notice of the assertion or

commencement of any Third Party Claim made or brought by any Person who is not a party to this Agreement or any Affiliate of a Party to this Agreement or the applicable Winning Bidder with respect to which indemnification is to be sought from an Indemnifying Party, the Indemnitee shall give such Indemnifying Party reasonably prompt written notice thereof, but in any event such notice shall not be given later than ten (10) calendar days after the Indemnitee's receipt of notice of such Third Party Claim. Such notice shall describe the nature of the

Third Party Claim in reasonable detail and shall indicate the estimated amount, if practicable, of the Indemnifiable Loss that has been or may be sustained by the Indemnitee. The Indemnifying Party will have the right to participate in or, by giving written notice to the Indemnitee, to elect to assume the defense of any Third Party Claim at such Indemnifying Party's expense and by such Indemnifying Party's own counsel, provided that the counsel for the Indemnifying Party who shall conduct the defense of such Third Party Claim shall be reasonably satisfactory to the Indemnitee. The Indemnitee shall cooperate in good faith in such defense at such Indemnitee's own expense. If an Indemnifying Party elects not to assume the defense of any Third Party Claim, the Indemnitee may compromise or settle such Third Party Claim over the objection of the Indemnifying Party, which settlement or compromise shall conclusively establish the Indemnifying Party's liability pursuant to this Agreement.

(b)

(i) If, within ten (10) calendar days after an Indemnitee provides written notice to the Indemnifying Party of any Third Party Claims, the Indemnitee receives written notice from the Indemnifying Party that such Indemnifying Party has elected to assume the defense of such Third Party Claim as provided in Section 10.5(a), the Indemnifying Party will not be liable for any legal expenses subsequently incurred by the Indemnitee in connection with the defense thereof; provided, however, that if the Indemnifying Party shall fail to take reasonable steps necessary to defend diligently such Third Party Claim within twenty (20) calendar days after receiving notice from the Indemnitee that the Indemnitee believes the Indemnifying Party has failed to take such steps, the Indemnitee may assume its own defense and the Indemnifying Party shall be liable for all reasonable expenses thereof.

(ii) Without the prior written consent of the Indemnitee, the Indemnifying Party shall not enter into any settlement of any Third Party Claim which would lead to liability or create any financial or other obligation on the part of the Indemnitee for which the Indemnitee is not entitled to indemnification hereunder. If a firm offer is made to settle a Third Party Claim without leading to liability or the creation of a financial or other obligation on the part of the Indemnitee for which the Indemnitee is not entitled to indemnification hereunder and the Indemnifying Party desires to accept and agree to such offer, the Indemnifying Party shall give written

notice to the Indemnitee to that effect. If the Indemnitee fails to consent to such firm offer within ten (10) calendar days after its receipt of such notice, the Indemnifying Party shall be relieved of its obligations to defend such Third Party Claim and the Indemnitee may contest or defend such Third Party Claim. In such event, the maximum liability of the Indemnifying Party as to such Third Party Claim will be the amount of such settlement offer plus reasonable costs and expenses paid or incurred by Indemnitee up to the date of said notice.

(c) Any claim by an Indemnitee on account of an Indemnifiable Loss which does not result from a Third Party Claim (a "Direct Claim") shall be asserted by giving the Indemnifying Party reasonably prompt written notice thereof, stating the nature of such claim in reasonable detail and indicating the estimated amount, if practicable, but in any event such notice shall not be given later than ten (10) calendar days after the Indemnitee becomes aware of such Direct Claim, and the Indemnifying Party shall have a period of thirty (30) calendar days within which to respond to such Direct Claim. If the Indemnifying Party does not respond within such thirty (30) calendar day period, the

Indemnifying Party shall be deemed to have accepted such claim. If the Indemnifying Party rejects such claim, the Indemnitee will be free to seek enforcement of its right to indemnification under this Agreement.

(d) If the amount of any Indemnifiable Loss, at any time subsequent to the making of an indemnity payment in respect thereof, is reduced by recovery, settlement or otherwise under or pursuant to any insurance coverage, or pursuant to any claim, recovery, settlement or payment by, from or against any other entity, the amount of such reduction, less any costs, expenses or premiums incurred in connection therewith (together with interest thereon from the date of payment thereof at the publicly announced prime rate then in effect of The Chase Manhattan Bank) shall promptly be repaid by the Indemnitee to the Indemnifying Party.

(e) A failure to give timely notice as provided in this Section 10.5 shall not affect the rights or obligations of any Party hereunder except if, and only to the extent that, as a result of such failure, the Party which was entitled to receive such notice was actually prejudiced as a result of such failure.

ARTICLE XI

TERMINATION

11.1 Termination. (a) This Agreement may be terminated at any time prior to the Exchange Closing Date by mutual written consent of DLC and the FE Subsidiaries.

(b) This Agreement may be terminated by either Party if (i) any federal or state court of competent jurisdiction shall have issued an order, judgment or decree permanently restraining, enjoining or otherwise prohibiting the Exchange Closing, and such order, judgment or decree shall have become final and nonappeallable; (ii) any statute, rule, order or regulation shall have been enacted or issued by any Governmental Authority which prohibits the consummation of the Exchange Closing; or (iii) the Exchange Closing contemplated hereby shall have not occurred on or before the day which is 12 months from the date of this Agreement (the "Termination Date"), provided that the right to terminate this Agreement under this Section 11.1(b)(iii) shall not be available to any Party whose failure to fulfill any obligation under this Agreement has been the cause of, or resulted in, the failure of the Exchange Closing to occur on or before such date, and provided, further, that if on the Termination Date (x) the conditions to the Exchange Closing set forth in Sections 9.1(b), 9.2(a) and 9.3(a) hereof shall not have been fulfilled but all other conditions to the Exchange Closing shall be fulfilled or shall be capable of being fulfilled, or (y) the conditions to the Auction Closings set forth in Sections 8.1(b), 8.2(c) and 8.2(d) of the Auction Agreements shall not have been fulfilled but all other conditions to the Auction Closings shall be fulfilled or shall be capable of being fulfilled, then the Termination Date shall be the day which is 18 months from the date of this Agreement.

(c) This Agreement may be terminated by DLC if it shall have received a Final Order that has caused the conditions set forth in Section 9.2(a) not to be satisfied.

(d) This Agreement may be terminated by the FE Subsidiaries if any of them shall have received a Final Order that has caused the conditions set forth in Section 9.3(a) not to be satisfied.

(e) This Agreement may be terminated by DLC if there has been a violation or breach by an FE Subsidiary of any covenant, representation or warranty contained in this Agreement which has resulted in an FE Material Adverse Effect and such violation or breach is not cured by the earlier of the Exchange Closing Date or the date which is thirty (30) days after receipt by the FE Subsidiary of notice specifying particularly such violation or breach, and such violation or breach has not been waived by DLC.

(f) This Agreement may be terminated by the FE Subsidiaries if there has been a violation or breach by DLC of any covenant, representation or warranty contained in this Agreement which has resulted in a DLC Material Adverse Effect and such violation or breach is not cured by the earlier of the Exchange Closing Date or the date which is thirty (30) days after receipt by DLC of notice specifying particularly such violation or breach, and such violation or breach has not been waived by the FE Subsidiaries.

(g) This Agreement may be terminated, in the event of a casualty or loss to the Exchange Assets, by the Party entitled to so terminate this Agreement under the provisions of Section 8.12(b).

(h) If before the Exchange Closing Date, all or any portion of the Exchange Assets are (i) taken by eminent domain or are the subject of a pending or (to the Knowledge of the Conveying Party with respect to such Exchange Assets) contemplated taking which has not been consummated or (ii) damaged or destroyed by fire or other casualty and, in either case, such taking, loss or casualty results (or would result) in the substantial likelihood that the Conveying Party (by conveying to the Acquiring Party the Exchange Assets not otherwise affected by such taking, loss or casualty) will suffer adverse Tax consequences with respect to the Plant to which such Exchange Assets relate, then the Conveying Party shall notify the Acquiring Party (or, if the Acquiring Party is the Winning Bidder, DLC) promptly in writing of such fact. Upon such notification, the Acquiring Party (or, if the Acquiring Party is the Winning Bidder, DLC) may, at its sole option, provide the Conveying Party with a written indemnity, in form and substance reasonably satisfactory to the Conveying Party, indemnifying the Conveying Party against any such adverse Tax consequences resulting from the Conveying Party's conveyance to the Acquiring Party of such Exchange Assets, upon receipt of which the Conveying Party shall remain obligated to convey such Exchange Assets to the Acquiring Party at the Exchange Closing as contemplated by this Agreement. In the event that following such notification, however, the Acquiring Party (or, if the Acquiring Party is the Winning Bidder, DLC) does not provide the Conveying Party with such indemnity on or before the tenth day following such notification, the Conveying Party may, at its sole option, terminate this Agreement.

11.2 Procedure and Effect of No-Default Termination. In the event of termination of this Agreement by either or both of the Parties pursuant to any of Section 11.1, written notice thereof shall forthwith be given by the terminating Party to the other Party, whereupon the liabilities of the Parties hereunder will terminate, except as otherwise expressly provided in this Agreement, and thereafter neither Party shall have any recourse against the other Party by reason of this Agreement.

ARTICLE XII

MISCELLANEOUS PROVISIONS

12.1 Liability of FE Subsidiaries. Each FE Subsidiary shall be individually responsible for its own obligations, covenants, representations and warranties under this Agreement.

12.2 Amendment and Modification. This Agreement may be amended, modified or supplemented only by written agreement of the Parties.

12.3 Waiver of Compliance; Consents. Except as otherwise provided in this Agreement, any failure of any of the Parties to comply with any obligation, covenant, agreement or condition herein may be waived by the Party entitled to the benefits thereof only by a written instrument signed by the Party granting such waiver, but any such waiver of such obligation, covenant, agreement or

condition shall not operate as a waiver of, or estoppel with respect to, any subsequent failure to comply therewith.

12.4 No Survival.

(a) Except as provided in Section 12.4(b) and 12.4(c), each and every representation, warranty and covenant contained in this Agreement shall expire with, and be terminated and extinguished by the consummation of the sale of the Exchange Assets and shall merge into the deed(s) pursuant hereto and the transfer of the Assumed Liabilities pursuant to this Agreement and such representations, warranties and covenants shall not survive the Exchange Closing Date; and none of DLC, any FE Subsidiary or any officer, director, trustee, Affiliate or agent of any of them shall be under any liability whatsoever with respect to any such representation, warranty or covenant.

(b) The covenants contained in Sections 5.2(e), 5.2(f), 5.4, 5.5, 8.2(d), 8.3(a), 8.5, 8.6, 8.7(e), 8.8, 8.9, 8.11, 8.14, 8.16, 11.2, and in Articles X and XII shall survive the delivery of the deed(s) and the Exchange Closing in accordance with their terms.

(c) The representations, warranties and disclaimers contained in Sections 6.1, 6.2, 6.3, 7.1, 7.2, 7.3, and claims arising under Sections 8.1 and 8.7(e) shall survive the Exchange Closing for eighteen (18) months from the Exchange Closing Date.

12.5 Notices. All notices and other communications hereunder shall be in writing and shall be deemed given if delivered personally or by facsimile transmission, or mailed by overnight courier or registered or certified mail (return receipt requested), postage prepaid, to the recipient Party at its address (or at such other address or facsimile number for a Party as shall be specified by like notice; provided however, that notices of a change of address shall be effective only upon receipt thereof):

(a) If to DLC, to:

Duquesne Light Company
411 Seventh Avenue
Pittsburgh, PA 15219
Telephone: (412) 393-6000
Fax: (412) 393-6760
Attention: Morgan O'Brien

with a copy to:

Skadden, Arps, Slate, Meagher & Flom LLP
1440 New York Avenue, N.W.
Washington, DC 20005
Telephone: (202) 371-7000
Fax: (202) 393-5760

Attention: Erica A. Ward

(b) if to the FE Subsidiaries, to:

FirstEnergy Corp.
76 South Main Street
Akron, OH 44308
Telephone: (330) 384-5793
Fax: (330) 384-3875
Attention: Anthony J. Alexander

with a copy to:

Winthrop, Stimson, Putnam & Roberts
One Battery Park Plaza
New York, NY 10004
Telephone: (212) 858-1000
Fax: (212) 858-1500
Attention: Michael F. Cusick

12.6 Assignment. This Agreement and all of the provisions hereof shall be binding upon and inure to the benefit of the Parties hereto and their respective successors and permitted assigns, but neither this Agreement nor any of the rights, interests or obligations hereunder shall be assigned by any Party hereto, including by operation of law, without the prior written consent of the other Party, nor is this Agreement intended to confer upon any other Person except the Parties hereto any rights, interests, obligations or remedies hereunder. Notwithstanding the foregoing, the Winning Bidder may (i) assign all of its rights and obligations hereunder to any wholly owned Subsidiary (direct or indirect) or (ii) make a security assignment to any lender providing financing in respect of the Winning Bidder's acquisition of the FE Assets, and in either case upon the applicable FE Subsidiary's receipt of notice from the

Winning Bidder of any such assignment, such assignee will be deemed to have assumed, ratified, agreed to be bound by and perform all such obligations, and all references herein to "Winning Bidder" shall thereafter be deemed to be references to such assignee, in each case without the necessity for further act or evidence by the Parties hereto or such assignee, provided, however, that no such assignment shall relieve or discharge the assignor (the original Winning Bidder hereunder) from any of its obligations as the Winning Bidder hereunder. Except as expressly provided herein with respect to the applicable Winning Bidder, no provision of this Agreement shall create any third party beneficiary rights in any employee or former employee of a Conveying Party (including any beneficiary or dependent thereof) in respect of continued employment or resumed employment, and no provision of this Agreement shall create any rights in any such Persons in respect of any benefits that may be provided, directly or indirectly, under any employee benefit plan or arrangement except as expressly provided for thereunder. Each Conveying Party agrees, at any Acquiring Party's expense, to execute and deliver such documents as may be reasonably necessary to

accomplish any such assignment, transfer, pledge or other disposition of rights and interests hereunder so long as such Conveying Party's rights under this Agreement are not thereby altered, amended, diminished or otherwise impaired.

12.7 Governing Law. This Agreement shall be governed by and construed in accordance with the law of the Commonwealth of Pennsylvania (without giving effect to conflict of law principles) as to all matters, including but not limited to matters of validity, construction, effect, performance and remedies (except as to such matters of real estate law that must be governed by the law of the State of Ohio). THE PARTIES HERETO AGREE THAT VENUE IN ANY AND ALL ACTIONS AND PROCEEDINGS RELATED TO THE SUBJECT MATTER OF THIS AGREEMENT SHALL BE IN THE STATE AND FEDERAL COURTS IN AND FOR PITTSBURGH, PENNSYLVANIA, WHICH COURTS SHALL HAVE EXCLUSIVE JURISDICTION FOR SUCH PURPOSE, AND THE PARTIES HERETO IRREVOCABLY SUBMIT TO THE EXCLUSIVE JURISDICTION OF SUCH COURTS AND IRREVOCABLY WAIVE THE DEFENSE OF AN INCONVENIENT FORUM TO THE MAINTENANCE OF ANY SUCH ACTION OR PROCEEDING. SERVICE OF PROCESS MAY BE MADE IN ANY MANNER RECOGNIZED BY SUCH COURTS. EACH OF THE PARTIES HERETO IRREVOCABLY WAIVES ITS RIGHT TO A JURY TRIAL WITH RESPECT TO ANY ACTION OR CLAIM ARISING OUT OF ANY DISPUTE IN CONNECTION WITH THIS AGREEMENT OR THE TRANSACTIONS CONTEMPLATED HEREBY.

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

12.9 Interpretation. The articles, section and schedule headings contained in this Agreement are solely for the purpose of reference, are not part of the agreement of the parties and shall not in any way affect the meaning or interpretation of this Agreement.

12.10 Schedules and Exhibits. Except as otherwise provided in this Agreement, all Exhibits and Schedules referred to herein are intended to be and hereby are specifically made a part of this Agreement.

12.11 Entire Agreement. This Agreement, the Ancillary Agreements, and the Exhibits, Schedules, documents, certificates and instruments referred to herein or therein, embody the entire agreement and understanding of the Parties hereto in respect of the transactions contemplated by this Agreement. There are no restrictions, promises, representations, warranties, covenants or undertakings, other than those expressly set forth or referred to herein or

therein. This Agreement and the Ancillary Agreements supersede all prior agreements and understandings between the Parties (except for that certain Confidentiality Agreement, dated August 17, 1998, by and between FE (including its affiliates) and DQE (including its affiliates) as it relates to Confidential Information (as defined therein) from the date thereof until the date hereof) with respect to such transactions.

12.12 U.S. Dollars. Unless otherwise stated, all dollar amounts set

forth herein are United States (U.S.) dollars.

12.13 Sewage Facilities. Pursuant to the provisions of Section 7a of the Pennsylvania Sewage Facilities Act, 35 P.S. section 750 (the "Facilities Act"), each Acquiring Party is notified that a "community sewage system" (as defined by Section 2 of the Facilities Act) is not available on one or more lots comprising part of the Real Property at the facilities listed in Schedule 12.13. Prior to construction of any buildings on such lots, a permit to connect to a community sewage system or permit for installation of an individual sewage system must be obtained pursuant to Section 7 of the Facilities Act. Before signing this Agreement, the Acquiring Party should contact the local agency charged with administering the Facilities Act in the area of each such facility and lot(s) to determine the procedure and requirements for obtaining a permit for an individual or community sewage system to service such lot(s), if required for the intended uses and purposes of such lot(s).

12.14 Bulk Sales Laws. Each Acquiring Party acknowledges that, notwithstanding anything in this Agreement to the contrary, the Conveying Party will not comply with the provision of the bulk sales laws of any jurisdiction in connection with the transactions contemplated by this Agreement. Each Acquiring Party hereby waives compliance by the Conveying Party with the provisions of the bulk sales laws of all applicable jurisdictions to the extent permitted by law.

12.15 Tax Matters

The Parties have entered into the Exchange Agreements with the intention that, to the extent eligible under the Code, the transfers of generating assets from the applicable FE Subsidiaries to DLC and from DLC to such FE Subsidiaries, as provided for in the Exchange Agreements, shall occur without recognition of a tax gain or loss by the FE Subsidiaries.

IN WITNESS WHEREOF, DLC and each FE Subsidiary have caused this Agreement to be signed by their respective duly authorized officers as of the date first above written.

DUQUESNE LIGHT COMPANY

By: /s/ Morgan K. O'Brien

Name: Morgan K. O'Brien
Title: Vice President, Finance

THE CLEVELAND ELECTRIC ILLUMINATING COMPANY

By: /s/ Anthony J. Alexander

Name: Anthony J. Alexander
Title: Executive Vice President and General Counsel

OHIO EDISON COMPANY

By: /s/ Anthony J. Alexander

Name: Anthony J. Alexander
Title: Executive Vice President and General Counsel

PENNSYLVANIA POWER COMPANY

By: /s/ Anthony J. Alexander

Name: Anthony J. Alexander
Title: Executive Vice President and General Counsel

LIST OF EXHIBITS AND SCHEDULES

EXHIBITS

Exhibit A	Form of Nuclear Generation Conveyance Agreement
Exhibit B	Form of Asset Purchase Agreement
Exhibit C	Form of Bill of Sale
Exhibit D	Form of DLC Assignment and Assumption Agreement
Exhibit E	Form of FE Connection Agreement
Exhibit F	Form FE (Accrued Liability) Assignment and Assumption Agreement
Exhibit G	Form of FE Assignment and Assumption Agreement
Exhibit H	Form of FE Easement and Attachment Agreement
Exhibit I	Form of FIRPTA Affidavit
Exhibit J	Form of Electrical Facilities Agreement
Exhibit K	Form of Settlement Agreement
Exhibit L	Form of Warranty Deed - FE
Exhibit M	Form of Warranty Deed - DLC
Exhibit N	Form of Order
Exhibit O	Form of CAPCO Settlement Agreement
Exhibit P	Form of Support Agreement
Exhibit Q	Form of FE Must-Run Agreement

SCHEDULES

1.1(24)	CAPCO Agreements
1.1 (27-DLC)	DLC Capital Spare Parts
1.1(27-FE)	FE Subsidiaries Capital Spare Parts
1.1(64)	DLC Transferable Permits (environmental and non-environmental)
1.1(90)	DLC Exempt Facilities
1.1 (126)	FE Transferable Permits (environmental and non-environmental)
1.1(170)	Permitted Encumbrances (DLC Assets)

3.1	Schedule of Designation of FE Subsidiaries receiving DLC Assets and conveying FE Assets
3.1(c)	Schedule of DLC Tangible Personal Property to be Conveyed to Acquiring Party
3.1(i)	Schedule of Unexpired Warranties and Guarantees
3.1(l)	Schedule of DLC Intellectual Property
3.3(d)	Schedule of Agreements and Consent Orders regarding Assumed DLC Liabilities
3.7	Schedule of Sammis and East Lake Property Tax Litigation
4.1	Schedule of FE Assets (Avon Lake)(New Castle)(Niles)
4.1(c)	Schedule of FE Tangible Personal Property to be Conveyed to Acquiring Party (Avon Lake)(New Castle)(Niles)

4.1(k)	Schedule of FE Intellectual Property (Avon Lake)(New Castle)(Niles)
4.2(a)	Description of Excluded FE Transmission and other Assets of each FE Subsidiary
4.2(b)	Excluded FE Equipment and Systems
4.3(e)	Schedule of Agreements and Consent Orders regarding Assumed FE Liabilities (Avon Lake)(New Castle)(Niles)
4.7	Schedule of FE Inventories (Avon Lake)(New Castle)(Niles)
5.2(b)(ii)	Value of DLC Inventories
6.3(a)(i)	DLC Conflicts, Third Party Consents and Breaches of Articles/Bylaws
6.3(a)(ii)	DLC Defaults, Termination or Acceleration of Notes, Bonds or Mortgages
6.3(a)(iii)	DLC Violations of Law, Regulations
6.3(b)	DLC Required Regulatory Approvals
6.4	DLC Insurance Exceptions
6.5	DLC Real Property Leases
6.6(a)	DLC Environmental Exceptions
6.6(b)	DLC Written Requests Under CERCLA
6.6(c)	DLC Consents, Decrees/Orders related to Environmental Laws or Remediation
6.7	Description of DLC Real Property
6.8	DLC Notices of Condemnation
6.9(a)	Certain DLC Material Agreements
6.9(b)	Certain Non-Assignable DLC Material Agreements
6.9(c)	Defaults under Certain DLC Material Agreements
6.10	Legal Proceedings Involving DLC
6.11(a)	List of DLC Permit Violations
6.11(b)	List of DLC Material Permits (other than DLC Transferable Permits)
6.12(b)	DLC Notices of Tax Deficiencies or Assessments

6.12(c)	DLC Outstanding Agreements or Waivers Extending Statute of Limitations for Taxes
6.12(d)	DLC Safe Harbor Lease/Tax Exempt Use Property
6.12(e)	Taxing Jurisdictions for DLC Assets
6.13	DLC Intellectual Property Default or Infringement
7.3(a)	FE Conflicts/Defaults/Violations (Avon Lake)(New Castle)(Niles)
7.3(b)	FE Required Regulatory Approvals (Avon Lake)(New Castle)(Niles)
7.4	FE Insurance Exceptions (Avon Lake)(New Castle)(Niles)
7.5	FE Real Property Leases (Avon Lake)(New Castle)(Niles)
7.6	Schedule of FE Environmental Matters (Avon Lake)(New Castle)(Niles)
7.7	Schedule of FE Labor Matters
7.8(a)	Schedule of FE Benefit Plans
7.9	Description of FE Real Property (Avon Lake)(New Castle)(Niles)
7.10	FE Notices of Condemnation
7.11(a)	Certain FE Material Agreements (Avon Lake)(New Castle)(Niles)
7.11(b)	Certain Non-Assignable FE Material Agreements (Avon Lake)(New Castle)(Niles)
7.11(c)	Defaults under Certain FE Material Agreements (Avon Lake)(New Castle)(Niles)
7.12	Legal Proceedings Involving FE

7.13(a)	List of FE Permit Violations (Avon Lake)(New Castle)(Niles)
7.13(b)	List of FE Material Permits (other than FE Transferable Permits) (Avon Lake)(New Castle)(Niles)
7.14(b)	FE Notices of Tax Deficiencies or Assessments
7.14(c)	FE Outstanding Agreements or Waivers Extending Statute of Limitations for Taxes
7.14(d)	FE Safe Harbor Lease/Tax Exempt Use Property
7.14(e)	Taxing Jurisdictions for FE Assets
7.15	FE Intellectual Property Default or Infringement (Avon Lake)(New Castle)(Niles)
8.1(a)	Schedule of Permitted FE Activities prior to Closing (Avon Lake) New Castle)(Niles)
8.1(c)	Schedule of Exceptions to Permitted FE Activities prior to Closing
8.1(c)(viii)	Schedule of Permitted FE Capital Expenditures
8.1(d)	Schedule of Permitted DLC Capital Expenditures
8.1(e)	Schedule of Permitted DLC Activities prior to Closing
8.11(a)	Employees at FE Plants
8.11(c)	FE Non-Union Employees
8.11(d)	FE Collective Bargaining Agreements
12.13	Status of Sewage Facilities on Subject Lots

EXHIBIT 2.2

NUCLEAR GENERATION CONVEYANCE AGREEMENT

by and between

DUQUESNE LIGHT COMPANY, on the one hand, and

PENNSYLVANIA POWER COMPANY

and

THE CLEVELAND ELECTRIC ILLUMINATING COMPANY, on the other

Dated as of March 25, 1999

NUCLEAR GENERATION CONVEYANCE AGREEMENT

NUCLEAR GENERATION CONVEYANCE AGREEMENT, dated as of March 25, 1999 ("Agreement"), by and between Duquesne Light Company ("DLC"), a Pennsylvania corporation, on the one hand, and Pennsylvania Power Company ("Penn Power"), a Pennsylvania corporation and The Cleveland Electric Illuminating Company ("CEIC"), an Ohio corporation, on the other. DLC, on the one hand, and Penn Power and CEIC, on the other, are referred to individually as a "Party," and collectively as the "Parties."

W I T N E S S E T H

WHEREAS, DLC and FE (as hereinafter defined), acting on behalf of the FE Subsidiaries (as hereinafter defined) have entered into an agreement in principle dated October 14, 1998 (the "Agreement in Principle"), regarding the

exchange of interests in certain electric generation facilities; and

WHEREAS, in order to implement the Agreement in Principle with respect to DLC's nuclear generating assets which are subject to the jurisdiction of the NRC (as hereinafter defined), the Parties desire to set forth in this Agreement the definitive terms and conditions pursuant to which DLC agrees to transfer to and convey, and Penn Power and CEIC agree to assume, all of DLC's right, title and interest in and to certain plants (Beaver Valley Unit 1, Beaver Valley Unit 2, SAPS and Perry Unit 1, as each is hereinafter defined), as well as DLC's rights and obligations as operator of Beaver Valley Unit 1 and Beaver Valley Unit 2; and

WHEREAS, in order to implement the Agreement in Principle with respect to certain fossil fueled power plants, simultaneously with the execution of this Agreement, DLC and the FE Subsidiaries will enter into the Generation Exchange Agreement (the "Exchange Agreement") dated as of the date hereof, in the form of Exhibit A, pursuant to which DLC will exchange its undivided interests in certain electric generation plants operated by the FE Subsidiaries (W.H. Sammis Unit No. 7, Bruce Mansfield Units Nos. 1, 2 & 3, and Eastlake Unit No. 5) for the interests of certain of the FE Subsidiaries in electric generation plants in Avon Lake, Ohio, New Castle, Pennsylvania and Niles, Ohio; and

WHEREAS, simultaneously with the execution of this Agreement, DLC and FE will enter into the FE Support Agreement, and DLC, FE and the FE Subsidiaries will enter into the CAPCO Settlement Agreement and the Electric Facilities Agreement (as each is hereinafter defined).

NOW, THEREFORE, in consideration of the mutual covenants, representations, warranties and agreements hereinafter set forth, and intending to be legally bound hereby, the Parties agree as follows:

ARTICLE I

DEFINITIONS

1.1 Definitions. As used in this Agreement, the following terms have the meanings specified in this Section 1.1.

(1) "Affiliate" has the meaning set forth in Rule 12b-2 of the General Rules and Regulations under the Securities Exchange Act of 1934, as amended.

(2) "Agreement" means this Nuclear Generation Conveyance Agreement, together with the Schedules and Exhibits hereto, as the same may be from time to time amended.

(3) "Agreement in Principle" has the meaning set forth in the preamble to this Agreement.

(3A) "Amendment 2 to the CAPCO Perry Unit 1 Operating Agreement"

means the Amendment 2 to the CAPCO Perry Unit 1 Operating Agreement, substantially in the form of Exhibit J hereto, to be entered into between DLC and CEIC at the time this Agreement is executed.

(4) "Ancillary Agreements" means the CAPCO Settlement Agreement and the Electric Facilities Agreement and, in respect of each Plant, the Assignment and Assumption Agreement, the Bill of Sale, the FIRPTA Affidavit, the Warranty Deed(s) with respect to such Plant and, in the case of Beaver Valley, the Beaver Valley Omnibus Services Agreement, in each case as the same may be from time to time amended.

(5) "ANI" means American Nuclear Insurance, or any successor entity.

(6) "Assignment and Assumption Agreement" means an Assignment and Assumption Agreement in respect of each Plant between DLC and the applicable Specified FE Subsidiary, substantially in the form of Exhibit B hereto, by which DLC shall, subject to the terms and conditions hereof, assign the DLC Nuclear Agreements, certain intangible assets and other DLC Nuclear Assets in respect of each Plant to the applicable Specified FE Subsidiary, and whereby such Specified FE Subsidiary shall assume the Assumed Liabilities in respect of each Plant.

(7) "Assumed Decommissioning Liabilities" has the meaning set forth in Section 2.3(f).

(8) "Assumed Environmental Liabilities" has the meaning set forth in Section 2.3(c).

(9) "Assumed Liabilities" has the meaning set forth in Section 2.3.

(10) "Assumed Nuclear Liabilities" has the meaning set forth in Section 2.3(g).

(11) "Assumed Spent Fuel Liabilities" has the meaning set forth in Section 2.3(h).

(12) "Atomic Energy Act" means the Atomic Energy Act of 1954, as amended.

(13) "Beaver Valley" means, collectively, Beaver Valley Unit 1, Beaver Valley Unit 2 and SAPS.

(14) [Intentionally Omitted.]

(15) "Beaver Valley CAPCO Agreements" means all the contractual arrangements associated with CAPCO relating to Beaver Valley,

including those contracts listed on Schedule 1.1 (15).

(16) "Beaver Valley Switchyard Assets" means the real and personal assets described in Schedule 2.2(a).

(17) [Intentionally Omitted.]

(18) "Beaver Valley Omnibus Services Agreement" means the Beaver Valley Omnibus Services Agreement substantially in the form of Exhibit F hereto, to be entered into between Penn Power and DLC as of the DLC Nuclear Closing Date.

(19) "Beaver Valley Unit 1" means the nuclear generating plant known as Beaver Valley Power Station Unit No. l, including such plant's fifty percent (50%) undivided interest in the Common Facility Assets.

(20) "Beaver Valley Unit 1 Decommissioning Amount" has the meaning set forth in Section 6.19.1 (a) (i).

(21) "Beaver Valley Unit 1 Decommissioning Shortfall" has the meaning set forth in Section 6.19.1 (a) (i).

(22) "Beaver Valley Unit 1 Nonqualified Decommissioning Funds" means one or more external trust funds that do not meet the requirements of Code section 468A and Treasury Regulations section 1.468A-5, maintained by DLC with respect to Beaver Valley Unit 1 prior to the DLC Nuclear Closing.

(23) "Beaver Valley Unit 1 Qualified Decommissioning Fund" means the external trust fund that meets the requirements of Code section 468A and Treasury Regulations section 1.468A-5, maintained by DLC with respect to Beaver Valley Unit 1 prior to the DLC Nuclear Closing.

(24) "Beaver Valley Unit 2" means the nuclear generating plant known as Beaver Valley Power Station Unit No. 2, including such plant's fifty percent (50%) undivided interest in the Common Facility Assets.

(25) "Beaver Valley Unit 2 Decommissioning Amount" has the meaning set forth in Section 6.19.2 (a)(i).

(26) "Beaver Valley Unit 2 Decommissioning Shortfall" has the meaning set forth in Section 6.19.2 (a) (i).

(27) "Beaver Valley Unit 2 Facility Leases" means, collectively, the seven (7) facility leases with respect to Beaver Valley Unit 2, dated as of September 15, 1987, each by and between the Beaver Valley Unit 2 Owner Trustee and DLC, as amended.

