

BEFORE THE  
LOUISIANA PUBLIC SERVICE COMMISSION

IN RE: EVALUATION OF SOUTHWESTERN :  
ELECTRIC POWER COMPANY'S DECISION TO :  
RETIRE THE PIRKEY POWER PLANT PURSUANT : DOCKET NO. U-37067  
TO COMMISSION ORDER NO. U-36385-A :

DIRECT TESTIMONY OF  
M. CASEY KOENIG  
FOR  
SOUTHWESTERN ELECTRIC POWER COMPANY

JULY 12, 2024

## TABLE OF CONTENTS

<u>SUBJECT</u>	<u>PAGE</u>
I. INTRODUCTION.....	1
II. PURPOSE OF TESTIMONY .....	2
III. DESCRIPTION AND HISTORY OF THE PIRKEY PLANT AND SABINE MINE .....	3
IV. MINE CLOSURE REQUIREMENTS .....	11
V. CONCLUSION .....	14

## EXHIBITS

<u>EXHIBIT</u>	<u>DESCRIPTION</u>
EXHIBIT MCK-1	THIRD RESTATEMENT OF LIGNITE MINING AGREEMENT



1 I. INTRODUCTION

2 Q. PLEASE STATE YOUR NAME, POSITION, AND BUSINESS ADDRESS.

3 A. My name is M. Casey Koenig, and I am the Land & Mineral Development Senior  
4 Manager for American Electric Power (AEP) Service Corporation (AEPSC). My  
5 business address is 428 Travis Street, Shreveport, Louisiana, 71101.

6 My staff and I constitute the Southwestern Electric Power Company (the  
7 Company or SWEPCO) Land Management Group (the Land Group).

8 Q. PLEASE GIVE A BRIEF DESCRIPTION OF YOUR EDUCATIONAL  
9 BACKGROUND AND WORK EXPERIENCE.

10 A. I received a Bachelor of Science Degree in Mining Engineering at the New Mexico  
11 Institute of Mining & Technology in December 1986.

12 After my graduation, I worked for two and a half years as a mine engineer in  
13 the gold mining industry working for both Cominco American Resources, Inc at  
14 Buckhorn, NV and then Western Mining Company at Angels Camp, CA. From there I  
15 was employed in roles of increasing responsibilities for various mining companies  
16 specializing in industrial minerals, gold, copper, cement, and specialized limestone  
17 over a span of 20 years. In early 2009, I joined Luminant Mining Company as the  
18 engineering superintendent for the Kosse lignite mining operation, where I spent five  
19 years.

20 In 2014, I began my employment at the Land & Mineral Development group  
21 for SWEPCO in the Shreveport general office. My role as a Senior Mine Engineer was  
22 to support the mining efforts of the Dolet Hills Lignite Company (DHLC), a wholly  
23 owned subsidiary of SWEPCO, and to provide oversight support of the Sabine Mining

1 Company (SMC), a subsidiary of the North American Coal Corporation (NACC). In  
2 addition, I have oversight responsibilities for AEP's coal properties scattered  
3 throughout the United States. In 2018, I received certification as a Professional  
4 Engineer in the State of Texas.

5 In early 2019, I was promoted to Engineer Principal. Since that time, I have  
6 continued to provide oversight to the two SWEPCO lignite operations. I am the lead  
7 in development and annual updates to the DHLHC's Asset Retirement Obligation (ARO)  
8 calculation. My responsibilities and duties continue to expand in field operations and  
9 mine closure efforts throughout AEP's coal and lignite holdings. I also serve as a  
10 shared resource to our Transmission right-of-way agents in coal sterilization projects  
11 and interaction with impacted mineral owners. In June 2024, I was promoted to Senior  
12 Manager of the Land Group.

13 Q. WHAT ARE YOUR PRINCIPAL AREAS OF RESPONSIBILITY?

14 A. Regarding the Henry W. Pirkey Power Plant (Pirkey), my primary area of responsibility  
15 is to plan, manage, and direct the acquisition, development, recovery, and supply of  
16 lignite mined by SMC and delivered to Pirkey, and to plan and oversee the final  
17 reclamation of the Sabine Mine by SMC. I have similar responsibilities for other AEP  
18 plant sites.

19

20 II. PURPOSE OF TESTIMONY

21 Q. WHAT IS THE PURPOSE OF YOUR TESTIMONY IN THIS PROCEEDING?

22 A. The purpose of my testimony is to: (1) describe SWEPCO's Pirkey lignite plant and  
23 the Sabine Mining Company (SMC); (2) discuss the structure, operation, and

1 administration of SWEPCO's fuel contract for Pirkey; (3) describe the utilization and  
2 procurement of lignite for Pirkey until its retirement in March 2023; (4) address and  
3 support the necessity of SWEPCO's overall fuel production activities related to Pirkey  
4 during the Review Period (January 2019 through March 2023); (5) demonstrate the  
5 reasonableness of SWEPCO's lignite expenses at Pirkey prior to its retirement in  
6 March 2023; (6) detail the post-production and required mine reclamation activities  
7 after Pirkey's retirement; and (7) demonstrate the reasonableness of SWEPCO's post-  
8 production costs incurred under the Pirkey mining agreements with North American  
9 Coal Corporation (NACC).

10 Q. PLEASE SUMMARIZE YOUR CONCLUSIONS.

11 A. SWEPCO's lignite-related activities during the Review Period were reasonable and  
12 necessary to secure a reliable supply of lignite for delivery to Pirkey. Moreover,  
13 SWEPCO's actions ensured that the costs of lignite delivered to the Plant during the  
14 Review Period were only those that were necessary and reasonable.

15  
16 III. DESCRIPTION AND HISTORY OF THE PIRKEY PLANT AND SABINE

17 MINE

18 Q. PLEASE DESCRIBE THE PIRKEY PLANT AND ITS OWNERSHIP.

19 A. Pirkey is located west of Marshall, Texas, and is a 675 net megawatt (MW) lignite  
20 fueled generating unit. SWEPCO operated Pirkey until its retirement on March 31,  
21 2023, and now manages its demolition. The power plant is owned by SWEPCO, North  
22 Texas Electric Cooperative (NTEC), and the Oklahoma Municipal Power Authority

1 (OMPA). SWEPCO's ownership interest of 85.936% represents 580 MW of the unit's  
2 capacity.

3 SWEPCO operated Pirkey through March 2023 until it retired. Deliveries of  
4 lignite to Pirkey during this operational period were made from SWEPCO's Marshall  
5 South and Rusk lignite reserves in Harrison County and Rusk County, Texas,  
6 respectively, pursuant to the Third Restatement of Lignite Mining Agreement (LMA)  
7 provided as EXHIBIT MCK-1) between SWEPCO and SMC, effective January 1,  
8 2008.

9 Q. PLEASE BRIEFLY DESCRIBE SWEPCO'S LIGNITE PROCUREMENT  
10 STRATEGY.

11 A. SWEPCO's lignite procurement strategy was to procure a reliable supply of lignite for  
12 the Pirkey Plant in order to produce power for SWEPCO's customers at a reasonable  
13 cost. SWEPCO met its lignite needs for Pirkey with deliveries from lignite reserves it  
14 owns or leases.

15 Q. WAS THERE A CHANGE IN SWEPCO'S OPERATING PLAN FOR PIRKEY  
16 DURING THE REVIEW PERIOD?

17 A. Yes, on November 5, 2020, SWEPCO announced that it would retire Pirkey rather than  
18 incur the costs of continued operation of the plant beyond 2023. SWEPCO ceased  
19 operations at Pirkey on March 31, 2023. Please refer to the direct testimonies of  
20 SWEPCO witnesses Thomas P. Brice and James F. Martin for factors related to the  
21 retirement of Pirkey.

22 Q. PLEASE GENERALLY DISCUSS THE STRUCTURE AND OPERATION OF THE  
23 LMA AND THE ROLE OF SMC.

1 A. The LMA provides for the delivery of lignite to Pirkey in quantities approximating the  
2 monthly utilization of lignite at the plant, or as otherwise directed by SWEPCO and for  
3 the final reclamation and closure of the mine. The LMA is structured as a management  
4 fee-based contract with the projected annual expenditures and mine plan being  
5 reviewed and approved by SWEPCO in advance. SWEPCO maintains direct contact  
6 with SMC to monitor the mining operations. In addition, SWEPCO conducts a monthly  
7 review of SMC expenditures and mining / post-mining activities.

8 Under the terms of the LMA, during the lignite Production Period, SMC  
9 developed, mined, and delivered to Pirkey, lignite from the South Hallsville Reserves,  
10 Marshall South Reserves, and the Rusk Reserves (collectively, SWEPCO's Reserves,  
11 also referred to as the Sabine Mine). Each year, SWEPCO designated the quantity of  
12 lignite to be delivered the following year for planning purposes. SMC was responsible  
13 (with SWEPCO's participation) for developing future mine plans to deliver the  
14 requested lignite at a reasonable cost. SMC invoiced SWEPCO each month for mining  
15 and delivery costs, final reclamation costs, plus a management fee per ton delivered.

16 During the lignite Post-Production Period, SMC is to perform all work and  
17 services required or requested by SWEPCO in connection with the final closing of the  
18 mine and completion of final reclamation work. SMC invoices SWEPCO each month  
19 for mine closing costs, plus a post-production management fee and a general and  
20 administrative fee, as defined in the LMA.

21 Q. HOW DOES SWEPCO ADMINISTER THE LMA?

22 A. The Land Group, which consists of AEPSC and SWEPCO personnel, participates in  
23 the development of and exercises approval rights over SMC's mine plans and projected

1 annual expenditures. The LMA requires SMC to submit to SWEPCO each year, for its  
2 approval, a detailed mine plan, or mine closure plan and budget (hereinafter referred to  
3 as Annual Mine Plan), which defines in detail the projected mining and reclamation  
4 strategy and associated costs. This Annual Mine Plan addresses, in detail, mining and  
5 reclamation operations and costs for the upcoming year.

6 The Land Group's review and approval rights concerning SMC's Annual Mine  
7 Plans are comprehensive. The Land Group is involved prior to the submittal of the first  
8 draft of the mining and reclamation plans, evaluating and ensuring the assumptions are  
9 reasonable and comply with prudent mining practices.

10 The review process begins with SMC's submission of a draft mine or reclamation  
11 plan to SWEPCO, generally on or about September 1st of each year. This submittal  
12 begins a more formal period of analysis and comparison. This review includes  
13 comparing the cost center reports issued by SMC on a historical basis to develop cost  
14 trend information for analysis. This review also includes an analysis of the work to be  
15 performed versus SMC's projected costs. This process can go through several iterations  
16 of meetings, requests for additional information, questions and answers before a final  
17 Annual Mine Plan is approved by SWEPCO.

18 Upon completion of a detailed review of SMC's draft Annual Mine Plan and  
19 associated costs, and the resolution of any resulting revisions, modifications, or  
20 disapprovals necessitated by the review, SWEPCO grants SMC approval or, in some  
21 instances, conditional approval, to proceed with the scope of work outlined in the  
22 Annual Mine Plan. Additionally, a monthly reforecast of the current year's plan is  
23 submitted by SMC each month.

1            Mine closure plans become the updated Asset Retirement Obligation (ARO)  
2            estimate.

3    Q.    HOW DOES THE LAND GROUP MONITOR SMC'S COSTS UNDER THE LMA?

4    A.    The Land Group exercises numerous planning and operational controls to assure that  
5           the delivered fuel costs and reclamation costs at Pirkey are reasonable. In addition to  
6           the mine and reclamation plan and budget review, the Land Group's responsibilities  
7           and activities also include: direct interactions with SMC staff; periodic mine  
8           inspections to ensure that the mining operations are being carried out according to plan;  
9           the approval by SWEPCO of SMC's specifications for capital expenditures; the  
10          independent receipt and review by SWEPCO of bid responses; management, technical,  
11          land, and environmental meetings with SMC's staff to discuss and evaluate on-going  
12          and future activities; review of monthly invoices; and involvement in planning and  
13          initiating future mine activities to ensure the cost of lignite deliveries to Pirkey are  
14          reasonable.

15           SMC submits an invoice each month to SWEPCO in accordance with the LMA.  
16          The invoice includes detailed supporting documents of actual costs distributed by  
17          function and by cost center within SMC. The Land Group reviews each monthly  
18          invoice submitted by SMC. Prior to review, SMC submits a monthly variance report  
19          addressing major cost and operational variances from the approved mine plan and  
20          budget. The monthly invoices and variance reports are reviewed in comparison to the  
21          Annual Mine Plan cost projections. Any questions presented by these reviews are  
22          pursued and resolved with SMC in accordance with the LMA. In addition, SWEPCO,

1        AEPSC, and SMC management meet monthly to review costs and discuss any current  
2        or projected issues related to the mine.

3            During the lignite Production Period, to accurately administer the contract, an  
4        electronic conveyor belt scale at Pirkey was read daily by SWEPCO to determine tons  
5        delivered. This quantity was provided daily to all involved parties and was the basis for  
6        the calculation of SMC's management fee (delivered tons x \$/ton). A reconciliation of  
7        tonnage delivered to Pirkey was performed monthly between SMC and SWEPCO. The  
8        conveyor belt scales were also calibrated monthly.

9            Each delivery day, a conveyor belt sampler at the power plant collected lignite  
10       samples, which were delivered to a third-party testing laboratory, contracted by SMC,  
11       for analysis of the lignite quality. A reconciliation of delivered quality was performed  
12       monthly between SMC and SWEPCO.

13    Q.     WHEN WILL THE LMA TERMINATE?

14    A.     The LMA will terminate on October 1, 2026, and SWEPCO will assume the remaining  
15       reclamation obligations moving forward.

16    Q.     DID THE CHANGE IN THE ECONOMICALLY USEFUL LIFE OF THE PIRKEY  
17       PLANT HAVE AN EFFECT ON LIGNITE COSTS BILLED BY SMC DURING  
18       THE REVIEW PERIOD?

19    A.     Yes. As noted above, SMC bills SWEPCO for the cost to produce lignite. These  
20       production costs include SMC's fixed, capital-related expenses, which are depreciated  
21       or amortized over "the anticipated useful service life of the assets" in accordance with  
22       Article IX, § 2(a)(iv) of the LMA. Thus, with the announced retirement of Pirkey, SMC  
23       had a shorter period over which to bill these fixed costs to SWEPCO. As a result, this



1 component of SMC's costs increased during the Review Period after the November  
2 2020 plant retirement announcement. However, the total dollar amount recovered from  
3 customers was the same amount as if the useful life had not been changed. However,  
4 significant ongoing capital and O&M costs for Pirkey were avoided due to this  
5 decision.

6 Q. WHAT LIGNITE COSTS FROM SMC HAVE BEEN INCLUDED IN SWEPKO'S  
7 FUEL ADJUSTMENT CLAUSE (FAC) SINCE THE PERIOD PREVIOUSLY  
8 REVIEWED BY THIS COMMISSION?

9 A. The following table summarizes the lignite quantities and costs passed through the  
10 Company's FAC during the period of review:

SOUTHWESTERN ELECTRIC POWER COMPANY				
Pirkey Fuel Costs				
LA jurisdictional share				
Year	Lignite Tons	MMBtu	Cost	\$/MMBtu
2019	745,681	9,316,914	\$36,052,430	\$ 3.87
2020	554,321	7,052,994	\$37,368,758	\$ 5.30
2021	704,166	8,990,191	\$57,127,104	\$ 6.35
2022	740,576	9,340,178	\$43,606,668	\$ 4.67
2023 (3mo)	221,298	2,758,669	\$14,728,843	\$ 5.34

11  
12 Q. DID MINING COSTS AT THE SABINE MINE INCREASE FROM 2019  
13 THROUGH 2021?

14 A. Yes, mining production costs generally increase year over year, as lower cost areas are  
15 mined prior to higher cost areas. This was true at the Sabine Mine. SMC planning first  
16 targeted areas with lower waste-to-lignite stripping ratios with consideration for the  
17 haulage distance to the plan, mining the lower cost fuel in systematic order. Over the  
18 life of the Sabine mine, production costs increased as the amount of work required to  
19 produce lignite increased.

1 Q. DID THE NOVEMBER 2020 PIRKEY RETIREMENT DECISION INCREASE THE  
2 LIGNITE PRODUCTION COSTS BILLED TO SWEPCO ABOVE WHAT  
3 OTHERWISE WOULD HAVE BEEN BILLED DURING THE REVIEW PERIOD?