(28) "Beaver Valley Unit 2 Foreclosure" means any foreclosure, forfeiture or similar proceeding the occurrence of which is pursuant to the Beaver Valley Unit 2 Lease Indentures.

(29) "Beaver Valley Unit 2 Indentures Notes" has the meaning set forth in Section 6.16(a).

(30) "Beaver Valley Unit 2 Indentures Support Agreement" means the Beaver Valley Unit 2 Indentures Support Agreement substantially in the form of Exhibit I.

(31) "Beaver Valley Unit 2 Indentures Trustee" means Irving Trust Company, as indenture trustee, under each of the Beaver Valley Unit 2 Lease Indentures, and any successor indenture trustee appointed in accordance with the terms of the Beaver Valley Unit 2 Lease Indentures.

(32) "Beaver Valley Unit 2 Lease Indentures" means, collectively, the seven (7) trust indenture, mortgage, security agreements and assignments of facility lease, dated as of September 15, 1987, between State Street Bank and Trust Company (successor in interest to The First National Bank of Boston), a national banking association, not in its individual capacity, but solely as trustee under those certain trust agreements dated as of September 15, 1987 with the owner participants thereto as set forth therein, and The Bank of New York (successor in interest to Irving Trust Company), a New York banking

corporation, as the indenture trustee, as such may be amended, modified, supplemented or restated from time to time.

(33) "Beaver Valley Unit 2 Lease Indentures Documents" means all contractual arrangements implementing the sale-leaseback in respect of Beaver Valley Unit 2, including those documents described in Schedule 1.1(33).

(34) "Beaver Valley Unit 2 Nonqualified Decommissioning Funds" means the external trust funds that do not meet the requirements of Code section 468A and Treasury Regulations section 1.468A-5, maintained by DLC with respect to Beaver Valley Unit 2.

(35) "Beaver Valley Unit 2 Operating Agreement" means the Operating Agreement -- Beaver Valley Unit 1 and Beaver Valley Unit 2, as amended and restated as of September 15, 1987, by and between CEIC, DLC, Ohio Edison Company, an Ohio corporation, Penn Power, and The Toledo Edison Company, an Ohio corporation, as such may be amended, modified, supplemented or restated from time to time.

(36) "Beaver Valley Unit 2 Owner Trustee" means First National

Bank of Boston, as owner trustee under each of the Beaver Valley Unit 2 Facility Leases.

(37) "Beaver Valley Unit 2 Qualified Decommissioning Funds" means the external trust funds that meet the requirements of Code section 468A and Treasury Regulations section 1.468A-5, maintained by DLC with respect to Beaver Valley Unit 2.

(38) "Benefit Plans" means with respect to each Party, each deferred compensation and each bonus or other incentive compensation, stock purchase, stock option and other equity compensation plan, program, agreement or arrangement; each severance or termination pay, medical, surgical, hospitalization, life insurance and other "welfare" plan, fund or program (within the meaning of Section 3(1) of ERISA) each profit-sharing, stock bonus or other "pension" plan, fund or program (within the meaning of Section 3(2) of ERISA); each employment, termination or severance agreement; and each other employee benefit plan, fund, program, agreement or arrangement, in each case, that is sponsored, maintained or contributed to or required to be contributed to by such Party or by any ERISA Affiliate.

(39) "Bill of Sale" means a Bill of Sale, substantially in the form of Exhibit C hereto, to be delivered by DLC to each of Penn Power and CEIC at the DLC Nuclear Closing, with respect to Tangible Personal Property included in the DLC Nuclear Assets transferred to such Specified FE Subsidiary at the DLC Nuclear Closing.

(40) "Bond Counsel" has the meaning assigned thereto in Section 6.17(b)(i).

(41) "Business Day" means any day other than Saturday, Sunday and any day which is a day on which banking institutions in the Commonwealth of Pennsylvania or the State of Ohio are authorized by law or other governmental action to close.

(42) "Byproduct Material" means any radioactive material (except Special Nuclear Material) yielded in, or made radioactive by, exposure to radiation in the process of producing or utilizing Special Nuclear Material.

(43) "CAPCO" means the Central Area Power Coordination Group.

(44) "CAPCO Agreements" means, collectively, the Beaver Valley CAPCO Agreements and the Perry CAPCO Agreements.

(45) "CAPCO Settlement Agreement" means that certain CAPCO Settlement Agreement executed by DLC and each applicable FE Subsidiary, substantially in the form of Exhibit H hereto.

(46) "Capital Expenditures" means capital additions to or replacements of property, plant and equipment included in the DLC Nuclear Assets and other expenditures or repairs on property, plant and equipment included in the DLC Nuclear Assets that would be capitalized by a party in accordance with its normal accounting policies.

(47) "CEIC" means The Cleveland Electric Illuminating Company, an Ohio corporation.

(48) "CEIC Nonqualified Decommissioning Funds" means the external trust funds that do not meet the requirements of Code section 468A and Treasury Regulations section 1.468A-5, maintained by CEIC.

(49) "CEIC Qualified Decommissioning Funds" means the external trust funds that meet the requirements of Code section 468A and Treasury Regulations section 1.468A-5, maintained by CEIC with respect to Perry Unit 1.

(50) "CERCLA" means the Federal Comprehensive Environmental Response, Compensation, and Liability Act, 42 U.S.C. Section 9601 et seq., as amended.

(51) "COBRA" means the Consolidated Omnibus Budget Reconciliation Act of 1984.

(52) "COBRA Continuous Coverage" means the requirements of Section 4980B(f) of the Code.

(53) "Code" means the Internal Revenue Code of 1986, as amended.

(54) "Collective Bargaining Agreement" has the meaning set forth in Section 6.11(d).

(55) "Commercially Reasonable Efforts" means efforts which are reasonably within the contemplation of the Parties at the time of executing this Agreement and which do not require the performing Party to expend any funds other than expenditures which are customary and reasonable under the circumstances in transactions of the kind and nature contemplated by this Agreement in order for the performing Party to satisfy its obligations hereunder.

(56) "Common CAPCO Agreements" means those CAPCO Agreements relating to both any portion of the Exchange Assets and any portion of the DLC Nuclear Assets, including those listed in Schedule 1.1(56).

(57) "Common Facility Assets" means those assets located at Beaver Valley and used in common by Beaver Valley Unit 1 and Beaver Valley Unit 2 and listed in Schedule 1.1(57).

(58) "Computer Systems" means hardware, software, and firmware product (including embedded microcontrollers in non-computer equipment).

(59) "Continuation Period" has the meaning set forth in Section 6.11(e)(ii).

(60) "Decommissioning" means the complete retirement and removal of a Plant from service and the restoration of the Real Property relating to such Plant, as well as any planning and administrative activities incidental thereto, including but not limited to (a) the dismantlement, decontamination, storage, and/or entombment of the Plant, in whole or in part, and any reduction or removal, whether before or after termination of the NRC license for the Plant, of radioactivity at the Real Property relating to such Plant, and (b) all activities necessary for the retirement, dismantlement and decontamination of the Plant to comply with all applicable laws, including applicable Nuclear Laws and Environmental Laws, including the applicable requirements of the Atomic Energy Act and the NRC's rules, regulations, orders and pronouncements thereunder, the NRC operating license for the Plant and any related decommissioning plan.

(61) "Decommissioning Costs" means the costs of Decommissioning the DLC Nuclear Assets in accordance with all applicable laws, including the applicable Nuclear Laws and Environmental Laws.

(62) "Decommissioning Funds" means collectively, the Qualified Decommissioning Funds and the Nonqualified Decommissioning Funds.

(63) "Department of Energy" means the United States Department of Energy and any successor agency thereto.

(64) "Department of Energy Decommissioning and Decontamination Fees" means all fees related to the Department of Energy's Special Assessment of utilities for the Uranium Enrichment Decontamination and Decommissioning Fund pursuant to Sections 1801, 1802 and 1803 of the Atomic Energy Act, 42 U.S.C. 2297(g)-(g-2), and the Department of Energy's implementing regulations at 10 CFR Part 766, or any similar fees assessed under amended or superseding statutes or regulations applicable to separative work units purchased from the Department of Energy in order to decontaminate and decommission the Department of Energy's gaseous diffusion enrichment facilities.

(65) "Department of Energy Standard Contract" means the Contracts for Disposal of Spent Nuclear Fuel and/or High-Level Radioactive Waste, No. DE- CR01-83NE44380, dated as of June 13, 1983 between the United States of America, represented by the United States Department of Energy, and DLC; and No. DE- CR01-84RW00004, dated as of June 26,

1984, between the Unites States of America, represented by the United States Department of Energy, and DLC and OEC.

(66) "Direct Claim" means any claim by an Indemnitee on account of an Indemnifiable Loss that does not result from a Third Party Claim.

(67) "DLC" means Duquesne Light Company, a Pennsylvania corporation.

(68) "DLC Beaver Valley Emergency Preparedness Agreements" means those agreements listed in Schedule 1.1(68).

(69) "DLC Indemnifiable Loss" means an Indemnifiable Loss asserted against or suffered by any DLC Indemnitee.

(70) "DLC Indemnitee" means DLC, its officers, directors, employees, shareholders, Affiliates and agents.

(70A) "DLC Interim Fuel Requirements" has the meaning set forth in Section 2.6(b)(i).

(71) "DLC Nonqualified Decommissioning Funds" means, collectively, the Beaver Valley Unit 1 Nonqualified Decommissioning Fund, the Beaver Valley Unit 2 Nonqualified Decommissioning Fund and the Perry Unit 1 Nonqualified Decommissioning Fund.

(72) "DLC Non-Union Employees" has the meaning set forth in Section 6.11(c).

(73) "DLC Nuclear Agreements" means any contracts, agreements, licenses and personal property leases entered into by DLC with respect to the ownership, operation or maintenance of the DLC Nuclear Assets, whether or not disclosed on Schedule 4.9(a)(i) and (ii) or Schedule 4.9(b)(i) and (ii), including the DLC Beaver Valley Emergency Preparedness Agreements, but shall not include the Beaver Valley Unit 2 Lease Indentures Documents.

(74) "DLC Nuclear Assets" has the meaning set forth in Section 2.1, to the extent of DLC's undivided percentage interest in such assets.

(75) "DLC Nuclear Closing" means the closing at which the assignment, conveyance, transfer and delivery of some or all of the DLC Nuclear Assets to Penn Power and CEIC, as contemplated by this Agreement, shall take place.

(76) "DLC Nuclear Closing Date" has the meaning set forth in Section 3.1.

(77) "DLC Nuclear Closing Payment" has the meaning set forth in Section 3.2(a).

(78) "DLC Nuclear Insurance Policies" means any insurance policies carried by or for the benefit of DLC with respect to the ownership, operation or maintenance of the DLC Nuclear Assets, including all ANI and NEIL nuclear liability, property damage or business interruption policies in respect thereof.

(79) "DLC Qualified Decommissioning Funds" means, collectively, the Beaver Valley Unit 1 Qualified Decommissioning Fund, the Beaver Valley Unit 2 Qualified Decommissioning Fund and the Perry Unit 1 Qualified Decommissioning Fund.

(80) "DLC Representatives" means DLC's authorized representatives, including its professional and financial advisors.

(81) "DLC Required Regulatory Approvals" means the Required Regulatory Approvals referred to in Schedule 4.3(b).

(82) "DLC Savings Plans" has the meaning set forth in Section 6.11(e)(ii)(E).

(83) "DLC Transferred Non-Union Employees" has the meaning set forth in Section 6.11(c).

(84) "DLC Transferred Union Employee" has the meaning set forth in Section 6.11(b).

(85) "DLC Transmission Assets" means DLC's seventy-six and one-tenth percent (76.1%) undivided interest in the Beaver Valley Switchyard Assets.

(86) "DLC Union Employees" has the meaning set forth in Section 6.11(b).

(87) "ECAR" means the East Central Area Reliability Council, a regional reliability counsel established pursuant to the East Central Area Reliability Coordination Agreement, and any successor entity thereto.

(88) "Electric Facilities Agreement" has the meaning assigned thereto in the Exchange Agreement.

(89) "Encumbrances" means any mortgages, pledges, liens, security interests, conditional and installment sale agreements, activity and use limitations, conservation easements, deed restrictions, encumbrances and charges of any kind.

(90) "Environmental Claim" means any and all pending and/or threatened administrative or judicial actions, suits, orders, claims, liens, notices, notices of violations, investigations, complaints, requests for information, proceedings, or other written communications, whether criminal or civil (each, a "Claim"), pursuant to or relating to any applicable Environmental Law or pursuant to a common law theory, by any Person (including any Governmental Authority, private person and citizens' group) based upon, alleging, asserting, or claiming any actual or potential (a) violation of, or liability under any Environmental Law, (b) violation of any Environmental Permit, or (c) liability for investigatory costs, cleanup costs, removal costs, remedial costs, response costs, natural resource damages, property damage, personal injury, fines, or penalties arising out of, based on, resulting from, or related to any Environmental Condition or any Release or threatened Release into the environment of any Regulated Substances at any location related to the DLC Nuclear Assets, including, but not limited to, any Off-Site Location to which Regulated Substances, or materials (other than Nuclear Materials) containing Regulated Substances, were sent for handling, storage, treatment, or disposal.

(91) "Environmental Condition" means the presence or Release of a Regulated Substance (other than a naturally-occurring substance) on or in environmental media, or structures on Real Property, at an Off-Site Location or other property (including the presence in surface water, groundwater, soils or subsurface strata, or air), including the subsequent migration of any such Regulated Substance, regardless of when such presence or Release occurred or is discovered.

(92) "Environmental Laws" means all Federal, state, local, provincial, foreign and international civil and criminal laws,

regulations, rules, ordinances, codes, decrees, judgments, directives, or judicial or administrative orders relating to pollution or protection of the environment, natural resources or human health and safety, including laws relating to Releases or threatened Releases of Regulated Substances (including Releases to ambient air, surface water, groundwater, land, surface and subsurface strata) or otherwise relating to the manufacture, processing, distribution, use, treatment, storage, Release, transport, disposal or handling of Regulated Substances, but shall not include Nuclear Laws. "Environmental Laws" include: (a) with respect to Federal law, CERCLA, the Hazardous Materials Transportation Act (49 U.S.C. sections 1801 et seq.), the Resource Conservation and Recovery Act (42 U.S.C. sections 6901 et seq.), the Federal Water Pollution Control Act (33 U.S.C. sections 1251 et seq.), the Clean Air Act (42 U.S.C. sections 7401 et seq.), the Toxic Substances Control Act (15 U.S.C. sections 2601 et seq.), Atomic Energy Act, 42 U.S.C. section 2011 et seq.; the Oil Pollution

Act (33 U.S.C. sections 2701 et seq.), the Emergency Planning and Community Right-to-Know Act (42 U.S.C. sections 11001 et seq.), the Occupational Safety and Health Act (29 U.S.C. sections 651 et seq.),the Safe Drinking Water Act (42 U.S.C. section 300f et seq.), the Surface Mine Conservation and Reclamation Act (30 U.S.C. sections 1251-1279), and regulations adopted pursuant thereto; and counterpart state and local laws, and regulations adopted thereto; (b) with respect to Pennsylvania law, the Pennsylvania Clean Streams Law (35 P.S. section 691.1 et seq.) the Pennsylvania Air Pollution Control Act (35 P.S. section 4001 et seq.), the Pennsylvania Solid Waste Management Act (35 P.S. section 6018.101 et seq.), the Pennsylvania Storage Tank and Spill Prevention Act (35 P.S. section 6021.101 et seq.), the Pennsylvania Safe Drinking Water Act (35 P.S. section 721.1 et seq.), the Pennsylvania Sewage Facilities Act (35 P.S. section 750.1 et seq.), the Pennsylvania Hazardous Sites Cleanup Act (35 P.S. section 6020.101 et seq.), the Pennsylvania Land Recycling and Environmental Remediation Standards Act (35 P.S. section 6026.101 et seq.), the Pennsylvania Surface Mining Conservation and Reclamation Act (52 P.S. section 1396.1 et seq.), the Coal Refuse Disposal Control Act (52 P.S. section 30.51 et seq.), the Non-Coal Surface Mining and Reclamation Act (52 P.S. section 3301 et seq.), the Pennsylvania Worker and Community Right-to-Know Act (35 P.S. section 7301 et seq.), the Pennsylvania Hazardous Material Emergency Planning and Response Act (35 P.S. section 6022.101 et seq.), and regulations adopted pursuant thereto; and (c) with respect to Ohio law, Ohio Rev. Code Ann. section 1501.30 et seq. (Diversion of Waters), Ohio Rev. Code Ann. section 1506.01 et seq. (Coastal Management), Ohio Rev. Code Ann. section 1509.01 et seq. (Oil and Gas), Ohio Rev. Code Ann. section 1513.01 et seq. (Coal Surface Mining), Ohio Rev. Code Ann. section 1520.01 et seq. (Canal Lands), Ohio Rev. Code Ann. section 3704.01 et seq. (Air Pollution Control), Ohio Rev. Code Ann. section 3710.01 et seq. (Asbestos Abatement), Ohio Rev. Code Ann. section 3714.01 et seq. (Construction and Demolition Debris), Ohio Rev. Code Ann. section 3734.01 et seq. (Solid and Hazardous Wastes), Ohio Rev. Code Ann. section 3737.87 et seq. (Petroleum Underground Storage Tanks), Ohio Rev. Code Ann. section 3742.01 et seq. (Lead Abatement and Testing), Ohio Rev. Code Ann. section 3750.01 et seq. (Emergency Planning), Ohio Rev. Code Ann. section 3751.01 et seq. (Hazardous Substances), Ohio Rev. Code Ann. section 3752.01 et seq. (Cessation of Chemical Handling Operations), Ohio Rev. Code Ann. section 3767.01 et seq. (Nuisances), Ohio Rev. Code Ann. section 4913.01 et seq. (Public Utilities Commission - Acid Rain Control), Ohio Rev. Code Ann. section 6109.01

et seq. (Safe Drinking Water), Ohio Rev. Code Ann. section 6111.01 et seq. (Water Pollution Control), and regulations adopted pursuant thereto.

(93) "Environmental Permits" means any permits, registrations, certificates, certifications, licenses and authorizations, consents

and approvals of Governmental Authorities required under Environmental Laws with respect to the DLC Nuclear Assets.

(94) "ERISA" means the Employee Retirement Income Security Act of 1974, as amended.

(95) "ERISA Affiliate" means a trade or business, whether or not incorporated, that together with a Party would be deemed a "single employer" within the meaning of Section 4001(b) of ERISA.

(96) "Estimated DLC Nuclear Closing Payment" has the meaning set forth in Section 3.2(b).

(97) "Estimated DLC Nuclear Closing Statement" has the meaning set forth in Section 3.2(b).

(98) "Exchange Agreement" has the meaning set forth in the preamble to this Agreement.

(99) "Exchange Assets" has the meaning assigned thereto in the Exchange Agreement.

(100) "Exchange Closing" has the meaning assigned thereto in the Exchange Agreement.

(101) "Exchange Date" has the meaning assigned thereto in the Exchange Agreement.

(102) "Excluded Assets" has the meaning set forth in Section 2.2.

(103) "Excluded Liabilities" has the meaning set forth in Section 2.4.

(104) "Exempt Facilities" means those DLC facilities listed in Schedule 1.1(104).

(105) "Facilities Act" has the meaning set forth in Section 10.12.

(106) "FE" means FirstEnergy Corp., an Ohio corporation and parent company of the FE Subsidiaries.

(107) "FE Subsidiaries" means, collectively, Ohio Edison Company, Penn Power, CEIC and The Toledo Edison Company.

(108) "FE Support Agreement" means the FE Support Agreement substantially in the form of Exhibit D hereto, to be entered into between FE and DLC on the date hereof.

(109) "FENOC" means FirstEnergy Nuclear Operating Company, an Ohio corporation.

(110) "FERC" means the Federal Energy Regulatory Commission or any successor agency thereto.

(111) "Final Adjustment" has the meaning set forth in Section 3.2(d).

(112) "Final DLC Nuclear Closing Statement" has the meaning set forth in Section 3.2(c).

(113) "Final Order" means an action by the relevant Governmental Authority that has not been reversed, stayed, enjoined, set aside, annulled or suspended or with respect to which any waiting period prescribed by law before the transactions contemplated hereby may be consummated has expired.

(114) "FIRPTA Affidavit" means the Foreign Investment in Real Property Tax Act Certification and Affidavit in respect of each Plant, substantially in the form of Exhibit E hereto.

(115) "Fuel Supplies" means the supplies of nuclear fuel in reactor core, natural uranium, converted uranium, enriched uranium and/or any other form of nuclear fuel, under contract, or in inventory, related to the operation of either Plant.

(116) "GE Settlement Agreement" means the Settlement Agreement between Plaintiffs FE Subsidiaries and DLC and Defendant General Electric Company, executed on January 20, 1994 in settlement of litigation concerning Perry Unit 1.

(117) "Good Utility Practices" mean any of the applicable practices, methods, standards, guides or acts:

(a) required by any Governmental Authority, regional or national reliability council, or national trade organization, including NERC, ECAR, Edison Electric Institute, or American Society of Mechanical Engineers, or the successor of any of them, whether or not the Party whose conduct is at issue is a member thereof;

(b) otherwise engaged in or approved by a significant portion of the electric utility industry during the relevant time period which in the exercise of reasonable judgment in light of the facts known or that should have been known at the time a decision was made, could have been expected to accomplish the desired result in a manner consistent with law, regulation, good business practices, generation, transmission, and distribution reliability, safety, environmental protection, economy, and expediency. Good Utility Practices is

intended to be acceptable practices, methods, or acts generally accepted in the region, and is not intended to be limited to the optimum practices, methods, or acts to the exclusion of all others; and

(c) such other acts or practices as are reasonably necessary to maintain the reliability of the Plants.

(118) "Governmental Authority" means any foreign, Federal, state, local or other governmental, regulatory or administrative agency, court, commission, department, board, or other governmental subdivision, legislature, rulemaking board, court, tribunal, arbitrating body or other governmental authority.

(119) "HSR Act" means the Hart-Scott-Rodino Antitrust Improvements Act of 1976, as amended.

(120) "High Level Waste" means (1) irradiated nuclear reactor fuel, (2) liquid wastes resulting from the operation of the first cycle solvent extraction system, or its equivalent, and the concentrated wastes from subsequent extraction cycles, or their equivalent, in a facility for reprocessing irradiated reactor fuel, and (3) solids into which such liquid wastes have been converted.

(121) "High Level Waste Repository" means a facility which is designed, constructed and operated by or on behalf of the Department of Energy for the storage and disposal of Spent Nuclear Fuel and other High Level Waste in accordance with the requirements set forth in the Nuclear Waste Policy Act.

(122) "IBEW" has the meaning set forth in Section 6.11(b).

(123) "IBEW CBA" has the meaning set forth in Section 6.11(b).

(124) "Income Tax" means any Federal, state, local or foreign Tax (a) based upon, measured by or calculated with respect to net income, profits or receipts (including capital gains Taxes and minimum Taxes) or (b) based upon, measured by or calculated with respect to multiple bases (including corporate franchise taxes) if one or more of the bases on which such Tax may be based, measured by or calculated with respect to, is described in clause (a), in each case together with any interest, penalties, or additions to such Tax.

(125) "Indemnifiable Loss" means any claim, demand, suit, loss, liability, damage, obligation, payment, cost or expense (including the cost and expense of any action, suit, proceeding, assessment, judgment, settlement or compromise relating thereto and reasonable attorneys' fees and reasonable disbursements in connection therewith).

(126) "Indemnifying Party" means a Party obligated to provide indemnification under this Agreement.

(127) "Indemnitee" means a Person entitled to receive indemnification under this Agreement.

(128) "Independent Accounting Firm" means such independent accounting firm of national reputation as is mutually appointed by DLC and Specified FE Subsidiaries.

(128A) "Interim Period" has the meaning set forth in Section 6.1.1(a).

(129) "Inspection" means all tests, reviews, examinations, inspections, investigations, verifications, samplings and similar activities conducted by Specified FE Subsidiaries (or either one of them) or their agents or Representatives with respect to the DLC Nuclear Assets prior to the DLC Nuclear Closing.

(130) "Intellectual Property" means patents and patent rights, trademarks and trademark rights, inventions, copyrights and copyright rights and all pending applications for registrations of patents, trademarks, and copyrights.

(131) "Inventories" means materials, spare parts, capital spare parts, consumable supplies and chemical inventories relating to the operation of any Plant, provided, that "Inventories" shall not include Fuel Supplies, and provided further, that reference to "Inventories" shall be limited to the extent of DLC's proportionate interest therein.

(132) "IRS" means the Internal Revenue Service and any successor agency thereto.

(133) "J&L Specialty Steel Transformer" means the 345/138 Kv auto transformer located at the site on which the Beaver Valley Switchyard Assets are located and owned by J&L Specialty Steel Company.

(134) "Knowledge" means the actual knowledge of the corporate officers and/or Plant managers of the specified Person charged with responsibility for the particular function as of the date of this Agreement, or, with respect to any certificate delivered pursuant to this Agreement, the date of delivery of the certificate.

(135) "Low Level Waste" means waste material which contains radioactive nuclides emitting primarily beta or gamma radiation, or both, in concentrations or quantities which exceed applicable Federal or state standards for unrestricted release. Low Level Waste does not include waste containing more than ten (10) nanocuries of transuranic

contaminants per gram of material, nor Spent Nuclear Fuel, nor material classified as either high-level waste or waste which is unsuited for disposal by near-surface burial under any applicable Federal regulations.

(136) "Material Adverse Effect" means any change in, or effect on DLC's proportionate interest in any Plant, from or after the date hereof that is materially adverse to the operations or condition (financial or otherwise) of DLC's proportionate interest in such Plant, other than: (a) any change affecting the international, national, regional or local electric or nuclear industry as a whole and not specific and exclusive to DLC's proportionate interest in such Plant; (b) any change or effect resulting from changes in the international, national, regional or local wholesale or retail markets for electric or nuclear power; (c) any change or effect resulting from changes in the international, national, regional or local markets for any fuel used in connection with DLC's proportionate interest in such Plant; (d) any change or effect resulting from changes in the North American, national, regional or local electric transmission systems or operations thereof; (e) any materially adverse change in or effect on DLC's proportionate interest in such Plant which is cured (including by the payment of money) before the Termination Date; and (f) any order of any court or Governmental Authority applicable to the providers of generation, transmission or distribution of electricity generally that imposes restrictions, regulations or other requirements thereon, including any order with respect to an independent system operator or retail access in Pennsylvania or Ohio.

(137) "Microwave Tower" shall mean the microwave tower at Beaver Valley reserved by DLC pursuant to the Electric Facilities Agreement.

(138) "NEIL" means Nuclear Electric Insurance Limited, or any successor entity.

(139) "NERC" means North American Electric Reliability Council, and any successor entity thereto.

(140) "Nonqualified Funds" mean any funds not eligible for contribution to an external trust meeting the requirements of Code section 468A and Treasury Regulations section 1.468A-5.

(141) "Non-Qualifying Offer" means an offer to a DLC Transferred NonUnion Employee that is either less than 100% of such employee's current total annual cash compensation at the time the offer was made (consisting of base salary and target incentive bonus) or requires, as a condition of acceptance, a relocation of residence as described in Section 6.11(g).

(142) "NRC" means the United States Nuclear Regulatory Commission and any successor agency thereto.

(143) "NRC Approvals" means the consent of the NRC pursuant to Section 184 of the Atomic Energy Act and 10 C.F.R. section 50.80 to the transfer of DLC's undivided ownership interests in Beaver Valley Unit 1 and Beaver Valley Unit 2 to Penn Power, DLC's undivided ownership interest in Perry to CEIC, and DLC's operating responsibility for Beaver Valley to FENOC, NRC approval of all conforming administrative license amendments associated with such transfers, NRC consent to the transfer of, and approval of any related amendments to, any nuclear materials licenses associated with such transfers and any other NRC reviews or approvals required in connection with the consummation of the transactions contemplated by this Agreement.

(144) "Nuclear Laws" means all Federal, state, local, provincial, foreign and international civil and criminal laws, regulations, rules, ordinances, codes, decrees, judgements, directives, or judicial or administrative orders relating to the regulation of nuclear power plants, nuclear source, byproduct and Special Nuclear Materials; the regulation of Low Level Waste and High Level Wastes; the transportation and storage of nuclear materials; the regulation of Safeguards Information; the regulation of nuclear fuel; the enrichment of uranium; the disposal and storage of high-level radioactive waste, and spent nuclear fuel; contracts for and payments into the Nuclear Waste Fund; and as applicable, the Antitrust Laws and Section 5 of the Federal Trade Commission Act to specified activities or proposed activities of certain licensees of commercial nuclear reactors, but shall not include Environmental Laws. "Nuclear Laws" include the Atomic Energy Act of 1954, as amended (42 U.S.C. section 2011 et seq.), the Price-Anderson Act (section 170 of the Atomic Energy Act of 1954, as amended); the Energy Reorganization Act of 1974 (42 U.S.C. section 5801 et seq.); Convention on the Physical Protection of Nuclear Material Implementation Act of 1982 (Public Law 97 - 351; 96 STAT. 1663); the Foreign Assistance Act of 1961 (22 U.S.C. section 2429 et seq.); the Nuclear Non-Proliferation Act of 1978 (22 U.S.C. section 3201); the Low-Level Radioactive Waste Policy Act (42 U.S.C. section 2021b et seq.); the Nuclear Waste Policy Act, (42 U.S.C. section 10101 et seq.); the Low-Level Radioactive Waste Policy Amendments Act of 1985 (42 U.S.C. section 2021d, 471); the Energy Policy Act of 1992 (4 U.S.C. section 13201 et seq.); the Pennsylvania Radiation Protection Act, 35 P.S. 7110.101 et seq.; the Appalachian States Low-Level Radioactive Waste Compact, 35 P.S. section 7125.1 et seq.; the Pennsylvania Low-Level Radioactive Waste Disposal Act., 35 P.S. section 7130.101 et seq.; the Pennsylvania Radiation Protection Act, 35 P.S.7110.101 et seq.; the Pennsylvania Low-Level Radioactive Waste Disposal Act, 35 P.S. section 7130.101 et seq.; the Ohio Low-Level Radioactive Waste Act, ORC Chapter 3747; Ohio Radiation Control Law, ORC Chapter 3748.

(145) "Nuclear Material" means Source Material, Special Nuclear Material, Low Level Waste, Byproduct Material and Spent Nuclear Fuel.

(146) "Nuclear Waste Fund" means the fund established by the Department of Energy under the Nuclear Waste Policy Act in which the Spent Nuclear Fuel Fees to be used for the design, construction and operation of a High Level Waste Repository and other activities related to the storage and disposal of Spent Nuclear Fuel and/or High Level Waste are deposited.

(147) "Nuclear Waste Policy Act" means the Nuclear Waste Policy Act of 1982, as amended.

(148) "Off-Site Location" means any real property other than the Real Property.

(149) "PaDEP" means the Pennsylvania Department of Environmental Protection and any successor agency thereto.

(150) "PaPUC" means the Pennsylvania Public Utility Commission and any successor agency thereto.

(151) "Party" has the meaning set forth in the preamble to this Agreement.

(151 A) "Penn Fuel Lease Arrangements" means the Second Amended and Restated Fuel Lease, dated December 1, 1981, with Amendment No. 1 dated January 22, 1992 between Penn Fuel Corporation, as lessor, and DLC, as lessee, and certain financing arrangements in connection with such Second Amended and Restated Fuel Lease.

(152) "Penn Power" means Pennsylvania Power Company, a Pennsylvania corporation.

(153) "Penn Power Nonqualified Decommissioning Funds" means the external trust funds that do not meet the requirements of Code section 468A and Treasury Regulations section 1.468-5 maintained by Penn Power.

(154) "Penn Power Qualified Decommissioning Funds" means the external trust funds that meet the requirements of Code section 468A and Treasury Regulations section 1.468-5, maintained by Penn Power with respect to Beaver Valley.

(155) "Permits" mean, with respect to the DLC Nuclear Assets, any permits, licenses (including the NRC 10 C.F.R. Part 50 Nuclear Licenses), registrations, franchises and other authorizations, consents and approvals of Governmental Authorities (but in each case

excluding Environmental Permits).

(156) "Permitted Encumbrances" means the permitted liens and encumbrances as set forth in Schedule 1.1 (156).

(157) "Perry CAPCO Agreements" means all the contractual arrangements associated with CAPCO relating to Perry Unit 1, including those contracts listed in Schedule 1.1(157).

(158) "Perry Unit 1" means the nuclear generation plant known as Perry Unit No. 1.

(159) "Perry Unit 1 Decommissioning Amount" has the meaning set forth in Section 6.19.3 (a) (i).

(160) "Perry Unit 1 Decommissioning Shortfall" has the meaning set forth in Section 6.19.3 (a) (i).

(161) "Perry Unit 1 Nonqualified Decommissioning Funds" means the external trust funds that do not meet the requirements of Code section 468A and Treasury Regulations section 1.468A-5, maintained by DLC with respect to Perry Unit 1.

(162) "Perry Unit 1 Qualified Decommissioning Funds" means the external trust funds that meet the requirements of Code section 468A and Treasury Regulations section 1.468A-5, maintained by DLC with respect to Perry Unit 1.

(163) "Person" means any individual, partnership, limited liability company, joint venture, corporation, trust, unincorporated organization, or Governmental Authority.

(164) "Plant" means Beaver Valley or Perry Unit 1.

(165) "Plants" mean, collectively, Beaver Valley and Perry Unit 1.

(166) "Proposed Final Adjustment" has the meaning set forth in Section 3.2(c).

(167) "Proprietary Information" of a Party means all information about the Party or its Affiliates, including their respective properties or operations, furnished to the other Party or its Representatives by the Party or its Representatives, in connection with this Agreement, whether before or after the date hereof, regardless of the manner or medium in which it is furnished and all analyses, reports, tests or other information created or prepared by, or on behalf of, a Party during the performance of "Phase I" or "Phase II" environmental site assessments. Proprietary Information does not

include information that: (a) is or becomes generally available to the public, other than as a result of a disclosure by the other Party or

its Representatives; (b) was available to the other Party on a nonconfidential basis prior to its disclosure by the Party or its Representatives; (c) becomes available to the other Party on a nonconfidential basis from a Person, other than the Party or its Representatives, who is not otherwise bound by a confidentiality agreement with the Party or its Representatives, or is not otherwise under any obligation to the Party or any of its Representatives not to transmit the information to the other Party or its Representatives; or (d) is independently developed by the other Party.

(168) "PUCO" means the Public Utilities Commission of the State of Ohio and any successor agency thereto.

(169) "Qualified Funds" mean any funds eligible for contribution to an external trust meeting the requirements of Code section 468A and Treasury Regulations section 1.468A-5.

(170) "Qualifying Offer" means an offer to a DLC Transferred Non-Union Employee of the same or similar job that is at least 100% of such employee's current total annual cash compensation at the time the offer was made (consisting of base salary and target incentive bonus).

(171) "Real Property" has the meaning set forth in Section 2.1(a). Any reference to the Real Property includes, by definition, the surface and subsurface elements, including the soils and groundwater present at the Real Property, and any reference to items "at the Real Property" shall include all items "at, on, in, upon, over, across, under and within" the Real Property.

(172) "Real Property Leases" means all real property leases listed in Schedule 4.5 under which DLC is a lessee or lessor and which relate to the DLC Nuclear Assets.

(173) "Regulated Substances" means (a) any petrochemical or petroleum products, oil or coal ash, radioactive materials, radon gas, asbestos in any form that is or could become friable, urea formaldehyde foam insulation and dielectric fluid containing polychlorinated biphenyls; (b) any chemicals, materials or substances defined as or included in the definition of "hazardous substances," "hazardous wastes," "hazardous materials," "hazardous constituents," "restricted hazardous materials," "extremely hazardous substances," "toxic substances," "contaminants," "pollutants," "toxic pollutants" or words of similar meaning and regulatory effect under any applicable Environmental Law; and (c) any other chemical, material or substance, exposure to which or whose discharge, emission, disposal or Release is prohibited, limited or regulated by any applicable Environmental Law,

but in all events shall exclude any Nuclear Material.

(174) "Regulatory Approvals" means any consent or approval of, filing with, or notice to, any Governmental Authority that is necessary for the execution and delivery of this Agreement by the

referenced Party or the consummation thereby of the transactions contemplated hereby, other than such consents, approvals, filings or notices which, if not obtained or made, will not prevent such Party from performing its material obligations hereunder.

(175) "Regulatory Material Adverse Effect" shall occur where a Final Order with respect to Required Regulatory Approvals contains terms and conditions that are materially adverse to the financial condition, prospects, properties, operations or results of operations of the affected Party, taken as a whole including all Subsidiaries and Affiliates, to which the terms and conditions of such Final Order apply, provided that, in addition to the foregoing, a Final Order with respect to Required Regulatory Approvals shall be deemed to constitute a Regulatory Material Adverse Effect (i) as to FE Subsidiaries or their Affiliates, if it prohibits such FE Subsidiaries or Affiliates from transferring their transmission assets to American Transmission Systems, Inc. (or its successor and assigns), is inconsistent with the FERC's determination in Ohio Edison Co. et al., 81 FERC P. 61,110 (1997) that "we expect FirstEnergy to participate in the Midwest ISO or another appropriate ISO," or requires the FE Subsidiaries or their Affiliates to divest generating plants other than Avon Lake, Newcastle or Niles, and (ii) as to DLC, if it disallows from recovery in rates a material portion of the expenses related to the Generation Exchange (as such term is defined in the Exchange Agreement).

(176) "Release" means release, spill, leak, discharge, dispose of, pump, pour, emit, empty, inject, leach, dump or allow to escape into or through the environment.

(177) "Remediation" means any action taken in the investigation, removal, confinement, cleanup, treatment, or monitoring of an Environmental Condition on Real Property or Off-Site Location, including, (i) obtaining any Permits or Environmental Permits required for such remedial activities, and (ii) implementation of any engineering controls and institutional controls. The term "remediation" includes (1) any action which constitutes "removal" action or "remedial action" as defined by Section 101 of CERCLA, 42 U.S.C. section 6901(23) and (24); (2) any action which constitutes a "response" as defined by Section 102 of the Pennsylvania Hazardous Sites Cleanup Act, 35 P.S. section 6020.103 or (3) any action which constitutes a "remedy" or "remedial activities" as defined by Ohio Rev. Code Ann. section 3746.01(N).

(178) "Representatives" means the DLC Representatives and the Specified FE Subsidiaries' Representatives, as applicable.

(179) "Required Regulatory Approvals" means with respect to a Party, any consent or approval of, filing with, or notice to, any Governmental Authority that is necessary for the execution and delivery of this Agreement by such Party or the consummation by such Party of the transactions contemplated hereby and thereby, other than such consents, approvals, filings or notices which are not required in

the ordinary course to be obtained prior to the DLC Nuclear Closing and transfer of the DLC Nuclear Assets or which, if not obtained or made, will not prevent such Party from performing its material obligations hereunder.

(180) "Revenue Bonds" has the meaning assigned thereto in Section 6.17(a)(i).

(181) "Safeguards Information" means information not otherwise classified as National Security Information or Restricted Data under NRC's regulations which specifically identifies an NRC licensee's detailed (1) security measures for the physical protection of Special Nuclear Material, or (2) security measures for the physical protection and location of certain plant equipment vital to the safety of production or utilization facilities.

(182) "SAPS" means the real and personal property comprising the decommissioned Shippingport Atomic Power Station described in Schedule 1.1(182).

(183) "SEC" means the Securities and Exchange Commission and any successor agency thereto.

(184) "Shippingport Contract" means Contract DE-AC11-76PN00292, as redesignated (36-1)-292, or No. 76-C-11-0292 between DLC and the United States Energy Research and Development Administration, and its successor the Department of Energy.

(185) "Shippingport Site Buildings" means those buildings described in Schedule 1.1(185).

(186) "Source Material" means: (1) uranium or thorium; or any combination thereof, in any physical or chemical form, or (2) ores which contain by weight one-twentieth of one percent (0.05%) or more of: (i) uranium, (ii) thorium, or (iii) any combination thereof. Source Material does not include Special Nuclear Material.

(187) "Special Nuclear Material" means plutonium, uranium-233, uranium enriched in the isotope-233 or in the isotope-235, and any

other material that the NRC determines to be "Special Nuclear Material." Special Nuclear Material also refers to any material artificially enriched by any of the above-listed materials or isotopes.

(188) "Specified FE Subsidiaries" means, collectively, Penn Power and CEIC, and "Specified FE Subsidiary" means either one of them.

(189) "Specified FE Subsidiaries' Indemnifiable Losses" has the meaning set forth in Section 8.3.

(190) "Specified FE Subsidiaries' Indemnitee" means each Specified FE Subsidiary, its officers, directors, employees, shareholders, Affiliates and agents.

(191) [Intentionally omitted.]

(192) "Specified FE Subsidiaries' Representatives" means the authorized representatives of each Specified FE Subsidiary, including its professional and financial advisors.

(193) "Specified FE Subsidiaries' Required Regulatory Approvals" means, the Required Regulatory Approvals referred to in Schedule 5.3(b).

(194) "Spent Nuclear Fuel" means fuel that has been withdrawn from a nuclear reactor following irradiation and has not been chemically separated into its constituent elements by reprocessing. Spent Nuclear Fuel includes the Special Nuclear Material, Byproduct Material, source material, and other radioactive materials associated with nuclear fuel assemblies.

(195) "Spent Nuclear Fuel Fees" means these fees assessed on electricity generated at the Plants and sold pursuant to the Department of Energy Standard Contract for Disposal of Spent Nuclear Fuel and/or High Level Waste, as provided in Section 302 of the Nuclear Waste Policy Act and 10 C.F.R. Part 961, as the same may be amended from time to time.

(196) "Subsidiary" when used in reference to any Person means any entity of which outstanding securities, having ordinary voting power to elect a majority of the Board of Directors or other Persons performing similar functions of such entity are owned directly or indirectly by such Person.

(197) "Tangible Personal Property" has the meaning set forth in Section 2.1(c).

(198) "Taxes" means all taxes, charges, fees, levies, penalties

or other assessments imposed by any Federal, state, local or foreign taxing authority, including, but not limited to, income, excise, property, sales, transfer, franchise, payroll, withholding, social security, gross receipts, license, stamp, occupation, employment or other taxes, including any interest, penalties or additions attributable thereto.

(199) "Tax Return" means any return, report, information return, declaration, claim for refund or other document (including any schedule or related or supporting information) required to be supplied to any taxing authority with respect to Taxes including amendments thereto.

(200) "Termination Date" has the meaning set forth in section 9.1(b).

(201) "Third Party Claim" means any claim, action, or proceeding made or brought by any Person who is not (i) a Party to this Agreement, or (ii) an Affiliate of a Party to this Agreement.

(202) "Transferable Permits" means those Permits and Environmental Permits which may be transferred by DLC to Specified FE Subsidiaries without a filing with, notice to, consent of or approval of any Governmental Authority, as set forth in Schedule 1.1(202).

(203) "Transfer Taxes" means any real property transfer or gains tax, sales tax, conveyance fee, use tax, stamp tax, stock transfer tax or other similar tax, including any related penalties, interest and additions to tax.

(203A) "Transition Committee" has the meaning set forth in Section 6.1.1(b)(i).

(203B) "Transition Plan" has the meaning set forth in Section 6.1.1(b)(i).

(203C) "Transition Team" has the meaning set forth in Section 6.1.1(b)(i).

(204) "USEPA" means the United States Environmental Protection Agency and any successor agency thereto.

(205) "WARN Act" means the Federal Worker Adjustment Retraining and Notification Act of 1988, as amended.

(206) "Warranty Deed" means a special warranty deed, in the Form of Exhibit G hereto.

(207) "Year 2000 Compliant" means, with respect to any Party,

that the Computer Systems of such Party will correctly differentiate between years, in different centuries, that end in the same two digits, and will accurately process date/time data (including, but not limited to, calculating, comparing, and sequencing) from, into, and between the twentieth and twenty-first centuries, including leap year calculations. "Year 2000 Compliance" has a meaning correlative to the foregoing.

1.2 Certain Interpretive Matters. In this Agreement, unless the context otherwise requires, the singular shall include the plural, the masculine shall include the feminine and neuter, and vice versa. The term "includes" or "including" shall mean "including without limitation." In addition, (i) references to a Section, Article, Exhibit or Schedule shall mean a Section, Article, Exhibit or Schedule of this Agreement; (ii) reference to a given agreement or instrument shall be a reference to that agreement or instrument as modified, amended, supplemented or restated through the date as of which such reference is made; (iii) references to any Person shall include its permitted successors and assigns and, in the case of any Governmental Authority, any Person succeeding to its functions and capacities; and (iv) references to laws,

rules and regulations shall include such laws, rules and regulations as they may from time to time be amended, modified or supplemented.

1.3 CAPCO Agreements to Govern. The Parties agree that, unless this Agreement expressly provides otherwise, the Parties' ownership, operation and maintenance of each Plant shall be governed by the CAPCO Agreements up to the DLC Nuclear Closing Date in respect of such Plant. Unless otherwise restricted under this Agreement, the CAPCO Agreements will govern and control the Parties' ownership, operation and maintenance of each Plant prior to the DLC Nuclear Closing Date in respect of such Plant.

1.4 DLC's Interest in Assets. The Parties acknowledge that DLC has a forty-seven and one-half percent (47.5%) undivided interest in Beaver Valley Unit 1 and the DLC Nuclear Assets relating thereto, a thirteen and seventy-four hundredths percent (13.74%) undivided interest in Beaver Valley Unit 2 and the DLC Nuclear Assets relating thereto and a thirteen and seventy-four hundredths percent (13.74%) undivided interest in Perry Unit 1 and the DLC Nuclear Assets relating thereto. All references in this Agreement to DLC's right, title and interest in such Plants and assets, and rights, liabilities and obligations in connection therewith, shall be construed in this context.

ARTICLE II

CONVEYANCE OF DLC NUCLEAR ASSETS

2.1 Transfer of DLC Nuclear Assets. Upon the terms and subject to the satisfaction of the conditions contained in this Agreement, at the DLC Nuclear Closing DLC will assign, convey, transfer and deliver to Penn Power, in respect

of Beaver Valley, and CEIC, in respect of Perry Unit 1, and Penn Power, in respect of Beaver Valley, and CEIC, in respect of Perry Unit 1, will assume and acquire from DLC, free and clear of all Encumbrances (except for Permitted Encumbrances), all right, title and interest of DLC in and to all of the assets (except for Excluded Assets) constituting the Plants, or used in and necessary to generate electricity from the Plants and DLC's undivided percentage ownership interest in those assets described below, each as in existence on the DLC Nuclear Closing Date (collectively, "DLC Nuclear Assets"):

(a) Those certain parcels of real property owned by DLC relating to the Plants, together with all building, facilities and other improvements thereon and all appurtenances thereto, as described in Schedule 2.1(a) (the "Real Property");

(b) All Inventories related exclusively to the Plants;

(c) All machinery (mobile or otherwise), equipment (including communications equipment), vehicles, tools, furniture and furnishings and other personal property included in the DLC Nuclear Assets that are owned by DLC and located on the Real Property on the DLC Nuclear Closing Date, including the items of personal property jointly owned by DLC and FE Subsidiaries and used principally in the operation of the Plants that are in the possession of DLC and listed in Schedule 2.1(c), other than property used or primarily usable as part

of the DLC Transmission Assets or otherwise constituting part of the Excluded Assets (collectively, "Tangible Personal Property");

(d) Subject to the provisions of Section 6.6(c), all DLC Nuclear Agreements, provided, however, in the event the Exchange Closing and the DLC Nuclear Closing do not occur on the same day, for the Common CAPCO Agreements which shall not be assigned and assumed as otherwise contemplated hereunder but shall be so assigned and assumed at the later of such Exchange Closing or DLC Nuclear Closing and then pursuant to a separate Assignment and Assumption Agreement, and, provided further, however, that DLC shall not assign its interest as operator under the Beaver Valley Unit 2 Operating Agreement to Penn Power on the DLC Nuclear Closing Date but DLC shall make arrangements to provide that Penn Power (or its designee) will be responsible for operation and maintenance of Beaver Valley after the DLC Nuclear Closing, and DLC shall terminate all involvement under the Beaver Valley Unit 2 Operating Agreement on the date on which the Beaver Valley Unit 2 Lease Indentures are terminated;

(e) Subject to the provisions of Section 6.6(c), all Real Property Leases;

(f) All Transferable Permits;

(g) All books, operating records, operating, safety and maintenance manuals, engineering design plans, documents, blueprints and as-built plans, specifications, procedures and similar items of DLC relating

specifically to the design, construction, licensing, regulation, operation or Decommissioning of the DLC Nuclear Assets and necessary for the licensing, operation and Decommissioning of the Plants in the possession of DLC other than such items which are proprietary to third parties and accounting records;

(h) Fuel Supplies and Spent Nuclear Fuel;

(i) All unexpired, transferable warranties and guarantees from third parties with respect to any DLC Nuclear Asset and listed in Schedule 2.1(i);

(j) The names of the Plants. It is expressly understood that DLC is not assigning or transferring to Specified FE Subsidiaries any right to use the name "Duquesne," "Duquesne Light Company," "DQE", "DQE, Inc.", or other trade names, trademarks, service marks, corporate names and logos or any part, derivative or combination thereof;

(k) All drafts, memoranda, reports, information, technology, and specifications relating to DLC's plans for Year 2000 Compliance with respect to the Plants;

(l) The Intellectual Property described on Schedule 2.1(l);

(m) The DLC Qualified Decommissioning Funds and the DLC Nonqualified Decommissioning Funds;

(n) The GE Settlement Agreement;

(o) The DLC Nuclear Insurance Policies and DLC's member account balance in respect of all ANI and NEIL nuclear liabilities, property damage or business interruption policies; and

(p) All right, title and interest of DLC in and to the 10 C.F.R. Part 50 Nuclear Licenses.

2.2 Excluded Assets. Notwithstanding anything to the contrary in this Agreement, nothing in this Agreement will constitute a transfer to Penn Power, in respect of Beaver Valley, and CEIC, in respect of Perry Unit 1 of, or be construed as conferring on Penn Power, in respect of Beaver Valley, and CEIC, in respect of Perry Unit 1, and Penn Power, in respect of Beaver Valley, and CEIC, in respect of Perry Unit 1 is not acquiring, any right, title or interest in or to the following specific assets which are associated with the DLC Nuclear Assets, but which are hereby specifically excluded from the transfer to Penn Power, in respect of Beaver Valley, and CEIC, in respect of Perry Unit 1 and the definition of DLC Nuclear Assets herein (the "Excluded Assets"):

(a) The DLC Transmission Assets and the assets being transferred by DLC pursuant to the Electric Facilities Agreement (including those certain assets, facilities, agreements, and other property used or primarily usable as

part of the DLC Transmission Assets);

(b) Certain switches and meters in the Plants, gas facilities, revenue meters and remote testing units, drainage pipes and systems and certain transmission towers and poles, as identified as being retained by DLC in the Electric Facilities Agreement;

(c) Certificates of deposit, shares of stock, securities, bonds, debentures, evidences of indebtedness, and interests in joint ventures, partnerships, limited liability companies and other entities;

(d) All cash, cash equivalents, bank deposits, accounts and notes receivable (trade or otherwise), and any income, sales, payroll or other tax receivables;

(e) The rights of DLC and its Affiliates to the names "Duquesne," "Duquesne Light Company," "DQE", "DQE, Inc.", or other trade names, trademarks, service marks, corporate names or logos, or any part, derivative or combination thereof;

(f) All tariffs, agreements and arrangements to which DLC is a party for the purchase or sale of electric capacity and/or energy or for the purchase of transmission or ancillary services;

(g) Except as provided in Section 2.11, or in the case of causes of action against third parties (including indemnification and contribution) relating to an Environmental Condition or Regulated Substance or arising under Environmental Laws, the rights of DLC in and to any causes of action against third parties (including indemnification and contribution) relating to any Real Property or Tangible Personal Property, Permits, Environmental Permits, Taxes, Real Property Leases or DLC Nuclear Agreements, if any, and not relating to the

Assumed Liabilities including any claims for refunds, prepayments, offsets, recoupment, insurance proceeds, condemnation awards, judgments and the like, whether received as payment or credit against future liabilities, relating specifically to the Plants or the Real Property and relating to any period prior to the applicable DLC Nuclear Closing Date;

(h) Any and all of DLC's rights and interests in any contract that is not a DLC Nuclear Agreement or that is an intercompany transaction between DLC and an Affiliate of DLC, whether or not such intercompany transaction relates to the provision of goods and services, payment arrangements, intercompany charges or balances, or the like;

(i) DLC's accrued interest in refunds of reserve premiums and/or dividends and/or distributions of earnings based on membership account balance(s) and insurance premiums in respect of all ANI and NEIL nuclear liabilities, property damage or business interruption policies in respect of the Plants up to and including the DLC Nuclear Closing Date, irrespective of when

such refunds and/or dividends are actually paid;

(j) The J&L Specialty Steel Transformer;

(k) The Beaver Valley Unit 2 Lease Indentures Documents;

(l) The telecommunication equipment listed in Schedule 2.2(l); and

(m) The Microwave Tower.

2.3 Assumed Liabilities. On the DLC Nuclear Closing Date with respect to the Plants, each Specified FE Subsidiary shall deliver to DLC an Assignment and Assumption Agreement pursuant to which each Specified FE Subsidiary (Penn Power, in respect of Beaver Valley, and CEIC, in respect of Perry Unit 1) shall assume and agree to discharge when due, without recourse to DLC, and shall release DLC from all of the following liabilities and obligations of DLC, direct or indirect, known or unknown, absolute or contingent, which relate to, or arise by virtue of DLC's ownership of the DLC Nuclear Assets (other than Excluded Liabilities) with respect to the Plants (Penn Power, in respect of Beaver Valley, and CEIC, in respect of Perry Unit 1), in accordance with the respective terms and subject to the respective conditions thereof (collectively, "Assumed Liabilities"):

(a) All liabilities and obligations of DLC arising on or after the DLC Nuclear Closing Date under the DLC Nuclear Agreements (except, in the event the Exchange Closing and the DLC Nuclear Closing do not occur on the same day, for the Common CAPCO Agreements which shall not be assigned and assumed as otherwise contemplated hereunder but shall be so assigned and assumed at the later of such Exchange Closing or such DLC Nuclear Closing and then pursuant to a separate Assignment and Assumption Agreement), the Real Property Leases and the Transferable Permits in accordance with the terms thereof, including the DLC Nuclear Agreements entered into by DLC (i) prior to the date hereof and (ii) after the date hereof consistent with the terms of this Agreement, except in each case to the extent such liabilities and obligations, but for a breach or default by DLC, would have been paid, performed or otherwise discharged on or

prior to such DLC Nuclear Closing Date or to the extent the same arise out of any such breach or default or out of any event which after the giving of notice or passage of time would constitute a default by DLC;

(b) All liabilities and obligations associated with the DLC Nuclear Assets in respect of Taxes for which Specified FE Subsidiaries are liable pursuant to Sections 3.4 or 6.9(a) hereof;

(c) All liabilities, responsibilities and obligations arising under Environmental Laws or relating to Environmental Conditions or Regulated Substances (including common law liabilities relating to Environmental Conditions and Regulated Substances), whether such liability, responsibility or

obligation is known or unknown, contingent or accrued, as of the applicable DLC Nuclear Closing Date, including: (i) costs of compliance (including capital, operating and other costs) relating to any violation or alleged violation of Environmental Laws occurring prior to, on or after such DLC Nuclear Closing Date, with respect to the ownership or operation of the applicable DLC Nuclear Assets; (ii) property damage or natural resource damage (whether such damages were manifested before or after the applicable DLC Nuclear Closing Date) arising from Environmental Conditions or Releases of Regulated Substances at, on, in, under, adjacent to, or migrating from any DLC Nuclear Assets prior to, on, or after the applicable DLC Nuclear Closing Date; (iii) any Remediation (whether or not such Remediation commenced before the applicable DLC Nuclear Closing Date or commences after the applicable DLC Nuclear Closing Date) of Environmental Conditions or Regulated Substances that are present or have been Released prior to, on or after such DLC Nuclear Closing Date, at, on, in, adjacent to or migrating from the DLC Nuclear Assets; (iv) any violations or alleged violations of Environmental Laws occurring on or after the applicable DLC Nuclear Closing Date with respect to the ownership or operation of any DLC Nuclear Assets; (v) any bodily injury or loss of life arising from Environmental Conditions or Releases of Regulated Substances at, on, in, under, adjacent to or migrating from any DLC Nuclear Assets on or after the applicable DLC Nuclear Closing Date; (vi) any bodily injury, loss of life, property damage, or natural resource damage arising from the storage, transportation, treatment, disposal, discharge, recycling or Release, at any Off-Site Location, or arising from the arrangement for such activities, on or after the applicable DLC Nuclear Closing Date, of Regulated Substances generated in connection with the ownership or operation of the DLC Nuclear Assets; and (vii) any Remediation of any Environmental Condition or Release of Regulated Substances arising from the storage, transportation, treatment, disposal, discharge, recycling or Release, at any Off-Site Location, or arising from the arrangement for such activities, on or after the applicable DLC Nuclear Closing Date, of Regulated Substances generated in connection with the ownership or operation of the DLC Nuclear Assets (collectively, "Assumed Environmental Liabilities");

(d) All liabilities and obligations of DLC with respect to the DLC Nuclear Assets under the agreements or consent orders with Governmental Authorities set forth on Schedule 2.3(d) after the applicable DLC Nuclear Closing;

(e) Any Tax that may be imposed by any Federal, state or local government on the ownership, sale (except with respect to Transfer Taxes as provided in Section 6.9(a)), operation or use of the applicable DLC Nuclear

Assets on or after the DLC Nuclear Closing Date, except for any Income Taxes attributable to income received by DLC;

(f) All liabilities and obligations of DLC in respect of Decommissioning the DLC Nuclear Assets, and the Decommissioning Costs relating thereto whether arising prior to, on or after the applicable DLC Nuclear Closing Date (collectively, "Assumed Decommissioning Liabilities");

(g) All liabilities, responsibilities and obligations arising under or relating to Nuclear Laws or relating to any claim in respect of Nuclear Materials based on common law or Environmental Laws, whether such liability, responsibility or obligation is known or unknown, contingent or accrued and whether arising or occurring prior to, on or after the DLC Nuclear Closing Date, including any and all asserted or unasserted liabilities or obligations to third parties (including employees) for personal injury or tort, or similar causes of action arising out of the ownership or operation of the DLC Nuclear Assets prior to, on or after the DLC Nuclear Closing Date, including liabilities, responsibilities and obligations arising out of or resulting from the transportation, treatment, storage or disposal of Low Level Waste or other Nuclear Materials, including liabilities, responsibilities and obligations arising out of or resulting from a "nuclear incident" or "precautionary evacuation" (as such terms are defined in the Atomic Energy Act) at the Plants, or any other licensed nuclear reactor site in the United States, or in the course of the transportation of Nuclear Materials to or from the Plants or any other site prior to, on or after the DLC Nuclear Closing Date, including liability for any deferred premiums assessed in connection with such a nuclear incident or precautionary evacuation under any applicable NRC or industry retrospective rating plan or insurance policy, including any mutual insurance pools established in compliance with the requirements imposed under Section 170 of the Atomic Energy Act and 10 C.F.R. Part 140 or 10 C.F.R. section 50.54(w), provided, however, that in respect of liabilities, responsibilities and obligations under Section 211 of the Energy Reorganization Act and 10 C.F.R. 50.7 in respect of Beaver Valley, Penn Power as transferee hereunder shall only be responsible for liabilities, responsibilities or obligations arising or occurring on or after the DLC Nuclear Closing (collectively, "Assumed Nuclear Liabilities");

(h) All liabilities, responsibilities and obligations in respect of Spent Nuclear Fuel, whether such liability, responsibility or obligation is known or unknown, contingent or accrued and whether arising or occurring prior to, on or after the DLC Nuclear Closing Date except as specified in the first sentence of Section 2.9 (collectively, "Assumed Spent Fuel Liabilities"); and

(i) All of DLC's rights (except as provided under the CAPCO Settlement Agreement) and obligations under all CAPCO Agreements, except to the extent otherwise specifically provided in the applicable DLC Assignment and Assumption Agreement and except, in the event the Exchange Closing and the DLC Nuclear Closing do not occur on the same day, for the Common CAPCO Agreements which shall not be assigned and assumed as otherwise contemplated hereunder but shall be so assigned and assumed at the later of such Exchange Closing or such DLC Nuclear Closing and then pursuant to a separate Assignment and Assumption Agreement.

2.4 Excluded Liabilities. Notwithstanding anything to the contrary in this Agreement, no Specified FE Subsidiary shall assume or be obligated to pay, perform or otherwise discharge the following specified liabilities or

obligations of DLC, (provided, however, that DLC retains such liabilities and obligations only to the extent these liabilities and obligations currently are imposed on DLC under the CAPCO Agreements and provided, further, that nothing in this Section 2.4 shall be construed to impose any continuing liability or obligation on DLC in respect of Assumed Decommissioning Liabilities, Assumed Environmental Liabilities (except as expressly provided in Sections 2.4(e), (g) and (h)), Assumed Nuclear Liabilities and Assumed Spent Fuel Liabilities) (the "Excluded Liabilities"):

(a) Any liabilities or obligations of DLC in respect of any Excluded Assets or other assets of DLC that are not DLC Nuclear Assets;

(b) Any liabilities or obligations of DLC with respect to Taxes attributable to DLC's ownership, operation or use of DLC Nuclear Assets for taxable periods, or portions thereof, ending before the DLC Nuclear Closing Date, except for Taxes for which Specified FE Subsidiaries are liable pursuant to Section 3.4 hereof and except for liabilities described in Section 2.3 that may be characterized as "Taxes";

(c) Any liabilities or obligations of DLC accruing under any of the DLC Nuclear Agreements prior to the DLC Nuclear Closing Date;

(d) Any and all asserted or unasserted liabilities or obligations to third parties (including employees) for personal injury or tort, or similar causes of action arising during or attributable to the period prior to the DLC Nuclear Closing Date, to the extent these liabilities or obligations are not assumed by Specified FE Subsidiaries by operation of law;

(e) Any fines, penalties and associated costs for defending related enforcement actions, resulting from any violation or alleged violation of Environmental Laws or Nuclear Laws with respect to the ownership or operation of the DLC Nuclear Assets occurring prior to the DLC Nuclear Closing Date;

(f) Any payment obligations of DLC pursuant to DLC Nuclear Agreements for goods delivered or services rendered prior to the DLC Nuclear Closing Date, including, but not limited to, rental payments pursuant to the Real Property Leases;

(g) Any liabilities, responsibilities and obligations of DLC arising under Environmental Laws or relating to Environmental Conditions or Regulated Substances (including common law liabilities relating to Environmental Conditions and Regulated Substances), whether such liability, responsibility or obligation was known or unknown, contingent or accrued, which relates to (i) any bodily injury, loss of life, property damage or natural resource damage arising from the storage, transportation, treatment, disposal, discharge, recycling or Release, at any Off-Site Location, or arising from the arrangement for such activities, prior to the DLC Nuclear Closing Date, of Regulated Substances generated in connection with the ownership or operation of the DLC Nuclear Assets; or (ii) any Remediation of any Environmental Condition or Regulated Substance at any Off-Site Location, arising from the storage, transportation, treatment, disposal, discharge, recycling or Release, at such Off-Site Location,

or arising from the arrangement for such activities, prior to the DLC Nuclear

Closing Date, of Regulated Substances generated in connection with, in each case, the ownership or operation of the DLC Nuclear Assets; provided, that for purposes of this paragraph, "Off-Site Location" does not include any location to which Regulated Substances disposed of or Released at the DLC Nuclear Assets have migrated;

(h) Any liability to third parties (including employees) for bodily injury or loss of life (whether or not such injury or loss arose or was made manifest on or after the DLC Nuclear Closing Date), to the extent caused (or allegedly caused) by Environmental Conditions or the Release of Regulated Substances at, on, in, under, or adjacent to, or migrating from, the DLC Nuclear Assets prior to the DLC Nuclear Closing Date;

(i) Any liability of DLC arising out of a breach by DLC or any Affiliates of DLC of any of their respective obligations under this Agreement or the Ancillary Agreements;

(j) Any liability of DLC in respect of Department of Energy Decontamination and Decommissioning fees due up to the time of the DLC Nuclear Closing as described in (and limited by) Section 2.10;

(k) Any liability in respect of Spent Nuclear Fuel specified as belonging to DLC in the first sentence of Section 2.9; and

(l) Any liability specified as belonging to DLC pursuant to Section 6.11(o).