4 A. Yes. SMC's production costs increased due to the increases in monthly depreciation  
5 and amortization of SMC's capital-related expenses resulting from the change in the  
6 useful life of Pirkey, as discussed above.

7 Q. DID SMC REDUCE ITS MINING PRODUCTION AFTER THE RETIREMENT OF  
8 THE PIRKEY PLANT WAS ANNOUNCED?

9 A. Yes. As noted above, SMC updated its mine plan after the announced retirement of  
10 Pirkey. Effectively, SMC assessed the available lignite in its stockpile and evaluated  
11 how much additional lignite would be needed to operate Pirkey through March 2023.  
12 Based on this analysis, SMC reduced its lignite production relative to the Pirkey  
13 nominations.

14 Q. DID EMPLOYEE SEVERANCE COSTS INCREASE SMC'S COSTS IN 2021?

15 A. Yes. Reduced SMC deliveries resulted in less workforce necessary at the mine. In late  
16 2020, SMC severed 101 employees. The impacted employees were covered by a SMC  
17 severance plan. As a result of the severance, approximately \$6.1 million was billed to  
18 SWEPCO under the normal billing processes during the Review Period.

19 Q. AFTER THE PIRKEY RETIREMENT ANNOUNCEMENT DID SMC TAKE  
20 ADVANTAGE OF ANY OPPORTUNITIES TO IMPROVE ITS OPERATION AND  
21 REDUCE COSTS?

22 A. Yes. A 2019 optimization study performed jointly by SMC and the Land Group  
23 identified and produced incremental fuel cost maps for all remaining mine reserves.

1 SMC revised their 2021 work plan to target the most economic reserves needed to  
2 support the remaining Pirkey burn through March 31, 2023. New infrastructure  
3 development and mining obstacle removals and relocations were minimized and/or  
4 eliminated. Mine plans were designed to maximize dragline use while minimizing  
5 mobile equipment use because the cost to move a cubic yard of overburden with mobile  
6 equipment is generally more than twice the cost of moving overburden with draglines.

7 In addition to optimizing the mining areas, SMC reviewed its equipment fleet.  
8 Higher operating cost machines were idled, and some major rebuilds and replacements  
9 were eliminated by extending machine lives through combining parts from declining  
10 machines. Warehouse inventories were examined and reduced to only critical and  
11 predictive wear items.

12 Q. WERE MEASURES TAKEN DURING THE REVIEW PERIOD TO ENSURE THAT  
13 THE COST OF LIGNITE SUPPLIED TO FUEL PIRKEY UNDER THE SMC-LMA  
14 WAS REASONABLE?

15 A. Yes, as demonstrated by the above discussion, SWEPCO, through its Land Group, took  
16 the actions necessary to ensure that the costs of the lignite fuel delivered to Pirkey  
17 during the Review Period were only those that were necessary and reasonable.

18  
19 IV. MINE CLOSURE REQUIREMENTS

20 Q. PLEASE EXPLAIN THE TRANSITION FROM THE PRODUCTION PERIOD TO  
21 THE POST-PRODUCTION PERIOD.

22 A. ARTICLE I of the SMC-LMA provides definitions for the Post-Production Period and  
23 the Production Period as follows:

1 (ee) "Post-Production Period" shall mean the period from the date on which the  
2 Production Period ends until the end of the term of this Agreement.

3 (ff) "Production Period" shall mean the period from January 1, 1996, until the  
4 mining and delivery of lignite to SWEPCO hereunder ceases and the final Mine  
5 closing and Post-Production Period reclamation commences.

6 SWEPCO notified SMC that the applicable SMC-LMA terms and conditions of the  
7 Post-Production Period for SMC began April 1, 2023.

8 Q. PLEASE DESCRIBE THE ONGOING MINE RECLAMATION ACTIVITIES AND  
9 EXPECTATIONS.

10 A. Reclamation activities will continue for years, as the property is under bond, and not  
11 released until reclamation is completed. Texas surface mining regulations require that  
12 certain soil and water quality standards be met to prevent erosion and sustain  
13 appropriate vegetation for mined areas, and SMC is working daily to reclaim the  
14 property. Reclamation activities include final pit backfilling, soil remediation, grass  
15 and tree planting, and structure and sedimentation pond removals. Prior to mining,  
16 SMC, through a SWEPCO guarantee, provided the State of Texas a surety bond for the  
17 costs associated with completing reclamation of the mined lands. SWEPCO is  
18 responsible for all property taxes and maintenance on the leased properties. The mining  
19 bond will be released after approval by the Railroad Commission of Texas (RRC) and  
20 the respective properties returned to landowners. The cost of mine reclamation and  
21 related activities have been approved to be recovered through SWEPCO's FAC, as  
22 further discussed by Company Witness Brice.

1 Q. PLEASE DESCRIBE SMC BILLING OF COSTS DURING THE POST-  
2 PRODUCTION PERIOD.

3 A. All SMC costs associated with conducting mine closure are billed monthly to  
4 SWEPCO and SWEPCO pays the majority of SMC's invoices from the ARO funds  
5 previously collected, while interest and property tax costs are treated separately as a  
6 post-production fuel cost. Please see the testimony of SWEPCO witness Hunter  
7 concerning SWEPCO's ARO funding.

8 Q. PLEASE EXPLAIN HOW THE ARO FOR THE SABINE MINE IS DETERMINED.

9 A. Annually, SMC updates the ARO estimate by developing a detailed engineering study  
10 and cost model for completing the reclamation of the Sabine Mine. The engineering  
11 model evaluates current mine conditions and then calculates the volume of work  
12 required to complete the reclamation. The cost model begins with updated unit costs  
13 and applies those to the engineering volumetrics. This model results in an annual cash  
14 flow in current dollars for the updated ARO estimate.

15 Q. HAS THE ESTIMATED ARO FOR THE SABINE MINE BEEN UPDATED  
16 RECENTLY?

17 A. Yes. The ARO estimate for the Sabine Mine was updated in December 2023 and totals  
18 \$139,030,953.

19 Q. WILL SWEPCO INCUR FUEL COSTS DURING THE POST-PRODUCTION  
20 PERIOD?

21 A. Yes. Each year the ARO funding is reviewed and re-forecasted. Any true-up to the  
22 ARO will be treated as a credit or a charge to fuel. In addition, interest and property  
23 tax cost incurred by SMC are post-production costs. Lastly, until final bond release is

1       achieved from the properties mined by SMC, SWEPCO will have costs associated with  
2       land overheads, and land lease true-ups, pursuant to the LMA.

3

4

V. CONCLUSION

5    Q.    DOES THIS CONCLUDE YOUR DIRECT TESTIMONY?

6    A.    Yes, it does.

**THIRD RESTATEMENT OF  
LIGNITE MINING AGREEMENT**

**BETWEEN**

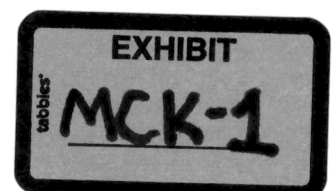
**SOUTHWESTERN ELECTRIC POWER COMPANY**

**AND**

**THE SABINE MINING COMPANY**

**Effective as of January 1, 2008**

**NOTICE:**    THIS CONTRACT IS SUBJECT TO ARBITRATION UNDER THE TEXAS  
GENERAL ARBITRATION ACT.



## CONTENTS

	<u>Description</u>	<u>Page</u>
ARTICLE I.	Definitions	4
ARTICLE II.	Term	7
ARTICLE III.	Scope of Engagement	8
ARTICLE IV.	Development and Operation of the Mine	9
ARTICLE V.	Quantity and Scheduling	14
ARTICLE VI.	Delivery	16
ARTICLE VII.	Quality and Recovery	16
ARTICLE VIII.	Loan and Lease Obligations	18
ARTICLE IX.	Compensation	20
ARTICLE X.	Sampling and Analysis; Weights	32
ARTICLE XI.	Mine Closing Costs	35
ARTICLE XII.	Billing and Accounts	36
ARTICLE XIII.	Reports and Audit	38
ARTICLE XIV.	Force Majeure	40
ARTICLE XV.	Conduct of Operations	42
ARTICLE XVI.	Insurance	43
ARTICLE XVII.	Relationship of the Parties	46
ARTICLE XVIII.	Arbitration	48
ARTICLE XIX.	SABINE Default; Remedy	51
ARTICLE XX.	Termination of Relationship	55



## CONTENTS CONTINUED

	<u>Description</u>	<u>Page</u>
ARTICLE XXI.	Notices and Other Communications; Designated Representatives	59
ARTICLE XXII.	Right of Inspection	60
ARTICLE XXIII.	Limitations of SABINE Functions	61
ARTICLE XXIV.	Assignment	61
ARTICLE XXV.	Interpretation	62
ARTICLE XXVI.	Severability	62
ARTICLE XXVII.	Entire Agreement	63
ARTICLE XXVIII.	Amendments	63
ARTICLE XXIX.	Counterparts	63
ARTICLE XXX.	Waiver of Remedies	64
ARTICLE XXXI.	Representations, Warranties and Covenants	64
ARTICLE XXXII.	Short Form Supplement	67
ARTICLE XXXIII.	Equal Employment Opportunity	67
	Signature Page	68
	Supplement A- Certification for Employment Opportunities Programs for Minorities and Veterans	

## CONTENTS CONTINUED

### EXHIBITS:

Exhibit "A"	Plat of South Hallsville No. 1 Reserves, South Marshall Reserves, Rusk Reserves and Norit Mine Area
Exhibit "B"	Management Fee Escalation Example
Exhibit "C"	Post-Production Period Management Fee Schedule
Exhibit "D"	General and Administrative Costs Adjustment Examples
Exhibit "E"	Invoice Calculation Procedure for Lignite Delivered by SABINE for Use at SWEPCO's Plant
Exhibit "F"	Post-Production Period General and Administrative Costs Schedule
Exhibit "G"	Example Calculation of Termination Fee

1 **THIRD RESTATEMENT OF**  
2 **LIGNITE MINING AGREEMENT**

3  
4  
5 **NOTICE: THIS CONTRACT IS SUBJECT TO ARBITRATION UNDER THE TEXAS**  
6 **GENERAL ARBITRATION ACT**  
7

8  
9 THIS AGREEMENT is made and entered into as of January 1, 2008 by and  
10 between SOUTHWESTERN ELECTRIC POWER COMPANY, a Delaware corporation  
11 (hereinafter referred to as "SWEPCO"), and THE SABINE MINING COMPANY, a  
12 Nevada corporation (hereinafter referred to as "SABINE"), a wholly-owned subsidiary of  
13 The North American Coal Corporation, a Delaware corporation, SABINE being  
14 incorporated for the sole and single purpose of performing the services, functions,  
15 duties and obligations stated herein to be performed by SABINE.

16  
17 **WITNESSETH:**  
18

19 WHEREAS, SWEPCO operates and has an ownership interest in a lignite-fired  
20 electric generating station called Henry W. Pirkey Unit No. 1 (hereinafter referred to as  
21 "SWEPCO's Plant") near Hallsville, Texas, having an approximate net generating  
22 capacity of 650 megawatts; and

23 WHEREAS, SWEPCO owns or controls (by lease, fee ownership or otherwise)  
24 certain lignite reserves located near SWEPCO's Plant, which may (at SWEPCO's  
25 election) be all or part of the source of the lignite supply for SWEPCO's Plant or which  
26 may be utilized for any other purposes, and lignite removed therefrom may be used at  
27 any other locations desired by SWEPCO; and

1 WHEREAS, SWEPCO and SABINE are parties to a Lignite Mining Agreement  
2 dated as of January 1, 1981, as amended (the "Lignite Mining Agreement"); and

3 WHEREAS, pursuant to the Lignite Mining Agreement, SWEPCO engaged  
4 SABINE to design, develop, construct and operate in the South Hallsville No. 1  
5 Reserves (as hereinafter defined) a lignite mine having a productive capacity sufficient  
6 to supply the lignite requested by SWEPCO within the quantity and quality limits  
7 provided for in that agreement; and

8 WHEREAS, SWEPCO conducted its evaluation of the various future fuel options  
9 for SWEPCO's Plant (the "Pirkey Fuel Study"), which options included the use of sub-  
10 bituminous coal mined and delivered to SWEPCO's Plant from the Powder River Basin  
11 Area of Wyoming, the continued mining of the South Hallsville No. 1 Reserves pursuant  
12 to the Lignite Mining Agreement, and the proposal of SABINE (the "Proposal") to modify  
13 the Lignite Mining Agreement to include within the lignite reserves upon which SABINE  
14 is authorized to conduct mining operations certain other lignite reserves controlled by  
15 SWEPCO but not covered by the Lignite Mining Agreement (the "South Marshall  
16 Reserves", as hereinafter defined); and

17 WHEREAS, SWEPCO concluded pursuant to the Pirkey Fuel Study that an  
18 amendment to and restatement of the Lignite Mining Agreement which authorizes  
19 SABINE to conduct lignite surface mining operations in the South Marshall Reserves  
20 pursuant to the Proposal currently is the most economical fuel option for SWEPCO's  
21 Plant; and

22 WHEREAS, the parties by the Restatement of Lignite Mining Agreement dated  
23 as of January 1, 1996 (the "RLMA") made certain amendments in the Lignite Mining

1 Agreement so as to authorize SABINE to design, develop, construct and operate  
2 facilities to mine lignite in the South Marshall Reserves in accordance with the Proposal  
3 and the Pirkey Fuel Study and in a manner which permits an orderly and economic  
4 cessation of the mining operations in the South Hallsville No. 1 Reserves; and

5 WHEREAS, the parties entered into amendments to the RLMA dated as of  
6 October 1, 1998; November 1, 1999; January 6, 2000 and letter agreements dated as of  
7 March 2, 1998, and February 9, 2000, amending the RLMA; and

8 WHEREAS, the parties by the Second Restatement of Lignite Mining Agreement  
9 dated as of December 1, 2001 restated the Lignite Mining Agreement again to  
10 incorporate such amendments and letter agreements into a single document, to provide  
11 for invoice normalization and the addition of the Norit Mine Area, and to make certain  
12 other changes to the RLMA;

13 WHEREAS, the parties by this instrument desire to restate the Lignite Mining  
14 Agreement again to include within the lignite reserves upon which SABINE is authorized  
15 to conduct mining operations certain other lignite reserves controlled by SWEPCO but  
16 not covered by the Second Restatement of Lignite Mining Agreement (the "Rusk  
17 Reserves", as hereinafter defined), and to make certain other changes to the RLMA;  
18 NOW, THEREFORE, in consideration of the foregoing and the covenants and  
19 agreements of the parties as herein set forth, the following Third Restatement of Lignite  
20 Mining Agreement hereby is adopted as an amendment and restatement of the Lignite  
21 Mining Agreement.

1 **ARTICLE I**  
2 **Definitions**

3 For the purposes of this Agreement, the following terms shall have the following  
4 meanings:

5 (a) "AAA" shall mean the American Arbitration Association.

6 (b) "AAA Rules" shall mean the Commercial Arbitration Rules of the AAA, as  
7 from time to time amended and in effect.

8 (c) "Affiliate of SABINE" shall mean a party or person owning fifty percent  
9 (50%) or more of the common stock of SABINE or otherwise controlling SABINE or  
10 controlled by or under common control with SABINE.

11 (d) "Annual Mining Plan" shall have the meaning set forth in **Article IV,**  
12 **Section 2 (b).**

13 (e) "Agreement" shall mean this Third Restatement of Lignite Mining  
14 Agreement.

15 (f) "As-delivered, as-received" shall mean the projected quality or the actual  
16 quality, as the case may be, of the mined lignite at the point of delivery to SWEPCO on  
17 an "as-received" moisture basis.

18 (g) "As-received" moisture basis shall have the meaning, as applicable, set  
19 forth in ASTM Standards D2013, D3173 and D3180.

20 (h) "ASTM" shall mean the American Society for Testing and Materials.

21 (i) "Btu" shall mean a Standard British Thermal Unit.

22 (j) "Business Day" shall mean any calendar day other than a Saturday,  
23 Sunday or other day on which banks in New York City or Texas are required or  
24 authorized to be closed.

25 (k) "Cost of Production" shall have the meaning set forth in **Article IX,**  
26 **Section 2(a).**

27 (l) "Deferred Development Costs" shall have the meaning set forth in  
28 **Article IX, Section 1(a).**

29 (m) "Designated Representative" shall have the meaning set forth in  
30 **Article XXI.**

31 (n) "Development Period" shall mean, with respect to the development of any  
32 area of the Mine, the period from the date of SWEPCO's written approval of the

Deferred Development Costs with respect to such area until such date that SWEPCO shall designate.