2.5 Control of Litigation. The Parties agree and acknowledge that DLC shall be entitled exclusively to control, defend and settle any litigation, administrative or regulatory proceeding, and any investigation or Remediation activity (including without limitation any environmental mitigation or Remediation activities), (i) arising out of or related to any Excluded Liabilities or (ii) in respect of Beaver Valley, where DLC, as operator of the Plant, would have been entitled to control such litigation under the CAPCO Agreements as in effect as of the DLC Nuclear Closing Date in respect of Beaver Valley, and in each case Specified FE Subsidiaries shall agree to cooperate fully in connection therewith, provided, however, that, in respect of any such activity described in clause (ii), DLC shall give the applicable Specified FE Subsidiary reasonable advance notice and opportunity to comment upon any settlement, which comments shall be fully considered.

2.6 Fuel Supplies. (a) At the DLC Nuclear Closing, DLC will sell, assign, convey, transfer and deliver to each Specified FE Subsidiary its rights, title and interest in and to the Fuel Supplies related to the operation of the applicable DLC Nuclear Assets (Beaver Valley in respect of Penn Power, and Perry Unit 1, in respect of CEIC) and the applicable Specified FE Subsidiary shall pay DLC an amount equal to the actual cost of such Fuel Supplies on DLC's books and

records, as established by invoices (and reasonable supporting materials establishing the actual cost of such Fuel Supplies) with such invoices and supporting materials to be delivered to the Specified FE Subsidiaries not later than three (3) Business Days prior to the scheduled date of the DLC Nuclear Closing.

(b)(i) The Parties acknowledge that, absent exercise by the Specified FE Subsidiaries of the option provided in clause (ii) below, DLC shall not be obligated to renew the Penn Fuel Lease Arrangements which are due to expire on September 29, 1999, but DLC may, at its option, elect to renew such arrangements to provide for DLC's requirements for Fuel Supplies from such expiration date through the DLC Nuclear Closing Date (the "DLC Interim Fuel Requirements").

(ii) DLC agrees that if the Specified FE Subsidiaries request, in writing, prior to July 10, 1999 that DLC renew the Penn Fuel Lease Arrangements for a period after the DLC Nuclear Closing Date, and agree in writing to pay any incremental costs associated with the renewal by DLC and obtaining all consents in respect of such arrangements, DLC will use Commercially Reasonable Efforts to effect such renewal and to obtain any consents required in connection therewith.

(iii) In connection with the DLC Interim Fuel Requirements, the Parties agree to discuss whether it would be mutually economically advantageous for DLC to obtain such requirements from Specified FE Subsidiaries (or an Affiliate of either of them), provided, however, that this clause shall neither require DLC to obtain such requirements from Specified FE Subsidiaries (or an Affiliate of either of them) nor obligate Specified FE Subsidiaries (or an Affiliate of either of them) to supply such requirements to DLC.

2.7 Inventories. Schedule 2.7 lists the Inventories that exist as of the date of this Agreement, together with the net book values of such Inventories. At the DLC Nuclear Closing, as part of the DLC Nuclear Assets in respect of the applicable Plant, DLC will transfer to each Specified FE Subsidiary (Penn Power in respect of Beaver Valley and CEIC in respect of Perry Unit 1) DLC's interest in Inventories at such Plant.

2.8 [Intentionally Omitted.]

2.9 Spent Nuclear Fuel Fees and Ownership Between the date hereof and the DLC Nuclear Closing Date for the Plants, DLC will pay all Spent Nuclear Fuel Fees and any other fees associated with its share of electricity generated at such Plant and sold prior to such closing date, and Specified FE Subsidiaries shall have no liability or responsibility in respect thereof. Specified FE Subsidiaries shall pay and discharge all fees and expenses associated with their share of the nuclear fuel consumed in the Plants and sold from and after such closing date, and DLC shall have no liability or responsibility in respect thereof. Specified FE Subsidiaries shall assume title to, and responsibility for the storage and disposal of Spent Nuclear Fuel presently stored at each Plant

(including any such fuel which may have been used in connection with generating DLC's share of electricity at such Plant) as of the DLC Nuclear Closing Date for such Plant. DLC shall assign to each Specified FE Subsidiary the applicable Department of Energy's Standard Spent Fuel Disposal Contract for each Plant and shall provide the required notice to the Department of Energy within 90 days of transfer of title to Spent Nuclear Fuel.

2.10 Department of Energy Decontamination and Decommissioning Fees. DLC will continue to pay all Department of Energy Decontamination and Decommissioning Fees relating to its share of the nuclear fuel purchased and consumed at each Plant prior to the DLC Nuclear Closing Date for such Plant, including all annual Special Assessment invoices to be issued after such closing

date by the Department of Energy, as contemplated by its regulations at 10 C.F.R. Part 766 implementing Sections 1801, 1802, and 1803 of the Atomic Energy Act, but DLC shall have no liability in respect of any such fees thereafter, whether such fees are assessed with respect to the period prior to, on or after the DLC Nuclear Closing Date.

2.11 Property Tax Litigation. Notwithstanding the provisions of the Perry CAPCO Agreements, CEIC will receive the full benefits, including any refunds, and shall bear the full costs incurred after October 14, 1998, related to pending litigation and appeals regarding the real and personal property taxes for Perry Unit 1 as identified on Schedule 2.11. DLC will continue to take all actions necessary in such proceedings, in cooperation with CEIC until the DLC Nuclear Closing, subject to reimbursement at the DLC Nuclear Closing by CEIC of all expenses incurred by DLC for such proceedings after October 14, 1998. DLC will promptly pay to CEIC all amounts received by DLC as a result of such pending litigation and appeals. If the conveyance as to Perry Unit 1 is not consummated for any reason, the Parties shall negotiate arrangements that place them in the same position as to such Plant, with respect to any such costs or benefits, as if neither the Agreement in Principle nor this Agreement had been executed.

ARTICLE III

THE DLC NUCLEAR CLOSING

3.1 DLC Nuclear Closing. Upon the terms and subject to the satisfaction of the conditions in Article VII of this Agreement, the conveyance, assignment, transfer and delivery of the DLC Nuclear Assets to Penn Power, in respect of Beaver Valley, and CEIC, in respect of Perry Unit 1, and the assumption of the Assumed Liabilities by Penn Power, in respect of Beaver Valley, and CEIC, in respect of Perry Unit 1, in respect of such DLC Nuclear Assets, as contemplated by this Agreement shall take place at a closing (the "DLC Nuclear Closing"), to be held at the offices of Skadden, Arps, Slate, Meagher & Flom LLP, 1440 New York Avenue, NW, Washington, D.C. at 10:00 a.m. local time, on the day following the date the conditions precedent to the DLC

Nuclear Closing set forth in ArticleVII of this Agreement in respect of the Plants have been either satisfied or waived by the Party for whose benefit such conditions precedent exist, or at such other time and date as the Parties may mutually agree. The date of the DLC Nuclear Closing in respect of the Plants is hereinafter called the "DLC Nuclear Closing Date".

3.2 Calculation of DLC Nuclear Closing Payments.

(a) The "DLC Nuclear Closing Payment" means the total of payments due under the Beaver Valley CAPCO Agreements and the Perry CAPCO Agreements, the amounts due to DLC from the Specified FE Subsidiaries in respect of Fuel Supplies pursuant to Section 2.6 and the amounts due pursuant to Section 3.4.

(b) At least ten (10) Business Days prior to the DLC Nuclear Closing Date, DLC shall prepare and deliver to Penn Power, in respect of Beaver Valley, and CEIC, in respect of Perry Unit 1, an estimated closing statement

(each, an "Estimated DLC Nuclear Closing Statement") that shall set forth DLC's best estimate of all estimated DLC Nuclear Closing Payments due from Penn Power, in respect of Beaver Valley, and CEIC, in respect of Perry Unit 1, to DLC (the "Estimated DLC Nuclear Closing Payment") in respect of the DLC Nuclear Closing. Within five (5) Business Days following the delivery of the Estimated DLC Nuclear Closing Statement to Specified FE Subsidiaries, either Specified FE Subsidiary may object in good faith to the Estimated DLC Nuclear Closing Payment in writing. If either Specified FE Subsidiary objects to the Estimated DLC Nuclear Closing Payment, the Parties shall attempt to resolve their differences by negotiation. If the Parties are unable to do so before three (3) Business Days prior to the DLC Nuclear Closing Date, the amounts of the Estimated DLC Nuclear Closing Payment not in dispute shall be paid at the DLC Nuclear Closing. The disputed portion shall be paid as a Final Adjustment to the extent required by Section 3.2(c).

(c) Within sixty (60) days following the DLC Nuclear Closing Date, DLC shall prepare and deliver to Penn Power, in respect of Beaver Valley, and CEIC, in respect of Perry Unit 1, a final closing statement including adjustments to the proration amounts specified by Section 3.4 and any disputed portion of the DLC Nuclear Closing Payment described in clause (a) above (the "Final DLC Nuclear Closing Statement") setting forth the final DLC Nuclear Closing Payment in respect of the DLC Nuclear Closing and identifying the amount of any adjustment necessary to conform such Final DLC Nuclear Closing Statement with payments made at the DLC Nuclear Closing ("Proposed Final Adjustment"). All calculations of any DLC Nuclear Closing Payments shall be prepared using the same accounting principles, policies and methods as DLC has historically used in connection with the calculation of the items reflected on such Final DLC Nuclear Closing Statement.

(d) Within thirty (30) days following the delivery of a Final DLC Nuclear Closing Statement, Penn Power, in respect of Beaver Valley, and

CEIC, in respect of Perry Unit 1, may object to such Proposed Final Adjustment in writing. DLC agrees to cooperate to provide the applicable Specified FE Subsidiary and its Representatives information used to prepare any Final DLC Nuclear Closing Statement and information relating thereto. If either Specified FE Subsidiary objects to the Proposed Final Adjustment in respect of its Plant, the Parties shall attempt to resolve such dispute by negotiation. If the Parties are unable to resolve such dispute within thirty (30) days of any objection by the applicable Specified FE Subsidiary, such Specified FE Subsidiary and DLC shall appoint the Independent Accounting Firm, which shall, at their joint expense, review the Proposed Final Adjustment and determine the appropriate adjustment to the applicable DLC Nuclear Closing Payment, if any, within thirty (30 days) of such appointment. The Parties agree to cooperate with the Independent Accounting Firm and provide it with such information as it reasonably requests to enable it to make such determination. The finding of such Independent Accounting Firm shall be binding on the applicable Specified FE Subsidiary and DLC. Upon determination of the appropriate adjustment (the "Final Adjustment") by agreement of the Parties or by binding determination of the Independent Accounting Firm, if the Final Adjustment results in a change to any DLC Nuclear Closing Payment, the Party owing the difference shall deliver such difference to the other Party no later than two (2) Business Days after such determination, in immediately available funds or in any other manner as reasonably requested by the payee.

3.3 Payment of DLC Nuclear Closing Payment. If any DLC Nuclear Closing Payment is a positive amount, such amount shall be payable by the applicable Specified FE Subsidiary to DLC. If any DLC Nuclear Closing Payment is a negative amount, such amount shall be payable by DLC to the applicable Specified FE Subsidiary. In connection with the DLC Nuclear Closing, subject to Section 3.2(b), the Party owing the DLC Nuclear Closing Payment shall pay such amount to the other Party by wire transfer of immediately available funds denominated in U.S. dollars or by such other means as are agreed upon by the Parties. In addition to DLC Nuclear Closing Payments, the Parties recognize that monies will be owed under the terms of the CAPCO Agreements related to the DLC Nuclear Assets for obligations through the DLC Nuclear Closing Date. Notwithstanding any contrary provisions herein, the Parties will follow existing CAPCO billing procedures and the applicable Party will take all actions necessary to cause final bills to be rendered within ninety (90) days after the DLC Nuclear Closing Date.

3.4 Prorations. Notwithstanding anything to the contrary in any CAPCO Agreement:

(a) The Parties agree that all of the items normally prorated, including those listed below (but not including Income Taxes), relating to the business and operation of the DLC Nuclear Assets shall be prorated as of the DLC Nuclear Closing Date, with DLC liable to the extent such items relate to any time period prior to the DLC Nuclear Closing Date, and the applicable Specified FE Subsidiary liable to the extent such items relate to periods commencing with the DLC Nuclear Closing Date (measured in the same units used to compute the

item in question, otherwise measured by calendar days):

(i) Personal property, real estate and occupancy Taxes, assessments and other charges, if any, on or with respect to the business and operation of the DLC Nuclear Assets;

(ii) Rent, Taxes and all other items (including prepaid services or goods not included in Inventory) payable by or to a DLC under any of the DLC Nuclear Agreements;

(iii) Any permit, license, registration, compliance assurance fees or other fees with respect to any Transferable Permit;

(iv) Sewer rents and charges for water, telephone, electricity and other utilities with respect to the DLC Nuclear Assets;

(v) Rent and Taxes payable by DLC under the Real Property Leases assigned to the applicable Specified FE Subsidiary; and

(vi) ANI and NEIL insurance premiums for the current year or other applicable policy period;

(vii) Impositions and fees payable to the Department of Energy and the NRC; and

(viii) Membership fees in respect of the Institute for Nuclear Power Operator, the Nuclear Energy Institute and similar organizations involved solely in nuclear matters.

(b) In connection with the prorations referred to in Section 3.4 (a) above, in the event that actual figures are not available at the DLC Nuclear Closing Date, the proration shall be based upon the actual Taxes or other amounts accrued through the DLC Nuclear Closing Date or paid for the most recent year (or other appropriate period) for which actual Taxes or other amounts paid are available. Such prorated Taxes or other amounts shall be re-prorated and paid to the appropriate Party within sixty (60) days of the date that the previously unavailable actual figures become available. The prorations shall be based on the number of days in a year or other appropriate period (i) before the DLC Nuclear Closing Date and (ii) including and after the DLC Nuclear Closing Date. The Parties agree to furnish each other with such documents and other records as may be reasonably requested in order to confirm all adjustment and proration calculations made pursuant to this Section 3.4.

3.5 Audit Cooperation. Each of Specified FE Subsidiaries and DLC shall notify and provide the other with reasonable assistance in the event of an examination, audit or other proceeding regarding any fair market value of the DLC Nuclear Assets and the Assumed Liabilities.

3.6 Deliveries by Specified FE Subsidiaries. At the DLC Nuclear

Closing, each Specified FE Subsidiary will deliver, or cause to be delivered, the following to DLC:

(a) With respect to the transfer of the applicable DLC Nuclear Assets:

(i) The Assignment and Assumption Agreement in respect of such assets, duly executed by each Specified FE Subsidiary (Penn Power in respect of Beaver Valley and CEIC in respect of Perry Unit 1);

(ii) All such other instruments of assumption as shall, in the reasonable opinion of DLC and its counsel, be necessary for Penn Power to assume the Assumed Liabilities in respect of Beaver Valley and CEIC to assume the Assumed Liabilities in respect of Perry Unit 1, in each case in accordance with this Agreement; and

(iii) Certificates of insurance relating to the insurance policies required pursuant to Section 6.16 of this Agreement and pursuant to 10 C.F.R. Parts 50 and 140.

(b) With respect to this Agreement:

(i) The documents to be delivered by Specified FE Subsidiaries under Section 7.2;

(ii) Copies, certified by the Secretary or Assistant Secretary of each Specified FE Subsidiary, of corporate resolutions authorizing the execution and delivery of this Agreement and all of the agreements and instruments to be executed and delivered by such Specified FE Subsidiary in

connection herewith, and the consummation of the transactions contemplated hereby;

(iii) Certificates of the Secretary or Assistant Secretary of each Specified FE Subsidiary identifying the name and title and bearing the signatures of the officers of such Specified FE Subsidiary authorized to execute and deliver this Agreement and the other agreements and instruments contemplated hereby;

(iv) Certificates of good standing with respect to each Specified FE Subsidiary, issued by the jurisdiction of incorporation of such Specified FE Subsidiary; and

(v) Such other agreements, documents, instruments and writings as are required to be delivered by such Specified FE Subsidiary at or prior to the applicable DLC Nuclear Closing Date pursuant to this Agreement or otherwise reasonably required in connection herewith.

(vi) Certificates dated the DLC Nuclear Closing Date

executed by the duly authorized officers of each Specified FE Subsidiary to the effect that, to such officers' Knowledge, the conditions set forth in Section 7.3 have been satisfied by each Specified FE Subsidiary and that each of the representations and warranties of each Specified FE Subsidiary made in this Agreement are true and correct in all material respects as though made at and as of the DLC Nuclear Closing Date.

3.7 Deliveries by DLC. At the DLC Nuclear Closing, DLC will deliver, or cause to be delivered, the following to the applicable Specified FE Subsidiary (Penn Power in respect of Beaver Valley and CEIC in respect of Perry Unit 1):

(a) With respect to the transfer of the applicable DLC Nuclear Assets :

(i) The Assignment and Assumption Agreement in respect of such assets, duly executed by DLC;

(ii) The duly executed Bill of Sale with respect to the applicable DLC Nuclear Assets;

(iii) Copies of any and all governmental and other third party consents, waivers or approvals obtained or required to be obtained by DLC with respect to the transfer of the applicable DLC Nuclear Assets or the consummation of the transactions contemplated by this Agreement;

(iv) One or more Warranty Deeds conveying the Real Property, duly executed and acknowledged by DLC and in recordable form;

(v) FIRPTA Affidavits, duly executed by DLC;

(vi) To the extent available, originals of all DLC Nuclear Agreements, Real Property Leases and Transferable Permits and, if not available, true and correct copies thereof which agreements, leases and permits shall be located at the applicable Plant, with a list thereof being provided at the applicable DLC Nuclear Closing;

(vii) All such other instruments of assignment, transfer or conveyance as shall, in the reasonable opinion of the applicable Specified FE Subsidiary and its counsel, be necessary or desirable to transfer the applicable DLC Nuclear Assets to the applicable Specified FE Subsidiary, in accordance with this Agreement and where necessary or desirable in recordable form; and

(viii) The DLC Nuclear Insurance Policies.

(b) With respect to this Agreement:

(i) The documents to be delivered by DLC under Section 7.3;

(ii) Copies, certified by the Secretary or Assistant Secretary of DLC, of corporate resolutions authorizing the execution and delivery of this Agreement and all of the agreements and instruments to be executed and delivered by DLC in connection herewith, and the consummation of the transactions contemplated hereby;

(iii) A certificate of the Secretary or Assistant Secretary of DLC identifying the name and title and bearing the signatures of the officers of DLC authorized to execute and deliver this Agreement and the other agreements and instruments contemplated hereby;

(iv) A certificate of good standing with respect to DLC, issued by the Secretary of State of the Commonwealth of Pennsylvania and the State of Ohio; and

(v) Such other agreements, documents, instruments and writings as are required to be delivered by DLC at or prior to the applicable DLC Nuclear Closing Date pursuant to this Agreement or otherwise reasonably required in connection herewith.

(vi) Certificate dated the DLC Nuclear Closing Date executed by the duly authorized officers of DLC to the effect that, to such officers' Knowledge, the conditions set forth in Section 7.2 have been satisfied by DLC and that each of the representations and warranties of DLC made in this Agreement are true and correct in all material respects as though made at and as of the DLC Nuclear Closing Date.

3.8 Work in Progress. The Parties agree to work together before and after the DLC Nuclear Closing Date to effect an orderly transition with respect to work in progress.

3.9 Ancillary Agreements. The Parties acknowledge that the Ancillary Agreements (except for the Electric Facilities Agreement and the CAPCO Settlement Agreement) shall be executed on the DLC Nuclear Closing Date and each

Party agrees to execute, in connection with the DLC Nuclear Closing, each such Ancillary Agreement to which it is to be a party, substantially in the form of such Ancillary Agreements attached hereto. Each Party further (i) acknowledges that it has executed the CAPCO Settlement Agreement and the Electric Facilities Agreement on the date hereof and (ii) agrees that the Parties hereto shall make, pursuant to Section 6.7 hereof, all filings necessary or advisable to obtain any Required Regulatory approvals in respect of the CAPCO Settlement Agreement and the Electric Facilities Agreement and the transactions contemplated thereby.

ARTICLE IV

REPRESENTATIONS, WARRANTIES AND DISCLAIMERS OF DLC

DLC represents and warrants to Penn Power, in respect of Beaver Valley, and to CEIC, in respect of Perry Unit 1 as follows:

4.1 Incorporation; Qualification. DLC is a corporation duly incorporated, validly existing and in good standing under the laws of the Commonwealth of Pennsylvania and has all requisite corporate power and authority to own, lease and operate its material assets and properties and to carry on its business as is now being conducted. DLC is duly qualified to do business as a foreign corporation and is in good standing under the laws of each jurisdiction in which its business, as now being conducted, shall require it to be so qualified, except where the failure to be so qualified would not have a Material Adverse Effect. DLC has heretofore delivered to Specified FE Subsidiaries true, complete and correct copies of its Articles of Incorporation and Bylaws as currently in effect.

4.2 Authority. DLC has full corporate power and authority to execute and deliver this Agreement and each of the Ancillary Agreements to which DLC is a signatory and to consummate the transactions contemplated hereby or thereby. The execution and delivery of this Agreement and each of the Ancillary Agreements to which DLC is a signatory by DLC and the consummation of the transactions contemplated hereby and thereby by DLC have been duly and validly authorized by all necessary corporate action required on the part of DLC and this Agreement and each of the Ancillary Agreements to which it is a signatory have been duly and validly executed and delivered by DLC. Subject to the receipt of the DLC Required Regulatory Approvals, each of this Agreement and each of the Ancillary Agreements to which DLC is a signatory constitutes the legal, valid and binding agreement of DLC, enforceable against DLC in accordance with its terms, except that such enforceability may be limited by applicable bankruptcy, insolvency, fraudulent conveyance, reorganization, moratorium or other similar laws affecting or relating to enforcement of creditors' rights generally and general principles of equity (regardless of whether enforcement is considered in a proceeding at law or in equity).

4.3 Consents and Approvals; No Violation. (a) Except as set forth in Schedule 4.3(a), and subject to obtaining any DLC Required Regulatory Approvals, neither the execution, delivery and performance of this Agreement by DLC nor the execution, delivery and performance by DLC of the Ancillary Agreements will (i) conflict with or result in any breach of any provision of the Articles of Incorporation or Bylaws of DLC, (ii) result in a default (or give rise to any

right of termination, cancellation or acceleration) under any of the terms, conditions or provisions of any note, bond, mortgage, indenture, material agreement or other instrument or obligation to which DLC is a party or by which it, or any of the DLC Nuclear Assets may be bound, except for such defaults (or rights of termination, cancellation or acceleration) as to which requisite waivers or consents have been obtained or that would not, individually or in the aggregate, create a Material Adverse Effect; or (iii) constitute violations of any law, regulation, order, judgment or decree applicable to DLC, which

violations, individually or in the aggregate, would create a Material Adverse Effect.

(b) Other than the Required Regulatory Approvals set forth in Schedule 4.3(b) (the "DLC Required Regulatory Approvals"), no consent or approval of, filing with, or notice to, any Governmental Authority is necessary for the execution and delivery of this Agreement, or the consummation by DLC of the transactions contemplated thereby, other than (i) such consents, approvals, filings or notices which, if not obtained or made, will not prevent DLC from performing its material obligations hereunder and (ii) such consents, approvals, filings or notices which become applicable to DLC or the DLC Nuclear Assets as a result of the specific regulatory status of Specified FE Subsidiaries (or any of their Affiliates) or as a result of any other facts that specifically relate to the business or activities in which Specified FE Subsidiaries (or any of their Affiliates) is or proposes to be engaged.

4.4 Insurance. (a) DLC has obtained and is maintaining policies of liability and other forms of insurance as required by the applicable CAPCO Agreements.

(b) DLC has obtained and is maintaining the policies of liability and other forms of insurance in respect of SAPS as described in Schedule 4.4(b).

4.5 DLC Real Property Leases. Schedule 4.5 lists, as of the date of the Agreement, all Real Property Leases. Except as set forth in Schedule 4.5, the Real Property Leases are valid, binding and enforceable against DLC in accordance with their terms; there are no existing material defaults by DLC or, to DLC's Knowledge, any other party thereunder; and no event has occurred which (whether with or without notice, lapse of time or both) would constitute a material default by DLC or, to DLC's Knowledge, any other party thereunder. DLC has delivered to each Specified FE Subsidiary true, correct and complete copies of each of the Real Property Leases applicable to the Plant it is to acquire.

4.6 Environmental Matters. (a) DLC is an owner but not an operator of Perry Unit 1 which is operated by an FE Subsidiary. For this reason, both DLC's environmental responsibilities and its Knowledge of environmental issues and concerns at Perry Unit 1 and the related DLC Nuclear Assets are limited and its representations are accordingly limited or excluded as set forth in this Section 4.6(a). Subject to this fact and except as disclosed in Schedule 4.6(a):

(i) DLC holds, and is in substantial compliance with, all Environmental Permits that are required for DLC to own its undivided interest in Perry Unit 1, and DLC is otherwise in compliance with applicable Environmental Laws with respect to its ownership of Perry Unit 1 except for such failures to hold or comply with required Environmental Permits, or such

failures to be in compliance with applicable Environmental Laws, as would not, individually or in the aggregate, create a Material Adverse Effect;

(ii) DLC has not received any written request for information, or been notified that it is a potentially responsible party, under CERCLA or any similar state law with respect to Perry Unit 1; and

(iii) DLC has not entered into or agreed to any consent decree or order relating to Perry Unit 1, and is not subject to any outstanding judgment, decree, or judicial order relating to compliance with any Environmental Law or to Remediation of Regulated Substances under any Environmental Law relating to Perry Unit 1.

(b) Except as disclosed in Schedule 4.6(b):

(i) DLC holds, and is in substantial compliance with, all Environmental Permits that are required for DLC to own its undivided interest in Beaver Valley and to conduct the business and operations of the DLC Nuclear Assets in respect of Beaver Valley, and is otherwise in compliance with applicable Environmental Laws with respect to the business and operations of the DLC Nuclear Assets in respect of Beaver Valley, except for such failures to hold or comply with required Environmental Permits, or such failures to be in compliance with applicable Environmental Laws, as would not, individually or in aggregate, create a Material Adverse Effect;

(ii) DLC has not received any written request for information, or been notified that it is a potentially responsible party, under CERCLA or any similar state law with respect to the Real Property in respect of Beaver Valley;

(iii) DLC has not entered into or agreed to any consent decree or order relating to the Real Property in respect of Beaver Valley, nor is it subject to any outstanding judgment, decree, or judicial order relating to compliance with any Environmental Law or to Remediation of Regulated Substances under any Environmental Law relating to Beaver Valley.

(iv) To DLC's Knowledge, no Release of Regulated Substances has occurred at the Real Property in respect of Beaver Valley and no Regulated Substances are present in, on, about or migrating from the Real Property in respect of Beaver Valley that could (absent a Release of such substances) give rise to an Environmental Claim related to the DLC Nuclear Assets in respect of Beaver Valley for which Remediation reasonably could be required, except in any such case to the extent that any such Release or Environmental Claim would not, individually or in aggregate, create a Material Adverse Effect.

(c) The representations and warranties made in this Section 4.6 are DLC's exclusive representations and warranties relating to environmental matters.

4.7 Real Property. Schedule 4.7 contains a description of the Real Property included in the DLC Nuclear Assets . True and correct copies of any current surveys, abstracts, title commitments or title opinions in DLC's

possession and all policies of title insurance currently in force and in the

possession of DLC with respect to the Real Property have heretofore been made available to Specified FE Subsidiaries.

4.8 Condemnation. Except as set forth in Schedule 4.8, DLC has not received any written notices of and otherwise has no Knowledge of any pending or threatened proceedings or actions by any Governmental Authority to condemn or take by power of eminent domain all or any part of the DLC Nuclear Assets.

4.9 Contracts and Leases. (a) With respect to Perry Unit 1:

(i) Schedule 4.9(a)(i) lists each written contract, license, agreement, or personal property lease which is material to DLC's ownership interest in the DLC Nuclear Assets relating to Perry Unit 1, other than (A) those listed or described on another Schedule, (B) that are expected to expire or terminate prior to the DLC Nuclear Closing Date, (C) that provide for annual payments by DLC after the date hereof of less than $500,000, or (iv) to which FE or a FE Subsidiary is a signatory.

(ii) Except as disclosed in Schedule 4.9(a)(ii), each DLC Nuclear Agreement listed in Schedule 4.9(a)(i) (A) constitutes a legal, valid and binding obligation of DLC and, to DLC's Knowledge, constitutes a valid and binding obligation of the other parties thereto, and (B) may be transferred to CEIC pursuant to this Agreement without the consent of the other parties thereto and will continue in full force and effect thereafter, unless in any such case the impact of such lack of legality, validity or binding nature, or inability to transfer, would not, individually or in the aggregate, create a Material Adverse Effect.

(iii) Except as set forth in Schedule 4.9(a)(iii), there is not, under any of the DLC Nuclear Agreements listed in Schedule 4.9(a)(i), any default or event which, with notice or lapse of time or both, would constitute a default on the part of DLC or, to DLC's Knowledge, any of the other parties thereto, except such events of default and other events which would not, individually or in the aggregate, create a Material Adverse Effect.

(b) With respect to Beaver Valley:

(i) Schedule 4.9(b)(i) lists each DLC Nuclear Agreement in respect of Beaver Valley which is material to the business or operations of the DLC Nuclear Assets in respect of Beaver Valley, other than those (A) that are listed or described on another Schedule, (B) that are expected to expire or terminate prior to the DLC Nuclear Closing Date, or (C) that provide for annual payments by DLC after the date hereof of less than $500,000.

(ii) Except as disclosed in Schedule 4.9(b)(ii), each DLC Nuclear Agreement in respect of Beaver Valley (A) constitutes a legal, valid

and binding obligation of DLC and, to DLC's Knowledge, constitutes a valid and binding obligation of the other parties thereto, and (B) may be transferred to Penn Power pursuant to this Agreement without the consent of the other parties thereto and will continue in full force and effect thereafter, unless in any such case the impact of such lack of legality, validity or binding nature, or inability to transfer, would not, individually or in the aggregate, create a

Material Adverse Effect, with the understanding that the DLC Nuclear Assets associated with Beaver Valley Unit 2 will be subject to the Encumbrances associated with the Beaver Valley Unit 2 Lease Indentures.

(iii) Except as set forth in Schedule 4.9(b)(iii), there is not, under the DLC Nuclear Agreements in respect of Beaver Valley, any default or event which, with notice or lapse of time or both, would constitute a default on the part of DLC or to DLC's Knowledge, any of the other parties thereto, except such events of default and other events which would not, individually or in the aggregate, create a Material Adverse Effect.

4.10 Legal Proceedings. Except as set forth in Schedule 4.10, there is no action or proceeding pending or, to DLC's Knowledge, threatened against DLC before any court, arbitrator or Governmental Authority, which could, individually or in the aggregate, reasonably be expected to create a Material Adverse Effect. Except as set forth in Schedule 4.10, DLC is not subject to any outstanding judgments, rules, orders, writs, injunctions or decrees of any court, arbitrator or Governmental Authority that would, individually or in the aggregate, create a Material Adverse Effect.

4.11 Permits. (a) With respect to Perry Unit 1:

(i) DLC has all Permits necessary to own the DLC Nuclear Assets relating to Perry Unit 1 except where the failure to have such Permits would not, individually or in the aggregate, create a Material Adverse Effect. Except as disclosed on Schedule 4.11(a)(i), DLC has not received any notification that DLC is in violation of any such Permits, except notifications of violations which would not, individually or in the aggregate, create a Material Adverse Effect. DLC is in compliance with all such Permits except where non-compliance would not, individually or in the aggregate, create a Material Adverse Effect.

(ii) Schedule 4.11(a)(ii) sets forth all material Permits, other than Transferable Permits related to the DLC Nuclear Assets relating to Perry Unit 1 held by DLC.

(b) With respect to Beaver Valley:

(i) DLC has all Permits (other than Environmental Permits, which are addressed in Section 4.6 hereof) necessary to own and operate the DLC Nuclear Assets relating to Beaver Valley except where the failure to have such Permits would not, individually or in the aggregate, create a Material

Adverse Effect. Except as disclosed on Schedule 4.11(b)(i), DLC has not received any notification that DLC is in violation of any such Permits, except notifications of violations which would not, individually or in the aggregate, create a Material Adverse Effect. DLC is in compliance with all such Permits except where non-compliance would not, individually or in the aggregate, create a Material Adverse Effect.

(ii) Schedule 4.11(b)(ii) sets forth all material Permits, other than Transferable Permits related to the DLC Nuclear Assets relating to Beaver Valley.

4.12 Taxes. DLC has filed or caused to be filed all Tax Returns that are required to be filed by it with respect to any Tax relating to the DLC Nuclear Assets, and paid or caused to be paid all Taxes that have become due as indicated thereon, except where such Tax is being contested in good faith by appropriate proceedings, or where the failure to so file or pay would not create a Material Adverse Effect. All Tax Returns relating to the DLC Nuclear Assets are true, correct and complete in all material respects. There are no liens for Taxes upon the DLC Nuclear Assets except for liens for Taxes not yet due and Permitted Encumbrances. Except as set forth in Schedule 4.12, no notice of deficiency or assessment has been received from any taxing authority with respect to liabilities for Taxes of DLC in respect of the DLC Nuclear Assets, which have not been fully paid or finally settled, and any such deficiency shown in Schedule 4.12 is being contested in good faith through appropriate proceedings. Except as set forth in Schedule 4.12, there are no outstanding agreements or waivers extending the applicable statutory periods of limitation for Taxes associated with the DLC Nuclear Assets that will be binding upon the applicable Specified FE Subsidiary after the DLC Nuclear Closing. Except as set forth in Schedule 4.12, none of the DLC Nuclear Assets is property that is required to be treated as being owned by any other person pursuant to the so-called safe harbor lease provisions of former Section 168(f) of the Code, and none of the DLC Nuclear Assets is "tax-exempt use" property within the meaning of Section 168(h) of the Code. Schedule 4.12 sets forth the taxing jurisdictions in which DLC owns assets or conducts business that require a notification to a taxing authority of the transactions contemplated by this Agreement, if the failure to make such notification, or obtain Tax clearance certificates in connection therewith, would either require either Specified FE Subsidiary to withhold any portion of the consideration or subject either Specified FE Subsidiary to any liability for any Taxes of DLC.

4.13 Intellectual Property. Schedule 4.13 sets forth all Intellectual Property used in and, individually or in the aggregate with other Intellectual Property, material to the operation or business of the DLC Nuclear Assets, each of which DLC either has all right, title and interest in or valid and binding rights under contract to use. Except as disclosed in Schedule 4.13, (i) DLC is not, nor has it received any notice that it is, in default (or with the giving of notice or lapse of time or both, would be in default), under any contract to use such Intellectual Property, and (ii) to DLC's Knowledge, such Intellectual Property is not being infringed by any other Person. DLC has not received notice

that it is infringing any Intellectual Property of any other Person in connection with the operation or business of DLC Nuclear Assets, and DLC, to its Knowledge, is not infringing any Intellectual Property of any other Person which, individually or in the aggregate, would have a Material Adverse Effect.

4.14 Compliance With Laws. DLC is in compliance with all applicable laws, rules and regulations with respect to its ownership or, in the case of Beaver Valley, operation of DLC Nuclear Assets except where the failure to be in compliance would not, individually or in the aggregate, create a Material Adverse Effect.

4.15 DISCLAIMERS REGARDING DLC NUCLEAR ASSETS. EXCEPT FOR THE REPRESENTATIONS AND WARRANTIES SET FORTH IN THIS ARTICLE IV, THE DLC NUCLEAR ASSETS ARE TRANSFERRED "AS IS, WHERE IS", AND DLC EXPRESSLY DISCLAIMS ANY REPRESENTATIONS OR WARRANTIES OF ANY KIND OR NATURE, EXPRESS OR IMPLIED, AS TO LIABILITIES, OPERATIONS OF THE PLANTS, THE TITLE, CONDITION, VALUE OR QUALITY OF

THE DLC NUCLEAR ASSETS OR THE PROSPECTS (FINANCIAL AND OTHERWISE), RISKS AND OTHER INCIDENTS OF THE DLC NUCLEAR ASSETS AND DLC SPECIFICALLY DISCLAIMS ANY REPRESENTATION OR WARRANTY OF MERCHANTABILITY, USAGE, SUITABILITY OR FITNESS FOR ANY PARTICULAR PURPOSE WITH RESPECT TO THE DLC NUCLEAR ASSETS, OR ANY PART THEREOF, OR AS TO THE WORKMANSHIP THEREOF, OR THE ABSENCE OF ANY DEFECTS THEREIN, WHETHER LATENT OR PATENT, OR COMPLIANCE WITH ENVIRONMENTAL REQUIREMENTS, OR THE APPLICABILITY OF ANY GOVERNMENTAL REQUIREMENTS, INCLUDING BUT NOT LIMITED TO ANY ENVIRONMENTAL LAWS, OR WHETHER DLC POSSESSES SUFFICIENT REAL PROPERTY OR PERSONAL PROPERTY TO OPERATE THE DLC NUCLEAR ASSETS. EXCEPT AS OTHERWISE EXPRESSLY PROVIDED HEREIN, DLC FURTHER SPECIFICALLY DISCLAIMS ANY REPRESENTATION OR WARRANTY REGARDING THE ABSENCE OF REGULATED SUBSTANCES OR LIABILITY OR POTENTIAL LIABILITY ARISING UNDER ENVIRONMENTAL LAWS WITH RESPECT TO THE DLC NUCLEAR ASSETS. WITHOUT LIMITING THE GENERALITY OF THE FOREGOING, EXCEPT AS OTHERWISE EXPRESSLY PROVIDED HEREIN, DLC EXPRESSLY DISCLAIMS ANY REPRESENTATION OR WARRANTY OF ANY KIND REGARDING THE CONDITION OF THE DLC NUCLEAR ASSETS OR THE SUITABILITY OF THE DLC NUCLEAR ASSETS FOR OPERATION AS A POWER PLANT AND NO SCHEDULE OR EXHIBIT TO THIS AGREEMENT, NOR ANY OTHER MATERIAL OR INFORMATION PROVIDED BY OR COMMUNICATIONS MADE BY DLC OR DLC REPRESENTATIVES, OR BY ANY BROKER OR INVESTMENT BANKER, WILL CAUSE OR CREATE ANY WARRANTY, EXPRESS OR IMPLIED, AS TO THE TITLE, CONDITION, VALUE OR QUALITY OF THE DLC NUCLEAR ASSETS.

4.16 Year 2000 Compliance. DLC, with respect to the Computer Systems at Beaver Valley that may be included in the DLC Nuclear Assets, has plans to achieve Year 2000 Compliance, and is using Commercially Reasonable Efforts to execute and carry out such plans.

4.17 [Intentionally Omitted.]

4.18 Capital Expenditures. The only capital expenditures associated with the DLC Nuclear Assets relating to Beaver Valley that are planned by DLC are those capital expenditures approved in accordance with the Beaver Valley

CAPCO Agreements.

4.19 Labor Matters. DLC has previously delivered to Penn Power or its Representatives true and correct copies of all collective bargaining agreements to which DLC is a party or is subject and which relate to the business and operations of the DLC Nuclear Assets relating to Beaver Valley. With respect to the business or operations of the DLC Assets relating to Beaver Valley, except to the extent set forth in Schedule 4.19 and except for such matters as will not, individually or in aggregate, create a Material Adverse Effect, (a) DLC is in compliance with all applicable laws respecting employment and employment practices, occupational safety and health, plant closing, mass layoffs, terms and conditions of employment and wages and hours; (b) DLC has not received any written notice of any unfair labor practice complaint against DLC pending before the National Labor Relations Board; (c) no arbitration proceeding arising out of

or under any collective bargaining agreement is pending against DLC; and (d) DLC has not experienced any work stoppage within the three-year period prior to the date hereof and to DLC's Knowledge none is currently threatened.

4.20 Benefit Plans; ERISA. (a) Schedule 4.20 lists all DLC Benefit Plans maintained for, or in which the employees of DLC connected with the DLC Nuclear Assets relating to Beaver Valley participate. True and complete copies of all such DLC Benefit Plans have been made available to Penn Power or its Representatives.

(b) No liability under Title IV or Section 302 of ERISA has been incurred by DLC or any ERISA Affiliate of DLC that has not been satisfied in full, and no condition exists that presents a material risk to DLC or any ERISA Affiliate of DLC of incurring any such liability, other than liability for premiums due the Pension Benefit Guaranty Corporation (which premiums have been paid when due). Insofar as the representation made in this Section 4.20(b) applies to Sections 4064, 4069 or 4204 of Title IV of ERISA, it is made with respect to any employee benefit plan, program, agreement or arrangement subject to Title IV of ERISA to which DLC or any ERISA Affiliate of DLC made, or was required to make, contributions during the five (5)-year period ending on the last day of the most recent plan year ended prior to the DLC Nuclear Closing Date.

(c) The consummation of the transactions contemplated by this Agreement will not, either alone or in combination with another event through the DLC Nuclear Closing Date, (i) entitle any current or former employee or officer of DLC or any ERISA Affiliate of DLC to severance pay, unemployment compensation or any other payment that is not the responsibility of DLC pursuant to Section 6.11(o), or (ii) accelerate the time of payment or vesting, or increase the amount of compensation due any such employee or officer that is not the responsibility of DLC pursuant to Section 6.11(o).

(d) There has been no material failure of a DLC Benefit Plan that is a group health plan (as defined in Section 5000(b)(1) of the Code) to

meet the requirements of Section 4980B(f) of the Code with respect to a qualified beneficiary (as defined in Section 4980B(g) of the Code). Neither DLC nor any ERISA Affiliate of DLC has contributed to a nonconforming group health plan (as defined in Section 5000(c) of the Code) and no ERISA Affiliate of DLC has incurred a tax under Section 5000(e) of the Code that is or could become a liability of Specified FE Subsidiaries.

(e) There are no pending, or to DLC's Knowledge, threatened or anticipated claims by or on behalf of any DLC Benefit Plans, by any employee or beneficiary covered under any such DLC Benefit Plans, or otherwise involving any such DLC Benefit Plans (other than routine claims for benefits).

4.21 DLC Qualified Decommissioning Funds.

(a) Each DLC Qualified Decommissioning Fund is a trust, validly existing and in good standing under the laws of the Commonwealth of Pennsylvania with all requisite authority to conduct its affairs as it now does. Each DLC Qualified Decommissioning Fund satisfies the requirements necessary for such

fund to be treated as a "Nuclear Decommissioning Reserve Fund" within the meaning of Code section 468A(a) and as a "nuclear decommissioning fund" and a "qualified nuclear decommissioning fund" within the meaning of Treas. Reg. section 1.468A-1(b)(3). Each such fund is in compliance in all material respects with all applicable rules and regulations of the NRC, the PaPUC, and the IRS. No DLC Qualified Decommissioning Fund has engaged in any acts of "self-dealing" as defined in Treas. Reg. section 1.468A-5(b)(2). No "excess contribution," as defined in Treas. Reg. section 1.468A-5(c)(2)(ii), has been made to any DLC Qualified Decommissioning Fund which has not been withdrawn within the period provided under Treas. Reg. section 1.468A-5(c)(1). DLC has made timely and valid elections to make annual contributions to the DLC Qualified Decommissioning Funds for each year in which such Funds have been in existence. DLC has heretofore delivered copies of such elections to Specified FE Subsidiaries.

(b) Subject only to DLC's Required Regulatory Approvals, DLC has all requisite authority to cause the assets of the DLC Qualified Decommissioning Funds to be transferred to the applicable Specified FE Subsidiaries in accordance with the provisions of this Agreement.

(c) DLC and/or the trustee of each of the DLC Qualified Decommissioning Funds have filed or caused to be filed with the NRC, the IRS and any state or local authority all material forms, statements, reports, documents (including all exhibits, amendments and supplements thereto) required to be filed by either of them. DLC has delivered to Specified FE Subsidiaries a copy of the schedule of ruling amounts most recently issued by the IRS for each of the DLC Qualified Decommissioning Funds, a copy of the request that was filed to obtain such schedule of ruling amounts and a copy of any pending requests for revised ruling amounts, in each case together with all exhibits, amendments and supplements thereto. As of the DLC Nuclear Closing, DLC will have timely filed all requests for revised schedules of ruling amounts for the DLC Qualified

Decommissioning Funds in accordance with Treas. Reg. section 1.468A-3(i). DLC shall furnish Specified FE Subsidiaries with copies of such requests for revised schedules of ruling amounts, together with all exhibits, amendments and supplementals thereto, promptly after they have been filed with the IRS. Any amounts contributed to the DLC Qualified Decommissioning Funds while such requests are pending before the IRS and which turn out to be in excess of the applicable amounts provided in the schedule of ruling amounts issued by the IRS will be withdrawn from the DLC Qualified Decommissioning Funds within the period provided under Treas. Reg. section 1.468A-5(c)(2) for withdrawals of excess contributions to be made without resulting in a disqualification of the Funds under Treas. Reg. section 1.468A-5(c)(1). Except as provided in Section 6.19 of this Agreement, there are no interim rate orders that may be retroactively adjusted or retroactive adjustments to interim rate orders that may affect amounts that Specified FE Subsidiaries may contribute to the DLC Qualified Decommissioning Funds or may require distributions to be made from the DLC Qualified Decommissioning Funds.

(d) DLC has made available to Specified FE Subsidiaries the balance sheets for each of the DLC Qualified Decommissioning Funds as of December 31, 1998 and as of the last Business Day before the DLC Nuclear Closing Date, and they present fairly as of December 31, 1998 and as of the last Business Day before closing, the financial position of each of the DLC Qualified Decommissioning Funds in conformity with generally accepted accounting principles applied on a consistent basis, except as otherwise noted there. DLC

has made available to Specified FE Subsidiaries information from which Specified FE Subsidiaries can determine the Tax Basis of all assets in the DLC Qualified Decommissioning Funds as of the last Business Day before the DLC Nuclear Closing Date. There are no liabilities (whether absolute, accrued, contingent or otherwise and whether due or to become due), including, but not limited to, any acts of "self-dealing" as defined in Treas. Reg. section 1.468A-5(b)(2) or agency or other legal proceedings that may materially affect the financial position of each of the DLC Qualified Decommissioning Funds other than those, if any, that are disclosed on Schedule 4.21.

(e) DLC has made available to Specified FE Subsidiaries all contracts and agreements to which the Trustee of each of the DLC Qualified Decommissioning Funds, in its capacity as such, is a party.

(f) Each of the DLC Qualified Decommissioning Funds has filed all Tax Returns required to be filed and all material Taxes shown to be due on such Tax Returns have been paid in full except where such Tax is being contested in good faith by appropriate proceedings or where the failure to so file or pay would not create a Material Adverse Effect. Except as shown in Schedule 4.21, no notice of deficiency or assessment has been received from any taxing authority with respect to liability for Taxes of each of the DLC Qualified Decommissioning Funds which have not been fully paid or finally settled, and any such deficiency shown in such Schedule 4.21 is being contested in good faith through appropriate proceedings. Except as set forth in Schedule 4.21, there are no outstanding

agreements or waivers extending the applicable statutory periods of limitations for Taxes associated with each of the DLC Qualified Decommissioning Funds that will be binding on Specified FE Subsidiaries after the DLC Nuclear Closing Date.

(g) To the extent DLC have pooled the assets of the DLC Qualified Decommissioning Funds for investment purposes in periods prior to the DLC Nuclear Closing, such pooling arrangement is a partnership for federal income tax purposes and DLC has filed all Tax Returns required to be filed with respect to such pooling arrangement for such periods.

4.22 DLC Nonqualified Decommissioning Funds.

(a) Each DLC Nonqualified Decommissioning Fund is a trust validly existing and in good standing under the laws of the Commonwealth of Pennsylvania with all requisite authority to conduct its affairs as it now does. Each of DLC Nonqualified Decommissioning Fund is in full compliance with all applicable rules and regulations of the NRC, and the PaPUC.

(b) Subject only to DLC's Required Regulatory Approvals, DLC has all requisite authority to cause the assets of the DLC Nonqualified Decommissioning Funds to be transferred to the applicable Specified FE Subsidiaries in accordance with the provisions of this Agreement.

(c) DLC and/or the Trustee of the DLC Nonqualified Decommissioning Funds have filed or caused to be filed with the NRC and any state or local authority all material forms, statements, reports, documents (including all exhibits, amendments and supplements thereto) required to be filed by either of them.

(d) DLC has made available to Specified FE Subsidiaries the balance sheets for the DLC Nonqualified Decommissioning Funds as of December 31, 1998 and as of the last Business Day before the DLC Nuclear Closing Date, and they present fairly as of December 31, 1998 and as of the last Business Day before closing, the financial position of the DLC Nonqualified Decommissioning Funds in conformity with generally accepted accounting principles applied on a consistent basis, except as otherwise noted therein. DLC has made available to Specified FE Subsidiaries information from which Specified FE Subsidiaries can determine the Tax Basis as of the last Business Day before closing of all assets (other than cash) of the DLC Nonqualified Decommissioning Funds transferred to Specified FE Subsidiaries pursuant to Section 6.19. There are no liabilities (whether absolute, accrued, contingent or otherwise and whether due or to become due) including, but not limited, agency or other legal proceedings, that may materially affect the financial position of the DLC Nonqualified Decommissioning Funds other than those, if any, that are disclosed on Schedule 4.22.

(e) DLC has made available to Specified FE Subsidiaries all contracts and agreements to which the trustee of the Nonqualified Decommissioning Funds, in its capacity as such, is a party.

4.23 DLC Nuclear Law Matters.

(a) DLC is a licensed co-owner, but not an operator of Perry Unit 1, which is operated by an Affiliate of Specified FE Subsidiaries. Subject to this fact, and except as disclosed in Schedule 4.23(a):

(i) DLC holds, and is in substantial compliance with all Permits in respect of Nuclear Laws that are required for DLC to own Perry Unit 1 and DLC is otherwise in compliance with all Nuclear Laws with respect to its ownership of Perry Unit 1 except for such failures to hold or comply with regard to Permits in respect of Nuclear Laws, or such failures to be in compliance with applicable Nuclear Laws, as would not, individually or in the aggregate, create a Material Adverse Effect; and

(ii) DLC has not entered into or agreed to any consent decree or order relating to Perry Unit 1, and is not subject to any outstanding judgment, decree or judicial order relating to any Nuclear Law relating to Perry Unit 1.

(b) Except as disclosed in Schedule 4.23(b):

(i) DLC holds, and is in substantial compliance with, all Permits in respect of Nuclear Laws that are required for DLC to conduct the business of and operate the DLC Nuclear Assets in respect of Beaver Valley, and is otherwise in substantial compliance with applicable Nuclear Laws with respect to the business and operations of the DLC Nuclear Assets in respect of Beaver Valley except for such failures to hold or comply with required Permits in respect of Nuclear Laws, or such failures to be in compliance with applicable Nuclear Laws, as would not, individually or in aggregate, create a Material Adverse Effect; and

(ii) DLC is not subject to any outstanding judgment, decree, or judicial order relating to compliance with any Nuclear Law relating to Beaver Valley.

ARTICLE V

REPRESENTATIONS, WARRANTIES AND DISCLAIMERS OF SPECIFIED FE SUBSIDIARIES

Each Specified FE Subsidiary hereby, for itself, represents and warrants to DLC as follows:

5.1 Incorporation; Qualification. Such Specified FE Subsidiary is a corporation duly incorporated, validly existing and in good standing under the laws of its jurisdiction of incorporation and has all requisite corporate power and authority to own, lease and operate its material assets and properties and to carry on its business as is now being conducted. Such Specified FE Subsidiary is duly qualified to do business as a foreign corporation and is in good

standing under the laws of each jurisdiction in which its business as now being conducted shall require it to be so qualified, except where the failure to be so qualified would not have an Material Adverse Effect. Such Specified FE Subsidiary has heretofore delivered to DLC true, complete and correct copies of its Articles of Incorporation and Bylaws as currently in effect.

5.2 Authority. Such Specified FE Subsidiary has full corporate power and authority to execute and deliver this Agreement and each of the Ancillary Agreements to which it is a signatory and to consummate the transactions contemplated hereby or thereby. The execution and delivery of this Agreement and each of the Ancillary Agreements to which it is a signatory by such Specified FE Subsidiary and the consummation of the transactions contemplated hereby and thereby by such Specified FE Subsidiary have been duly and validly authorized by all necessary corporate action required on the part of such Specified FE Subsidiary and this Agreement and each of the Ancillary Agreements to which it is a signatory has been duly and validly executed and delivered by such Specified FE Subsidiary. Subject to the receipt of the applicable Specified FE Subsidiaries' Required Regulatory Approvals, each of this Agreement and each of the Ancillary Agreements to which it is a signatory constitutes the legal, valid and binding agreement of such Specified FE Subsidiary, enforceable against such Specified FE Subsidiary in accordance with its terms, except that such enforceability may be limited by applicable bankruptcy, insolvency, fraudulent conveyance, reorganization, moratorium or other similar laws affecting or relating to enforcement of creditors' rights generally and general principles of equity (regardless of whether enforcement is considered in a proceeding at law or in equity).

5.3 Consents and Approvals; No Violation.

(a) Except as set forth in Schedule 5.3(a), and subject to obtaining any applicable Specified FE Subsidiaries' Required Regulatory Approvals, neither the execution and delivery of this Agreement nor the execution and delivery of the Ancillary Agreements to which it is a signatory will (i) conflict with or result in any breach of any provision of the Articles of Incorporation or Bylaws of such Specified FE Subsidiary, (ii) result in a default (or give rise to any right of termination, cancellation or acceleration) under any of the terms, conditions or provisions of any note, bond, mortgage, indenture, material agreement or other instrument or obligation to which such

Specified FE Subsidiary is a party or by which it, or any of the DLC Nuclear Assets may be bound, except for such defaults (or rights of termination, cancellation or acceleration) as to which requisite waivers or consents have been obtained or that would not, individually or in the aggregate, create a Material Adverse Effect; or (iii) constitute violations of any law, regulation, order, judgment or decree applicable to such Specified FE Subsidiary, which violations, individually or in the aggregate, would create a Material Adverse Effect.

(b) Other than the Required Regulatory Approvals set forth in

Schedule 5.3(b) in respect of such Specified FE Subsidiary (collectively, the "Specified FE Subsidiaries' Required Regulatory Approvals"), no consent or approval of, filing with, or notice to, any Governmental Authority is necessary for the execution and delivery of this Agreement by such Specified FE Subsidiary, or the consummation by such Specified FE Subsidiary of the transactions contemplated hereby, other than (i) such consents, approvals, filings or notices which, if not obtained or made, will not prevent such Specified FE Subsidiary from performing its material obligations hereunder and (ii) such consents, approvals, filings or notices which become applicable to such Specified FE Subsidiary or the DLC Nuclear Assets as a result of the specific regulatory status of DLC (or any of its Affiliates) or as a result of any other facts that specifically relate to the business or activities in which DLC (or any of its Affiliates) is or proposes to be engaged.

5.4 Legal Proceedings. Except as set forth in Schedule 5.4, there is no action or proceeding pending or, to the knowledge of such Specified FE Subsidiary, threatened, against such Specified FE Subsidiary before any court, arbitrator or Governmental Authority, which could, individually or in the aggregate, reasonably be expected to create an Material Adverse Effect. Except as set forth in Schedule 5.4, such Specified FE Subsidiary is not subject to any outstanding judgments, rules, orders, writs, injunctions or decrees of any court, arbitrator or Governmental Authority that would, individually or in the aggregate, create an Material Adverse Effect.

5.5 [Intentionally Omitted].

5.6 WARN Act. Specified FE Subsidiaries do not intend to engage in a "Plant Closing" or "Mass Layoff" as such terms are defined in the WARN Act with respect to any Plant within sixty days of the DLC Nuclear Closing Date in respect of the Plants.

5.7 Regulatory Status of Specified FE Subsidiaries. Each Specified FE Subsidiary is an "electric utility" within the meaning of 10 C.F.R. section 50.2 and an "eligible taxpayer" under Code Section 468A).

5.8 Specified FE Subsidiaries' Nuclear Law Matters.

(a) Penn Power is a licensed co-owner, but not an operator, of Beaver Valley, which is operated by DLC. Subject to this fact, and except as disclosed in Schedule 5.8(a):

(i) Penn Power holds, and is in substantial compliance with all Permits in respect of Nuclear Laws that are required for Penn Power to own Beaver Valley and Penn Power is otherwise in compliance with all Nuclear

Laws with respect to its ownership of Beaver Valley except for such failures to hold or comply with regard to Permits in respect of Nuclear Laws, or such failures to be in compliance with applicable Nuclear Laws, as would not, individually or in the aggregate, create a Material Adverse Effect; and

(ii) Penn Power has not entered into or agreed to any consent decree or order relating to Beaver Valley, and is not subject to any outstanding judgment, decree or judicial order relating to any Nuclear Law relating to Beaver Valley.

(b) Except as disclosed in Schedule 5.8(b):

(i) CEIC holds, and is in substantial compliance with, all Permits in respect of Nuclear Laws that are required for CEIC to conduct the business of and operate the CEIC Nuclear Assets in respect of Perry Unit 1, and is otherwise in substantial compliance with applicable Nuclear Laws with respect to the business and operations of the CEIC Nuclear Assets in respect of Perry Unit 1 except for such failures to hold or comply with required Permits in respect of Nuclear Laws, or such failures to be in compliance with applicable Nuclear Laws, as would not, individually or in aggregate, create a Material Adverse Effect; and

(ii) CEIC is not subject to any outstanding judgment, decree, or judicial order relating to compliance with any Nuclear Law relating to Perry Unit 1.

ARTICLE VI

COVENANTS OF THE PARTIES

6.1.1 Interim Operation of Beaver Valley. (a) The Parties understand and agree that the CAPCO Agreements remain in full force and effect from the date of this Agreement through the DLC Nuclear Closing Date (the "Interim Period"), and, except as modified by this Section 6.1, the ownership and operating responsibility for Beaver Valley shall be as provided in the CAPCO Agreements.

(b) During the Interim Period, in the interest of facilitating an orderly transition and permitting informed action by FENOC in furtherance of the action contemplated by Section 6.15 hereof, the Parties agree as follows:

(i) A transition team led by one individual designated by DLC and one individual designated by FENOC (the "Transition Team") will be established as soon after execution of this Agreement as practicable to examine all aspects of the operation of Beaver Valley, including but not limited to operations and maintenance, engineering, regulatory, procedural, staffing, support services, fuel purchasing and business issues affecting Beaver Valley. The Transition Team shall appoint individuals from each Party's organization representing the key nuclear functional areas as such areas are mutually defined by the Transition Team. The appointed individuals and the Transition Team shall comprise the Beaver Valley Transition Committee (the "Transition

Committee") which shall meet, during the Interim Period, on a regular basis to create a definitive transition plan which will enable the Parties to effect an orderly transition in furtherance of the action contemplated by Section 6.15 hereof (the "Transition Plan").

(ii) From time to time, but at least once every two weeks, the Transition Committee shall report its progress on the Transition Plan to the senior management of both DLC and FENOC. The Transition Committee shall be provided access to such information and site facilities as may be necessary to enable it to perform its responsibilities hereunder. The Transition Committee shall have no authority to bind or make agreements on behalf of any of DLC, FENOC or Penn Power, or to issue instructions to or direct or exercise authority over their respective officers, employees, advisors or agents.

(iii) Nothing in this Section 6.1.1(b) is intended to modify DLC's ownership or operating responsibility or authority with respect to Beaver Valley as provided for in the CAPCO Agreements or in any way affect DLC's authority to conduct its business at Beaver Valley in accordance with its own judgement and discretion in accordance with the CAPCO Agreements.

(c) Notwithstanding Section 6.1(a) above, unless Penn Power otherwise consents in writing, during the period from the date of this Agreement to the DLC Nuclear Closing Date, DLC shall not:

(i) except as otherwise provided herein (including as provided in Section 6.1(d) below), enter into any commitment for the purchase, sale, or transportation of fuel for Beaver Valley having a term greater than six months and not terminable on or before the DLC Nuclear Closing Date either (i) automatically, or (ii) by option of Penn Power in its sole discretion, if the aggregate payment under such commitment for fuel and all other outstanding commitments for fuel for Beaver Valley not previously approved by Penn Power would exceed $3,000,000;

(ii) except as otherwise provided herein, enter into any contract, agreement, commitment or arrangement relating to Beaver Valley that individually exceeds $1,000,000 unless it is terminable by DLC without penalty or premium upon no more than sixty (60) days notice;

(iii) except as otherwise required by the terms of any collective bargaining agreement or as otherwise provided in Section 6.11 hereof or as currently contemplated by the plans and budgets in place under the CAPCO Agreements, (i) hire at, or transfer to Beaver Valley, any new employees prior to the DLC Nuclear Closing, other than to fill vacancies in existing positions in the reasonable discretion of DLC, (ii) materially increase salaries or wages of employees employed in connection with Beaver Valley prior to the DLC Nuclear Closing, (iii) take any action prior to the DLC Nuclear Closing to affect a material change in any collective bargaining agreement, or (iv) take any action prior to the DLC Nuclear Closing to materially increase the aggregate benefits

payable to the employees employed in connection with Beaver Valley; or

(iv) except as otherwise provided herein, enter into any written or oral contract, agreement, commitment or arrangement with respect to any of the proscribed transactions set forth in the foregoing paragraphs (i)-(iii).

(d) Notwithstanding Section 6.1(c) above, DLC is permitted to enter into commitments with respect to uranium enrichment services in respect to the Plants satisfactory to it in its sole discretion from the date of this Agreement through the DLC Nuclear Closing Date in respect of each Plant; provided, however, that if DLC expects to include such commitments in the DLC Nuclear Agreements, it shall obtain the written consent of Specified FE Subsidiaries prior to entering into such commitments.

6.1.2 Interim Operation of Perry Unit 1. The Parties understand and agree that the Amendment 2 to the CAPCO Perry Unit 1 Operating Agreement executed in accordance with Section 6.15(b) hereof shall remain in full force and effect during the Interim Period, and, except as modified by this Agreement, the ownership, operation and maintenance of Perry shall be as provided in the amended CAPCO Perry Unit 1 Operating Agreement.

6.2 Access to Information.

(a) For a period of seven (7) years after the DLC Nuclear Closing Date (or such longer period as may be required by applicable law), each Party and their Representatives shall have reasonable access to all of the books and records of the DLC Nuclear Assets, including all Transferred Employee Records in the possession of any Party to the extent that such access may reasonably be required in connection with the Assumed Liabilities or the Excluded Liabilities, or other matters relating to or affected by the operation of the DLC Nuclear Assets . Such access shall be afforded by the Party in possession of any such books and records upon receipt of reasonable advance notice and during normal business hours. The Party exercising this right of access shall be solely responsible for any costs or expenses incurred by it or the holder of the information with respect to such access pursuant to this Section 6.2(a). If the Party in possession of such books and records shall desire to dispose of any books and records upon or prior to the expiration of such seven-year period (or any such longer period), such Party shall, prior to such disposition, give the other Party a reasonable opportunity at the latter's expense, to segregate and remove such books and records as it may select.

(b) Penn Power agrees that, prior to the DLC Nuclear Closing Date, it will not contact any vendors, suppliers, employees, or other contracting parties of DLC or its Affiliates with respect to any aspect of the DLC Nuclear Assets relating to Beaver Valley or the transactions contemplated hereby, without the prior written consent of DLC, which consent shall not be unreasonably withheld.

6.3 Confidentiality. (a) Each Party shall, and shall use its best efforts to cause its Representatives to, (i) keep all Proprietary Information of the other Party confidential and not to disclose or reveal any such Proprietary Information to any Person other than such Party's Representatives and (ii) not use such Proprietary Information other than in connection with the consummation

of the transactions contemplated hereby. After the DLC Nuclear Closing Date, any Proprietary Information to the extent related to the DLC Nuclear Assets acquired by Specified FE Subsidiaries shall no longer be subject to the restrictions set forth herein. The obligations of the Parties under this Section 6.3(a) shall be in full force and effect for three (3) years from the date hereof and will survive the termination of this Agreement, the discharge of all other obligations owed by the Parties to each other and the DLC Nuclear Closing Date.

(b) Upon the other Party's prior written approval (which shall not be unreasonably withheld), either Party may provide Proprietary Information of the other Party to the PUCO, the PaPUC, the SEC, the FERC, the NRC or any other Governmental Authority with jurisdiction or any stock exchange, as may be necessary to obtain Regulatory Approvals required by a Party, or to comply generally with any relevant law or regulation. The disclosing Party will seek confidential treatment for the Proprietary Information provided to any Governmental Authority and the disclosing Party will notify the other Party as far in advance as is practicable of its intention to release to any Governmental Authority any Proprietary Information.

6.4 Public Statements. Subject to the requirements imposed by law, any Governmental Authority or stock exchange, prior to the DLC Nuclear Closing Date, no press release or other public announcement or public statement or comment in response to any inquiry relating to the transactions contemplated by this Agreement shall be issued or made by any Party without the prior approval of the other Party (which approval shall not be unreasonably withheld). The Parties agree to cooperate in preparing such announcements.