(o) "Emergency" shall mean a sudden and unexpected occurrence at the Mine, the nature of which requires prompt action in order to preserve or protect life or property, prevent damage, maintain production, or comply with any applicable law, rule or regulation and where there is not sufficient time for SABINE to notify SWEPCO of such occurrence and obtain advance approval of such remedial or preventive action.

(p) "Force Majeure" shall have the meaning set forth in **Article XIV**.

(q) "Laboratory" shall mean the laboratory which is used by SWEPCO to analyze the lignite samples taken by SWEPCO in accordance with the provisions of **Article X, Section 1**.

(r) "Life of Mine Plan" shall mean the Mining Plan covering life of mine requirements described in **Article IV, Section 2(a)**.

(s) "Loan and Lease Obligations" shall mean all obligations of SABINE incurred in connection with loans, leases, extensions of credit and other financial arrangements entered into by SABINE with SWEPCO's advance approval and necessary for, but not limited to, the design, development, construction, equipment, operation and maintenance of the Mine to the capacity required for producing quantities of lignite to be furnished to SWEPCO under this Agreement, whether the same shall become due and owing during the term hereof or otherwise, including fees, if any, interest, rentals, late payment penalties, indemnification payments, and all payments arising as a result of any termination, premature or otherwise, or any default under any such financial arrangements or the agreement or agreements embodying the same.

(t) "Management Fee" shall have the meaning set forth in **Article IX, Section 2 (c)**.

(u) "Mine" shall mean the mine developed, constructed and operated by SABINE in SWEPCO's Reserves.

(v) "Mining Plan" shall mean the Life of Mine Plan and/or Annual Mining Plan approved by SWEPCO as provided in **Article IV** of this Agreement, as revised and expanded pursuant to such **Article IV**.

(w) "mmBtus" shall mean one million Btus on an "as-delivered, as-received" basis.

(x) "North American Coal" shall mean The North American Coal Corporation (formerly called Nortex Mining Company), a Delaware corporation.

(y) "Norit" shall mean Norit Americas, Inc., a Georgia corporation.

(z) "Norit Mine Area" shall mean the area so delineated in **Exhibit "A"**.

1 (aa) "Norit Tons" shall mean Tons of lignite mined by SABINE and delivered  
2 into trucks supplied by Norit, its agents or contractors, which quantity shall be no less  
3 than 225,000 TPY and no greater than 650,000 TPY.

4 (bb) "Option Agreement" shall mean, collectively, that certain Option  
5 Agreement, dated as of January 15, 1981, by and among North American Coal,  
6 SWEPCO, and Texas Commerce Bank-Longview, National Association (or their  
7 respective predecessors-in-interest), as amended by the following: (1) Addendum to  
8 Option Agreement, dated as of January 15, 1981, by and among North American Coal,  
9 SWEPCO, and Texas Commerce Bank-Longview, National Association (or their  
10 predecessors-in-interest), (2) Agreement, dated as of June 30, 1988, by and among  
11 North American Coal, SWEPCO, Texas Commerce Bank-Longview, National  
12 Association, SABINE, and North American Coal (or their respective predecessors-in-  
13 interest), (3) Amendment to Option Agreement, dated as of December 2, 1996, by and  
14 among North American Coal, SWEPCO, and Longview National Bank, and (4) Second  
15 Amendment to Option Agreement, dated as of \_\_\_\_\_, by and among  
16 North American Coal, SWEPCO, and Regions Bank.

17 (cc) "Pirkey Fuel Study" shall have the meaning set forth in the fifth  
18 "WHEREAS" clause of this Agreement.

19 (dd) "Post-Production Management Fee" shall have the meaning set forth in  
20 **Article IX, Section 3.**

21 (ee) "Post-Production Period" shall mean the period from the date on which the  
22 Production Period ends until the end of the term of this Agreement.

23 (ff) "Production Period" shall mean the period from January 1, 1996 until the  
24 mining and delivery of lignite to SWEPCO hereunder ceases and the final Mine closing  
25 and Post-Production Period reclamation commences.

26 (gg) "Proposal" shall have the meaning set forth in the fifth "WHEREAS" clause  
27 of this Agreement.

28 (hh) "Recovery Period" shall mean the period(s) of time designated by  
29 SWEPCO over which the Deferred Development Costs for each Development Period  
30 are to be repaid by SWEPCO to SABINE in the Cost of Production.

31 (ii) "SABINE Default" shall have the meaning set forth in **Article XIX,**  
32 **Section 1.**

33 (jj) "SABINE Qualifying Force Majeure Event" shall mean each event of Force  
34 Majeure experienced by SABINE during a calendar year which has a duration greater  
35 than three (3) calendar days.

36 (kk) "South Hallsville No. 1 Reserves" shall mean the lignite reserves so  
37 designated in **Exhibit "A"** attached hereto and made a part hereof that are located from



1 the surface to a depth of 200 feet below the surface and are owned by, leased to, or  
2 otherwise controlled by SWEPCO and shall also mean any additional economically  
3 surface mineable lignite to such 200 foot depth which SWEPCO hereafter acquires  
4 within the South Hallsville No. 1 Reserves area delineated in **Exhibit "A."** At  
5 SWEPCO's option, the 200 foot depth limitation may be extended to a greater depth.

6 (ll) "South Marshall Reserves" shall mean the lignite reserves so designated  
7 in **Exhibit "A"** attached hereto and made a part hereof that are located from the surface  
8 to a depth of 200 feet below the surface and are owned by, leased to, or otherwise  
9 controlled by SWEPCO, including the Norit Mine Area, and shall also mean any  
10 additional economically surface mineable lignite to such 200 foot depth which SWEPCO  
11 hereafter acquires within the South Marshall Reserves area delineated in **Exhibit "A."**  
12 At SWEPCO's option, the 200 foot depth limitation may be extended to a greater depth.

13 (mm) "Rusk Reserves" shall mean the lignite reserves so designated in  
14 **Exhibit "A"** attached hereto and made a part hereof that are located from the surface to  
15 a depth of 200 feet below the surface and are owned by, leased to, or otherwise  
16 controlled by SWEPCO and shall also mean any additional economically surface  
17 mineable lignite to such 200 foot depth which SWEPCO hereafter acquires within the  
18 Rusk Reserves the area delineated in **Exhibit "A."** At SWEPCO's option, the 200 foot  
19 depth limitation may be extended to a greater depth.

20 (nn) "SWEPCO's Reserves" shall mean collectively the South Hallsville No. 1  
21 Reserves, the South Marshall Reserves and the Rusk Reserves.

22 (oo) "Ton" shall mean a net ton of 2,000 pounds.

23 (pp) "Total Compensation" shall mean the total amount paid each year during  
24 the Production Period to SABINE pursuant to **Article IX, Section 2.**

25 (qq) "TPY" shall mean Tons per year.

26 (rr) "Uniform Rounding Practice" shall mean as follows: when the number to  
27 the right of the relevant number is four (4) or less, the relevant number shall remain  
28 unchanged. When the number to the right of the relevant number is five (5) or more,  
29 the relevant number shall be increased to the next higher number.

## 30 **ARTICLE II**

### 31 **Term**

32 This Agreement shall commence on the date hereof and shall remain in effect (a)

33 (i) until 2035 and (ii) thereafter until the Mine has been closed, the reclamation work has  
34 been completed, the permit bonds have been released, and the permit to mine has

1 been satisfied by successful completion of all reclamation operations in accordance with  
2 the approved Mining Plan, or (b) until such earlier time that this Agreement might expire  
3 or be terminated as provided herein.

4 The termination or expiration of this Agreement shall not release either party from  
5 any obligations, payments or liabilities of such party that accrued during the term of this  
6 Agreement or as a result of operations under this Agreement.

7 **ARTICLE III**  
8 **Scope of Engagement**

9 SWEPCO hereby engages SABINE to continue to design, develop, construct and  
10 operate the Mine in accordance with the provisions of this Agreement, and SABINE  
11 hereby accepts such engagement and undertakes to use its best efforts, best  
12 management and mining skills and best engineering and business judgments to perform  
13 its obligations under this Agreement for the compensation herein specified. SABINE  
14 shall design, develop, construct and operate the Mine as hereinafter provided and shall  
15 furnish, subject to SWEPCO's approval, all engineering, permitting, geological,  
16 operating, administrative and supervisory services and personnel necessary therefor.  
17 SABINE shall be responsible for preparing, processing, obtaining and shall use its best  
18 efforts to comply with the conditions of all permits required in connection with the  
19 operations contemplated hereby. After first obtaining SWEPCO's approval of any  
20 proposed permit application, exhibits thereto and related documents, SABINE shall  
21 process the same in the name of SABINE.

**ARTICLE IV**  
**Development and Operation of the Mine**

**Section 1. General**

The design, development, construction and operation of the Mine shall consist of one or more Development Periods, a Production Period and a Post-Production Period.

During each Development Period, SABINE shall design, engineer, develop and construct the Mine in SWEPCO's Reserves.

During the Production Period, SABINE shall operate the Mine and perform all engineering, geological, operational, administrative and other work required or requested by SWEPCO to supply lignite to SWEPCO under this Agreement.

During the Post-Production Period, SABINE shall perform all work and services required or requested by SWEPCO in connection with the final closing of the Mine and completion of final reclamation work. SWEPCO shall have the right at its election at any time during the Post-Production Period (with or without cause) to take over and conduct or complete the Post-Production work by the acquisition by SWEPCO of all the capital stock of SABINE pursuant to the Option Agreement after giving SABINE notice thereof, which notice shall be given at least 365 days in advance. During such notice period SABINE shall fully cooperate regarding the orderly transfer of operations.

SABINE shall have the right to employ consulting organizations approved by SWEPCO to provide engineering, design, environmental and other work required for SABINE to perform its obligations under this Agreement. Further, all charges of such consulting organizations not included in the Approved Annual Mining Plan must be approved in writing by SWEPCO.

1   **Section 2. Mine Development**

2           **(a)   Life of Mine Plan.**

3           SABINE has provided to SWEPCO in writing a mining plan covering life of Mine  
4 requirements ("Life of Mine Plan") for the design, development, construction and  
5 operation of the Mine to furnish from SWEPCO's Reserves the lignite requirements  
6 requested by SWEPCO under the provisions of **Article V** hereof for the period 2008  
7 through 2035. The Life of Mine Plan is in accordance with sound engineering and  
8 design practices and applicable laws, rules and regulations and shall include, but not be  
9 limited to, production schedules, manpower and equipment requirements, estimated  
10 costs per ton and per mmBtus, time schedules for mine development, method of  
11 operation, including method of operation of any coal handling facilities, reclamation and  
12 permitting schedules, capital expenditures and operating cost requirements, mine  
13 design, mine projection maps, mine progression and reserve studies, and other  
14 documentation requested by SWEPCO.

15           On or before October 1 of each calendar year, SABINE shall review and revise or  
16 expand, if necessary, the Life of Mine Plan based on the then current designation of  
17 annual deliveries provided by SWEPCO in the notice given pursuant to **Section 3** of  
18 **Article V** hereof. SABINE, at a minimum, shall emphasize and set forth in specific  
19 detail in such revised Life of Mine Plan the next five (5) years of mining operations.

20           **(b)   Annual Mining Plan.**

21           On or before October 1 of each calendar year during the term of this Agreement,  
22 SABINE shall provide to SWEPCO in writing a mining plan covering the operation of the  
23 Mine for the next calendar year ("Annual Mining Plan"). Such Annual Mining Plan shall

1 include, but not be limited to, the following items for activities during the following  
2 calendar year:

- 3 (i) an estimated capital budget containing estimates of all capital  
4 expenditures and commitments;
- 5 (ii) an estimate of all operating costs and expenses in such detail as  
6 SWEPCO may reasonably request; and
- 7 (iii) an estimated monthly cash flow statement containing estimates of the  
8 cash requirements for the capital and operating budgets prepared  
9 pursuant to this subsection.

10 The Annual Mining Plan shall also include the details of an incentive  
11 compensation plan for SABINE's employees (except for SABINE's employees who are  
12 participants in a plan of an Affiliate of SABINE).

13 **(c) Approval of Annual Mining Plan.**

14 Within sixty (60) days after receipt by SWEPCO of an Annual Mining Plan,  
15 including the annual capital budgets, SWEPCO shall give SABINE written notice of  
16 SWEPCO's approval or disapproval of such Annual Mining Plan and capital budgets.  
17 As part of any such approval, SWEPCO shall agree to contribute any item or items of,  
18 or interest in, real property and non-depreciable capital assets, and SWEPCO may  
19 stipulate that it will contribute any item or items of, or interest in, depreciable capital  
20 assets provided for in such Annual Mining Plan and capital budget and thereupon, to  
21 the extent necessary or applicable, grant to SABINE sublease rights or other rights to  
22 permit SABINE to use the same as long as necessary in lieu of SABINE incurring any  
23 expense or obligation with respect thereto. If SWEPCO does not give SABINE such  
24 notice within sixty (60) days after SWEPCO's receipt thereof, SWEPCO shall be  
25 deemed to have approved such Annual Mining Plan and capital budgets. If SWEPCO  
26 disapproves an Annual Mining Plan, capital budgets or any portion(s) thereof, SWEPCO

1 shall advise SABINE of the reasons for such disapproval, and SWEPCO and SABINE  
2 shall meet promptly and attempt in good faith to resolve their differences with respect to  
3 the Annual Mining Plan and/or capital budgets. If SWEPCO and SABINE are unable to  
4 resolve such differences within thirty (30) days after SWEPCO's disapproval, SABINE  
5 shall revise and resubmit the Annual Mining Plan and/or capital budgets as requested  
6 by SWEPCO. Under no circumstances shall SABINE acquire any interest in real  
7 property or non-depreciable capital assets without the mutual consent of the parties.

8 SABINE shall consult with and keep SWEPCO informed of the progress of the  
9 design, construction, development and operation of the Mine in such manner as  
10 SWEPCO may reasonably request.

11 In the event that any such annual review of the Annual Mining Plan and any  
12 revision, adjustments or modification thereof requested by SWEPCO should delay the  
13 final approval thereof by SWEPCO past the beginning of the next calendar year,  
14 SABINE shall have the right to continue its operations hereunder pursuant to the last  
15 approved capital budget and Annual Mining Plan extended (on a pro rata basis) into the  
16 next calendar year until the matter causing such delay has been resolved.

17 SWEPCO and SABINE shall meet at least quarterly (and at such other times as  
18 needed or requested by either party) to review the progress of the design, construction,  
19 development and operation of the Mine.

20 SABINE shall not make any capital expenditures unless they are generally  
21 reflected in a capital budget approved by SWEPCO as part of an Annual Mining Plan or  
22 unless otherwise specifically approved by SWEPCO; provided, however, SABINE shall  
23 have the right during any calendar year to make capital expenditures required in the

1 event of an Emergency without advance approval by SWEPCO, provided that SABINE  
2 shall make all reasonable efforts to obtain the approval of SWEPCO prior to making any  
3 such capital expenditure and if the nature of the Emergency and the time elements  
4 involved do not allow sufficient time to obtain SWEPCO's approval of such capital  
5 expenditure before it is incurred, SABINE shall subsequently and promptly (but not later  
6 than two (2) Business Days after such occurrence) give SWEPCO written notice  
7 thereof; and further provided, however, SABINE shall have the right to exceed the  
8 amount for any specific capital expenditure (i.e., line item) in any budget approved by  
9 SWEPCO by up to five percent (5%) but not more than \$100,000.00 in any calendar  
10 year without the specific approval of SWEPCO.

11 If SABINE requests approval to exceed an individual capital line item by more  
12 than \$100,000.00, and if SWEPCO neither approves nor disapproves such request  
13 within fifteen (15) days after SWEPCO's receipt thereof, SWEPCO shall be deemed to  
14 have approved such request.

15 Except in the event of an Emergency, no material modification of or deviation  
16 from the approved Annual Mining Plan shall be made without the written approval of  
17 SWEPCO, which approval shall not be unreasonably withheld. Within two (2) Business  
18 Days after the occurrence of any Emergency, SABINE shall notify SWEPCO thereof  
19 giving all details including nature, extent and reason for any material modification or  
20 deviation from the approved Annual Mining Plan.