6.5 Expenses. Except to the extent specifically provided herein, whether or not the transactions contemplated hereby are consummated, all costs and expenses incurred in connection with this Agreement and the transactions contemplated hereby shall be borne by the Party incurring such costs and expenses, including the costs of any state or local Transfer Taxes associated with its transfer of the Real Property. Notwithstanding anything to the contrary herein, Specified FE Subsidiaries will be responsible for (a) all costs and expenses associated with the obtaining of any title insurance policy and all endorsements thereto that such Party elects to obtain and (b) all filing fees under the HSR Act relating to the DLC Nuclear Assets it would acquire hereunder.

6.6 Further Assurances.

(a) Subject to the terms and conditions of this Agreement, each Party hereto shall use its best efforts to take, or cause to be taken, all actions, and to do, or cause to be done, all things necessary, proper or

advisable under applicable laws and regulations to consummate and achieve the DLC Nuclear Closing in respect of all the Plants pursuant to this Agreement and the assumption of the Assumed Liabilities, including using its best efforts to ensure satisfaction of the conditions precedent to each Party's obligations hereunder, including obtaining all necessary consents, approvals, and authorizations of third parties and Governmental Authorities required to be obtained in order to consummate the transactions hereunder, and to effectuate a transfer of the Transferable Permits to Specified FE Subsidiaries. Specified FE Subsidiaries agree to perform promptly all conditions required of Specified FE Subsidiaries in connection with DLC's Required Regulatory Approvals. None of the Parties hereto shall, without prior written consent of the other Parties, take

or fail to take any action, which might reasonably be expected to prevent or materially impede, interfere with or delay the transactions contemplated by this Agreement.

(b) In the event that any DLC Nuclear Asset shall not have been conveyed to the applicable Specified FE Subsidiary at the DLC Nuclear Closing, DLC shall, subject to Section 6.6(c), use Commercially Reasonable Efforts to convey such asset to the applicable Specified FE Subsidiary as promptly as is practicable after the DLC Nuclear Closing.

(c) (i) To the extent that DLC's rights under any material DLC Nuclear Agreement or Real Property Lease may not be assigned without the consent of another Person which consent has not been obtained by the DLC Nuclear Closing Date, this Agreement shall not constitute an agreement to assign the same, if an attempted assignment would constitute a breach thereof or be unlawful.

(ii) If any consent to an assignment of any material DLC Nuclear Agreement or Real Property Lease shall not be obtained or if any attempted assignment would be ineffective or would impair either Specified FE Subsidiaries' rights and obligations under the material DLC Nuclear Agreement or Real Property Lease in question, so that such Specified FE Subsidiary would not in effect acquire the benefit of all such rights and obligations, DLC, at the option of such Specified FE Subsidiary and to the maximum extent permitted by law and such material DLC Nuclear Agreement or Real Property Lease shall, after the DLC Nuclear Closing Date, appoint such Specified FE Subsidiary to be DLC's agent with respect to such material DLC Nuclear Agreement or Real Property Lease, or, to the maximum extent permitted by law and such material DLC Nuclear Agreement or Real Property Lease, enter into such reasonable arrangements with such Specified FE Subsidiary or take such other actions as are necessary to provide such Specified FE Subsidiary with the same or substantially similar rights and obligations of such material DLC Nuclear Agreement or Real Property Lease as such Specified FE Subsidiary may reasonably request. The Parties shall cooperate and shall each use Commercially Reasonable Efforts prior to and after the DLC Nuclear Closing Date to obtain an assignment of such material DLC Nuclear Agreement or Real Property Lease to such Specified FE Subsidiary. For purposes of this Section 6.6(c), without limitation, all DLC Nuclear Agreements listed on Schedules 4.5 and 4.9(a)(i) and 4.9(b)(i) are deemed to be "material."

(d) To the extent that DLC's rights under any warranty or guaranty described in Section 2.1(i) may not be assigned without the consent of another Person, which consent has not been obtained by the DLC Nuclear Closing Date, this Agreement shall not constitute an agreement to assign the same, if an attempted assignment would constitute a breach thereof, or be unlawful. If any consent to an assignment of any such warranty or guaranty shall not be obtained, or if any attempted assignment would be ineffective or would impair the rights and obligations of the applicable Specified FE Subsidiary under the warranty or guaranty in question, so that such Specified FE Subsidiary would not in effect acquire the benefit of all such rights and obligations, DLC, at the expense of such Specified FE Subsidiary, shall use Commercially Reasonable Efforts, to the extent permitted by law and such warranty or guaranty, to enforce such warranty or guaranty for the benefit of such Specified FE Subsidiary so as to provide such Specified FE Subsidiary to the maximum extent possible with the benefits and obligations of such warranty or guaranty.

6.7 Consents and Approvals.

(a) As promptly as advisable after the date of this Agreement, DLC and Specified FE Subsidiaries shall each file or cause to be filed with the Federal Trade Commission and the United States Department of Justice any notifications required to be filed under the HSR Act and the rules and regulations promulgated thereunder with respect to the transactions contemplated hereby. The Parties shall use their respective best efforts to respond promptly to any requests for additional information made by either of such agencies, and to cause the waiting periods under the HSR Act to terminate or expire at the earliest possible date after the date of filing. Specified FE Subsidiaries will pay all filing fees under the HSR Act relating to the DLC Nuclear Assets to be acquired thereby, but each Party will bear its own costs of the preparation of any filing.

(b) As promptly as advisable after the date hereof, Specified FE Subsidiaries shall make any filings required by the Federal Power Act. Prior filings with the FERC, Specified FE Subsidiaries shall submit such application to DLC for review and comment and shall incorporate into the application any revisions reasonably requested. Specified FE Subsidiaries shall be solely responsible for the cost of preparing and filing the application, any petition(s) for rehearing, or any reapplication. If the filing is rejected by the FERC, Specified FE Subsidiaries agrees to petition the FERC for rehearing and/or to re-submit an application with the FERC, provided that in either case this action does not create a Material Adverse Effect on Specified FE Subsidiaries and that it has been approved by DLC.

(c) As promptly as advisable, and in any case within sixty (60) days after the date of this Agreement, DLC and Specified FE Subsidiaries, as applicable, shall make any filings required by the PUCO, the PaPUC and any other Governmental Authority, and make or cause to be made any other filings required to be made with respect to the transactions contemplated hereby. The Parties

shall respond promptly to any requests for additional information made by such agencies, and use their respective Commercially Reasonable Efforts to cause regulatory approval to be obtained at the earliest possible date after the date of filing. Each Party will bear its own costs of the preparation of any such filing.

(d) The Parties shall cooperate with each other and promptly prepare and file notifications with, and request Tax clearances from, state and local taxing authorities in jurisdictions in which a portion of the consideration may be required to be withheld or in which Specified FE Subsidiaries would otherwise be liable for any Tax liabilities of DLC pursuant to such state and local Tax law.

(e) Specified FE Subsidiaries shall have the primary responsibility for securing the transfer, reissuance or procurement of the Permits and Environmental Permits (other than Transferable Permits) effective as of the DLC Nuclear Closing Date. DLC shall cooperate with Specified FE Subsidiaries' efforts in this regard and assist in any transfer or reissuance of a Permit or Environmental Permit held by DLC or the procurement of any other Permit or Environmental Permit when so requested by Specified FE Subsidiaries, to the extent such cooperation does not entail payment of money by DLC.

(f) As promptly as possible after the date hereof, DLC and Specified FE Subsidiaries shall file with the NRC joint applications requesting the NRC Approvals. The Parties shall respond promptly to any requests for additional information made by the NRC, cooperate in connection with any presentation or proceeding associated with the NRC application and use their respective best efforts to cause such NRC Approvals to be obtained at the earliest possible date after the date of filing. Each Party will bear its own costs of the preparation of any such filing and the NRC filing and processing fees in respect of such filing shall be paid fifty percent (50%) by DLC and fifty percent (50%) by the Specified FE Subsidiaries.

6.8 Fees and Commissions. Each Party represents and warrants to the other Party that, no broker, finder or other Person is entitled to any brokerage fees, commissions or finder's fees in connection with the transaction contemplated hereby by reason of any action taken by the Party making such representation. DLC and Specified FE Subsidiaries will pay to the other or otherwise discharge, and will indemnify and hold the other harmless from and against, any and all claims or liabilities for all brokerage fees, commissions and finder's fees (other than the fees, commissions and finder's fees payable to the parties listed above) incurred by reason of any action taken by the indemnifying party.

6.9 Tax Matters.

(a) All Transfer Taxes incurred in connection with this Agreement and the transactions contemplated hereby, including, (i) Pennsylvania or Ohio sales tax; (ii) the Pennsylvania or Ohio transfer tax, conveyance fees

or conveyances of interests in real and/or personal property; and (iii) Pennsylvania or Ohio sales tax and transfer tax on deeds shall be borne by DLC. DLC shall file, to the extent required by, or permissible under, applicable law, all necessary Tax Returns and other documentation with respect to all such Transfer Taxes, and, if required by applicable law, Specified FE Subsidiaries shall join in the execution of any such Tax Returns and other documentation. Prior to the applicable DLC Nuclear Closing Date, to the extent applicable, Specified FE Subsidiaries shall provide to DLC appropriate certificates of Tax exemption from each applicable taxing authority.

(b) With respect to Taxes to be prorated in accordance with Section 3.4 of this Agreement, Specified FE Subsidiaries shall prepare and timely file all Tax Returns required to be filed after the DLC Nuclear Closing Date with respect to the DLC Nuclear Assets, if any, and shall duly and timely pay all such Taxes shown to be due on such Tax Returns. Specified FE Subsidiaries agrees that preparation of any such Tax Returns shall be subject to DLC's approval, which approval shall not be unreasonably withheld. Specified FE Subsidiaries shall make such Tax Returns available for DLC's review and approval no later than fifteen (15) Business Days prior to the due date for filing each such Tax Return.

(c) Specified FE Subsidiaries and DLC shall provide each other with such assistance as may reasonably be requested by the other Party in connection with the preparation of any Tax Return, any audit or other examination by any taxing authority, or any judicial or administrative proceedings relating to liability for Taxes, and each shall retain and provide the requesting party with any records or information which may be relevant to such return, audit, examination or proceedings. Any information obtained

pursuant to this Section 6.9(c) or pursuant to any other Section hereof providing for the sharing of information or review of any Tax Return or other instrument relating to Taxes shall be kept confidential by the Parties.

(d) In the event that a dispute arises between DLC and either Specified FE Subsidiary regarding Taxes, or any amount due under this Section 6.9, the Parties shall attempt in good faith to resolve such dispute and any agreed upon amount shall be paid to the appropriate Party. If such dispute is not resolved within 30 days, the Parties shall submit the dispute to the Independent Accounting Firm for resolution, which resolution shall be final, conclusive and binding on the Parties. Notwithstanding anything in this Agreement to the contrary, the fees and expenses of the Independent Accounting Firm in resolving the dispute shall be borne 50% by DLC and 50% by the applicable Specified FE Subsidiary. Any payment required to be made as a result of the resolution of the dispute by the Independent Accounting Firm shall be made within ten days after such resolution, together with any interest determined by the Independent Accounting Firm to be appropriate.

6.10 Advice of Changes. Prior to the DLC Nuclear Closing, each Party will advise the other in writing with respect to any matter arising after

execution of this Agreement of which that Party obtains Knowledge and which, if existing or occurring at the date of this Agreement, would have been required to be set forth in this Agreement, including any of the Schedules hereto. DLC may at any time notify Specified FE Subsidiaries of any development causing a breach of any of its representations and warranties in Article IV, and Specified FE Subsidiaries may at any time notify DLC of any development causing a breach of any of its representations and warranties in Article V. Unless DLC or the Specified FE Subsidiaries have the right to terminate this Agreement pursuant to Section 9.1(f) or (g) below (after the expiration of the applicable cure period provided therein) by reason of the developments and exercises that right within the period of fifteen (15) days after such right accrues, the written notice pursuant to this Section 6.10 will be deemed to have amended this Agreement, including the appropriate Schedule, to have qualified the representations and warranties contained in Articles IV and V above, as applicable and to have cured any misrepresentation or breach of warranty that otherwise might have existed hereunder by reason of the development.

6.11 DLC Employees.

(a) DLC shall identify the employees at the Plants on Schedule 6.11(a), which schedule shall also set forth such employees level of seniority, classification and Plant location. DLC may submit an offer of continuing employment with DLC or a DLC Subsidiary or an Affiliate thereof to those employees identified on Schedule 6.11(a), provided that such offer shall not be contingent on any such employee waiving his or her rights to consider a competing offer of employment from either Specified FE Subsidiary. Upon the acceptance by any such employee of DLC's offer of continuing employment, DLC shall provide written notice thereof to Specified FE Subsidiaries and shall modify Schedule 6.11(a) to reflect the same.

(b) At least 120 days prior to the DLC Nuclear Closing Date, each Specified FE Subsidiary shall provide DLC with notice of its respective staffing level requirements, listed by classification and operation, and shall

be required to offer employment only to that number of employees of DLC who are covered by the International Brotherhood of Electrical Workers ("IBEW"), Local Unions 140, 142, 144, 147, 148, 149 collective bargaining agreement with DLC ("IBEW CBA") and are either (i) employed in positions relating to the Plants or (ii) if employed at another location, perform substantially all their work in support of the Plants, and in each case, who are necessary to satisfy such Specified FE Subsidiary's staffing level requirements (collectively, "DLC Union Employees"). In each classification, DLC Union Employees shall be so offered employment in order of their seniority as provided for in the IBEW CBA. Each person who becomes employed by such Specified FE Subsidiary pursuant to this section shall be referred herein as a "DLC Transferred Union Employee."

(c) At least 120 days prior to the DLC Nuclear Closing Date, each Specified FE Subsidiary shall provide DLC with notice of its respective staffing level requirements, listed by classification and operation, and shall

be required to make either a Non-Qualifying or a Qualifying Offer of employment only to that number of salaried employees of DLC who are employed in connection with the DLC Nuclear Assets and who are listed in, or are in a function or whose employment responsibilities are listed in, Schedule 6.11(c) (collectively, "DLC Non-Union Employees"), which schedule shall also set forth such employees' salary and responsibilities and who are necessary to satisfy the staffing level requirements of a Specified FE Subsidiary or Affiliate. Each employee employed by a Specified FE Subsidiary or Affiliate pursuant to this section shall be referred herein as a "DLC Transferred Non-Union Employee." To the extent that a Specified FE Subsidiary takes an employee from Beaver Valley and relocates the employee to another plant owned by any Specified FE Subsidiary or any Affiliate of any of them, such employee shall receive the same relocation allowance as if he or she had been an FE employee.

(d) All offers of employment made by a Specified FE Subsidiary pursuant to Sections 6.11 (b) and (c) shall be made in accordance with all applicable laws and regulations (including the joint application to be made by DLC and Penn Power to the NRC in respect of Beaver Valley), and for DLC Union Employees, in accordance with the IBEW CBA and shall remain open for a period of ten (10) working days. Any such offer which is accepted within such ten (10) working day period shall thereafter be irrevocable until the earlier of the DLC Nuclear Closing Date or the termination of this Agreement pursuant to its terms. Following acceptance of such offers, such Specified FE Subsidiary shall provide written notice thereof to DLC, and DLC shall provide such Specified FE Subsidiary with access to the files and records of employees accepting such offers, to the extent permitted by contract, the IBEW CBA and/or applicable law. Schedule 6.11(d) sets forth the collective bargaining agreements, and amendments thereto, to which DLC is a party in connection with the DLC Nuclear Assets.

(e) With respect to DLC Transferred Union Employees and DLC Transferred Non-Union Employees, the following shall be applicable:

(i) For such DLC Transferred Union Employees, a Specified FE Subsidiary shall recognize IBEW Local Unions 140, 142, 144, 147, 148, 149 as the exclusive collective bargaining representative and shall assume the terms and conditions of the IBEW CBA until the expiration of said agreement, and will further comply with all applicable legal obligations with respect to collective bargaining under federal labor law thereafter.

(ii) A Specified FE Subsidiary or Affiliate will establish and maintain benefit plans (including a severance plan) for Transferred DLC Non-Union Employees and DLC Transferred Union Employees under either the IBEW CBA or any similar DLC document which are comparable to the DLC Plant Benefit Plans in effect for such employees immediately prior to the DLC Nuclear Closing Date and provide at least the same level of benefits or coverage as the DLC Plant Benefit Plans in accordance with and for the duration of the IBEW CBA, in the case of DLC Transferred Union Employees, or until December 31, 2001, in the case of DLC Transferred NonUnion Employees (such period being hereinafter referred to as the "Continuation Period"). Subject to applicable law

and the IBEW CBA, nothing in the foregoing shall prevent a Specified FE Subsidiary or FE Affiliate from using different benefit providers or from establishing new benefit plans or using its existing benefit plans as the means of meeting its obligation hereunder. The commitments under this paragraph shall, however, require the following during the Continuation Period:

(A) With respect to health care plans, any Specified FE Subsidiary agrees to waive or to cause the waiver of all limitations as to pre-existing conditions and actively-at-work exclusions and waiting periods for such employees, except that a Specified FE Subsidiary may require the employee or his/her dependents who, on the DLC Nuclear Closing Date, is then in the process of satisfying any similar exclusion or waiting period under the DLC health care plans to satisfy fully the balance of the applicable time period for such exclusion or waiting period under the applicable FE plan. With respect to the calendar year in which the DLC Nuclear Closing Date occurs, all health care expenses incurred by any such employees and/or any eligible dependent thereof in the portion of the calendar year preceding the DLC Nuclear Closing Date that were qualified to be taken into account for purposes of satisfying any deductible or out-of-pocket limit under any DLC health care plans shall be taken into account for purposes of satisfying any deductible or out-of-pocket limit under the health care plan of a Specified FE Subsidiary or Affiliate of FE for such calendar year.

(B) With respect to service and seniority, a Specified FE Subsidiary shall recognize each such employee's service and seniority with DLC for all non-pension purposes, including the determination of eligibility and extent of service or seniority-related welfare benefits such as vacation and sick pay benefits and to agree to give each such employee full credit for all vacation benefits banked, accrued, and unused, as of the DLC Nuclear Closing Date.

(C) With respect to pension benefits, a Specified FE Subsidiary or Affiliate of FE shall provide each employee with a pension benefit that, when combined with the benefit accrued by such employee under the DLC pension plan as it exists on the DLC Nuclear Closing Date, is at least equal in value to the pension benefit such employee would have accrued if such employee had remained employed with DLC and continued to be covered by such DLC pension plan (as it exists on the DLC Nuclear Closing Date) during the Continuation Period. In providing such benefits, a Specified FE Subsidiary or Affiliate of FE shall recognize each such employee's combined service and earnings with DLC and a Specified FE Subsidiary or Affiliate of FE. The determination of the benefit required by this Section 6.11(e)(ii)(C) shall be made in good faith by the accounting firm then acting as the independent

auditor of the Specified FE Subsidiary or Affiliate of FE, which determination shall be final and binding on the parties hereto and

each affected employee.

(D) With respect to post-retirement medical and life insurance programs, a Specified FE Subsidiary shall provide to any such employee who retires from a Specified FE Subsidiary's employment prior to the expiration of the IBEW CBA with respect to DLC Transferred Union Employees, and December 31, 2001 with respect to DLC Transferred Non-Union Employees, and is at least age 55 and has ten or more years of combined service with DLC and a Specified FE Subsidiary or Affiliate of FE, benefits, to the extent possible, that are substantially equivalent to the DLC post-retirement medical and life insurance programs that such employee would have received, if such employee had continued to be covered by the DLC programs as they existed on the DLC Nuclear Closing Date.

(E) With respect to the DLC 401(k) Retirement Savings Plan for Management or the DLC 401(k) Retirement Savings Plan for the IBEW (collectively, the "DLC Savings Plan"), a Specified FE Subsidiary shall take any and all necessary action to cause the trustee of any defined contribution plan of a Specified FE Subsidiary in which any such employee becomes a participant by virtue of this section, to accept a direct "rollover" of all or a portion of said employee's "eligible rollover distribution" within the meaning of Section 402 of the Code from the DLC Savings Plan, if requested to do so by such employee, or to accept a direct plan-to-plan transfer from the DLC Savings Plan of the account balances of any such employee and the assets of such plans related thereto, if requested to do so by DLC or by any such employee. Each Specified FE Subsidiary agrees that the property so rolled over and the assets so transferred may include (i) promissory notes evidencing loans from the DLC Savings Plan to such employees that are outstanding as of the DLC Nuclear Closing Date, and (ii) shares of DLC common stock in which the account balances of such employees are invested as of the DLC Nuclear Closing Date. However, any defined contribution plan of FE or its Subsidiaries or Affiliates accepting such a rollover or transfer shall not be required to (i) make any further loans to any such employee after the DLC Nuclear Closing Date or (ii) permit any additional investment to be made in DLC common stock on behalf of any such employee after the DLC Nuclear Closing Date. DLC hereby represents to each FE Subsidiary that the DLC Savings Plan is intended to be qualified within the meaning of Section 402 of the Code.

(f) With respect to severance benefits, each Specified FE Subsidiary, as applicable, is required to provide for any DLC Transferred Non-Union Employee who is terminated as a result of an overall reduction in work force due to decreased employment need of such Specified FE Subsidiary prior to the date which is one year following the DLC Nuclear Closing Date severance benefits at the level for such employees in effect as of the date hereof. DLC Transferred Non-Union Employees shall also be entitled to severance benefits if, prior to the date which is one year following the DLC Nuclear Closing Date, the applicable Specified FE Subsidiary reduces the pay rate for such employee and

such employee within seven days thereafter terminates employment. Any employee provided severance benefits under this section may be required to execute a release of claims against DLC and such Specified FE Subsidiary, in such form as

each Specified FE Subsidiary shall prescribe, as a condition for the receipt of such benefits.

(g) Each DLC Transferred Non-Union Employee who is initially assigned, or assigned within 12 months of the DLC Nuclear Closing Date, by each Specified FE Subsidiary, to a principal place of work that requires such employee to relocate his residence will be reimbursed by the applicable Specified FE Subsidiary for all relocation expenses in accordance with the DLC relocation plans in effect as of the date hereof. For purposes of the foregoing a required relocation of residence shall include a change in the principal place of work that is more than 30 miles farther from such employee's principal place of work immediately prior to the DLC Nuclear Closing Date and requires a commute from his current residence of at least one hour in each direction.

(h) DLC shall be responsible, with respect to the DLC Nuclear Assets, for performing and discharging all requirements under the WARN Act and under applicable state and local laws and regulations for the notification of its employees of any "employment loss" within the meaning of the WARN Act which occurs prior to the DLC Nuclear Closing Date.

(i) Neither Specified FE Subsidiary shall be responsible for extending COBRA Continuous Coverage to any employees and former employees of DLC, or to any qualified beneficiaries of such employees and former employees, who become or became entitled to COBRA Continuous Coverage on or before the DLC Nuclear Closing Date, including those for whom the DLC Nuclear Closing Date occurs during their COBRA election period.

(j) DLC or its Affiliates shall pay to all DLC Transferred Union and DLC Transferred Non-Union Employees, all compensation, bonus, vacation and holiday compensation, workers' compensation or other employment benefits to which they are entitled under the terms of the applicable compensation or DLC benefit plans or programs. The Specified FE Subsidiaries shall pay to each employee offered employment pursuant to this Section 6.11, all unpaid salary, bonus, vacation and holiday compensation, workers' compensation or other compensation or employment benefits that are payable in cash which have accrued to such employees following the DLC Nuclear Closing Date, at such times as provided under the terms of the applicable compensation or benefit programs.

(k) Individuals who are otherwise DLC Union Employees or DLC Non-Union Employees, but who on any date are not actively at work due to a leave of absence covered by the Family and Medical Leave Act (FMLA), or due to any other authorized leave of absence, shall nevertheless be treated as "Union Employees" or as "Non-Union Employees", as the case may be, on such date if they are able (i) to return to work within the protected period under the FMLA or such other leave (which in any event shall not extend more than twelve (12)

weeks after the DLC Nuclear Closing Date), whichever is applicable, and (ii) to perform the essential functions of their job, with or without a reasonable accommodation.

(l) The Specified FE Subsidiaries shall be responsible, with respect to the Exchange Assets, for performing and discharging all requirements under the WARN Act and under applicable state and local laws and regulations for

the notification of its employees of any "employment loss" within the meaning of the WARN Act which occurs following the DLC Nuclear Closing Date.

(m) The Specified FE Subsidiaries are responsible for extending and continuing to extend COBRA Continuation Coverage to all DLC Transferred Union and DLC Transferred NonUnion Employees, and qualified beneficiaries of such employees who become entitled to such COBRA Continuation Coverage following the DLC Nuclear Closing Date.

(n) The provisions of this Section 6.11 shall not be construed as being for the benefit for any person other than the Parties hereto, and shall not be enforceable by persons other than such Parties (including, without limitations, the DLC Transferred Union Employees and DLC Transferred Non-Union Employees.)

(o) Notwithstanding any provision of the Beaver Valley CAPCO Agreements, with respect to any DLC Union Employees who do not receive an offer of employment from a Specified FE Subsidiary pursuant to subsection (b) hereof and with respect to any DLC Non-Union Employees who decline a Non-Qualifying Offer pursuant to subsection (c) hereof, and are thereafter terminated, DLC will be responsible for paying for the aggregate cost incurred in providing the severance, pension and banked, accrued and unused vacation benefits due to such employees.

6.12 Risk of Loss.

From the date hereof through the DLC Nuclear Closing Date, all risk of loss or damage to the property included in the DLC Nuclear Assets shall be governed by the Perry CAPCO Agreements or Beaver Valley CAPCO Agreements, as applicable.

6.13 CAPCO Agreements. Administration of the CAPCO Agreements shall be conducted in accordance with the terms of such CAPCO Agreements and the CAPCO Settlement Agreement.

6.14 Refund of Accrued Interest in Insurance Premiums. At the request of DLC, each Specified FE Subsidiary shall enter into and/or cause other appropriate FE Subsidiaries to enter into any agreement with ANI and/or NEIL and DLC reasonably requested by DLC to assure that the refunds in respect of ANI and NEIL reserve premiums and/or dividends and/or distributions of earnings based on membership account balance(s) and insurance premiums described in Section 2.2(i)

are paid directly by ANI and/or NEIL to DLC.

6.15 Operating Control. (a) Subject to the terms and conditions hereof and receipt of the applicable DLC Required Regulatory Approvals, at the DLC Nuclear Closing DLC shall transfer to FENOC, and FENOC shall assume from DLC, responsibility for the operation and maintenance of Beaver Valley and FENOC shall become the operator, all as described in Section 2.1(d).

(b) As of the date of this Agreement, DLC has provided written notification to FE that it supports the pending NRC application by FENOC to assume responsibility for the operation and maintenance of Perry Unit 1. Promptly upon the execution of this Agreement, DLC shall (i) provide its consent, pursuant to the operating agreement in respect of Perry Unit 1, to the assignment of operating responsibility to FENOC and (ii) the parties to

Amendment 2 to the CAPCO Perry Unit 1 Operating Agreement shall execute and deliver that amendment.

6.16 Beaver Valley Unit 2 Facility Leases.

(a) Prior to the DLC Nuclear Closing Date, DLC will terminate the Beaver Valley Unit 2 Facility Leases and will be responsible for all payments and expenses associated with such termination. In addition, pursuant to Section 3.9(b) of the Beaver Valley Unit 2 Lease Indentures, DLC will assume all of the obligations of the Beaver Valley Unit 2 Owner Trustees under those indenture and the notes issued and outstanding thereunder (the "Beaver Valley Unit 2 Indentures Notes") and shall make all payments required thereby. DLC further agrees that it will redeem the Beaver Valley Unit 2 Indentures Notes in full no later than December 1, 2002. In connection with such termination and assumption, Penn Power agrees to cooperate and/or to cause other appropriate FE Subsidiaries to cooperate to the extent reasonably necessary or appropriate to effect such termination and assumption by DLC, including taking those actions described in Schedule 6.16(a) and taking actions reasonably acceptable to it that may be required by third parties in connection with such termination and assumption.

(b) Until the Beaver Valley Unit 2 Indentures Notes have been paid in full, Penn Power agrees that it:

(i) will not terminate the Beaver Valley Unit 2 Operating Agreement, and will not sell, transfer, assign or dispose of (collectively, "transfer") all or any material portion of its rights or interest in and to Beaver Valley Unit 2 and the Beaver Valley Unit 2 Operating Agreement, unless such transfer is made subject to the Encumbrance of the Beaver Valley Unit 2 Lease Indentures, as provided in this Agreement, and the transferee assumes all obligations in connection with accepting the transfer subject to such Encumbrance as provided in this Agreement;

(ii) will keep Beaver Valley Unit 2 and the Beaver

Valley Unit 2 Operating Agreement free and clear of any Encumbrances that would be superior to the Encumbrance of the Beaver Valley Unit 2 Lease Indentures;

(iii) cause Beaver Valley Unit 2 to be used and operated under and in compliance with all applicable laws, rules regulations and orders of any applicable Governmental Authority, Good Utility Practices and the Beaver Valley Unit 2 Operating Agreement, except where failure to do so would not result in a Material Adverse Effect; and

(iv) maintain insurance policies in respect of Beaver Valley Unit 2 comparable to those maintained in respect thereof by DLC as of the DLC Nuclear Closing Date in respect of Beaver Valley, cause DLC to be a named insured in respect of such liability insurance policies maintained in respect of Beaver Valley, cause the Beaver Valley Unit 2 Lease Indentures Trustee to be a named insured on such insurance policies and the loss payee in respect of thirteen and seventy-four one hundredths percent (13.74%) of the "all risk" property insurance portion of such insurance policies, and provide a copy of a certificate evidencing such insurance coverage to DLC on or before September 1 of each year.

6.17 Tax Exempt Financing.

(a) Specified FE Subsidiaries understand and agree that:

(i) the Exempt Facilities have been financed, and refinanced, in whole or in part, with the proceeds of the issuance and sale by various governmental authorities of industrial development revenue bonds or private activity bonds (collectively, the "Revenue Bonds") the interest on which, with certain exceptions, is excluded from gross income for purposes of federal income taxation; and DLC is the economic obligor in respect of such bonds;

(ii) the basis for such exclusion is the use of the Exempt Facilities for the purpose of (A) the abatement or control of atmospheric pollution or contamination (B) the abatement or control of water pollution or contamination, (C) sewage disposal and/or (D) the disposal of solid waste, such qualifying purposes being discussed in more detail in (b) below;

(iii) the use of the Exempt Facilities for a purpose other than the qualifying purpose indicated in subsection (ii) above could impair (a) such exclusion from gross income of the interest on such bonds, possibly with retroactive affect, unless appropriate remedial action were taken (which could include prompt defeasance and /or redemption of such bonds) and/or (b) the deductibility of DLC's payment of interest based on the restrictions in Section 150(b) of the Code; and

(iv) any breach by Specified FE Subsidiaries of their obligations under this Article could result in the incurrence by DLC of

additional costs and expenses, including without limitation, increased interest costs, loss of the interest deduction for tax purposes and transaction costs relating to any refinancing redemption and/or defeasance of all or part of the Revenue Bonds, and Specified FE Subsidiaries will be liable to DLC for such additional costs and expenses.

(b) (i) Specified FE Subsidiaries shall not use, or permit the use of, the Exempt Facilities for any purpose other than:(A) abating or controlling atmospheric or water pollution or contamination by removing, altering, disposing of or storing pollutants, contaminants, waste or heat, all as contemplated in U.S. Treasury Regulations Section 1.103-8(g); (B) the collection, storage, treatment, utilization, processing or final disposal of solid waste, all as contemplated in U.S. Treasury Regulations Section 1.103-8(f); or (C) the collection, storage, treatment, utilization, processing or final disposal of sewage, all as contemplated in U.S. Treasury Regulations Section 1.103-8(f); unless Specified FE Subsidiaries have obtained at their own expense an opinion addressed to DLC of nationally recognized bond counsel reasonably acceptable to DLC ("Bond Counsel") that such use will not impair (x) the exclusion from gross income of the interest on any issue of Revenue Bonds for Federal income tax purposes or (y) the deductibility of DLC's payments of interest based on the restrictions in Section 150(b) of the Code.

(ii) Specified FE Subsidiaries reasonably expect, as of the date of this Agreement, that the Exempt Facilities will continue to be used for the qualifying purposes set forth in subsection (i) above, and for no other purpose, for the remainder of their useful lives.