**ARTICLE V**  
**Quantity and Scheduling**

**Section 1. Quantity**

The quantity of mmBtus of lignite to be mined and delivered to SWEPCO for use at SWEPCO's Plant and the quantity of Norit Tons to be mined and delivered shall be the quantities requested by SWEPCO in accordance with the provisions of this Agreement; provided, however, the quantity of mmBtus of lignite and the quantity of Norit Tons to be mined and delivered by SABINE shall not exceed the production capability of the Mine; and further provided, however, that when any increase in SWEPCO's mmBtus requirements or in the quantity of Norit Tons occurs which necessitates the acquisition by SABINE of additional equipment, SABINE shall not be obligated to supply any such increased requirements until such time as it is able to acquire and install such additional equipment and do all other things necessary to supply such increased requirements.

**Section 2. Rate of Delivery**

The delivery of lignite for use at SWEPCO's Plant shall be made in monthly quantities which approximate the monthly utilization of lignite at SWEPCO's Plant, or as otherwise directed by SWEPCO. The delivery of Norit Tons shall be made in approximately equal monthly quantities or as otherwise directed by SWEPCO.

**Section 3. Designation of Annual Deliveries**

No later than August 1 of each year during the term of this Agreement, SWEPCO shall notify SABINE in writing of the quantity of mmBtus of lignite to be delivered during the subsequent calendar year for use at SWEPCO's Plant and an estimate of the quantity requirements during each of the four (4) calendar years thereafter. No later



1 than August 15 of each year during the term of this Agreement, SWEPCO shall notify  
2 SABINE in writing of the quantity of Norit Tons to be delivered during the subsequent  
3 calendar year and the delivery schedule therefor, which delivery schedule SWEPCO,  
4 upon written notice to SABINE, may increase or decrease by up to 5,000 Tons per  
5 month.

6 At any time and from time to time, SWEPCO shall have the right, upon written  
7 notice to SABINE, to increase or to decrease any previously issued annual nomination  
8 to the extent desired by SWEPCO, subject however, to the limitations set forth in  
9 **Section 1 of this Article V.**

10 If the total mmBtus of lignite actually delivered by SABINE to SWEPCO and Norit  
11 for use at SWEPCO's Plant and Norit's Plant during two (2) consecutive calendar years  
12 is less than ninety (90%) of the annual quantity of mmBtus designated by SWEPCO or  
13 Norit for use at SWEPCO's Plant or Norit's Plant for each of such two consecutive  
14 calendar years as set forth in the annual nomination in effect at the end of each such  
15 year, then the difference in the quantity delivered and ninety (90%) of the quantity  
16 requested for such calendar years shall be considered an "excess deficiency". If such  
17 "excess deficiency" is not caused by "Force Majeure" or is not caused by the failure of  
18 SWEPCO to accept delivery of such lignite, then in addition to any other remedies  
19 available to SWEPCO, it is agreed that SWEPCO shall receive a credit equal to the "per  
20 Ton" Management Fee in effect for such calendar years, as adjusted, multiplied by the  
21 number of Tons of such "excess deficiency", but not to exceed the total Management  
22 Fee paid or due to SABINE for such calendar years, which amount shall be credited to  
23 the Management Fee paid or due to SABINE for the next succeeding calendar year.

1   **Section 4. Stockpiling**

2           SABINE may establish and maintain at a location(s) agreed to by SWEPCO a  
3   run of mine lignite stockpile(s). SWEPCO shall have the right to limit, at any time, the  
4   size of the stockpile(s) by giving written notice to SABINE. SABINE shall maintain such  
5   stockpile(s) in accordance with good industry practices and shall take reasonable  
6   precautions to prevent spontaneous combustion and water accumulation in the  
7   stockpile.

8                                   **ARTICLE VI**  
9                                   **Delivery**

10          The lignite for use at SWEPCO's Plant shall be delivered by SABINE to  
11   SWEPCO at the lignite dump hopper at the boundary of the Mine adjacent to  
12   SWEPCO's Plant. The Norit Tons shall be delivered to the coal storage facility or other  
13   areas in the Mine designated by SWEPCO into trucks supplied by Norit, its agents or  
14   contractors.

15          For truck delivery purposes, the "boundary of the Mine" shall be the horizontal  
16   plane immediately below the bottom of the truck support beams at the lignite dump  
17   hopper. SABINE shall be responsible for the maintenance of the truck support. For belt  
18   delivery purposes, the "boundary of the Mine" shall be the location along the beltline  
19   that is designated by SWEPCO.

20                                   **ARTICLE VII**  
21                                   **Quality and Recovery**

22          (a)   The lignite to be supplied to SWEPCO and/or Norit shall be from the Mine  
23   in SWEPCO's Reserves and shall be of run-of-mine lignite quality.

1 SABINE shall deliver the lignite so as to be reasonably free from contamination,  
2 BUT SABINE MAKES NO REPRESENTATIONS OR WARRANTIES AS TO THE  
3 INHERENT QUALITY AND CHARACTERISTICS OF SWEPCO'S RESERVES.

4 Any unsatisfactory performance of such lignite caused by the inherent quality and  
5 characteristics thereof shall not excuse, alter or diminish the obligation of SWEPCO to  
6 make the payments provided for in **Article XII** and, so long as such lignite is mined and  
7 blended as requested by SWEPCO, shall not be an event of "Force Majeure" on the  
8 part of SWEPCO.

9 (b) SABINE shall consult with SWEPCO from time to time in advance of  
10 stripping overburden as to the locations in which such stripping will occur. SABINE  
11 shall drill and analyze samples of lignite at such locations to project "as-delivered, as-  
12 received" lignite quality and recovery in advance of stripping overburden and shall  
13 provide the results of such drilling and analyses to SWEPCO. SWEPCO shall have the  
14 right to review, inspect and approve in advance SABINE's drilling and testing methods  
15 and analytical procedures and data provided thereby. On or before October 1 of each  
16 year, SABINE shall furnish SWEPCO with a statement of the expected "as delivered-as  
17 received" lignite quality, recovery parameters, and other characteristics of the lignite  
18 which SABINE plans to mine during the following calendar year.

19 (c) Upon request by SWEPCO, SABINE shall analyze the exposed lignite  
20 from which the overburden has been stripped in advance of loading and shall furnish  
21 such analyses to SWEPCO. SABINE shall blend the exposed lignite so as to deliver,  
22 within the inherent characteristics of the exposed lignite, lignite of the characteristics  
23 desired by SWEPCO.

1 (d) The parties hereto recognize that the quality and recovery of the lignite  
2 delivered to SWEPCO and/or Norit hereunder, as opposed to the quality of the lignite  
3 "in-place," is directly related to good mine management practices by SABINE. SABINE  
4 shall keep SWEPCO fully informed of any significant changes in the lignite quality after  
5 mining thereof and its recovery.

6 **ARTICLE VIII**  
7 **Loan and Lease Obligations**

8 It will be necessary for SABINE from time to time during the term of this  
9 Agreement to incur Loan and Lease Obligations. SWEPCO recognizes that such Loan  
10 and Lease Obligations will also be required for reasonable replacements at the end of  
11 the useful life of certain of SABINE's equipment, for additions to certain of SABINE's  
12 equipment, for meeting payment obligations incurred by SABINE in connection with  
13 Loan and Lease Obligations and for maintaining working capital necessary for operating  
14 the Mine in the most cost effective manner.

15 SWEPCO shall have the right to direct SABINE in incurring all such Loan and  
16 Lease Obligations; provided, however, that SABINE shall not be required to incur any  
17 Loan or Lease Obligation directed by SWEPCO if the terms thereof are less favorable to  
18 SABINE than the terms of a Loan or Lease Obligation which, for the same term, could  
19 be obtained by SABINE without such direction by SWEPCO.

20 SWEPCO shall have the right to approve or disapprove any agreement in  
21 respect of any Loan or Lease Obligation which SABINE proposes to incur to carry out  
22 its obligations under this Agreement. SABINE shall submit to SWEPCO a summary of  
23 the terms and conditions of any such proposed Loan or Lease Obligation. Within thirty

1 (30) days after receipt by SWEPCO of written notice from SABINE requesting approval  
2 or disapproval of such terms and conditions, SWEPCO shall give SABINE written notice  
3 of SWEPCO's approval or disapproval thereof. If SWEPCO fails to give such notice  
4 within such thirty (30) day period, SWEPCO shall be deemed to have disapproved the  
5 same. Upon disapproval by SWEPCO, SABINE shall promptly renegotiate and  
6 resubmit to SWEPCO any new or alternate proposed arrangement involving a Loan or  
7 Lease Obligation, and the same procedure mentioned above shall be followed. No  
8 such Loan or Lease Obligation shall be incurred or agreed to by SABINE without  
9 SWEPCO's advance approval.

10 In connection with any financing pursuant to this **Article VIII**, SABINE, subject to  
11 SWEPCO's prior written approval, which approval shall not be unreasonably withheld,  
12 may create a security interest and/or grant a deed of trust or other appropriate lien, or  
13 any right of participation in respect thereof, on any or all assets of SABINE, including  
14 without limitation all or any portion of its rights hereunder, in favor of any lender or  
15 lessor to SABINE and/or any guarantor of any Loan or Lease Obligation of SABINE.

16 SABINE shall have the right to pay dividends on its stock only from earned  
17 surplus. For this purpose, "earned surplus" shall mean without duplication net income  
18 for the most recent fiscal period and/or retained income since incorporation less  
19 dividends previously paid, as determined in accordance with generally accepted  
20 accounting principles and as certified to annually by SABINE's independent public  
21 accountants.



1 Management Fee (as determined hereinafter under **Subsections (c) and (d)** of this  
2 **Section 2**):

3 (a) **Cost of Production**

4 For the purpose of this Agreement and except as otherwise expressly stated,  
5 "Cost of Production" shall mean the costs actually incurred by SABINE in performing its  
6 obligations under this Agreement, but shall exclude costs or expenses which have not  
7 been authorized pursuant to this Agreement or which have been incurred over the prior  
8 disapproval by SWEPCO thereof. Such costs shall be determined and allocated on an  
9 accrual basis in accordance with generally accepted accounting principles (except as  
10 otherwise expressly stated herein), consistently applied, and shall include but not be  
11 limited to the following:

12 (i) All production, maintenance, delivery and accounting costs including  
13 without limitation the following types of costs:

14 (aa) Labor costs, which include wages and the costs of an incentive  
15 compensation plan and all related payroll taxes, benefits and  
16 fringes, including welfare plans, group insurance, vacations and  
17 other comparable benefits of corporate officers and employees of  
18 SABINE located at the Mine.

19 (bb) Expense of payroll preparation, general accounting and billing  
20 performed at the Mine.

21 (cc) Consumable materials and supplies.

22 (dd) Consumable tools.

23 (ee) Machinery and equipment not capitalized or leased.

24 (ff) Rental of machinery and equipment, but not including any  
25 payments under leases included under **Section 2(b)** of this  
26 **Article IX**.

27 (gg) Electric power costs.

- (hh) Reasonable and necessary services rendered by persons other than Affiliates of SABINE.
- (ii) Insurance, including workers' compensation as required by law, liability, property damage, and such other insurance as requested by SWEPCO and in amounts and with insurance carriers (or self insurance) approved by SWEPCO, as provided in **Article XVI**.
- (jj) Taxes, but not including income taxes imposed by any governmental unit, except for income taxes incurred as a result of reimbursement of governmental penalties and fines, and reclamation costs which are not deductible under the United States Internal Revenue Code.
- (kk) Cost of reclamation during the Production Period, including labor and supplies, as required to comply with the lignite leases and all applicable Federal, state, and local governmental laws, rules and regulations or at such higher level of reclamation as may be requested by SWEPCO.
- (ll) Costs incurred by SABINE relating to this Agreement in connection with or as a result of the enactment, modification, interpretation, repeal or enforcement of all applicable Federal, state and local governmental laws, rules and regulations.
- (mm) Usual membership fees of the National Mining Association (allocated to SABINE pro rata based on combined annual coal production of SABINE and its Affiliates) and a reasonable number of other professional, service and civic organization memberships paid for by SABINE which are commonly maintained by mining companies similarly situated in East Texas. Also, any contributions and other memberships that are approved in advance by SWEPCO.
- (nn) Deferred Development Costs, which shall be amortized ratably as provided in **Section 1(a)** of this **Article IX**.
- (oo) Cost of reclamation and similar performance bonds as required by any governmental entity obtained by SABINE in connection with the performance of its obligations hereunder.
- (pp) Telephone and office costs, travel expenses and moving expenses of exempt employees of SABINE, provided that no moving expense will be allowed for any non-exempt employee of SABINE without SWEPCO's prior approval.



1           There shall be credited to costs under this **Subsection 2(a)** any investment tax  
2 credit or other tax credits based upon new investment incurred and taken by SABINE  
3 and any net receipts by SABINE from rental of, or other net income derived by SABINE,  
4 from real or personal property. There also shall be credited to costs under this  
5 **Subsection (a)** any gains and shall be so charged any losses on the disposal of any  
6 property owned by SABINE related to the Mine or SWEPCO's Reserves, any refunds or  
7 rebates related to the insurance program and any bond adjustments, any refunds or  
8 rebates received by SABINE from manufacturers or vendors and any interest or  
9 dividends received by SABINE on its investments, except investments of the  
10 Management Fee (as determined hereinafter) and undistributed net earnings.

11           If any of the foregoing includes costs incurred by an Affiliate of SABINE and  
12 charged to SABINE and except as otherwise expressly provided, they shall be included  
13 only at the cost to such Affiliate without addition for any overhead, loading,  
14 intercompany profit or service charge. SABINE, in determining costs, shall give  
15 SWEPCO the proportionate benefit of volume purchases participated in by SABINE and  
16 Affiliates of SABINE.

17           (ii) Real property costs, if any, but none can be incurred without advance  
18 written approval by SWEPCO.

19           (iii) General and Administrative Costs.

20           (a) The following amount (which shall be subject to adjustment as set  
21 forth herein) shall be added to the Cost of Production for general  
22 and administrative costs each year during the Production Period,  
23 \$668,430 for calendar year 2008 and subsequent years. SABINE

1 shall invoice SWEPCO for such amounts (as adjusted) each  
2 calendar year in equal, consecutive, monthly installments.

3 (b) General and administrative costs which are to be covered by such  
4 amount of \$668,430 (and which shall not otherwise be included in  
5 the Cost of Production), are salaries and related expenses such as  
6 payroll taxes, pensions and workers' compensation, together with  
7 travel, telephone, postage and office rent and office maintenance  
8 expense, of officers of SABINE not located at the Mine and of  
9 officers and employees of Affiliates of SABINE who perform, and  
10 for the time and to the extent they perform, functions relating to  
11 SABINE or this Agreement. Without limiting the generality of the  
12 foregoing, the expenses of executive office support, administrative  
13 support, operations management support, business development  
14 support and legal support (excluding outside litigation services and  
15 other outside legal services described below in **clause (3)** of  
16 **Section 2(a)(iii)(c)**), finance and accounting support, management  
17 information systems support, technical services support, human  
18 resources support and benefits support rendered by employees of  
19 Affiliates of SABINE shall be included in such \$668,430.

20 (c) Notwithstanding anything to the contrary contained in  
21 **Subsection 2(a)(iii)(b)**, general and administrative costs which are  
22 not to be covered by such amount of \$668,430 and which otherwise  
23 shall be included in the Cost of Production are:

- 1 (1) corporate franchise taxes for SABINE paid to the State of  
2 Texas, but excluding corporate franchise taxes which  
3 SABINE is required to pay to Nevada, its state of  
4 incorporation;
- 5 (2) outside audit expense of SABINE;
- 6 (3) litigation and other legal expenses incurred through the use  
7 of attorneys who are not employees of SABINE or Affiliates  
8 of SABINE;
- 9 (4) actual costs of new reserve mine planning, mine permitting  
10 and special studies; and
- 11 (5) actual costs of geologic support on drilling and modeling  
12 provided by employees of Affiliates of SABINE.

13 Any costs associated with work provided by employees of Affiliates  
14 of SABINE that are not included in such amount of \$668,430 must  
15 be approved by SWEPCO in writing.

- 16 (d) Effective for the calendar year 2008 and subsequent years, the  
17 amount of \$668,430 for general and administrative costs for each  
18 such calendar year shall be adjusted in the same percentage by  
19 which the average of the IPD-GDP Index on the base 2000=100,  
20 published by the Bureau of Economic Analysis of the U.S.  
21 Department of Commerce, for the four calendar quarters consisting  
22 of (x) the fourth calendar quarter for the year immediately preceding  
23 the calendar year under consideration and (y) the first three  
24 calendar quarters of the year under consideration is greater or less  
25 than 103.646. If any adjustment of the amount of \$668,430 for  
26 general and administrative costs made pursuant to this subsection  
27 is based upon an index figure which is subsequently revised, there  
28 shall be no further adjustment of such amount on the basis of such

1 revision. All adjustments of the amount of \$668,430 for general  
2 and administrative costs for a given year shall be made prior to the  
3 end of March of the year following the year under consideration,  
4 and any additional payment to be made by SWEPCO or refund to  
5 be made by SABINE shall be made accordingly. An example  
6 calculation of such year-end adjustment to the amount of \$668,430  
7 for general and administrative costs is set forth in **Exhibit "D"**,  
8 which is attached hereto and made part hereof.

9 (e) If at any time during the term of this Agreement it is reasonably  
10 believed by either party that neither the IPD-GDP Index nor any  
11 index substituted therefor in accordance with the following  
12 provisions reflects the true change in purchasing power of the  
13 United States dollar, then upon the written request of either party  
14 SWEPCO and SABINE shall undertake good faith negotiations to  
15 determine and agree upon a substituted index or method whereby  
16 such change in purchasing power of the United States dollar can be  
17 determined. When and if such substituted index or method has  
18 been determined and mutually agreed upon the same shall be  
19 substituted and put into effect commencing at a time mutually  
20 agreed upon. If the IPD-GDP Index or any substitute index is  
21 changed in the future to use some base other than the base of  
22 2000=100, for the purposes hereof, the IPD-GDP Index or any  
23 substitute index, as the case may be, shall be adjusted so as to be

1 in correct relationship to the base of 2000=100, or some other  
2 alternative base which is mutually agreeable to SWEPCO and  
3 SABINE. If publication of the IPD-GDP Index or any substituted  
4 index is no longer made by any Federal agency, the index to be  
5 used as aforesaid shall be that index agreed to by the parties which  
6 after necessary adjustment, if any, provides the most reasonable  
7 substitute for said index. If within ninety (90) days the parties  
8 hereto cannot agree upon a substitute index which will accomplish  
9 the purposes of this **Subsection 2(a)(iii)** the matter shall be  
10 resolved by arbitration pursuant to Article XVIII hereof.

11 (iv) Capital Related Costs. Depreciation and/or amortization to which SABINE  
12 is entitled, the rates of which shall be determined by SABINE from time to  
13 time. No depreciation or amortization shall be included in the Cost of  
14 Production with respect to items of property for which a lessor under a  
15 lease has taken depreciation or amortization. The rates of such  
16 depreciation and/or amortization (unless SWEPCO approves otherwise),  
17 for purposes of this paragraph, shall be limited to a straight-line basis over  
18 the mutually agreeable anticipated useful service life of the assets.  
19 SWEPCO shall be entitled from time to time to the correction of  
20 anticipated useful service lives to conform to experience. SABINE shall  
21 claim all investment tax credits or similar subsequent tax benefits at the  
22 times and in the amounts that will produce the greatest tax savings to  
23 SABINE and resulting credits to SWEPCO. Net gains or losses on the

1 disposition of capital assets shall be credited or charged, as the case may  
2 be, to the Cost of Production. Transactions covered by this Agreement  
3 involving capital assets between SABINE and/or any one or more of the  
4 Affiliates of SABINE, including contributions to the capital of SABINE, shall  
5 be subject to SWEPCO's prior written approval, and such review and  
6 approval of any such intercompany transfers shall be based upon needs  
7 and financial justification and shall be reflected in SABINE's accounts at  
8 cost to the Affiliates of the assets involved, less accrued depreciation, as  
9 shown by the accounts of the transferring company. Transactions  
10 involving the disposition or transfer of capital assets shall be subject to  
11 SWEPCO's prior written approval.

12 (v) Depletion. For any cost depletion from which SABINE obtains a tax  
13 benefit, tax credit or other benefit as a result of its performance under this  
14 Agreement, such benefit or credit shall be credited, at the statutory federal  
15 income tax rate applicable to SABINE, to costs under this **Subsection**  
16 **2(a)** and SWEPCO shall receive the benefit therefor.

17 **(b) Loan and Lease Obligations.**

18 For purposes of this **Section 2**, Loan and Lease Obligations shall mean an  
19 amount equal to all amounts payable for such period by SABINE in respect of Loan and  
20 Lease Obligations but shall not include any amounts payable by SABINE in respect of  
21 the repayment of the principal amount of any indebtedness of SABINE for money  
22 borrowed except to the extent that SABINE does not at any time have available to it  
23 sufficient funds and credit facilities to permit it to meet its obligations in respect of such

1 principal repayments. Any amounts so paid by SWEPCO in respect of principal shall be  
2 treated as advance payments by SWEPCO and credited by SABINE against the next  
3 succeeding payment obligation of SWEPCO under **Section 2(a)** of this **Article IX**.

4 **(c) Management Fee.**

5 Effective for the calendar year 2008 and subsequent calendar years  
6 during the Production Period, SWEPCO shall pay SABINE a base management  
7 fee ("Management Fee") per Ton of lignite delivered to SWEPCO during each  
8 calendar year which shall be:

9 (i) \$1.0250 per Ton of lignite on all Norit Tons,

10 (ii) \$1.0250 per Ton of lignite on all Tons for use at SWEPCO's Plant  
11 up to and including 2,800,000 Tons per year, and

12 (iii) \$0.8546 per Ton of lignite on all Tons for use at SWEPCO's Plant  
13 over 2,800,000 Tons per year,

14 which base Management Fee shall be subject to further adjustment as hereinafter  
15 provided in **Subsection 2(d)** of this **Article IX**. SABINE shall invoice SWEPCO and  
16 SWEPCO shall pay SABINE on a monthly basis for such Management Fee.

17 **(d) Adjustment of Management Fee.**

18 (i) Effective for the calendar year 2008 and subsequent calendar years, the  
19 Management Fee (including the maximum and minimum amounts) for each such  
20 calendar year shall be adjusted in the same percentage by which the average of the  
21 IPD-GDP Index on the base 2000 = 100, published by the Bureau of Economic Analysis  
22 of the U.S. Department of Commerce, for the four calendar quarters consisting of (x) the  
23 fourth calendar quarter for the year immediately preceding the calendar year under

1 consideration and (y) the first three calendar quarters of the year under consideration is  
2 greater or less than 103.646. If any adjustment of the Management Fee made pursuant  
3 to this subsection is based upon an index figure which is subsequently revised, there  
4 shall be no further adjustment of the Management Fee on the basis of the final  
5 published figure for such index. All adjustments of the Management Fee for a given  
6 year shall be made prior to the end of March of the year following the year under  
7 consideration, and any additional payment to be made by SWEPCO or refund to be  
8 made by SABINE shall be made accordingly. An example calculation of such year-end  
9 adjustment to Management Fee is set forth in **Exhibit "B,"** which is attached hereto and  
10 made part hereof.

11 **(ii) Further Modification of Management Fee.**

12 If at any time during the term of this Agreement it is reasonably believed by either  
13 party that neither the IPD-GDP Index nor any index substituted therefor in accordance  
14 with the following provisions reflects the true change in purchasing power of the United  
15 States dollar, then upon the written request of either party SWEPCO and SABINE shall  
16 undertake good faith negotiations to determine and agree upon a substituted index or  
17 method whereby such change in purchasing power of the United States dollar can be  
18 determined. When and if such substituted index or method has been determined and  
19 mutually agreed upon the same shall be substituted and put into effect commencing at a  
20 time mutually agreed upon. In the event the IPD-GDP Index or any substitute index is  
21 changed in the future to use some base other than the base of 2000=100, for the  
22 purposes hereof, the IPD-GDP Index or any substitute index, as the case may be, shall  
23 be adjusted so as to be in correct relationship to the base of 2000=100, or some other



1 alternative base which is mutually agreeable to SWEPCO and SABINE. If publication of  
2 the IPD-GDP Index or any substituted index is no longer made by any Federal agency,  
3 the index to be used as aforesaid shall be that index agreed to by the parties which after  
4 necessary adjustment, if any, provides the most reasonable substitute for said index. If  
5 within ninety (90) days the parties hereto cannot agree upon a substitute index which  
6 will accomplish the purposes of this **Subsection 2(d)(iii)** the matter shall be resolved by  
7 arbitration pursuant to **Article XVIII** hereof.

### 8 **Section 3. Compensation for Mine Closing Operations**

9 During the continuation of SABINE's operations hereunder during the Post  
10 Production Period as provided for in the fourth paragraph of **Section 1** of **Article IV**,  
11 SWEPCO shall compensate SABINE, which compensation shall include payment of the  
12 mine closing costs provided for in **Article XI**, on the same basis as provided for in  
13 **Section 2** of this **Article IX**, except that

14 (a) in lieu of the Management Fee provided for in **Section 2(c)**, SWEPCO  
15 shall pay SABINE as additional compensation a Post-Production  
16 Management Fee in accordance with the schedule set forth in **Exhibit "C"**  
17 which is attached hereto and made a part hereof; and

18 (b) in lieu of the general and administrative costs provided for in  
19 **Section 2(a)(iii)**, SWEPCO shall pay SABINE for general and  
20 administrative costs in accordance with the Post-Production General and  
21 Administrative Costs Schedule set forth in **Exhibit "F"** which is attached  
22 hereto and made a part hereof.

1 Such payments described in clauses (a) and (b) above shall be made on a monthly  
2 basis. The Post-Production Management Fee set forth in **Exhibit "C"** shall be adjusted  
3 in the same manner in which the Management Fee is adjusted pursuant to  
4 **Subsection 2(d) of Article IX** of this Agreement, and the general and administrative  
5 costs set forth in **Exhibit "F"** shall be adjusted in the same manner in which the general  
6 and administrative costs are adjusted pursuant to **Section 2(a)(iii)(d) of Article IX** of  
7 this Agreement.

8 **ARTICLE X**  
9 **Sampling and Analysis; Weights**

10 **Section 1. Sampling and Analysis**

11 The quality of lignite delivered to SWEPCO from the Mine for use at SWEPCO's  
12 Plant shall be determined by analyses of samples taken at a point or points mutually  
13 agreed upon by SWEPCO and SABINE. Sampling and analyses shall be performed by  
14 methods which meet the standards of the ASTM, or by such other methods as may be  
15 mutually agreed upon between SWEPCO and SABINE. SWEPCO shall cause the  
16 samples to be transported to the Laboratory. Each sample shall be processed, split into  
17 three (3) equal parts and placed in suitable airtight containers by SWEPCO or the  
18 Laboratory. Part one of each sample shall be analyzed by the Laboratory, and the cost  
19 of such analysis shall be included in the Cost of Production. Part two of each sample  
20 shall be properly identified and stored in the Laboratory for a period of not less than  
21 sixty (60) days for either party to analyze at its own expense if it so desires. Part three  
22 of each sample shall be properly identified and stored by SWEPCO for a period of not  
23 less than sixty (60) days. The cost of analysis of part three of the sample, if required,

1 shall be borne equally by SWEPCO and SABINE. For deliveries for which a sample is  
2 not available or for which a sample is agreed by SWEPCO and SABINE to be incorrect,  
3 the weighted average of the immediately preceding three (3) days sample analyses  
4 which are available shall be utilized.

5 The results of the analyses performed by the Laboratory on part one of the  
6 samples shall be binding on the parties and shall be deemed to represent the quality  
7 and characteristics of the lignite delivered hereunder unless one party notifies the other  
8 of a dispute concerning such analysis within the sixty (60) day period specified in the  
9 preceding paragraph. If the analysis of part one is disputed and the analyses of parts  
10 one and two of the sample differ by more than the reproducibility values specified by  
11 ASTM or any other mutually agreeable tolerances, then part three of such sample shall  
12 be analyzed by a commercial testing laboratory mutually chosen and using ASTM  
13 standards or mutually accepted procedures. When all three parts of a sample are  
14 analyzed, the average of the two closest sample results will be used to represent the  
15 quality of the lignite delivered on the day such samples were taken; provided, however,  
16 that if the two closest sample results differ by more than the reproducibility values  
17 specified by ASTM or any other mutually agreeable tolerances, then the weighted  
18 average of the immediately preceding three (3) days sample analyses which are  
19 available shall be deemed to be the quality and characteristics of the daily delivery of  
20 lignite under consideration.

21 As soon as practicable after the end of each month, SABINE shall furnish  
22 SWEPCO with a summary of the analyses performed by the Laboratory during the  
23 preceding month on part one of each sample. In addition, if either party elects to

1 analyze part two of a sample, that party shall deliver the results of such analyses to the  
2 other party within seven (7) Business Days of receiving such results.

3 SABINE and SWEPCO each shall have the right to request a bias test of the  
4 sampling system if it questions the accuracy of said system. The party requesting such  
5 bias test shall pay all costs of any such challenge bias test unless the sampling system  
6 is found to be in error, in which case SWEPCO and SABINE each shall pay fifty percent  
7 (50%) of the costs of such test. SABINE shall have the right to have a representative  
8 present at any and all times to observe the sampling. If the sampling system is  
9 replaced or substantially modified, then SWEPCO shall perform, at its sole cost, a bias  
10 test of the sampling system as so replaced, altered or modified.

11 **Section 2. Weighing**

12 The weight of the lignite delivered to SWEPCO from the Mine for use at  
13 SWEPCO's Plant shall be determined on scales properly installed on conveyor belts  
14 leading from SWEPCO's lignite dumping facilities or by other means mutually agreed  
15 upon by SWEPCO and SABINE. SWEPCO shall consult with SABINE as to design,  
16 selection and installation of such scale(s), and the parties shall mutually agree as to  
17 such matters. The scales shall be maintained and calibrated in accordance with the  
18 manufacturer's recommended standards. SWEPCO shall calibrate such scale(s) on a  
19 regular basis during the Production Period (not less than monthly) and maintain such  
20 scale(s) within design tolerance. SABINE shall have the right to have a representative  
21 present at any and all times to observe the testing and calibration of the scale(s).

22 The weight of the Norit Tons shall be determined on scales furnished and  
23 maintained by Norit.

1 The weights thus determined shall be accepted as the quantity of lignite  
2 delivered under this Agreement and for which invoices are to be rendered and  
3 payments made in accordance with **Article XII** hereof.

4 SABINE shall be given a record of all weight determinations made by SWEPCO  
5 and Norit. If either SWEPCO or SABINE at any time questions the accuracy of  
6 SWEPCO's scales or the Norit scales, such party may request a prompt test and  
7 adjustment of such scales by utilizing a material weight test, the procedures for which  
8 the parties shall mutually agree, at the requesting party's expense. If such test reveals  
9 error in weight in excess of the manufacturer's specified tolerances, the scale shall be  
10 adjusted to an accurate condition, and an appropriate adjustment shall be made in the  
11 invoices and payments affected by such inaccuracy; provided, however, no such  
12 adjustment shall be for a period in excess of the lesser of (a) one-half of the period  
13 since the date that either party first questioned the accuracy of the weights and the date  
14 of the last regularly scheduled test of the scales, or (b) three (3) months.

15 **ARTICLE XI**  
16 **Mine Closing Costs**

17 SWEPCO recognizes that Mine closing costs will be incurred by SABINE from  
18 time to time. SWEPCO shall reimburse SABINE for all such Mine closing costs, which  
19 costs shall include, but not be limited to, costs of dismantling and removal of equipment,  
20 reclamation of lands disturbed by SABINE's mining operations and activities pursuant to  
21 an approved Mining Plan, and actions taken by SABINE to prevent environmental  
22 pollution and to comply with applicable laws, rules and regulations of Federal, state and  
23 local governments and their instrumentalities. Such costs, when determined, shall be

1 included within budgets and operating plans submitted to SWEPCO for its approval and  
2 shall be paid by SWEPCO as incurred and, when conducted during the Production  
3 Period, shall be deemed to be included within the Cost of Production in accordance with  
4 the provisions set forth herein. SWEPCO shall be given proper credit for all salvage  
5 value. SWEPCO from time to time may request that SABINE prepare an estimate of  
6 the total of the Mine closing costs to be incurred after the Production Period, based on  
7 the then current Mining Plan and a Mine closing date approved by SWEPCO. Effective  
8 January 1, 2003, Mine closing costs shall be determined in accordance with SFAS  
9 No. 143, "Accounting for Asset Retirement Obligations".