(c) It is expressly understood and agreed the provisions of clause (b) above shall not prohibit Specified FE Subsidiaries from suspending the operation of the Exempt Facilities on a temporary basis, or from terminating the operation of the Exempt Facilities on a permanent basis and shutting down, retiring, abandoning and/or decommissioning the Exempt Facilities; provided, however, that if the Exempt Facilities, in whole or in part, are dismantled and sold, including any sale for scrap, and if the operation of the Plant served by such Exempt Facilities shall not theretofore have been, and is not then being, terminated on a permanent basis, then the proceeds of such sale of the Exempt Facilities shall within six months from the date of sale be expended to acquire replacement property to be used for the same qualifying purpose as the Exempt Facilities so sold, unless Specified FE Subsidiaries have obtained at their own expense an opinion addressed to DLC Bond Counsel that no taking this action will not impair (x) the exclusion from gross income of the interest on any issue of Revenue Bonds for Federal income tax purposes or (y) the deductibility of DLC's payments of interest based on the restrictions in Section 150(b) of the Code.

(d) Specified FE Subsidiaries shall not issue, or have issued on their behalf, any tax-exempt bonds to finance or refinance its acquisition of the Exempt Facilities; provided that it is expressly understood and agreed that this clause (d) shall not prohibit the use of tax-exempt bonds to finance or refinance any improvement to the Exempt Facilities made after the date of

acquisition or any assets other than the Exempt Facilities.

(e) Specified FE Subsidiaries shall give DLC at least 180 days' prior written notice of any suspension or termination of the operation of the Exempt Facilities, or any part thereof, and of any sale, exchange, transfer or other disposition of the Exempt Facilities, or any part thereof, including, but not limited to, a sale for scrap.

(f) If DLC shall desire to refund any Revenue Bonds, Specified FE Subsidiaries shall cooperate with DLC and with Bond Counsel with respect to the refunding bonds and shall provide upon request any representations, agreements or covenants that are reasonably requested concerning its compliance to such date and/or in the future with the representations, agreements and covenants made herein.

(g) If Specified FE Subsidiaries shall sell, exchange, transfer or otherwise dispose of the Exempt Facilities to a third party, Specified FE Subsidiaries shall cause to be included in the documentation relating to such transaction covenants and agreements on the part of such third party substantially identical to those on the part of Specified FE Subsidiaries contained in this Section 6.17.

(h) The covenants and agreements on the part of Specified FE Subsidiaries contained in this Section 6.17 shall continue in effect so long as any Revenue Bonds, including any refunding bonds issued hereafter to refund any Revenue Bonds, shall remain outstanding. DLC shall notify Specified FE Subsidiaries promptly when there shall be no Revenue bonds outstanding.

6.18 Removal at Shippingport Site Buildings. Prior to the DLC Nuclear Closing in respect of Beaver Valley, DLC will remove all Regulated Substances and Nuclear Material from the Shippingport Site Buildings to the reasonable satisfaction of Penn Power. In addition, DLC agrees to use Commercially

Reasonable Efforts to assign its rights under the Shippingport Contract to Penn Power and take appropriate steps to delete the SAPS site from the definition of the Beaver Valley site boundaries set forth in the Updated Safety Analysis Reports for Beaver Valley Unit 1 and Beaver Valley Unit 2 and other related licensing documentation on or prior to the DLC Nuclear Closing.

6.19 Decommissioning Funds.

6.19.1 Beaver Valley Unit 1 Decommissioning Funds

(a) Beaver Valley Unit 1 Qualified Funds.

(i) As soon as practicable after execution of this Agreement, DLC shall use Commercially Reasonable Efforts to obtain a private letter ruling from the IRS substantially to the effect that DLC be permitted to make an additional single

contribution in the same calendar year as the DLC Nuclear Closing Date to the Beaver Valley Unit 1 Qualified Decommissioning Fund in an amount equal to the Beaver Valley Unit 1 Decommissioning Shortfall. As used herein, the "Beaver Valley Unit 1 Decommissioning Shortfall" shall mean $25.5 million (the "Beaver Valley Unit 1 Decommissioning Amount") less the amount of any additional qualifying fund deposits made by DLC to the Beaver Valley Unit 1 Qualified Decommissioning Fund between January 1, 1999 and the DLC Nuclear Closing Date. If necessary to obtain such IRS ruling, DLC will request from the PaPUC an appropriate order with respect to the rate treatment of such contribution.

(ii) If DLC is informed by the IRS that the IRS will not issue a favorable ruling or DLC determines that it is otherwise unable to obtain the private letter ruling described in paragraph (i) above prior to the DLC Nuclear Closing Date, DLC may notify Penn Power, in writing, that DLC is unable to obtain the IRS ruling. Upon receiving such notification, Penn Power shall use Commercially Reasonable Efforts to obtain a private letter ruling from the IRS prior to the DLC Nuclear Closing Date substantially to the effect that Penn Power be permitted to make an additional single contribution to the Penn Power Qualified Decommissioning Funds for Beaver Valley Unit 1 in the same calendar year as the DLC Nuclear Closing Date in an amount equal to the Beaver Valley Unit 1 Decommissioning Shortfall and, if necessary to obtain such ruling, Penn Power shall also request from the PaPUC an appropriate order with respect to the rate treatment of such contribution. To the extent that Penn Power obtains the private letter ruling referenced in this paragraph (ii), DLC shall agree to pay in cash to Penn Power an amount equal to the Beaver Valley Unit 1 Decommissioning Shortfall.

(iii) If DLC determines that the private letter rulings described in paragraphs (i)-(ii) will not be obtained, Penn Power

shall, at the request of DLC, cooperate with DLC in requesting such private letter rulings from the IRS or authorizations from any other Governmental Authority prior to the DLC Nuclear Closing Date that would permit DLC to transfer to Penn Power or permit DLC or Penn Power, as applicable, to make one or more contributions, as soon as possible after January 1, 1999, to the Beaver Valley Unit 1 Qualified Decommissioning Funds or the Penn Power Qualified Decommissioning Funds, as applicable, in such amounts that would provide to Penn Power in Qualified Funds, the equivalent, on an after-tax present value basis, of the Beaver Valley Unit 1 Decommissioning Amount as determined in

paragraphs (i) and (ii) above. In the event that the rulings or authorizations in this paragraph (iii) are not able to be obtained or DLC otherwise determines not to pursue the provisions of this paragraph (iii), DLC shall transfer to Penn Power such amounts as provided pursuant to the provisions of paragraphs (v)(A) and (B) below.

(iv) At the DLC Nuclear Closing, DLC shall cause all of the assets of the Beaver Valley Unit 1 Qualified Decommissioning Funds to be transferred to Penn Power (or, if directed in writing to do so by Penn Power, to the trustee of any trust specified in such written direction), provided that (A) Penn Power shall contribute all amounts received from the Beaver Valley Unit 1 Qualified Decommissioning Funds into the Penn Power Qualified Decommissioning Funds, and (B) each of DLC and Penn Power shall have received private letter rulings from the IRS, or opinions of counsel satisfactory to each of DLC and Penn Power, substantially to the effect that, pursuant to Treas. Reg. section 1.468A-6, neither DLC nor Penn Power nor any of the applicable DLC Qualified Decommissioning Funds or Penn Power Qualified Decommissioning Funds shall recognize any gain or otherwise take into account any income for federal income tax purposes by reason of the transfer of the assets of the Beaver Valley Unit 1 Qualified Decommissioning Funds.

(v) At the DLC Nuclear Closing Date, DLC shall, in respect of any amounts for which an IRS private letter ruling pursuant to paragraphs (i), (ii) or (iii) has not been received, transfer an additional decommissioning payment to Penn Power as follows:

(A) If receipt of the additional decommissioning payment by Penn Power from DLC is not included in income for federal income tax purposes or Penn Power receives a deduction for federal income tax purposes for the same year in which it has such income, the additional decommissioning payment ("ADPNet") shall be ($25.5 million - AQF) (1.436). As used in this paragraph (A) and paragraph (B) below, AQF shall mean the additional qualifying fund deposits authorized by any IRS ruling, including any qualified fund deposits made between January 1, 1999 and the DLC Nuclear Closing Date; provided, however, that ADPNet shall not be less than zero.

(B) If receipt of the additional decommissioning payment by Penn Power is included in income for federal income tax purposes and Penn Power does not receive a

deduction for federal income tax purposes for the same year in which it has such income, the additional decommissioning payment ("ADPGross") shall be ($25.5 million - AQF) (1.436) divided by 0.65; provided, however, that ADPGross shall not be less than zero.

Any additional decommissioning payment shall be payable in cash or in additional Nonqualified Funds, and at the request of DLC, Penn Power shall contribute all payments received from DLC into the Penn Power Nonqualified Decommissioning Funds or the Penn Power Qualified Decommissioning Funds.

(b) Beaver Valley Unit 1 Nonqualified Funds.

(i) DLC and Penn Power shall use Commercially Reasonable Efforts to obtain a private letter ruling from the IRS prior to the DLC Nuclear Closing Date substantially to the effect that Penn Power shall not recognize any gain or otherwise take into account any income for federal income tax purposes by reason of the transfer of the assets of the Beaver Valley Unit 1 Nonqualified Decommissioning Funds.

(ii) At the DLC Nuclear Closing, DLC shall cause all of the assets of the Beaver Valley Unit 1 Nonqualified Decommissioning Funds to be transferred to Penn Power (or, if directed in writing to do so by Penn Power, to the trustee of any trust specified in such written direction), provided that, to the extent required by any IRS private letter ruling received pursuant to paragraph (i), Penn Power shall contribute all amounts received from the Beaver Valley Unit 1 Nonqualified Decommissioning Funds into the Penn Power Nonqualified or Qualified Decommissioning Funds, as applicable.

(iii) If the receipt by Penn Power of the Beaver Valley Unit 1 Nonqualified Decommissioning Funds is included in income for federal income tax purposes and Penn Power does not receive a deduction for federal income tax purposes for the same year in which it has such income, DLC shall transfer to Penn Power an amount equal to the assets of the Beaver Valley Unit 1 Nonqualified Decommissioning Funds as of the DLC Nuclear Closing Date divided by 0.65.

(c) Reporting

Commencing on the date of this Agreement until the DLC Nuclear Closing Date, DLC shall provide (or cause the investment manager to provide) to Penn Power quarterly unaudited statements of earnings, contributions, market

values, investment allocations and performance reports and such other information for the Beaver Valley Unit 1 Qualified and Nonqualified Decommissioning Funds as reasonably requested by Penn Power.

6.19.2 Beaver Valley Unit 2 Decommissioning Funds

(a) Beaver Valley Unit 2 Qualified Funds.

(i) As soon as practicable after execution of this Agreement, DLC shall use Commercially Reasonable Efforts to obtain a private letter ruling from the IRS substantially to the effect that DLC be permitted to make an additional single contribution in the same calendar year as the DLC Nuclear Closing Date to the Beaver Valley Unit 2 Qualified Decommissioning Fund in an amount equal to the Beaver Valley Unit 2 Decommissioning Shortfall. As used herein, the "Beaver Valley Unit 2 Decommissioning Shortfall" shall mean $10.3 million (the "Beaver Valley Unit 2 Decommissioning Amount") less the amount of any additional qualifying fund deposits made by DLC to the Beaver Valley Unit 2 Qualified Decommissioning Fund between January 1, 1999 and the DLC Nuclear Closing Date. If necessary to obtain such IRS ruling, DLC will request from the PaPUC an appropriate order with respect to the rate treatment of such contribution.

(ii) If DLC is informed by the IRS that the IRS will not issue a favorable ruling or DLC determines that it is otherwise unable to obtain the private letter ruling described in paragraph (i) above prior to the DLC Nuclear Closing Date, DLC may notify Penn Power, in writing, that DLC is unable to obtain the IRS ruling. Upon receiving such notification, Penn Power shall use Commercially Reasonable Efforts to obtain a private letter ruling from the IRS prior to the DLC Nuclear Closing Date substantially to the effect that Penn Power be permitted to make an additional single contribution to the Penn Power Qualified Decommissioning Funds for Beaver Valley Unit 2 in the same calendar year as the DLC Nuclear Closing Date in an amount equal to the Beaver Valley Unit 2 Decommissioning Shortfall and, if necessary to obtain such ruling, Penn Power shall also request from the PaPUC an appropriate order with respect to the rate treatment of such contribution. To the extent that Penn Power obtains the private letter ruling referenced in this paragraph (ii), DLC shall agree to pay in cash to Penn Power an amount equal to the Beaver Valley Unit 2 Decommissioning Shortfall.

(iii) If DLC determines that the private letter rulings described in paragraphs (i)-(ii) will not be obtained, Penn Power shall, at the request of DLC, cooperate with DLC in requesting such private letter rulings from the IRS or

authorizations from any other Governmental Authority prior to the DLC Nuclear Closing Date that would permit DLC to transfer to Penn Power or permit DLC or Penn Power, as applicable, to make one or more contributions, as soon as possible after January 1, 1999, to the Beaver Valley Unit 2 Qualified Decommissioning Funds or the Penn Power Qualified

Decommissioning Funds, as applicable, in such amounts that would provide to Penn Power in Qualified Funds, the equivalent, on an after-tax present value basis, of the Beaver Valley Unit 2 Decommissioning Amount as determined in paragraphs (i) and (ii) above. In the event that the rulings or authorizations in this paragraph (iii) are not able to be obtained or DLC otherwise determines not to pursue the provisions of this paragraph (iii), DLC shall transfer to Penn Power such amounts as provided pursuant to the provisions of paragraphs (v)(A) and (B) below.

(iv) At the DLC Nuclear Closing, DLC shall cause all of the assets of the Beaver Valley Unit 2 Qualified Decommissioning Funds to be transferred to Penn Power (or, if directed in writing to do so by Penn Power, to the trustee of any trust specified in such written direction), provided that (A) Penn Power shall contribute all amounts received from the Beaver Valley Unit 2 Qualified Decommissioning Funds into the Penn Power Qualified Decommissioning Funds, and (B) each of DLC and Penn Power shall have received private letter rulings from the IRS, or opinions of counsel satisfactory to each of DLC and Penn Power, substantially to the effect that, pursuant to Treas. Reg. section 1.468A-6, neither DLC nor Penn Power nor any of the applicable DLC Qualified Decommissioning Funds or Penn Power Qualified Decommissioning Funds shall recognize any gain or otherwise take into account any income for federal income tax purposes by reason of the transfer of the assets of the Beaver Valley Unit 2 Qualified Decommissioning Funds.

(v) At the DLC Nuclear Closing Date, DLC shall, in respect of any amounts for which an IRS private letter ruling pursuant to paragraphs (i), (ii) or (iii) has not been received, transfer an additional decommissioning payment to Penn Power as follows:

(A) If receipt of the additional decommissioning payment by Penn Power from DLC is not included in income for federal income tax purposes or Penn Power receives a deduction for federal income tax purposes for the same year in which it has such income, the additional decommissioning payment ("ADPNet") shall be ($10.3 million - AQF) (1.436).

As used in this paragraph (A) and paragraph (B) below, AQF shall mean the additional qualifying fund deposits authorized by any IRS ruling, including any qualified fund deposits made between January 1, 1999 and the DLC Nuclear Closing Date; provided, however, that ADPNet shall not be less than zero.

(B) If receipt of the additional decommissioning payment by Penn Power is included in income for federal income tax purposes and Penn Power does not receive a deduction for federal income tax purposes for the same year in which it has such income, the additional decommissioning payment ("ADPGross") shall be ($10.3 million - AQF) (1.436)

divided by 0.65; provided, however, that ADPGross shall not be less than zero.

Any additional decommissioning payment shall be payable in cash, or in additional Nonqualified Funds, and at the request of DLC, Penn Power shall contribute all payments received from DLC into the Penn Power Nonqualified Decommissioning Funds or the Penn Power Qualified Decommissioning Funds.

(b) Beaver Valley Unit 2 Nonqualified Funds.

(i) DLC and Penn Power shall use Commercially Reasonable Efforts to obtain a private letter ruling from the IRS prior to the DLC Nuclear Closing Date substantially to the effect that Penn Power shall not recognize any gain or otherwise take into account any income for federal income tax purposes by reason of the transfer of the assets of the Beaver Valley Unit 2 Nonqualified Decommissioning Funds.

(ii) At the DLC Nuclear Closing, DLC shall cause all of the assets of the Beaver Valley Unit 2 Nonqualified Decommissioning Funds to be transferred to Penn Power (or, if directed in writing to do so by Penn Power, to the trustee of any trust specified in such written direction), provided that, to the extent required by any IRS private letter ruling received pursuant to paragraph (i), Penn Power shall contribute all amounts received from the Beaver Valley Unit 2 Nonqualified Decommissioning Funds into the Penn Power Nonqualified or Qualified Decommissioning Funds, as applicable.

(iii) If the receipt by Penn Power of the Beaver Valley Unit 2 Nonqualified Decommissioning Funds is included in income for federal income tax purposes and Penn Power does not receive

a deduction for federal income tax purposes for the same year in which it has such income, DLC shall transfer to Penn Power an amount equal to the assets of the Beaver Valley Unit 2 Nonqualified Decommissioning Funds as of the DLC Nuclear Closing Date divided by 0.65.

(c) Reporting

Commencing on the date of this Agreement until the DLC Nuclear Closing Date, DLC shall provide (or cause the investment manager to provide) to Penn Power quarterly unaudited statements of earnings, contributions, market values, investment allocations and performance reports and such other information for the Beaver Valley Unit 2 Qualified and Nonqualified Decommissioning Funds as reasonably requested by Penn Power.

6.19.3 Perry Unit 1 Decommissioning Funds

(a) Perry Unit 1 Qualified Funds.

(i) As soon as practicable after execution of this Agreement, DLC shall use Commercially Reasonable Efforts to obtain a private letter ruling from the IRS substantially to the effect that DLC be permitted to make an additional single contribution in the same calendar year as the DLC Nuclear Closing Date to the Perry Unit 1 Qualified Decommissioning Fund in an amount equal to the Perry Unit 1 Decommissioning Shortfall. As used herein, the "Perry Unit 1 Decommissioning Shortfall" shall mean $21.6 million (the "Perry Unit 1 Decommissioning Amount") less the amount of any additional qualifying fund deposits made by DLC to the Perry Unit 1 Qualified Decommissioning Fund between January 1, 1999 and the DLC Nuclear Closing Date. If necessary to obtain such IRS ruling, DLC will request from the PaPUC an appropriate order with respect to the rate treatment of such contribution.

(ii) If DLC is informed by the IRS that the IRS will not issue a favorable ruling or DLC determines that it is otherwise unable to obtain the private letter ruling described in paragraph (i) above prior to the DLC Nuclear Closing Date, DLC may notify CEIC, in writing, that DLC is unable to obtain the IRS ruling. Upon receiving such notification, CEIC shall use Commercially Reasonable Efforts to obtain a private letter ruling from the IRS prior to the DLC Nuclear Closing Date substantially to the effect that CEIC be permitted to make an additional single contribution to the CEIC Qualified Decommissioning Funds for Perry Unit 1 in the

same calendar year as the DLC Nuclear Closing Date in an amount equal to the Perry Unit 1 Decommissioning Shortfall and, if necessary to obtain such ruling, CEIC shall also request from the PUCO an appropriate order with respect to the rate treatment of such contribution. To the extent that CEIC obtains the private letter ruling referenced in this paragraph (ii), DLC shall agree to pay in cash to CEIC an amount equal to the Perry Unit 1 Decommissioning Shortfall.

(iii) If DLC determines that the private letter rulings described in paragraphs (i)- (ii) will not be obtained, CEIC shall, at the request of DLC, cooperate with DLC in requesting such private letter rulings from the IRS or authorizations from any other Governmental Authority prior to the DLC Nuclear Closing Date that would permit DLC to transfer to CEIC or permit DLC or CEIC, as applicable, to make one or more contributions, as soon as possible after January 1, 1999, to the Perry Unit 1 Qualified Decommissioning Funds or the CEIC Qualified Decommissioning Funds, as applicable, in such amounts that would provide to CEIC in Qualified Funds, the equivalent, on an after-tax present value basis, of the Perry Unit 1 Decommissioning Amount as determined in paragraphs (i) and (ii) above. In the event that the rulings or authorizations in this paragraph (iii) are not able to be obtained or DLC otherwise determines not to pursue the provisions of this paragraph (iii), DLC shall transfer to

CEIC such amounts as provided pursuant to the provisions of paragraphs (v)(A) and (B) below.

(iv) At the DLC Nuclear Closing, DLC shall cause all of the assets of the Perry Unit 1 Qualified Decommissioning Funds to be transferred to CEIC (or, if directed in writing to do so by CEIC, to the trustee of any trust specified in such written direction), provided that (A) CEIC shall contribute all amounts received from the Perry Unit 1 Qualified Decommissioning Funds into the CEIC Qualified Decommissioning Funds, and (B) each of DLC and CEIC shall have received private letter rulings from the IRS, or opinions of counsel satisfactory to each of DLC and CEIC, substantially to the effect that, pursuant to Treas. Reg. section 1.468A-6, neither DLC nor CEIC nor any of the applicable DLC Qualified Decommissioning Funds or CEIC Qualified Decommissioning Funds shall recognize any gain or otherwise take into account any income for federal income tax purposes by reason of the transfer of the assets of the Perry Unit 1 Qualified Decommissioning Funds.

(v) At the DLC Nuclear Closing Date, DLC shall, in respect of

any amounts for which an IRS private letter ruling pursuant to paragraphs (i), (ii) or (iii) has not been received, transfer an additional decommissioning payment to CEIC as follows:

(A) If receipt of the additional decommissioning payment by CEIC from DLC is not included in income for federal income tax purposes or CEIC receives a deduction for federal income tax purposes for the same year in which it has such income, the additional decommissioning payment ("ADPNet") shall be ($21.6 million - AQF) (1.436). As used in this paragraph (A) and paragraph (B)below, AQF shall mean the additional qualifying fund deposits authorized by any IRS ruling, including any qualified fund deposits made between January 1, 1999 and the DLC Nuclear Closing Date; provided, however, that ADPNet shall not be less than zero.

(B) If receipt of the additional decommissioning payment by CEIC is included in income for federal income tax purposes and CEIC does not receive a deduction for federal income tax purposes for the same year in which it has such income, the additional decommissioning payment ("ADPGross") shall be ($21.6 million - AQF) (1.436) divided by 0.65; provided, however, that ADPGross shall not be less than zero.

Any additional decommissioning payment shall be payable in cash or in additional Nonqualified Funds, and at the request of DLC, CEIC shall contribute all payments received from DLC into the CEIC Nonqualified Decommissioning Funds or the CEIC Qualified Decommissioning Funds.

(b) Reporting

Commencing on the date of this Agreement until the DLC Nuclear Closing Date, DLC shall provide (or cause the investment manager to provide) to CEIC quarterly unaudited statements of earnings, contributions, market values, investment allocations and performance reports and such other information for the Perry Unit 1 Qualified Decommissioning Funds as reasonably requested by CEIC.

6.20 Employee Morale. The Parties agree to work together in good faith to preserve the morale of the employees at Beaver Valley prior to the DLC Nuclear Closing Date in respect of Beaver Valley.

6.21 Beaver Valley Omnibus Services Agreement and Related Easements. The Parties agree that they will work together in good faith during the Interim Period to finalize the Beaver Valley Omnibus Services Agreement (including

Exhibit A thereto), and that the form thereof attached hereto may need to be modified in order to take into account the reasonable operating needs of Beaver Valley following the DLC Nuclear Closing Date. The Parties further agree that they will work together to agree on an easement and access agreement, substantially in the form of Exhibit K, to be executed at the time the Beaver Valley Omnibus Services Agreement is executed, to provide DLC with the access rights reasonably necessary to enable it to perform its obligations under the Beaver Valley Omnibus Services Agreement.

ARTICLE VII

CONDITIONS

7.1 Conditions to Obligations of the Parties. The obligation of the Parties to effect the transfer of the DLC Nuclear Assets in respect of each Plant and the other transactions contemplated by this Agreement shall be subject to the fulfillment or waiver by each of Specified FE Subsidiaries and DLC at or prior to the DLC Nuclear Closing Date, of the following conditions in respect of each Plant:

(a) The waiting period under the HSR Act applicable to the consummation of the transfer of the DLC Nuclear Assets contemplated hereby shall have expired or been terminated;

(b) No preliminary or permanent injunction or other order or decree by any Governmental Authority which prevents the consummation of the transfer of the applicable DLC Nuclear Assets contemplated herein shall have been issued and remain in effect (each Party agreeing to use its reasonable best efforts to have any such injunction, order or decree lifted) and no statute, rule or regulation shall have been enacted by any state or federal government or Governmental Authority prohibiting the consummation of the transfer of the DLC Nuclear Assets;

(c) In respect of the DLC Nuclear Closing in respect of Beaver Valley, DLC shall have terminated the Beaver Valley Facilities Leases and assumed the Beaver Valley Unit 2 Indentures Notes issued pursuant to the Beaver Valley Unit 2 Lease Indentures;

(d) The Applicable NRC Approval(s) shall have been obtained in respect of the transfer of such Plant;

(e) The CAPCO Settlement Agreement shall have been executed by DLC, the FE Subsidiaries and TEC;

(f) The Support Agreement shall have been executed by FE and DLC;

(g) All consents or approvals, filings with, or notices to any

Governmental Authority that are necessary for the consummation of the transactions contemplated by each of the CAPCO Settlement Agreement and the Electric Facilities Agreement shall have been obtained or made, other than such consents, approvals, filings or notices which are not required in the ordinary course to be obtained or made prior to the consummation of the transactions thereunder or which, if not obtained or made, will not prevent the parties thereto from performing their material obligations thereunder; and

(h) There shall be no court order requiring DQE to consummate the transactions contemplated under the Agreement and Plan of Merger between DQE and Allegheny Energy, Inc.

7.2 Conditions to Obligations of DLC. The obligation of DLC to consummate the transactions contemplated by this Agreement shall be subject to the fulfillment of the following conditions or the waiver thereof by DLC at or prior to the DLC Nuclear Closing Date of the following conditions:

(a) DLC shall have received all Required Regulatory Approvals applicable to DLC, in form and substance reasonably satisfactory to it and on terms and conditions that do not create a Regulatory Material Adverse Effect for DLC;

(b) All consents and approvals for the consummation of the execution, delivery and performance of this Agreement and the Ancillary Agreements and the transfer of the applicable DLC Nuclear Assets contemplated hereby required under the terms of any note, bond, mortgage, indenture, material agreement or other instrument or obligation to which Specified FE Subsidiaries is a party or by which Specified FE Subsidiaries, or any of the applicable DLC Nuclear Assets, may be bound, shall have been obtained, other than those which if not obtained, would not, individually or in the aggregate, create a Material Adverse Effect;

(c) Specified FE Subsidiaries shall have in all material respects performed and complied with the covenants and agreements contained in this Agreement which are required to be performed and complied with by Specified FE Subsidiaries on or prior to the DLC Nuclear Closing Date;

(d) The representations and warranties of Specified FE Subsidiaries set forth in this Agreement shall be true and correct in all material respects as of the DLC Nuclear Closing Date as though made at and as of the DLC Nuclear Closing Date;

(e) DLC shall have received a certificate from authorized officers of Specified FE Subsidiaries, dated the DLC Nuclear Closing Date, to the effect that, to such officers' Knowledge, the conditions set forth in Sections 7.2(c) and (d) have been satisfied by Specified FE Subsidiaries;

(f) DLC shall have received an opinion from counsel to each Specified FE Subsidiary, dated the DLC Nuclear Closing Date and reasonably

satisfactory in form and substance to DLC and its counsel, substantially to the effect that:

(i) Such Specified FE Subsidiary is a corporation duly organized, validly existing and in good standing under the laws of its state of organization and is qualified to do business in the Commonwealth of Pennsylvania or State of Ohio, as the case may be, and has the full corporate power and authority to own, lease and operate its material assets and properties and to carry on its business as is now conducted, and to execute and deliver the Agreement and each of the Ancillary Agreements to which it is a party and to consummate the transactions contemplated hereby and thereby; and the execution and delivery of the Agreement and the Ancillary Agreements to which it is a party by such Specified FE Subsidiary, and the consummation of the transactions contemplated hereby and thereby have been duly and validly authorized by all necessary corporate action required on the part of such Specified FE Subsidiary;

(ii) The Agreement and each of the Ancillary Agreements to which it is a party have been duly and validly executed and delivered by such Specified FE Subsidiary and constitute legal, valid and binding agreements of such Specified FE Subsidiary, enforceable against such Specified FE Subsidiary in accordance with their terms, except that such enforceability may be limited by applicable bankruptcy, insolvency, fraudulent conveyance, reorganization, moratorium or other similar laws affecting or relating to enforcement of creditors' rights generally and general principles of equity (regardless of whether enforcement is considered in a proceeding at law or in equity);

(iii) The execution, delivery and performance of the Agreement and each of the Ancillary Agreements to which it is a party by the applicable Specified FE Subsidiary does not (A) conflict with the Articles of Incorporation or Bylaws, as currently in effect, of such Specified FE Subsidiary or (B) to the knowledge of such counsel, constitute a violation of or default under those agreements or instruments set forth on a Schedule attached to the opinion and which have been identified to such counsel as all the agreements and instruments which are material to the business or financial condition of such Specified FE Subsidiary;

(iv) The Assignment and Assumption Agreement and other transfer documents described in Section 3.6 are in proper form for each Specified FE Subsidiary to assume its respective Assumed Liabilities; and

(v) No consent or approval of, filing with, or notice to, any Governmental Authority is necessary for the execution and delivery of this Agreement and each of the Ancillary Agreements by Specified FE Subsidiaries or the consummation by Specified FE Subsidiaries of the transactions contemplated hereby and thereby, other than (i) such consents, approvals, filings or notices set forth in Schedules 4.3(a) or 4.3(b) or which, if not obtained or made, will not prevent Specified FE Subsidiaries from performing their material obligations under this Agreement and each of the Ancillary Agreements to which it is a party and (ii) such consents, approvals, filings or

notices which become applicable to each Specified FE Subsidiary or the applicable DLC Nuclear Assets as a result of the specific regulatory status of DLC (or any of its Affiliates) or as a result of any other facts that specifically relate to the business or activities in which DLC (or any of its Affiliates) is or proposes to be engaged.

In rendering the foregoing opinion, counsel to each Specified FE Subsidiary may rely on opinions of local law reasonably acceptable to DLC.

(g) Specified FE Subsidiaries shall have delivered, or caused to be delivered, to DLC at the DLC Nuclear Closing, Specified FE Subsidiaries closing deliveries described in Section 3.6.

7.3 Conditions to Obligations of Specified FE Subsidiaries. The obligation of Specified FE Subsidiaries to consummate the transactions contemplated by this Agreement shall be subject to the fulfillment or waiver by Specified FE Subsidiaries at or prior to the DLC Nuclear Closing Date of the following conditions:

(a) Specified FE Subsidiaries shall have received all Required Regulatory Approvals applicable to Specified FE Subsidiaries on terms and conditions that do not create a Regulatory Material Adverse Effect for Specified FE Subsidiaries;

(b) All consents and approvals for the execution, delivery, and performance of this Agreement and the Ancillary Agreements, and for the consummation of the transfer of the applicable DLC Nuclear Assets contemplated hereby required under the terms of any note, bond, mortgage, indenture, material agreement or other instrument or obligation to which DLC is a party or by which DLC, or any of the DLC Nuclear Assets, may be bound, shall have been obtained, other than those which if not obtained, would not, individually or in the aggregate, create a Material Adverse Effect;

(c) DLC shall have in all material respects performed and complied with the covenants and agreements contained in this Agreement which are required to be performed and complied with by DLC on or prior to the DLC Nuclear Closing Date (including its covenant under Section 6.16(a) to terminate the Beaver Valley Unit 2 Facility Leases and assume the obligations in respect of the Beaver Valley Unit 2 Indentures Notes);

(d) The representations and warranties of DLC set forth in this Agreement shall be true and correct in all material respects as of the DLC Nuclear Closing Date as though made at and as of the DLC Nuclear Closing Date;

(e) Specified FE Subsidiaries shall have received a certificate from an authorized officer of DLC, dated the DLC Nuclear Closing Date, to the effect that, to such officer's Knowledge, the conditions set forth in Sections 7.3(c) and (d) have been satisfied by DLC;

(f) Specified FE Subsidiaries shall have received an opinion from DLC's counsel, dated the DLC Nuclear Closing Date and reasonably satisfactory in form and substance to Specified FE Subsidiaries and its counsel, substantially to the effect that:

(i) DLC is a corporation duly incorporated, validly existing and in good standing under the laws of the Commonwealth of Pennsylvania and has the full corporate power and authority to own, lease and operate its material assets and properties and to carry on its business as is now conducted, and to execute and deliver the Agreement and each of the Ancillary Agreements and to consummate the transactions contemplated hereby and thereby; and the execution and delivery of the Agreement and the Ancillary Agreements by DLC, and the consummation of the transactions contemplated hereby and thereby have been duly and validly authorized by all necessary corporate action required on the part of DLC;

(ii) The Agreement and each of the Ancillary Agreements have been duly and validly executed and delivered by DLC and constitute legal, valid and binding agreements of DLC, enforceable against DLC in accordance with their terms, except that such enforceability may be limited by applicable bankruptcy, insolvency, fraudulent conveyance, reorganization, moratorium or other similar laws affecting or relating to enforcement of creditors' rights generally and general principles of equity (regardless of whether enforcement is considered in a proceeding at law or in equity);

(iii) The execution, delivery and performance of the Agreement and each of the Ancillary Agreements by DLC does not conflict with the Articles of Incorporation or Bylaws, as currently in effect, of DLC;

(iv) The Assignment and Assumption Agreement, the Bill of Sale, the Warranty Deeds, and other transfer documents described in Section 3.7 are in proper form to transfer to Specified FE Subsidiaries such title as was held by DLC to the applicable DLC Nuclear Assets; and

(v) No consent or approval of, filing with, or notice to, any Governmental Authority is necessary for the execution and delivery of this Agreement and each of the Ancillary Agreements by DLC, or the consummation by DLC of the transactions contemplated hereby and thereby, other than (i) such consents, approvals, filings or notices set forth in Schedules 4.3(a) or 4.3(b) or which, if not obtained or made, will not prevent DLC from performing its material obligations under this Agreement and each of the Ancillary Agreements and (ii) such consents, approvals, filings or notices which become applicable to DLC or the DLC Nuclear Assets as a result of the specific regulatory status of Specified FE Subsidiaries (or any of their Affiliates) or as a result of any other facts that specifically relate to the business or activities in which Specified FE Subsidiaries (or any of their Affiliates) is or proposes to be engaged.