10 **ARTICLE XII**  
11 **Billing and Accounts**

12 **Section 1. Payment Obligations; Billing Accounts;**  
13 **Billing Procedure**

14 Or before the twentieth (20th) day of each calendar month, SABINE shall furnish  
15 SWEPCO with two written invoices which set forth the compensation due SABINE  
16 under the provisions of **Article IX** or **Article XX** of this Agreement, as the case may be,  
17 for the immediately preceding month, one of which shall be for the lignite delivered for  
18 use at SWEPCO's Plant and the other of which shall be for the Norit Tons delivered.  
19 The amount of each invoice for the lignite delivered for use at SWEPCO's Plant shall be  
20 determined in accordance with **Exhibit "E"** hereto, and the amount of each invoice for  
21 Norit Tons delivered shall be determined by a mutually agreed cost allocation method  
22 based on the compensation due SABINE under the provisions of **Article IX** of this  
23 Agreement for the immediately preceding month with respect to such Norit Tons.

1 SWEPCO shall pay SABINE the amount of such invoices within ten (10) days of  
2 SWEPCO's receipt of the same.

3 All such billings and payments shall provide for credit to SWEPCO with regard to  
4 all refunds, rebates, advance payments and discounts of all types and shall be subject  
5 to audit by SWEPCO and corrections and adjustments where necessary. The  
6 correction and adjustment of any undisputed deficiencies shall be adjusted on the next  
7 monthly billing.

8 **Section 2. Payment Obligations Absolute**

9 Except as provided in **Article XIII** (and subject to the limitation specified therein)  
10 amounts payable by SWEPCO hereunder in respect of the Loan and Lease Obligations  
11 shall be payable under any and all circumstances, without set-off, counterclaim,  
12 recoupment, abatement, suspension, deduction or defense or other right which  
13 SWEPCO may have against SABINE or any other person for any reason whatsoever  
14 and shall not be refunded, it being the intention of the parties hereto that the obligations  
15 of SWEPCO in respect of such payments shall be absolute and unconditional, shall be  
16 separate and independent covenants and agreements and shall survive the expiration  
17 or other termination of this Agreement and continue unaffected unless the requirement  
18 to pay the same shall have been terminated pursuant to an express provision of this  
19 Agreement, provided that the foregoing shall not operate as a waiver by SWEPCO of its  
20 rights to pursue by separate action any claims it may have against any third party and  
21 any claims it may have against SABINE which are covered by insurance or bonds.

22 The provisions of this **Section 2** of **Article XII** shall not be subject to the  
23 arbitration provisions of this Agreement.

**ARTICLE XIII**  
**Reports and Audit**

Annually, SABINE shall have an audit of its accounts, made in whatever scope and detail requested by SWEPCO, by independent public accountants acceptable to SWEPCO and shall provide SWEPCO with a copy of such audit.

On or before the twentieth (20th) day of each month, SABINE shall furnish to SWEPCO separate detailed statements of costs incurred by SABINE at the Mine for the preceding month in respect of the lignite for use at SWEPCO's Plant and the Norit Tons. Such statements shall be in such form and detail as requested by SWEPCO and shall list the quantity and costs incurred by SABINE in respect of the lignite for use at SWEPCO's Plant and the quantity and the costs incurred by SABINE in respect of the Norit Tons, as the case may be.

SWEPCO and its duly authorized representatives shall have the right to inspect all work being performed hereunder including work at the Mine. SABINE shall, at SWEPCO's request, furnish to SWEPCO, or to such person as SWEPCO may designate, a copy of SABINE's reports applicable to the work on which it was engaged and the location of such work.

SABINE shall furnish with any billing containing cost adjustments, data showing the computations and application of such adjustment and shall furnish promptly such additional documents and evidence as SWEPCO may request in support of such adjustment. SABINE agrees to maintain adequate books, payrolls and records satisfactory to SWEPCO in connection with any and all work performed hereunder, including but not limited to the verification of all provisions under this **Article XIII**. SABINE further agrees to retain all such work records for a period of not less than four



1 (4) years after completion of such work, and SABINE further agrees to consult with  
2 SWEPCO prior to SABINE's disposal of such records. SWEPCO and its duly  
3 authorized representative shall have access at all reasonable times to the books,  
4 payrolls, records, correspondence and personnel of SABINE and any Affiliate of  
5 SABINE relating to any of the work performed hereunder for the purpose of auditing and  
6 verifying SABINE's charges for work or for any other reasonable purpose including, but  
7 not limited to, compliance by SABINE with other terms and provisions of this  
8 Agreement. SABINE agrees that (if and when applicable) these provisions will be  
9 included in any consulting services or other subcontracts relating to work performed for  
10 SABINE under provisions of this Agreement.

11 SWEPCO shall have access and the right to examine all income tax filings of  
12 SABINE or in which SABINE is included. SABINE shall have the right to join with any  
13 Affiliates of SABINE in the filing of any consolidated tax return, but this right shall be  
14 applicable only if the exercise thereof will not increase the cost of lignite to SWEPCO. If  
15 SABINE so joins in such filing, SABINE shall promptly furnish SWEPCO a copy of North  
16 American Coal's consolidated tax sharing agreement and shall promptly furnish to  
17 SWEPCO a revised copy at any time such agreement is amended. Savings applicable  
18 to SABINE as a result of any such consolidation shall be invested by SABINE and will  
19 serve to further reduce the cost of lignite to SWEPCO. If SABINE files consolidated tax  
20 returns with an Affiliate or Affiliates of SABINE, it shall collect from such Affiliate or  
21 Affiliates any net tax benefit derived by any such Affiliate from such consolidation  
22 attributable to SABINE. Any net tax benefit collected by SABINE arising from any such

1 consolidation which was directly attributable to SABINE shall be repaid promptly to any  
2 such Affiliate(s) in the event such net tax benefit is reversed for whatever reason.

3 Any correction and adjustment of undisputed audit deficiencies determined by  
4 audit shall be made within thirty (30) days after determination thereof. Any disputed  
5 audit deficiency shall be finally determined and resolved by a nationally recognized  
6 independent accounting firm selected by mutual agreement of SWEPCO and SABINE,  
7 and its decision and determination shall be binding on the parties, and the correction  
8 and adjustment shall be made within thirty (30) days after such determination. The cost  
9 and expense of such third-party audit of a disputed deficiency shall be borne by the  
10 losing party, meaning the party whose position is furthest from the final determination,  
11 and if SABINE is the losing party such cost and expense of audit shall not be  
12 recoupable from SWEPCO.

13 Anything to the contrary in the foregoing provisions of this **Article XIII**  
14 notwithstanding, SWEPCO hereby agrees that without the advance written approval of  
15 the obligees of all Loan and Lease Obligations then outstanding it will not collect from  
16 SABINE, in connection with any claim against SABINE hereunder, any amount in  
17 excess of SABINE's net income and retained earnings (determined without duplication),  
18 plus all amounts available to or from SABINE under bonding, insurance, and similar  
19 arrangements.

20 **ARTICLE XIV**  
21 **Force Majeure**

22 In the event SWEPCO or SABINE is rendered unable, wholly or in part, by "Force  
23 Majeure" as hereinafter defined to carry out any of its obligations under this Agreement,

1 and if such party shall (within two [2] Business Days after the declaring party is aware of  
2 the occurrence of such "Force Majeure" relied upon) give the other party concerned  
3 written notice and full particulars of such "Force Majeure", then the obligations of the  
4 party giving such notice shall be suspended to the extent made necessary by such  
5 "Force Majeure" from the inception of the "Force Majeure" and during its continuance,  
6 but for no longer; provided, however, that the party giving such notice shall diligently  
7 use its best efforts to eliminate the cause and effect of such "Force Majeure" insofar as  
8 possible with all reasonable dispatch. Any deficiencies in the production or delivery of  
9 lignite hereunder caused by "Force Majeure" shall not be made up under the provisions  
10 of this Agreement except by mutual agreement.

11 The term "Force Majeure" as used in this Agreement shall mean any and all  
12 causes beyond the control and without the fault or negligence of the party failing to  
13 perform, such as acts of God, strikes, lockouts or other industrial disturbances, labor  
14 disputes, labor or material shortages, acts of the public enemy, wars, blockades,  
15 insurrections, riots, epidemics, landslides, adverse geological conditions, faults in lignite  
16 seams, lightning, earthquakes, fires, storms, floods, washouts, major breakdowns of or  
17 damage to plant, SWEPCO's Plant, mine equipment, or facilities, interruptions to or  
18 contingencies of transportation, orders or acts of a military authority or civil authority  
19 (including without limitation, interruptions, whether by action or inaction, by Federal,  
20 state or local governments or court orders, present and future, or acts or failures to act  
21 of any regulatory body having proper jurisdiction) and any other causes, whether of the  
22 kind herein enumerated or otherwise, beyond the control and without the fault or  
23 negligence of the party failing to perform, which wholly or partly prevents the mining,

1 producing, processing and delivering of the lignite by SABINE, or the receiving and/or  
2 utilizing of the lignite by SWEPCO. It is understood and agreed that the settlement of  
3 strikes or lockouts or industrial disputes or disturbances shall be entirely within the  
4 discretion of the party having the difficulty and that the above requirement that any  
5 "Force Majeure" shall be remedied with all reasonable dispatch shall not require the  
6 settlement of strikes or lockouts by acceding to the demands of the opposing party  
7 therein when such course is inadvisable in the discretion of the party having the  
8 difficulty.

9 It is agreed that no such event of "Force Majeure" shall excuse, alter or diminish  
10 the obligation of SWEPCO to make the payments provided for in **Article XII** hereof.  
11 During any period of "Force Majeure", SABINE agrees to make a diligent effort to  
12 minimize all costs and expenses incurred.

13  
14 **ARTICLE XV**  
15 **Conduct of Operations**

16 SABINE shall conduct its mining operations hereunder in a careful, good  
17 workmanlike manner. SABINE shall use its best efforts to design and operate the Mine  
18 in accordance with this Agreement and all applicable laws, rules and regulations of  
19 Federal, state and local governments or their instrumentalities; provided, however, that  
20 SABINE shall have the right to contest in good faith through appropriate legal  
21 proceedings the validity or applicability of any such law, rule or regulation so long as  
22 SABINE gives SWEPCO advance notice of the nature of and reasons for such  
23 proposed contest and of such proposed proceedings and obtains SWEPCO's advance  
24 approval of the projected cost and expenses thereof, which approval shall not be

1 unreasonably withheld; and further provided, however, SABINE shall not be in default in  
2 the performance of its obligations under this Agreement if and to the extent such failure  
3 to perform its obligations is due to (1) an event described in **Article XIV** hereof, (2)  
4 control exercised by SWEPCO pursuant to **Section 2(c)** of **Article IV** or **Article VIII** of  
5 this Agreement, or (3) the failure of SWEPCO to perform its obligations hereunder.

6 SABINE represents that its management and supervisory personnel and a major  
7 portion of its other employees shall be well qualified and trained personnel with  
8 established credentials in engineering, constructing, operating and administering similar  
9 projects and that it will utilize and exercise high standards of industry practice and  
10 workmanship in the performance of all of its undertakings and obligations reflected in  
11 this Agreement. SABINE agrees to the foregoing and agrees that it shall diligently  
12 attempt and use its best efforts to:

13 (a) mine, recover and deliver the optimum quantity and quality of  
14 mineable commercial lignite, as defined in the approved Annual Mining Plan, in  
15 the most economical and efficient manner;

16 (b) conduct its operations and carefully plan and supervise its capital,  
17 operating and all other expenditures and acquisitions pursuant to the advance  
18 approval by SWEPCO as provided herein so as not to exceed the pre-approved  
19 budgets, as provided herein.

## 20 **ARTICLE XVI**

### 21 **Insurance**

22 SABINE shall procure or cause to be procured and maintain or cause to be  
23 maintained in full force and effect all insurance coverages specified in this Agreement.  
24 All insurance coverages shall be in accordance with the terms of this Article XVI using  
25 companies authorized to do business in the applicable jurisdiction where such services  
26 are to be performed. The insurance shall be of such types, limits, coverages and

1 amounts, and deductible amounts and with such insurers as may periodically be  
2 required, requested or approved by SWEPCO applicable to the Mine, the equipment  
3 and property at the Mine, the operation of the Mine or operations incidental to the Mine  
4 and personnel at the Mine or utilized in connection therewith. Such insurance shall  
5 include, but shall not be limited to, public liability, contractual liability, all-risk property  
6 insurance including coverage for physical damage to equipment, mine reclamation  
7 bonds and workers' compensation insurance as required by law and the following:

8 (a) Coverage for the legal liability of SABINE and its subcontractors for  
9 workers' compensation and occupational disease under the law of the state in which the  
10 work hereunder is to be performed; provided, however,

11 A. in states with a workers' compensation fund, SABINE and its  
12 subcontractors shall be contributors to the state workers'  
13 compensation fund and shall furnish a certificate to that effect.

14 B. in states without a workers' compensation fund, SABINE and its  
15 subcontractors shall maintain an insurance policy for workers'  
16 compensation from an insurance carrier approved for transacting  
17 workers' compensation business in the state in which the work is  
18 performed.

19 C. if SABINE or any subcontractor is a legally permitted and qualified self-  
20 insurer in the state in which the work is performed, it may furnish proof  
21 that it is such a self-insurer in lieu of submitting proof of insurance.

22 (b) commercial general liability insurance with limits of coverage of not less  
23 than \$1,000,000 per occurrence and annual aggregate;

1 (c) commercial automobile liability insurance with limits of coverage for bodily  
2 injury and property damage of not less than \$1,000,000 for each incident;

3 (d) excess or umbrella liability insurance with a combined single limit of  
4 coverage of not less than \$5,000,000 per occurrence and annual aggregates of at least  
5 \$10 million for bodily injury and property damage, and including coverage for the excess  
6 of Employers Liability and the insurance described in paragraphs (b) and (c) above;

7 (e) Property Damage and Boiler and Machinery coverage with combined  
8 limits of coverage of not less than \$100 Million per occurrence and a deductible of no  
9 more than \$1,000,000; and

10 (f) pollution legal liability insurance with limits of coverage of not less than  
11 \$1,000,000 per occurrence and annual aggregate.

12 SWEPCO, its parent, subsidiaries, Affiliates, directors, officers, agents, and  
13 employees, shall be named as additional insureds under the insurance policies  
14 described in paragraphs (b) through (d) and paragraph (f) above, and as loss payees  
15 under the insurance policies described in paragraph (e) above, with respect to  
16 SABINE's operations and the work to be performed under this Agreement. Such  
17 insurance shall be primary and non-contributory over any other insurance maintained by  
18 SWEPCO, its parent, subsidiaries and Affiliates.

19 SABINE shall obtain waivers of subrogation on all insurance maintained by  
20 SABINE hereunder. Such waivers shall be made for the benefit of SWEPCO, its parent,  
21 subsidiaries and Affiliates.

1 Any policies of insurance written on a "claims-made" basis shall be maintained  
2 for a period of five (5) years after termination of this Agreement, provided that such  
3 coverage is available and that SWEPCO pays all costs of maintaining such insurance.

4 SABINE shall furnish annually to SWEPCO two (2) copies of acceptable  
5 certificates of insurance covering the terms of the insurance policies maintained by  
6 SABINE. Such certificates of insurance shall state that the insurer has issued the  
7 policies providing for the insurance specified above, that such policies are in force and  
8 that the insurer shall give SWEPCO thirty (30) days prior written notice of any material  
9 change in, or cancellation of, such policies. If such insurance policies are subject to any  
10 exceptions to the terms specified herein, such exceptions shall be fully explained in  
11 such certificates. SWEPCO may, at its discretion, require SABINE to obtain insurance  
12 policies that are not subject to any exceptions.

13 SABINE shall require all contractors, subcontractors and its Affiliates engaged in  
14 work on or for the Mine to comply with the applicable workers' compensation laws of the  
15 State of Texas, or any other applicable state to the end that the employer is protected  
16 against any common law action by an employee and to maintain such other insurance  
17 as SWEPCO may deem advisable.

18  
19 **ARTICLE XVII**  
20 **Relationship of the Parties**

21 SWEPCO and SABINE agree that in performing services hereunder SABINE  
22 shall be an independent contractor and not the agent, servant or employee of SWEPCO  
23 or any of its affiliate companies or of Norit. Nothing contained in this Agreement shall  
24 be construed to constitute or create a joint venture, trust, mining partnership,



1 commercial partnership or other relationship between SWEPCO or any of its affiliate  
2 companies or Norit and SABINE whereby either party hereto would be liable for the acts  
3 and deeds of the other party hereto, except as specifically set forth herein.