In rendering the foregoing opinion, DLC's counsel may rely on opinions of local law reasonably acceptable to Specified FE Subsidiaries.

(g) DLC shall have delivered, or caused to be delivered, to Specified FE Subsidiaries at the applicable DLC Nuclear Closing, DLC's closing deliveries described in Section 3.7.

(h) With respect to Beaver Valley only, Penn Power shall have received from a title insurance company ALTA title owner's insurance policies on the Real Property, subject only to Permitted Encumbrances, standard printed exceptions and such other Encumbrances as are reasonably acceptable to Penn Power. Any Permitted Encumbrance not removed prior to the DLC Nuclear Closing shall be deemed reasonably acceptable to Specified FE Subsidiaries as aforesaid unless such Permitted Encumbrance would have a Material Adverse Effect. DLC shall provide Specified FE Subsidiaries with a copy of a preliminary title report and survey for the Real Property as soon as they are available.

ARTICLE VIII

INDEMNIFICATION

8.1 General Indemnification Obligations. Up to the DLC Nuclear Closing Date, the indemnification provisions of the CAPCO Agreements shall be applicable.

8.2 Indemnification and Release of DLC by Specified FE Subsidiaries.

(a) Each Specified FE Subsidiary severally with respect to itself under this Agreement shall indemnify, defend and hold harmless DLC, its officers, directors, employees, shareholders, Affiliates and agents (each, a "DLC Indemnitee") from and against any and all Indemnifiable Losses asserted against or suffered by any DLC Indemnitee (each, a "DLC Indemnifiable Loss") in any way relating to, resulting from or arising out of (i) any breach by such Specified FE Subsidiary of any covenant or agreement of such Specified FE Subsidiary contained in this Agreement or the representations and warranties contained in Sections 5.1, 5.2 and 5.3, (ii) the Assumed Liabilities, or (iii) any Third Party Claims against a DLC Indemnitee arising out of or in connection with such Specified FE Subsidiary's ownership or operation of the Plants and other DLC Nuclear Assets on or after the DLC Nuclear Closing Date.

(b) Each Specified FE Subsidiary severally with respect to itself under this Agreement, on behalf of its Representatives and Affiliates, does hereby release, hold harmless and forever discharge DLC, DLC Representatives and Affiliates of DLC, from any and all Specified FE Subsidiaries Indemnifiable Losses resulting from, arising out of or relating to Assumed Liabilities. Each Specified FE Subsidiary hereby waives for itself any and all rights and benefits with respect to such Specified FE Subsidiaries' Indemnifiable Losses that it now has, or in the future may have conferred upon it by virtue of any statute or common law principle which provides that a general release does not extend to claims which a Party does not know or suspect

to exist in its favor at the time of executing the release, if Knowledge of such

claims would have materially affected such Party's settlement with the obligor. In this connection, each Specified FE Subsidiary hereby acknowledges that it is aware that factual matters now unknown to it may have given or may hereafter give rise to Specified FE Subsidiaries' Indemnifiable Losses that are presently unknown, unanticipated and unsuspected, and it further agrees that this release has been negotiated and agreed upon in light of that awareness and nevertheless hereby intends to release DLC, DLC Representatives and DLC Affiliates from the Specified FE Subsidiaries' Indemnifiable Losses described in the first sentence of this paragraph.

8.3 Indemnification of Specified FE Subsidiaries by DLC.

DLC shall indemnify, defend and hold harmless Specified FE Subsidiaries, their officers, directors, employees, shareholders, Affiliates and agents (each, a "Specified FE Subsidiaries' Indemnitee") from and against any and all Indemnifiable Losses asserted against or suffered by any Specified FE Subsidiaries' Indemnitee (each, a "Specified FE Subsidiaries' Indemnifiable Loss") in any way relating to, resulting from or arising out of (i) any breach by DLC of any covenant or agreement of DLC contained in this Agreement or the representations and warranties contained in Sections 4.1, 4.2 and 4.3, (ii) the Excluded Liabilities, (iii) noncompliance by DLC with any bulk sales or transfer laws as provided in Section 10.13, and (iv) claims and liabilities associated with the termination of the Beaver Valley Unit 2 Facility Leases as contemplated by Section 6.16.

8.4 Certain Limitations on Indemnification.

(a) Notwithstanding anything to the contrary contained herein:

(i) Any Indemnitee shall use Commercially Reasonable Efforts to mitigate all losses, damages and the like relating to a claim under these indemnification provisions, including availing itself of any defenses, limitations, rights of contribution, claims against third Persons and other rights at law or equity. The Indemnitee's Commercially Reasonable Efforts shall include the reasonable expenditure of money to mitigate or otherwise reduce or eliminate any loss or expenses for which indemnification would otherwise be due, and the Indemnifying Party shall reimburse the Indemnitee for the Indemnitee's reasonable expenditures in undertaking the mitigation.

(ii) Any Indemnifiable Loss shall be net of (i) the dollar amount of any insurance or other proceeds actually receivable by the Indemnitee or any of its Affiliates with respect to the Indemnifiable Loss, and (ii) income tax benefits to the Indemnitee, to the extent realized by the Indemnitee. Any Party seeking indemnity hereunder shall use Commercially Reasonable Efforts to seek coverage (including both costs of defense and indemnity) under applicable insurance policies with respect to any such Indemnifiable Loss.

(b) The expiration, termination or extinguishment of any covenant or agreement shall not affect the Parties' obligations under Sections 8.2 and 8.3 hereof if the Indemnitee provided the Indemnifying Party with proper notice of the claim or event for which indemnification is sought prior to such expiration, termination or extinguishment.

(c) Except to the extent otherwise provided in Article VII, the rights and remedies of DLC and each DLC Indemnitee and each of the Specified FE Subsidiaries and each Specified FE Subsidiaries' Indemnitee under this Article VIII are exclusive and in lieu of any and all other rights and remedies which DLC and Specified FE Subsidiaries may have under this Agreement or otherwise for monetary relief, with respect to (i) any breach of or failure to perform any covenant, agreement, or representation or warranty set forth in this Agreement, after the occurrence of the DLC Nuclear Closing, or (ii) the Assumed Liabilities or the Excluded Liabilities, as the case may be. The indemnification obligations of the Parties set forth in this Article VIII apply only to matters arising out of this Agreement, but do not extend to matters arising out of the Ancillary Agreements. Any Indemnifiable Loss arising under or pursuant to an Ancillary Agreement shall be governed by the indemnification obligations, if any, contained in the Ancillary Agreement under which the Indemnifiable Loss arises.

(d) Notwithstanding anything to the contrary contained herein, no Party (including an Indemnitee) shall be entitled to recover from any other Party (including an Indemnifying Party) for any liabilities, damages, obligations, payments, losses, costs, or expenses under this Agreement any amount in excess of the actual compensatory damages, court costs and reasonable attorney's and other advisor fees suffered by such Party. DLC and Specified FE Subsidiaries waive any right to recover punitive, incidental, special, exemplary and consequential damages arising in connection with or with respect to this Agreement. The provisions of this Section 8.4(d) shall not apply to indemnification for a Third Party Claim.

8.5 Defense of Claims.

(a) If any Indemnitee receives notice of the assertion or commencement of any Third Party Claim made or brought by any Person who is not a Party to this Agreement or any Affiliate of a Party to this Agreement with respect to which indemnification is to be sought from an Indemnifying Party, the Indemnitee shall give such Indemnifying Party reasonably prompt written notice thereof, but in any event such notice shall not be given later than ten (10) calendar days after the Indemnitee's receipt of notice of such Third Party Claim. Such notice shall describe the nature of the Third Party Claim in reasonable detail and shall indicate the estimated amount, if practicable, of the Indemnifiable Loss that has been or may be sustained by the Indemnitee. The Indemnifying Party will have the right to participate in or, by giving written notice to the Indemnitee, to elect to assume the defense of any Third Party Claim at such Indemnifying Party's expense and by such Indemnifying Party's own counsel, provided that the counsel for the Indemnifying Party who shall conduct

the defense of such Third Party Claim shall be reasonably satisfactory to the Indemnitee. The Indemnitee shall cooperate in good faith in such defense at such Indemnitee's own expense. If an Indemnifying Party elects not to assume the defense of any Third Party Claim, the Indemnitee may compromise or settle such Third Party Claim over the objection of the Indemnifying Party, which settlement or compromise shall conclusively establish the Indemnifying Party's liability pursuant to this Agreement.

(b) (i) If, within ten (10) calendar days after an Indemnitee provides written notice to the Indemnifying Party of any Third Party

Claims, the Indemnitee receives written notice from the Indemnifying Party that such Indemnifying Party has elected to assume the defense of such Third Party Claim as provided in Section 8.5(a), the Indemnifying Party will not be liable for any legal expenses subsequently incurred by the Indemnitee in connection with the defense thereof; provided, however, that if the Indemnifying Party shall fail to take reasonable steps necessary to defend diligently such Third Party Claim within twenty (20) calendar days after receiving notice from the Indemnitee that the Indemnitee believes the Indemnifying Party has failed to take such steps, the Indemnitee may assume its own defense and the Indemnifying Party shall be liable for all reasonable expenses thereof.

(ii) Without the prior written consent of the Indemnitee, the Indemnifying Party shall not enter into any settlement of any Third Party Claim which would lead to liability or create any financial or other obligation on the part of the Indemnitee for which the Indemnitee is not entitled to indemnification hereunder. If a firm offer is made to settle a Third Party Claim without leading to liability or the creation of a financial or other obligation on the part of the Indemnitee for which the Indemnitee is not entitled to indemnification hereunder and the Indemnifying Party desires to accept and agree to such offer, the Indemnifying Party shall give written notice to the Indemnitee to that effect. If the Indemnitee fails to consent to such firm offer within ten (10) calendar days after its receipt of such notice, the Indemnifying Party shall be relieved of its obligations to defend such Third Party Claim and the Indemnitee may contest or defend such Third Party Claim. In such event, the maximum liability of the Indemnifying Party as to such Third Party Claim will be the amount of such settlement offer plus reasonable costs and expenses paid or incurred by Indemnitee up to the date of said notice.

(c) Any claim by an Indemnitee on account of an Indemnifiable Loss which does not result from a Third Party Claim (a "Direct Claim") shall be asserted by giving the Indemnifying Party reasonably prompt written notice thereof, stating the nature of such claim in reasonable detail and indicating the estimated amount, if practicable, but in any event such notice shall not be given later than ten (10) calendar days after the Indemnitee becomes aware of such Direct Claim, and the Indemnifying Party shall have a period of thirty (30) calendar days within which to respond to such Direct Claim. If the Indemnifying Party does not respond within such thirty (30) calendar day period, the Indemnifying Party shall be deemed to have accepted such claim. If the

Indemnifying Party rejects such claim, the Indemnitee will be free to seek enforcement of its right to indemnification under this Agreement.

(d) If the amount of any Indemnifiable Loss, at any time subsequent to the making of an indemnity payment in respect thereof, is reduced by recovery, settlement or otherwise under or pursuant to any insurance coverage, or pursuant to any claim, recovery, settlement or payment by, from or against any other entity, the amount of such reduction, less any costs, expenses or premiums incurred in connection therewith (together with interest thereon from the date of payment thereof at the publicly announced prime rate then in effect of The Chase Manhattan Bank) shall promptly be repaid by the Indemnitee to the Indemnifying Party.

(e) A failure to give timely notice as provided in this Section 8.5 shall not affect the rights or obligations of any Party hereunder except if,

and only to the extent that, as a result of such failure, the Party which was entitled to receive such notice was actually prejudiced as a result of such failure.

ARTICLE IX

TERMINATION

9.1 Termination. (a) This Agreement may be terminated at any time prior to the DLC Nuclear Closing Date by mutual written consent of DLC and the Specified FE Subsidiaries.

(b) This Agreement may be terminated by either Party if (i) any Federal or state court of competent jurisdiction shall have issued an order, judgment or decree permanently restraining, enjoining or otherwise prohibiting the DLC Nuclear Closing, and such order, judgment or decree shall have become final and nonappeallable; (ii) any statute, rule, order or regulation shall have been enacted or issued by any Governmental Authority which prohibits the consummation of the DLC Nuclear Closing; or (iii) the DLC Nuclear Closing contemplated hereby shall have not occurred on or before the day which is 12 months from the date of this Agreement (the "Termination Date"); provided that the right to terminate this Agreement under this Section 9.1(b) (iii) shall not be available to any Party whose failure to fulfill any obligation under this Agreement has been the cause of, or resulted in, the failure of the DLC Nuclear Closing to occur on or before such date; and provided, further, that if on the Termination Date the conditions to the DLC Nuclear Closing set forth in Section 7.1(b) or 7.2(a) or 7.3(a), shall not have been fulfilled but all other conditions to the DLC Nuclear Closing shall be fulfilled or shall be capable of being fulfilled, then the Termination Date shall be the day which is 18 months from the date of this Agreement.

(c) This Agreement may be terminated by DLC if it shall have

received a Final Order that has caused the conditions set forth in Section 7.2(a) not to be satisfied.

(d) This Agreement may be terminated by Specified FE Subsidiaries if they (or either one of them) shall have received a Final Order that has caused the conditions set forth in Section 7.3(a) not to be satisfied.

(e) This Agreement may be terminated by either Party if, before the DLC Nuclear Closing Date, all or any portion of the DLC Nuclear Assets are (i) taken by eminent domain or are the subject of a pending or (to the Knowledge of DLC with respect such DLC Nuclear Assets) contemplated taking which has not been consummated or (ii) damaged or destroyed by fire or other casualty, DLC shall (x) notify the applicable Specified FE Subsidiary promptly in writing of such fact, (y) assign or pay, as the case may be, any proceeds thereof to the applicable Specified FE Subsidiary at the DLC Nuclear Closing, and (z) either restore the damage or assign the insurance proceeds therefor (and pay the amount of any deductible and/or self-insured amount in respect of such casualty) to the applicable Specified FE Subsidiary at the DLC Nuclear Closing. Notwithstanding the above, if such casualty or loss results in a Material Adverse Effect to DLC with respect to the DLC Nuclear Assets being conveyed by DLC, the Parties shall negotiate to settle the loss resulting from such taking (and such negotiation shall include, without limitation, the negotiation of a fair and equitable payment to the applicable Specified FE Subsidiary to offset such casualty or

loss). If no such settlement is reached within sixty (60) days after DLC has notified the applicable Specified FE Subsidiary of such casualty or loss, then DLC may terminate this Agreement. In the event of damage or destruction which DLC elects to restore, DLC will have the right (with respect to the DLC Nuclear Assets being conveyed by DLC) to postpone the DLC Nuclear Closing for up to six (6) months, and the applicable Specified FE Subsidiary will have the right to inspect and observe, or have its Representatives inspect or observe, all repairs necessitated by any such damage or destruction.

(f) This Agreement may be terminated by DLC if there has been a violation or breach by a Specified FE Subsidiary of any covenant, representation or warranty contained in this Agreement which has resulted in a Material Adverse Effect and such violation or breach is not cured (and the applicable Material Adverse Effect remedied) by the earlier of the DLC Nuclear Closing Date or the date which is thirty (30) days after receipt by Specified FE Subsidiaries of notice specifying particularly such violation or breach, and such violation or breach has not been waived by DLC.

(g) This Agreement may be terminated by Specified FE Subsidiaries if there has been a violation or breach by DLC of any covenant, representation or warranty contained in this Agreement which has resulted in a Material Adverse Effect and such violation or breach is not cured (and the applicable Material Adverse Effect remedied) by the earlier of the DLC Nuclear Closing Date or the date which is thirty (30) days after receipt by DLC of notice specifying particularly such violation or breach, and such violation or

breach has not been waived by Specified FE Subsidiaries provided, however, that in no event shall DLC's entry into a commitment described in Section 6.1(d) constitute a basis for termination under this clause (g).

9.2 Procedure and Effect of No-Default Termination. In the event of termination of this Agreement by either or both of the Parties pursuant to any of Section 9.1(a) through (e), written notice thereof shall forthwith be given by the terminating party to the other party, whereupon the liabilities of the Parties hereunder will terminate, except as otherwise expressly provided in this Agreement, and thereafter neither Party shall have any recourse against the other by reason of this Agreement.

ARTICLE X

MISCELLANEOUS PROVISIONS

10.1 Amendment and Modification. This Agreement may be amended, modified or supplemented only by written agreement of DLC and Specified FE Subsidiaries.

10.2 Waiver of Compliance; Consents. Except as otherwise provided in this Agreement, any failure of any of the Parties to comply with any obligation, covenant, agreement or condition herein may be waived by the Party entitled to the benefits thereof only by a written instrument signed by the Party granting such waiver, but such waiver of such obligation, covenant, agreement or condition shall not operate as a waiver of, or estoppel with respect to, any subsequent failure to comply therewith.

10.3 No Survival. (a) Except as provided in Section 10.3(b) and 10.3(c), each and every representation, warranty and covenant contained in this Agreement shall expire with, and be terminated and extinguished by the consummation of the sale of the DLC Nuclear Assets and shall merge into the deed(s) pursuant hereto and the transfer of the Assumed Liabilities pursuant to this Agreement and such representations, warranties and covenants shall not survive the DLC Nuclear Closing Date; and none of DLC, either Specified FE Subsidiary or any officer, director, trustee or Affiliate of any of them shall be under any liability whatsoever with respect to any such representation, warranty or covenant.

(b) The covenants contained in Sections 3.2(c), 3.2(d), 3.4, 3.5, 6.2(a), 6.3(a), 6.5, 6.6, 6.7(e), 6.7(f), 6.8, 6.9, 6.11, 6.14, 6.16, 6.17, 9.2, and in Articles VIII and IX shall survive the delivery of the deed(s) and the DLC Nuclear Closing in accordance with their terms.

(c) The representations, warranties and disclaimers contained in Sections 4.1, 4.2, 4.3, 5.1, 5.2, 5.3, and claims arising under 6.7(e) shall survive the DLC Nuclear Closing for eighteen (18) months from the DLC Nuclear Closing Date.

10.4 Notices. All notices and other communications hereunder shall be in writing and shall be deemed given if delivered personally or by facsimile transmission, or mailed by overnight courier or registered or certified mail (return receipt requested), postage prepaid, to the recipient Party at its address (or at such other address or facsimile number for a Party as shall be specified by like notice; provided however, that notices of a change of address shall be effective only upon receipt thereof):

(a) If to DLC, to:

Duquesne Light Company
411 Seventh Avenue
Pittsburgh, PA 15219
Telephone: (412) 393-6000
Fax: (412) 393-6760
Attention: Morgan O'Brien

with a copy to:

Skadden, Arps, Slate, Meagher & Flom LLP
1440 New York Avenue, N.W.
Washington, DC 20005
Telephone: (202) 371-7000
Fax: (202) 393-5760
Attention: Erica A. Ward

(b) if to either Specified FE Subsidiary, to:

FirstEnergy Corp.
76 South Main Street
Akron, OH 44308
Telephone:
Fax:
Attention: Anthony J. Alexander

with a copy to:

Winthrop, Stimpson, Putnam & Roberts
One Battery Park Plaza
New York, NY 10004
Telephone: (212) 858-1000
Fax: (212) 858-1500
Attention: Michael F. Cusick

10.5 Assignment. This Agreement and all of the provisions hereof shall be binding upon and inure to the benefit of the Parties hereto and their respective successors and permitted assigns, but neither this Agreement nor any of the rights, interests or obligations hereunder shall be assigned by any Party

hereto, including by operation of law, without the prior written consent of each other Party, nor is this Agreement intended to confer upon any other Person except the Parties hereto any rights, interests, obligations or remedies hereunder. Except as expressly provided herein, no provision of this Agreement shall create any third party beneficiary rights in any employee or former employee of DLC (including any beneficiary or dependent thereof) in respect of continued employment or resumed employment, and no provision of this Agreement shall create any rights in any such Persons in respect of any benefits that may be provided, directly or indirectly, under any employee benefit plan or arrangement except as expressly provided for thereunder. DLC agrees, at the expense of Specified FE Subsidiaries, to execute and deliver such documents as may be reasonably necessary to accomplish any such assignment, transfer, pledge or other disposition of rights and interests hereunder so long as the DLC's rights under this Agreement are not thereby altered, amended, diminished or otherwise impaired.

10.6 Governing Law. This Agreement shall be governed by and construed in accordance with the law of the Commonwealth of Pennsylvania (without giving effect to conflict of law principles) as to all matters, including but not limited to matters of validity, construction, effect, performance and remedies (except to such matters of real estate law that must be governed by the laws of the State of Ohio). THE PARTIES HERETO AGREE THAT VENUE IN ANY AND ALL ACTIONS AND PROCEEDINGS RELATED TO THE SUBJECT MATTER OF THIS AGREEMENT SHALL BE IN THE STATE AND FEDERAL COURTS IN AND FOR PITTSBURGH, PENNSYLVANIA, WHICH COURTS SHALL HAVE EXCLUSIVE JURISDICTION FOR SUCH PURPOSE, AND THE PARTIES HERETO IRREVOCABLY SUBMIT TO THE EXCLUSIVE JURISDICTION OF SUCH COURTS AND IRREVOCABLY WAIVE THE DEFENSE OF AN INCONVENIENT FORUM TO THE MAINTENANCE OF ANY SUCH ACTION OR

PROCEEDING. SERVICE OF PROCESS MAY BE MADE IN ANY MANNER RECOGNIZED BY SUCH COURTS. EACH OF THE PARTIES HERETO IRREVOCABLY WAIVES ITS RIGHT TO A JURY TRIAL WITH RESPECT TO ANY ACTION OR CLAIM ARISING OUT OF ANY DISPUTE IN CONNECTION WITH THIS AGREEMENT OR THE TRANSACTIONS CONTEMPLATED HEREBY.

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

10.8 Interpretation. The articles, section and schedule headings contained in this Agreement are solely for the purpose of reference, are not part of the agreement of the parties and shall not in any way affect the meaning or interpretation of this Agreement.

10.9 Schedules and Exhibits. Except as otherwise provided in this Agreement, all Exhibits and Schedules referred to herein are intended to be and hereby are specifically made a part of this Agreement.

10.10 Entire Agreement. This Agreement and the Ancillary Agreements, including the Exhibits, Schedules, documents, certificates and instruments referred to herein or therein, embody the entire agreement and understanding of

the Parties hereto in respect of the transactions contemplated by this Agreement. There are no restrictions, promises, representations, warranties, covenants or undertakings, other than those expressly set forth or referred to herein or therein. This Agreement and the Ancillary Agreements supersede all prior agreements and understandings between the Parties with respect to such transactions (including the Agreement in Principle).

10.11 U.S. Dollars. Unless otherwise stated, all dollar amounts set forth herein are United States (U.S.) dollars.

10.12 Sewage Facilities. Pursuant to the provisions of the Pennsylvania Sewage Facilities Act, 35 P.S. section 750.7a, Penn Power is notified that a "community sewage system" (as defined in Section 2 of the Sewage Facilities Act, 35 P.S. section 750.2) is not available on one or more lots comprising part of the Real Property at the facilities list in Schedule 10.12. Prior to construction of any buildings on such lots, a permit to connect to a community sewage system or a permit for installation of an individual sewage system must be obtained pursuant to Section 7 of the Sewage Facilities Act, 35 P.S. section 750.7. Before signing this Agreement, Penn Power should contact the local agency charged with administering the Sewage Facilities Act in the area of each such facility and lot(s) to determine the procedure and requirements for obtaining a permit for an individual or community sewage system to service such lot(s), if required for the intended uses and purposes of such lot(s).

10.13 Bulk Sales Laws. Each Specified FE Subsidiary acknowledges that, notwithstanding anything in this Agreement to the contrary, DLC will not comply with the provision of the bulk sales laws of any jurisdiction in connection with the transactions contemplated by this Agreement. Each Specified FE Subsidiary hereby waives compliance by DLC with the provisions of the bulk sales laws of all applicable jurisdictions.

IN WITNESS WHEREOF, DLC and Specified FE Subsidiaries have caused this Agreement to be signed by their respective duly authorized officers as of the date first above written.

DUQUESNE LIGHT COMPANY

By: /s/ Morgan K. O'Brien

Name: Morgan K. O'Brien
Title: Vice President, Finance

PENNSYLVANIA POWER COMPANY

By: /s/ Anthony J. Alexander

Name: Anthony J. Alexander
Title: Executive Vice President and General Counsel

THE CLEVELAND ELECTRIC ILLUMINATING COMPANY

By: /s/ Anthony J. Alexander

Name: Anthony J. Alexander
Title: Executive Vice President and General Counsel

LIST OF EXHIBITS AND SCHEDULES

EXHIBITS

Exhibit A	Form of Exchange Agreement
Exhibit B	Form of Assignment and Assumption Agreement
Exhibit C	Form of Bill of Sale
Exhibit D	Form of FE Support Agreement
Exhibit E	Form of FIRPTA Affidavit
Exhibit F	Form of Beaver Valley Omnibus Services Agreement
Exhibit G	Form of Special Warranty Deed
Exhibit H	Form of CAPCO Settlement Agreement
Exhibit I	Form of Beaver Valley Unit 2 Indentures Support Agreement
Exhibit J	Form of Amendment 2 to the CAPCO Perry Unit 1 Operating Agreement
Exhibit K	Form of Easement Agreement

SCHEDULES

1.1(15)	Beaver Valley CAPCO Agreements
1.1(33)	Beaver Valley Unit 2 Lease Indentures Documents
1.1(56)	Common CAPCO Agreements
1.1(57)	Common Facility Assets
1.1(68)	DLC Beaver Valley Emergency Preparedness Agreements
1.1(104)	Exempt Facilities
1.1(156)	Permitted Encumbrances
1.1(157)	Perry CAPCO Agreements
1.1(182)	Real and Personal Property Comprising the Decommissioned Shippingport Atomic Power Station
1.1(202)	Transferable Permits (both environmental and non-environmental)

2.1(a)	DLC Real Property
2.1(c)	Tangible Personal Property
2.1(i)	Unexpired, Transferrable Warranties and Guarantees from Third Parties
2.1(l)	Intellectual Property
2.2(a)	Beaver Valley Switchyard Assets
2.2(l)	Excepted Beaver Valley Telecommunications Equipment
2.3(d)	Agreements or Consent Orders
2.7	Inventories to be Transferred and Total Net Book Value
2.11	Perry Unit 1 Property Tax Litigation
4.3(a)	DLC Conflicts/Defaults/Violations
4.3(b)	DLC Required Regulatory Approvals
4.4(b)	Shippingport Atomic Power Station Insurance Coverage
4.5	Real Property Leases

4.6(a)	Perry Unit 1 Environmental Matters
4.6(b)	Beaver Valley Environmental Matters
4.7	Description of Real Property
4.8	Notices of Condemnation
4.9(a)(i)	Perry Unit 1 List of Contracts
4.9(a)(ii)	Material Exceptions and Required Consents to Perry Unit 1 Contracts
4.9(a)(iii)	Material Defaults under Perry Unit 1 Contracts
4.9(b)(i)	Beaver Valley List of Contracts
4.9(b)(ii)	Material Exceptions and Required Consents to Beaver Valley Contracts
4.9(b)(iii)	Material Defaults under Beaver Valley Contracts
4.10	Legal Proceedings
4.11(a)(i)	Perry Unit 1 Permit Violations
4.11(a)(ii)	Perry Unit 1 Material Permits
4.11(b)(i)	Beaver Valley Permit Violations
4.11(b)(ii)	Beaver Valley Material Permits
4.12	Tax Matters
4.13	Intellectual Property
4.19	Beaver Valley Labor Matters
4.20	Beaver Valley Benefit Plans
4.21	Matters Relating to Qualified Decommissioning Funds
4.22	Matters Relating to Nonqualified Decommissioning Funds
4.23(a)	DLC Nuclear Law Matters Relating to Perry Unit 1
4.23(b)	DLC Nuclear Law Matters Relating to Beaver Valley
5.3(a)	Specified FE Subsidiaries' Conflicts/Defaults/Violations
5.3(b)	Specified FE Subsidiaries' Required Regulatory Approvals
5.4	List of Specified FE Subsidiaries' Litigation
5.8(a)	Specified FE Subsidiaries' Nuclear Law Matters Relating to Beaver Valley
5.8(b)	Specified FE Subsidiaries' Nuclear Law Matters Relating to Perry

	Unit 1
6.11(a)	Specified Individual Employees
6.11(c)	DLC Non-Union Employees
6.11(d)	DLC Collective Bargaining Agreements for DLC Nuclear Assets
6.16(a)	Penn Power Actions in Respect of Beaver Valley Unit 2 Lease Indentures
10.12	Sewage Facilities

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NEWS

Duquesne
Light
411 Seventh Avenue
Pittsburgh, PA 15219

CONTACT: Barry Kukovich
(412)-393-4060

FOR IMMEDIATE RELEASE

DUQUESNE LIGHT, FIRSTENERGY EXCHANGE POWER PLANT INTERESTS

Pittsburgh, PA -- March 26, 1999 - Duquesne Light Company announced today that it has executed definitive agreements providing for the exchange of its partial interests in five power generation stations for three wholly-owned generating facilities from FirstEnergy Corp. The three fossil-fired plants that Duquesne will receive have an aggregate net demonstrated capacity of 1,323 MW and two of those plants, Avon Lake and Niles, are located in Ohio while the other facility, New Castle, is located in Western Pennsylvania. The ownership interests transferred by Duquesne to FirstEnergy include the Beaver Valley and Perry nuclear stations and the fossil-fired Mansfield, Eastlake and Sammis plants which represent an aggregate net demonstrated capacity of 1,400 MW. The five plants are all co-owned by FirstEnergy which operates each of the facilities with the exception of Beaver Valley.

The generation swap with FirstEnergy is another significant step in Duquesne's effort to strategically reposition the company. Duquesne will incorporate its three new facilities into a portfolio of generating assets totaling 2,614 MW to be divested in a formal auction process set to begin in April 1999. Duquesne will also include four wholly-owned, fossil-fired stations (Cheswick, Elrama, Brunot Island and Phillips) located in and around the city of Pittsburgh in its auction. Duquesne's asset auction will be the first of its kind in the ECAR market, which serves customers in all or a portion of seven Midwestern states. The proceeds from the auction will be used to mitigate Duquesne's stranded costs.

Duquesne will also be conducting a parallel auction process for all its retail supply business, which represents the opportunity to supply the provider of last resort service (POLR), at pre-determined fixed rates, for all of Duquesne's 580,000 customers who do not choose an alternative generation supplier. The auction of Duquesne's retail supply business is notable because it is the first auction of its type outside of the New England region and it would be one of the largest single market transactions ever. The concurrent auction of Duquesne's generating assets and retail supply business is a unique opportunity for a purchaser to acquire the first competitive integrated energy supply business in the U.S.

Certain aspects of the generation swap are subject to regulatory approvals by agencies including the Pennsylvania Public Utility Commission, Federal Energy Regulatory Commission and the Nuclear Regulatory Commission. Duquesne anticipates making the requisite regulatory filings before these agencies in April 1999. The swap is expected to close by year end 1999.