4 **SABINE SHALL INDEMNIFY, HOLD HARMLESS AND DEFEND SWEPCO**  
5 **AND ITS SUBSIDIARIES, AFFILIATES AND THEIR DIRECTORS, OFFICERS,**  
6 **EMPLOYEES AND AGENTS, THE SUCCESSORS AND ASSIGNS OF SWEPCO**  
7 **(COLLECTIVELY, "RELEASEES"), FROM ANY AND ALL LOSS AND LIABILITY**  
8 **AND FOR CLAIMS, DEMANDS, SUITS OR CAUSES OF ACTION AT LAW OR IN**  
9 **EQUITY FOR DAMAGES AND INJURIES (INCLUDING DEATH) OF EVERY KIND**  
10 **AND NATURE TO PERSONS (INCLUDING EMPLOYEES OF SABINE, SWEPCO**  
11 **AND ANY OF THEIR AFFILIATES) AND PROPERTY (INCLUDING LOSS OF USE**  
12 **THEREOF) ARISING OUT OF, OR CLAIMED TO HAVE BEEN CAUSED BY, OR IN**  
13 **ANY MANNER RELATED TO THE OPERATIONS OF SABINE OR OF ANY PERSON**  
14 **UNDER CONTRACT TO IT UNDER THIS AGREEMENT EVEN THOUGH CAUSED IN**  
15 **WHOLE OR IN PART BY THE NEGLIGENCE OF ANY SINGLE RELEASEE OR ANY**  
16 **COMBINATION OF RELEASEES THAT OPERATES CONCURRENTLY WITH THE**  
17 **NEGLIGENCE OF ANY PERSON OR ENTITY THAT IS NOT A RELEASEE, BUT IN**  
18 **NO EVENT FOR THE SOLE NEGLIGENCE OF ANY RELEASEE OR ANY**  
19 **COMBINATION OF RELEASEES; PROVIDED, HOWEVER, THAT,**  
20 **NOTWITHSTANDING ANYTHING TO THE CONTRARY CONTAINED HEREIN,**  
21 **SABINE'S INDEMNITY OBLIGATION UNDER THIS PARAGRAPH SHALL BE**  
22 **LIMITED TO \$500,000 AND SHALL BE SUPPORTED BY LIABILITY INSURANCE**  
23 **COVERAGE TO BE FURNISHED BY SABINE, AND PROVIDED, FURTHER,**

1   HOWEVER, THAT SABINE SHALL NOT BE OBLIGATED TO INDEMNIFY ANY  
2   RELEASEE (I) AGAINST ANY LOSS OR LIABILITY WITH RESPECT TO WHICH  
3   SABINE IS NOT COVERED BY SUCH INSURANCE, (II) FOR THE AMOUNT OF ANY  
4   LOSS OR LIABILITY IN EXCESS OF THE AMOUNT WHICH IS COVERED BY SUCH  
5   INSURANCE OR (III) FOR ANY LOSS OR LIABILITY WITH RESPECT TO ANY  
6   EMPLOYEE OF NORIT OR ANY OF ITS AGENTS OR CONTRACTORS.

7       Notwithstanding anything to the contrary contained in this Agreement, in the  
8   event of a disagreement, controversy or litigation between SABINE and SWEPCO  
9   involving this Agreement, any provision hereof or the subject matter hereof, the legal  
10   costs and expenses of SABINE in connection therewith shall not be recouped by  
11   SABINE or considered a Cost of Production or a reimbursable expense under the terms  
12   hereof, unless SABINE is the ultimate successful party in such disagreement,  
13   controversy or litigation.

14                                   **ARTICLE XVIII**  
15                                   **Arbitration**

16       Any valid dispute between the parties arising out of this Agreement (including  
17   failure to agree on matters slated to be determined by mutual agreement) for which the  
18   ultimate resolution is not expressly provided by this Agreement or for which arbitration is  
19   not expressly excluded, shall be resolved by arbitration. The parties shall first make a  
20   diligent good faith attempt to resolve the dispute by mutual agreement. If unsuccessful,  
21   the request for arbitration shall be in writing setting forth in detail the claim or claims to  
22   be arbitrated, and the amount involved, if any, and shall specify the position of the party  
23   giving the notice, the reasons therefore and the remedy sought and shall name one

1 qualified person to act as an arbitrator. It shall be delivered to the other party within 180  
2 days of the date of the first knowledge of the claiming party of the occurrence or  
3 conditions giving rise to the dispute. Any failure to request arbitration within such 180  
4 day period shall be deemed a waiver of the right to arbitrate the dispute.

5       Within fifteen (15) days after such notice is received, the party receiving the  
6 notice shall by written notice to the other party specify its position, the reasons therefor  
7 and the remedy sought with respect to such issue and shall name one qualified person  
8 to act as an arbitrator. All persons appointed to act as arbitrator (including the third  
9 arbitrator selected as provided below) shall be disinterested persons qualified by  
10 experience to hear and determine the questions to be arbitrated, and if the nature of any  
11 such question shall so require, they shall be geologists or mining engineers experienced  
12 in the exploration for or mining of minerals under operating conditions similar to those  
13 which may be encountered hereunder.

14       The two arbitrators so designated shall select a third arbitrator. If the two  
15 arbitrators cannot agree within fifteen (15) days as to the designation of a third  
16 arbitrator, then said third arbitrator shall be selected pursuant to the AAA Rules. The  
17 arbitrators and SWEPCO and SABINE shall hold hearings in Dallas, Texas on the  
18 matters to be arbitrated within thirty (30) days after the appointment of the third  
19 arbitrator. The arbitrators shall make such examinations and investigations as they may  
20 deem necessary and shall render their decision in writing within sixty (60) days following  
21 such hearings.

22       The decision of the arbitrators shall be limited to selecting either the position and  
23 remedy stated by SWEPCO in its notice or the position and remedy stated by SABINE

1 in its notice as provided above. The arbitrators shall have no power to mediate or  
2 compromise any dispute but shall have only the limited authority herein provided to  
3 review the information presented by the parties and to select the position and remedy  
4 proposed by one of the parties.

5 The decision of the arbitrators shall be final and binding on the parties, and  
6 judgment thereon may be entered in any court of competent jurisdiction. The cost and  
7 expense for the arbitration shall be shared equally between the parties. Except as  
8 herein otherwise specified, the arbitration shall be conducted pursuant to the AAA Rules  
9 in effect at the time of such arbitration. Unless the parties mutually agree otherwise,  
10 each arbitration procedure and hearing shall be limited in scope to one dispute.

11 Notwithstanding anything to the contrary contained in this **Article XVIII**, it is  
12 agreed that whenever it is provided in this Agreement that any act, event, decision,  
13 determination or other matter is or is not to be done, performed or made at the option,  
14 election, request or determination or in the opinion of SWEPCO or is subject to the right  
15 of approval or disapproval by SWEPCO, such determination, election, request, option,  
16 opinion, approval or disapproval by SWEPCO shall not be subject to arbitration  
17 hereunder.

18 It is mutually understood that the existence of a dispute which has or may  
19 become the subject of an arbitration shall in no way excuse either SWEPCO or SABINE  
20 from performing its obligations under this Agreement, and each of the parties hereto  
21 shall continue to perform in accordance with the terms of this Agreement irrespective of  
22 the existence of any such dispute.

**ARTICLE XIX**  
**SABINE Default; Remedy**

**Section 1. SABINE Default**

For the purposes of this Agreement, any one of the following events is a "SABINE Default":

(a) there exists at any time during the Production Period for any reason other than Force Majeure, as defined in **Article XIV**, a deficiency of deliveries of mmBtus of lignite in excess of twenty-five percent (25%) of the amount required to be delivered under **Article V** for use at SWEPCO's Plant during the immediately preceding six-month period or a deficiency of deliveries of mmBtus of lignite in excess of twenty percent (20%) of the amount required to be delivered under **Article V** for use at SWEPCO's Plant during the immediately preceding twelve-month period;

(b) SABINE fails to perform any of its obligations in accordance with the performance standards recited in **Article XV** hereof, which failure to perform has a material adverse effect on the operations of SWEPCO's Plant, and such failure continues unremedied for sixty (60) days after written notice thereof shall have been given to SABINE by SWEPCO;

(c) SABINE materially breaches any of the terms, conditions or provisions which results in an event of default in respect of any Loan or Lease Obligation, which default is not remedied by SABINE prior to the time that any party (other than SABINE) to such Loan or Lease Obligation is permitted by such Loan or Lease Obligation to exercise its rights with respect to such event of default thereunder;

(d) SABINE or North American Coal commences a voluntary case under any chapter of the Federal Bankruptcy Code or consents to (or fails to controvert in a timely

1 manner) the commencement of an involuntary case against SABINE or North American  
2 Coal under said Code;

3 (e) SABINE or North American Coal institutes proceedings for liquidation,  
4 rehabilitation, readjustment or composition (or for any related or similar purpose) under  
5 any law other than the Federal Bankruptcy Code or consents to (or fails to controvert in  
6 a timely manner) the institution of any such proceedings against SABINE or North  
7 American Coal;

8 (f) SABINE or North American Coal is insolvent (within the meaning of any  
9 applicable law), or is unable, or admits in writing its inability, to pay its debts generally  
10 as they come due or makes an assignment for the benefit of creditors or enters into any  
11 arrangement for the adjustment or composition of debts or claims;

12 (g) a court or other governmental authority or agency having jurisdiction in the  
13 premises enters a decree or order (i) for the appointment of a receiver, liquidator,  
14 assignee, trustee or sequestrator (or other similar official) of SABINE or North American  
15 Coal or of any part of the property of such person or for the winding-up or liquidation of  
16 the affairs of such person, and such decree or order remains in force undischarged and  
17 unstayed for a period of more than thirty (30) days, or (ii) for the sequestration or  
18 attachment of any property of SABINE or North American Coal without its unconditional  
19 return to the possession of such person, or its unconditional release from such  
20 sequestration or attachment, within thirty (30) days thereafter;

21 (h) a court having jurisdiction in the premises enters an order for relief in an  
22 involuntary case commenced against SABINE or North American Coal under the

1 Federal Bankruptcy Code, and such order remains in force undischarged and unstayed  
2 for a period of more than thirty (30) days;

3 (i) a court or other governmental authority or agency having jurisdiction in the  
4 premises enters a decree or order approving or acknowledging as properly filed or  
5 commenced against SABINE or North American Coal a petition or proceedings for  
6 liquidation, rehabilitation, readjustment or composition (or for any related or similar  
7 purpose) under any law other than the Federal Bankruptcy Code, and any such decree  
8 or order remains in force undischarged and unstayed for a period of more than thirty  
9 (30) days; or

10 (j) SABINE or North American Coal takes corporate action for the purpose or  
11 with the effect of authorizing, acknowledging or confirming the taking or existence of any  
12 action or condition specified in paragraphs (d), (e) or (f) of this **Section 1**.

13 Provided, however, if SWEPCO claims that a SABINE Default of the nature  
14 described in this **Section 1** has occurred and is continuing, SABINE shall have sixty  
15 (60) days (notwithstanding the provisions of **Article XVIII** hereof) after its receipt of  
16 written notice from SWEPCO of such SABINE Default to:

17 (i) except for a SABINE Default of the nature described in  
18 **Subsection 1(a)** of this **Article XIX**, which such default is not subject to this  
19 paragraph (i), correct such SABINE Default, or, if such SABINE Default is not  
20 correctable within said sixty (60) day period, to submit to SWEPCO for its  
21 approval, which approval shall not be unreasonably withheld, a plan and  
22 timetable for correcting such SABINE Default. If such Default is not corrected  
23 within said time, or any extended time approved by SWEPCO, SWEPCO's  
24 remedies provided for herein shall thereupon be fully available; or

25 (ii) give SWEPCO written notice that SABINE disputes that such  
26 SABINE Default has occurred and is continuing and that SABINE is submitting  
27 the matter to arbitration in accordance with the provisions of **Article XVIII** of this  
28 Agreement. If arbitration is so sought, SABINE shall not be deemed in default

1 until the matter has been determined finally by arbitration under the provisions of  
2 **Article XVIII** hereof.

3 **Section 2. Remedy of SWEPCO Upon SABINE Default**

4 Upon the occurrence of any SABINE Default, SWEPCO, in its discretion (and in  
5 addition to any other rights or remedies available to SWEPCO), may exercise (without  
6 any other prerequisites) its rights, options and powers under the Option Agreement, in  
7 which event no further Management Fee will be payable to SABINE or North American  
8 Coal. Any amounts paid by SWEPCO other than to SABINE in respect of any Loan or  
9 Lease Obligation shall be credited against its obligations hereunder to make payments  
10 in respect of such Loan or Lease Obligation. The exercise by SWEPCO of any remedy  
11 hereunder shall be governed by the last sentence of **Article XIII**.

12 **Section 3. Limitations on SWEPCO's Rights Under Article XIX**

13 Notwithstanding anything to the contrary contained in this **Article XIX**, SWEPCO  
14 shall not have the right to exercise the Option Agreement if a SABINE Default of the  
15 nature described in **Section 1** of this **Article XIX** has occurred and is continuing:

16 (a) as a result of any failure by SWEPCO to carry-out its obligations under  
17 this Agreement, or as a result of a failure by SWEPCO to approve any Loan or Lease  
18 Obligation which SABINE proposes to enter into pursuant to **Article VIII**;

19 (b) as a result of any failure by SWEPCO to pay to SABINE any sum due  
20 SABINE from SWEPCO pursuant to this Agreement; provided, however, that if  
21 SWEPCO's obligation to pay any such sum (or any part thereof) is disputed by  
22 SWEPCO and payment of such sum is necessary to enable SABINE to comply with the  
23 terms of any Loan or Lease Obligation entered into pursuant to **Article VIII** hereof or to  
24 enable SABINE to prevent the occurrence of a SABINE Default of the nature described



1 in **Section 1** of this **Article XIX**, then SWEPCO shall pay SABINE the full sum claimed  
2 by SABINE, and such payment shall be without prejudice to SWEPCO's position in such  
3 dispute and its right to obtain reimbursement thereof;

4 (c) as a result of SABINE's compliance with any directions and/or prohibitions  
5 of SWEPCO to SABINE contrary to SABINE's recommendations and advice as to the  
6 design, construction, development and operation of the Mine; or

7 (d) because of a reasonable difference with governmental authorities as to  
8 the interpretation of applicable governmental laws, rules or regulations, impossibility of  
9 compliance therewith, or SWEPCO's consent to non-compliance therewith.

10 **ARTICLE XX**  
11 **Termination of Relationship**

12 **Section 1. Events of Termination**

13 This Agreement shall terminate and SWEPCO and SABINE shall be released,  
14 except as provided in this **Article XX**, Section 1, from their respective obligations  
15 thereafter accruing hereunder upon the occurrence of either of the following events:

16 (a) if SWEPCO takes the action specified in **Section 2** of **Article XIX** hereof,  
17 in which event SWEPCO shall be and become obligated to make payments to SABINE  
18 from time to time sufficient to permit SABINE to satisfy Loan and Lease Obligations in  
19 accordance with their terms; or

20 (b) if at any time all economically surface mineable lignite reserves in  
21 SWEPCO's Reserves have been depleted or SWEPCO's Plant has reached the end of  
22 its useful life (estimated to be 2035), in which event SWEPCO shall be and become

obligated to make payments to SABINE from time to time sufficient to permit SABINE to satisfy Loan and Lease Obligations in accordance with their terms.

**Section 2. Additional Right of Termination**

In addition to the events of termination specified in **Section 1** of this **Article XX** and notwithstanding any other provision of this Agreement, SWEPCO and SABINE each shall have the right, in their respective unqualified and unrestricted discretion and without requirement of cause, to terminate the relationship created by this Agreement by giving notice of termination (which notice shall specify the effective date of such termination ("Termination Effective Date"), which shall not be earlier than one year from the date of such notice), in which event SWEPCO shall (i) be and become obligated to make payments to SABINE from time to time sufficient to permit SABINE to satisfy Loan and Lease Obligations in accordance with their terms as the same become due and payable, and (ii) exercise its rights, options and powers under the Option Agreement. If SWEPCO terminates this Agreement pursuant to this **Section 2** and the reason therefor is not because of a SABINE Default, or is not due to a shutdown of the Mine because of economic reasons, including, but not limited to, the purchase of fuel from a more cost effective source, governmental requirements or restrictions or otherwise, and SWEPCO mines, or causes to be mined, within two (2) years after the Termination Effective Date lignite from said SWEPCO's Reserves, then North American Coal shall be entitled to, and SWEPCO shall cause the successor mining company to pay, and SWEPCO shall guarantee the payment, to North American Coal or its nominee an amount (the "Termination Fee") calculated in accordance with the methodology set forth in **Exhibit "G,"** which is attached hereto and made part hereof.

1       Such Termination Fee, if payable under this **Article XX, Section 2**, (a) shall be  
2       due within sixty (60) days following the recommencement of mining in the event that  
3       SWEPCO commences or causes another person to commence the mining of lignite  
4       from SWEPCO's Reserves within said two (2) years, and (b) shall be determined as of  
5       the first day of the calendar quarter in which the recommencement of mining occurs,  
6       based on the Termination Fee for the year in which the Termination Effective Date  
7       occurs and on the percentage change in the value of the IPD-GDP Index on the base  
8       2000 = 100 from the fourth calendar quarter of 2008 to the value of such Index for the  
9       calendar quarter immediately preceding the calendar quarter in which the  
10      recommencement of mining occurs. If the value of the IPD-GDP Index on the base  
11      2000 = 100 for such immediately preceding calendar quarter is not available when the  
12      Termination Fee is due and payable, the most current quarterly value of such Index  
13      shall be used for making payment of the Termination Fee, and such payment shall be  
14      subject to true-up at the time the final published value of the IPD-GDP Index on the  
15      base 2000 = 100 for such immediately preceding calendar quarter is available.

16       If at any time during the term of this Agreement it is reasonably believed by either  
17      party that neither the IPD-GDP Index nor any index substituted therefor in accordance  
18      with the following provisions reflects the true change in purchasing power of the United  
19      States dollar, then upon the written request of either party SWEPCO and SABINE shall  
20      undertake good faith negotiations to determine and agree upon a substituted index or  
21      method whereby such change in purchasing power of the United States dollar can be  
22      determined. When and if such substituted index or method has been determined and  
23      mutually agreed upon, the same shall be substituted and put into effect commencing at

**ARTICLE XXI**  
**Notices and Other Communications;**  
**Designated Representatives**

SWEPCO and SABINE each shall appoint a representative ("Designated Representative") to receive and give on behalf of SWEPCO and SABINE all notices, approvals, disapprovals and other communications required or permitted under this Agreement.

Except as otherwise expressly stated in this Agreement, any such notice or approval, disapproval or other communication shall be in writing to the other party and shall be deemed to have been duly given when delivered in person or by facsimile transmission (as evidenced by confirmation of facsimile transmission) to the Designated Representative or when actually received (as evidenced by return receipt after posting by United States certified mail, return receipt requested), with postage prepaid, addressed to the Designated Representatives of SWEPCO and SABINE, as follows:

(a) to SWEPCO:

Southwestern Electric Power Company  
Attn: Manager, Lignite & Business Services  
2396 Farm Road 3251  
Hallsville, Texas 75650-7723  
Telephone: 903/938-0321  
Facsimile: 903/927-5820

With copy to:

American Electric Power  
Attn: Director of Mining Operations  
155 W. Nationwide Blvd.  
Columbus, OH 43215  
Telephone: (614) 583-6400  
Facsimile: (614) 583-1602

1 (b) to SABINE:  
2

3 The Sabine Mining Company  
4 Attn: President  
5 6501 Farm Road 968 West  
6 Hallsville, Texas 75650  
7 Telephone: 903/660-4200  
8 Facsimile: 903/660-3665  
9

10 With copy to:

11  
12 The North American Coal Corporation  
13 Attn: President and Chief Executive Officer  
14 14785 Preston Road, Suite 1100  
15 Dallas, Texas 75254-7891  
16 Telephone: (972) 239-2625  
17 Facsimile: (972) 387-1031  
18  
19

20 (c) To such other address or addresses as the respective parties hereto may

21 from time to time designate in writing.

22 It is agreed that wherever this Agreement provides for notice to be given within  
23 twenty-four (24) hours of certain occurrences, such notice shall be given verbally and  
24 shall subsequently be confirmed in writing in the manner provided for above in this

25 **Article XXI.**

26 **ARTICLE XXII**  
27 **Right of Inspection**

28 SWEPCO (upon first giving reasonable notice to the office of SABINE's  
29 Designated Representative) at all times and for any purpose shall be afforded complete  
30 access to the Mine, Mine records, accounting and financial records, installations, tax  
31 returns and operations of SABINE and the right to inspect the Mine, provided that the  
32 exercise of such rights does not interfere with the operation of the Mine and that the



1 exercise of such rights shall be at the sole risk, cost and expense of SWEPCO. It is  
2 agreed that the personnel and employees of SABINE engaged in the mining are solely  
3 the employees of SABINE and that SWEPCO, in the exercise of its right of access and  
4 inspection or otherwise, shall have no right to issue instructions to, make demand of, or  
5 direct in any way the daily work and daily activities of SABINE's employees.

6 **ARTICLE XXIII**  
7 **Limitations of SABINE Functions**

8 Until this Agreement expires or is terminated, SABINE shall be chartered as a  
9 single purpose corporation to perform, pursuant to this Agreement, the duties and  
10 obligations hereof and shall not perform any work or services, enter into any  
11 employment contracts, enter into any agreements with third-parties without SWEPCO's  
12 advance approval, undertake any obligations or liabilities, or expend any funds, or  
13 engage in any activities, except those which are pursuant this Agreement.

14 Without first obtaining SWEPCO's approval, SABINE shall not purchase or  
15 otherwise acquire any real property interests including lignite or other mineral leases  
16 and land that would in any way conflict with the interests of SWEPCO.

17 **ARTICLE XXIV**  
18 **Assignment**

19 Either party may assign this Agreement and its rights hereunder to its parent  
20 company or any Affiliate or subsidiary of its parent company or of itself, and only to such  
21 a party, without the consent of the other party. Otherwise, this Agreement may not be  
22 assigned wholly or in part by either party without the written consent of the other party,  
23 which consent shall not be unreasonably withheld. No assignment shall release the

1 assignor from its financial responsibility hereunder, unless expressly agreed to in writing  
2 by the other party and its assignees. Subject to the foregoing limitations, all of the  
3 provisions of this Agreement shall inure to the benefit of and be binding upon the parties  
4 hereto, and their successors and assigns.

5 **ARTICLE XXV**  
6 **Interpretation**

7 This Agreement shall be governed by, and construed and interpreted in  
8 accordance with, the internal laws of the State of Texas without giving effect to the  
9 conflict of laws and principles thereof. The topical headings used in this Agreement  
10 have been inserted as a matter of convenience of reference only and shall not control or  
11 affect the meaning or construction of any of the terms and provisions of this Agreement.  
12 As used herein, any gender shall include any other gender, the singular shall include  
13 the plural, and the plural shall include the singular, wherever appropriate.

14 **ARTICLE XXVI**  
15 **Severability**

16 The invalidity or unenforceability of any particular provision of this Agreement  
17 shall not affect the other provisions hereof unless it substantially and adversely affects  
18 the value of this Agreement to one of the parties; and in the absence of any such  
19 substantial and adverse effect, this Agreement shall be construed in all respects as if  
20 such invalid or unenforceable provision were omitted.



1                                   **ARTICLE XXVII**  
2                                   **Entire Agreement**

3           This Agreement constitutes the entire agreement between SWEPCO and  
4   SABINE and supersedes all other prior negotiations, undertakings, notices, memoranda  
5   and agreements between SWEPCO and SABINE, whether oral or written, with respect  
6   to the subject matter hereof; provided, however, the parties recognize that the  
7   performance of this Agreement is subject to all necessary regulatory approvals, and that  
8   in the event regulatory approval is required for the performance by SWEPCO of its  
9   payment obligations hereunder, SABINE shall not be required to incur any Loan or  
10   Lease Obligation until such approval is obtained, and further provided, however, that all  
11   liabilities and obligations of SWEPCO and SABINE which have accrued prior to the  
12   effective date of this Agreement shall survive until satisfied or discharged or until the  
13   responsible party has been released therefrom.

14                                   **ARTICLE XXVIII**  
15                                   **Amendments**

16           Any modification or amendment of the terms and provisions of this Agreement  
17   shall be valid and effective only if and when made in writing and duly executed on  
18   behalf of the parties hereto.

19                                   **ARTICLE XXIX**  
20                                   **Counterparts**

21           The Agreement may be executed in any number of counterparts, each of which,  
22   when executed and delivered, shall be an original, but all of which shall collectively  
23   constitute one and the same instrument.

1  
2  
3  
4  
5  
6  
7

**ARTICLE XXX**  
**Waiver of Remedies**

8  
9

The failure of either SWEPCO or SABINE to insist in any one or more instances upon strict performance of any of the provisions of this Agreement or to take advantage of any of its rights hereunder shall not be construed as a waiver of any such provisions or the relinquishment of any such rights, but the same shall continue and remain in full force and effect.

10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23

**ARTICLE XXXI**  
**Representations, Warranties and Covenants**

(a) Representations and Warranties of SABINE. SABINE represents and warrants that:

(i) it is a corporation duly organized and validly existing in good standing under the laws of the State of Nevada, is duly qualified to do business in the State of Texas and has all requisite corporate power and authority to enter into this Agreement and to perform its obligations hereunder;

(ii) there is no action, proceeding or investigation pending, or, to the best knowledge of SABINE, threatened against it, and there is no term of its charter, by-laws, or any mortgage, indenture, contract, agreement, instrument, judgment, decree, order, statute, rule or regulation to which SABINE or any of its affiliates is a party or by which it is bound, which in any way prevents or interferes with or adversely affects the entering into by it of this Agreement, or the validity of this Agreement as to it, or the carrying out by it of the terms or provisions of this Agreement;

1 (iii) no approval, action, waiver or consent of any governmental body is  
2 required for the execution and delivery of this Agreement by SABINE (or, if  
3 required, all of the same have been obtained), and SABINE will use its best  
4 efforts to obtain any governmental approvals, actions, waivers or consents of any  
5 governmental body which are or may be required for the performance by  
6 SABINE of this Agreement; and

7 (iv) this Agreement has been duly and validly authorized by all  
8 necessary corporate action and when executed and delivered will constitute a  
9 valid and binding agreement of SABINE.

10 (b) Representations and Warranties of SWEPCO. SWEPCO represents and  
11 warrants that:

12 (i) it is a corporation duly organized and validly existing in good  
13 standing under the laws of the State of Delaware, is duly qualified to do business  
14 in the State of Texas and has all requisite corporate power and authority to enter  
15 into this Agreement and to perform its obligations hereunder;

16 (ii) there is no action, proceeding or investigation pending, or to the  
17 best knowledge of SWEPCO threatened against it, and there is no term of its  
18 charter, by-laws, or any mortgage, indenture, contract, Agreement, instrument,  
19 judgment, decree, order, statute, rule or regulation to which SWEPCO or any of  
20 its affiliates is a party or by which it is bound, which in any way prevents or  
21 interferes with or adversely affects the entering into by it of this Agreement, or the  
22 validity of this Agreement as to it, or the carrying out by it of any of the terms or  
23 provisions of this Agreement;

1 (iii) no approval, action, waiver or consent of any governmental body is  
2 required for the execution and delivery of this Agreement by SWEPCO (or, if  
3 required, all of the same have been obtained), and SWEPCO will use its best  
4 efforts to obtain any governmental approvals, actions, waivers or consents of any  
5 governmental body which are or may be required for the performance by  
6 SWEPCO of this Agreement;

7 (iv) this Agreement has been duly and validly authorized by all  
8 necessary corporate action and when executed and delivered will constitute a  
9 valid and binding agreement of SWEPCO;

10 (v) that to the best of its knowledge it owns, leases or otherwise  
11 controls the lignite, including surface mining rights, which will be mined and  
12 delivered by SABINE hereunder. SWEPCO agrees to use its best efforts to  
13 maintain in effect during the term of this Agreement all ownership, leasehold or  
14 other rights with respect to such lignite which are necessary for SABINE to mine  
15 and deliver the lignite covered by this Agreement, and shall indemnify and hold  
16 SABINE harmless from and against any and all claims, demands, actions,  
17 causes of action by and liability to third parties, excluding North American Coal,  
18 arising out of SWEPCO's failure to maintain such rights.

19 (c) Covenants of SWEPCO. SWEPCO hereby covenants and agrees  
20 that in the event any Loan or Lease Obligation is determined or declared void or  
21 unenforceable by any court or regulatory authority due to the fact that SABINE is  
22 determined to be a public utility within the meaning of any Federal or Texas,  
23 Louisiana or Arkansas statute, or because of the failure of SWEPCO to obtain

1 any regulatory approval necessary to permit the performance by it of its  
2 obligations hereunder, SWEPCO shall nevertheless continue to make payments  
3 in respect thereof as if such determination, declaration or failure had not  
4 occurred.

5 **ARTICLE XXXII**  
6 **Short Form Supplement**

7 If needed or requested by either party for purposes of recording, permitting, filing  
8 or any other valid reason, the parties hereto shall execute a short form supplement to  
9 this Agreement which shall contain the pertinent provisions hereof in mutually  
10 satisfactory detail.

11 **ARTICLE XXXIII**  
12 **Equal Employment Opportunity**

13 There is attached hereto as "Supplement A" and made a part hereof that certain  
14 instrument entitled "CERTIFICATION FOR EMPLOYMENT OPPORTUNITIES  
15 PROGRAMS FOR MINORITIES AND VETERANS". SABINE agrees to fully comply  
16 with said Supplement A, and throughout said Supplement A, whenever reference is  
17 made to "Contractor" it is understood that same refers to SABINE.

1 IN WITNESS WHEREOF, the parties hereto, with intent to be legally bound  
2 hereby, have caused this instrument to be executed by their duly authorized officers on  
3 the date first above written.

4  
5 WITNESSES:

SOUTHWESTERN ELECTRIC POWER  
COMPANY by ~~AMERICAN ELECTRIC POWER~~  
SERVICE CORPORATION, its agent *due*

6  
7 *[Signature]*  
8  
9

By: *[Signature]* *due*  
Title: *Vice President*  
Date: *12-31-08*

10  
11  
12  
13  
14  
15 WITNESSES:

THE SABINE MINING COMPANY

16 *Linda Campbell*  
17  
18

By: *[Signature]*  
Rick J. Ziegler, President  
Date: *12-22-2008*

19  
20  
21  
22 g:\legal\sabine\3rd rima\3rd rima final 12-19-08.doc  
23  
24  
25

ACKNOWLEDGMENTS

THE STATE OF Ohio  
COUNTY OF Franklin

Timothy K. Light BEFORE ME, the undersigned authority, on this day personally appeared Timothy K. Light, known to me to be the person and agent whose name is subscribed to the foregoing instrument and acknowledged to me that the same was the act of the said ~~AMERICAN ELECTRIC POWER SERVICE CORPORATION~~, a corporation, ~~as agent for~~ SOUTHWESTERN ELECTRIC POWER COMPANY, and that he executed the same as the act of such corporation for the purposes and consideration therein expressed, and in the capacity therein stated.

December GIVEN UNDER MY HAND AND SEAL OF OFFICE this 31st day of December, 2008.

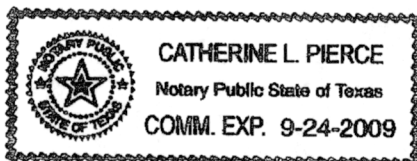
Paul M. [Signature]  
NOTARY PUBLIC  
My Commission Expires:

THE STATE OF TEXAS  
COUNTY OF HARRISON

DAVID M. COHEN  
NOTARY PUBLIC, STATE OF OHIO  
LIFETIME COMMISSION

BEFORE ME, the undersigned authority, on this day personally appeared Rick J. Ziegler, known to me to be the person and officer whose name is subscribed to the foregoing instrument and acknowledged to me that the same was the act of the said THE SABINE MINING COMPANY, a corporation, and that he executed the same as the act of such corporation for the purposes and consideration therein expressed, and in the capacity therein stated.

December GIVEN UNDER MY HAND AND SEAL OF OFFICE this 22<sup>nd</sup> day of December, 2008.



Catherine L. Pierce  
NOTARY PUBLIC  
My Commission Expires: 9-24-2009